

1-1 By: Schwertner, et al. S.B. No. 219
1-2 (In the Senate - Filed December 19, 2014; January 28, 2015,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 9, 2015, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 March 9, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Schwertner	X			
1-9 Kolkhorst	X			
1-10 Campbell	X			
1-11 Estes	X			
1-12 Perry	X			
1-13 Rodriguez	X			
1-14 Taylor of Collin	X			
1-15 Uresti	X			
1-16 Zaffirini	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 219 By: Schwertner

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to the provision of health and human services in this
1-22 state, including the powers and duties of the Health and Human
1-23 Services Commission and other state agencies, and the licensing of
1-24 certain health professionals; clarifying certain statutory
1-25 provisions; authorizing the imposition of fees.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 ARTICLE 1. FAMILY CODE

1-28 SECTION 1.001. The heading to Chapter 55, Family Code, is
1-29 amended to read as follows:

1-30 CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS
1-31 OR INTELLECTUAL DISABILITY [MENTAL RETARDATION]

1-32 SECTION 1.002. Section 55.01, Family Code, is amended to
1-33 read as follows:

1-34 Sec. 55.01. MEANING OF "HAVING A MENTAL ILLNESS". For
1-35 purposes of this chapter, a child who is described as having a
1-36 mental illness means a child with a [who suffers from] mental
1-37 illness as defined by Section 571.003, Health and Safety Code.

1-38 SECTION 1.003. Section 55.02, Family Code, is amended to
1-39 read as follows:

1-40 Sec. 55.02. MENTAL HEALTH AND INTELLECTUAL DISABILITY
1-41 [MENTAL RETARDATION] JURISDICTION. For the purpose of initiating
1-42 proceedings to order mental health or intellectual disability
1-43 [mental retardation] services for a child or for commitment of a
1-44 child as provided by this chapter, the juvenile court has
1-45 jurisdiction of proceedings under Subtitle C or D, Title 7, Health
1-46 and Safety Code.

1-47 SECTION 1.004. Section 55.03(b), Family Code, is amended to
1-48 read as follows:

1-49 (b) Except as provided by this chapter, a child who is
1-50 committed by a court to a residential care facility due to an
1-51 intellectual disability [for mental retardation] shall be cared for
1-52 as provided by Subtitle D, Title 7, Health and Safety Code.

1-53 SECTION 1.005. The heading to Subchapter C, Chapter 55,
1-54 Family Code, is amended to read as follows:

1-55 SUBCHAPTER C. CHILD UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS
1-56 OR INTELLECTUAL DISABILITY [MENTAL RETARDATION]

1-57 SECTION 1.006. Sections 55.31(a), (b), and (c), Family
1-58 Code, are amended to read as follows:

1-59 (a) A child alleged by petition or found to have engaged in
1-60 delinquent conduct or conduct indicating a need for supervision who

2-1 as a result of mental illness or an intellectual disability [mental
 2-2 retardation] lacks capacity to understand the proceedings in
 2-3 juvenile court or to assist in the child's own defense is unfit to
 2-4 proceed and shall not be subjected to discretionary transfer to
 2-5 criminal court, adjudication, disposition, or modification of
 2-6 disposition as long as such incapacity endures.

2-7 (b) On a motion by a party, the juvenile court shall
 2-8 determine whether probable cause exists to believe that a child who
 2-9 is alleged by petition or who is found to have engaged in delinquent
 2-10 conduct or conduct indicating a need for supervision is unfit to
 2-11 proceed as a result of mental illness or an intellectual disability
 2-12 [mental retardation]. In making its determination, the court may:

2-13 (1) consider the motion, supporting documents,
 2-14 professional statements of counsel, and witness testimony; and
 2-15 (2) make its own observation of the child.

2-16 (c) If the court determines that probable cause exists to
 2-17 believe that the child is unfit to proceed, the court shall
 2-18 temporarily stay the juvenile court proceedings and immediately
 2-19 order the child to be examined under Section 51.20. The information
 2-20 obtained from the examination must include expert opinion as to
 2-21 whether the child is unfit to proceed as a result of mental illness
 2-22 or an intellectual disability [mental retardation].

2-23 SECTION 1.007. Sections 55.32(a), (b), (d), (f), and (g),
 2-24 Family Code, are amended to read as follows:

2-25 (a) If the juvenile court determines that evidence exists to
 2-26 support a finding that a child is unfit to proceed as a result of
 2-27 mental illness or an intellectual disability [mental retardation],
 2-28 the court shall set the case for a hearing on that issue.

2-29 (b) The issue of whether the child is unfit to proceed as a
 2-30 result of mental illness or an intellectual disability [mental
 2-31 retardation] shall be determined at a hearing separate from any
 2-32 other hearing.

2-33 (d) Unfitness to proceed as a result of mental illness or an
 2-34 intellectual disability [mental retardation] must be proved by a
 2-35 preponderance of the evidence.

2-36 (f) If the court or jury determines that the child is unfit
 2-37 to proceed as a result of mental illness or an intellectual
 2-38 disability [mental retardation], the court shall:

2-39 (1) stay the juvenile court proceedings for as long as
 2-40 that incapacity endures; and

2-41 (2) proceed under Section 55.33.

2-42 (g) The fact that the child is unfit to proceed as a result
 2-43 of mental illness or an intellectual disability [mental
 2-44 retardation] does not preclude any legal objection to the juvenile
 2-45 court proceedings which is susceptible of fair determination prior
 2-46 to the adjudication hearing and without the personal participation
 2-47 of the child.

2-48 SECTION 1.008. Section 55.33(a), Family Code, is amended to
 2-49 read as follows:

2-50 (a) If the juvenile court or jury determines under Section
 2-51 55.32 that a child is unfit to proceed with the juvenile court
 2-52 proceedings for delinquent conduct, the court shall:

2-53 (1) if the unfitness to proceed is a result of mental
 2-54 illness or an intellectual disability [mental retardation]:

2-55 (A) provided that the child meets the commitment
 2-56 criteria under Subtitle C or D, Title 7, Health and Safety Code,
 2-57 order the child placed with the [Texas] Department of State Health
 2-58 Services or the Department of Aging and Disability Services, as
 2-59 appropriate, [Mental Health and Mental Retardation] for a period of
 2-60 not more than 90 days, which order may not specify a shorter period,
 2-61 for placement in a facility designated by the department; or

2-62 (B) on application by the child's parent,
 2-63 guardian, or guardian ad litem, order the child placed in a private
 2-64 psychiatric inpatient facility for a period of not more than 90
 2-65 days, which order may not specify a shorter period, but only if the
 2-66 placement is agreed to in writing by the administrator of the
 2-67 facility; or

2-68 (2) if the unfitness to proceed is a result of mental
 2-69 illness and the court determines that the child may be adequately

3-1 treated in an alternative setting, order the child to receive
 3-2 treatment for mental illness on an outpatient basis for a period of
 3-3 not more than 90 days, which order may not specify a shorter period.
 3-4

3-5 SECTION 1.009. Section 55.35(a), Family Code, is amended to
 3-6 read as follows:

3-7 (a) If the juvenile court issues a placement order under
 3-8 Section 55.33(a), the court shall order the probation department to
 3-9 send copies of any information in the possession of the department
 3-10 and relevant to the issue of the child's mental illness or
 3-11 intellectual disability [mental retardation] to the public or
 3-12 private facility or outpatient center, as appropriate.

3-13 SECTION 1.010. Section 55.40, Family Code, is amended to
 3-14 read as follows:

3-15 Sec. 55.40. REPORT THAT CHILD IS UNFIT TO PROCEED AS A
 3-16 RESULT OF INTELLECTUAL DISABILITY [MENTAL RETARDATION]. If a
 3-17 report submitted under Section 55.35(b) states that a child is
 3-18 unfit to proceed as a result of an intellectual disability [mental
 3-19 retardation] and that the child meets the commitment criteria for
 3-20 civil commitment under Subtitle D, Title 7, Health and Safety Code,
 3-21 the director of the residential care facility shall submit to the
 3-22 court an affidavit stating the conclusions reached as a result of
 3-23 the diagnosis. On receipt of the affidavit, the court shall:

3-24 (1) initiate proceedings as provided by Section 55.41
 3-25 in the juvenile court for commitment of the child under Subtitle D,
 3-26 Title 7, Health and Safety Code; or

3-27 (2) refer the child's case as provided by Section 55.42
 3-28 to the appropriate court for the initiation of proceedings in that
 3-29 court for commitment of the child under Subtitle D, Title 7, Health
 3-30 and Safety Code.

3-31 SECTION 1.011. The heading to Section 55.41, Family Code,
 3-32 is amended to read as follows:

3-33 Sec. 55.41. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR
 3-34 CHILDREN WITH INTELLECTUAL DISABILITY [MENTAL RETARDATION].

3-35 SECTION 1.012. Section 55.41(c), Family Code, is amended to
 3-36 read as follows:

3-37 (c) On receipt of the court's order, the [Texas] Department
 3-38 of Aging and Disability Services [Mental Health and Mental
 3-39 Retardation] or the appropriate community center shall admit the
 3-40 child to a residential care facility.

3-41 SECTION 1.013. The heading to Section 55.42, Family Code,
 3-42 is amended to read as follows:

3-43 Sec. 55.42. REFERRAL FOR COMMITMENT PROCEEDINGS FOR
 3-44 CHILDREN WITH INTELLECTUAL DISABILITY [MENTAL RETARDATION].

3-45 SECTION 1.014. Section 55.42(a), Family Code, is amended to
 3-46 read as follows:

3-47 (a) If the juvenile court refers the child's case to an
 3-48 appropriate court for the initiation of commitment proceedings
 3-49 under Section 55.40(2), the juvenile court shall:

3-50 (1) send all papers relating to the child's
 3-51 intellectual disability [mental retardation] to the clerk of the
 3-52 court to which the case is referred;

3-53 (2) send to the office of the appropriate county
 3-54 attorney or, if a county attorney is not available, to the office of
 3-55 the appropriate district attorney, copies of all papers sent to the
 3-56 clerk of the court under Subdivision (1); and

3-57 (3) if the child is in detention:

3-58 (A) order the child released from detention to
 3-59 the child's home or another appropriate place;

3-60 (B) order the child detained in an appropriate
 3-61 place other than a juvenile detention facility; or

3-62 (C) if an appropriate place to release or detain
 3-63 the child as described by Paragraph (A) or (B) is not available,
 3-64 order the child to remain in the juvenile detention facility
 3-65 subject to further detention orders of the court.

3-66 SECTION 1.015. Section 55.43(a), Family Code, is amended to
 3-67 read as follows:

3-68 (a) The prosecuting attorney may file with the juvenile
 3-69 court a motion for a restoration hearing concerning a child if:

(1) the child is found unfit to proceed as a result of

4-1 mental illness or an intellectual disability [~~mental retardation~~];
 4-2 and

4-3 (2) the child:

4-4 (A) is not:

4-5 (i) ordered by a court to receive inpatient

4-6 mental health services;

4-7 (ii) committed by a court to a residential

4-8 care facility; or

4-9 (iii) ordered by a court to receive

4-10 treatment on an outpatient basis; or

4-11 (B) is discharged or currently on furlough from a

4-12 mental health facility or outpatient center before the child

4-13 reaches 18 years of age.

4-14 SECTION 1.016. Section 55.44(a), Family Code, is amended to
 4-15 read as follows:

4-16 (a) The juvenile court shall transfer all pending
 4-17 proceedings from the juvenile court to a criminal court on the 18th
 4-18 birthday of a child for whom the juvenile court or a court to which
 4-19 the child's case is referred has ordered inpatient mental health
 4-20 services or residential care for persons with an intellectual
 4-21 disability [~~mental retardation~~] if:

4-22 (1) the child is not discharged or currently on
 4-23 furlough from the facility before reaching 18 years of age; and

4-24 (2) the child is alleged to have engaged in delinquent
 4-25 conduct that included a violation of a penal law listed in Section
 4-26 53.045 and no adjudication concerning the alleged conduct has been
 4-27 made.

4-28 SECTION 1.017. The heading to Subchapter D, Chapter 55,
 4-29 Family Code, is amended to read as follows:

4-30 SUBCHAPTER D. LACK OF RESPONSIBILITY FOR CONDUCT AS A RESULT OF
 4-31 MENTAL ILLNESS OR INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]

4-32 SECTION 1.018. Section 55.51, Family Code, is amended to
 4-33 read as follows:

4-34 Sec. 55.51. LACK OF RESPONSIBILITY FOR CONDUCT
 4-35 DETERMINATION; EXAMINATION. (a) A child alleged by petition to
 4-36 have engaged in delinquent conduct or conduct indicating a need for
 4-37 supervision is not responsible for the conduct if at the time of the
 4-38 conduct, as a result of mental illness or an intellectual
 4-39 disability [~~mental retardation~~], the child lacks substantial
 4-40 capacity either to appreciate the wrongfulness of the child's
 4-41 conduct or to conform the child's conduct to the requirements of
 4-42 law.

4-43 (b) On a motion by a party in which it is alleged that a
 4-44 child may not be responsible as a result of mental illness or an
 4-45 intellectual disability [~~mental retardation~~] for the child's
 4-46 conduct, the court shall order the child to be examined under
 4-47 Section 51.20. The information obtained from the examinations must
 4-48 include expert opinion as to whether the child is not responsible
 4-49 for the child's conduct as a result of mental illness or an
 4-50 intellectual disability [~~mental retardation~~].

4-51 (c) The issue of whether the child is not responsible for
 4-52 the child's conduct as a result of mental illness or an intellectual
 4-53 disability [~~mental retardation~~] shall be tried to the court or jury
 4-54 in the adjudication hearing.

4-55 (d) Lack of responsibility for conduct as a result of mental
 4-56 illness or an intellectual disability [~~mental retardation~~] must be
 4-57 proved by a preponderance of the evidence.

4-58 (e) In its findings or verdict the court or jury must state
 4-59 whether the child is not responsible for the child's conduct as a
 4-60 result of mental illness or an intellectual disability [~~mental~~
 4-61 ~~retardation~~].

4-62 (f) If the court or jury finds the child is not responsible
 4-63 for the child's conduct as a result of mental illness or an
 4-64 intellectual disability [~~mental retardation~~], the court shall
 4-65 proceed under Section 55.52.

4-66 (g) A child found to be not responsible for the child's
 4-67 conduct as a result of mental illness or an intellectual disability
 4-68 [mental retardation] shall not be subject to proceedings under this
 4-69 title with respect to such conduct, other than proceedings under

5-1 Section 55.52.

5-2 SECTION 1.019. Section 55.52(a), Family Code, is amended to
 5-3 read as follows:

5-4 (a) If the court or jury finds that a child is not
 5-5 responsible for the child's conduct under Section 55.51, the court
 5-6 shall:

5-7 (1) if the lack of responsibility is a result of mental
 5-8 illness or an intellectual disability [~~mental retardation~~]:

5-9 (A) provided that the child meets the commitment
 5-10 criteria under Subtitle C or D, Title 7, Health and Safety Code,
 5-11 order the child placed with the [Texas] Department of State Health
 5-12 Services or the Department of Aging and Disability Services, as
 5-13 appropriate, [~~Mental Health and Mental Retardation~~] for a period of
 5-14 not more than 90 days, which order may not specify a shorter period,
 5-15 for placement in a facility designated by the department; or

5-16 (B) on application by the child's parent,
 5-17 guardian, or guardian ad litem, order the child placed in a private
 5-18 psychiatric inpatient facility for a period of not more than 90
 5-19 days, which order may not specify a shorter period, but only if the
 5-20 placement is agreed to in writing by the administrator of the
 5-21 facility; or

5-22 (2) if the child's lack of responsibility is a result
 5-23 of mental illness and the court determines that the child may be
 5-24 adequately treated in an alternative setting, order the child to
 5-25 receive treatment on an outpatient basis for a period of not more
 5-26 than 90 days, which order may not specify a shorter period.

5-27 SECTION 1.020. Sections 55.54(a) and (b), Family Code, are
 5-28 amended to read as follows:

5-29 (a) If the juvenile court issues a placement order under
 5-30 Section 55.52(a), the court shall order the probation department to
 5-31 send copies of any information in the possession of the department
 5-32 and relevant to the issue of the child's mental illness or
 5-33 intellectual disability [~~mental retardation~~] to the public or
 5-34 private facility or outpatient center, as appropriate.

5-35 (b) Not later than the 75th day after the date the court
 5-36 issues a placement order under Section 55.52(a), the public or
 5-37 private facility or outpatient center, as appropriate, shall submit
 5-38 to the court a report that:

5-39 (1) describes the treatment of the child provided by
 5-40 the facility or center; and

5-41 (2) states the opinion of the director of the facility
 5-42 or center as to whether the child has a mental illness or an
 5-43 intellectual disability [~~is mentally ill or mentally retarded~~].

5-44 SECTION 1.021. Section 55.55, Family Code, is amended to
 5-45 read as follows:

5-46 Sec. 55.55. REPORT THAT CHILD DOES NOT HAVE MENTAL ILLNESS
 5-47 OR INTELLECTUAL DISABILITY [~~IS NOT MENTALLY ILL OR MENTALLY~~
 5-48 ~~RETARDED~~]; HEARING ON OBJECTION. (a) If a report submitted under
 5-49 Section 55.54(b) states that a child does not have a mental illness
 5-50 or an intellectual disability [~~mental retardation~~], the juvenile
 5-51 court shall discharge the child unless:

5-52 (1) an adjudication hearing was conducted concerning
 5-53 conduct that included a violation of a penal law listed in Section
 5-54 53.045(a) and a petition was approved by a grand jury under Section
 5-55 53.045; and

5-56 (2) the prosecuting attorney objects in writing not
 5-57 later than the second day after the date the attorney receives a
 5-58 copy of the report under Section 55.54(c).

5-59 (b) On objection by the prosecuting attorney under
 5-60 Subsection (a), the juvenile court shall hold a hearing without a
 5-61 jury to determine whether the child has a mental illness or an
 5-62 intellectual disability [~~mental retardation~~] and whether the child
 5-63 meets the commitment criteria for civil commitment under Subtitle C
 5-64 or D, Title 7, Health and Safety Code.

5-65 (c) At the hearing, the burden is on the state to prove by
 5-66 clear and convincing evidence that the child has a mental illness or
 5-67 an intellectual disability [~~mental retardation~~] and that the child
 5-68 meets the commitment criteria for civil commitment under Subtitle C
 5-69 or D, Title 7, Health and Safety Code.

6-1 (d) If, after a hearing, the court finds that the child does
 6-2 not have a mental illness or an intellectual disability [mental
 6-3 retardation] and that the child does not meet the commitment
 6-4 criteria under Subtitle C or D, Title 7, Health and Safety Code, the
 6-5 court shall discharge the child.

6-6 (e) If, after a hearing, the court finds that the child has a
 6-7 mental illness or an intellectual disability [mental retardation]
 6-8 and that the child meets the commitment criteria under Subtitle C or
 6-9 D, Title 7, Health and Safety Code, the court shall issue an
 6-10 appropriate commitment order.

6-11 SECTION 1.022. Section 55.59, Family Code, is amended to
 6-12 read as follows:

6-13 Sec. 55.59. REPORT THAT CHILD HAS INTELLECTUAL DISABILITY
 6-14 [MENTAL RETARDATION]; INITIATION OF COMMITMENT PROCEEDINGS. If a
 6-15 report submitted under Section 55.54(b) states that a child has an
 6-16 intellectual disability [mental retardation] and that the child
 6-17 meets the commitment criteria for civil commitment under Subtitle
 6-18 D, Title 7, Health and Safety Code, the director of the residential
 6-19 care facility shall submit to the court an affidavit stating the
 6-20 conclusions reached as a result of the diagnosis. On receipt of an
 6-21 affidavit, the juvenile court shall:

6-22 (1) initiate proceedings in the juvenile court as
 6-23 provided by Section 55.60 for commitment of the child under
 6-24 Subtitle D, Title 7, Health and Safety Code; or

6-25 (2) refer the child's case to the appropriate court as
 6-26 provided by Section 55.61 for the initiation of proceedings in that
 6-27 court for commitment of the child under Subtitle D, Title 7, Health
 6-28 and Safety Code.

6-29 SECTION 1.023. The heading to Section 55.60, Family Code,
 6-30 is amended to read as follows:

6-31 Sec. 55.60. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR
 6-32 CHILDREN WITH INTELLECTUAL DISABILITY [MENTAL RETARDATION].

6-33 SECTION 1.024. Section 55.60(c), Family Code, is amended to
 6-34 read as follows:

6-35 (c) On receipt of the court's order, the [Texas] Department
 6-36 of Aging and Disability Services [Mental Health and Mental
 6-37 Retardation] or the appropriate community center shall admit the
 6-38 child to a residential care facility.

6-39 SECTION 1.025. The heading to Section 55.61, Family Code,
 6-40 is amended to read as follows:

6-41 Sec. 55.61. REFERRAL FOR COMMITMENT PROCEEDINGS FOR
 6-42 CHILDREN WITH INTELLECTUAL DISABILITY [MENTAL RETARDATION].

6-43 SECTION 1.026. Section 55.61(a), Family Code, is amended to
 6-44 read as follows:

6-45 (a) If the juvenile court refers the child's case to an
 6-46 appropriate court for the initiation of commitment proceedings
 6-47 under Section 55.59(2), the juvenile court shall:

6-48 (1) send all papers relating to the child's
 6-49 intellectual disability [mental retardation] to the clerk of the
 6-50 court to which the case is referred;

6-51 (2) send to the office of the appropriate county
 6-52 attorney or, if a county attorney is not available, to the office of
 6-53 the appropriate district attorney, copies of all papers sent to the
 6-54 clerk of the court under Subdivision (1); and

6-55 (3) if the child is in detention:

6-56 (A) order the child released from detention to
 6-57 the child's home or another appropriate place;

6-58 (B) order the child detained in an appropriate
 6-59 place other than a juvenile detention facility; or

6-60 (C) if an appropriate place to release or detain
 6-61 the child as described by Paragraph (A) or (B) is not available,
 6-62 order the child to remain in the juvenile detention facility
 6-63 subject to further detention orders of the court.

6-64 SECTION 1.027. Section 101.0021, Family Code, is
 6-65 redesignated as Section 101.036, Family Code, and amended to read
 6-66 as follows:

6-67 Sec. 101.036 [101.0021]. [BUREAU OF] VITAL STATISTICS
 6-68 UNIT. "Vital [Bureau of vital] statistics unit" means the [bureau
 6-69 of] vital statistics unit of the [Texas] Department of State Health

Services.

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

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

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

(a) An original suit may be filed at any time by:

(1) a parent of the child;

(2) the child through a representative authorized by 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;

(4) a guardian of the person or of the estate of the child;

(5) a governmental entity;

(6) the Department of Family and Protective Services [an authorized agency];

(7) a licensed child placing agency;

(8) a man alleging himself to be the father of a child filing in accordance with Chapter 160, subject to the limitations of that chapter, but not otherwise;

(9) a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition;

(10) a person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under Chapter 161 or to whom consent to adoption has been given in writing under Chapter 162;

(11) a person with whom the child and the child's guardian, managing conservator, or parent have resided for at least six months ending not more than 90 days preceding the date of the filing of the petition if the child's guardian, managing conservator, or parent is deceased at the time of the filing of the petition;

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

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

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

SECTION 1.030. Section 102.011(b), Family Code, is amended to read as follows:

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

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

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

(3) the child resides in this state as a result of the

8-1 acts or directives of the person;
 8-2 (4) the person resided with the child in this state;
 8-3 (5) the person resided in this state and provided
 8-4 prenatal expenses or support for the child;

8-5 (6) the person engaged in sexual intercourse in this
 8-6 state and the child may have been conceived by that act of
 8-7 intercourse;

8-8 (7) the person, as provided by Chapter 160:

8-9 (A) registered with the paternity registry
 8-10 maintained by the [bureau of] vital statistics unit; or
 8-11 (B) signed an acknowledgment of paternity of a
 8-12 child born in this state; or

8-13 (8) there is any basis consistent with the
 8-14 constitutions of this state and the United States for the exercise
 8-15 of the personal jurisdiction.

8-16 SECTION 1.031. Section 107.001(5), Family Code, is amended
 8-17 to read as follows:

8-18 (5) "Guardian ad litem" means a person appointed to
 8-19 represent the best interests of a child. The term includes:

8-20 (A) a volunteer advocate from a charitable
 8-21 organization described by [appointed under] Subchapter C who is
 8-22 appointed by the court as the child's guardian ad litem;

8-23 (B) a professional, other than an attorney, who
 8-24 holds a relevant professional license and whose training relates to
 8-25 the determination of a child's best interests;

8-26 (C) an adult having the competence, training, and
 8-27 expertise determined by the court to be sufficient to represent the
 8-28 best interests of the child; or

8-29 (D) an attorney ad litem appointed to serve in
 8-30 the dual role.

8-31 SECTION 1.032. Section 107.002(c), Family Code, is amended
 8-32 to read as follows:

8-33 (c) A guardian ad litem appointed for the child under this
 8-34 chapter is entitled to:

8-35 (1) receive a copy of each pleading or other paper
 8-36 filed with the court in the case in which the guardian ad litem is
 8-37 appointed;

8-38 (2) receive notice of each hearing in the case;

8-39 (3) participate in case staffings by the Department of
 8-40 Family and Protective Services [an authorized agency] concerning
 8-41 the child;

8-42 (4) attend all legal proceedings in the case but may
 8-43 not call or question a witness or otherwise provide legal services
 8-44 unless the guardian ad litem is a licensed attorney who has been
 8-45 appointed in the dual role;

8-46 (5) review and sign, or decline to sign, an agreed
 8-47 order affecting the child; and

8-48 (6) explain the basis for the guardian ad litem's
 8-49 opposition to the agreed order if the guardian ad litem does not
 8-50 agree to the terms of a proposed order.

8-51 SECTION 1.033. Section 107.003(a), Family Code, is amended
 8-52 to read as follows:

8-53 (a) An attorney ad litem appointed to represent a child or
 8-54 an amicus attorney appointed to assist the court:

8-55 (1) shall:

8-56 (A) subject to Rules 4.02, 4.03, and 4.04, Texas
 8-57 Disciplinary Rules of Professional Conduct, and within a reasonable
 8-58 time after the appointment, interview:

8-59 (i) the child in a developmentally
 8-60 appropriate manner, if the child is four years of age or older;

8-61 (ii) each person who has significant
 8-62 knowledge of the child's history and condition, including any
 8-63 foster parent of the child; and

8-64 (iii) the parties to the suit;

8-65 (B) seek to elicit in a developmentally
 8-66 appropriate manner the child's expressed objectives of
 8-67 representation;

8-68 (C) consider the impact on the child in
 8-69 formulating the attorney's presentation of the child's expressed

objectives of representation to the court;

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

(E) obtain and review copies of relevant records relating to the child as provided by Section **107.006**;

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

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

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

(I) review and sign, or decline to sign, a proposed or agreed order affecting the child;

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

(3) is entitled to:

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

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

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

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

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

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

(G) attend all legal proceedings in the suit.

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

9-33 Sec. 108.001. TRANSMITTAL OF RECORDS OF SUIT BY CLERK. (a)
9-34 Except as provided by this chapter, the clerk of the court shall
9-35 transmit to the [bureau of] vital statistics unit a certified
9-36 record of the order rendered in a suit, together with the name and
9-37 all prior names, birth date, and place of birth of the child on a
9-38 form provided by the unit [bureau]. The form shall be completed by
9-39 the petitioner and submitted to the clerk at the time the order is
9-40 filed for record.

9-41 (b) The [bureau of] vital statistics unit shall maintain
9-42 these records in a central file according to the name, birth date,
9-43 and place of birth of the child, the court that rendered the order,
9-44 and the docket number of the suit.

9-45 (c) Except as otherwise provided by law, the records
9-46 required under this section to be maintained by the [bureau of]
9-47 vital statistics unit are confidential.

9-48 (d) In a Title IV-D case, the Title IV-D agency may transmit
9-49 the record and information specified by Subsection (a) to the
9-50 [bureau of] vital statistics unit, with a copy to the clerk of the
9-51 court on request by the clerk. The record and information are not
9-52 required to be certified if transmitted by the Title IV-D agency
9-53 under this subsection.

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

9-56 Sec. 108.003. TRANSMITTAL OF INFORMATION REGARDING
9-57 ADOPTION. (a) The clerk of a court that renders a decree of
9-58 adoption shall, not later than the 10th day of the first month after
9-59 the month in which the adoption is rendered, transmit to the central
9-60 registry of the [bureau of] vital statistics unit a certified
9-61 report of adoption that includes:

10-1 required or waived under Chapter 162, or whose parental rights were
 10-2 terminated in the adoption suit;

10-3 (7) the identity of the licensed child placing agency,
 10-4 if any, through which the adopted child was placed for adoption; and
 10-5 (8) the identity, address, and telephone number of the
 10-6 registry through which the adopted child may register as an
 10-7 adoptee.

10-8 (b) Except as otherwise provided by law, for good cause
 10-9 shown, or on an order of the court that granted the adoption or
 10-10 terminated the proceedings under Section 155.001, the records
 10-11 concerning a child maintained by the district clerk after rendition
 10-12 of a decree of adoption, the records of a child-placing agency that
 10-13 has ceased operations, and the records required under this section
 10-14 to be maintained by the [bureau of] vital statistics unit are
 10-15 confidential, and no person is entitled to access to or information
 10-16 from these records.

10-17 (c) If the [bureau of] vital statistics unit determines that
 10-18 a report filed with the unit [bureau] under this section requires
 10-19 correction, the unit [bureau] shall mail the report directly to an
 10-20 attorney of record with respect to the adoption. The attorney shall
 10-21 return the corrected report to the unit [bureau]. If there is no
 10-22 attorney of record, the unit [bureau] shall mail the report to the
 10-23 clerk of the court for correction.

10-24 SECTION 1.036. Section 108.004, Family Code, is amended to
 10-25 read as follows:

10-26 Sec. 108.004. TRANSMITTAL OF FILES ON LOSS OF JURISDICTION.
 10-27 On the loss of jurisdiction of a court under Chapter 155, 159, or
 10-28 262, the clerk of the court shall transmit to the central registry
 10-29 of the [bureau of] vital statistics unit a certified record, on a
 10-30 form provided by the unit [bureau], stating that jurisdiction has
 10-31 been lost, the reason for the loss of jurisdiction, and the name and
 10-32 all previous names, date of birth, and place of birth of the child.

10-33 SECTION 1.037. The heading to Section 108.005, Family Code,
 10-34 is amended to read as follows:

10-35 Sec. 108.005. ADOPTION RECORDS RECEIVED BY [BUREAU OF]
 10-36 VITAL STATISTICS UNIT.

10-37 SECTION 1.038. Section 108.005(a), Family Code, is amended
 10-38 to read as follows:

10-39 (a) When the [bureau of] vital statistics unit receives a
 10-40 record from the district clerk showing that continuing, exclusive
 10-41 jurisdiction of a child has been lost due to the adoption of the
 10-42 child, the unit [bureau] shall close the records concerning that
 10-43 child.

10-44 SECTION 1.039. Sections 108.006(a), (c), and (d), Family
 10-45 Code, are amended to read as follows:

10-46 (a) The Department of State Health Services [bureau of vital]
 10-47 statistics] may charge a reasonable fee to cover the cost of
 10-48 determining and sending information concerning the identity of the
 10-49 court with continuing, exclusive jurisdiction.

10-50 (c) The clerk shall send the fees collected under Subsection
 10-51 (b) to the Department of State Health Services [bureau of vital]
 10-52 statistics] for deposit in a special fund in the state treasury from
 10-53 which the legislature may appropriate money only to operate and
 10-54 maintain the central file and central registry of the vital
 10-55 statistics unit [bureau].

10-56 (d) The receipts from the fees charged under Subsection (a)
 10-57 shall be deposited in a financial institution as determined by the
 10-58 Department of State Health Services [director of the bureau of]
 10-59 vital statistics] and withdrawn as necessary for the sole purpose
 10-60 of operating and maintaining the central record file.

10-61 SECTION 1.040. Section 108.007, Family Code, is amended to
 10-62 read as follows:

10-63 Sec. 108.007. MICROFILM. (a) The [bureau of] vital
 10-64 statistics unit may use microfilm or other suitable means for
 10-65 maintaining the central record file.

10-66 (b) A certified reproduction of a document maintained by the
 10-67 [bureau of] vital statistics unit is admissible in evidence as the
 10-68 original document.

10-69 SECTION 1.041. Section 108.008(a), Family Code, is amended

11-1 to read as follows:

11-2 (a) On a determination of paternity, the petitioner shall
11-3 provide the clerk of the court in which the order was rendered the
11-4 information necessary to prepare the report of determination of
11-5 paternity. The clerk shall:

11-6 (1) prepare the report on a form provided by the vital
11-7 statistics unit [Bureau of Vital Statistics]; and

11-8 (2) complete the report immediately after the order
11-9 becomes final.

11-10 SECTION 1.042. Section 108.110, Family Code, is amended to
11-11 read as follows:

11-12 Sec. 108.110. RELEASE OF INFORMATION BY [BUREAU OF] VITAL
11-13 STATISTICS UNIT. (a) The [bureau of] vital statistics unit shall
11-14 provide to the Department of Family and Protective [and Regulatory]
11-15 Services:

11-16 (1) adoption information as necessary for the department
11-17 to comply with federal law or regulations regarding the
11-18 compilation or reporting of adoption information to federal
11-19 officials; and

11-20 (2) other information as necessary for the department
11-21 to administer its duties.

11-22 (b) The unit [bureau] may release otherwise confidential
11-23 information from the unit's [bureau's] central record files to
11-24 another governmental entity that has a specific need for the
11-25 information and maintains appropriate safeguards to prevent
11-26 further dissemination of the information.

11-27 SECTION 1.043. Section 153.005(b), Family Code, is amended
11-28 to read as follows:

11-29 (b) A managing conservator must be a parent, a competent
11-30 adult, the Department of Family and Protective Services [an
11-31 authorized agency], or a licensed child-placing agency.

11-32 SECTION 1.044. Section 153.371, Family Code, is amended to
11-33 read as follows:

11-34 Sec. 153.371. RIGHTS AND DUTIES OF NONPARENT APPOINTED AS
11-35 SOLE MANAGING CONSERVATOR. Unless limited by court order or other
11-36 provisions of this chapter, a nonparent, a licensed child-placing
11-37 agency, or the Department of Family and Protective Services
11-38 [authorized agency] appointed as a managing conservator of the
11-39 child has the following rights and duties:

11-40 (1) the right to have physical possession and to
11-41 direct the moral and religious training of the child;

11-42 (2) the duty of care, control, protection, and
11-43 reasonable discipline of the child;

11-44 (3) the duty to provide the child with clothing, food,
11-45 shelter, education, and medical, psychological, and dental care;

11-46 (4) the right to consent for the child to medical,
11-47 psychiatric, psychological, dental, and surgical treatment and to
11-48 have access to the child's medical records;

11-49 (5) the right to receive and give receipt for payments
11-50 for the support of the child and to hold or disburse funds for the
11-51 benefit of the child;

11-52 (6) the right to the services and earnings of the
11-53 child;

11-54 (7) the right to consent to marriage and to enlistment
11-55 in the armed forces of the United States;

11-56 (8) the right to represent the child in legal action
11-57 and to make other decisions of substantial legal significance
11-58 concerning the child;

11-59 (9) except when a guardian of the child's estate or a
11-60 guardian or attorney ad litem has been appointed for the child, the
11-61 right to act as an agent of the child in relation to the child's
11-62 estate if the child's action is required by a state, the United
11-63 States, or a foreign government;

11-64 (10) the right to designate the primary residence of
11-65 the child and to make decisions regarding the child's education;
11-66 and

11-67 (11) if the parent-child relationship has been
11-68 terminated with respect to the parents, or only living parent, or if
11-69 there is no living parent, the right to consent to the adoption of

12-1 the child and to make any other decision concerning the child that a
12-2 parent could make.

12-3 SECTION 1.045. Section 153.372(a), Family Code, is amended
12-4 to read as follows:

12-5 (a) A nonparent, the Department of Family and Protective
12-6 Services [authorized agency], or a licensed child-placing agency
12-7 appointed as a joint managing conservator may serve in that
12-8 capacity with either another nonparent or with a parent of the
12-9 child.

12-10 SECTION 1.046. Section 153.373, Family Code, is amended to
12-11 read as follows:

12-12 Sec. 153.373. VOLUNTARY SURRENDER OF POSSESSION REBUTS
12-13 PARENTAL PRESUMPTION. The presumption that a parent should be
12-14 appointed or retained as managing conservator of the child is
12-15 rebutted if the court finds that:

12-16 (1) the parent has voluntarily relinquished actual
12-17 care, control, and possession of the child to a nonparent, a
12-18 licensed child-placing agency, or the Department of Family and
12-19 Protective Services [authorized agency] for a period of one year or
12-20 more, a portion of which was within 90 days preceding the date of
12-21 intervention in or filing of the suit; and

12-22 (2) the appointment of the nonparent, [or] agency, or
12-23 Department of Family and Protective Services as managing
12-24 conservator is in the best interest of the child.

12-25 SECTION 1.047. Section 153.374, Family Code, is amended to
12-26 read as follows:

12-27 Sec. 153.374. DESIGNATION OF MANAGING CONSERVATOR IN
12-28 AFFIDAVIT OF RELINQUISHMENT. (a) A parent may designate a
12-29 competent person, the Department of Family and Protective Services
12-30 [authorized agency], or a licensed child-placing agency to serve as
12-31 managing conservator of the child in an unrevoked or irrevocable
12-32 affidavit of relinquishment of parental rights executed as provided
12-33 by Chapter 161.

12-34 (b) The person, Department of Family and Protective
12-35 Services, or agency designated to serve as managing conservator
12-36 shall be appointed managing conservator unless the court finds that
12-37 the appointment would not be in the best interest of the child.

12-38 SECTION 1.048. Section 153.376(a), Family Code, is amended
12-39 to read as follows:

12-40 (a) Unless limited by court order or other provisions of
12-41 this chapter, a nonparent, a licensed child-placing agency, or the
12-42 Department of Family and Protective Services [authorized agency]
12-43 appointed as a possessory conservator has the following rights and
12-44 duties during the period of possession:

12-45 (1) the duty of care, control, protection, and
12-46 reasonable discipline of the child;

12-47 (2) the duty to provide the child with clothing, food,
12-48 and shelter; and

12-49 (3) the right to consent to medical, dental, and
12-50 surgical treatment during an emergency involving an immediate
12-51 danger to the health and safety of the child.

12-52 SECTION 1.049. Section 153.434, Family Code, is amended to
12-53 read as follows:

12-54 Sec. 153.434. LIMITATION ON RIGHT TO REQUEST POSSESSION OR
12-55 ACCESS. A biological or adoptive grandparent may not request
12-56 possession of or access to a grandchild if:

12-57 (1) each of the biological parents of the grandchild
12-58 has:

12-59 (A) died;

12-60 (B) had the person's parental rights terminated;

12-61 or

12-62 (C) executed an affidavit of waiver of interest
12-63 in child or an affidavit of relinquishment of parental rights under
12-64 Chapter 161 and the affidavit designates the Department of Family
12-65 and Protective Services [an authorized agency], a licensed
12-66 child-placing agency, or a person other than the child's stepparent
12-67 as the managing conservator of the child; and

12-68 (2) the grandchild has been adopted, or is the subject
12-69 of a pending suit for adoption, by a person other than the child's

13-1 stepparent.

13-2 SECTION 1.050. Section 155.004(a), Family Code, is amended
13-3 to read as follows:

13-4 (a) A court of this state loses its continuing, exclusive
13-5 jurisdiction to modify its order if:

13-6 (1) an order of adoption is rendered after the court
13-7 acquires continuing, exclusive jurisdiction of the suit;

13-8 (2) the parents of the child have remarried each other
13-9 after the dissolution of a previous marriage between them and file a
13-10 suit for the dissolution of their subsequent marriage combined with
13-11 a suit affecting the parent-child relationship as if there had not
13-12 been a prior court with continuing, exclusive jurisdiction over the
13-13 child; or

13-14 (3) another court assumed jurisdiction over a suit and
13-15 rendered a final order based on incorrect information received from
13-16 the [bureau of] vital statistics unit that there was no court of
13-17 continuing, exclusive jurisdiction.

13-18 SECTION 1.051. Sections 155.101(a), (b), and (d), Family
13-19 Code, are amended to read as follows:

13-20 (a) The petitioner or the court shall request from the
13-21 [bureau of] vital statistics unit identification of the court that
13-22 last had continuing, exclusive jurisdiction of the child in a suit
13-23 unless:

13-24 (1) the petition alleges that no court has continuing,
13-25 exclusive jurisdiction of the child and the issue is not disputed by
13-26 the pleadings; or

13-27 (2) the petition alleges that the court in which the
13-28 suit or petition to modify has been filed has acquired and retains
13-29 continuing, exclusive jurisdiction of the child as the result of a
13-30 prior proceeding and the issue is not disputed by the pleadings.

13-31 (b) The [bureau of] vital statistics unit shall, on the
13-32 written request of the court, an attorney, or a party:

13-33 (1) identify the court that last had continuing,
13-34 exclusive jurisdiction of the child in a suit and give the docket
13-35 number of the suit; or

13-36 (2) state that the child has not been the subject of a
13-37 suit.

13-38 (d) The [bureau of] vital statistics unit shall transmit the
13-39 information not later than the 10th day after the date on which the
13-40 request is received.

13-41 SECTION 1.052. Section 155.103, Family Code, is amended to
13-42 read as follows:

13-43 Sec. 155.103. RELIANCE ON [BUREAU OF] VITAL STATISTICS UNIT
13-44 INFORMATION. (a) A court shall have jurisdiction over a suit if it
13-45 has been, correctly or incorrectly, informed by the [bureau of]
13-46 vital statistics unit that the child has not been the subject of a
13-47 suit and the petition states that no other court has continuing,
13-48 exclusive jurisdiction over the child.

13-49 (b) If the [bureau of] vital statistics unit notifies the
13-50 court that the unit [bureau] has furnished incorrect information
13-51 regarding the existence of another court with continuing, exclusive
13-52 jurisdiction before the rendition of a final order, the provisions
13-53 of this chapter apply.

13-54 SECTION 1.053. Section 155.104, Family Code, is amended to
13-55 read as follows:

13-56 Sec. 155.104. VOIDABLE ORDER. (a) If a request for
13-57 information from the [bureau of] vital statistics unit relating to
13-58 the identity of the court having continuing, exclusive jurisdiction
13-59 of the child has been made under this subchapter, a final order,
13-60 except an order of dismissal, may not be rendered until the
13-61 information is filed with the court.

13-62 (b) If a final order is rendered in the absence of the filing
13-63 of the information from the [bureau of] vital statistics unit, the
13-64 order is voidable on a showing that a court other than the court
13-65 that rendered the order had continuing, exclusive jurisdiction.

13-66 SECTION 1.054. Section 159.201(a), Family Code, is amended
13-67 to read as follows:

13-68 (a) In a proceeding to establish or enforce a support order
13-69 or to determine parentage, a tribunal of this state may exercise

14-1 personal jurisdiction over a nonresident individual or the
 14-2 individual's guardian or conservator if:

14-3 (1) the individual is personally served with citation
 14-4 in this state;

14-5 (2) the individual submits to the jurisdiction of this
 14-6 state by consent, by entering a general appearance, or by filing a
 14-7 responsive document having the effect of waiving any contest to
 14-8 personal jurisdiction;

14-9 (3) the individual resided with the child in this
 14-10 state;

14-11 (4) the individual resided in this state and provided
 14-12 prenatal expenses or support for the child;

14-13 (5) the child resides in this state as a result of the
 14-14 acts or directives of the individual;

14-15 (6) the individual engaged in sexual intercourse in
 14-16 this state and the child may have been conceived by that act of
 14-17 intercourse;

14-18 (7) the individual asserted parentage in the paternity
 14-19 registry maintained in this state by the [bureau of] vital
 14-20 statistics unit; or

14-21 (8) there is any other basis consistent with the
 14-22 constitutions of this state and the United States for the exercise
 14-23 of personal jurisdiction.

14-24 SECTION 1.055. Section 160.204(a), Family Code, is amended
 14-25 to read as follows:

14-26 (a) A man is presumed to be the father of a child if:

14-27 (1) he is married to the mother of the child and the
 14-28 child is born during the marriage;

14-29 (2) he is married to the mother of the child and the
 14-30 child is born before the 301st day after the date the marriage is
 14-31 terminated by death, annulment, declaration of invalidity, or
 14-32 divorce;

14-33 (3) he married the mother of the child before the birth
 14-34 of the child in apparent compliance with law, even if the attempted
 14-35 marriage is or could be declared invalid, and the child is born
 14-36 during the invalid marriage or before the 301st day after the date
 14-37 the marriage is terminated by death, annulment, declaration of
 14-38 invalidity, or divorce;

14-39 (4) he married the mother of the child after the birth
 14-40 of the child in apparent compliance with law, regardless of whether
 14-41 the marriage is or could be declared invalid, he voluntarily
 14-42 asserted his paternity of the child, and:

14-43 (A) the assertion is in a record filed with the
 14-44 [bureau of] vital statistics unit;

14-45 (B) he is voluntarily named as the child's father
 14-46 on the child's birth certificate; or

14-47 (C) he promised in a record to support the child
 14-48 as his own; or

14-49 (5) during the first two years of the child's life, he
 14-50 continuously resided in the household in which the child resided
 14-51 and he represented to others that the child was his own.

14-52 SECTION 1.056. Section 160.302(b), Family Code, is amended
 14-53 to read as follows:

14-54 (b) An acknowledgment of paternity is void if it:

14-55 (1) states that another man is a presumed father of the
 14-56 child, unless a denial of paternity signed or otherwise
 14-57 authenticated by the presumed father is filed with the [bureau of]
 14-58 vital statistics unit;

14-59 (2) states that another man is an acknowledged or
 14-60 adjudicated father of the child; or

14-61 (3) falsely denies the existence of a presumed,
 14-62 acknowledged, or adjudicated father of the child.

14-63 SECTION 1.057. Section 160.304(c), Family Code, is amended
 14-64 to read as follows:

14-65 (c) Subject to Subsection (a), an acknowledgment of
 14-66 paternity or denial of paternity takes effect on the date of the
 14-67 birth of the child or the filing of the document with the [bureau
 14-68 of] vital statistics unit, whichever occurs later.

14-69 SECTION 1.058. Section 160.305, Family Code, is amended to

15-1 read as follows:

15-2 Sec. 160.305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF
 15-3 PATERNITY. (a) Except as provided by Sections 160.307 and 160.308,
 15-4 a valid acknowledgment of paternity filed with the [bureau of]
 15-5 vital statistics unit is the equivalent of an adjudication of the
 15-6 paternity of a child and confers on the acknowledged father all
 15-7 rights and duties of a parent.

15-8 (b) Except as provided by Sections 160.307 and 160.308, a
 15-9 valid denial of paternity filed with the [bureau of] vital
 15-10 statistics unit in conjunction with a valid acknowledgment of
 15-11 paternity is the equivalent of an adjudication of the nonpaternity
 15-12 of the presumed father and discharges the presumed father from all
 15-13 rights and duties of a parent.

15-14 SECTION 1.059. Section 160.306, Family Code, is amended to
 15-15 read as follows:

15-16 Sec. 160.306. FILING FEE NOT REQUIRED. The Department of
 15-17 State Health Services [bureau of vital statistics] may not charge a
 15-18 fee for filing:

- 15-19 (1) an acknowledgment of paternity;
- 15-20 (2) a denial of paternity; or
- 15-21 (3) a rescission of an acknowledgment of paternity or
 15-22 denial of paternity.

15-23 SECTION 1.060. Sections 160.307(b) and (c), Family Code,
 15-24 are amended to read as follows:

15-25 (b) A signatory seeking to rescind an acknowledgment of
 15-26 paternity or denial of paternity must file with the [bureau of]
 15-27 vital statistics unit a completed rescission, on the form
 15-28 prescribed under Section 160.312, in which the signatory declares
 15-29 under penalty of perjury that:

15-30 (1) as of the date the rescission is filed, a
 15-31 proceeding has not been held affecting the child identified in the
 15-32 acknowledgment of paternity or denial of paternity, including a
 15-33 proceeding to establish child support;

15-34 (2) a copy of the completed rescission was sent by
 15-35 certified or registered mail, return receipt requested, to:

15-36 (A) if the rescission is of an acknowledgment of
 15-37 paternity, the other signatory of the acknowledgment of paternity
 15-38 and the signatory of any related denial of paternity; or

15-39 (B) if the rescission is of a denial of
 15-40 paternity, the signatories of the related acknowledgment of
 15-41 paternity; and

15-42 (3) if a signatory to the acknowledgment of paternity
 15-43 or denial of paternity is receiving services from the Title IV-D
 15-44 agency, a copy of the completed rescission was sent by certified or
 15-45 registered mail to the Title IV-D agency.

15-46 (c) On receipt of a completed rescission, the [bureau of]
 15-47 vital statistics unit shall void the acknowledgment of paternity or
 15-48 denial of paternity affected by the rescission and amend the birth
 15-49 record of the child, if appropriate.

15-50 SECTION 1.061. Sections 160.309(b) and (e), Family Code,
 15-51 are amended to read as follows:

15-52 (b) For purposes of a challenge to an acknowledgment of
 15-53 paternity or denial of paternity, a signatory submits to the
 15-54 personal jurisdiction of this state by signing the acknowledgment
 15-55 or denial. The jurisdiction is effective on the filing of the
 15-56 document with the [bureau of] vital statistics unit.

15-57 (e) At the conclusion of a proceeding to challenge an
 15-58 acknowledgment of paternity or a denial of paternity, the court
 15-59 shall order the [bureau of] vital statistics unit to amend the birth
 15-60 record of the child, if appropriate.

15-61 SECTION 1.062. Section 160.312(a), Family Code, is amended
 15-62 to read as follows:

15-63 (a) To facilitate compliance with this subchapter, the
 15-64 [bureau of] vital statistics unit shall prescribe forms for the:

- 15-65 (1) acknowledgment of paternity;
- 15-66 (2) denial of paternity; and
- 15-67 (3) rescission of an acknowledgment or denial of
 15-68 paternity.

15-69 SECTION 1.063. Section 160.313, Family Code, is amended to

16-1 read as follows:

16-2 Sec. 160.313. RELEASE OF INFORMATION. The [bureau of]
16-3 vital statistics unit may release information relating to the
16-4 acknowledgment of paternity or denial of paternity to a signatory
16-5 of the acknowledgment or denial and to the courts and Title IV-D
16-6 agency of this or another state.

16-7 SECTION 1.064. Section 160.314, Family Code, is amended to
16-8 read as follows:

16-9 Sec. 160.314. ADOPTION OF RULES. The Title IV-D agency and
16-10 the executive commissioner of the Health and Human Services
16-11 Commission [bureau of vital statistics] may adopt rules to
16-12 implement this subchapter.

16-13 SECTION 1.065. Section 160.315, Family Code, is amended to
16-14 read as follows:

16-15 Sec. 160.315. MEMORANDUM OF UNDERSTANDING. (a) The Title
16-16 IV-D agency and the [bureau of] vital statistics unit shall adopt a
16-17 memorandum of understanding governing the collection and transfer
16-18 of information for the voluntary acknowledgment of paternity.

16-19 (b) The Title IV-D agency and the [bureau of] vital
16-20 statistics unit shall review the memorandum semiannually and renew
16-21 or modify the memorandum as necessary.

16-22 SECTION 1.066. Section 160.401, Family Code, is amended to
16-23 read as follows:

16-24 Sec. 160.401. ESTABLISHMENT OF REGISTRY. A registry of
16-25 paternity is established in the [bureau of] vital statistics unit.

16-26 SECTION 1.067. Section 160.402(c), Family Code, is amended
16-27 to read as follows:

16-28 (c) A registrant shall promptly notify the registry in a
16-29 record of any change in the information provided by the registrant.
16-30 The [bureau of] vital statistics unit shall incorporate all new
16-31 information received into its records but is not required to
16-32 affirmatively seek to obtain current information for incorporation
16-33 in the registry.

16-34 SECTION 1.068. Section 160.404, Family Code, is amended to
16-35 read as follows:

16-36 Sec. 160.404. TERMINATION OF PARENTAL RIGHTS: FAILURE TO
16-37 REGISTER. The parental rights of a man alleged to be the father of a
16-38 child may be terminated without notice as provided by Section
16-39 161.002 if the man:

16-40 (1) did not timely register with the [bureau of] vital
16-41 statistics unit; and

16-42 (2) is not entitled to notice under Section 160.402 or
16-43 161.002.

16-44 SECTION 1.069. Section 160.411, Family Code, is amended to
16-45 read as follows:

16-46 Sec. 160.411. REQUIRED FORM. The [bureau of] vital
16-47 statistics unit shall adopt a form for registering with the
16-48 registry. The form must require the signature of the registrant.
16-49 The form must state that:

16-50 (1) the form is signed under penalty of perjury;
16-51 (2) a timely registration entitles the registrant to
16-52 notice of a proceeding for adoption of the child or for termination
16-53 of the registrant's parental rights;

16-54 (3) a timely registration does not commence a
16-55 proceeding to establish paternity;

16-56 (4) the information disclosed on the form may be used
16-57 against the registrant to establish paternity;

16-58 (5) services to assist in establishing paternity are
16-59 available to the registrant through the support enforcement agency;

16-60 (6) the registrant should also register in another
16-61 state if the conception or birth of the child occurred in the other
16-62 state;

16-63 (7) information on registries in other states is
16-64 available from the [bureau of] vital statistics unit; and

16-65 (8) procedures exist to rescind the registration of a
16-66 claim of paternity.

16-67 SECTION 1.070. Section 160.412(a), Family Code, is amended
16-68 to read as follows:

16-69 (a) The [bureau of] vital statistics unit is not required to

17-1 attempt to locate the mother of a child who is the subject of a
 17-2 registration. The [bureau of] vital statistics unit shall send a
 17-3 copy of the notice of the registration to a mother who has provided
 17-4 an address.

17-5 SECTION 1.071. Section 160.415, Family Code, is amended to
 17-6 read as follows:

17-7 Sec. 160.415. UNTIMELY REGISTRATION. If a man registers
 17-8 later than the 31st day after the date of the birth of the child, the
 17-9 [bureau of] vital statistics unit shall notify the registrant that
 17-10 the registration was not timely filed.

17-11 SECTION 1.072. Section 160.416(b), Family Code, is amended
 17-12 to read as follows:

17-13 (b) Except as otherwise provided by Subsection (c), the
 17-14 [bureau of] vital statistics unit may charge a reasonable fee for
 17-15 making a search of the registry and for furnishing a certificate.

17-16 SECTION 1.073. Section 160.421(a), Family Code, is amended
 17-17 to read as follows:

17-18 (a) If a father-child relationship has not been established
 17-19 under this chapter, a petitioner for the adoption of or the
 17-20 termination of parental rights regarding the child must obtain a
 17-21 certificate of the results of a search of the registry. The
 17-22 petitioner may request a search of the registry on or after the 32nd
 17-23 day after the date of the birth of the child, and the executive
 17-24 commissioner of the Health and Human Services Commission [bureau of
 17-25 vital statistics] may not by rule impose a waiting period that must
 17-26 elapse before the vital statistics unit [bureau] will conduct the
 17-27 requested search.

17-28 SECTION 1.074. Sections 160.422(a) and (b), Family Code,
 17-29 are amended to read as follows:

17-30 (a) The [bureau of] vital statistics unit shall furnish a
 17-31 certificate of the results of a search of the registry on request by
 17-32 an individual, a court, or an agency listed in Section 160.412(b).

17-33 (b) The certificate of the results of a search must be
 17-34 signed on behalf of the unit [bureau] and state that:

17-35 (1) a search has been made of the registry; and
 17-36 (2) a registration containing the information
 17-37 required to identify the registrant:

17-38 (A) has been found and is attached to the
 17-39 certificate; or

17-40 (B) has not been found.

17-41 SECTION 1.075. Section 160.636(f), Family Code, is amended
 17-42 to read as follows:

17-43 (f) If the order of the court is at variance with the child's
 17-44 birth certificate, the court shall order the [bureau of] vital
 17-45 statistics unit to issue an amended birth record.

17-46 SECTION 1.076. Section 160.760(b), Family Code, is amended
 17-47 to read as follows:

17-48 (b) After receiving notice of the birth, the court shall
 17-49 render an order that:

17-50 (1) confirms that the intended parents are the child's
 17-51 parents;

17-52 (2) requires the gestational mother to surrender the
 17-53 child to the intended parents, if necessary; and

17-54 (3) requires the [bureau of] vital statistics unit to
 17-55 issue a birth certificate naming the intended parents as the
 17-56 child's parents.

17-57 SECTION 1.077. Section 160.763, Family Code, is amended to
 17-58 read as follows:

17-59 Sec. 160.763. HEALTH CARE FACILITY REPORTING REQUIREMENT.

17-60 (a) The executive commissioner of the Health and Human Services
 17-61 Commission [Texas Department of Health] by rule shall develop and
 17-62 implement a confidential reporting system that requires each health
 17-63 care facility in this state at which assisted reproduction
 17-64 procedures are performed under gestational agreements to report
 17-65 statistics related to those procedures.

17-66 (b) In developing the reporting system, the executive
 17-67 commissioner [department] shall require each health care facility
 17-68 described by Subsection (a) to annually report:

17-69 (1) the number of assisted reproduction procedures

18-1 under a gestational agreement performed at the facility during the
 18-2 preceding year; and

18-3 (2) the number and current status of embryos created
 18-4 through assisted reproduction procedures described by Subdivision
 18-5 (1) that were not transferred for implantation.

18-6 SECTION 1.078. Section [161.001](#), Family Code, is amended to
 18-7 read as follows:

18-8 Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD
 18-9 RELATIONSHIP. (a) In this section, "born addicted to alcohol or a
 18-10 controlled substance" means a child:

18-11 (1) who is born to a mother who during the pregnancy
 18-12 used a controlled substance, as defined by Chapter 481, Health and
 18-13 Safety Code, other than a controlled substance legally obtained by
 18-14 prescription, or alcohol; and

18-15 (2) who, after birth as a result of the mother's use of
 18-16 the controlled substance or alcohol:

18-17 (A) experiences observable withdrawal from the
 18-18 alcohol or controlled substance;

18-19 (B) exhibits observable or harmful effects in the
 18-20 child's physical appearance or functioning; or

18-21 (C) exhibits the demonstrable presence of
 18-22 alcohol or a controlled substance in the child's bodily fluids.

18-23 (b) The court may order termination of the parent-child
 18-24 relationship if the court finds by clear and convincing evidence:

18-25 (1) that the parent has:

18-26 (A) voluntarily left the child alone or in the
 18-27 possession of another not the parent and expressed an intent not to
 18-28 return;

18-29 (B) voluntarily left the child alone or in the
 18-30 possession of another not the parent without expressing an intent
 18-31 to return, without providing for the adequate support of the child,
 18-32 and remained away for a period of at least three months;

18-33 (C) voluntarily left the child alone or in the
 18-34 possession of another without providing adequate support of the
 18-35 child and remained away for a period of at least six months;

18-36 (D) knowingly placed or knowingly allowed the
 18-37 child to remain in conditions or surroundings which endanger the
 18-38 physical or emotional well-being of the child;

18-39 (E) engaged in conduct or knowingly placed the
 18-40 child with persons who engaged in conduct which endangers the
 18-41 physical or emotional well-being of the child;

18-42 (F) failed to support the child in accordance
 18-43 with the parent's ability during a period of one year ending within
 18-44 six months of the date of the filing of the petition;

18-45 (G) abandoned the child without identifying the
 18-46 child or furnishing means of identification, and the child's
 18-47 identity cannot be ascertained by the exercise of reasonable
 18-48 diligence;

18-49 (H) voluntarily, and with knowledge of the
 18-50 pregnancy, abandoned the mother of the child beginning at a time
 18-51 during her pregnancy with the child and continuing through the
 18-52 birth, failed to provide adequate support or medical care for the
 18-53 mother during the period of abandonment before the birth of the
 18-54 child, and remained apart from the child or failed to support the
 18-55 child since the birth;

18-56 (I) contumaciously refused to submit to a
 18-57 reasonable and lawful order of a court under Subchapter D, Chapter
 18-58 261;

18-59 (J) been the major cause of:

18-60 (i) the failure of the child to be enrolled
 18-61 in school as required by the Education Code; or

18-62 (ii) the child's absence from the child's
 18-63 home without the consent of the parents or guardian for a
 18-64 substantial length of time or without the intent to return;

18-65 (K) executed before or after the suit is filed an
 18-66 unrevoked or irrevocable affidavit of relinquishment of parental
 18-67 rights as provided by this chapter;

18-68 (L) been convicted or has been placed on
 18-69 community supervision, including deferred adjudication community

supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:

- (i) Section 19.02 (murder);
 - (ii) Section 19.03 (capital murder);
 - (iii) Section 19.04 (manslaughter);
 - (iv) Section 21.11 (indecency with a minor);
 - (v) Section 22.01 (assault);
 - (vi) Section 22.011 (sexual assault);
 - (vii) Section 22.02 (aggravated assault);
 - (viii) Section 22.021 (aggravated sexual assault);
 - (ix) Section 22.04 (injury to a child, disabled individual);
 - (x) Section 22.041 (abandoning or abandoning a child);
 - (xi) Section 25.02 (prohibited sexual conduct);
 - (xii) Section 43.25 (sexual performance by a minor);
 - (xiii) Section 43.26 (possession or photography);
 - (xiv) Section 21.02 (continuous sexual assault on children);
 - (xv) Section 20A.02(a)(7) or (8) (sexual assault); and
 - (xvi) Section 43.05(a)(2) (compelling a minor to commit a sexual offense).

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

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

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

- (ii) the parent has not regularly visited or maintained significant contact with the child; and
- (iii) the parent has demonstrated an inability to provide the child with a safe environment;

(O) failed to comply with the provisions of a

court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;

(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:

- (i) failed to complete a court-ordered substance abuse treatment program; or
- (ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;

(Q) knowingly engaged in criminal conduct that has resulted in the parent's:

(i) conviction of an offense; and
(ii) confinement or imprisonment and
inability to care for the child for not less than two years from the
date of filing the petition;

(R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription[as defined]

20-1 by Section 261.001];
 20-2 (S) voluntarily delivered the child to a
 20-3 designated emergency infant care provider under Section 262.302
 20-4 without expressing an intent to return for the child; or
 20-5 (T) been convicted of:
 20-6 (i) the murder of the other parent of the
 20-7 child under Section 19.02 or 19.03, Penal Code, or under a law of
 20-8 another state, federal law, the law of a foreign country, or the
 20-9 Uniform Code of Military Justice that contains elements that are
 20-10 substantially similar to the elements of an offense under Section
 20-11 19.02 or 19.03, Penal Code;
 20-12 (ii) criminal attempt under Section 15.01,
 20-13 Penal Code, or under a law of another state, federal law, the law of
 20-14 a foreign country, or the Uniform Code of Military Justice that
 20-15 contains elements that are substantially similar to the elements of
 20-16 an offense under Section 15.01, Penal Code, to commit the offense
 20-17 described by Subparagraph (i); or
 20-18 (iii) criminal solicitation under Section
 20-19 15.03, Penal Code, or under a law of another state, federal law, the
 20-20 law of a foreign country, or the Uniform Code of Military Justice
 20-21 that contains elements that are substantially similar to the elements of
 20-22 an offense under Section 15.03, Penal Code, of the
 20-23 offense described by Subparagraph (i); and
 20-24 (2) that termination is in the best interest of the
 20-25 child.

20-26 SECTION 1.079. Section 161.002(e), Family Code, is amended
 20-27 to read as follows:

20-28 (e) The court shall not render an order terminating parental
 20-29 rights under Subsection (b)(2) or (3) unless the court receives
 20-30 evidence of a certificate of the results of a search of the
 20-31 paternity registry under Chapter 160 from the [bureau of] vital
 20-32 statistics unit indicating that no man has registered the intent to
 20-33 claim paternity.

20-34 SECTION 1.080. Section 161.003(a), Family Code, is amended
 20-35 to read as follows:

20-36 (a) The court may order termination of the parent-child
 20-37 relationship in a suit filed by the Department of Family and
 20-38 Protective [and Regulatory] Services if the court finds that:

20-39 (1) the parent has a mental or emotional illness or a
 20-40 mental deficiency that renders the parent unable to provide for the
 20-41 physical, emotional, and mental needs of the child;

20-42 (2) the illness or deficiency, in all reasonable
 20-43 probability, proved by clear and convincing evidence, will continue
 20-44 to render the parent unable to provide for the child's needs until
 20-45 the 18th birthday of the child;

20-46 (3) the department has been the temporary or sole
 20-47 managing conservator of the child of the parent for at least six
 20-48 months preceding the date of the hearing on the termination held in
 20-49 accordance with Subsection (c);

20-50 (4) the department has made reasonable efforts to
 20-51 return the child to the parent; and

20-52 (5) the termination is in the best interest of the
 20-53 child.

20-54 SECTION 1.081. Section 161.005(b), Family Code, is amended
 20-55 to read as follows:

20-56 (b) If the petition designates the Department of Family and
 20-57 Protective [and Regulatory] Services as managing conservator, the
 20-58 department shall be given service of citation. The court shall
 20-59 notify the department if the court appoints the department as the
 20-60 managing conservator of the child.

20-61 SECTION 1.082. Sections 161.103(c) and (e), Family Code,
 20-62 are amended to read as follows:

20-63 (c) The affidavit may contain:

20-64 (1) a waiver of process in a suit to terminate the
 20-65 parent-child relationship filed under this chapter or in a suit to
 20-66 terminate joined with a petition for adoption; and

20-67 (2) a consent to the placement of the child for
 20-68 adoption by the Department of Family and Protective [and
 20-69 Regulatory] Services or by a licensed child-placing agency.

21-1 (e) The relinquishment in an affidavit that designates the
21-2 Department of Family and Protective [and Regulatory] Services or a
21-3 licensed child-placing agency to serve as the managing conservator
21-4 is irrevocable. A relinquishment in any other affidavit of
21-5 relinquishment is revocable unless it expressly provides that it is
21-6 irrevocable for a stated period of time not to exceed 60 days after
21-7 the date of its execution.

21-8 SECTION 1.083. Section 161.104, Family Code, is amended to
21-9 read as follows:

21-10 Sec. 161.104. RIGHTS OF DESIGNATED MANAGING CONSERVATOR
21-11 PENDING COURT APPOINTMENT. A person, licensed child-placing
21-12 agency, or the Department of Family and Protective Services
21-13 [~~authorized agency~~] designated managing conservator of a child in
21-14 an irrevocable or unrevoked affidavit of relinquishment has a right
21-15 to possession of the child superior to the right of the person
21-16 executing the affidavit, the right to consent to medical, surgical,
21-17 dental, and psychological treatment of the child, and the rights
21-18 and duties given by Chapter 153 to a possessory conservator until
21-19 such time as these rights and duties are modified or terminated by
21-20 court order.

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

21-23 (e) An affidavit of waiver of interest in a child may be used
21-24 in a suit in which the affiant attempts to establish an interest in
21-25 the child. The affidavit may not be used in a suit brought by
21-26 another person, licensed child-placing agency, or the Department of
21-27 Family and Protective Services [authorized agency] to establish the
21-28 affiant's paternity of the child.

21-29 SECTION 1.085. Section 161.108(a), Family Code, is amended
21-30 to read as follows:

21-31 (a) Before or at the time an affidavit of relinquishment of
21-32 parental rights under Section 161.103 is executed, the mother of a
21-33 newborn child may authorize the release of the child from the
21-34 hospital or birthing center to a licensed child-placing agency, the
21-35 Department of Family and Protective [and Regulatory] Services, or
21-36 another designated person.

21-37 SECTION 1.086. Section 161.109, Family Code, is amended to
21-38 read as follows:

21-39 Sec. 161.109. REQUIREMENT OF PATERNITY REGISTRY
21-40 CERTIFICATE. (a) If a parent-child relationship does not exist
21-41 between the child and any man, a certificate from the [bureau of]
21-42 vital statistics unit signed by the registrar that a diligent
21-43 search has been made of the paternity registry maintained by the
21-44 unit [bureau] and that a registration has not been found pertaining
21-45 to the father of the child in question must be filed with the court
21-46 before a trial on the merits in the suit for termination may be
21-47 held.

(b) In a proceeding to terminate parental rights in which the alleged or probable father has not been personally served with citation or signed an affidavit of relinquishment or an affidavit of waiver of interest, the court may not terminate the parental rights of the alleged or probable father, whether known or unknown, unless a certificate from the [bureau of] vital statistics unit signed by the registrar states that a diligent search has been made of the paternity registry maintained by the unit [bureau] and that a filing or registration has not been found pertaining to the father of the child in question.

21-58 SECTION 1.087. Section 161.2061(a), Family Code, is amended
21-59 to read as follows:

21-60 (a) If the court finds it to be in the best interest of the
21-61 child, the court may provide in an order terminating the
21-62 parent-child relationship that the biological parent who filed an
21-63 affidavit of voluntary relinquishment of parental rights under
21-64 Section 161.103 shall have limited post-termination contact with
21-65 the child as provided by Subsection (b) on the agreement of the
21-66 biological parent and the Department of Family and Protective [and
21-67 ~~Regulatory~~] Services.

21-68 SECTION 1.088. Section 161.207(a), Family Code, is amended
21-69 to read as follows:

22-1 (a) If the court terminates the parent-child relationship
 22-2 with respect to both parents or to the only living parent, the court
 22-3 shall appoint a suitable, competent adult, the Department of Family
 22-4 and Protective [and ~~Regulatory~~] Services, or a licensed
 22-5 child-placing agency[, or an authorized agency] as managing
 22-6 conservator of the child. An agency designated managing
 22-7 conservator in an unrevoked or irrevocable affidavit of
 22-8 relinquishment shall be appointed managing conservator.

22-9 SECTION 1.089. Section 161.208, Family Code, is amended to
 22-10 read as follows:

22-11 Sec. 161.208. APPOINTMENT OF DEPARTMENT OF FAMILY AND
 22-12 PROTECTIVE [~~AND REGULATORY~~] SERVICES AS MANAGING CONSERVATOR. If a
 22-13 parent of the child has not been personally served in a suit in
 22-14 which the Department of Family and Protective [and ~~Regulatory~~]
 22-15 Services seeks termination, the court that terminates a
 22-16 parent-child relationship may not appoint the Department of Family
 22-17 and Protective [and ~~Regulatory~~] Services as permanent managing
 22-18 conservator of the child unless the court determines that:

22-19 (1) the department has made a diligent effort to
 22-20 locate a missing parent who has not been personally served and a
 22-21 relative of that parent; and

22-22 (2) a relative located by the department has had a
 22-23 reasonable opportunity to request appointment as managing
 22-24 conservator of the child or the department has not been able to
 22-25 locate the missing parent or a relative of the missing parent.

22-26 SECTION 1.090. Section 162.001(c), Family Code, is amended
 22-27 to read as follows:

22-28 (c) If an affidavit of relinquishment of parental rights
 22-29 contains a consent for the Department of Family and Protective [and
 22-30 ~~Regulatory~~] Services or a licensed child-placing agency to place
 22-31 the child for adoption and appoints the department or agency
 22-32 managing conservator of the child, further consent by the parent is
 22-33 not required and the adoption order shall terminate all rights of
 22-34 the parent without further termination proceedings.

22-35 SECTION 1.091. Section 162.005(b), Family Code, is amended
 22-36 to read as follows:

22-37 (b) Before placing a child for adoption, the Department of
 22-38 Family and Protective [and ~~Regulatory~~] Services, a licensed
 22-39 child-placing agency, or the child's parent or guardian shall
 22-40 compile a report on the available health, social, educational, and
 22-41 genetic history of the child to be adopted.

22-42 SECTION 1.092. Section 162.006(a), Family Code, is amended
 22-43 to read as follows:

22-44 (a) The Department of Family and Protective Services
 22-45 [~~department~~], licensed child-placing agency, or other person
 22-46 placing a child for adoption shall inform the prospective adoptive
 22-47 parents of their right to examine the records and other information
 22-48 relating to the history of the child. The department, licensed
 22-49 child-placing agency, or other person placing the child for
 22-50 adoption shall edit the records and information to protect the
 22-51 identity of the biological parents and any other person whose
 22-52 identity is confidential.

22-53 SECTION 1.093. Section 162.0065, Family Code, is amended to
 22-54 read as follows:

22-55 Sec. 162.0065. EDITING ADOPTION RECORDS IN DEPARTMENT
 22-56 PLACEMENT. Notwithstanding any other provision of this chapter, in
 22-57 an adoption in which a child is placed for adoption by the
 22-58 Department of Family and Protective [and ~~Regulatory~~] Services, the
 22-59 department is not required to edit records to protect the identity
 22-60 of birth parents and other persons whose identity is confidential
 22-61 if the department determines that information is already known to
 22-62 the adoptive parents or is readily available through other sources,
 22-63 including the court records of a suit to terminate the parent-child
 22-64 relationship under Chapter 161.

22-65 SECTION 1.094. Section 162.008(b), Family Code, is amended
 22-66 to read as follows:

22-67 (b) A petition for adoption may not be granted until the
 22-68 following documents have been filed:

22-69 (1) a copy of the health, social, educational, and

23-1 genetic history report signed by the child's adoptive parents; and
 23-2 (2) if the report is required to be submitted to the
 23-3 Department of Family and Protective Services [~~bureau of vital~~
 23-4 ~~statistics~~] under Section 162.006(e), a certificate from the
 23-5 department [~~bureau~~] acknowledging receipt of the report.

23-6 SECTION 1.095. Section 162.0085(a), Family Code, is amended
 23-7 to read as follows:

23-8 (a) In a suit affecting the parent-child relationship in
 23-9 which an adoption is sought, the court shall order each person
 23-10 seeking to adopt the child to obtain that person's own criminal
 23-11 history record information. The court shall accept under this
 23-12 section a person's criminal history record information that is
 23-13 provided by the Department of Family and Protective [and
 23-14 ~~Regulatory~~] Services or by a licensed child-placing agency that
 23-15 received the information from the department if the information was
 23-16 obtained not more than one year before the date the court ordered
 23-17 the history to be obtained.

23-18 SECTION 1.096. Sections 162.018(a) and (d), Family Code,
 23-19 are amended to read as follows:

23-20 (a) The adoptive parents are entitled to receive copies of
 23-21 the records and other information relating to the history of the
 23-22 child maintained by the Department of Family and Protective
 23-23 Services [~~department~~], licensed child-placing agency, person, or
 23-24 entity placing the child for adoption.

23-25 (d) At the time an adoption order is rendered, the court
 23-26 shall provide to the parents of an adopted child information
 23-27 provided by the [~~bureau of~~] vital statistics unit that describes
 23-28 the functions of the voluntary adoption registry under Subchapter
 23-29 E. The licensed child-placing agency shall provide to each of the
 23-30 child's biological parents known to the agency, the information
 23-31 when the parent signs an affidavit of relinquishment of parental
 23-32 rights or affidavit of waiver of interest in a child. The
 23-33 information shall include the right of the child or biological
 23-34 parent to refuse to participate in the registry. If the adopted
 23-35 child is 14 years old or older the court shall provide the
 23-36 information to the child.

23-37 SECTION 1.097. Section 162.021(b), Family Code, is amended
 23-38 to read as follows:

23-39 (b) Rendition of the order does not relieve the clerk from
 23-40 the duty to send information regarding adoption to the [~~bureau of~~]
 23-41 vital statistics unit as required by this subchapter and Chapter
 23-42 108.

23-43 SECTION 1.098. Sections 162.101(1) and (2), Family Code,
 23-44 are amended to read as follows:

23-45 (1) "Appropriate public authorities," with reference
 23-46 to this state, means the commissioner of the Department of Family
 23-47 and Protective Services [~~executive director~~].

23-48 (2) "Appropriate authority in the receiving state,"
 23-49 with reference to this state, means the commissioner of the
 23-50 Department of Family and Protective Services [~~executive director~~].

23-51 SECTION 1.099. Section 162.103, Family Code, is amended to
 23-52 read as follows:

23-53 Sec. 162.103. FINANCIAL RESPONSIBILITY FOR CHILD. (a)
 23-54 Financial responsibility for a child placed as provided in the
 23-55 compact is determined, in the first instance, as provided in
 23-56 Article V of the compact. After partial or complete default of
 23-57 performance under the provisions of Article V assigning financial
 23-58 responsibility, the commissioner of the Department of Family and
 23-59 Protective Services [~~executive director~~] may bring suit under
 23-60 Chapter 154 and may file a complaint with the appropriate
 23-61 prosecuting attorney, claiming a violation of Section 25.05, Penal
 23-62 Code.

23-63 (b) After default, if the commissioner of the Department of
 23-64 Family and Protective Services [~~executive director~~] determines
 23-65 that financial responsibility is unlikely to be assumed by the
 23-66 sending agency or the child's parents, the commissioner [~~executive~~
 23-67 ~~director~~] may cause the child to be returned to the sending agency.

23-68 (c) After default, the Department of Family and Protective
 23-69 Services [~~department~~] shall assume financial responsibility for

the child until it is assumed by the child's parents or until the child is safely returned to the sending agency.

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

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

SECTIÖN 1.101. Section 162.106, Family Code, is amended to read as follows:

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

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

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

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

SECTION 1.103. Section 162.201, Family Code, is amended to read as follows:

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

INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE
ARTICLE I. FINDINGS

The legislature finds that:

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

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

ARTICLE II. PURPOSES

The purposes of the compact are to:

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

(b) provide procedures for interstate children's adoption assistance payments, including medical payments.

ARTICLE III. DEFINITIONS

In this compact:

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

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

(c) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin

25-1 Islands, Guam, the Commonwealth of the Northern Mariana Islands, or
 25-2 a territory or possession of or a territory or possession
 25-3 administered by the United States.

25-4 ARTICLE IV. COMPACTS AUTHORIZED

25-5 The Department of Family and Protective [~~and Regulatory~~]
 25-6 Services, through its commissioner [~~executive director~~], is
 25-7 authorized to develop, participate in the development of,
 25-8 negotiate, and enter into one or more interstate compacts on behalf
 25-9 of this state with other states to implement one or more of the
 25-10 purposes of this compact. An interstate compact authorized by this
 25-11 article has the force and effect of law.

25-12 ARTICLE V. CONTENTS OF COMPACTS

25-13 A compact entered into under the authority conferred by this
 25-14 compact shall contain:

25-15 (1) a provision making the compact available for
 25-16 joinder by all states;

25-17 (2) a provision for withdrawal from the compact on
 25-18 written notice to the parties, with a period of one year between the
 25-19 date of the notice and the effective date of the withdrawal;

25-20 (3) a requirement that protections under the compact
 25-21 continue for the duration of the adoption assistance and apply to
 25-22 all children and their adoptive parents who on the effective date of
 25-23 the withdrawal are receiving adoption assistance from a party state
 25-24 other than the one in which they reside and have their principal
 25-25 place of abode;

25-26 (4) a requirement that each case of adoption
 25-27 assistance to which the compact applies be covered by a written
 25-28 adoption assistance agreement between the adoptive parents and the
 25-29 state child welfare agency of the state that provides the adoption
 25-30 assistance and that the agreement be expressly for the benefit of
 25-31 the adopted child and enforceable by the adoptive parents and the
 25-32 state agency providing the adoption assistance; and

25-33 (5) other provisions that are appropriate for the
 25-34 proper administration of the compact.

25-35 ARTICLE VI. OPTIONAL CONTENTS OF COMPACTS

25-36 A compact entered into under the authority conferred by this
 25-37 compact may contain the following provisions, in addition to those
 25-38 required under Article V of this compact:

25-39 (1) provisions establishing procedures and
 25-40 entitlement to medical, developmental, child-care, or other social
 25-41 services for the child in accordance with applicable laws, even if
 25-42 the child and the adoptive parents are in a state other than the one
 25-43 responsible for or providing the services or the funds to defray
 25-44 part or all of the costs thereof; and

25-45 (2) other provisions that are appropriate or
 25-46 incidental to the proper administration of the compact.

25-47 ARTICLE VII. MEDICAL ASSISTANCE

25-48 (a) A child with special needs who resides in this state and
 25-49 who is the subject of an adoption assistance agreement with another
 25-50 state is entitled to receive a medical assistance identification
 25-51 from this state on the filing in the state medical assistance agency
 25-52 of a certified copy of the adoption assistance agreement obtained
 25-53 from the adoption assistance state. In accordance with rules of the
 25-54 state medical assistance agency, the adoptive parents, at least
 25-55 annually, shall show that the agreement is still in effect or has
 25-56 been renewed.

25-57 (b) The state medical assistance agency shall consider the
 25-58 holder of a medical assistance identification under this article as
 25-59 any other holder of a medical assistance identification under the
 25-60 laws of this state and shall process and make payment on claims on
 25-61 the holder's account in the same manner and under the same
 25-62 conditions and procedures as for other recipients of medical
 25-63 assistance.

25-64 (c) The state medical assistance agency shall provide
 25-65 coverage and benefits for a child who is in another state and who is
 25-66 covered by an adoption assistance agreement made by the Department
 25-67 of Family and Protective [~~and Regulatory~~] Services for the coverage
 25-68 or benefits, if any, not provided by the residence state. The
 25-69 adoptive parents acting for the child may submit evidence of

26-1 payment for services or benefit amounts not payable in the
 26-2 residence state and shall be reimbursed for those amounts.
 26-3 Services or benefit amounts covered under any insurance or other
 26-4 third-party medical contract or arrangement held by the child or
 26-5 the adoptive parents may not be reimbursed. The state medical
 26-6 assistance agency shall adopt rules implementing this subsection.
 26-7 The additional coverage and benefit amounts provided under this
 26-8 subsection are for services for which there is no federal
 26-9 contribution or services that, if federally aided, are not provided
 26-10 by the residence state. The rules shall include procedures for
 26-11 obtaining prior approval for services in cases in which prior
 26-12 approval is required for the assistance.

26-13 (d) The submission of a false, misleading, or fraudulent
 26-14 claim for payment or reimbursement for services or benefits under
 26-15 this article or the making of a false, misleading, or fraudulent
 26-16 statement in connection with the claim is an offense under this
 26-17 subsection if the person submitting the claim or making the
 26-18 statement knows or should know that the claim or statement is false,
 26-19 misleading, or fraudulent. A person who commits an offense under
 26-20 this subsection may be liable for a fine not to exceed \$10,000 or
 26-21 imprisonment for not more than two years, or both the fine and the
 26-22 imprisonment. An offense under this subsection that also
 26-23 constitutes an offense under other law may be punished under either
 26-24 this subsection or the other applicable law.

26-25 (e) This article applies only to medical assistance for
 26-26 children under adoption assistance agreements with states that have
 26-27 entered into a compact with this state under which the other state
 26-28 provides medical assistance to children with special needs under
 26-29 adoption assistance agreements made by this state. All other
 26-30 children entitled to medical assistance under adoption assistance
 26-31 agreements entered into by this state are eligible to receive the
 26-32 medical assistance in accordance with the laws and procedures that
 26-33 apply to the agreement.

ARTICLE VIII. FEDERAL PARTICIPATION

26-34 Consistent with federal law, the Department of Family and
 26-35 Protective [and Regulatory] Services and the Health and Human
 26-36 Services Commission, in connection with the administration of this
 26-37 compact or a compact authorized by this compact, shall include the
 26-38 provision of adoption assistance and medical assistance for which
 26-39 the federal government pays some or all of the cost in any state
 26-40 plan made under the Adoption Assistance and Child Welfare Act of
 26-41 1980 (Pub. L. No. 96-272), Titles IV-E and XIX of the Social
 26-42 Security Act, and other applicable federal laws. The Department of
 26-43 Family and Protective [and Regulatory] Services and the Health and
 26-44 Human Services Commission shall apply for and administer all
 26-45 relevant federal aid in accordance with law.

26-46 SECTION 1.104. Section 162.202, Family Code, is amended to
 26-47 read as follows:

26-48 Sec. 162.202. AUTHORITY OF DEPARTMENT OF FAMILY AND
 26-49 PROTECTIVE [AND REGULATORY] SERVICES. The Department of Family and
 26-50 Protective [and Regulatory] Services, with the concurrence of the
 26-51 Health and Human Services Commission, may develop, participate in
 26-52 the development of, negotiate, and enter into one or more
 26-53 interstate compacts on behalf of this state with other states to
 26-54 implement one or more of the purposes of this subchapter. An
 26-55 interstate compact authorized by this subchapter [article] has the
 26-56 force and effect of law.

26-57 SECTION 1.105. Section 162.203, Family Code, is amended to
 26-58 read as follows:

26-59 Sec. 162.203. COMPACT ADMINISTRATION. The commissioner
 26-60 [~~executive director~~] of the Department of Family and Protective
 26-61 [and Regulatory] Services shall serve as the compact administrator.
 26-62 The administrator shall cooperate with all departments, agencies,
 26-63 and officers of this state and its subdivisions in facilitating the
 26-64 proper administration of the compact and any supplemental
 26-65 agreements entered into by this state. The commissioner of the
 26-66 Department of Family and Protective Services [~~executive director~~]
 26-67 and the executive commissioner of the Health and Human Services
 26-68 Commission [~~human services~~] shall designate deputy compact
 26-69

27-1 administrators to represent adoption assistance services and
 27-2 medical assistance services provided under Title XIX of the Social
 27-3 Security Act.

27-4 SECTION 1.106. The heading to Subchapter D, Chapter 162,
 27-5 Family Code, is amended to read as follows:

27-6 SUBCHAPTER D. ADOPTION SERVICES BY THE DEPARTMENT OF
 27-7 FAMILY AND PROTECTIVE [AND REGULATORY] SERVICES

27-8 SECTION 1.107. Sections 162.301(1) and (3), Family Code,
 27-9 are amended to read as follows:

27-10 (1) "Adoption assistance agreement" means a written
 27-11 agreement, binding on the parties to the agreement, between the
 27-12 Department of Family and Protective Services [department] and the
 27-13 prospective adoptive parents that specifies the nature and amount
 27-14 of any payment, services, or assistance to be provided under the
 27-15 agreement and stipulates that the agreement will remain in effect
 27-16 without regard to the state in which the prospective adoptive
 27-17 parents reside at any particular time.

27-18 (3) "Department" means the Department of Family and
 27-19 Protective [and Regulatory] Services.

27-20 SECTION 1.108. Section 162.302(c), Family Code, is amended
 27-21 to read as follows:

27-22 (c) The program shall be carried out by licensed
 27-23 child-placing agencies or county child-care or welfare units under
 27-24 department rules [adopted by the department].

27-25 SECTION 1.109. Sections 162.309(b) and (i), Family Code,
 27-26 are amended to read as follows:

27-27 (b) The committee is composed of 12 members appointed by the
 27-28 commissioner [board] of the department [Department of Protective
 27-29 and Regulatory Services]. The commissioner [board] shall appoint
 27-30 to the committee individuals who in the aggregate have knowledge of
 27-31 and experience in community education, cultural relations, family
 27-32 support, counseling, and parenting skills and education. At least
 27-33 six members must be ordained members of the clergy.

27-34 (i) On receiving the committee's recommendations, the
 27-35 department may [adopt rules to] implement a program or project
 27-36 recommended under this section. The executive commissioner of the
 27-37 Health and Human Services Commission may adopt rules necessary for
 27-38 the implementation of a program or project by the department. The
 27-39 department may solicit, accept, and use gifts and donations to
 27-40 implement a program or project recommended by the committee.

27-41 SECTION 1.110. Sections 162.402(7), (11), (12), and (14),
 27-42 Family Code, are amended to read as follows:

27-43 (7) "Authorized agency" means a public agency
 27-44 authorized to care for or to place children for adoption or a
 27-45 private entity approved for that purpose by the department through
 27-46 a license, certification, or other means. The term includes a
 27-47 licensed child-placing agency or a previously licensed
 27-48 child-placing agency that has ceased operations and has transferred
 27-49 its adoption records to the vital statistics unit [bureau] or an
 27-50 agency authorized by the department to place children for adoption
 27-51 and a licensed child-placing agency that has been acquired by,
 27-52 merged with, or otherwise succeeded by an agency authorized by the
 27-53 department to place children for adoption.

27-54 (11) "Central registry" means the mutual consent
 27-55 voluntary adoption registry established and maintained by the vital
 27-56 statistics unit [bureau] under this subchapter.

27-57 (12) "Department" means the Department of Family and
 27-58 Protective [and Regulatory] Services.

27-59 (14) "Vital statistics unit" ["Bureau"] means the
 27-60 [bureau of] vital statistics unit of the Department of State Health
 27-61 Services.

27-62 SECTION 1.111. Sections 162.403(a) and (c), Family Code,
 27-63 are amended to read as follows:

27-64 (a) The vital statistics unit [bureau] shall establish and
 27-65 maintain a mutual consent voluntary adoption registry.

27-66 (c) An authorized agency that did not directly or by
 27-67 contract provide registry services as required by this subchapter
 27-68 on January 1, 1984, may not provide its own registry service. The
 27-69 vital statistics unit [bureau] shall operate through the central

28-1 registry those services for agencies not permitted to provide a
28-2 registry under this section.

28-3 SECTION 1.112. Section 162.407(b), Family Code, is amended
28-4 to read as follows:

28-5 (b) An adoptee adopted or placed through an authorized
28-6 agency may register through the registry maintained by that agency
28-7 or the registry to which the agency has delegated registry services
28-8 or through the central registry maintained by the vital statistics
28-9 unit [bureau].

28-10 SECTION 1.113. Section 162.408, Family Code, is amended to
28-11 read as follows:

28-12 Sec. 162.408. PROOF OF IDENTITY. The rules and minimum
28-13 standards of the Department [Texas Board] of State Health Services
28-14 for the vital statistics unit [bureau] must provide for proof of
28-15 identity in order to facilitate the purposes of this subchapter and
28-16 to protect the privacy rights of adoptees, adoptive parents, birth
28-17 parents, biological siblings, and their families.

28-18 SECTION 1.114. Section 162.411(d), Family Code, is amended
28-19 to read as follows:

28-20 (d) The fees collected by the vital statistics unit [bureau]
28-21 shall be deposited in a special fund in the general revenue fund.
28-22 Funds in the special fund may be appropriated only for the
28-23 administration of the central registry.

28-24 SECTION 1.115. Section 162.414(c), Family Code, is amended
28-25 to read as follows:

28-26 (c) To establish or corroborate a match, the administrator
28-27 shall request confirmation of a possible match from the vital
28-28 statistics unit [bureau]. If the agency operating the registry has
28-29 in its own records sufficient information through which the match
28-30 may be confirmed, the administrator may, but is not required to,
28-31 request confirmation from the vital statistics unit [bureau]. The
28-32 vital statistics unit [bureau] may confirm or deny the match
28-33 without breaching the duty of confidentiality to the adoptee,
28-34 adoptive parents, birth parents, or biological siblings and without
28-35 a court order.

28-36 SECTION 1.116. Section 162.420, Family Code, is amended to
28-37 read as follows:

28-38 Sec. 162.420. RULEMAKING. (a) The executive commissioner
28-39 of the Health and Human Services Commission [Texas Board of Health]
28-40 shall make rules and adopt minimum standards for the Department of
28-41 State Health Services [bureau] to:

28-42 (1) administer the provisions of this subchapter; and
28-43 (2) ensure that each registry respects the right to
28-44 privacy and confidentiality of an adoptee, birth parent, and
28-45 biological sibling who does not desire to disclose the person's
28-46 identity.

28-47 (b) The Department of State Health Services [bureau] shall
28-48 conduct a comprehensive review of all rules and standards adopted
28-49 under this subchapter not less than every six years.

28-50 (c) In order to provide the administrators an opportunity to
28-51 review proposed rules and standards and send written suggestions to
28-52 the executive commissioner of the Health and Human Services
28-53 Commission [Texas Board of Health], the executive commissioner
28-54 [board] shall, before adopting rules and minimum standards, send a
28-55 copy of the proposed rules and standards not less than 60 days
28-56 before the date they take effect to:

28-57 (1) the administrator of each registry established
28-58 under this subchapter; and

28-59 (2) the administrator of each agency authorized by the
28-60 department to place children for adoption.

28-61 SECTION 1.117. Section 162.421(a), Family Code, is amended
28-62 to read as follows:

28-63 (a) This subchapter does not prevent the Department of State
28-64 Health Services [bureau] from making known to the public, by
28-65 appropriate means, the existence of voluntary adoption registries.

28-66 SECTION 1.118. Sections 162.422(a) and (b), Family Code,
28-67 are amended to read as follows:

28-68 (a) The Department of State Health Services [bureau] or
28-69 authorized agency establishing or operating a registry is not

29-1 liable to any person for obtaining or disclosing identifying
 29-2 information about a birth parent, adoptee, or biological sibling
 29-3 within the scope of this subchapter and under its provisions.

29-4 (b) An employee or agent of the Department of State Health
 29-5 Services [bureau] or of an authorized agency establishing or
 29-6 operating a registry under this subchapter is not liable to any
 29-7 person for obtaining or disclosing identifying information about a
 29-8 birth parent, adoptee, or biological sibling within the scope of
 29-9 this subchapter and under its provisions.

29-10 SECTION 1.119. Section 162.601(a), Family Code, is amended
 29-11 to read as follows:

29-12 (a) Subject to the availability of funds, the Department of
 29-13 Family and Protective [and Regulatory] Services shall pay, in
 29-14 addition to any other amounts due, a monetary incentive to a
 29-15 licensed child-placing agency for the completion of an adoption:

29-16 (1) of a child, as defined by Section 162.301,
 29-17 receiving or entitled to receive foster care at department expense;
 29-18 and

29-19 (2) arranged with the assistance of the agency.

29-20 SECTION 1.120. Section 261.001(7), Family Code, is amended
 29-21 to read as follows:

29-22 (7) "Executive commissioner" ["Board"] means the
 29-23 executive commissioner of the Health and Human Services Commission
 29-24 [Board of Protective and Regulatory Services].

29-25 SECTION 1.121. Sections 261.002(a) and (b), Family Code,
 29-26 are amended to read as follows:

29-27 (a) The department shall establish and maintain [in Austin]
 29-28 a central registry of the names of individuals found by the
 29-29 department to have abused or neglected a [reported cases of] child
 29-30 [abuse or neglect].

29-31 (b) The executive commissioner [department] may adopt rules
 29-32 necessary to carry out this section. The rules shall provide for
 29-33 cooperation with local child service agencies, including
 29-34 hospitals, clinics, and schools, and cooperation with other states
 29-35 in exchanging reports to effect a national registration system.

29-36 SECTION 1.122. Section 261.101(b-1), Family Code, is
 29-37 amended to read as follows:

29-38 (b-1) In addition to the duty to make a report under
 29-39 Subsection (a) or (b), a person or professional shall make a report
 29-40 in the manner required by Subsection (a) or (b), as applicable, if
 29-41 the person or professional has cause to believe that an adult was a
 29-42 victim of abuse or neglect as a child and the person or professional
 29-43 determines in good faith that disclosure of the information is
 29-44 necessary to protect the health and safety of:

29-45 (1) another child; or

29-46 (2) an elderly person or [disabled] person with a
 29-47 disability as defined by Section 48.002, Human Resources Code.

29-48 SECTION 1.123. Section 261.103(a), Family Code, is amended
 29-49 to read as follows:

29-50 (a) Except as provided by Subsections (b) and (c) and
 29-51 Section 261.405, a report shall be made to:

29-52 (1) any local or state law enforcement agency;

29-53 (2) the department; or

29-54 (3) the state agency that operates, licenses,
 29-55 certifies, or registers the facility in which the alleged abuse or
 29-56 neglect occurred[; or]

29-57 [(4) the agency designated by the court to be
 29-58 responsible for the protection of children].

29-59 SECTION 1.124. Sections 261.105(a), (b), and (c-1), Family
 29-60 Code, are amended to read as follows:

29-61 (a) All reports received by a local or state law enforcement
 29-62 agency that allege abuse or neglect by a person responsible for a
 29-63 child's care, custody, or welfare shall be referred immediately to
 29-64 the department [or the designated agency].

29-65 (b) The department [or designated agency] shall immediately
 29-66 notify the appropriate state or local law enforcement agency of any
 29-67 report it receives, other than a report from a law enforcement
 29-68 agency, that concerns the suspected abuse or neglect of a child or
 29-69 death of a child from abuse or neglect.

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

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

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

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

SECTION 1.126. Section 261.109(b), Family Code, is amended to read as follows:

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

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

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

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

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

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

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

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

(e) Before placing a child who was the subject of an

investigation, the department shall notify the prospective adoptive parents of their right to examine any report, record, working paper, or other information in the possession, custody, or control of the department [state] that pertains to the history of the child.

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

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

(d) The executive commissioner [department] shall by rule

31-1 assign priorities and prescribe investigative procedures for
 31-2 investigations based on the severity and immediacy of the alleged
 31-3 harm to the child. The primary purpose of the investigation shall
 31-4 be the protection of the child. The rules must require the
 31-5 department, subject to the availability of funds, to:

31-6 (1) immediately respond to a report of abuse and
 31-7 neglect that involves circumstances in which the death of the child
 31-8 or substantial bodily harm to the child would result unless the
 31-9 department immediately intervenes;

31-10 (2) respond within 24 hours to a report of abuse and
 31-11 neglect that is assigned the highest priority, other than a report
 31-12 described by Subdivision (1); and

31-13 (3) respond within 72 hours to a report of abuse and
 31-14 neglect that is assigned the second highest priority.

31-15 (e) As necessary to provide for the protection of the child,
 31-16 the department [~~or designated agency~~] shall determine:

31-17 (1) the nature, extent, and cause of the abuse or
 31-18 neglect;

31-19 (2) the identity of the person responsible for the
 31-20 abuse or neglect;

31-21 (3) the names and conditions of the other children in
 31-22 the home;

31-23 (4) an evaluation of the parents or persons
 31-24 responsible for the care of the child;

31-25 (5) the adequacy of the home environment;

31-26 (6) the relationship of the child to the persons
 31-27 responsible for the care, custody, or welfare of the child; and

31-28 (7) all other pertinent data.

31-29 SECTION 1.130. The heading to Section [261.3015](#), Family
 31-30 Code, is amended to read as follows:

31-31 Sec. 261.3015. ALTERNATIVE [~~FLEXIBLE~~] RESPONSE SYSTEM.

31-32 SECTION 1.131. Sections [261.3015](#)(a) and (d), Family Code,
 31-33 are amended to read as follows:

31-34 (a) In assigning priorities and prescribing investigative
 31-35 procedures based on the severity and immediacy of the alleged harm
 31-36 to a child under Section [261.301](#)(d), the department shall establish
 31-37 an alternative [~~a flexible~~] response system to allow the department
 31-38 to make the most effective use of resources to investigate and
 31-39 respond to reported cases of abuse and neglect.

31-40 (d) In determining how to classify a reported case of abuse
 31-41 or neglect under the alternative [~~flexible~~] response system, the
 31-42 child's safety is the primary concern. The classification of a case
 31-43 may be changed as warranted by the circumstances.

31-44 SECTION 1.132. Section [261.302](#)(b), Family Code, is amended
 31-45 to read as follows:

31-46 (b) The interview with and examination of the child may:

31-47 (1) be conducted at any reasonable time and place,
 31-48 including the child's home or the child's school;

31-49 (2) include the presence of persons the department [~~or~~
 31-50 ~~designated agency~~] determines are necessary; and

31-51 (3) include transporting the child for purposes
 31-52 relating to the interview or investigation.

31-53 SECTION 1.133. Sections [261.303](#)(a), (c), and (d), Family
 31-54 Code, are amended to read as follows:

31-55 (a) A person may not interfere with an investigation of a
 31-56 report of child abuse or neglect conducted by the department [~~or~~
 31-57 ~~designated agency~~].

31-58 (c) If a parent or person responsible for the child's care
 31-59 does not consent to release of the child's prior medical,
 31-60 psychological, or psychiatric records or to a medical,
 31-61 psychological, or psychiatric examination of the child that is
 31-62 requested by the department [~~or designated agency~~], the court
 31-63 having family law jurisdiction shall, for good cause shown, order
 31-64 the records to be released or the examination to be made at the
 31-65 times and places designated by the court.

31-66 (d) A person, including a medical facility, that makes a
 31-67 report under Subchapter B shall release to the department [~~or~~
 31-68 ~~designated agency~~], as part of the required report under Section
 31-69 [261.103](#), records that directly relate to the suspected abuse or

32-1 neglect without requiring parental consent or a court order. If a
 32-2 child is transferred from a reporting medical facility to another
 32-3 medical facility to treat the injury or condition that formed the
 32-4 basis for the original report, the transferee medical facility
 32-5 shall, at the department's request, release to the department
 32-6 records relating to the injury or condition without requiring
 32-7 parental consent or a court order.

32-8 SECTION 1.134. Section 261.3031(a), Family Code, is amended
 32-9 to read as follows:

32-10 (a) If a parent or other person refuses to cooperate with
 32-11 the department's investigation of the alleged abuse or neglect of a
 32-12 child and the refusal poses a risk to the child's safety, the
 32-13 department shall seek assistance from the appropriate [county
 32-14 attorney or district attorney or criminal district] attorney with
 32-15 responsibility for representing the department as provided by
 32-16 Section 264.009 to obtain a court order as described by Section
 32-17 261.303.

32-18 SECTION 1.135. Sections 261.305(b) and (d), Family Code,
 32-19 are amended to read as follows:

32-20 (b) If the parent or person does not consent to an
 32-21 examination or allow the department [~~or designated agency~~] to have
 32-22 access to medical or mental health records requested by the
 32-23 department [~~or agency~~], the court having family law jurisdiction,
 32-24 for good cause shown, shall order the examination to be made or that
 32-25 the department [~~or agency~~] be permitted to have access to the
 32-26 records under terms and conditions prescribed by the court.

32-27 (d) A parent or person responsible for the child's care is
 32-28 entitled to notice and a hearing when the department [~~or designated~~
 32-29 ~~agency~~] seeks a court order to allow a medical, psychological, or
 32-30 psychiatric examination or access to medical or mental health
 32-31 records.

32-32 SECTION 1.136. Section 261.306, Family Code, is amended to
 32-33 read as follows:

32-34 Sec. 261.306. REMOVAL OF CHILD FROM STATE. (a) If the
 32-35 department [~~or designated agency~~] has reason to believe that a
 32-36 person responsible for the care, custody, or welfare of the child
 32-37 may remove the child from the state before the investigation is
 32-38 completed, the department [~~or designated agency~~] may file an
 32-39 application for a temporary restraining order in a district court
 32-40 without regard to continuing jurisdiction of the child as provided
 32-41 in Chapter 155.

32-42 (b) The court may render a temporary restraining order
 32-43 prohibiting the person from removing the child from the state
 32-44 pending completion of the investigation if the court:

32-45 (1) finds that the department [~~or designated agency~~]
 32-46 has probable cause to conduct the investigation; and

32-47 (2) has reason to believe that the person may remove
 32-48 the child from the state.

32-49 SECTION 1.137. Sections 261.308(a), (b), and (c), Family
 32-50 Code, are amended to read as follows:

32-51 (a) The department [~~or designated agency~~] shall make a
 32-52 complete written report of the investigation.

32-53 (b) If sufficient grounds for filing a suit exist, the
 32-54 department [~~or designated agency~~] shall submit the report, together
 32-55 with recommendations, to the court, the district attorney, and the
 32-56 appropriate law enforcement agency.

32-57 (c) On receipt of the report and recommendations, the court
 32-58 may direct the department [~~or designated agency~~] to file a petition
 32-59 requesting appropriate relief as provided in this title.

32-60 SECTION 1.138. Section 261.309(a), Family Code, is amended
 32-61 to read as follows:

32-62 (a) The executive commissioner [~~department~~] shall by rule
 32-63 establish policies and procedures to resolve complaints relating to
 32-64 and conduct reviews of child abuse or neglect investigations
 32-65 conducted by the department.

32-66 SECTION 1.139. Section 261.310(a), Family Code, is amended
 32-67 to read as follows:

32-68 (a) The executive commissioner [~~department~~] shall by rule
 32-69 develop and adopt standards for persons who investigate suspected

33-1 child abuse or neglect at the state or local level. The standards
 33-2 shall encourage professionalism and consistency in the
 33-3 investigation of suspected child abuse or neglect.

33-4 SECTION 1.140. Sections 261.311(a) and (b), Family Code,
 33-5 are amended to read as follows:

33-6 (a) When during an investigation of a report of suspected
 33-7 child abuse or neglect a representative of the department [~~or the~~
 33-8 ~~designated agency~~] conducts an interview with or an examination of
 33-9 a child, the department [~~or designated agency~~] shall make a
 33-10 reasonable effort before 24 hours after the time of the interview or
 33-11 examination to notify each parent of the child and the child's legal
 33-12 guardian, if one has been appointed, of the nature of the allegation
 33-13 and of the fact that the interview or examination was conducted.

33-14 (b) If a report of suspected child abuse or neglect is
 33-15 administratively closed by the department [~~or designated agency~~] as
 33-16 a result of a preliminary investigation that did not include an
 33-17 interview or examination of the child, the department [~~or~~
 33-18 ~~designated agency~~] shall make a reasonable effort before the
 33-19 expiration of 24 hours after the time the investigation is closed to
 33-20 notify each parent and legal guardian of the child of the
 33-21 disposition of the investigation.

33-22 SECTION 1.141. Section 261.312(b), Family Code, is amended
 33-23 to read as follows:

33-24 (b) A review team consists of at least five members who
 33-25 serve staggered two-year terms. Review team members are appointed
 33-26 by the commissioner [~~director~~] of the department and consist of
 33-27 volunteers who live in and are broadly representative of the region
 33-28 in which the review team is established and have expertise in the
 33-29 prevention and treatment of child abuse and neglect. At least two
 33-30 members of a review team must be parents who have not been convicted
 33-31 of or indicted for an offense involving child abuse or neglect, have
 33-32 not been determined by the department to have engaged in child abuse
 33-33 or neglect, and are not under investigation by the department for
 33-34 child abuse or neglect. A member of a review team is a department
 33-35 volunteer for the purposes of Section 411.114, Government Code.

33-36 SECTION 1.142. Section 261.315(c), Family Code, is amended
 33-37 to read as follows:

33-38 (c) The executive commissioner [~~board~~] shall adopt rules
 33-39 necessary to administer this section.

33-40 SECTION 1.143. Sections 261.401(c) and (d), Family Code,
 33-41 are amended to read as follows:

33-42 (c) A state agency shall adopt rules relating to the
 33-43 investigation and resolution of reports received as provided by
 33-44 this subchapter. The executive commissioner [~~Health and Human~~
 33-45 ~~Services Commission~~] shall review and approve the rules of agencies
 33-46 other than the Texas Department of Criminal Justice or the [~~T~~] Texas
 33-47 Juvenile Justice Department [~~Youth Commission, or Texas Juvenile~~
 33-48 ~~Probation Commission~~] to ensure that those agencies implement
 33-49 appropriate standards for the conduct of investigations and that
 33-50 uniformity exists among agencies in the investigation and
 33-51 resolution of reports.

33-52 (d) The Texas School for the Blind and Visually Impaired and
 33-53 the Texas School for the Deaf shall adopt policies relating to the
 33-54 investigation and resolution of reports received as provided by
 33-55 this subchapter. The executive commissioner [~~Health and Human~~
 33-56 ~~Services Commission~~] shall review and approve the policies to
 33-57 ensure that the Texas School for the Blind and Visually Impaired and
 33-58 the Texas School for the Deaf adopt those policies in a manner
 33-59 consistent with the minimum standards adopted by the executive
 33-60 commissioner [~~Health and Human Services Commission~~] under Section
 33-61 261.407.

33-62 SECTION 1.144. Section 261.402(c), Family Code, is amended
 33-63 to read as follows:

33-64 (c) A state agency that licenses, certifies, or registers a
 33-65 facility in which children are located shall compile, maintain, and
 33-66 make available statistics on the incidence in the facility of child
 33-67 abuse, neglect, and exploitation that is investigated by the agency
 33-68 [~~in the facility~~].

33-69 SECTION 1.145. Section 261.403, Family Code, is amended to

34-1 read as follows:

34-2 Sec. 261.403. COMPLAINTS. (a) If a state agency receives a
 34-3 complaint relating to an investigation conducted by the agency
 34-4 concerning a facility operated by that agency in which children are
 34-5 located, the agency shall refer the complaint to the agency's
 34-6 governing body [board].

34-7 (b) The governing body [board] of a state agency that
 34-8 operates a facility in which children are located shall ensure that
 34-9 the procedure for investigating abuse, neglect, and exploitation
 34-10 allegations and inquiries in the agency's facility is periodically
 34-11 reviewed under the agency's internal audit program required by
 34-12 Chapter 2102, Government Code.

34-13 SECTION 1.146. Section 261.404, Family Code, is amended to
 34-14 read as follows:

34-15 Sec. 261.404. INVESTIGATIONS REGARDING CERTAIN CHILDREN
 34-16 WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY [~~MENTAL~~
 34-17 RETARDATION]. (a) The department shall investigate a report of
 34-18 abuse, neglect, or exploitation of a child receiving services:

34-19 (1) in a facility operated by the Department of Aging
 34-20 and Disability Services or a mental health facility operated by the
 34-21 Department of State Health Services;

34-22 (2) in or from a community center, a local mental
 34-23 health authority, or a local intellectual and developmental
 34-24 disability [mental retardation] authority;

34-25 (3) through a program providing services to that child
 34-26 by contract with a facility operated by the Department of Aging and
 34-27 Disability Services, a mental health facility operated by the
 34-28 Department of State Health Services, a community center, a local
 34-29 mental health authority, or a local intellectual and developmental
 34-30 disability [mental retardation] authority;

34-31 (4) from a provider of home and community-based
 34-32 services who contracts with the Department of Aging and Disability
 34-33 Services; or

34-34 (5) in a facility licensed under Chapter 252, Health
 34-35 and Safety Code.

34-36 (b) The department shall investigate the report under rules
 34-37 developed by the executive commissioner [~~of the Health and Human~~
 34-38 ~~Services Commission~~] with the advice and assistance of the
 34-39 department, the Department of Aging and Disability Services, and
 34-40 the Department of State Health Services.

34-41 (c) If a report under this section relates to a child with an
 34-42 intellectual disability [mental retardation] receiving services in
 34-43 a state supported living center or the ICF-IID [~~ICF-MR~~] component
 34-44 of the Rio Grande State Center, the department shall, within one
 34-45 hour of receiving the report, notify the facility in which the child
 34-46 is receiving services of the allegations in the report.

34-47 (d) If during the course of the department's investigation
 34-48 of reported abuse, neglect, or exploitation a caseworker of the
 34-49 department or the caseworker's supervisor has cause to believe that
 34-50 a child with an intellectual disability [mental retardation]
 34-51 described by Subsection (c) has been abused, neglected, or
 34-52 exploited by another person in a manner that constitutes a criminal
 34-53 offense under any law, including Section 22.04, Penal Code, the
 34-54 caseworker shall immediately notify the Health and Human Services
 34-55 Commission's office of inspector general and promptly provide the
 34-56 commission's office of inspector general with a copy of the
 34-57 department's investigation report.

34-58 (e) The definitions of "abuse" and "neglect" prescribed by
 34-59 Section 261.001 do not apply to an investigation under this
 34-60 section.

34-61 (f) In this section:

34-62 (1) "Community center," "local mental health
 34-63 authority," "local intellectual and developmental disability
 34-64 [~~mental retardation~~] authority," and "state supported living
 34-65 center" have the meanings assigned by Section 531.002, Health and
 34-66 Safety Code.

34-67 (2) "Provider" has the meaning assigned by Section
 34-68 48.351, Human Resources Code.

34-69 SECTION 1.147. Section 261.405(a)(1), Family Code, is

35-1 amended to read as follows:

35-2 (1) "Juvenile justice facility" means a facility
 35-3 operated wholly or partly by the juvenile board, by another
 35-4 governmental unit, or by a private vendor under a contract with the
 35-5 juvenile board, county, or other governmental unit that serves
 35-6 juveniles under juvenile court jurisdiction. The term includes:

35-7 (A) a public or private juvenile
 35-8 pre-adjudication secure detention facility, including a holdover
 35-9 facility;

35-10 (B) a public or private juvenile
 35-11 post-adjudication secure correctional facility except for a
 35-12 facility operated solely for children committed to the Texas
 35-13 Juvenile Justice Department [~~Youth Commission~~]; and

35-14 (C) a public or private non-secure juvenile
 35-15 post-adjudication residential treatment facility that is not
 35-16 licensed by the Department of Family and Protective [and
 35-17 Regulatory] Services or the Department of State Health Services
 35-18 [~~Texas Commission on Alcohol and Drug Abuse~~].

35-19 SECTION 1.148. Section 261.406(d), Family Code, is amended
 35-20 to read as follows:

35-21 (d) The executive commissioner [~~Board of Protective and~~
 35-22 ~~Regulatory Services~~] shall adopt rules necessary to implement this
 35-23 section.

35-24 SECTION 1.149. Section 261.407, Family Code, is amended to
 35-25 read as follows:

35-26 Sec. 261.407. MINIMUM STANDARDS. (a) The executive
 35-27 commissioner [~~Health and Human Services Commission~~] by rule shall
 35-28 adopt minimum standards for the investigation under Section 261.401
 35-29 of suspected child abuse, neglect, or exploitation in a facility.

35-30 (b) A rule or policy adopted by a state agency or
 35-31 institution under Section 261.401 must be consistent with the
 35-32 minimum standards adopted by the executive commissioner [~~Health and~~
 35-33 ~~Human Services Commission~~].

35-34 (c) This section does not apply to a facility under the
 35-35 jurisdiction of the Texas Department of Criminal Justice or the[
 35-36 Texas Juvenile Justice Department [~~Youth Commission, or Texas~~
 35-37 Juvenile Probation Commission].

35-38 SECTION 1.150. Sections 261.408(a) and (c), Family Code,
 35-39 are amended to read as follows:

35-40 (a) The executive commissioner [~~Health and Human Services~~
 35-41 ~~Commission~~] by rule shall adopt uniform procedures for collecting
 35-42 information under Section 261.401, including procedures for
 35-43 collecting information on deaths that occur in facilities.

35-44 (c) This section does not apply to a facility under the
 35-45 jurisdiction of the Texas Department of Criminal Justice or the[
 35-46 Texas Juvenile Justice Department [~~Youth Commission, or Texas~~
 35-47 Juvenile Probation Commission].

35-48 SECTION 1.151. Section 262.006(a), Family Code, is amended
 35-49 to read as follows:

35-50 (a) An authorized representative of the Department of
 35-51 Family and Protective [and Regulatory] Services may assume the
 35-52 care, control, and custody of a child born alive as the result of an
 35-53 abortion as defined by Chapter 161.

35-54 SECTION 1.152. Section 262.007(c), Family Code, is amended
 35-55 to read as follows:

35-56 (c) If a person entitled to possession of the child is not
 35-57 immediately available to take possession of the child, the law
 35-58 enforcement officer shall deliver the child to the Department of
 35-59 Family and Protective [and Regulatory] Services. Until a person
 35-60 entitled to possession of the child takes possession of the child,
 35-61 the department may, without a court order, retain possession of the
 35-62 child not longer than five days after the date the child is
 35-63 delivered to the department. While the department retains
 35-64 possession of a child under this subsection, the department may
 35-65 place the child in foster [~~home~~] care. If a parent or other person
 35-66 entitled to possession of the child does not take possession of the
 35-67 child before the sixth day after the date the child is delivered to
 35-68 the department, the department shall proceed under this chapter as
 35-69 if the law enforcement officer took possession of the child under

36-1 Section 262.104.

36-2 SECTION 1.153. Section 262.008(a), Family Code, is amended
36-3 to read as follows:

36-4 (a) An authorized representative of the Department of
36-5 Family and Protective [and Regulatory] Services may assume the
36-6 care, control, and custody of a child:

36-7 (1) who is abandoned without identification or a means
36-8 for identifying the child; and

36-9 (2) whose identity cannot be ascertained by the
36-10 exercise of reasonable diligence.

36-11 SECTION 1.154. Section 262.1015(a), Family Code, is amended
36-12 to read as follows:

36-13 (a) If the Department of Family and Protective Services
36-14 [~~department~~] determines after an investigation that child abuse has
36-15 occurred and that the child would be protected in the child's home
36-16 by the removal of the alleged perpetrator of the abuse, the
36-17 department shall file a petition for the removal of the alleged
36-18 perpetrator from the residence of the child rather than attempt to
36-19 remove the child from the residence.

36-20 SECTION 1.155. Sections 262.102(a), (c), and (d), Family
36-21 Code, are amended to read as follows:

36-22 (a) Before a court may, without prior notice and a hearing,
36-23 issue a temporary order for the conservatorship of a child under
36-24 Section 105.001(a)(1) or a temporary restraining order or
36-25 attachment of a child authorizing a governmental entity to take
36-26 possession of a child in a suit brought by a governmental entity,
36-27 the court must find that:

36-28 (1) there is an immediate danger to the physical
36-29 health or safety of the child or the child has been a victim of
36-30 neglect or sexual abuse and that continuation in the home would be
36-31 contrary to the child's welfare;

36-32 (2) there is no time, consistent with the physical
36-33 health or safety of the child and the nature of the emergency, for a
36-34 full adversary hearing under Subchapter C; and

36-35 (3) reasonable efforts, consistent with the
36-36 circumstances and providing for the safety of the child, were made
36-37 to prevent or eliminate the need for removal of the child.

36-38 (c) If, based on the recommendation of or a request by the
36-39 Department of Family and Protective Services [~~department~~], the
36-40 court finds that child abuse or neglect has occurred and that the
36-41 child requires protection from family violence by a member of the
36-42 child's family or household, the court shall render a temporary
36-43 order under Title 4 [~~Chapter 71~~] for the protection of the child.
36-44 In this subsection, "family violence" has the meaning assigned by
36-45 Section 71.004.

36-46 (d) The temporary order, temporary restraining order, or
36-47 attachment of a child rendered by the court under Subsection (a)
36-48 must contain the following statement prominently displayed in
36-49 boldface type, capital letters, or underlined:

36-50 "YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY. IF YOU
36-51 ARE INDIGENT AND UNABLE TO AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO
36-52 REQUEST THE APPOINTMENT OF AN ATTORNEY BY CONTACTING THE COURT AT
36-53 [ADDRESS], [TELEPHONE NUMBER]. IF YOU APPEAR IN OPPOSITION TO THE
36-54 SUIT, CLAIM INDIGENCE, AND REQUEST THE APPOINTMENT OF AN ATTORNEY,
36-55 THE COURT WILL REQUIRE YOU TO SIGN AN AFFIDAVIT OF INDIGENCE AND THE
36-56 COURT MAY HEAR EVIDENCE TO DETERMINE IF YOU ARE INDIGENT. IF THE
36-57 COURT DETERMINES YOU ARE INDIGENT AND ELIGIBLE FOR APPOINTMENT OF
36-58 AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT YOU."

36-59 SECTION 1.156. Section 262.103, Family Code, is amended to
36-60 read as follows:

36-61 Sec. 262.103. DURATION OF TEMPORARY ORDER, TEMPORARY
36-62 RESTRAINING ORDER, AND ATTACHMENT. A temporary order, temporary
36-63 restraining order, or attachment of the child issued under Section
36-64 262.102(a) [~~this chapter~~] expires not later than 14 days after the
36-65 date it is issued unless it is extended as provided by the Texas
36-66 Rules of Civil Procedure or Section 262.201(a-3).

36-67 SECTION 1.157. Section 262.104(a), Family Code, is amended
36-68 to read as follows:

36-69 (a) If there is no time to obtain a temporary order,

37-1 temporary restraining order, or attachment under Section
 37-2 262.102(a) before taking possession of a child consistent with the
 37-3 health and safety of that child, an authorized representative of
 37-4 the Department of Family and Protective Services, a law enforcement
 37-5 officer, or a juvenile probation officer may take possession of a
 37-6 child without a court order under the following conditions, only:

37-7 (1) on personal knowledge of facts that would lead a
 37-8 person of ordinary prudence and caution to believe that there is an
 37-9 immediate danger to the physical health or safety of the child;

37-10 (2) on information furnished by another that has been
 37-11 corroborated by personal knowledge of facts and all of which taken
 37-12 together would lead a person of ordinary prudence and caution to
 37-13 believe that there is an immediate danger to the physical health or
 37-14 safety of the child;

37-15 (3) on personal knowledge of facts that would lead a
 37-16 person of ordinary prudence and caution to believe that the child
 37-17 has been the victim of sexual abuse;

37-18 (4) on information furnished by another that has been
 37-19 corroborated by personal knowledge of facts and all of which taken
 37-20 together would lead a person of ordinary prudence and caution to
 37-21 believe that the child has been the victim of sexual abuse; or

37-22 (5) on information furnished by another that has been
 37-23 corroborated by personal knowledge of facts and all of which taken
 37-24 together would lead a person of ordinary prudence and caution to
 37-25 believe that the parent or person who has possession of the child is
 37-26 currently using a controlled substance as defined by Chapter 481,
 37-27 Health and Safety Code, and the use constitutes an immediate danger
 37-28 to the physical health or safety of the child.

37-29 SECTION 1.158. Section 262.105(b), Family Code, is amended
 37-30 to read as follows:

37-31 (b) If the Department of Family and Protective [and
 37-32 ~~Regulatory~~] Services files a suit affecting the parent-child
 37-33 relationship required under Subsection (a)(1) seeking termination
 37-34 of the parent-child relationship, the department shall file the
 37-35 suit not later than the 45th day after the date the department
 37-36 assumes the care, control, and custody of a child under Section
 37-37 262.303.

37-38 SECTION 1.159. Section 262.106(d), Family Code, is amended
 37-39 to read as follows:

37-40 (d) For the purpose of determining under Subsection (a) the
 37-41 first working day after the date the child is taken into possession,
 37-42 the child is considered to have been taken into possession by the
 37-43 Department of Family and Protective [and ~~Regulatory~~] Services on
 37-44 the expiration of the five-day period permitted under Section
 37-45 262.007(c) or 262.110(b), as appropriate.

37-46 SECTION 1.160. Section 262.109(a), Family Code, is amended
 37-47 to read as follows:

37-48 (a) The Department of Family and Protective Services
 37-49 [~~department~~] or other agency must give written notice as prescribed
 37-50 by this section to each parent of the child or to the child's
 37-51 conservator or legal guardian when a representative of the
 37-52 Department of Protective and Regulatory Services or
 37-53 other agency takes possession of a child under this chapter.

37-54 SECTION 1.161. Section 262.110(a), Family Code, is amended
 37-55 to read as follows:

37-56 (a) An authorized representative of the Department of
 37-57 Family and Protective [and ~~Regulatory~~] Services, a law enforcement
 37-58 officer, or a juvenile probation officer may take temporary
 37-59 possession of a child without a court order on discovery of a child
 37-60 in a situation of danger to the child's physical health or safety
 37-61 when the sole purpose is to deliver the child without unnecessary
 37-62 delay to the parent, managing conservator, possessory conservator,
 37-63 guardian, caretaker, or custodian who is presently entitled to
 37-64 possession of the child.

37-65 SECTION 1.162. Section 262.112(a), Family Code, is amended
 37-66 to read as follows:

37-67 (a) The Department of Family and Protective [and
 37-68 ~~Regulatory~~] Services is entitled to an expedited hearing under this
 37-69 chapter in any proceeding in which a hearing is required if the

38-1 department determines that a child should be removed from the
 38-2 child's home because of an immediate danger to the physical health
 38-3 or safety of the child.

38-4 SECTION 1.163. Sections [262.201\(a-3\)](#) and (g), Family Code,
 38-5 are amended to read as follows:

38-6 (a-3) The court may, for good cause shown, postpone the full
 38-7 adversary hearing for not more than seven days from the date of the
 38-8 attorney's appointment to provide the attorney time to respond to
 38-9 the petition and prepare for the hearing. The court may shorten or
 38-10 lengthen the extension granted under this subsection if the parent
 38-11 and the appointed attorney agree in writing. If the court postpones
 38-12 the full adversary hearing, the court shall extend a temporary
 38-13 order, temporary restraining order, or attachment issued by the
 38-14 court under Section [262.102\(a\)](#) for the protection of the child
 38-15 until the date of the rescheduled full adversary hearing.

38-16 (g) For the purpose of determining under Subsection (a) the
 38-17 14th day after the date the child is taken into possession, a child
 38-18 is considered to have been taken into possession by the Department
 38-19 of Family and Protective Services [department] on the expiration of
 38-20 the five-day period permitted under Section [262.007\(c\)](#) or
 38-21 [262.110\(b\)](#), as appropriate.

38-22 SECTION 1.164. Sections [262.2015\(a\), \(b\), and \(d\)](#), Family
 38-23 Code, are amended to read as follows:

38-24 (a) The court may waive the requirement of a service plan
 38-25 and the requirement to make reasonable efforts to return the child
 38-26 to a parent and may accelerate the trial schedule to result in a
 38-27 final order for a child under the care of the Department of Family
 38-28 and Protective Services [department] at an earlier date than
 38-29 provided by Subchapter D, Chapter 263, if the court finds that the
 38-30 parent has subjected the child to aggravated circumstances.

38-31 (b) The court may find under Subsection (a) that a parent
 38-32 has subjected the child to aggravated circumstances if:

38-33 (1) the parent abandoned the child without
 38-34 identification or a means for identifying the child;
 38-35 (2) the child is a victim of serious bodily injury or
 38-36 sexual abuse inflicted by the parent or by another person with the
 38-37 parent's consent;

38-38 (3) the parent has engaged in conduct against the
 38-39 child that would constitute an offense under the following
 38-40 provisions of the Penal Code:

38-41 (A) Section [19.02](#) (murder);
 38-42 (B) Section [19.03](#) (capital murder);
 38-43 (C) Section [19.04](#) (manslaughter);
 38-44 (D) Section [21.11](#) (indecency with a child);
 38-45 (E) Section [22.011](#) (sexual assault);
 38-46 (F) Section [22.02](#) (aggravated assault);
 38-47 (G) Section [22.021](#) (aggravated sexual assault);
 38-48 (H) Section [22.04](#) (injury to a child, elderly
 38-49 individual, or disabled individual);
 38-50 (I) Section [22.041](#) (abandoning or endangering
 38-51 child);

38-52 (J) Section [25.02](#) (prohibited sexual conduct);
 38-53 (K) Section [43.25](#) (sexual performance by a
 38-54 child);
 38-55 (L) Section [43.26](#) (possession or promotion of
 38-56 child pornography);
 38-57 (M) Section [21.02](#) (continuous sexual abuse of
 38-58 young child or children);
 38-59 (N) Section [43.05\(a\)\(2\)](#) (compelling
 38-60 prostitution); or

38-61 (O) Section [20A.02\(a\)\(7\)](#) or (8) (trafficking of
 38-62 persons);
 38-63 (4) the parent voluntarily left the child alone or in
 38-64 the possession of another person not the parent of the child for at
 38-65 least six months without expressing an intent to return and without
 38-66 providing adequate support for the child;

38-67 (5) the parent's parental rights with regard to
 38-68 another child have been involuntarily terminated based on a finding
 38-69 that the parent's conduct violated Section [161.001\(b\)\(1\)\(D\)](#)

39-1 [161.001(1)(D)] or (E) or a substantially equivalent provision of
 39-2 another state's law;

39-3 (6) the parent has been convicted for:

39-4 (A) the murder of another child of the parent and
 39-5 the offense would have been an offense under 18 U.S.C. Section
 39-6 1111(a) if the offense had occurred in the special maritime or
 39-7 territorial jurisdiction of the United States;

39-8 (B) the voluntary manslaughter of another child
 39-9 of the parent and the offense would have been an offense under 18
 39-10 U.S.C. Section 1112(a) if the offense had occurred in the special
 39-11 maritime or territorial jurisdiction of the United States;

39-12 (C) aiding or abetting, attempting, conspiring,
 39-13 or soliciting an offense under Paragraph [Subdivision] (A) or (B);
 39-14 or

39-15 (D) the felony assault of the child or another
 39-16 child of the parent that resulted in serious bodily injury to the
 39-17 child or another child of the parent; or

39-18 (7) the parent's parental rights with regard to two
 39-19 other children have been involuntarily terminated.

39-20 (d) The Department of Family and Protective [and
 39-21 Regulatory] Services shall make reasonable efforts to finalize the
 39-22 permanent placement of a child for whom the court has made the
 39-23 finding described by Subsection (c). The court shall set the suit
 39-24 for trial on the merits as required by Subchapter D, Chapter 263, in
 39-25 order to facilitate final placement of the child.

39-26 SECTION 1.165. Section 262.301(1), Family Code, is amended
 39-27 to read as follows:

39-28 (1) "Designated emergency infant care provider"
 39-29 means:

39-30 (A) an emergency medical services provider;
 39-31 (B) a hospital; or
 39-32 (C) a child-placing agency licensed by the
 39-33 Department of Family and Protective [and Regulatory] Services under
 39-34 Chapter 42, Human Resources Code, that:

39-35 (i) agrees to act as a designated emergency
 39-36 infant care provider under this subchapter; and

39-37 (ii) has on staff a person who is licensed
 39-38 as a registered nurse under Chapter 301, Occupations Code, or who
 39-39 provides emergency medical services under Chapter 773, Health and
 39-40 Safety Code, and who will examine and provide emergency medical
 39-41 services to a child taken into possession by the agency under this
 39-42 subchapter.

39-43 SECTION 1.166. Section 262.303(a), Family Code, is amended
 39-44 to read as follows:

39-45 (a) Not later than the close of the first business day after
 39-46 the date on which a designated emergency infant care provider takes
 39-47 possession of a child under Section 262.302, the provider shall
 39-48 notify the Department of Family and Protective [and Regulatory]
 39-49 Services that the provider has taken possession of the child.

39-50 SECTION 1.167. Section 262.304, Family Code, is amended to
 39-51 read as follows:

39-52 Sec. 262.304. FILING PETITION AFTER ACCEPTING POSSESSION OF
 39-53 ABANDONED CHILD. A child for whom the Department of Family and
 39-54 Protective [and Regulatory] Services assumes care, control, and
 39-55 custody under Section 262.303 shall be treated as a child taken into
 39-56 possession without a court order, and the department shall take
 39-57 action as required by Section 262.105 with regard to the child.

39-58 SECTION 1.168. Section 262.305(a), Family Code, is amended
 39-59 to read as follows:

39-60 (a) Immediately after assuming care, control, and custody
 39-61 of a child under Section 262.303, the Department of Family and
 39-62 Protective [and Regulatory] Services shall report the child to
 39-63 appropriate state and local law enforcement agencies as a potential
 39-64 missing child.

39-65 SECTION 1.169. Section 262.307, Family Code, is amended to
 39-66 read as follows:

39-67 Sec. 262.307. REIMBURSEMENT FOR CARE OF ABANDONED CHILD.
 39-68 The Department of Family and Protective Services [department] shall
 39-69 reimburse a designated emergency infant care provider that takes

40-1 possession of a child under Section 262.302 for the cost to the
 40-2 provider of assuming the care, control, and custody of the child.

40-3 SECTION 1.170. Section 263.001(a)(4), Family Code, is
 40-4 amended to read as follows:

40-5 (4) "Substitute care" means the placement of a child
 40-6 who is in the conservatorship of the department [~~or an authorized~~
 40-7 ~~agency~~] in care outside the child's home. The term includes foster
 40-8 care, institutional care, adoption, placement with a relative of
 40-9 the child, or commitment to the Texas Juvenile Justice Department
 40-10 [~~Youth Commission~~].

40-11 SECTION 1.171. Section 263.002, Family Code, is amended to
 40-12 read as follows:

40-13 Sec. 263.002. REVIEW OF PLACEMENTS BY COURT. In a suit
 40-14 affecting the parent-child relationship in which the department [~~or~~
 40-15 ~~an authorized agency~~] has been appointed by the court or designated
 40-16 in an affidavit of relinquishment of parental rights as the
 40-17 temporary or permanent managing conservator of a child, the court
 40-18 shall hold a hearing to review:

40-19 (1) the conservatorship appointment and substitute
 40-20 care; and

40-21 (2) for a child committed to the Texas Juvenile
 40-22 Justice Department [~~Youth Commission~~], the child's commitment in
 40-23 the Texas Juvenile Justice Department [~~Youth Commission~~] or release
 40-24 under supervision by the Texas Juvenile Justice Department [~~Youth~~
 40-25 ~~Commission~~].

40-26 SECTION 1.172. Section 263.008(a)(2), Family Code, is
 40-27 amended to read as follows:

40-28 (2) "Foster care" means the placement of a child who is
 40-29 in the conservatorship of the department [~~or an authorized agency~~]
 40-30 and in care outside the child's home in an agency foster group home,
 40-31 agency foster home, foster group home, foster home, or another
 40-32 facility licensed or certified under Chapter 42, Human Resources
 40-33 Code, in which care is provided for 24 hours a day.

40-34 SECTION 1.173. Section 263.101, Family Code, is amended to
 40-35 read as follows:

40-36 Sec. 263.101. DEPARTMENT TO FILE SERVICE PLAN. Not later
 40-37 than the 45th day after the date the court renders a temporary order
 40-38 appointing the department as temporary managing conservator of a
 40-39 child under Chapter 262, the department [~~or other agency appointed~~
 40-40 ~~as the managing conservator of a child~~] shall file a service plan.

40-41 SECTION 1.174. Section 263.102(a), Family Code, is amended
 40-42 to read as follows:

40-43 (a) The service plan must:

40-44 (1) be specific;

40-45 (2) be in writing in a language that the parents
 40-46 understand, or made otherwise available;

40-47 (3) be prepared by the department [~~or other agency~~] in
 40-48 conference with the child's parents;

40-49 (4) state appropriate deadlines;

40-50 (5) state whether the goal of the plan is:

40-51 (A) return of the child to the child's parents;

40-52 (B) termination of parental rights and placement
 40-53 of the child for adoption; or

40-54 (C) because of the child's special needs or
 40-55 exceptional circumstances, continuation of the child's care out of
 40-56 the child's home;

40-57 (6) state steps that are necessary to:

40-58 (A) return the child to the child's home if the
 40-59 placement is in foster care;

40-60 (B) enable the child to remain in the child's
 40-61 home with the assistance of a service plan if the placement is in
 40-62 the home under the department's [~~or other agency's~~] supervision; or

40-63 (C) otherwise provide a permanent safe placement
 40-64 for the child;

40-65 (7) state the actions and responsibilities that are
 40-66 necessary for the child's parents to take to achieve the plan goal
 40-67 during the period of the service plan and the assistance to be
 40-68 provided to the parents by the department or other [~~authorized~~]
 40-69 agency toward meeting that goal;

(8) state any specific skills or knowledge that the child's parents must acquire or learn, as well as any behavioral changes the parents must exhibit, to achieve the plan goal;

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

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

(11) prescribe any other term or condition that the department [or other agency] determines to be necessary to the service plan's success.

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

(a) The original service plan shall be developed jointly by the child's parents and a representative of the department [or other authorized agency], including informing the parents of their rights in connection with the service plan process. If a parent is not able or willing to participate in the development of the service plan, it should be so noted in the plan.

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

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

(d) The original service plan takes effect when:

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

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

(b) The amended service plan supersedes the previously

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

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

(2) the department [or other authorized agency] determines that the child's parents are unable or unwilling to sign the amended plan and files it without the parents' signatures.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The permanency progress report must:

(1) recommend that the suit be dismissed; or

(2) recommend that the suit continue, and:
(A) identify the date for dismissal

(A) Identify the date for dismissal of the suit
y:

under this chapter;

(B) provide:

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

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

(D) evaluate whether the child's placement in

(E) describe the permanency plan for the child and recommend actions necessary to ensure that a final order

and recommend actions necessary to ensure that a final order consistent with that permanency plan, including the concurrent permanency goals contained in that plan, is rendered before the date for dismissal of the suit under this chapter;

(F) with respect to a child 16 years of age or older, identify the services needed to assist the child in the transition to adult life; and

(G) with respect to a child committed to the Texas Juvenile Justice Department [~~Youth Commission~~] or released under supervision by the Texas Juvenile Justice Department [~~Youth Commission~~]:

- (i) evaluate whether the child's needs for treatment and education are being met;
- (ii) describe, using information provided by the Texas Juvenile Justice Department [~~Youth Commission~~], the child's progress in any rehabilitation program administered by the

43-1 Texas Juvenile Justice Department [~~Youth Commission~~]; and
 43-2 (iii) recommend other plans or services to
 43-3 meet the child's needs.

43-4 (c) A parent whose parental rights are the subject of a suit
 43-5 affecting the parent-child relationship, the attorney for that
 43-6 parent, or the child's attorney ad litem or guardian ad litem may
 43-7 file a response to the department's [~~or other agency's~~] report filed
 43-8 under Subsection (b). A response must be filed not later than the
 43-9 third day before the date of the hearing.

43-10 SECTION 1.180. Section 263.306(a), Family Code, as amended
 43-11 by Chapters 191 (S.B. 352), 204 (H.B. 915), and 688 (H.B. 2619),
 43-12 Acts of the 83rd Legislature, Regular Session, 2013, is reenacted
 43-13 and amended to read as follows:

43-14 (a) At each permanency hearing the court shall:
 43-15 (1) identify all persons or parties present at the
 43-16 hearing or those given notice but failing to appear;
 43-17 (2) review the efforts of the department [~~or another~~
 43-18 agency] in:

43-19 (A) attempting to locate all necessary persons;
 43-20 (B) requesting service of citation; and
 43-21 (C) obtaining the assistance of a parent in
 43-22 providing information necessary to locate an absent parent, alleged
 43-23 father, or relative of the child;

43-24 (3) review the efforts of each custodial parent,
 43-25 alleged father, or relative of the child before the court in
 43-26 providing information necessary to locate another absent parent,
 43-27 alleged father, or relative of the child;

43-28 (4) review any visitation plan or amended plan
 43-29 required under Section 263.107 and render any orders for visitation
 43-30 the court determines necessary;

43-31 (5) return the child to the parent or parents if the
 43-32 child's parent or parents are willing and able to provide the child
 43-33 with a safe environment and the return of the child is in the
 43-34 child's best interest;

43-35 (6) place the child with a person or entity, other than
 43-36 a parent, entitled to service under Chapter 102 if the person or
 43-37 entity is willing and able to provide the child with a safe
 43-38 environment and the placement of the child is in the child's best
 43-39 interest;

43-40 (7) evaluate the department's efforts to identify
 43-41 relatives who could provide the child with a safe environment, if
 43-42 the child is not returned to a parent or another person or entity
 43-43 entitled to service under Chapter 102;

43-44 (8) evaluate the parties' compliance with temporary
 43-45 orders and the service plan;

43-46 (9) identify an education decision-maker for the child
 43-47 if one has not previously been identified;

43-48 (10) review the medical care provided to the child as
 43-49 required by Section 266.007;

43-50 (11) [~~9~~] ensure the child has been provided the
 43-51 opportunity, in a developmentally appropriate manner, to express
 43-52 the child's opinion on the medical care provided;

43-53 (12) [~~10~~] for a child receiving psychotropic
 43-54 medication, determine whether the child:

43-55 (A) has been provided appropriate psychosocial
 43-56 therapies, behavior strategies, and other non-pharmacological
 43-57 interventions; and

43-58 (B) has been seen by the prescribing physician,
 43-59 physician assistant, or advanced practice nurse at least once every
 43-60 90 days for purposes of the review required by Section 266.011;

43-61 (13) [~~11~~] determine whether:
 43-62 (A) the child continues to need substitute care;
 43-63 (B) the child's current placement is appropriate
 43-64 for meeting the child's needs, including with respect to a child who
 43-65 has been placed outside of the state, whether that placement
 43-66 continues to be in the best interest of the child; and

43-67 (C) other plans or services are needed to meet
 43-68 the child's special needs or circumstances;

43-69 (14) [~~12~~] if the child is placed in institutional

44-1 care, determine whether efforts have been made to ensure placement
 44-2 of the child in the least restrictive environment consistent with
 44-3 the best interest and special needs of the child;

44-4 (15) [413] if the child is 16 years of age or older,
 44-5 order services that are needed to assist the child in making the
 44-6 transition from substitute care to independent living if the
 44-7 services are available in the community;

44-8 (16) [414] determine plans, services, and further
 44-9 temporary orders necessary to ensure that a final order is rendered
 44-10 before the date for dismissal of the suit under this chapter;

44-11 (17) [415] if the child is committed to the Texas
 44-12 Juvenile Justice Department or released under supervision by the
 44-13 Texas Juvenile Justice Department, determine whether the child's
 44-14 needs for treatment, rehabilitation, and education are being met;
 44-15 and

44-16 (18) [416] determine the date for dismissal of the
 44-17 suit under this chapter and give notice in open court to all parties
 44-18 of:

- 44-19 (A) the dismissal date;
- 44-20 (B) the date of the next permanency hearing; and
- 44-21 (C) the date the suit is set for trial.

44-22 SECTION 1.181. Section 263.307(b), Family Code, is amended
 44-23 to read as follows:

44-24 (b) The following factors should be considered by the court
 44-25 and [7] the department[, and other authorized agencies] in
 44-26 determining whether the child's parents are willing and able to
 44-27 provide the child with a safe environment:

44-28 (1) the child's age and physical and mental
 44-29 vulnerabilities;

44-30 (2) the frequency and nature of out-of-home
 44-31 placements;

44-32 (3) the magnitude, frequency, and circumstances of the
 44-33 harm to the child;

44-34 (4) whether the child has been the victim of repeated
 44-35 harm after the initial report and intervention by the department
 44-36 [or other agency];

44-37 (5) whether the child is fearful of living in or
 44-38 returning to the child's home;

44-39 (6) the results of psychiatric, psychological, or
 44-40 developmental evaluations of the child, the child's parents, other
 44-41 family members, or others who have access to the child's home;

44-42 (7) whether there is a history of abusive or
 44-43 assaultive conduct by the child's family or others who have access
 44-44 to the child's home;

44-45 (8) whether there is a history of substance abuse by
 44-46 the child's family or others who have access to the child's home;

44-47 (9) whether the perpetrator of the harm to the child is
 44-48 identified;

44-49 (10) the willingness and ability of the child's family
 44-50 to seek out, accept, and complete counseling services and to
 44-51 cooperate with and facilitate an appropriate agency's close
 44-52 supervision;

44-53 (11) the willingness and ability of the child's family
 44-54 to effect positive environmental and personal changes within a
 44-55 reasonable period of time;

44-56 (12) whether the child's family demonstrates adequate
 44-57 parenting skills, including providing the child and other children
 44-58 under the family's care with:

44-59 (A) minimally adequate health and nutritional
 44-60 care;

44-61 (B) care, nurturance, and appropriate discipline
 44-62 consistent with the child's physical and psychological
 44-63 development;

44-64 (C) guidance and supervision consistent with the
 44-65 child's safety;

44-66 (D) a safe physical home environment;

44-67 (E) protection from repeated exposure to
 44-68 violence even though the violence may not be directed at the child;
 44-69 and

(F) an understanding of the child's needs and capabilities; and

(13) whether an adequate social support system consisting of an extended family and friends is available to the child.

SECTION 1.182. Sections 263.502(a) and (c), Family Code, are amended to read as follows:

(a) Not later than the 10th day before the date set for a placement review hearing, the department [or other authorized agency] shall file a placement review report with the court and provide a copy to each person entitled to notice under Section 263.501(d).

(c) The placement review report must identify the department's permanency goal for the child and must:

(1) evaluate whether the child's current placement is appropriate for meeting the child's needs;

(2) evaluate whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;

(3) contain a transition plan for a child who is at least 16 years of age that identifies the services and specific tasks that are needed to assist the child in making the transition from substitute care to adult living and describes the services that are being provided through the Transitional Living Services Program operated by the department;

(4) evaluate whether the child's current educational placement is appropriate for meeting the child's academic needs;

(5) identify other plans or services that are needed to meet the child's special needs or circumstances;

(6) describe the efforts of the department [~~or authorized agency~~] to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption, including efforts to provide adoption promotion and support services as defined by 42 U.S.C. Section 629a and other efforts consistent with the federal Adoption and Safe Families Act of 1997 (Pub. L. No. 105-89);

(7) for a child for whom the department has been named managing conservator in a final order that does not include termination of parental rights, describe the efforts of the department to find a permanent placement for the child, including efforts to:

(A) work with the caregiver with whom the child is placed to determine whether that caregiver is willing to become a permanent placement for the child;

(B) locate a relative or other suitable individual to serve as permanent managing conservator of the child; and

(C) evaluate any change in a parent's circumstances to determine whether:

(i) the child can be returned to the parent;
or
(ii) parental rights should be terminated.

(ii) parental rights should be terminated;

(8) with respect to a child committed to the Texas Juvenile Justice Department or released under supervision by the Texas Juvenile Justice Department:

(A) evaluate whether the child's needs for

(A) evaluate whether the child's needs for treatment and education are being met;

(B) describe, using information provided by the Texas Juvenile Justice Department, the child's progress in any rehabilitation program administered by the Texas Juvenile Justice Department; and

(C) recommend other plans or services to meet the

(c) recommend other plans or services to meet the child's needs; and

(9) identify any placement changes that have occurred

(5) Identify any placement changes that have occurred since the most recent court hearing concerning the child and describe any barriers to sustaining the child's placement, including any reason for which a substitute care provider has requested a placement change.

46-1 SECTION 1.183. Section 263.503(a), Family Code, as amended
46-2 by Chapters 204 (H.B. 915) and 688 (H.B. 2619), Acts of the 83rd
46-3 Legislature, Regular Session, 2013, is reenacted and amended to
46-4 read as follows:

46-5 (a) At each placement review hearing, the court shall
46-6 determine whether:

46-7 (1) the child's current placement is necessary, safe,
46-8 and appropriate for meeting the child's needs, including with
46-9 respect to a child placed outside of the state, whether the
46-10 placement continues to be appropriate and in the best interest of
46-11 the child;

46-12 (2) efforts have been made to ensure placement of the
46-13 child in the least restrictive environment consistent with the best
46-14 interest and special needs of the child if the child is placed in
46-15 institutional care;

46-16 (3) the services that are needed to assist a child who
46-17 is at least 16 years of age in making the transition from substitute
46-18 care to independent living are available in the community;

46-19 (4) the child is receiving appropriate medical care;

46-20 (5) the child has been provided the opportunity, in a
46-21 developmentally appropriate manner, to express the child's opinion
46-22 on the medical care provided;

46-23 (6) for a child who is receiving psychotropic
46-24 medication, the child:

46-25 (A) has been provided appropriate psychosocial
46-26 therapies, behavior strategies, and other non-pharmacological
46-27 interventions; and

46-28 (B) has been seen by the prescribing physician,
46-29 physician assistant, or advanced practice nurse at least once every
46-30 90 days for purposes of the review required by Section 266.011;

46-31 (7) other plans or services are needed to meet the
46-32 child's special needs or circumstances;

46-33 (8) the department [~~or authorized agency~~] has
46-34 exercised due diligence in attempting to place the child for
46-35 adoption if parental rights to the child have been terminated and
46-36 the child is eligible for adoption;

46-37 (9) for a child for whom the department has been named
46-38 managing conservator in a final order that does not include
46-39 termination of parental rights, a permanent placement, including
46-40 appointing a relative as permanent managing conservator or
46-41 returning the child to a parent, is appropriate for the child;

46-42 (10) for a child whose permanency goal is another
46-43 planned, permanent living arrangement, the department has:

46-44 (A) documented a compelling reason why adoption,
46-45 permanent managing conservatorship with a relative or other
46-46 suitable individual, or returning the child to a parent is not in
46-47 the child's best interest; and

46-48 (B) identified a family or other caring adult who
46-49 has made a permanent commitment to the child;

46-50 (11) the department [~~or authorized agency~~] has made
46-51 reasonable efforts to finalize the permanency plan that is in
46-52 effect for the child; [~~and~~]

46-53 (12) if the child is committed to the Texas Juvenile
46-54 Justice Department or released under supervision by the Texas
46-55 Juvenile Justice Department, the child's needs for treatment,
46-56 rehabilitation, and education are being met;

46-57 (13) [~~10~~] an education decision-maker for the child
46-58 has been identified; and

46-59 (14) [~~11~~] the child's education needs and goals have
46-60 been identified and addressed.

46-61 SECTION 1.184. Section 264.0091, Family Code, is amended to
46-62 read as follows:

46-63 Sec. 264.0091. USE OF TELECONFERENCING AND
46-64 VIDEOCONFERENCE TECHNOLOGY. Subject to the availability of
46-65 funds, the department, in cooperation with district and county
46-66 courts, shall expand the use of teleconferencing and
46-67 videoconferencing to facilitate participation by medical experts,
46-68 children, and other individuals in court proceedings, including
46-69 children for whom the department [~~, an authorized agency~~] or a

47-1 licensed child-placing agency has been appointed managing
 47-2 conservator and who are committed to the Texas Juvenile Justice
 47-3 Department [~~Youth Commission~~].

47-4 SECTION 1.185. Section 264.010(d), Family Code, is amended
 47-5 to read as follows:

47-6 (d) A child abuse prevention and protection plan must:

47-7 (1) specify the manner of communication between
 47-8 entities who are parties to the plan, including the department, the
 47-9 commission [~~Texas Department of Human Services~~], local law
 47-10 enforcement agencies, the county and district attorneys, members of
 47-11 the medical and social service community, foster parents, and child
 47-12 advocacy groups; and

47-13 (2) provide other information concerning the
 47-14 prevention and investigation of child abuse in the area for which
 47-15 the plan is adopted.

47-16 SECTION 1.186. Section 264.0111(e), Family Code, is amended
 47-17 to read as follows:

47-18 (e) The executive commissioner [~~department~~] may adopt rules
 47-19 to implement this section.

47-20 SECTION 1.187. Section 264.0145(b), Family Code, is amended
 47-21 to read as follows:

47-22 (b) The executive commissioner [~~department~~] by rule shall
 47-23 establish guidelines that prioritize requests to release case
 47-24 records, including those made by an adult previously in the
 47-25 department's managing conservatorship.

47-26 SECTION 1.188. Sections 264.101(b) and (d), Family Code,
 47-27 are amended to read as follows:

47-28 (b) The department may not pay the cost of protective foster
 47-29 care for a child for whom the department has been named managing
 47-30 conservator under an order rendered solely under Section
 47-31 161.001(b)(1)(J) [~~161.001(1)(J)~~].

47-32 (d) The executive commissioner [~~of the Health and Human~~
 47-33 ~~Services Commission~~] may adopt rules that establish criteria and
 47-34 guidelines for the payment of foster care, including medical care,
 47-35 for a child and for providing care for a child after the child
 47-36 becomes 18 years of age if the child meets the requirements for
 47-37 continued foster care under Subsection (a-1).

47-38 SECTION 1.189. Sections 264.107(a) and (b), Family Code,
 47-39 are amended to read as follows:

47-40 (a) The department shall use a system for the placement of
 47-41 children in contract residential care, including foster care, that
 47-42 conforms to the levels of care adopted [~~and maintained~~] by the
 47-43 executive commissioner [~~Health and Human Services Commission~~].

47-44 (b) The department shall use the standard application
 47-45 provided by the Health and Human Services Commission for the
 47-46 placement of children in contract residential care [~~as adopted and~~
 47-47 ~~maintained by the Health and Human Services Commission~~].

47-48 SECTION 1.190. Section 264.1075(b), Family Code, is amended
 47-49 to read as follows:

47-50 (b) As soon as possible after a child begins receiving
 47-51 foster care under this subchapter, the department shall assess
 47-52 whether the child has a developmental or intellectual disability
 47-53 [~~or mental retardation~~]. The commission shall establish the
 47-54 procedures that the department must use in making an assessment
 47-55 under this subsection. The procedures may include screening or
 47-56 participation by:

47-57 (1) a person who has experience in childhood
 47-58 developmental or intellectual disabilities [~~or mental~~
 47-59 ~~retardation~~];

47-60 (2) a local intellectual and developmental disability
 47-61 [~~mental retardation~~] authority; or

47-62 (3) a provider in a county with a local child welfare
 47-63 board.

47-64 SECTION 1.191. Section 264.108(f), Family Code, is amended
 47-65 to read as follows:

47-66 (f) The executive commissioner [~~department~~] by rule shall
 47-67 define what constitutes a delay under Subsections (b) and (d).

47-68 SECTION 1.192. Sections 264.110(b) and (g), Family Code,
 47-69 are amended to read as follows:

(b) A person registered under this section must satisfy requirements adopted by rule by the executive commissioner [department].

(g) The department may refuse to place a child with a person registered under this section only for a reason permitted under criteria adopted by the executive commissioner by [department] rule.

SECTION 1.193. Section 264.112(a), Family Code, is amended to read as follows:

(a) The department shall report the status for children in substitute care to the executive commissioner [Board of Protective and Regulatory Services] at least once every 12 months.

SECTION 1.194. Section 264.121(a), Family Code, is amended to read as follows:

(a) The department shall address the unique challenges facing foster children in the conservatorship of the department who must transition to independent living by:

(1) expanding efforts to improve transition planning and increasing the availability of transitional family group decision-making to all youth age 14 or older in the department's permanent managing conservatorship, including enrolling the youth in the Preparation for Adult Living Program before the age of 16;

(2) coordinating with the commission [~~Health and Human Services Commission~~] to obtain authority, to the extent allowed by federal law, the state Medicaid plan, the Title IV-E state plan, and any waiver or amendment to either plan, necessary to:

(A) extend foster care eligibility and transition services for youth up to age 21 and develop policy to permit eligible youth to return to foster care as necessary to achieve the goals of the Transitional Living Services Program; and

(B) extend Medicaid coverage for foster care youth and former foster care youth up to age 21 with a single application at the time the youth leaves foster care; and

(3) entering into cooperative agreements with the Texas Workforce Commission and local workforce development boards to further the objectives of the Preparation for Adult Living Program. The department, the Texas Workforce Commission, and the local workforce development boards shall ensure that services are prioritized and targeted to meet the needs of foster care and former foster care children and that such services will include, where feasible, referrals for short-term stays for youth needing housing.

SECTION 1.195. Section 264.124(b), Family Code, as added by Chapter 423 (S.B. 430), Acts of the 83rd Legislature, Regular Session, 2013, is amended to read as follows:

(b) The department, in accordance with department rules [executive commissioner rule], shall implement a process to verify that each foster parent who is seeking monetary assistance from the department for day care for a foster child has attempted to find appropriate day-care services for the foster child through community services, including Head Start programs, prekindergarten classes, and early education programs offered in public schools. The department shall specify the documentation the foster parent must provide to the department to demonstrate compliance with the requirements established under this subsection.

SECTION 1.196. Section 264.205(b), Family Code, is amended to read as follows:

(b) A swift adoption team shall consist of department personnel who shall operate under policies adopted by rule by the executive commissioner [department]. The department shall set priorities for the allocation of department resources to enable a swift adoption team to operate successfully under the policies adopted under this subsection.

SECTION 1.197. Section 264.506(b), Family Code, is amended to read as follows:

(b) To achieve its purpose, a review team shall:

(1) adapt and implement, according to local needs and resources, the model protocols developed by the department and the committee;

(2) meet on a regular basis to review child fatality

49-1 cases and recommend methods to improve coordination of services and
49-2 investigations between agencies that are represented on the team;
49-3 (3) collect and maintain data as required by the
49-4 committee; and

49-5 (4) submit to the [bureau of] vital statistics unit
49-6 data reports on deaths reviewed as specified by the committee.

49-7 SECTION 1.198. Section 264.507, Family Code, is amended to
49-8 read as follows:

49-9 Sec. 264.507. DUTIES OF PRESIDING OFFICER. The presiding
49-10 officer of a review team shall:

49-11 (1) send notices to the review team members of a
49-12 meeting to review a child fatality;

49-13 (2) provide a list to the review team members of each
49-14 child fatality to be reviewed at the meeting;

49-15 (3) submit data reports to the [bureau of] vital
49-16 statistics unit not later than the 30th day after the date on which
49-17 the review took place; and

49-18 (4) ensure that the review team operates according to
49-19 the protocols developed by the department and the committee, as
49-20 adapted by the review team.

49-21 SECTION 1.199. Section 264.514(a), Family Code, is amended
49-22 to read as follows:

49-23 (a) A medical examiner or justice of the peace notified of a
49-24 death of a child under Section 264.513 shall hold an inquest under
49-25 Chapter 49, Code of Criminal Procedure, to determine whether the
49-26 death is unexpected or the result of abuse or neglect. An inquest
49-27 is not required under this subchapter if the child's death is
49-28 expected and is due to a congenital or neoplastic disease. A death
49-29 caused by an infectious disease may be considered an expected death
49-30 if:

49-31 (1) the disease was not acquired as a result of trauma
49-32 or poisoning;

49-33 (2) the infectious organism is identified using
49-34 standard medical procedures; and

49-35 (3) the death is not reportable to the [Texas]
49-36 Department of State Health Services under Chapter 81, Health and
49-37 Safety Code.

49-38 SECTION 1.200. Section 264.614(d), Family Code, is amended
49-39 to read as follows:

49-40 (d) The executive commissioner [~~of the Health and Human~~
49-41 ~~Services Commission~~] shall adopt rules necessary to implement this
49-42 section.

49-43 SECTION 1.201. Section 264.753, Family Code, is amended to
49-44 read as follows:

49-45 Sec. 264.753. EXPEDITED PLACEMENT. The department [~~or~~
49-46 ~~other authorized entity~~] shall expedite the completion of the
49-47 background and criminal history check, the home study, and any
49-48 other administrative procedure to ensure that the child is placed
49-49 with a qualified relative or caregiver as soon as possible after the
49-50 date the caregiver is identified.

49-51 SECTION 1.202. Section 264.755(d), Family Code, is amended
49-52 to read as follows:

49-53 (d) The department, in accordance with department rules
49-54 [~~executive commissioner rule~~], shall implement a process to verify
49-55 that each relative and designated caregiver who is seeking monetary
49-56 assistance or additional support services from the department for
49-57 day care as defined by Section 264.124 for a child under this
49-58 section has attempted to find appropriate day-care services for the
49-59 child through community services, including Head Start programs,
49-60 prekindergarten classes, and early education programs offered in
49-61 public schools. The department shall specify the documentation the
49-62 relative or designated caregiver must provide to the department to
49-63 demonstrate compliance with the requirements established under
49-64 this subsection. The department may not provide monetary
49-65 assistance or additional support services to the relative or
49-66 designated caregiver for the day care unless the department
49-67 receives the required verification.

49-68 SECTION 1.203. The following provisions of the Family Code
49-69 are repealed:

- (1) Section 101.002;
- (2) Section 161.002(c);
- (3) Section 162.305;
- (4) Sections 261.001(3) and (8);
- (5) Section 262.008(c);
- (6) Section 263.1015;
- (7) Section 264.007;
- (8) Section 264.105;
- (9) Section 264.106;
- (10) Section 264.1063;
- (11) Section 264.107(f);
- (12) Section 264.206;
- (13) Sections 264.501(2) and (5); and
- (14) Subchapter H, Chapter 264.

ARTICLE 2. GOVERNMENT CODE

SECTION 2.001. Section 403.1066(c), Government Code, is amended to read as follows:

(c) The available earnings of the fund may be appropriated to the [Texas] Department of State Health Services for the purpose of providing services at a public health hospital as defined by Section 13.033, Health and Safety Code, [the Texas Center for Infectious Disease] and grants, loans, or loan guarantees to public or nonprofit community hospitals with 125 beds or fewer located in an urban area of the state.

SECTION 2.002. Section 411.110(a), Government Code, is amended to read as follows:

(a) The Department of State Health Services is entitled to obtain from the department criminal history record information maintained by the department that relates to:

(1) a person who is:

(A) an applicant for a license or certificate under the Emergency Health Care [~~Medical Services~~] Act (Chapter 773, Health and Safety Code);

- (B) an owner or manager of an applicant for an emergency medical services provider license under that Act; or
- (C) the holder of a license or certificate under that Act.

that Act;

(2) an applicant for a license or a license holder under Subchapter N, Chapter 431, Health and Safety Code;

(3) an applicant for a license, the owner or manager of

(3) an applicant for a license, the owner or manager of an applicant for a massage establishment license, or a license holder under Chapter 455, Occupations Code;

(4) an applicant for employment at or current employee
of:
Section 13.033 (A) a public health hospital as defined by
Health and Safety Code [the Texas Center for

(B) the South Texas Health Care System; or
(5) an applicant for employment at current employee

of, or person who contracts or may contract to provide goods or

services with:

- (A) the vital statistics unit of the Department of State Health Services; or
- (B) the Council on Sex Offender Treatment or other division or component of the Department of State Health Services that monitors sexually violent predators as described by Section 841.003(a), Health and Safety Code.

SECTION 2.003. Section 411.1131, Government Code, is amended to read as follows:

Sec. 411.1131. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES [TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING]. (a) The Department of Assistive and Rehabilitative Services [Texas Commission for the Deaf and Hard of Hearing] is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is an applicant for a staff position at an outdoor training program for children who are deaf or hard of hearing conducted by a private entity through a contract with the Department of Assistive and Rehabilitative

51-1 Services [~~commission~~] in accordance with Section 81.013, Human
 51-2 Resources Code.

51-3 (b) Criminal history record information obtained by the
 51-4 Department of Assistive and Rehabilitative Services [~~Texas~~
 51-5 Commission for the Deaf and Hard of Hearing] under Subsection (a)
 51-6 may be used only to evaluate an applicant for a staff position at an
 51-7 outdoor training program for children who are deaf or hard of
 51-8 hearing. The Department of Assistive and Rehabilitative Services
 51-9 [~~Texas Commission for the Deaf and Hard of Hearing~~] may release or
 51-10 disclose the information to a private entity described by
 51-11 Subsection (a) for that purpose.

51-12 (c) The Department of Assistive and Rehabilitative Services
 51-13 [~~Texas Commission for the Deaf and Hard of Hearing~~] may not release
 51-14 or disclose information obtained under Subsection (a), except on
 51-15 court order or with the consent of the person who is the subject of
 51-16 the criminal history record information, and shall destroy all
 51-17 criminal history record information obtained under Subsection (a)
 51-18 after the information is used for its authorized purpose.

51-19 SECTION 2.004. Section 411.114(a)(3), Government Code, is
 51-20 amended to read as follows:

51-21 (3) The Department of Family and Protective Services
 51-22 is entitled to obtain from the department criminal history record
 51-23 information maintained by the department that relates to a person
 51-24 who is:

51-25 (A) a volunteer or applicant volunteer with a
 51-26 local affiliate in this state of Big Brothers/Big Sisters of
 51-27 America;

51-28 (B) a volunteer or applicant volunteer with the
 51-29 "I Have a Dream/Houston" program;

51-30 (C) a volunteer or applicant volunteer with an
 51-31 organization that provides court-appointed special advocates for
 51-32 abused or neglected children;

51-33 (D) a person providing, at the request of the
 51-34 child's parent, in-home care for a child who is the subject of a
 51-35 report alleging the child has been abused or neglected;

51-36 (E) a volunteer or applicant volunteer with a
 51-37 Texas chapter of the Make-a-Wish Foundation of America;

51-38 (F) a person providing, at the request of the
 51-39 child's parent, in-home care for a child only if the person gives
 51-40 written consent to the release and disclosure of the information;

51-41 (G) a child who is related to the caretaker, as
 51-42 determined under Section 42.002, Human Resources Code, and who
 51-43 resides in or is present in a child-care facility or family home,
 51-44 other than a child described by Subdivision (2)(C), or any other
 51-45 person who has unsupervised access to a child in the care of a
 51-46 child-care facility or family home;

51-47 (H) an applicant for a position with the
 51-48 Department of Family and Protective Services, other than a position
 51-49 described by Subdivision (2)(D), regardless of the duties of the
 51-50 position;

51-51 (I) a volunteer or applicant volunteer with the
 51-52 Department of Family and Protective Services, other than a
 51-53 registered volunteer, regardless of the duties to be performed;

51-54 (J) a person providing or applying to provide
 51-55 in-home, adoptive, or foster care for children to the extent
 51-56 necessary to comply with Subchapter B, Chapter 162, Family Code;

51-57 (K) a Department of Family and Protective
 51-58 Services employee, other than an employee described by Subdivision
 51-59 (2)(H), regardless of the duties of the employee's position;

51-60 (L) a relative of a child in the care of the
 51-61 Department of Family and Protective Services, to the extent
 51-62 necessary to comply with Section 162.007, Family Code;

51-63 (M) a person, other than an alleged perpetrator
 51-64 in a report described in Subdivision (2)(I), living in the
 51-65 residence in which the alleged victim of the report resides;

51-66 (N) [~~a contractor or an employee of a contractor
 51-67 who delivers services to a ward of the Department of Family and
 51-68 Protective Services under a contract with the estate of the ward,~~]
 51-69 [(O) a person who seeks unsupervised visits with

~~a ward of the Department of Family and Protective Services, including a relative of the ward,~~

[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;

(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;

(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 adult receiving extended foster care services from the Department of Family and Protective Services;

(Q) [S] a person 14 years of age or older who will be regularly or frequently working or staying in a host home that is providing supervised independent living services to a young adult receiving extended foster care services from the Department of Family and Protective Services; or

(R) [T] a person who volunteers to supervise visitation under Subchapter B, Chapter 263, Family Code.

SECTION 2.005. Sections [411.1386\(a-1\)](#) and [\(a-3\)](#), Government Code, are amended to read as follows:

(a-1) The Department of Aging and Disability Services shall obtain from the Department of Public Safety criminal history record information maintained by the Department of Public Safety that relates to each individual who is or will be providing guardianship services to a ward of or referred by the Department of Aging and Disability Services, including:

(1) an employee of or an applicant selected for an employment position with the Department of Aging and Disability Services;

(2) a volunteer or an applicant selected to volunteer with the Department of Aging and Disability Services;

(3) an employee of or an applicant selected for an employment position with a business entity or other person that contracts with the Department of Aging and Disability Services to provide guardianship services to a ward referred by the department; [and]

(4) a volunteer or an applicant selected to volunteer with a business entity or person described by Subdivision (3); and

(5) a contractor or an employee of a contractor who provides services to a ward of the Department of Aging and Disability Services under a contract with the estate of the ward.

(a-3) The information in Subsection (a-1) regarding employees, contractors, or volunteers providing guardianship services must be obtained annually.

SECTION 2.006. Section [411.13861](#), Government Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) The Department of Aging and Disability Services is entitled to obtain from the Department of Public Safety criminal history record information maintained by the Department of Public Safety that relates to a person:

(1) required to undergo a background and criminal history check under Chapter 248A, Health and Safety Code; or

(2) who seeks unsupervised visits with a ward of the department, including a relative of the ward.

(e) In this section, "ward" has the meaning assigned by Section [1002.030](#), Estates Code.

SECTION 2.007. Section [531.001](#), Government Code, is amended by amending Subdivisions (4-a) and (6) and adding Subdivision (4-b) to read as follows:

(4-a) "Home telemonitoring service" means a health service that requires scheduled remote monitoring of data related

53-1 to a patient's health and transmission of the data to a licensed
 53-2 home and community support services [health] agency or a hospital,
 53-3 as those terms are defined by Section 531.02164(a).

53-4 (4-b) "Medicaid" means the medical assistance program
 53-5 established under Chapter 32, Human Resources Code.

53-6 (6) "Section 1915(c) waiver program" means a federally
 53-7 funded [Medicaid] program of the state under Medicaid that is
 53-8 authorized under Section 1915(c) of the federal Social Security Act
 53-9 (42 U.S.C. Section 1396n(c)).

53-10 SECTION 2.008. Section 531.0055(b), Government Code, is
 53-11 amended to read as follows:

53-12 (b) The commission shall:

53-13 (1) supervise the administration and operation of
 53-14 [the] Medicaid [program], including the administration and
 53-15 operation of the Medicaid managed care system in accordance with
 53-16 Section 531.021;

53-17 (2) perform information systems planning and
 53-18 management for health and human services agencies under Section
 53-19 531.0273, with:

53-20 (A) the provision of information technology
 53-21 services at health and human services agencies considered to be a
 53-22 centralized administrative support service either performed by
 53-23 commission personnel or performed under a contract with the
 53-24 commission; and

53-25 (B) an emphasis on research and implementation on
 53-26 a demonstration or pilot basis of appropriate and efficient uses of
 53-27 new and existing technology to improve the operation of health and
 53-28 human services agencies and delivery of health and human services;

53-29 (3) monitor and ensure the effective use of all
 53-30 federal funds received by a health and human services agency in
 53-31 accordance with Section 531.028 and the General Appropriations Act;

53-32 (4) implement Texas Integrated Enrollment Services as
 53-33 required by Subchapter F, except that notwithstanding Subchapter F,
 53-34 determining eligibility for benefits under the following programs
 53-35 is the responsibility of and must be centralized by the commission:

53-36 (A) the child health plan program;
 53-37 (B) the financial assistance program under
 53-38 Chapter 31, Human Resources Code;

53-39 (C) Medicaid [the medical assistance program
 53-40 under Chapter 32, Human Resources Code];

53-41 (D) the supplemental nutrition [nutritional]
 53-42 assistance program [programs] under Chapter 33, Human Resources
 53-43 Code;

53-44 (E) long-term care services, as defined by
 53-45 Section 22.0011, Human Resources Code;

53-46 (F) community-based support services identified
 53-47 or provided in accordance with Section 531.02481; and

53-48 (G) other health and human services programs, as
 53-49 appropriate; and

53-50 (5) implement programs intended to prevent family
 53-51 violence and provide services to victims of family violence.

53-52 SECTION 2.009. Subchapter A, Chapter 531, Government Code,
 53-53 is amended by adding Section 531.00551 to read as follows:

53-54 Sec. 531.00551. PROCEDURES FOR ADOPTING RULES AND POLICIES.

53-55 (a) The executive commissioner shall develop procedures for
 53-56 adopting rules for the health and human services agencies. The
 53-57 procedures must specify the manner in which the health and human
 53-58 services agencies may participate in the rulemaking process.

53-59 (b) A health and human services agency shall assist the
 53-60 executive commissioner in the development of policies and
 53-61 guidelines needed for the administration of the agency's functions
 53-62 and shall submit any proposed policies and guidelines to the
 53-63 executive commissioner. The agency may implement a proposed policy
 53-64 or guideline only if the executive commissioner approves the policy
 53-65 or guideline.

53-66 SECTION 2.010. Section 531.006, Government Code, is amended
 53-67 to read as follows:

53-68 Sec. 531.006. ELIGIBILITY. (a) A person is not eligible
 53-69 for appointment as executive commissioner if the person or the

54-1 person's spouse is an employee, officer, or paid consultant of a
 54-2 trade association in a field under the commission's jurisdiction.

54-3 (b) A person who is required to register as a lobbyist under
 54-4 Chapter 305 because of the person's activities for compensation in
 54-5 or on behalf of a profession related to a field under the
 54-6 commission's jurisdiction may not serve as executive commissioner.

54-7 (c) A person is not eligible for appointment as executive
 54-8 commissioner if the person has a financial interest in a
 54-9 corporation, organization, or association under contract with:

54-10 (1) the [Texas] Department of State Health Services,
 54-11 if the contract involves mental health services;

54-12 (2) the Department of Aging and Disability Services
 54-13 [Mental Health and Mental Retardation], if the contract involves
 54-14 intellectual and developmental disability services;

54-15 (3) a local mental health or intellectual and
 54-16 developmental disability [mental retardation] authority; [or]

54-17 (4) a community center.

54-18 SECTION 2.011. Section 531.007, Government Code, is amended
 54-19 to read as follows:

54-20 Sec. 531.007. TERM. The executive commissioner serves a
 54-21 two-year term expiring February 1 of each odd-numbered year.

54-22 SECTION 2.012. Section 531.008(c), Government Code, is
 54-23 amended to read as follows:

54-24 (c) The executive commissioner shall establish the
 54-25 following divisions and offices within the commission:

54-26 (1) the eligibility services division to make
 54-27 eligibility determinations for services provided through the
 54-28 commission or a health and human services agency related to:

54-29 (A) the child health plan program;

54-30 (B) the financial assistance program under
 54-31 Chapter 31, Human Resources Code;

54-32 (C) Medicaid [the medical assistance program
 54-33 under Chapter 32, Human Resources Code];

54-34 (D) the supplemental nutrition [nutritional]
 54-35 assistance program [programs] under Chapter 33, Human Resources
 54-36 Code;

54-37 (E) long-term care services, as defined by
 54-38 Section 22.0011, Human Resources Code;

54-39 (F) community-based support services identified
 54-40 or provided in accordance with Section 531.02481; and

54-41 (G) other health and human services programs, as
 54-42 appropriate;

54-43 (2) the office of inspector general to perform fraud
 54-44 and abuse investigation and enforcement functions as provided by
 54-45 Subchapter C and other law;

54-46 (3) the office of the ombudsman to:

54-47 (A) provide dispute resolution services for the
 54-48 commission and the health and human services agencies; and

54-49 (B) perform consumer protection functions
 54-50 related to health and human services;

54-51 (4) a purchasing division as provided by Section
 54-52 531.017; and

54-53 (5) an internal audit division to conduct a program of
 54-54 internal auditing in accordance with [Government Code,] Chapter
 54-55 2102.

54-56 SECTION 2.013. Section 531.0081, Government Code, is
 54-57 amended to read as follows:

54-58 Sec. 531.0081. [OFFICE OF] MEDICAL TECHNOLOGY. [(a) In
 54-59 this section, "office" means the office of medical technology.]

54-60 (b) The commission shall [establish the office of medical
 54-61 technology within the commission. The office shall] explore and
 54-62 evaluate new developments in medical technology and propose
 54-63 implementing the technology in Medicaid [the medical assistance
 54-64 program under Chapter 32, Human Resources Code], if appropriate and
 54-65 cost-effective.

54-66 (c) Commission [Office] staff implementing this section
 54-67 must have skills and experience in research regarding health care
 54-68 technology.

54-69 SECTION 2.014. Section 531.0082(d), Government Code, is

55-1 amended to read as follows:

55-2 (d) Not later than the 30th day following the end of each
 55-3 calendar quarter, the data analysis unit shall provide an update on
 55-4 the unit's activities and findings to the governor, the lieutenant
 55-5 governor, the speaker of the house of representatives, the chair of
 55-6 the Senate Finance Committee, the chair of the House Appropriations
 55-7 Committee, and the chairs of the standing committees of the senate
 55-8 and house of representatives having jurisdiction over [the]
 55-9 Medicaid [program].

55-10 SECTION 2.015. Sections 531.009(a), (b), (c), (d), (e), and
 55-11 (g), Government Code, are amended to read as follows:

55-12 (a) The executive commissioner shall employ a medical
 55-13 director to provide medical expertise to the executive commissioner
 55-14 and the commission and may employ other personnel necessary to
 55-15 administer the commission's duties.

55-16 (b) The executive commissioner [~~or the commissioner's~~
 55-17 ~~designated representative~~] shall develop an intra-agency career
 55-18 ladder program, one part of which must require the intra-agency
 55-19 posting of all non-entry-level positions concurrently with any
 55-20 public posting.

55-21 (c) The executive commissioner [~~or the commissioner's~~
 55-22 ~~designated representative~~] shall develop a system of annual
 55-23 performance evaluations based on measurable job tasks. All merit
 55-24 pay for commission employees must be based on the system
 55-25 established under this subsection.

55-26 (d) The executive commissioner shall provide to commission
 55-27 employees as often as is necessary information regarding their
 55-28 qualifications under this chapter and their responsibilities under
 55-29 applicable laws relating to standards of conduct for state
 55-30 employees.

55-31 (e) The executive commissioner [~~or the commissioner's~~
 55-32 ~~designated representative~~] shall prepare and maintain a written
 55-33 policy statement that implements a program of equal employment
 55-34 opportunity to ensure that all personnel transactions are made
 55-35 without regard to race, color, disability, sex, religion, age, or
 55-36 national origin.

55-37 (g) The policy statement described by Subsection (e) must:

55-38 (1) be updated annually;
 55-39 (2) be reviewed by the Texas Workforce Commission
 55-40 civil rights division [~~state Commission on Human Rights~~] for
 55-41 compliance with Subsection (f)(1); and
 55-42 (3) be filed with the governor's office.

55-43 SECTION 2.016. Section 531.011(d), Government Code, is
 55-44 amended to read as follows:

55-45 (d) The executive commissioner by rule shall establish
 55-46 methods by which the public, consumers, and service recipients can
 55-47 be notified of the mailing addresses and telephone numbers of
 55-48 appropriate agency personnel for the purpose of directing
 55-49 complaints to the commission. The commission may provide for that
 55-50 notification:

55-51 (1) on each registration form, application, or written
 55-52 contract for services of a person regulated by the commission;
 55-53 (2) on a sign prominently displayed in the place of
 55-54 business of each person regulated by the commission; or
 55-55 (3) in a bill for service provided by a person
 55-56 regulated by the commission.

55-57 SECTION 2.017. Section 531.012, Government Code, is amended
 55-58 to read as follows:

55-59 Sec. 531.012. ADVISORY COMMITTEES. The executive
 55-60 commissioner may appoint advisory committees as needed.

55-61 SECTION 2.018. Section 531.020, Government Code, is amended
 55-62 to read as follows:

55-63 Sec. 531.020. OFFICE OF COMMUNITY ACCESS AND SERVICES

55-64 [~~COLLABORATION~~]. The executive commissioner shall establish
 55-65 within the commission an office of community access and services

56-1 [collaboration]. The office is responsible for:

56-2 (1) collaborating with community, state, and federal
56-3 stakeholders to improve the elements of the health care system that
56-4 are involved in the delivery of Medicaid services; and
56-5 (2) sharing with Medicaid providers, including
56-6 hospitals, any best practices, resources, or other information
56-7 regarding improvements to the health care system.

56-8 SECTION 2.019. Section 531.021, Government Code, is amended
56-9 to read as follows:

56-10 Sec. 531.021. ADMINISTRATION OF MEDICAID [PROGRAM]. (a)
56-11 The commission is the state agency designated to administer federal
56-12 Medicaid [medical assistance] funds.

56-13 (b) The commission shall:

56-14 (1) plan and direct [the] Medicaid [program] in each
56-15 agency that operates a portion of [the] Medicaid [program],
56-16 including the management of the Medicaid managed care system and
56-17 the development, procurement, management, and monitoring of
56-18 contracts necessary to implement the Medicaid managed care system;
56-19 and

56-20 (2) [adopt reasonable rules and standards governing
56-21 the determination of fees, charges, and rates for medical
56-22 assistance payments under Chapter 32, Human Resources Code, in
56-23 consultation with the agencies that operate the Medicaid program;
56-24 and]

56-25 [3] establish requirements for and define the scope
56-26 of the ongoing evaluation of the Medicaid managed care system
56-27 conducted in conjunction with the Department of State Health
56-28 Services [Texas Health Care Information Council] under Section
56-29 108.0065, Health and Safety Code.

56-30 (b-1) The executive commissioner shall adopt reasonable
56-31 rules and standards governing the determination of fees, charges,
56-32 and rates for Medicaid payments.

56-33 (c) The executive commissioner [commission] in the [its]
56-34 adoption of reasonable rules and standards under Subsection (b-1)
56-35 [(b)(2)] shall include financial performance standards that, in the
56-36 event of a proposed rate reduction, provide private ICF-IID
56-37 [ICF-MR] facilities and home and community-based services
56-38 providers with flexibility in determining how to use Medicaid
56-39 [medical assistance] payments to provide services in the most
56-40 cost-effective manner while continuing to meet the state and
56-41 federal requirements of [the] Medicaid [program].

56-42 (d) In adopting rules and standards required by Subsection
56-43 (b-1) [(b)(2)], the executive commissioner [commission] may
56-44 provide for payment of fees, charges, and rates in accordance with:

56-45 (1) formulas, procedures, or methodologies prescribed
56-46 by the commission's rules;

56-47 (2) applicable state or federal law, policies, rules,
56-48 regulations, or guidelines;

56-49 (3) economic conditions that substantially and
56-50 materially affect provider participation in [the] Medicaid
56-51 [program], as determined by the executive commissioner; or

56-52 (4) available levels of appropriated state and federal
56-53 funds.

56-54 (e) Notwithstanding any other provision of Chapter 32,
56-55 Human Resources Code, Chapter 533, or this chapter, the commission
56-56 may adjust the fees, charges, and rates paid to Medicaid providers
56-57 as necessary to achieve the objectives of [the] Medicaid [program]
56-58 in a manner consistent with the considerations described by
56-59 Subsection (d).

56-60 (f) In adopting rates for Medicaid [medical assistance]
56-61 payments under Subsection (b-1) [(b)(2)], the executive
56-62 commissioner may adopt reimbursement rates for appropriate nursing

57-1 services provided to recipients with certain health conditions if
 57-2 those services are determined to provide a cost-effective
 57-3 alternative to hospitalization. A physician must certify that the
 57-4 nursing services are medically appropriate for the recipient for
 57-5 those services to qualify for reimbursement under this subsection.

57-6 (g) In adopting rates for Medicaid [medical assistance]
 57-7 payments under Subsection (b-1) [(b)(2)], the executive
 57-8 commissioner may adopt cost-effective reimbursement rates for
 57-9 group appointments with Medicaid [medical assistance] providers
 57-10 for certain diseases and medical conditions specified by rules of
 57-11 the executive commissioner.

57-12 SECTION 2.020. Sections 531.0211(a) and (c), Government
 57-13 Code, are amended to read as follows:

57-14 (a) In adopting rules to implement a managed care Medicaid
 57-15 program, the executive commissioner [commission] shall establish
 57-16 guidelines for, and require managed care organizations to provide,
 57-17 education programs for providers and clients using a variety of
 57-18 techniques and mediums.

57-19 (c) A client education program must present information in a
 57-20 manner that is easy to understand. A program must include
 57-21 information on:

57-22 (1) a client's rights and responsibilities under the
 57-23 bill of rights and the bill of responsibilities prescribed by
 57-24 Section 531.0212;

57-25 (2) how to access health care services;

57-26 (3) how to access complaint procedures and the
 57-27 client's right to bypass the managed care organization's internal
 57-28 complaint system and use the notice and appeal procedures otherwise
 57-29 required by [the] Medicaid [program];

57-30 (4) Medicaid policies, procedures, eligibility
 57-31 standards, and benefits;

57-32 (5) the policies and procedures of the managed care
 57-33 organization; and

57-34 (6) the importance of prevention, early intervention,
 57-35 and appropriate use of services.

57-36 SECTION 2.021. Sections 531.0211(a) and (b), Government
 57-37 Code, are amended to read as follows:

57-38 (a) The commission shall prepare a biennial Medicaid
 57-39 financial report covering each state agency that operates
 57-40 [administers] any part of [the state] Medicaid [program] and each
 57-41 component of [the] Medicaid [programs] operated [or administered]
 57-42 by those agencies.

57-43 (b) The report must include:

57-44 (1) for each state agency described by Subsection (a):
 57-45 (A) a description of each of the components of
 57-46 Medicaid [programs administered or] operated by the agency; and
 57-47 (B) an accounting of all funds related to [the
 57-48 state] Medicaid [program] received and disbursed by the agency
 57-49 during the period covered by the report, including:

57-50 (i) the amount of any federal Medicaid
 57-51 [medical assistance] funds allocated to the agency for the support
 57-52 of each of the Medicaid components [programs] operated [or
 57-53 administered] by the agency;

57-54 (ii) the amount of any funds appropriated
 57-55 by the legislature to the agency for each of those components
 57-56 [programs]; and

57-57 (iii) the amount of Medicaid [medical
 57-58 assistance] payments and related expenditures made by or in
 57-59 connection with each of those components [programs]; and

57-60 (2) for each Medicaid component [program] identified
 57-61 in the report:

57-62 (A) the amount and source of funds or other
 57-63 revenue received by or made available to the agency for the
 57-64 component [program]; and

57-65 (B) the information required by Section
 57-66 531.02112(b).

57-67 SECTION 2.022. Sections 531.02112(a) and (b), Government
 57-68 Code, are amended to read as follows:

57-69 (a) The commission shall prepare a report, on a quarterly

58-1 basis, regarding the Medicaid expenditures of each state agency
58-2 that ~~administers or~~ operates a component of Medicaid ~~program~~.

58-3 (b) The report must identify each agency's expenditures by
58-4 Medicaid component ~~program~~ and must include for each component
58-5 ~~program~~:

58-6 (1) the amount spent on each type of service or benefit
58-7 provided by or under the component ~~program~~;

58-8 (2) the amount spent on ~~program~~ operations for that
58-9 component, including eligibility determination, claims processing,
58-10 and case management; and

58-11 (3) the amount spent on any other administrative
58-12 costs.

58-13 SECTION 2.023. Sections 531.02115(a) and (c), Government
58-14 Code, are amended to read as follows:

58-15 (a) A provider participating in ~~the~~ Medicaid or the child
58-16 health plan program, including a provider participating in the
58-17 network of a managed care organization that contracts with the
58-18 commission to provide services under ~~the~~ Medicaid or the child
58-19 health plan program, may not engage in any marketing activity,
58-20 including any dissemination of material or other attempt to
58-21 communicate, that:

58-22 (1) involves unsolicited personal contact, including
58-23 by door-to-door solicitation, solicitation at a child-care
58-24 facility or other type of facility, direct mail, or telephone, with
58-25 a Medicaid client or a parent whose child is enrolled in ~~the~~
58-26 Medicaid or the child health plan program;

58-27 (2) is directed at the client or parent solely because
58-28 the client or the parent's child is receiving benefits under ~~the~~
58-29 Medicaid or the child health plan program; and

58-30 (3) is intended to influence the client's or parent's
58-31 choice of provider.

58-32 (c) Nothing in this section prohibits:

58-33 (1) a provider participating in ~~the~~ Medicaid or the
58-34 child health plan program from:

58-35 (A) engaging in a marketing activity, including
58-36 any dissemination of material or other attempt to communicate, that
58-37 is intended to influence the choice of provider by a Medicaid client
58-38 or a parent whose child is enrolled in ~~the~~ Medicaid or the child
58-39 health plan program, if the marketing activity:

58-40 (i) is conducted at a community-sponsored
58-41 educational event, health fair, outreach activity, or other similar
58-42 community or nonprofit event in which the provider participates and
58-43 does not involve unsolicited personal contact or promotion of the
58-44 provider's practice; or

58-45 (ii) involves only the general
58-46 dissemination of information, including by television, radio,
58-47 newspaper, or billboard advertisement, and does not involve
58-48 unsolicited personal contact;

58-49 (B) as permitted under the provider's contract,
58-50 engaging in the dissemination of material or another attempt to
58-51 communicate with a Medicaid client or a parent whose child is
58-52 enrolled in ~~the~~ Medicaid or the child health plan program,
58-53 including communication in person or by direct mail or telephone,
58-54 for the purpose of:

58-55 (i) providing an appointment reminder;
58-56 (ii) distributing promotional health
58-57 materials;

58-58 (iii) providing information about the types
58-59 of services offered by the provider; or

58-60 (iv) coordinating patient care; or

58-61 (C) engaging in a marketing activity that has
58-62 been submitted for review and obtained a notice of prior
58-63 authorization from the commission under Subsection (d); or

58-64 (2) a provider participating in the ~~Medicaid~~ STAR +
58-65 PLUS Medicaid managed care program from, as permitted under the
58-66 provider's contract, engaging in a marketing activity, including
58-67 any dissemination of material or other attempt to communicate, that
58-68 is intended to educate a Medicaid client about available long-term
58-69 care services and supports.

59-1 SECTION 2.024. Sections 531.0212(a) and (c), Government
59-2 Code, are amended to read as follows:

59-3 (a) The executive commissioner [commission] by rule shall
59-4 adopt a bill of rights and a bill of responsibilities for each
59-5 person enrolled in [the] Medicaid [program].

59-6 (c) The bill of responsibilities must address a client's
59-7 responsibility to:

59-8 (1) learn and understand each right the client has
59-9 under [the] Medicaid [program];

59-10 (2) abide by the health plan and Medicaid policies and
59-11 procedures;

59-12 (3) share information relating to the client's health
59-13 status with the primary care provider and become fully informed
59-14 about service and treatment options; and

59-15 (4) actively participate in decisions relating to
59-16 service and treatment options, make personal choices, and take
59-17 action to maintain the client's health.

59-18 SECTION 2.025. Section 531.0213(d), Government Code, is
59-19 amended to read as follows:

59-20 (d) As a part of the support and information services
59-21 required by this section, the commission or nonprofit organization
59-22 shall:

59-23 (1) operate a statewide toll-free assistance
59-24 telephone number that includes TDD lines and assistance for persons
59-25 who speak Spanish;

59-26 (2) intervene promptly with the state Medicaid office,
59-27 managed care organizations and providers, [the Texas Department of
59-28 Health,] and any other appropriate entity on behalf of a person who
59-29 has an urgent need for medical services;

59-30 (3) assist a person who is experiencing barriers in
59-31 the Medicaid application and enrollment process and refer the
59-32 person for further assistance if appropriate;

59-33 (4) educate persons so that they:

59-34 (A) understand the concept of managed care;

59-35 (B) understand their rights under [the] Medicaid

59-36 [program], including grievance and appeal procedures; and

59-37 (C) are able to advocate for themselves;

59-38 (5) collect and maintain statistical information on a
59-39 regional basis regarding calls received by the assistance lines and
59-40 publish quarterly reports that:

59-41 (A) list the number of calls received by region;

59-42 (B) identify trends in delivery and access
59-43 problems;

59-44 (C) identify recurring barriers in the Medicaid

59-45 system; and

59-46 (D) indicate other problems identified with
59-47 Medicaid managed care; and

59-48 (6) assist the state Medicaid office and[,] managed
59-49 care organizations and providers[, and the Texas Department of
59-50 Health] in identifying and correcting problems, including site
59-51 visits to affected regions if necessary.

59-52 SECTION 2.026. Sections 531.0214(a), (c), and (e),
59-53 Government Code, are amended to read as follows:

59-54 (a) The commission and each health and human services agency
59-55 that administers a part of [the state] Medicaid [program] shall
59-56 jointly develop a system to coordinate and integrate state Medicaid
59-57 databases to:

59-58 (1) facilitate the comprehensive analysis of Medicaid
59-59 data; and

59-60 (2) detect fraud perpetrated by a program provider or
59-61 client.

59-62 (c) On the request of the executive commissioner, a state
59-63 agency that administers any part of [the state] Medicaid [program]
59-64 shall assist the commission in developing the system required by
59-65 this section.

59-66 (e) The commission shall ensure that the database system is
59-67 used each month to match [bureau of] vital statistics unit death
59-68 records with a list of persons eligible for Medicaid [medical
59-69 assistance under Chapter 32, Human Resources Code], and that each

60-1 person who is deceased is promptly removed from the list of persons
 60-2 eligible for Medicaid [medical assistance].

60-3 SECTION 2.027. Section 531.02141(a), Government Code, is
 60-4 amended to read as follows:

60-5 (a) The commission shall make every effort to improve data
 60-6 analysis and integrate available information associated with [the]
 60-7 Medicaid [program]. The commission shall use the decision support
 60-8 system in the commission's center for strategic decision support
 60-9 for this purpose and shall modify or redesign the system to allow
 60-10 for the data collected by [the] Medicaid [program] to be used more
 60-11 systematically and effectively for Medicaid [program] evaluation
 60-12 and policy development. The commission shall develop or redesign
 60-13 the system as necessary to ensure that the system:

60-14 (1) incorporates program enrollment, utilization, and
 60-15 provider data that are currently collected;

60-16 (2) allows data manipulation and quick analysis to
 60-17 address a large variety of questions concerning enrollment and
 60-18 utilization patterns and trends within the program;

60-19 (3) is able to obtain consistent and accurate answers
 60-20 to questions;

60-21 (4) allows for analysis of multiple issues within the
 60-22 program to determine whether any programmatic or policy issues
 60-23 overlap or are in conflict;

60-24 (5) includes predefined data reports on utilization of
 60-25 high-cost services that allow program management to analyze and
 60-26 determine the reasons for an increase or decrease in utilization
 60-27 and immediately proceed with policy changes, if appropriate;

60-28 (6) includes any encounter data with respect to
 60-29 recipients that a managed care organization that contracts with the
 60-30 commission under Chapter 533 receives from a health care provider
 60-31 under the organization's provider network; and

60-32 (7) links Medicaid and non-Medicaid data sets,
 60-33 including data sets related to [the] Medicaid [program], the
 60-34 Temporary Assistance for Needy Families program, the Special
 60-35 Supplemental Nutrition Program for Women, Infants, and Children,
 60-36 vital statistics, and other public health programs.

60-37 SECTION 2.028. Section 531.0215, Government Code, is
 60-38 amended to read as follows:

60-39 Sec. 531.0215. COMPILATION OF STATISTICS RELATING TO FRAUD.
 60-40 The commission and each health and human services agency that
 60-41 administers a part of [the state] Medicaid [program] shall maintain
 60-42 statistics on the number, type, and disposition of fraudulent
 60-43 claims for benefits submitted under the part of the program the
 60-44 agency administers.

60-45 SECTION 2.029. Sections 531.0216(a), (d), and (f),
 60-46 Government Code, are amended to read as follows:

60-47 (a) The executive commissioner [commission] by rule shall
 60-48 develop and implement a system to reimburse providers of services
 60-49 under [the state] Medicaid [program] for services performed using
 60-50 telemedicine medical services or telehealth services.

60-51 (d) Subject to Section 153.004, Occupations Code, the
 60-52 executive commissioner [commission] may adopt rules as necessary to
 60-53 implement this section. In the rules adopted under this section,
 60-54 the executive commissioner [commission] shall:

60-55 (1) refer to the site where the patient is physically
 60-56 located as the patient site; and

60-57 (2) refer to the site where the physician or health
 60-58 professional providing the telemedicine medical service or
 60-59 telehealth service is physically located as the distant site.

60-60 (f) Not later than December 1 of each even-numbered year,
 60-61 the commission shall report to the speaker of the house of
 60-62 representatives and the lieutenant governor on the effects of
 60-63 telemedicine medical services, telehealth services, and home
 60-64 telemonitoring services on [the] Medicaid [program] in the state,
 60-65 including the number of physicians, health professionals, and
 60-66 licensed health care facilities using telemedicine medical
 60-67 services, telehealth services, or home telemonitoring services,
 60-68 the geographic and demographic disposition of the physicians and
 60-69 health professionals, the number of patients receiving

61-1 telemedicine medical services, telehealth services, and home
 61-2 telemonitoring services, the types of services being provided, and
 61-3 the cost of utilization of telemedicine medical services,
 61-4 telehealth services, and home telemonitoring services to Medicaid
 61-5 [~~the program~~].

61-6 SECTION 2.030. Section 531.02161, Government Code, is
 61-7 amended to read as follows:

61-8 Sec. 531.02161. TELEMEDICINE, TELEHEALTH, AND HOME
 61-9 TELEMONITORING TECHNOLOGY STANDARDS. (b) The executive
 61-10 commissioner [commission and the Telecommunications Infrastructure
Fund Board] by [~~Joint~~] rule shall establish and adopt minimum
 61-11 standards for an operating system used in the provision of
 61-12 telemedicine medical services, telehealth services, or home
 61-13 telemonitoring services by a health care facility participating in
 61-14 [~~the state~~] Medicaid [~~program~~], including standards for electronic
 61-15 transmission, software, and hardware.

61-16 (c) In developing standards under this section, the
 61-17 executive commissioner [commission and the Telecommunications
Infrastructure Fund Board] shall address:

- 61-18 (1) authentication and authorization of users;
- 61-19 (2) authentication of the origin of information;
- 61-20 (3) the prevention of unauthorized access to the
 61-21 system or information;
- 61-22 (4) system security, including the integrity of
 61-23 information that is collected, program integrity, and system
 61-24 integrity;
- 61-25 (5) maintenance of documentation about system and
 61-26 information usage;
- 61-27 (6) information storage, maintenance, and
 61-28 transmission; and
- 61-29 (7) synchronization and verification of patient
 61-30 profile data.

61-31 SECTION 2.031. Section 531.02162(b), Government Code, is
 61-32 amended to read as follows:

61-33 (b) The executive commissioner [commission] by rule shall
 61-34 establish policies that permit reimbursement under [~~the state~~]
 61-35 Medicaid and the child [children's] health plan [insurance] program
 61-36 for services provided through telemedicine medical services and
 61-37 telehealth services to children with special health care needs.

61-38 SECTION 2.032. Sections 531.02163(a), (c), and (d),
 61-39 Government Code, are amended to read as follows:

61-40 (a) In this section, "health professional" means an
 61-41 individual who:

- 61-42 (1) is licensed or certified in this state to perform
 61-43 health care services; and
- 61-44 (2) is not a physician, registered nurse, advanced
 61-45 practice registered nurse, or physician assistant.

61-46 (c) Notwithstanding Section 531.0217, the commission may
 61-47 provide reimbursement under [~~the state~~] Medicaid [~~program~~] for a
 61-48 telemedicine medical service initiated by a trained health
 61-49 professional who complies with the minimum standards adopted under
 61-50 this section.

61-51 (d) The commission shall provide reimbursement under [~~the~~
 61-52 state] Medicaid [~~program~~] to a physician for overseeing a
 61-53 telemedicine consultation at a telemedicine distant site if the
 61-54 telepresenter at the patient site is another physician or is an
 61-55 advanced practice registered nurse, registered nurse, or physician
 61-56 assistant acting under physician delegation and supervision
 61-57 throughout the consultation.

61-58 SECTION 2.033. Section 531.02164, Government Code, is
 61-59 amended to read as follows:

61-60 Sec. 531.02164. MEDICAID SERVICES PROVIDED THROUGH HOME
 61-61 TELEMONITORING SERVICES. (a) In this section:

61-62 (1) "Home and community support services [~~health~~]
 61-63 agency" means a person [facility] licensed under Chapter 142,
 61-64 Health and Safety Code, to provide home health, hospice, or
 61-65 personal assistance services as defined by Section 142.001, Health
 61-66 and Safety Code.

61-67 (2) "Hospital" means a hospital licensed under Chapter

62-1 241, Health and Safety Code.

62-2 (b) If the commission determines that establishing a
 62-3 statewide program that permits reimbursement under [the state]
 62-4 Medicaid [program] for home telemonitoring services would be
 62-5 cost-effective and feasible, the executive commissioner by rule
 62-6 shall establish the program as provided under this section.

62-7 (c) The program required under this section must:

62-8 (1) provide that home telemonitoring services are
 62-9 available only to persons who:

62-10 (A) are diagnosed with one or more of the
 62-11 following conditions:

- 62-12 (i) pregnancy;
- 62-13 (ii) diabetes;
- 62-14 (iii) heart disease;
- 62-15 (iv) cancer;
- 62-16 (v) chronic obstructive pulmonary disease;
- 62-17 (vi) hypertension;
- 62-18 (vii) congestive heart failure;
- 62-19 (viii) mental illness or serious emotional

62-20 disturbance;

- 62-21 (ix) asthma;
- 62-22 (x) myocardial infarction; or
- 62-23 (xi) stroke; and

62-24 (B) exhibit two or more of the following risk
 62-25 factors:

62-26 (i) two or more hospitalizations in the
 62-27 prior 12-month period;

- 62-28 (ii) frequent or recurrent emergency room

62-29 admissions;

62-30 (iii) a documented history of poor
 62-31 adherence to ordered medication regimens;

62-32 (iv) a documented history of falls in the
 62-33 prior six-month period;

62-34 (v) limited or absent informal support
 62-35 systems;

62-36 (vi) living alone or being home alone for
 62-37 extended periods of time; and

62-38 (vii) a documented history of care access
 62-39 challenges;

62-40 (2) ensure that clinical information gathered by a
 62-41 home and community support services [health] agency or hospital
 62-42 while providing home telemonitoring services is shared with the
 62-43 patient's physician; and

62-44 (3) ensure that the program does not duplicate disease
 62-45 management program services provided under Section 32.057, Human
 62-46 Resources Code.

62-47 (d) If, after implementation, the commission determines
 62-48 that the program established under this section is not
 62-49 cost-effective, the commission may discontinue the program and stop
 62-50 providing reimbursement under [the state] Medicaid [program] for
 62-51 home telemonitoring services, notwithstanding Section 531.0216 or
 62-52 any other law.

62-53 (e) The commission shall determine whether the provision of
 62-54 home telemonitoring services to persons who are eligible to receive
 62-55 benefits under both [the] Medicaid and the Medicare program
 62-56 [programs] achieves cost savings for the Medicare program.

62-57 SECTION 2.034. Sections 531.0217(b), (c-1), (c-3), (d),
 62-58 (h), (i), (i-1), and (j), Government Code, are amended to read as
 62-59 follows:

62-60 (b) The executive commissioner [commission] by rule shall
 62-61 require each health and human services agency that administers a
 62-62 part of [the] Medicaid [program] to provide Medicaid reimbursement
 62-63 for a telemedicine medical service initiated or provided by a
 62-64 physician.

62-65 (c-1) Notwithstanding Subsection (b) or (c), the commission
 62-66 shall provide for reimbursement under [the] Medicaid [program] for
 62-67 an office visit provided through telemedicine by a physician who is
 62-68 assessing and evaluating the patient from a distant site if:

- 62-69 (1) a health professional acting under the delegation

63-1 and supervision of that physician is present with the patient at the
63-2 time of the visit; and

63-3 (2) the medical condition, illness, or injury for
63-4 which the patient is receiving the service is not likely, within a reasonable degree of medical certainty, to undergo material
63-5 deterioration within the 30-day period following the date of the
63-6 visit.

63-7 (c-3) In adopting rules developed under Subsection (c-2),
63-8 the executive commissioner [~~commission~~] shall confer with the
63-9 Centers for Medicare and Medicaid Services on the legality of
63-10 allocating reimbursement or establishing a facility fee as
63-11 described in that subsection. Rules adopted by the executive
63-12 commissioner [~~commission~~] under this subsection or Subsection
63-13 (c-2) must reflect a policy to build capacity in medically
63-14 underserved areas of this state.

63-15 (d) The commission shall require reimbursement for a telemedicine medical service at the same rate as [~~the~~] Medicaid
63-16 [~~program~~] reimburses for a comparable in-person medical service. A request for reimbursement may not be denied solely because an
63-17 in-person medical service between a physician and a patient did not occur.

63-18 (h) The commission in consultation with the Texas Medical
63-19 Board [~~State Board of Medical Examiners~~] shall monitor and regulate
63-20 the use of telemedicine medical services to ensure compliance with
63-21 this section. In addition to any other method of enforcement, the
63-22 commission may use a corrective action plan to ensure compliance
63-23 with this section.

63-24 (i) The Texas Medical Board [~~State Board of Medical~~
63-25 Examiners], in consultation with the commission, as appropriate,
63-26 may adopt rules as necessary to:

63-27 (1) ensure that appropriate care, including quality of care, is provided to patients who receive telemedicine medical services;

63-28 (2) prevent abuse and fraud through the use of telemedicine medical services, including rules relating to filing of claims and records required to be maintained in connection with telemedicine; and

63-29 (3) define those situations when a face-to-face consultation with a physician is required after a telemedicine medical service.

63-30 (i-1) The Texas Medical Board [~~State Board of Medical~~
63-31 Examiners], in consultation with the commission and the Department
63-32 of State Health Services, as appropriate, shall adopt rules to establish supervisory requirements for a physician delegating a service to be performed by an individual who is not a physician, registered nurse, advanced practice registered nurse, or physician assistant, including a health professional who is authorized to be a telepresenter under Section 531.02163. This section may not be construed as authorizing the Texas Medical Board [~~State Board of~~
63-33 Medical Examiners] to regulate another licensed or certified health care provider.

63-34 (j) The executive commissioner shall establish an advisory committee to coordinate state telemedicine efforts and assist the commission in:

63-35 (1) evaluating policies for telemedicine medical services under Section 531.0216 and this section;

63-36 (2) monitoring the types of programs receiving reimbursement under this section; and

63-37 (3) coordinating the activities of state agencies interested in the use of telemedicine medical services.

63-38 SECTION 2.035. Sections 531.02172(b) and (c), Government Code, are amended to read as follows:

63-39 (b) The advisory committee must include:

63-40 (1) representatives of health and human services agencies and other state agencies concerned with the use of telemedical and telehealth consultations and home telemonitoring services in [~~the~~] Medicaid [~~program~~] and the state child health plan program, including representatives of:

63-41 (A) the commission;

Affairs;

- (B) the Department of State Health Services;
- (C) the Office [~~Texas Department~~] of Rural
- (D) the Texas Department of Insurance;
- (E) the Texas Medical Board;
- (F) the Texas Board of Nursing; and
- (G) the Texas State Board of Pharmacy;

(2) representatives of health science centers in this

(2) representatives of health science centers in this state;

(3) experts on telemedicine, telemedical consultation, and telemedicine medical services or telehealth services;

(4) representatives of consumers of health services provided through telemedical consultations and telemedicine medical services or telehealth services; and

(5) representatives of providers of telemedicine medical services, telehealth services, and home telemonitoring services.

(c) A member of the advisory committee serves at the will of the executive commissioner.

SECTION 2.036. Section 531.02173, Government Code, is amended to read as follows:

Sec. 331.02173. ALIGNMENT OF MEDICAID TELEMEDICINE REIMBURSEMENT POLICIES WITH MEDICARE REIMBURSEMENT POLICIES. (a) The commission shall periodically review policies regarding reimbursement under [the] Medicaid [program] for telemedicine medical services to identify variations between permissible reimbursement under that program and reimbursement available to providers under the Medicare program.

(b) To the extent practicable, and notwithstanding any other state law, after [conducting] a review conducted under Subsection (a) the executive commissioner [commission] may modify rules and procedures applicable to reimbursement under [the] Medicaid [program] for telemedicine medical services as necessary to provide for a reimbursement system that is comparable to the reimbursement system for those services under the Medicare program.

(c) The commission and executive commissioner shall perform the [its] duties under this section with assistance from the telemedicine and telehealth advisory committee established under Section 531.02172.

SECTION 2.037. Section 531.02174, Government Code, is amended to read as follows:

Sec. 531.02174. ADDITIONAL AUTHORITY REGARDING
TELEMEDICINE MEDICAL SERVICES. (a) In addition to the authority granted by other law regarding telemedicine medical services, the executive commissioner [commission] may review rules and procedures applicable to reimbursement of telemedicine medical services provided through any government-funded health program subject to the commission's oversight.

(b) The executive commissioner [commission] may modify rules and procedures described by Subsection (a) as necessary to ensure that reimbursement for telemedicine medical services is provided in a cost-effective manner and only in circumstances in which the provision of those services is clinically effective.

(c) This section does not affect the commission's authority or duties under other law regarding reimbursement of telemedicine medical services under [the] Medicaid [program].

SECTION 2.038. Sections 531.02175(b) and (c), Government Code, are amended to read as follows:

(b) Subject to the requirements of this subsection, the executive commissioner by rule may require the commission and each health and human services agency that administers a part of [the] Medicaid [program] to provide Medicaid reimbursement for a medical consultation that is provided by a physician or other health care professional using the Internet as a cost-effective alternative to an in-person consultation. The executive commissioner may require the commission or a health and human services agency to provide the reimbursement described by this subsection only if the Centers for Medicare and Medicaid Services develop an appropriate Current

65-1 Procedural Terminology code for medical services provided using the
 65-2 Internet.

65-3 (c) The executive commissioner may develop and implement a
 65-4 pilot program in one or more sites chosen by the executive
 65-5 commissioner under which Medicaid reimbursements are paid for
 65-6 medical consultations provided by physicians or other health care
 65-7 professionals using the Internet. The pilot program must be
 65-8 designed to test whether an Internet medical consultation is a
 65-9 cost-effective alternative to an in-person consultation under
 65-10 [the] Medicaid [program]. The executive commissioner may modify
 65-11 the pilot program as necessary throughout its implementation to
 65-12 maximize the potential cost-effectiveness of Internet medical
 65-13 consultations. If the executive commissioner determines from the
 65-14 pilot program that Internet medical consultations are
 65-15 cost-effective, the executive commissioner may expand the pilot
 65-16 program to additional sites or may implement Medicaid
 65-17 reimbursements for Internet medical consultations statewide.

65-18 SECTION 2.039. Section 531.02176, Government Code, is
 65-19 amended to read as follows:

65-20 Sec. 531.02176. EXPIRATION OF MEDICAID REIMBURSEMENT FOR
 65-21 PROVISION OF HOME TELEMONITORING SERVICES. Notwithstanding any
 65-22 other law, the commission may not reimburse providers under [the]
 65-23 Medicaid [program] for the provision of home telemonitoring
 65-24 services on or after September 1, 2015.

65-25 SECTION 2.040. Section 531.0218(b), Government Code, is
 65-26 amended to read as follows:

65-27 (b) Subsection (a) does not apply to functions of a Section
 65-28 1915(c) waiver program that is operated in conjunction with a
 65-29 federally funded [Medicaid] program of the state under Medicaid
 65-30 that is authorized under Section 1915(b) of the federal Social
 65-31 Security Act (42 U.S.C. Section 1396n(b)).

65-32 SECTION 2.041. Sections 531.022(a), (b), (d), and (e),
 65-33 Government Code, are amended to read as follows:

65-34 (a) The executive commissioner shall develop a coordinated,
 65-35 six-year strategic plan for health and human services in this state
 65-36 and shall update the plan biennially.

65-37 (b) The executive commissioner shall submit each biennial
 65-38 update of the plan to the governor, the lieutenant governor, and the
 65-39 speaker of the house of representatives not later than October 1 of
 65-40 each even-numbered year.

65-41 (d) In developing a plan and plan updates under this
 65-42 section, the executive commissioner shall consider:

65-43 (1) existing strategic plans of health and human
 65-44 services agencies;

65-45 (2) health and human services priorities and plans
 65-46 submitted by governmental entities under Subsection (e);

65-47 (3) facilitation of pending reorganizations or
 65-48 consolidations of health and human services agencies and programs;

65-49 (4) public comment, including comment documented
 65-50 through public hearings conducted under Section 531.036; and

65-51 (5) budgetary issues, including projected agency
 65-52 needs and projected availability of funds.

65-53 (e) The executive commissioner shall identify the
 65-54 governmental entities that coordinate the delivery of health and
 65-55 human services in regions, counties, and municipalities and request
 65-56 that each entity:

65-57 (1) identify the health and human services priorities
 65-58 in the entity's jurisdiction and the most effective ways to deliver
 65-59 and coordinate services in that jurisdiction;

65-60 (2) develop a coordinated plan for the delivery of
 65-61 health and human services in the jurisdiction, including transition
 65-62 services that prepare special education students for adulthood; and

65-63 (3) make the information requested under Subdivisions
 65-64 (1) and (2) available to the commission.

65-65 SECTION 2.042. Sections 531.0223(b), (e), and (o),
 65-66 Government Code, are amended to read as follows:

65-67 (b) The executive commissioner shall appoint an advisory
 65-68 committee to develop a strategic plan for eliminating the
 65-69 disparities between the Texas-Mexico border region and other areas

66-1 of the state in:

66-2 (1) capitation rates under Medicaid managed care and
66-3 the child health plan program for services provided to persons
66-4 younger than 19 years of age;

66-5 (2) fee-for-service per capita expenditures under
66-6 [the] Medicaid [program] and the child health plan program for
66-7 inpatient and outpatient hospital services for services provided to
66-8 persons younger than 19 years of age; and

66-9 (3) total professional services expenditures per
66-10 Medicaid recipient younger than 19 years of age or per child
66-11 enrolled in the child health plan program.

66-12 (e) The executive commissioner shall appoint nine members
66-13 to the advisory committee in a manner that ensures that the
66-14 committee:

66-15 (1) represents the spectrum of geographic areas
66-16 included in the Texas-Mexico border region;

66-17 (2) includes persons who are knowledgeable regarding
66-18 [the] Medicaid [program], including Medicaid managed care, and the
66-19 child health plan program; and

66-20 (3) represents the interests of physicians,
66-21 hospitals, patients, managed care organizations, state agencies
66-22 involved in the management and delivery of medical resources of any
66-23 kind, affected communities, and other areas of the state.

66-24 (o) The commission shall:

66-25 (1) measure changes occurring from September 1, 2002,
66-26 to August 31, 2014, in the number of health care providers
66-27 participating in [the] Medicaid [program] or the child health plan
66-28 program in the Texas-Mexico border region and resulting effects on
66-29 consumer access to health care and consumer utilization;

66-30 (2) determine:

66-31 (A) the effects, if any, of the changes in rates
66-32 and expenditures required by Subsection (k); and

66-33 (B) if funding available and used for changes in
66-34 rates and expenditures was sufficient to produce measurable
66-35 effects;

66-36 (3) make a recommendation regarding whether Medicaid
66-37 rate increases should be expanded to include Medicaid services
66-38 provided to adults in the Texas-Mexico border region; and

66-39 (4) not later than December 1, 2014, submit a report to
66-40 the legislature.

66-41 SECTION 2.043. Section 531.0224, Government Code, is
66-42 amended to read as follows:

66-43 Sec. 531.0224. PLANNING AND POLICY DIRECTION OF TEMPORARY
66-44 ASSISTANCE FOR NEEDY FAMILIES PROGRAM. (a) The commission shall:

66-45 (1) plan and direct the financial assistance program
66-46 under Chapter 31, Human Resources Code, including the procurement,
66-47 management, and monitoring of contracts necessary to implement the
66-48 program; and

66-49 (2) [adopt rules and standards governing the financial
66-50 assistance program under Chapter 31, Human Resources Code; and]

66-51 [+] establish requirements for and define the scope
66-52 of the ongoing evaluation of the financial assistance program under
66-53 Chapter 31, Human Resources Code.

66-54 (b) The executive commissioner shall adopt rules and
66-55 standards governing the financial assistance program under Chapter
66-56 31, Human Resources Code.

66-57 SECTION 2.044. Section 531.0226(a), Government Code, is
66-58 amended to read as follows:

66-59 (a) If feasible and cost-effective, the commission may
66-60 apply for a waiver from the federal Centers for Medicare and
66-61 Medicaid Services or another appropriate federal agency to more
66-62 efficiently leverage the use of state and local funds in order to
66-63 maximize the receipt of federal Medicaid matching funds by
66-64 providing benefits under [the] Medicaid [program] to individuals
66-65 who:

66-66 (1) meet established income and other eligibility
66-67 criteria; and

66-68 (2) are eligible to receive services through the
66-69 county for chronic health conditions.

67-1 SECTION 2.045. Sections 531.0235(a) and (c), Government
 67-2 Code, are amended to read as follows:

67-3 (a) The executive commissioner shall direct and require the
 67-4 Texas [Planning] Council for Developmental Disabilities and the
 67-5 Office for the Prevention of Developmental Disabilities to prepare
 67-6 a joint biennial report on the state of services to persons with
 67-7 disabilities in this state. The Texas [Planning] Council for
 67-8 Developmental Disabilities will serve as the lead agency in
 67-9 convening working meetings and in coordinating and completing the
 67-10 report. Not later than December 1 of each even-numbered year, the
 67-11 agencies shall submit the report to the executive commissioner,
 67-12 governor, lieutenant governor, and speaker of the house of
 67-13 representatives.

67-14 (c) The commission[, Texas Department of Human Services,]
 67-15 and other health and human services agencies shall cooperate with
 67-16 the agencies required to prepare the report under Subsection (a).

67-17 SECTION 2.046. Section 531.024(a-1), Government Code, is
 67-18 amended to read as follows:

67-19 (a-1) To the extent permitted under applicable federal law
 67-20 and notwithstanding any provision of Chapter 191 or 192, Health and
 67-21 Safety Code, the commission and other health and human services
 67-22 agencies shall share data to facilitate patient care coordination,
 67-23 quality improvement, and cost savings in [the] Medicaid [program],
 67-24 the child health plan program, and other health and human services
 67-25 programs funded using money appropriated from the general revenue
 67-26 fund.

67-27 SECTION 2.047. Section 531.0241, Government Code, is
 67-28 amended to read as follows:

67-29 Sec. 531.0241. STREAMLINING DELIVERY OF SERVICES. To
 67-30 integrate and streamline service delivery and facilitate access to
 67-31 services, the executive commissioner may request a health and human
 67-32 services agency to take a specific action and may recommend the
 67-33 manner in which the streamlining is to be accomplished, including
 67-34 requesting each health and human services agency to:

67-35 (1) simplify agency procedures;
 67-36 (2) automate agency procedures;
 67-37 (3) coordinate service planning and management tasks
 67-38 between and among health and human services agencies;
 67-39 (4) reallocate staff resources;
 67-40 (5) [adopt rules];
 67-41 [+] amend, [+] waive[, or repeal] existing rules; or
 67-42 [+] take other necessary actions.

67-43 SECTION 2.048. Section 531.02411, Government Code, is
 67-44 amended to read as follows:

67-45 Sec. 531.02411. STREAMLINING ADMINISTRATIVE PROCESSES.
 67-46 The commission shall make every effort using the commission's
 67-47 existing resources to reduce the paperwork and other administrative
 67-48 burdens placed on Medicaid recipients and providers and other
 67-49 participants in [the] Medicaid [program] and shall use technology
 67-50 and efficient business practices to decrease those burdens. In
 67-51 addition, the commission shall make every effort to improve the
 67-52 business practices associated with the administration of [the]
 67-53 Medicaid [program] by any method the commission determines is
 67-54 cost-effective, including:

67-55 (1) expanding the utilization of the electronic claims
 67-56 payment system;
 67-57 (2) developing an Internet portal system for prior
 67-58 authorization requests;
 67-59 (3) encouraging Medicaid providers to submit their
 67-60 program participation applications electronically;
 67-61 (4) ensuring that the Medicaid provider application is
 67-62 easy to locate on the Internet so that providers may conveniently
 67-63 apply to the program;
 67-64 (5) working with federal partners to take advantage of
 67-65 every opportunity to maximize additional federal funding for
 67-66 technology in [the] Medicaid [program]; and
 67-67 (6) encouraging the increased use of medical
 67-68 technology by providers, including increasing their use of:
 67-69 (A) electronic communications between patients

68-1 and their physicians or other health care providers;

68-2 (B) electronic prescribing tools that provide
68-3 up-to-date payer formulary information at the time a physician or
68-4 other health care practitioner writes a prescription and that
68-5 support the electronic transmission of a prescription;

68-6 (C) ambulatory computerized order entry systems
68-7 that facilitate physician and other health care practitioner orders
68-8 at the point of care for medications and laboratory and
68-9 radiological tests;

68-10 (D) inpatient computerized order entry systems
68-11 to reduce errors, improve health care quality, and lower costs in a
68-12 hospital setting;

68-13 (E) regional data-sharing to coordinate patient
68-14 care across a community for patients who are treated by multiple
68-15 providers; and

68-16 (F) electronic intensive care unit technology to
68-17 allow physicians to fully monitor hospital patients remotely.

68-18 SECTION 2.049. Section 531.024115, Government Code, is
68-19 amended to read as follows:

68-20 Sec. 531.024115. SERVICE DELIVERY AREA
68-21 ALIGNMENT. Notwithstanding Section 533.0025(e) or any other law,
68-22 to the extent possible, the commission shall align service delivery
68-23 areas under [the] Medicaid and the child health plan program
68-24 [programs].

68-25 SECTION 2.050. Section 531.02412, Government Code, is
68-26 amended to read as follows:

68-27 Sec. 531.02412. SERVICE DELIVERY AUDIT MECHANISMS. (a)
68-28 The commission shall make every effort to ensure the integrity of
68-29 [the] Medicaid [program]. To ensure that integrity, the commission
68-30 shall:

68-31 (1) perform risk assessments of every element of the
68-32 [Medicaid] program and audit those elements of the program that are
68-33 determined to present the greatest risks;

68-34 (2) ensure that sufficient oversight is in place for
68-35 the Medicaid medical transportation program;

68-36 (3) ensure that a quality review assessment of the
68-37 Medicaid medical transportation program occurs; and

68-38 (4) evaluate [the] Medicaid [program] with respect to
68-39 use of the metrics developed through the Texas Health Steps
68-40 performance improvement plan to guide changes and improvements to
68-41 the program.

68-42 SECTION 2.051. Sections 531.02413(a-1) and (b), Government
68-43 Code, are amended to read as follows:

68-44 (a-1) If cost-effective and feasible, the commission shall
68-45 contract to expand the Medicaid billing coordination system
68-46 described by Subsection (a) to process claims for all other health
68-47 care services provided through [the] Medicaid [program] in the
68-48 manner claims for acute care services are processed by the system
68-49 under Subsection (a). This subsection does not apply to claims for
68-50 health care services provided through [the] Medicaid [program] if,
68-51 before September 1, 2009, those claims were being processed by an
68-52 alternative billing coordination system.

68-53 (b) If cost-effective, the executive commissioner shall
68-54 adopt rules for the purpose of enabling the system described by
68-55 Subsection (a) to identify an entity with primary responsibility
68-56 for paying a claim that is processed by the system under Subsection
68-57 (a) and establish reporting requirements for any entity that may
68-58 have a contractual responsibility to pay for the types of services
68-59 that are provided under [the] Medicaid [program] and the claims for
68-60 which are processed by the system under Subsection (a).

68-61 SECTION 2.052. Section 531.024131(a), Government Code, is
68-62 amended to read as follows:

68-63 (a) If cost-effective, the commission may:

68-64 (1) contract to expand all or part of the billing
68-65 coordination system established under Section 531.02413 to process
68-66 claims for services provided through other benefits programs
68-67 administered by the commission or a health and human services
68-68 agency;

68-69 (2) expand any other billing coordination tools and

69-1 resources used to process claims for health care services provided
 69-2 through [the] Medicaid [program] to process claims for services
 69-3 provided through other benefits programs administered by the
 69-4 commission or a health and human services agency; and

69-5 (3) expand the scope of persons about whom information
 69-6 is collected under Section 32.042, Human Resources Code, to include
 69-7 recipients of services provided through other benefits programs
 69-8 administered by the commission or a health and human services
 69-9 agency.

69-10 SECTION 2.053. Section 531.02414(a)(1), Government Code,
 69-11 is amended to read as follows:

69-12 (1) "Medical transportation program" means the
 69-13 program that provides nonemergency transportation services to and
 69-14 from covered health care services, based on medical necessity, to
 69-15 recipients under [the] Medicaid [program], the children with
 69-16 special health care needs program, and the transportation for
 69-17 indigent cancer patients program, who have no other means of
 69-18 transportation.

69-19 SECTION 2.054. The heading to Section 531.024161,
 69-20 Government Code, is amended to read as follows:

69-21 Sec. 531.024161. REIMBURSEMENT CLAIMS FOR CERTAIN MEDICAID
 69-22 OR CHILD HEALTH PLAN [CHIP] SERVICES INVOLVING SUPERVISED
 69-23 PROVIDERS.

69-24 SECTION 2.055. Section 531.024161(a), Government Code, is
 69-25 amended to read as follows:

69-26 (a) If a provider, including a nurse practitioner or
 69-27 physician assistant, under [the] Medicaid or the child health plan
 69-28 program provides a referral for or orders health care services for a
 69-29 recipient or enrollee, as applicable, at the direction or under the
 69-30 supervision of another provider, and the referral or order is based
 69-31 on the supervised provider's evaluation of the recipient or
 69-32 enrollee, the names and associated national provider identifier
 69-33 numbers of the supervised provider and the supervising provider
 69-34 must be included on any claim for reimbursement submitted by a
 69-35 provider based on the referral or order. For purposes of this
 69-36 section, "national provider identifier" means the national
 69-37 provider identifier required under Section 1128J(e), Social
 69-38 Security Act (42 U.S.C. Section 1320a-7k(e)).

69-39 SECTION 2.056. Section 531.02418, Government Code, is
 69-40 amended to read as follows:

69-41 Sec. 531.02418. MEDICAID AND CHILD HEALTH PLAN PROGRAM
 69-42 ELIGIBILITY DETERMINATIONS FOR CERTAIN INDIVIDUALS. (a) The
 69-43 commission shall enter into a memorandum of understanding with the
 69-44 Texas Juvenile Justice Department [Youth Commission] to ensure that
 69-45 each individual who is committed, placed, or detained under Title
 69-46 3, Family Code, is assessed by the commission for eligibility for
 69-47 Medicaid [the medical assistance program under Chapter 32, Human
 69-48 Resources Code,] and the child health plan program before that
 69-49 individual's release from commitment, [-]

69-50 [(b) The commission shall enter into a memorandum of
 69-51 understanding with the Texas Juvenile Probation Commission to
 69-52 ensure that each individual who is placed or detained under Title 3,
 69-53 Family Code, is assessed by the commission for eligibility for the
 69-54 medical assistance program under Chapter 32, Human Resources Code,
 69-55 and the child health plan program before the individual's release
 69-56 from placement, or detention. Local juvenile probation
 69-57 departments are subject to the requirements of the memorandum.]

69-58 (c) The [Each] memorandum of understanding entered into as
 69-59 required by this section must specify:

69-60 (1) the information that must be provided to the
 69-61 commission;

69-62 (2) the process by which and time frame within which
 69-63 the information must be provided; and

69-64 (3) the roles and responsibilities of all parties to
 69-65 the memorandum, which must include a requirement that the
 69-66 commission pursue the actions needed to complete eligibility
 69-67 applications as necessary.

69-68 (d) The [Each] memorandum of understanding required by
 69-69 Subsection (a) [or (b)] must be tailored to achieve the goal of

70-1 ensuring that an individual described by Subsection (a) [~~or (b)~~]
 70-2 who is determined eligible by the commission for coverage under
 70-3 ~~Medicaid [the medical assistance program under Chapter 32, Human~~
 70-4 ~~Resources Code]~~, or the child health plan program[~~T~~] is enrolled in
 70-5 the program for which the individual is eligible and may begin
 70-6 receiving services through the program as soon as possible after
 70-7 the eligibility determination is made and, if possible, to achieve
 70-8 the goal of ensuring that the individual may begin receiving those
 70-9 services on the date of the individual's release from placement,
 70-10 detention, or commitment.

70-11 (e) The executive commissioner may adopt rules as necessary
 70-12 to implement this section.

70-13 SECTION 2.057. Section 531.024181(a), Government Code, is
 70-14 amended to read as follows:

70-15 (a) This section applies only with respect to the following
 70-16 benefits programs:

70-17 (1) the child health plan program under Chapter 62,
 70-18 Health and Safety Code;

70-19 (2) the financial assistance program under Chapter 31,
 70-20 Human Resources Code;

70-21 (3) ~~Medicaid [the medical assistance program under~~
 70-22 ~~Chapter 32, Human Resources Code]~~; and

70-23 (4) the supplemental nutrition [~~nutritional~~]
 70-24 assistance program under Chapter 33, Human Resources Code.

70-25 SECTION 2.058. Section 531.024182(b), Government Code, is
 70-26 amended to read as follows:

70-27 (b) If, at the time of application for benefits, a person
 70-28 stated that the person is a sponsored alien, the commission may, to
 70-29 the extent allowed by federal law, verify information relating to
 70-30 the sponsorship, using an automated system or systems where
 70-31 available, after the person is determined eligible for and begins
 70-32 receiving benefits under any of the following benefits programs:

70-33 (1) the child health plan program under Chapter 62,
 70-34 Health and Safety Code;

70-35 (2) the financial assistance program under Chapter 31,
 70-36 Human Resources Code;

70-37 (3) ~~Medicaid [the medical assistance program under~~
 70-38 ~~Chapter 32, Human Resources Code]~~; or

70-39 (4) the supplemental nutrition [~~nutritional~~]
 70-40 assistance program under Chapter 33, Human Resources Code.

70-41 SECTION 2.059. Sections 531.0244(c) and (g), Government
 70-42 Code, are amended to read as follows:

70-43 (c) For purposes of developing the strategies required by
 70-44 Subsection (b)(4), a person with a mental illness who is admitted to
 70-45 a facility of the [~~Texas~~] Department of State Health Services
 70-46 [~~Mental Health and Mental Retardation~~] for inpatient mental health
 70-47 services three or more times during a 180-day period is presumed to
 70-48 be in imminent risk of requiring placement in an institution. The
 70-49 strategies must be developed in a manner that presumes the person's
 70-50 eligibility for and the appropriateness of intensive
 70-51 community-based services and support.

70-52 (g) Not later than December 1 of each even-numbered year,
 70-53 the executive commissioner shall submit to the governor and the
 70-54 legislature a report on the status of the implementation of the plan
 70-55 required by Subsection (a). The report must include
 70-56 recommendations on any statutory or other action necessary to
 70-57 implement the plan.

70-58 SECTION 2.060. Sections 531.02441(a), (b), (c), (d), (e),
 70-59 (g), and (i), Government Code, are amended to read as follows:

70-60 (a) The executive commissioner shall establish an
 70-61 interagency task force to assist the commission and appropriate
 70-62 health and human services agencies in developing a comprehensive,
 70-63 effectively working plan to ensure appropriate care settings for
 70-64 persons with disabilities.

70-65 (b) The executive commissioner shall determine the number
 70-66 of members of the task force. The executive commissioner shall
 70-67 appoint as members of the task force:

70-68 (1) representatives of appropriate health and human
 70-69 services agencies, including the [~~Texas~~] Department of Aging and

71-1 Disability [Human] Services and the [Texas] Department of State
 71-2 Health Services [Mental Health and Mental Retardation];

71-3 (2) representatives of related work groups, including
 71-4 representatives of the work group [groups] established under
 71-5 Section [Sections 22.034 and] 22.035, Human Resources Code;

71-6 (3) representatives of consumer and family advocacy
 71-7 groups; and

71-8 (4) representatives of service providers for persons
 71-9 with disabilities.

71-10 (c) The executive commissioner shall designate a member of
 71-11 the task force to serve as presiding officer. The members of the
 71-12 task force shall elect any other necessary officers.

71-13 (d) The task force shall meet at the call of the executive
 71-14 commissioner.

71-15 (e) A member of the task force serves at the will of the
 71-16 executive commissioner.

71-17 (g) The task force shall study and make recommendations to
 71-18 the commission on[+]

71-19 [+] developing the comprehensive, effectively
 71-20 working plan required by Section 531.0244(a) to ensure appropriate
 71-21 care settings for persons with disabilities[, and]

71-22 [+] identifying appropriate components of the pilot
 71-23 program established under Section 22.037, Human Resources Code, for
 71-24 coordination and integration among the Texas Department of Human
 71-25 Services, the Texas Department of Mental Health and Mental
 71-26 Retardation, and the Department of Protective and Regulatory
 71-27 Services].

71-28 (i) Not later than September 1 of each year, the task force
 71-29 shall submit a report to the executive commissioner on its findings
 71-30 and recommendations required by Subsection (g).

71-31 SECTION 2.061. Section 531.02442, Government Code, is
 71-32 amended to read as follows:

71-33 Sec. 531.02442. COMMUNITY LIVING OPTIONS INFORMATION
 71-34 PROCESS FOR CERTAIN PERSONS WITH AN INTELLECTUAL DISABILITY [MENTAL
 71-35 RETARDATION]. (a) In this section:

71-36 (1) "Department" means the Department of Aging and
 71-37 Disability Services.

71-38 (1-a) "Institution" means:

71-39 (A) a residential care facility operated or
 71-40 maintained by the department [Texas Department of Mental Health and
 71-41 Mental Retardation] to provide 24-hour services, including
 71-42 residential services, to persons with an intellectual disability
 71-43 [mental retardation]; or

71-44 (B) an ICF-IID [ICF-MR], as defined by Section
 71-45 531.002, Health and Safety Code.

71-46 (2) "Legally authorized representative" has the
 71-47 meaning assigned by Section 241.151, Health and Safety Code.

71-48 (3) "Local intellectual and developmental disability
 71-49 [mental retardation] authority" has the meaning assigned by Section
 71-50 531.002, Health and Safety Code.

71-51 (b) In addition to providing information regarding care and
 71-52 support options as required by Section 531.042, the department
 71-53 [Texas Department of Mental Health and Mental Retardation] shall
 71-54 implement a community living options information process in each
 71-55 institution to inform persons with an intellectual disability
 71-56 [mental retardation] who reside in the institution and their
 71-57 legally authorized representatives of alternative community living
 71-58 options.

71-59 (c) The department shall provide the information required
 71-60 by Subsection (b) through the community living options information
 71-61 process at least annually. The department shall also provide the
 71-62 information at any other time on request by a person with an
 71-63 intellectual disability [mental retardation] who resides in an
 71-64 institution or the person's legally authorized representative.

71-65 (d) If a person with an intellectual disability [mental
 71-66 retardation] residing in an institution or the person's legally
 71-67 authorized representative indicates a desire to pursue an
 71-68 alternative community living option after receiving the
 71-69 information provided under this section, the department shall refer

72-1 the person or the person's legally authorized representative to the
 72-2 local intellectual and developmental disability [~~mental~~
 72-3 ~~retardation~~] authority. The local intellectual and developmental
 72-4 disability [~~mental retardation~~] authority shall place the person in
 72-5 an alternative community living option, subject to the availability
 72-6 of funds, or on a waiting list for those options if the options are
 72-7 not available to the person for any reason on or before the 30th day
 72-8 after the date the person or the person's legally authorized
 72-9 representative is referred to the local intellectual and
 72-10 developmental disability [~~mental retardation~~] authority.

72-11 (e) The department shall document in the records of each
 72-12 person with an intellectual disability [~~mental retardation~~] who
 72-13 resides in an institution the information provided to the person or
 72-14 the person's legally authorized representative through the
 72-15 community living options information process and the results of
 72-16 that process.

72-17 SECTION 2.062. Section 531.02443, Government Code, is
 72-18 amended to read as follows:

72-19 Sec. 531.02443. IMPLEMENTATION OF COMMUNITY LIVING OPTIONS
 72-20 INFORMATION PROCESS AT STATE INSTITUTIONS FOR CERTAIN ADULT
 72-21 RESIDENTS. (a) In this section:

72-22 (1) "Adult resident" means a person with an
 72-23 intellectual disability [~~mental retardation~~] who:

72-24 (A) is at least 22 years of age; and
 72-25 (B) resides in a state supported living center
 72-26 [~~school~~].

72-27 (2) "Department" means the Department of Aging and
 72-28 Disability Services.

72-29 (3) "Legally authorized representative" has the
 72-30 meaning assigned by Section 241.151, Health and Safety Code.

72-31 (4) "Local intellectual and developmental disability
 72-32 [~~mental retardation~~] authority" has the meaning assigned by Section
 72-33 531.002, Health and Safety Code.

72-34 (5) "State supported living center [~~school~~]" has the
 72-35 meaning assigned by Section 531.002, Health and Safety Code.

72-36 (b) This section applies only to the community living
 72-37 options information process for an adult resident.

72-38 (c) The department shall contract with local intellectual
 72-39 and developmental disability [~~mental retardation~~] authorities to
 72-40 implement the community living options information process
 72-41 required by Section 531.02442 for an adult resident.

72-42 (d) The contract with the local intellectual and
 72-43 developmental disability [~~mental retardation~~] authority must:

72-44 (1) delegate to the local intellectual and
 72-45 developmental disability [~~mental retardation~~] authority the
 72-46 department's duties under Section 531.02442 with regard to the
 72-47 implementation of the community living options information process
 72-48 at a state supported living center [~~school~~];

72-49 (2) include performance measures designed to assist
 72-50 the department in evaluating the effectiveness of a local
 72-51 intellectual and developmental disability [~~mental retardation~~]
 72-52 authority in implementing the community living options information
 72-53 process; and

72-54 (3) ensure that the local intellectual and
 72-55 developmental disability [~~mental retardation~~] authority provides
 72-56 service coordination and relocation services to an adult resident
 72-57 who chooses, is eligible for, and is recommended by the
 72-58 interdisciplinary team for a community living option to facilitate
 72-59 a timely, appropriate, and successful transition from the state
 72-60 supported living center [~~school~~] to the community living option.

72-61 (e) The department, with the advice and assistance of the
 72-62 interagency task force on ensuring appropriate care settings for
 72-63 persons with disabilities and representatives of family members or
 72-64 legally authorized representatives of adult residents, persons
 72-65 with an intellectual disability [~~mental retardation~~], state
 72-66 supported living centers [~~schools~~], and local intellectual and
 72-67 developmental disability [~~mental retardation~~] authorities, shall:

72-68 (1) develop an effective community living options
 72-69 information process;

- (2) create uniform procedures for the implementation of the community living options information process; and
- (3) minimize any potential conflict of interest regarding the community living options information process between a state supported living center [school] and an adult resident, an adult resident's legally authorized representative, or a local intellectual and developmental disability [~~mental retardation~~] authority.

(f) A state supported living center [~~school~~] shall:

(1) allow a local intellectual and developmental disability [mental retardation] authority to participate in the interdisciplinary planning process involving the consideration of community living options for an adult resident;

(2) to the extent not otherwise prohibited by state or federal confidentiality laws, provide a local intellectual and developmental disability [~~mental retardation~~] authority with access to an adult resident and an adult resident's records to assist the authority in implementing the community living options information process; and

(3) provide the adult resident or the adult resident's legally authorized representative with accurate information regarding the risks of moving the adult resident to a community living option.

SECTION 2.063. Section [531.02444](#), Government Code, as amended by Chapter 34 (S.B. 187), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

Sec. 531.02444. MEDICAID BUY-IN PROGRAMS FOR CERTAIN PERSONS WITH DISABILITIES. (a) The executive commissioner shall develop and implement:

- (1) a Medicaid buy-in program for persons with disabilities as authorized by the Ticket to Work and Work Incentives Improvement Act of 1999 (Pub. L. No. 106-170) or the Balanced Budget Act of 1997 (Pub. L. No. 105-33); and
- (2) as authorized by the Deficit Reduction Act of 2005 (Pub. L. No. 109-171), a Medicaid buy-in program for [disabled] children with disabilities that is described by 42 U.S.C. Section 1396a(cc)(1) whose family incomes do not exceed 300 percent of the applicable federal poverty level.

(b) The executive commissioner shall adopt rules in accordance with federal law that provide for:

(1) eligibility requirements for each program described by Subsection (a); and

(c) Rules adopted by the executive commissioner under

(c) Rules adopted by the executive commissioner under Subsection (b) with respect to the program for [disabled] children with disabilities described by Subsection (a)(2) must require a participant to pay monthly premiums according to a sliding scale that is based on family income, subject to the requirements of 42 U.S.C. Sections 1396o(i)(2) and (3).

SECTION 2.064. Section 531.0246, Government Code, is amended to read as follows:

Sec. 531.0246. REGIONAL MANAGEMENT OF HEALTH AND HUMAN SERVICES AGENCIES. (a) The [Subject to Section 531.005(c), the] commission may require a health and human services agency, under the direction of the commission, to:

(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;]

[(2)] ensure that the agency's location is accessible to [disabled] employees with disabilities and agency clients with disabilities; and
[(2) [(3)] consolidate agency support services,

including clerical and administrative support services and information resources support services, with support services provided to or by another health and human services agency.

(b) The executive commissioner may require a health and

human services agency, under the direction of the executive

74-1 commissioner, to locate all or a portion of the agency's employees
 74-2 and programs in the same building as another health and human
 74-3 services agency or at a location near or adjacent to the location of
 74-4 another health and human services agency.

74-5 SECTION 2.065. Section 531.0247, Government Code, is
 74-6 amended to read as follows:

74-7 Sec. 531.0247. ANNUAL BUSINESS PLAN. The [Subject to
 74-8 Section 531.0055(c), the] commission shall develop and implement an
 74-9 annual business services plan for each health and human services
 74-10 region that establishes performance objectives for all health and
 74-11 human services agencies providing services in the region and
 74-12 measures agency effectiveness and efficiency in achieving those
 74-13 objectives.

74-14 SECTION 2.066. Section 531.0248(d), Government Code, is
 74-15 amended to read as follows:

74-16 (d) In implementing this section, the commission shall
 74-17 consider models used in other service delivery systems, including
 74-18 the mental health and intellectual disability [mental retardation]
 74-19 service delivery systems [system].

74-20 SECTION 2.067. Sections 531.02481(a), (e), and (f),
 74-21 Government Code, are amended to read as follows:

74-22 (a) The commission[, the Texas Department of Human
 74-23 Services] and the Department of Aging and Disability Services
 74-24 [Texas Department on Aging] shall assist communities in this state
 74-25 in developing comprehensive, community-based support and service
 74-26 delivery systems for long-term care services. At the request of a
 74-27 community-based organization or combination of community-based
 74-28 organizations, the commission may provide a grant to the
 74-29 organization or combination of organizations in accordance with
 74-30 Subsection (g). At the request of a community, the commission shall
 74-31 provide resources and assistance to the community to enable the
 74-32 community to:

74-33 (1) identify and overcome institutional barriers to
 74-34 developing more comprehensive community support systems, including
 74-35 barriers that result from the policies and procedures of state
 74-36 health and human services agencies;

74-37 (2) develop a system of blended funds, consistent with
 74-38 the requirements of federal law and the General Appropriations Act,
 74-39 to allow the community to customize services to fit individual
 74-40 community needs; and

74-41 (3) develop a local system of access and assistance to
 74-42 aid clients in accessing the full range of long-term care services.

74-43 (e) The executive commissioner shall assure the maintenance
 74-44 of no fewer than 28 area agencies on aging in order to assure the
 74-45 continuation of a local system of access and assistance that is
 74-46 sensitive to the aging population.

74-47 (f) A community-based organization or a combination of
 74-48 organizations may make a proposal under this section. A
 74-49 community-based organization includes:

74-50 (1) an area agency on aging;
 74-51 (2) an independent living center;
 74-52 (3) a municipality, county, or other local government;
 74-53 (4) a nonprofit or for-profit organization; or
 74-54 (5) a community mental health and intellectual
 74-55 disability [mental retardation] center.

74-56 SECTION 2.068. Section 531.02491, Government Code, is
 74-57 amended to read as follows:

74-58 Sec. 531.02491. JOINT TRAINING FOR CERTAIN CASEWORKERS.
 74-59 (a) The executive commissioner shall provide for joint training
 74-60 for health and human services caseworkers whose clients are
 74-61 children, including caseworkers employed by:

74-62 (1) the commission [Texas Department of Health];
 74-63 (2) the [Texas] Department of Aging and Disability
 74-64 [Human] Services; [and]
 74-65 (3) the [Texas] Department of State Health Services;
 74-66 (4) [Mental Health and Mental Retardation], a local
 74-67 mental health authority; and [, or]
 74-68 (5) a local intellectual and developmental disability
 74-69 [mental retardation] authority.

(b) Training provided under this section must be designed to increase a caseworker's knowledge and awareness of the services available to children at each health and human services agency or local mental health or intellectual and developmental disability [mental retardation] authority, including long-term care programs and services available under a Section 1915(c) waiver program.

SECTION 2.069. Section 531.02492, Government Code, is amended to read as follows:

Sec. 531.02492. DELIVERY OF HEALTH AND HUMAN SERVICES TO 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.]

(b) The commission shall electronically publish on the commission's Internet website a biennial report and, on or before the date the report is due, shall notify the governor, the lieutenant governor, the speaker of the house of representatives, the comptroller, the Legislative Budget Board, and the appropriate legislative committees that the report is available on the commission's Internet website. The report must address the efforts of the health and human services agencies to provide health and human services to children younger than six years of age. The report may contain recommendations by the commission to better coordinate state agency programs relating to the delivery of health and human services to children younger than six years of age and may propose joint agency collaborative programs.

[(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 follow the rules adopted by the commissioner under this section.]

SECTION 2.070. Section 531.0271, Government Code, is amended to read as follows:

Sec. 531.0271. HEALTH AND HUMAN SERVICES AGENCIES OPERATING BUDGETS. The commission may, within the limits established by and subject to the General Appropriations Act, transfer amounts appropriated to health and human services agencies among the agencies to:

agencies to:

- (1) enhance the receipt of federal money under the federal money [~~funds~~] management system established under Section 531.028;
- (2) achieve efficiencies in the administrative support functions of the agencies; and
- (3) perform the functions assigned to the executive commissioner under Section 531.005.

SECTION 2.071. Section 531.0273, Government Code, is amended to read as follows:

Sec. 531.0273. INFORMATION RESOURCES PLANNING AND MANAGEMENT [~~ADVISORY COMMITTEE~~]. (a) The commission is responsible for strategic planning for information resources at each health and human services agency and shall direct the management of information resources at each health and human services agency. The commission shall:

(1) develop a coordinated strategic plan for information resources management that:

- (A) covers a five-year period;
- (B) defines objectives for information resources management at each health and human services agency;
- (C) prioritizes information resources projects and implementation of new technology for all health and human services agencies:

(D) integrates planning and development of each information resources system used by a health and human services agency into a coordinated information resources management planning and development system established by the commission;

(E) establishes standards for information

76-1 resources system security and that promotes the ability of
76-2 information resources systems to operate with each other;

76-3 (F) achieves economies of scale and related
76-4 benefits in purchasing for health and human services information
76-5 resources systems; and

76-6 (G) is consistent with the state strategic plan
76-7 for information resources developed under Chapter 2054;

76-8 (2) establish information resources management
76-9 policies, procedures, and technical standards and ensure
76-10 compliance with those policies, procedures, and standards; and

76-11 (3) review and approve the information resources
76-12 deployment review and biennial operating plan of each health and
76-13 human services agency.

76-14 (c) A health and human services agency may not submit its
76-15 plans to the Department of Information Resources or the Legislative
76-16 Budget Board under Subchapter E, Chapter 2054, until those plans
76-17 are approved by the commission.

76-18 [d] The commission shall appoint an advisory committee
76-19 composed of:

76-20 [1] information resources managers for state
76-21 agencies and for private employers; and

76-22 [2] the directors, executive directors, and
76-23 commissioners of health and human services agencies.

76-24 [e] The advisory committee appointed under Subsection (d)
76-25 shall advise the commission with respect to the implementation of
76-26 the commission's duties under Subsection (a)(1) and:

76-27 [1] shall advise the commission about:

76-28 [A] overall goals and objectives for
76-29 information resources management for all health and human services
76-30 agencies;

76-31 [B] coordination of agency information
76-32 resources management plans;

76-33 [C] development of short term and long term
76-34 strategies for:

76-35 [i] implementing information resources
76-36 management policies, procedures, and technical standards; and

76-37 [ii] ensuring compatibility of
76-38 information resources systems across health and human services
76-39 agencies as technology changes;

76-40 [D] information resources training and skill
76-41 development for health and human services agency employees and
76-42 policies to facilitate recruitment and retention of trained
76-43 employees;

76-44 [E] standards for determining:

76-45 [i] the circumstances in which obtaining
76-46 information resources services under contract is appropriate;

76-47 [ii] the information resources services
76-48 functions that must be performed by health and human services
76-49 agency information resources services employees; and

76-50 [iii] the information resources services
76-51 skills that must be maintained by health and human services agency
76-52 information resources services employees;

76-53 [F] optimization of the use of information
76-54 resources technology that is in place at health and human services
76-55 agencies; and

76-56 [G] existing and potential future information
76-57 resources technologies and practices and the usefulness of those
76-58 technologies and practices to health and human services agencies;
76-59 and

76-60 [2] shall review and make recommendations to the
76-61 commission relating to the consolidation and improved efficiency of
76-62 information resources management functions, including:

76-63 [A] cooperative leasing of information
76-64 resources systems equipment;

76-65 [B] consolidation of data centers;

76-66 [C] improved network operations;

76-67 [D] technical support functions, including help
76-68 desk services, call centers, and data warehouses;

76-69 [E] administrative applications;

77-1 [(F) purchases of standard software;
 77-2 [(G) joint training efforts;
 77-3 [(H) recruitment and retention of trained agency
 77-4 employees;
 77-5 [(I) video conferencing; and
 77-6 [(J) other related opportunities for improved
 77-7 efficiency.

77-8 [(f) A member of the advisory committee may not receive
 77-9 compensation, but is entitled to reimbursement of the travel
 77-10 expenses incurred by the member while conducting the business of
 77-11 the committee, as provided by the General Appropriations Act.

77-12 [(g) The advisory committee is not subject to Chapter 2110.]

77-13 SECTION 2.072. Section 531.028(b), Government Code, is
 77-14 amended to read as follows:

77-15 (b) The executive commissioner shall establish a federal
 77-16 money management system to coordinate and monitor the use of
 77-17 federal money that is received by health and human services
 77-18 agencies to ensure that the money is spent in the most efficient
 77-19 manner and shall:

77-20 (1) establish priorities for use of federal money by
 77-21 all health and human services agencies, in coordination with the
 77-22 coordinated strategic plan established under Section 531.022 and
 77-23 the budget prepared under Section 531.026;

77-24 (2) coordinate and monitor the use of federal money
 77-25 for health and human services to ensure that the money is spent in
 77-26 the most cost-effective manner throughout the health and human
 77-27 services system;

77-28 (3) review and approve all federal funding plans for
 77-29 health and human services in this state;

77-30 (4) estimate available federal money, including
 77-31 earned federal money, and monitor unspent money;

77-32 (5) ensure that the state meets federal requirements
 77-33 relating to receipt of federal money for health and human services,
 77-34 including requirements relating to state matching money and
 77-35 maintenance of effort;

77-36 (6) transfer appropriated amounts as described by
 77-37 Section 531.0271; and

77-38 (7) ensure that each governmental entity identified
 77-39 under Section 531.022(e) has access to complete and timely
 77-40 information about all sources of federal money for health and human
 77-41 services programs and that technical assistance is available to
 77-42 governmental entities seeking grants of federal money to provide
 77-43 health and human services.

77-44 SECTION 2.073. Section 531.031, Government Code, is amended
 77-45 to read as follows:

77-46 Sec. 531.031. MANAGEMENT INFORMATION AND COST ACCOUNTING
 77-47 SYSTEM. The executive commissioner shall establish a management
 77-48 information system and a cost accounting system for all health and
 77-49 human services that is compatible with and meets the requirements
 77-50 of the uniform statewide accounting project.

77-51 SECTION 2.074. (a) Section 531.0312(b), Government Code, as
 77-52 amended by Chapters 50 (S.B. 397) and 1460 (H.B. 2641), Acts of the
 77-53 76th Legislature, Regular Session, 1999, and Chapter 937 (H.B.
 77-54 3560), Acts of the 80th Legislature, Regular Session, 2007, is
 77-55 reenacted to read as follows:

77-56 (b) The commission shall cooperate with the Records
 77-57 Management Interagency Coordinating Council and the comptroller to
 77-58 establish a single method of categorizing information about health
 77-59 and human services to be used by the Records Management Interagency
 77-60 Coordinating Council and the Texas Information and Referral
 77-61 Network. The network, in cooperation with the council and the
 77-62 comptroller, shall ensure that:

77-63 (1) information relating to health and human services
 77-64 is included in each residential telephone directory published by a
 77-65 for-profit publisher and distributed to the public at minimal or no
 77-66 cost; and

77-67 (2) the single method of categorizing information
 77-68 about health and human services is used in a residential telephone
 77-69 directory described by Subdivision (1).

(c) A health and human services agency or a public or private entity receiving state-appropriated funds to provide health and human services shall provide the Texas Information and Referral Network and the Records Management Interagency Coordinating Council with information about the health and human services provided by the agency or entity for inclusion in the statewide information and referral network, residential telephone directories described by Subsection (b), and any other materials produced under the direction of the network or the council. The agency or entity shall provide the information in the format required by the Texas Information and Referral Network or the Records Management Interagency Coordinating Council [a form determined by the commissioner] and shall update the information at least quarterly or as required by the network or the council.

(c) Section 531.0312(d), Government Code, is amended to read as follows:

(d) The Texas Department of Housing and Community Affairs shall provide the Texas Information and Referral Network with information regarding the department's housing and community affairs programs for inclusion in the statewide information and referral network. The department shall provide the information in a form determined by the commission [commissioner] and shall update the information at least quarterly.

SECTION 2.075. Section 531.0317(c), Government Code, is amended to read as follows:

(c) The Internet site must:

(1) contain information that is:

(A) in a concise and easily understandable and accessible format; and

(B) organized by the type of service provided rather than by the agency or provider delivering the service;

(2) contain eligibility criteria for each agency

program; (3) contain application forms for each of the public assistance programs administered by health and human services agencies, including application forms for:

(A) financial assistance under Chapter 31, Human Resources Code;

(B) Medicaid [medical assistance under Chapter 32, Human Resources Code]; and
(C) nutritional assistance under Chapter 33,

Human Resources Code;

(4) to avoid duplication of functions and efforts, provide a link that provides access to a site maintained by the Texas Information and Referral Network under Section [531.0313](#);

- (5) contain the telephone number and, to the extent available, the electronic mail address for each health and human services agency and local provider of health and human services;
- (6) be designed in a manner that allows a member of the public to send questions about each agency's programs or services electronically and receive responses to the questions from the

agency electronically; and

(7) be updated at least quarterly.

SECTION 2.076. Sections 531.0318(b) and (c), Government Code, are amended to read as follows:

Code, are amended to read as follows:

(b) The information for consumers required by this section must:

(1) be presented in a manner that is easily accessible to, and understandable by, a consumer; and

(2) allow a consumer to make informed choices concerning long-term care services and include:

79-1 counties through different programs operated by the commission and
 79-2 by the Department of Aging and Disability Services, so that an
 79-3 individual can easily understand the service options available in
 79-4 the area in which that individual lives; and

79-5 (B) for the [Medicaid] Star + Plus Medicaid
 79-6 managed care [pilot] program, information that allows a consumer to
 79-7 evaluate the performance of each participating plan issuer,
 79-8 including for each issuer, in an accessible format such as a table:

79-9 (i) the enrollment in each county;
 79-10 (ii) additional "value-added" services
 79-11 provided;

79-12 (iii) a summary of the financial
 79-13 statistical report required under Subchapter A, Chapter 533;

79-14 (iv) complaint information;

79-15 (v) any sanction or penalty imposed by any
 79-16 state agency, including a sanction or penalty imposed by the
 79-17 commission or the Texas Department of Insurance;

79-18 (vi) information concerning consumer
 79-19 satisfaction; and

79-20 (vii) other data, including relevant data
 79-21 from reports of external quality review organizations, that may be
 79-22 used by the consumer to evaluate the quality of the services
 79-23 provided.

79-24 (c) In addition to providing the information required by
 79-25 this section through the Internet, the commission or the Department
 79-26 of Aging and Disability Services shall, on request by a consumer
 79-27 without Internet access, provide the consumer with a printed copy
 79-28 of the information from the website. The commission or department
 79-29 may charge a reasonable fee for printing the information. The
79-30 executive commissioner shall establish the fee by rule.

79-31 SECTION 2.077. Section 531.033, Government Code, is amended
 79-32 to read as follows:

79-33 Sec. 531.033. RULES. The executive commissioner shall
 79-34 adopt rules necessary to carry out the commission's duties under
 79-35 this chapter.

79-36 SECTION 2.078. Section 531.0335(b), Government Code, is amended
 79-37 to read as follows:

79-38 (b) The executive commissioner by rule shall prohibit a
 79-39 health and human services agency from taking a punitive action
 79-40 against a person responsible for a child's care, custody, or
 79-41 welfare for failure of the person to ensure that the child receives
 79-42 the immunization series prescribed by Section 161.004, Health and
 79-43 Safety Code.

79-44 SECTION 2.079. Section 531.035, Government Code, is amended
 79-45 to read as follows:

79-46 Sec. 531.035. DISPUTE ARBITRATION. The executive
 79-47 commissioner shall arbitrate and render the final decision on
 79-48 interagency disputes.

79-49 SECTION 2.080. The heading to Section 531.0381, Government
 79-50 Code, is amended to read as follows:

79-51 Sec. 531.0381. CERTAIN GIFTS AND GRANTS TO HEALTH AND HUMAN
 79-52 SERVICES AGENCIES.

79-53 SECTION 2.081. Sections 531.0381(b) and (c), Government
 79-54 Code, are amended to read as follows:

79-55 (b) Acceptance of a gift or grant under this section is
 79-56 subject to the written approval of the executive commissioner.
 79-57 Chapter 575 does not apply to a gift or grant under this section.

79-58 (c) The executive commissioner may adopt rules and
 79-59 procedures to implement this section. The rules must ensure that
 79-60 acceptance of a gift or grant under this section is consistent with
 79-61 any applicable federal law or regulation and does not adversely
 79-62 affect federal financial participation in any state program,
 79-63 including [the state] Medicaid [program].

79-64 SECTION 2.082. Section 531.0392(a), Government Code, is
 79-65 amended to read as follows:

79-66 (a) In this section, "dually eligible individual" means an
 79-67 individual who is eligible to receive health care benefits under
 79-68 both [the] Medicaid and the Medicare program [programs].

79-69 SECTION 2.083. Section 531.041, Government Code, is amended

80-1 to read as follows:

80-2 Sec. 531.041. GENERAL POWERS AND DUTIES. The executive
 80-3 commissioner and the commission have [has] all the powers and
 80-4 duties necessary to administer this chapter.

80-5 SECTION 2.084. Section 531.042(a), Government Code, is
 80-6 amended to read as follows:

80-7 (a) The executive commissioner by rule shall require each
 80-8 health and human services agency to provide to each patient or
 80-9 client of the agency and to at least one family member of the
 80-10 patient or client, if possible, information regarding all care and
 80-11 support options available to the patient or client, including
 80-12 community-based services appropriate to the needs of the patient or
 80-13 client, before the agency allows the patient or client to be placed
 80-14 in a care setting, including a nursing facility [~~home~~],
 80-15 intermediate care facility for individuals with an intellectual
 80-16 disability [~~the mentally retarded~~], or general residential
 80-17 operation for children with an intellectual disability that is
 80-18 [~~institution for the mentally retarded~~] licensed [~~or operated~~] by
 80-19 the Department of Family and Protective [~~and Regulatory~~] Services,
 80-20 to receive care or services provided by the agency or by a person
 80-21 under an agreement with the agency.

80-22 SECTION 2.085. Section 531.043(a), Government Code, is
 80-23 amended to read as follows:

80-24 (a) In conjunction with the appropriate state agencies, the
 80-25 executive commissioner shall develop a plan for access to
 80-26 individualized long-term care services for persons with functional
 80-27 limitations or medical needs and their families that assists those
 80-28 persons in achieving and maintaining the greatest possible
 80-29 independence, autonomy, and quality of life.

80-30 SECTION 2.086. Section 531.044, Government Code, is amended
 80-31 to read as follows:

80-32 Sec. 531.044. FINANCIAL ASSISTANCE [~~AEDC~~] RECIPIENTS
 80-33 ELIGIBLE FOR FEDERAL PROGRAMS. [(a)] The commission shall assist
 80-34 recipients of financial assistance under Chapter 31, Human
 80-35 Resources Code, who are eligible for assistance under federal
 80-36 programs to apply for benefits under those federal programs. The
 80-37 commission may delegate this responsibility to a health and human
 80-38 services [~~service~~] agency, contract with a unit of local
 80-39 government, or use any other cost-effective method to assist
 80-40 financial assistance recipients who are eligible for federal
 80-41 programs.

80-42 [(b)] The commission shall organize a planning group
 80-43 involving the Texas Department of Human Services, the Texas
 80-44 Education Agency, and the Texas Rehabilitation Commission to:

80-45 [(1)] improve workload coordination between these
 80-46 agencies as necessary to administer this section; and
 80-47 [(2)] provide information and help train employees to
 80-48 correctly screen applicants under this section as requested by the
 80-49 commission.]

80-50 SECTION 2.087. Sections 531.045(b) and (g), Government
 80-51 Code, are amended to read as follows:

80-52 (b) The task force is composed of:

80-53 (1) a representative of:

80-54 (A) the attorney general's office, appointed by
 80-55 the attorney general;

80-56 (B) the comptroller's office, appointed by the
 80-57 comptroller;

80-58 (C) the commission, appointed by the executive
 80-59 commissioner;

80-60 (D) the [~~Texas~~] Department of State Health
 80-61 Services, appointed by the commissioner of state health services
 80-62 [~~public health~~];

80-63 (E) the [~~Texas~~] Department of Aging and
 80-64 Disability [~~Human~~] Services, appointed by the commissioner of aging
 80-65 and disability [~~human~~] services;

80-66 (F) the Texas Workforce Commission, appointed by
 80-67 the executive director of that agency; and

80-68 (G) the Department of Assistive and
 80-69 Rehabilitative Services [~~Texas Rehabilitation Commission~~],

81-1 appointed by the commissioner of assistive and rehabilitative
 81-2 services [~~that agency~~]; and
 81-3 (2) two representatives of each of the following
 81-4 groups, appointed by the comptroller:
 81-5 (A) retailers who maintain electronic benefits
 81-6 transfer point-of-sale equipment;
 81-7 (B) banks or owners of automatic teller machines;
 81-8 and
 81-9 (C) consumer or client advocacy organizations.
 81-10 (g) The task force shall:
 81-11 (1) serve as this state's counterpoint to the federal
 81-12 electronic benefits transfer task force;
 81-13 (2) identify benefit programs that merit addition to
 81-14 this state's electronic benefits transfer system;
 81-15 (3) identify and address problems that may occur if a
 81-16 program is added;
 81-17 (4) pursue state-federal partnerships to facilitate
 81-18 the development and expansion of this state's electronic benefits
 81-19 transfer system;
 81-20 (5) track and distribute federal legislation and
 81-21 information from other states that relate to electronic benefits
 81-22 transfer systems;
 81-23 (6) ensure efficiency and planning coordination in
 81-24 relation to this state's electronic benefits transfer system;
 81-25 (7) ~~[develop a plan using the experience and expertise~~
 81-26 ~~of appropriate state agencies for the use of a photograph or other~~
 81-27 ~~imaging technology on all electronic benefits transfer cards and,~~
 81-28 ~~if proven to be effective in reducing fraud and misuse, begin using~~
 81-29 ~~the new cards starting with replacement cards for cards that were~~
 81-30 ~~used in the program on June 13, 1995,~~
 81-31 [~~(8)~~] review current and potential fraud problems with
 81-32 electronic benefits transfer and propose methods to prevent or
 81-33 deter fraud;
 81-34 [~~(9) evaluate the feasibility of adding the Medicaid~~
 81-35 ~~program to the state's electronic benefits transfer system,~~] and
 81-36 (~~8~~) [~~(10)~~] develop a plan to assist beneficiaries of
 81-37 public programs to obtain bank accounts.

81-38 SECTION 2.088. Section 531.047(a), Government Code, is
 81-39 amended to read as follows:

81-40 (a) The executive commissioner [~~commission~~], after
 81-41 consulting with representatives from the Department of Family and
 81-42 Protective [and Regulatory] Services, the Texas Juvenile Justice
 81-43 Department [~~Probation Commission~~], the Department of Aging and
 81-44 Disability Services, and the [~~Texas~~] Department of State Health
 81-45 Services [~~Mental Health and Mental Retardation~~], shall by rule
 81-46 adopt result-oriented standards that a provider of substitute care
 81-47 services for children under the care of the state must achieve.

81-48 SECTION 2.089. Section 531.048, Government Code, is amended
 81-49 to read as follows:

81-50 Sec. 531.048. CASELOAD STANDARDS. (a) The executive [~~After~~
 81-51 ~~considering the recommendations of the caseload standards advisory~~
 81-52 ~~committees under Section 531.049(e), the~~] commissioner may
 81-53 establish caseload standards and other standards relating to
 81-54 caseloads for each category of caseworker employed by the [~~Texas~~
 81-55 ~~Department of Human Services or the~~] Department of Family and
 81-56 Protective [and Regulatory] Services.

81-57 (b) In establishing standards under this section, the
 81-58 executive commissioner shall:

81-59 (1) ensure the standards are based on the actual
 81-60 duties of the caseworker;

81-61 (2) ensure the caseload standards are reasonable and
 81-62 achievable;

81-63 (3) ensure the standards are consistent with existing
 81-64 professional caseload standards;

81-65 (4) consider standards developed by other states for
 81-66 caseworkers in similar positions of employment; and

81-67 (5) ensure the standards are consistent with existing
 81-68 caseload standards of other state agencies.

81-69 (c) Subject to the availability of funds appropriated by the

82-1 legislature, [~~the commissioner of human services and~~] the
 82-2 ~~commissioner [executive director]~~ of the Department of Family and
 82-3 ~~Protective [and Regulatory]~~ Services shall use the standards
 82-4 established by the executive commissioner under this section to
 82-5 determine the number of personnel to assign as caseworkers for the
 82-6 department [~~their respective agencies~~].

82-7 (d) Subject to the availability of funds appropriated by the
 82-8 legislature, the [~~Texas Department of Human Services and the~~]
 82-9 Department of Family and Protective [and Regulatory] Services shall
 82-10 use the standards established by the executive commissioner to
 82-11 assign caseloads to individual caseworkers employed by the
 82-12 department [~~those agencies~~].

82-13 [~~(e) The commissioner shall include a recommendation made~~
 82-14 ~~to the commissioner by a caseload standards advisory committee~~
 82-15 ~~under Section 531.049(e) in the strategic plan of the agency that is~~
 82-16 ~~the subject of the recommendation.~~]

82-17 (f) Nothing in this section may be construed to create a
 82-18 cause of action.

82-19 [~~(g) The executive commissioner shall develop and, subject~~
 82-20 ~~to the availability of funds, implement a caseload management~~
 82-21 ~~reduction plan to reduce, not later than January 1, 2011, caseloads~~
 82-22 ~~for caseworkers employed by the adult protective services division~~
 82-23 ~~of the Department of Family and Protective Services to a level that~~
 82-24 ~~does not exceed professional caseload standards by more than five~~
 82-25 ~~cases per caseworker. The plan must provide specific annual~~
 82-26 ~~targets for caseload reduction.]~~

82-27 SECTION 2.090. Section 531.050, Government Code, is amended
 82-28 to read as follows:

82-29 Sec. 531.050. MINIMUM COLLECTION GOAL. (a) Before August
 82-30 31 of each year, the executive commissioner [~~commission, after~~
 82-31 ~~consulting with the Texas Department of Human Services,~~] by rule
 82-32 shall set a minimum goal for the commission [~~Texas Department of~~
 82-33 ~~Human Services~~] that specifies the percentage of the amount of
 82-34 benefits granted by the commission [~~department~~] in error under the
 82-35 supplemental nutrition assistance [~~food stamp~~] program or the
 82-36 program of financial assistance under Chapter 31, Human Resources
 82-37 Code, that the commission [~~department~~] should recover. The
 82-38 executive commissioner [~~commission~~] shall set the percentage based
 82-39 on comparable recovery rates reported by other states or other
 82-40 appropriate factors identified by the executive commissioner
 82-41 [~~commission and the department~~].

82-42 (b) If the commission [~~department~~] fails to meet the goal
 82-43 set under Subsection (a) for the fiscal year, the executive
 82-44 commissioner shall notify the comptroller, and the comptroller
 82-45 shall reduce the commission's [~~department's~~] general revenue
 82-46 appropriation by an amount equal to the difference between the
 82-47 amount of state funds the commission [~~department~~] would have
 82-48 collected had the commission [~~department~~] met the goal and the
 82-49 amount of state funds the commission [~~department~~] actually
 82-50 collected.

82-51 (c) The executive commissioner [~~commission~~], the governor,
 82-52 and the Legislative Budget Board shall monitor the commission's
 82-53 [~~department's~~] performance in meeting the goal set under this
 82-54 section. The commission [~~department~~] shall cooperate by providing
 82-55 to [~~the commission~~] the governor[~~–~~] and the Legislative Budget
 82-56 Board, on request, information concerning the commission's
 82-57 [~~department's~~] collection efforts.

82-58 SECTION 2.091. Section 531.051(c), Government Code, is
 82-59 amended to read as follows:

82-60 (c) In adopting rules for the consumer direction models, the
 82-61 executive commissioner [~~commission~~] shall:

82-62 (1) with assistance from the work group established
 82-63 under Section 531.052, determine which services are appropriate and
 82-64 suitable for delivery through consumer direction;

82-65 (2) ensure that each consumer direction model is
 82-66 designed to comply with applicable federal and state laws;

82-67 (3) maintain procedures to ensure that a potential
 82-68 consumer or the consumer's legally authorized representative has
 82-69 adequate and appropriate information, including the

83-1 responsibilities of a consumer or representative under each service
 83-2 delivery option, to make an informed choice among the types of
 83-3 consumer direction models;

83-4 (4) require each consumer or the consumer's legally
 83-5 authorized representative to sign a statement acknowledging
 83-6 receipt of the information required by Subdivision (3);

83-7 (5) maintain procedures to monitor delivery of
 83-8 services through consumer direction to ensure:

83-9 (A) adherence to existing applicable program
 83-10 standards;

83-11 (B) appropriate use of funds; and
 83-12 (C) consumer satisfaction with the delivery of
 83-13 services;

83-14 (6) ensure that authorized program services that are
 83-15 not being delivered to a consumer through consumer direction are
 83-16 provided by a provider agency chosen by the consumer or the
 83-17 consumer's legally authorized representative; and

83-18 (7) work in conjunction with the work group
 83-19 established under Section 531.052 to set a timetable to complete
 83-20 the implementation of the consumer direction models.

83-21 SECTION 2.092. Sections 531.055(a) and (e), Government
 83-22 Code, are amended to read as follows:

83-23 (a) Each health and human services agency, the Texas
 83-24 Correctional Office [Council] on Offenders with Medical or Mental
 83-25 Impairments, the Texas Department of Criminal Justice, the Texas
 83-26 Department of Housing and Community Affairs, the Texas Education
 83-27 Agency, the Texas Workforce Commission, and the Texas Juvenile
 83-28 Justice Department [Youth Commission] shall enter into [adopt] a
 83-29 joint memorandum of understanding to promote a system of
 83-30 local-level interagency staffing groups to coordinate services for
 83-31 persons needing multiagency services.

83-32 (e) The agencies shall ensure that a state-level
 83-33 interagency staffing group provides a biennial report to the
 83-34 administrative head [executive director] of each agency, the
 83-35 legislature, and the governor that includes:

83-36 (1) the number of persons served through the
 83-37 local-level interagency staffing groups and the outcomes of the
 83-38 services provided;

83-39 (2) a description of any barriers identified to the
 83-40 state's ability to provide effective services to persons needing
 83-41 multiagency services; and

83-42 (3) any other information relevant to improving the
 83-43 delivery of services to persons needing multiagency services.

83-44 SECTION 2.093. Section 531.056, Government Code, is amended
 83-45 to read as follows:

83-46 Sec. 531.056. REVIEW OF SURVEY PROCESS IN CERTAIN
 83-47 INSTITUTIONS AND FACILITIES. (a) The commission shall adopt
 83-48 procedures to review:

83-49 (1) citations or penalties assessed for a violation of
 83-50 a rule or law against an institution or facility licensed under
 83-51 Chapter 242, 247, or 252, Health and Safety Code, or certified to
 83-52 participate in Medicaid administered in accordance with Chapter 32,
 83-53 Human Resources Code, considering:

83-54 (A) the number of violations by geographic
 83-55 region;

83-56 (B) the patterns of violations in each region;
 83-57 and

83-58 (C) the outcomes following the assessment of a
 83-59 penalty or citation; and

83-60 (2) the performance of duties by employees and agents
 83-61 of a [the Texas Department of Human Services or another] state
 83-62 agency responsible for licensing, inspecting, surveying, or
 83-63 investigating institutions and facilities licensed under Chapter
 83-64 242, 247, or 252, Health and Safety Code, or certified to
 83-65 participate in Medicaid administered in accordance with Chapter 32,
 83-66 Human Resources Code, related to:

83-67 (A) complaints received by the commission; or

83-68 (B) any standards or rules violated by an
 83-69 employee or agent of a state agency.

84-1 SECTION 2.094. Section 531.057, Government Code, is amended
84-2 to read as follows:

84-3 Sec. 531.057. VOLUNTEER ADVOCATE PROGRAM FOR THE ELDERLY.

84-4 (a) In this section:

84-5 (1) "Designated caregiver" means:

84-6 (A) a person designated as a caregiver by an
84-7 elderly individual receiving services from or under the direction
84-8 of the commission or a health and human services agency; or

84-9 (B) a court-appointed guardian of an elderly
84-10 individual receiving services from or under the direction of the
84-11 commission or a health and human services agency.

84-12 (2) "Elderly" means individuals who are at least 60
84-13 years of age.

84-14 (3) "Program" means the volunteer advocate program
84-15 created under this section for the elderly receiving services from
84-16 or under the direction of the commission or a health and human
84-17 services agency [created under this section].

84-18 (4) "Volunteer advocate" means a person who
84-19 successfully completes the volunteer advocate curriculum described
84-20 by Subsection (c)(2).

84-21 [(b) The executive commissioner shall coordinate with the
84-22 advisory committee established under Section 531.0571 to develop a
84-23 volunteer advocate program for the elderly receiving services from
84-24 or under the direction of the commission or a health and human
84-25 services agency.]

84-26 (c) [In developing the] program[, the executive
84-27 commissioner and the advisory committee] shall adhere to the
84-28 following principles:

84-29 (1) the intent of the program is to evaluate, through
84-30 operation of pilot projects, whether providing the services of a
84-31 trained volunteer advocate selected by an elderly individual or the
84-32 individual's designated caregiver is effective in achieving the
84-33 following goals:

84-34 (A) extend the time the elderly individual can
84-35 remain in an appropriate home setting;

84-36 (B) maximize the efficiency of services
84-37 delivered to the elderly individual by focusing on services needed
84-38 to sustain family caregiving;

84-39 (C) protect the elderly individual by providing a
84-40 knowledgeable third party to review the quality of care and
84-41 services delivered to the individual and the care options available
84-42 to the individual and the individual's family; and

84-43 (D) facilitate communication between the elderly
84-44 individual or the individual's designated caregiver and providers
84-45 of health care and other services;

84-46 (2) a volunteer advocate curriculum must be maintained
84-47 [established] that incorporates best practices as determined and
84-48 recognized by a professional organization recognized in the elder
84-49 health care field;

84-50 (3) the use of pro bono assistance from qualified
84-51 professionals must be maximized in modifying [developing] the
84-52 volunteer advocate curriculum and [designing] the program;

84-53 (4) trainers must be certified on the ability to
84-54 deliver training;

84-55 (5) training shall be offered through multiple
84-56 community-based organizations; and

84-57 (6) participation in the program is voluntary and must
84-58 be initiated by the elderly individual or the individual's
84-59 designated caregiver.

84-60 (d) The executive commissioner may enter into agreements
84-61 with appropriate nonprofit organizations for the provision of
84-62 services under the program. A nonprofit organization is eligible
84-63 to provide services under the program if the organization:

84-64 (1) has significant experience in providing services
84-65 to elderly individuals;

84-66 (2) has the capacity to provide training and
84-67 supervision for individuals interested in serving as volunteer
84-68 advocates; and

84-69 (3) meets any other criteria prescribed by the

85-1 executive commissioner.

85-2 (e) The commission shall fund the program, including the
 85-3 design and evaluation of pilot projects, modification
 85-4 [~~development~~] of the volunteer advocate curriculum, and training of
 85-5 volunteers, through existing appropriations to the commission.

85-6 (f) Notwithstanding Subsection (e), the commission may
 85-7 accept gifts, grants, or donations for the program from any public
 85-8 or private source to:

- 85-9 (1) carry out the design of the program;
- 85-10 (2) develop criteria for evaluation of any proposed
 pilot projects operated under the program;
- 85-11 (3) modify [~~develop~~] a volunteer advocate training
 curriculum;
- 85-12 (4) conduct training for volunteer advocates; and
- 85-13 (5) develop a request for offers to conduct any
 proposed pilot projects under the program.

85-14 (g) The executive commissioner may adopt rules as necessary
 85-15 to implement the program.

85-16 SECTION 2.095. Sections [531.0571\(a\)](#) and (b), Government
 85-17 Code, are amended to read as follows:

85-18 (a) The executive commissioner shall appoint an advisory
 85-19 committee composed of the following members:

- 85-20 (1) a representative of the Department of Aging and
 Disability Services;
- 85-21 (2) a representative of the Department of Assistive
 and Rehabilitative Services;
- 85-22 (3) a representative of the Department of State Health
 Services;
- 85-23 (4) a representative of the Texas Silver-Haired
 Legislature;
- 85-24 (5) a representative of an area agency on aging;
- 85-25 (6) a representative of United Ways of Texas;
- 85-26 (7) a home health provider;
- 85-27 (8) an assisted living provider;
- 85-28 (9) a nursing facility [~~home~~] provider;
- 85-29 (10) a representative of Texas CASA;
- 85-30 (11) a licensed gerontologist; and
- 85-31 (12) a representative of AARP.

85-32 (b) The advisory committee shall advise the executive
 85-33 commissioner on [~~the development of~~] the volunteer advocate program
 85-34 for the elderly [~~developed~~] under Section [531.057](#), including
 85-35 reviewing and commenting on:

- 85-36 (1) program design and selection of any pilot sites
 operated under the program;
- 85-37 (2) the volunteer advocate training curriculum;
- 85-38 (3) requests for oversight requirements for any pilot
 projects operated under the program;
- 85-39 (4) evaluation of any pilot projects operated under
 the program;
- 85-40 (5) requirements for periodic reports to the elderly
 individual or the individual's designated caregiver and providers
 of health care or other services; and
- 85-41 (6) other issues as requested by the executive
 commissioner.

85-42 SECTION 2.096. Sections [531.058\(a\)](#), (b), and (d),
 85-43 Government Code, are amended to read as follows:

85-44 (a) The executive commissioner [~~commission~~] by rule shall
 85-45 establish an informal dispute resolution process in accordance with
 85-46 this section. The process must provide for adjudication by an
 85-47 appropriate disinterested person of disputes relating to a proposed
 85-48 enforcement action or related proceeding of the commission [~~Texas~~
 85-49 ~~Department of Human Services~~] under Section [32.021\(d\)](#), Human
 85-50 Resources Code, or the Department of Aging and Disability Services
 85-51 under Chapter 242, 247, or 252, Health and Safety Code. The
 85-52 informal dispute resolution process must require:

- 85-53 (1) an institution or facility to request informal
 dispute resolution not later than the 10th calendar day after
 notification by the commission or department, as applicable, of the
 violation of a standard or standards; and

(2) the commission to complete the process not later than:

(A) the 30th calendar day after receipt of a request from an institution or facility, other than an assisted living facility, for informal dispute resolution; or

(B) the 90th calendar day after receipt of a request from an assisted living facility for informal dispute resolution.

(b) The executive commissioner [commission] shall adopt rules to adjudicate claims in contested cases.

(d) The executive commissioner [commission] shall use a negotiated rulemaking process and engage a qualified impartial third party as provided by Section 2009.053, with the goal of the executive commissioner adopting rules that are fair and impartial to all parties not later than January 1, 2015. This subsection expires September 1, 2015.

SECTION 2.097. Section 531.059, Government Code, is amended to read as follows:

Sec. 531.059. VOUCHER PROGRAM FOR TRANSITIONAL LIVING ASSISTANCE FOR PERSONS WITH DISABILITIES. (a) In this section:

(1) "Institutional housing" means:

(A) an ICF-IID [~~ICF-MR~~], as defined by Section 531.002, Health and Safety Code;

(B) a nursing facility;

(C) a state hospital, state supported living center [~~school~~], or state center maintained and managed by the [Texas] Department of State Health Services or the Department of Aging and Disability Services [Mental Health and Mental Retardation];

(D) a general residential operation for children with an intellectual disability that is [an institution for the mentally retarded] licensed [or operated] by the Department of Family and Protective Services; or

(E) a general residential operation, as defined by Section 42.002, Human Resources Code.

(2) "Integrated housing" means housing in which a person with a disability resides or may reside that is found in the community but that is not exclusively occupied by persons with disabilities and their care providers.

(b) Subject to the availability of funds, the commission shall coordinate with the [Texas Department of Human Services, the] Texas Department of Housing and Community Affairs, the Department of State Health Services, and the [Texas] Department of Aging and Disability Services [Mental Health and Mental Retardation] to develop a housing assistance program to assist persons with disabilities in moving from institutional housing to integrated housing. In developing the program, the agencies shall address:

(1) eligibility requirements for assistance;
(2) the period during which a person with a disability may receive assistance;

- (3) the types of housing expenses to be covered under the program; and
- (4) the locations at which the program will be

operated.

(c) Subject to the availability of funds, the Department of Aging and Disability Services [commission] shall [~~require the Texas Department of Human Services to implement and~~] administer the housing assistance program under this section. The department shall coordinate with the Texas Department of Housing and Community Affairs in [~~implementing and~~] administering the program, determining the availability of funding from the United States Department of Housing and Urban Development, and obtaining those funds.

(d) The [Texas Department of Human Services and the] Texas Department of Housing and Community Affairs and the Department of Aging and Disability Services shall provide information to the commission as necessary to facilitate the administration [development and implementation] of the housing assistance program.

87-1 SECTION 2.098. Sections 531.060(c)(3) and (4), Government
 87-2 Code, are amended to read as follows:

87-3 (3) "Institution" means any congregate care facility,
 87-4 including:

87-5 (A) a nursing facility [home];
 87-6 (B) an ICF-IID [ICF-MR facility], as defined by
 87-7 Section 531.002, Health and Safety Code;
 87-8 (C) a group home operated by the [Texas]
 87-9 Department of Aging and Disability Services [Mental Health and
 87-10 Mental Retardation]; and
 87-11 (D) a general residential operation for children
 87-12 with an intellectual disability that is [an institution for the
 87-13 mentally retarded] licensed by the Department of Family and
 87-14 Protective [and Regulatory] Services.

87-15 (4) "Waiver services" means services provided under:

87-16 (A) the Medically Dependent Children Program
 87-17 (MDCP);
 87-18 (B) the Community Living Assistance and Support
 87-19 Services (CLASS) waiver program [Program];
 87-20 (C) the Home and Community-based [Waiver]
 87-21 Services (HCS) waiver program [Program, including the HCS-OBRA
 87-22 Program];

87-23 (D) [the Mental Retardation Local Authority
 87-24 Pilot Project (MRLA),
 87-25 (E) the Deaf Blind with Multiple Disabilities
 87-26 (DBMD) waiver program [Deaf, Blind, and Multiply Disabled Program];
 87-27 and

87-28 (E) [(F)] any other Section 1915(c) waiver
 87-29 program that provides long-term care services for children.

87-30 SECTION 2.099. Sections 531.062(a) and (b), Government
 87-31 Code, are amended to read as follows:

87-32 (a) Notwithstanding any other law, the commission may
 87-33 establish one or more pilot projects through which reimbursement
 87-34 under Medicaid [the medical assistance program under Chapter 32,
 87-35 Human Resources Code,] is made to demonstrate the applications of
 87-36 technology in providing services under that program.

87-37 (b) A pilot project established under this section may
 87-38 relate to providing rehabilitation services, services for the aging
 87-39 or persons with disabilities [disabled], or long-term care
 87-40 services, including community care services and support.

87-41 SECTION 2.100. Sections 531.063(a) and (i), Government
 87-42 Code, are amended to read as follows:

87-43 (a) The executive commissioner [commission], by rule[-]
 87-44 shall establish at least one but not more than four call centers for
 87-45 purposes of determining and certifying or recertifying a person's
 87-46 eligibility and need for services related to the programs listed
 87-47 under Section 531.008(c), if cost-effective. [The commission must
 87-48 conduct a public hearing before establishing the initial call
 87-49 center.]

87-50 (i) Notwithstanding Subsection (a), the executive
 87-51 commissioner shall develop and implement policies that provide an
 87-52 applicant for services related to the programs listed under Section
 87-53 531.008(c) with an opportunity to appear in person to establish
 87-54 initial eligibility or to comply with periodic eligibility
 87-55 recertification requirements if the applicant requests a personal
 87-56 interview. In implementing the policies, the commission shall
 87-57 maintain offices to serve applicants who request a personal
 87-58 interview. This subsection does not affect a law or rule that
 87-59 requires an applicant to appear in person to establish initial
 87-60 eligibility or to comply with periodic eligibility recertification
 87-61 requirements.

87-62 SECTION 2.101. Section 531.064(a), Government Code, is
 87-63 amended to read as follows:

87-64 (a) In this section, "vaccines for children program" means
 87-65 the program operated by the [Texas] Department of State Health
 87-66 Services under authority of 42 U.S.C. Section 1396s, as amended.

87-67 SECTION 2.102. Sections 531.067(a), (b), (d), and (g),
 87-68 Government Code, are amended to read as follows:

87-69 (a) The commission shall appoint a Public Assistance Health

88-1 Benefit Review and Design Committee. The committee consists of
 88-2 nine representatives of health care providers participating in
 88-3 [the] Medicaid [program] or the child health plan program, or both.
 88-4 The committee membership must include at least three
 88-5 representatives from each program.

88-6 (b) The executive commissioner shall designate one member
 88-7 to serve as presiding officer for a term of two years.

88-8 (d) The committee shall review and provide recommendations
 88-9 to the commission regarding health benefits and coverages provided
 88-10 under [the state] Medicaid [program], the child health plan
 88-11 program, and any other income-based health care program
 88-12 administered by the commission or a health and human services
 88-13 agency. In performing its duties under this subsection, the
 88-14 committee must:

88-15 (1) review benefits provided under each of the
 88-16 programs; and

88-17 (2) review procedures for addressing high utilization
 88-18 of benefits by recipients.

88-19 (g) In performing the duties under this section, the
 88-20 commission may design and implement a program to improve and
 88-21 monitor clinical and functional outcomes of a recipient of services
 88-22 under Medicaid or the state child health plan [~~or medical~~
 88-23 assistance] program. The program may use financial, clinical, and
 88-24 other criteria based on pharmacy, medical services, and other
 88-25 claims data related to Medicaid or the child health plan [~~or the~~
 88-26 ~~state medical assistance~~] program. The commission must report to
 88-27 the committee on the fiscal impact, including any savings
 88-28 associated with the strategies utilized under this section.

88-29 SECTION 2.103. Section 531.068, Government Code, is amended
 88-30 to read as follows:

88-31 Sec. 531.068. MEDICAID OR OTHER HEALTH BENEFIT COVERAGE.
 88-32 In adopting rules or standards governing [the state] Medicaid
 88-33 [program] or rules or standards for the development or
 88-34 implementation of health benefit coverage for a program
 88-35 administered by the commission or a health and human services
 88-36 agency, the executive commissioner [~~commission and each health and~~
 88-37 ~~human services agency, as appropriate,~~] may take into consideration
 88-38 any recommendation made with respect to health benefits provided
 88-39 under [their respective programs or the state] Medicaid or another
 88-40 of those programs [program] by the Public Assistance Health Benefit
 88-41 Review and Design Committee established under Section 531.067.

88-42 SECTION 2.104. Section 531.0691(a)(1), Government Code, is
 88-43 amended to read as follows:

88-44 (1) "Medicaid Drug Utilization Review Program" means
 88-45 the program operated by the vendor drug program to improve the
 88-46 quality of pharmaceutical care under [the] Medicaid [program].

88-47 SECTION 2.105. Section 531.0693(a), Government Code, is
 88-48 amended to read as follows:

88-49 (a) The commission shall monitor and analyze prescription
 88-50 drug use and expenditure patterns in [the] Medicaid [program]. The
 88-51 commission shall identify the therapeutic prescription drug
 88-52 classes and individual prescription drugs that are most often
 88-53 prescribed to patients or that represent the greatest expenditures.

88-54 SECTION 2.106. Section 531.0694, Government Code, is
 88-55 amended to read as follows:

88-56 Sec. 531.0694. PERIOD OF VALIDITY FOR PRESCRIPTION. In the
 88-57 [~~its~~] rules and standards governing the vendor drug program, the
 88-58 executive commissioner [~~commission~~], to the extent allowed by
 88-59 federal law and laws regulating the writing and dispensing of
 88-60 prescription medications, shall ensure that a prescription written
 88-61 by an authorized health care provider under [the] Medicaid
 88-62 [program] is valid for the lesser of the period for which the
 88-63 prescription is written or one year. This section does not apply to
 88-64 a prescription for a controlled substance, as defined by Chapter
 88-65 481, Health and Safety Code.

88-66 SECTION 2.107. Section 531.0697(a), Government Code, is
 88-67 amended to read as follows:

88-68 (a) This section applies to:

88-69 (1) the vendor drug program for [the] Medicaid and the

89-1 child health plan program [programs];
 89-2 (2) the kidney health care program;
 89-3 (3) the children with special health care needs
 89-4 program; and
 89-5 (4) any other state program administered by the
 89-6 commission that provides prescription drug benefits.

89-7 SECTION 2.108. Sections 531.070(b), (c), and (m),
 89-8 Government Code, are amended to read as follows:

89-9 (b) For purposes of this section, the term "supplemental
 89-10 rebates" means cash rebates paid by a manufacturer to the state on
 89-11 the basis of appropriate quarterly health and human services
 89-12 program utilization data relating to the manufacturer's products,
 89-13 pursuant to a state supplemental rebate agreement negotiated with
 89-14 the manufacturer and, if necessary, approved by the federal
 89-15 government under Section 1927 of the federal Social Security Act
89-16 (42 U.S.C. Section 1396r-8).

89-17 (c) The commission may enter into a written agreement with a
 89-18 manufacturer to accept certain program benefits in lieu of
 89-19 supplemental rebates, as defined by this section, only if:

89-20 (1) the program benefit yields savings that are at
 89-21 least equal to the amount the manufacturer would have provided
 89-22 under a state supplemental rebate agreement during the current
 89-23 biennium as determined by the written agreement;

89-24 (2) the manufacturer posts a performance bond
 89-25 guaranteeing savings to the state, and agrees that if the savings
 89-26 are not achieved in accordance with the written agreement, the
 89-27 manufacturer will forfeit the bond to the state less any savings
 89-28 that were achieved; and

89-29 (3) the program benefit is in addition to other
 89-30 program benefits currently offered by the manufacturer to
 89-31 recipients of Medicaid [medical assistance] or related programs.

89-32 (m) In negotiating terms for a supplemental rebate, the
 89-33 commission shall use the average manufacturer price (AMP), as
 89-34 defined in 42 U.S.C. Section 1396r-8(k)(1) [~~Section 1396r-8(k)(1)
of the Omnibus Budget Reconciliation Act of 1990~~], as the cost basis
 89-35 for the product.

89-36 SECTION 2.109. Section 531.071(a), Government Code, is
 89-37 amended to read as follows:

89-38 (a) Notwithstanding any other state law, information
 89-39 obtained or maintained by the commission regarding prescription
 89-40 drug rebate negotiations or a supplemental Medicaid [medical
 89-41 assistance] or other rebate agreement, including trade secrets,
 89-42 rebate amount, rebate percentage, and manufacturer or labeler
 89-43 pricing, is confidential and not subject to disclosure under
 89-44 Chapter 552.

89-45 SECTION 2.110. Sections 531.073(a), (a-1), (c), and (d),
 89-46 Government Code, are amended to read as follows:

89-47 (a) The executive commissioner [commission], in the [its]
 89-48 rules and standards governing the Medicaid vendor drug program and
 89-49 the child health plan program, shall require prior authorization
 89-50 for the reimbursement of a drug that is not included in the
 89-51 appropriate preferred drug list adopted under Section 531.072,
 89-52 except for any drug exempted from prior authorization requirements
 89-53 by federal law. The executive commissioner [commission] may
 89-54 require prior authorization for the reimbursement of a drug
 89-55 provided through any other state program administered by the
 89-56 commission or a state health and human services agency, including a
 89-57 community mental health center and a state mental health hospital
 89-58 if the commission adopts preferred drug lists under Section 531.072
 89-59 that apply to those facilities and the drug is not included in the
 89-60 appropriate list. The executive commissioner [commission] shall
 89-61 require that the prior authorization be obtained by the prescribing
 89-62 physician or prescribing practitioner.

89-63 (a-1) Until the commission has completed a study evaluating
 89-64 the impact of a requirement of prior authorization on recipients of
 89-65 certain drugs, the executive commissioner [commission] shall delay
 89-66 requiring prior authorization for drugs that are used to treat
 89-67 patients with illnesses that:

89-68 (1) are life-threatening;

(2) are chronic; and

(3) require complex medical management strategies.

(c) The commission shall ensure that a prescription drug prescribed before implementation of a prior authorization requirement for that drug for a recipient under the child health plan program, [the] Medicaid [program], or another state program administered by the commission or a health and human services agency or for a person who becomes eligible under the child health plan program, [the] Medicaid [program], or another state program administered by the commission or a health and human services agency is not subject to any requirement for prior authorization under this section unless the recipient has exhausted all the prescription, including any authorized refills, or a period prescribed by the commission has expired, whichever occurs first.

(d) The commission shall implement procedures to ensure that a recipient under the child health plan program, [the] Medicaid [program], or another state program administered by the commission or a person who becomes eligible under the child health plan program, [the] Medicaid [program], or another state program administered by the commission or a health and human services agency receives continuity of care in relation to certain prescriptions identified by the commission.

SECTION 2.111. Sections 531.074(b), (c), (f), (i), and (i-1), Government Code, are amended to read as follows:

(b) The committee consists of the following members appointed by the governor:

(1) six physicians licensed under Subtitle B, Title 3, Occupations Code, and participating in [the] Medicaid [program], at least one of whom is a licensed physician who is actively engaged in mental health providing care and treatment to persons with severe mental illness and who has practice experience in the state Medicaid plan; and

(2) five pharmacists licensed under Subtitle J, Title 3, Occupations Code, and participating in the Medicaid vendor drug program.

(c) In making appointments to the committee under Subsection (b), the governor shall ensure that the committee includes physicians and pharmacists who:

(1) represent different specialties and provide services to all segments of the [Medicaid program's] diverse population served by Medicaid;

(2) have experience in either developing or practicing under a preferred drug list; and

(3) do not have contractual relationships, ownership interests, or other conflicts of interest with a pharmaceutical manufacturer or labeler or with an entity engaged by the commission to assist in the development of the preferred drug lists or the administration of the prior authorization system.

(f) The [committee shall meet at least monthly during the six-month period following establishment of the committee to enable the committee to develop recommendations for the initial preferred drug lists. After that period, the] committee shall meet at least quarterly and at other times at the call of the presiding officer or a majority of the committee members.

(i) The executive commissioner [commission] shall adopt rules governing the operation of the committee, including rules governing the procedures used by the committee for providing notice of a meeting and rules prohibiting the committee from discussing confidential information described by Section 531.071 in a public meeting. The committee shall comply with the rules adopted under this subsection and Subsection (i-1).

(i-1) In addition to the rules under Subsection (i), the executive commissioner [commission] by rule shall require the committee or the committee's designee to present a summary of any clinical efficacy and safety information or analyses regarding a drug under consideration for a preferred drug list that is provided to the committee by a private entity that has contracted with the commission to provide the information. The committee or the committee's designee shall provide the summary in electronic form.

91-1 before the public meeting at which consideration of the drug
 91-2 occurs. Confidential information described by Section 531.071
 91-3 must be omitted from the summary. The summary must be posted on the
 91-4 commission's Internet website.

91-5 SECTION 2.112. The heading to Section 531.077, Government
 91-6 Code, is amended to read as follows:

91-7 Sec. 531.077. RECOVERY OF CERTAIN [MEDICAL] ASSISTANCE.

91-8 SECTION 2.113. Section 531.077(a), Government Code, is
 91-9 amended to read as follows:

91-10 (a) The executive commissioner shall ensure that [~~the~~
 91-11 ~~state~~] Medicaid [~~program~~] implements 42 U.S.C. Section
 91-12 1396p(b)(1).

91-13 SECTION 2.114. Section 531.078(a), Government Code, is
 91-14 amended to read as follows:

91-15 (a) In this section, "gross receipts" means money received
 91-16 as compensation for services under an intermediate care facility
 91-17 [~~facilities~~] for individuals with an intellectual disability [~~the~~
 91-18 ~~mentally retarded~~] waiver program such as a home and community
 91-19 services waiver or a community living assistance and support
 91-20 services waiver. The term does not include a charitable
 91-21 contribution, revenues received for services or goods other than
 91-22 waivers, or any money received from consumers or their families as
 91-23 reimbursement for services or goods not normally covered by the
 91-24 waivers.

91-25 SECTION 2.115. Section 531.079, Government Code, is amended
 91-26 to read as follows:

91-27 Sec. 531.079. WAIVER PROGRAM QUALITY ASSURANCE FEE ACCOUNT.

91-28 (a) The waiver program quality assurance fee account is a dedicated
 91-29 account in the general revenue fund. The account is exempt from the
 91-30 application of Section 403.095. [~~Interest earned on money in the~~
 91-31 ~~account shall be credited to the account.~~]

91-32 (b) The account consists of fees collected under Section
 91-33 531.078 [~~and interest earned on money in the account~~].

91-34 (c) Subject to legislative appropriation and state and
 91-35 federal law, money in the account may be appropriated only to the
 91-36 Department of Aging and Disability Services to increase
 91-37 reimbursement rates paid under the home and community services
 91-38 waiver program or the community living assistance and support
 91-39 services waiver program or to offset allowable expenses under [~~the~~
 91-40 ~~state~~] Medicaid [~~program~~].

91-41 SECTION 2.116. Section 531.081, Government Code, is amended
 91-42 to read as follows:

91-43 Sec. 531.081. INVALIDITY; FEDERAL FUNDS. If any portion of
 91-44 Sections 531.078-531.080 is held invalid by a final order of a court
 91-45 that is not subject to appeal, or if the commission determines that
 91-46 the imposition of the quality assurance fee and the expenditure of
 91-47 the money collected as provided by those sections will not entitle
 91-48 this state to receive additional federal money under [~~the~~] Medicaid
 91-49 [~~program~~], the commission shall:

91-50 (1) stop collection of the quality assurance fee; and
 91-51 (2) not later than the 30th day after the date the
 91-52 collection of the quality assurance fee is stopped, return any
 91-53 money collected under Section 531.078, but not spent under Section
 91-54 531.080, to the persons who paid the fees in proportion to the total
 91-55 amount paid by those persons.

91-56 SECTION 2.117. Section 531.084(a), Government Code, is
 91-57 amended to read as follows:

91-58 (a) The commission shall make every effort to achieve cost
 91-59 efficiencies within the Medicaid long-term care program. To
 91-60 achieve those efficiencies, the commission shall:

91-61 (1) establish a fee schedule for reimbursable incurred
 91-62 medical expenses for dental services controlled in long-term care
 91-63 facilities;

91-64 (2) implement a fee schedule for reimbursable incurred
 91-65 medical expenses for durable medical equipment in nursing
 91-66 facilities and ICF-IID [~~ICF-MR~~] facilities;

91-67 (3) implement a durable medical equipment fee schedule
 91-68 action plan;

91-69 (4) establish a system for private contractors to

92-1 secure and coordinate the collection of Medicare funds for
 92-2 recipients who are dually eligible for Medicare and Medicaid;
 92-3 (5) create additional partnerships with
 92-4 pharmaceutical companies to obtain discounted prescription drugs
 92-5 for Medicaid recipients; and
 92-6 (6) develop and implement a system for auditing the
 92-7 Medicaid hospice care system that provides services in long-term
 92-8 care facilities to ensure correct billing for pharmaceuticals.

92-9 SECTION 2.118. Section 531.085, Government Code, is amended
 92-10 to read as follows:

92-11 Sec. 531.085. HOSPITAL EMERGENCY ROOM USE REDUCTION
 92-12 INITIATIVES. The commission shall develop and implement a
 92-13 comprehensive plan to reduce the use of hospital emergency room
 92-14 services by recipients under Medicaid [~~the medical assistance~~
 92-15 ~~program~~]. The plan may include:

92-16 (1) a pilot program designed to facilitate program
 92-17 participants in accessing an appropriate level of health care,
 92-18 which may include as components:

92-19 (A) providing program participants access to
 92-20 bilingual health services providers; and

92-21 (B) giving program participants information on
 92-22 how to access primary care physicians, advanced practice registered
 92-23 nurses, and local health clinics;

92-24 (2) a pilot program under which health care providers,
 92-25 other than hospitals, are given financial incentives for treating
 92-26 recipients outside of normal business hours to divert those
 92-27 recipients from hospital emergency rooms;

92-28 (3) payment of a nominal referral fee to hospital
 92-29 emergency rooms that perform an initial medical evaluation of a
 92-30 recipient and subsequently refer the recipient, if medically
 92-31 stable, to an appropriate level of health care, such as care
 92-32 provided by a primary care physician, advanced practice registered
 92-33 nurse, or local clinic;

92-34 (4) a program under which the commission or a managed
 92-35 care organization that enters into a contract with the commission
 92-36 under Chapter 533 contacts, by telephone or mail, a recipient who
 92-37 accesses a hospital emergency room three times during a six-month
 92-38 period and provides the recipient with information on ways the
 92-39 recipient may secure a medical home to avoid unnecessary treatment
 92-40 at hospital emergency rooms;

92-41 (5) a health care literacy program under which the
 92-42 commission develops partnerships with other state agencies and
 92-43 private entities to:

92-44 (A) assist the commission in developing
 92-45 materials that:

92-46 (i) contain basic health care information
 92-47 for parents of young children who are recipients under Medicaid
 92-48 [~~the medical assistance program~~] and who are participating in
 92-49 public or private child-care or prekindergarten programs,
 92-50 including federal Head Start programs; and

92-51 (ii) are written in a language
 92-52 understandable to those parents and specifically tailored to be
 92-53 applicable to the needs of those parents;

92-54 (B) distribute the materials developed under
 92-55 Paragraph (A) to those parents; and

92-56 (C) otherwise teach those parents about the
 92-57 health care needs of their children and ways to address those needs;
 92-58 and

92-59 (6) other initiatives developed and implemented in
 92-60 other states that have shown success in reducing the incidence of
 92-61 unnecessary treatment in hospital emergency rooms.

92-62 SECTION 2.119. Sections 531.0861(a) and (b), Government
 92-63 Code, are amended to read as follows:

92-64 (a) If cost-effective, the executive commissioner by rule
 92-65 shall establish a physician incentive program designed to reduce
 92-66 the use of hospital emergency room services for non-emergent
 92-67 conditions by recipients under Medicaid [~~the medical assistance~~
 92-68 ~~program~~].

92-69 (b) In establishing the physician incentive program under

93-1 Subsection (a), the executive commissioner may include only the
 93-2 program components identified as cost-effective in the study
 93-3 conducted under former Section [531.086](#).

93-4 SECTION 2.120. Section [531.087](#)(a), Government Code, is
 93-5 amended to read as follows:

93-6 (a) The commission shall ensure that educational materials
 93-7 relating to the federal earned income tax credit are provided in
 93-8 accordance with this section to each person receiving assistance or
 93-9 benefits under:

- 93-10 (1) the child health plan program;
- 93-11 (2) the financial assistance program under Chapter 31,
Human Resources Code;
- 93-12 (3) Medicaid [~~the medical assistance program under~~
~~Chapter 32, Human Resources Code~~];
- 93-13 (4) the supplemental nutrition assistance [~~food~~
~~stamp~~] program under Chapter 33, Human Resources Code; or
- 93-14 (5) another appropriate health and human services
program.

93-15 SECTION 2.121. Section [531.089](#)(b), Government Code, is
 93-16 amended to read as follows:

93-17 (b) The executive commissioner [~~of the Health and Human~~
~~Services Commission~~] may adopt rules as necessary to implement this
93-18 section.

93-19 SECTION 2.122. Section [531.090](#)(a), Government Code, is
 93-20 amended to read as follows:

93-21 (a) Subject to Subsection (b), the commission and each
 93-22 health and human services agency authorized by the executive
 93-23 commissioner may enter into an agreement with one or more other
 93-24 states for the joint bulk purchasing of prescription drugs and
 93-25 other medications to be used in [~~the~~] Medicaid [~~program~~], the state
 93-26 child health plan, or another program under the authority of the
 93-27 commission.

93-28 SECTION 2.123. Section [531.091](#)(b), Government Code, is
 93-29 amended to read as follows:

93-30 (b) The method may:

93-31 (1) provide for the use of a single integrated
 93-32 benefits issuance card or multiple cards capable of integrating
 93-33 benefits issuance or other program functions;

93-34 (2) incorporate a fingerprint image identifier to
 93-35 enable personal identity verification at a point of service and
 93-36 reduce fraud [~~as permitted by Section [531.1063](#)~~];

93-37 (3) enable immediate electronic verification of
 93-38 recipient eligibility; and

93-39 (4) replace multiple forms, cards, or other methods
 93-40 used for fraud reduction or provision of health and human services
 93-41 benefits, including:

93-42 (A) electronic benefits transfer cards; and

93-43 (B) smart cards used in [~~the~~] Medicaid [~~program~~].

93-44 SECTION 2.124. Section [531.097](#), Government Code, is amended
 93-45 to read as follows:

93-46 Sec. 531.097. TAILORED BENEFIT PACKAGES FOR CERTAIN
 93-47 CATEGORIES OF THE MEDICAID POPULATION. (a) The executive
 93-48 commissioner may seek a waiver under Section 1115 of the federal
 93-49 Social Security Act (42 U.S.C. Section 1315) to develop and,
 93-50 subject to Subsection (c), implement tailored benefit packages
 93-51 designed to:

93-52 (1) provide Medicaid benefits that are customized to
 93-53 meet the health care needs of recipients within defined categories
 93-54 of the Medicaid population through a defined system of care;

93-55 (2) improve health outcomes for those recipients;

93-56 (3) improve those recipients' access to services;

93-57 (4) achieve cost containment and efficiency; and

93-58 (5) reduce the administrative complexity of
 93-59 delivering Medicaid benefits.

93-60 (b) The commission:

93-61 (1) shall develop a tailored benefit package that is
 93-62 customized to meet the health care needs of Medicaid recipients who
 93-63 are children with special health care needs, subject to approval of
 93-64 the waiver described by Subsection (a); and

(2) may develop tailored benefit packages that are customized to meet the health care needs of other categories of Medicaid recipients.

(c) If the commission develops tailored benefit packages under Subsection (b)(2), the commission shall submit a report to the standing committees of the senate and house of representatives having primary jurisdiction over [the] Medicaid [program] that specifies, in detail, the categories of Medicaid recipients to which each of those packages will apply and the services available under each package. [The commission may not implement a package developed under Subsection (b)(2) before September 1, 2009.]

(d) Except as otherwise provided by this section and subject to the terms of the waiver authorized by this section, the commission has broad discretion to develop the tailored benefit packages under this section and determine the respective categories of Medicaid recipients to which the packages apply in a manner that preserves recipients' access to necessary services and is consistent with federal requirements.

(e) Each tailored benefit package developed under this section must include:

(1) a basic set of benefits that are provided under all tailored benefit packages; and

(2) to the extent applicable to the category of Medicaid recipients to which the package applies:

- (A) a set of benefits customized to meet the health care needs of recipients in that category; and
- (B) services to integrate the management of a recipient's acute and long-term care needs, to the extent feasible.

(f) In addition to the benefits required by Subsection (e), a tailored benefit package developed under this section that applies to Medicaid recipients who are children must provide at least the services required by federal law under the early and periodic screening, diagnosis, and treatment program.

(g) A tailored benefit package developed under this section may include any service available under the state Medicaid plan or under any federal Medicaid waiver, including any preventive health or wellness service.

(g-1) A tailored benefit package developed under this section must increase the state's flexibility with respect to the state's use of Medicaid funding and may not reduce the benefits available under the Medicaid state plan to any Medicaid recipient population.

(h) In developing the tailored benefit packages, the commission shall consider similar benefit packages established in other states as a guide.

(i) The executive commissioner, by rule, shall define each category of recipients to which a tailored benefit package applies and a mechanism for appropriately placing recipients in specific categories. Recipient categories must include children with special health care needs and may include:

- (1) persons with disabilities or special health needs;
- (2) elderly persons;
- (3) children without special health care needs; and
- (4) working-age parents and caretaker relatives.

[(j) This section does not apply to a tailored benefit package or similar package of benefits if, before September 1, 2007:

[(1) a federal waiver was requested to implement the package of benefits;]

[(2) the package of benefits is being developed, directed by the legislature; or
[(3) the package of benefits has been implemented.]

SECTION 2.125. Sections 531.099(a) and (b), Government Code, are amended to read as follows:

(a) The commission shall review forms and requirements under [the] Medicaid [program] regarding written orders for diabetic equipment and supplies to identify variations between permissible ordering procedures under that program and ordering procedures available to providers under the Medicare program.

(b) To the extent practicable, and in conformity with Chapter 157, Occupations Code, and Chapter 483, Health and Safety Code, after conducting a review under Subsection (a) the commission or executive commissioner, as appropriate, shall modify only forms, rules, and procedures applicable to orders for diabetic equipment and supplies under [the] Medicaid [program] to provide for an ordering system that is comparable to the ordering system for diabetic equipment and supplies under the Medicare program. The ordering system must permit a diabetic equipment or supplies supplier to complete the forms by hand or to enter by electronic format medical information or supply orders into any form as necessary to provide the information required to dispense diabetic equipment or supplies.

SECTION 2.126. Section 531.0995(a), Government Code, is amended to read as follows:

(a) This section applies to individuals receiving benefits under:

(1) the financial assistance program under Chapter 31, Human Resources Code;

(2) Medicaid [the medical assistance program under Chapter 32, Human Resources Code]; or
(3) the supplemental nutrition assistance program under Chapter 33, Human Resources Code.

SECTION 2.127. Section 531.0996(a), Government Code, is amended to read as follows:

(a) The commission shall develop and implement a pilot program in Harris County to create pregnancy medical homes that provide coordinated evidence-based maternity care management to women who reside in the pilot program area and are recipients of Medicaid [medical assistance] through a Medicaid managed care model or arrangement under Chapter 533.

SECTION 2.128. Section 531.0998(e), Government Code, is amended to read as follows:

(e) Not later than October 1 of each year, the commission, the Texas Veterans Commission, the Veterans' Land Board, and the Department of Aging and Disability Services collectively shall submit to the legislature, the governor, and the Legislative Budget Board a report describing:

(1) interagency progress in identifying and obtaining United States Department of Veterans Affairs benefits for veterans receiving Medicaid and other public benefit programs;

(2) the number of veterans benefits claims awarded, the total dollar amount of veterans benefits claims awarded, and the costs to the state that were avoided as a result of state agencies' use of the system;

(3) efforts to expand the use of the system and improve the effectiveness of shifting veterans from Medicaid and other public benefits to United States Department of Veterans Affairs benefits, including any barriers and how state agencies have addressed those barriers; and

(4) the extent to which the Texas Veterans Commission has targeted specific populations of veterans, including populations in rural counties and in specific age and service-connected disability categories, in order to maximize benefits for veterans and savings to the state.

SECTION 2.129. Sections 531.101(a) and (b), Government Code, are amended to read as follows:

(a) The commission may grant an award to an individual who reports activity that constitutes fraud or abuse of funds in [the state] Medicaid [program] or reports overcharges in Medicaid [~~the program~~] if the commission determines that the disclosure results in the recovery of an administrative penalty imposed under Section 32.039, Human Resources Code. The commission may not grant an award to an individual in connection with a report if the commission or attorney general had independent knowledge of the activity reported by the individual.

(b) The commission shall determine the amount of an award. The award may not exceed five percent of the amount of the administrative penalty imposed under Section 32.039, Human

96-1 Resources Code, that resulted from the individual's disclosure. In
 96-2 determining the amount of the award, the commission shall consider
 96-3 how important the disclosure is in ensuring the fiscal integrity of
 96-4 Medicaid [~~the program~~]. The commission may also consider whether
 96-5 the individual participated in the fraud, abuse, or overcharge.

96-6 SECTION 2.130. Sections [531.1011\(1\), \(6\), \(9\), and \(10\)](#),
 96-7 Government Code, are amended to read as follows:

96-8 (1) "Abuse" means:

96-9 (A) a practice by a provider that is inconsistent
 96-10 with sound fiscal, business, or medical practices and that results
 96-11 in:

96-12 (i) an unnecessary cost to [~~the~~] Medicaid
 96-13 [~~program~~]; or

96-14 (ii) the reimbursement of services that are
 96-15 not medically necessary or that fail to meet professionally
 96-16 recognized standards for health care; or

96-17 (B) a practice by a recipient that results in an
 96-18 unnecessary cost to [~~the~~] Medicaid [~~program~~].

96-19 (6) "Payment hold" means the temporary denial of
 96-20 reimbursement under [~~the~~] Medicaid [~~program~~] for items or services
 96-21 furnished by a specified provider.

96-22 (9) "Program exclusion" means the suspension of a
 96-23 provider from being authorized under [~~the~~] Medicaid [~~program~~] to
 96-24 request reimbursement of items or services furnished by that
 96-25 specific provider.

96-26 (10) "Provider" means a person, firm, partnership,
 96-27 corporation, agency, association, institution, or other entity
 96-28 that was or is approved by the commission to:

96-29 (A) provide Medicaid services [~~medical~~
 96-30 ~~assistance~~] under a contract or provider agreement with the
 96-31 commission; or

96-32 (B) provide third-party billing vendor services
 96-33 under a contract or provider agreement with the commission.

96-34 SECTION 2.131. Sections [531.102\(e\), \(f\), \(m\), and \(n\)](#),
 96-35 Government Code, are amended to read as follows:

96-36 (e) The executive commissioner [~~commission~~], in
 96-37 consultation with the inspector general, by rule shall set specific
 96-38 claims criteria that, when met, require the office to begin an
 96-39 investigation.

96-40 (f)(1) If the commission receives a complaint or allegation
 96-41 of Medicaid fraud or abuse from any source, the office must conduct
 96-42 a preliminary investigation as provided by Section [531.118\(c\)](#) to
 96-43 determine whether there is a sufficient basis to warrant a full
 96-44 investigation. A preliminary investigation must begin not later
 96-45 than the 30th day after the date the commission receives a complaint
 96-46 or allegation or has reason to believe that fraud or abuse has
 96-47 occurred. A preliminary investigation shall be completed not later
 96-48 than the 90th day after it began.

96-49 (2) If the findings of a preliminary investigation
 96-50 give the office reason to believe that an incident of fraud or abuse
 96-51 involving possible criminal conduct has occurred in [~~the~~] Medicaid
 96-52 [~~program~~], the office must take the following action, as
 96-53 appropriate, not later than the 30th day after the completion of the
 96-54 preliminary investigation:

96-55 (A) if a provider is suspected of fraud or abuse
 96-56 involving criminal conduct, the office must refer the case to the
 96-57 state's Medicaid fraud control unit, provided that the criminal
 96-58 referral does not preclude the office from continuing its
 96-59 investigation of the provider, which investigation may lead to the
 96-60 imposition of appropriate administrative or civil sanctions; or

96-61 (B) if there is reason to believe that a
 96-62 recipient has defrauded [~~the~~] Medicaid [~~program~~], the office may
 96-63 conduct a full investigation of the suspected fraud, subject to
 96-64 Section [531.118\(c\)](#).

96-65 (m) The office shall employ a dental director who is a
 96-66 licensed dentist under Subtitle D, Title 3, Occupations Code, and
 96-67 the rules adopted under that subtitle by the State Board of Dental
 96-68 Examiners, and who preferably has significant knowledge of [~~the~~]
 96-69 Medicaid [~~program~~]. The dental director shall ensure that any

97-1 investigative findings based on the necessity of dental services or
 97-2 the quality of dental care have been reviewed by a qualified expert
 97-3 as described by the Texas Rules of Evidence before the office
 97-4 imposes a payment hold or seeks recoupment of an overpayment,
 97-5 damages, or penalties.

97-6 (n) To the extent permitted under federal law, the executive
 97-7 commissioner, on behalf of the office, [acting through the
 97-8 commission,] shall adopt rules establishing the criteria for
 97-9 initiating a full-scale fraud or abuse investigation, conducting
 97-10 the investigation, collecting evidence, accepting and approving a
 97-11 provider's request to post a surety bond to secure potential
 97-12 recoupments in lieu of a payment hold or other asset or payment
 97-13 guarantee, and establishing minimum training requirements for
 97-14 Medicaid provider fraud or abuse investigators.

97-15 SECTION 2.132. Section 531.102(l), Government Code, as
 97-16 added by Chapter 622 (S.B. 1803), Acts of the 83rd Legislature,
 97-17 Regular Session, 2013, is amended to read as follows:

97-18 (1) The office shall employ a medical director who is a
 97-19 licensed physician under Subtitle B, Title 3, Occupations Code, and
 97-20 the rules adopted under that subtitle by the Texas Medical Board,
 97-21 and who preferably has significant knowledge of [~~the~~] Medicaid
 97-22 [~~program~~]. The medical director shall ensure that any
 97-23 investigative findings based on medical necessity or the quality of
 97-24 medical care have been reviewed by a qualified expert as described
 97-25 by the Texas Rules of Evidence before the office imposes a payment
 97-26 hold or seeks recoupment of an overpayment, damages, or penalties.

97-27 SECTION 2.133. Subsection (1), Section 531.102, Government
 97-28 Code, as added by Chapter 1311 (S.B. 8), Acts of the 83rd
 97-29 Legislature, Regular Session, 2013, is redesignated as Subsection
 97-30 (o), Section 531.102, Government Code, to read as follows:

97-31 (o) [~~(1)~~] Nothing in this section limits the authority of
 97-32 any other state agency or governmental entity.

97-33 SECTION 2.134. Section 531.1021(a), Government Code, is
 97-34 amended to read as follows:

97-35 (a) The office of inspector general may request that the
 97-36 executive commissioner or the executive commissioner's designee
 97-37 approve the issuance by the office of a subpoena in connection with
 97-38 an investigation conducted by the office. If the request is
 97-39 approved, the office may issue a subpoena to compel the attendance
 97-40 of a relevant witness or the production, for inspection or copying,
 97-41 of relevant evidence that is in this state.

97-42 SECTION 2.135. Section 531.1022(a), Government Code, is
 97-43 amended to read as follows:

97-44 (a) The commission's office of inspector general shall
 97-45 employ and commission not more than five peace officers at any given
 97-46 time for the purpose of assisting the office in carrying out the
 97-47 duties of the office relating to the investigation of fraud, waste,
 97-48 and abuse in [~~the~~] Medicaid [~~program~~].

97-49 SECTION 2.136. Sections 531.103(a) and (c), Government
 97-50 Code, are amended to read as follows:

97-51 (a) The commission, acting through the commission's office
 97-52 of inspector general, and the office of the attorney general shall
 97-53 enter into a memorandum of understanding to develop and implement
 97-54 joint written procedures for processing cases of suspected fraud,
 97-55 waste, or abuse, as those terms are defined by state or federal law,
 97-56 or other violations of state or federal law under [~~the state~~]
 97-57 Medicaid [~~program~~] or another [~~other~~] program administered by the
 97-58 commission or a health and human services agency, including the
 97-59 financial assistance program under Chapter 31, Human Resources
 97-60 Code, the supplemental nutrition [~~a nutritional~~] assistance
 97-61 program under Chapter 33, Human Resources Code, and the child
 97-62 health plan program. The memorandum of understanding shall
 97-63 require:

97-64 (1) the office of inspector general and the office of
 97-65 the attorney general to set priorities and guidelines for referring
 97-66 cases to appropriate state agencies for investigation,
 97-67 prosecution, or other disposition to enhance deterrence of fraud,
 97-68 waste, abuse, or other violations of state or federal law,
 97-69 including a violation of Chapter 102, Occupations Code, in the

98-1 programs and maximize the imposition of penalties, the recovery of
 98-2 money, and the successful prosecution of cases;

98-3 (1-a) the office of inspector general to refer each
 98-4 case of suspected provider fraud, waste, or abuse to the office of
 98-5 the attorney general not later than the 20th business day after the
 98-6 date the office of inspector general determines that the existence
 98-7 of fraud, waste, or abuse is reasonably indicated;

98-8 (1-b) the office of the attorney general to take
 98-9 appropriate action in response to each case referred to the
 98-10 attorney general, which action may include direct initiation of
 98-11 prosecution, with the consent of the appropriate local district or
 98-12 county attorney, direct initiation of civil litigation, referral to
 98-13 an appropriate United States attorney, a district attorney, or a
 98-14 county attorney, or referral to a collections agency for initiation
 98-15 of civil litigation or other appropriate action;

98-16 (2) the office of inspector general to keep detailed
 98-17 records for cases processed by that office or the office of the
 98-18 attorney general, including information on the total number of
 98-19 cases processed and, for each case:

98-20 (A) the agency and division to which the case is
 98-21 referred for investigation;

98-22 (B) the date on which the case is referred; and

98-23 (C) the nature of the suspected fraud, waste, or
 98-24 abuse;

98-25 (3) the office of inspector general to notify each
 98-26 appropriate division of the office of the attorney general of each
 98-27 case referred by the office of inspector general;

98-28 (4) the office of the attorney general to ensure that
 98-29 information relating to each case investigated by that office is
 98-30 available to each division of the office with responsibility for
 98-31 investigating suspected fraud, waste, or abuse;

98-32 (5) the office of the attorney general to notify the
 98-33 office of inspector general of each case the attorney general
 98-34 declines to prosecute or prosecutes unsuccessfully;

98-35 (6) representatives of the office of inspector general
 98-36 and of the office of the attorney general to meet not less than
 98-37 quarterly to share case information and determine the appropriate
 98-38 agency and division to investigate each case; and

98-39 (7) the office of inspector general and the office of
 98-40 the attorney general to submit information requested by the
 98-41 comptroller about each resolved case for the comptroller's use in
 98-42 improving fraud detection.

98-43 (c) The commission and the office of the attorney general
 98-44 shall jointly prepare and submit an annual report to the governor,
 98-45 lieutenant governor, and speaker of the house of representatives
 98-46 concerning the activities of those agencies in detecting and
 98-47 preventing fraud, waste, and abuse under [the state] Medicaid
 98-48 [program] or another [other] program administered by the commission
 98-49 or a health and human services agency. The report may be
 98-50 consolidated with any other report relating to the same subject
 98-51 matter the commission or office of the attorney general is required
 98-52 to submit under other law.

98-53 SECTION 2.137. Section 531.1031(a)(2), Government Code, is
 98-54 amended to read as follows:

98-55 (2) "Participating agency" means:

98-56 (A) the Medicaid fraud enforcement divisions of
 98-57 the office of the attorney general;

98-58 (B) each board or agency with authority to
 98-59 license, register, regulate, or certify a health care professional
 98-60 or managed care organization that may participate in [the state]
 98-61 Medicaid [program]; and

98-62 (C) the commission's office of inspector
 98-63 general.

98-64 SECTION 2.138. Section 531.1031(b), Government Code, is
 98-65 amended to read as follows:

98-66 (b) This section applies only to criminal history record
 98-67 information held by a participating agency that relates to a health
 98-68 care professional and information held by a participating agency
 98-69 that relates to a health care professional or managed care

organization that is the subject of an investigation by a participating agency for alleged fraud or abuse under [~~the state~~] Medicaid [program].

SECTION 2.139. Section 531.105, Government Code, is amended to read as follows:

Sec. 531.105. FRAUD DETECTION TRAINING. (a) The commission shall develop and implement a program to provide annual training to contractors who process Medicaid claims and to appropriate staff of the health and human services agencies [~~Texas Department of Health and the Texas Department of Human Services~~] in identifying potential cases of fraud, waste, or abuse under [~~the state~~] Medicaid [program]. The training provided to the contractors and staff must include clear criteria that specify:

(1) the circumstances under which a person should refer a potential case to the commission; and

(2) the time by which a referral should be made.

(b) The health and human services agencies [~~Texas Department of Health and the Texas Department of Human Services~~], in cooperation with the commission, shall periodically set a goal of the number of potential cases of fraud, waste, or abuse under [~~the state~~] Medicaid [program] that each agency will attempt to identify and refer to the commission. The commission shall include information on the agencies' goals and the success of each agency in meeting the agency's goal in the report required by Section 531.103(c).

SECTION 2.140. Sections 531.106(a), (d), (f), and (g), Government Code, are amended to read as follows:

(a) The commission shall use learning or neural network technology to identify and deter fraud in [~~the~~] Medicaid [program] throughout this state.

(d) The commission shall require each health and human services agency that performs any aspect of [~~the state~~] Medicaid [program] to participate in the implementation and use of the technology.

(f) The commission shall refer cases identified by the technology to the commission's office of inspector general [~~investigations and enforcement~~] or the office of the attorney general, as appropriate.

(g) Each month, the learning or neural network technology implemented under this section must match [~~bureau of~~] vital statistics unit death records with Medicaid claims filed by a provider. If the commission determines that a provider has filed a claim for services provided to a person after the person's date of death, as determined by the [~~bureau of~~] vital statistics unit death records, the commission shall refer the case for investigation to the commission's office of inspector general [~~investigations and enforcement~~].

SECTION 2.141. Sections 531.1061(a) and (c), Government Code, are amended to read as follows:

(a) The commission shall use an automated fraud investigation tracking system through the commission's office of inspector general [~~investigations and enforcement~~] to monitor the progress of an investigation of suspected fraud, abuse, or insufficient quality of care under [~~the state~~] Medicaid [program].

(c) The commission shall require each health and human services agency that performs any aspect of [~~the state~~] Medicaid [program] to participate in the implementation and use of the automated fraud investigation tracking system.

SECTION 2.142. Section 531.1062(a), Government Code, is amended to read as follows:

(a) The commission shall use an automated recovery monitoring system to monitor the collections process for a settled case of fraud, abuse, or insufficient quality of care under [~~the state~~] Medicaid [program].

SECTION 2.143. Sections 531.107(a), (b), and (f), Government Code, are amended to read as follows:

(a) The Medicaid and Public Assistance Fraud Oversight Task Force advises and assists the commission and the commission's office of inspector general [~~investigations and enforcement~~] in

improving the efficiency of fraud investigations and collections.

(b) The task force is composed of a representative of the:

- (1) attorney general's office, appointed by the attorney general;
- (2) comptroller's office, appointed by the comptroller;
- (3) Department of Public Safety, appointed by the public safety director;
- (4) state auditor's office, appointed by the state auditor;
- (5) commission, appointed by the executive commissioner [~~of health and human services~~];
- (6) [Texas] Department of Aging and Disability Human Services, appointed by the commissioner of aging and disability human services;
- (7) Texas Department of Insurance, appointed by the commissioner of insurance; and
- (8) [Texas] Department of State Health Services, appointed by the commissioner of state [public] health services; and
- (9) commission's office of inspector general, appointed by the executive commissioner.

(f) At least once each fiscal quarter, the commission's office of inspector general [~~investigations and enforcement~~] shall provide to the task force:

(1) information detailing:

(A) the number of fraud referrals made to the office and the origin of each referral;

(B) the time spent investigating each case;

(C) the number of cases investigated each month, by program and region;

(D) the dollar value of each fraud case that results in a criminal conviction; and

(E) the number of cases the office rejects and the reason for rejection, by region; and

(2) any additional information the task force requires.

SECTION 2.144. Sections 531.108(a) and (b), Government Code, are amended to read as follows:

(a) The commission's office of inspector general [~~investigations and enforcement~~] shall compile and disseminate accurate information and statistics relating to:

(1) fraud prevention; and

(2) post-fraud referrals received and accepted or rejected from the commission's case management system or the case management system of a health and human services agency.

(b) The commission shall:

(1) aggressively publicize successful fraud prosecutions and fraud-prevention programs through all available means, including the use of statewide press releases [~~issued in coordination with the Texas Department of Human Services~~]; and

(2) ensure that a toll-free hotline for reporting suspected fraud in programs administered by the commission or a health and human services agency is maintained and promoted, either by the commission or by a health and human services agency.

SECTION 2.145. Section 531.109(a), Government Code, is amended to read as follows:

(a) The commission shall annually select and review a random, statistically valid sample of all claims for reimbursement under [~~the state~~] Medicaid [~~program~~], including under the vendor drug program, for potential cases of fraud, waste, or abuse.

SECTION 2.146. Sections 531.110(a), (b), (c), and (e), Government Code, are amended to read as follows:

(a) The commission shall conduct electronic data matches for a Medicaid recipient [~~of assistance under the state Medicaid program~~] at least quarterly to verify the identity, income, employment status, and other factors that affect the eligibility of the recipient.

(b) To verify eligibility of a recipient for [~~assistance~~

101-1 under the state] Medicaid [program], the electronic data matching
 101-2 must match information provided by the recipient with information
 101-3 contained in databases maintained by appropriate federal and state
 101-4 agencies.

101-5 (c) The health and human services agencies [~~Texas~~
 101-6 ~~Department of Human Services~~] shall cooperate with the commission
 101-7 by providing data or any other assistance necessary to conduct the
 101-8 electronic data matches required by this section.

101-9 (e) The executive commissioner shall establish procedures
 101-10 by which the commission, or a health and human services agency
 101-11 designated by the commission, verifies [by rule shall establish
 101-12 procedures to verify] the electronic data matches conducted by the
 101-13 commission under this section. Not later than the 20th day after
 101-14 the date the electronic data match is verified, the commission
 101-15 [~~Texas Department of Human Services~~] shall remove from eligibility
 101-16 a recipient who is determined to be ineligible for [assistance
 101-17 under the state] Medicaid [program].

101-18 SECTION 2.147. Section 531.111, Government Code, is amended
 101-19 to read as follows:

101-20 Sec. 531.111. FRAUD DETECTION TECHNOLOGY. The commission
 101-21 may contract with a contractor who specializes in developing
 101-22 technology capable of identifying patterns of fraud exhibited by
 101-23 Medicaid recipients to:

101-24 (1) develop and implement the fraud detection
 101-25 technology; and

101-26 (2) determine if a pattern of fraud by Medicaid
 101-27 recipients is present in the recipients' eligibility files
 101-28 maintained by the commission [~~Texas Department of Human Services~~].

101-29 SECTION 2.148. Section 531.1112(a), Government Code, is
 101-30 amended to read as follows:

101-31 (a) The commission and the commission's office of inspector
 101-32 general shall jointly study the feasibility of increasing the use
 101-33 of technology to strengthen the detection and deterrence of fraud
 101-34 in [~~the state~~] Medicaid [program]. The study must include the
 101-35 determination of the feasibility of using technology to verify a
 101-36 person's citizenship and eligibility for coverage.

101-37 SECTION 2.149. Section 531.112(a)(1), Government Code, is
 101-38 amended to read as follows:

101-39 (1) "Chemical dependency" has the meaning assigned by
 101-40 Section 461A.002 [~~461.002~~], Health and Safety Code.

101-41 SECTION 2.150. Section 531.112(b), Government Code, is
 101-42 amended to read as follows:

101-43 (b) Following the final conviction of a chemical dependency
 101-44 treatment provider for an offense, an element of which involves
 101-45 submitting a fraudulent claim for reimbursement for services under
 101-46 [~~the state~~] Medicaid [program], the commission or other health and
 101-47 human services agency that operates a portion of [~~the state~~]
 101-48 Medicaid [program] shall expunge or provide for the expunction of a
 101-49 diagnosis of chemical dependency in a child that has been made by
 101-50 the treatment provider and entered in any:

101-51 (1) appropriate official record of the commission or
 101-52 agency;

101-53 (2) applicable medical record that is in the
 101-54 commission's or agency's custody; and

101-55 (3) applicable record of a company that the commission
 101-56 contracts with for the processing and payment of claims under [~~the~~
 101-57 state] Medicaid [program].

101-58 SECTION 2.151. Sections 531.113(a) and (e), Government
 101-59 Code, are amended to read as follows:

101-60 (a) Each managed care organization that provides or
 101-61 arranges for the provision of health care services to an individual
 101-62 under a government-funded program, including [~~the~~] Medicaid
 101-63 [program] and the child health plan program, shall:

101-64 (1) establish and maintain a special investigative
 101-65 unit within the managed care organization to investigate fraudulent
 101-66 claims and other types of program abuse by recipients and service
 101-67 providers; or

101-68 (2) contract with another entity for the investigation
 101-69 of fraudulent claims and other types of program abuse by recipients

102-1 and service providers.

102-2 (e) The executive commissioner shall adopt rules as
102-3 necessary to accomplish the purposes of this section.

102-4 SECTION 2.152. Section 531.1131(a), Government Code, is
102-5 amended to read as follows:

102-6 (a) If a managed care organization's special investigative
102-7 unit under Section 531.113(a)(1) or the entity with which the
102-8 managed care organization contracts under Section 531.113(a)(2)
102-9 discovers fraud or abuse in [the] Medicaid [program] or the child
102-10 health plan program, the unit or entity shall:

102-11 (1) immediately and contemporaneously notify the
102-12 commission's office of inspector general and the office of the
102-13 attorney general;

102-14 (2) subject to Subsection (b), begin payment recovery
102-15 efforts; and

102-16 (3) ensure that any payment recovery efforts in which
102-17 the organization engages are in accordance with applicable rules
102-18 adopted by the executive commissioner.

102-19 SECTION 2.153. Section 531.114(g), Government Code, is
102-20 amended to read as follows:

102-21 (g) The executive commissioner [commission] shall adopt
102-22 rules as necessary to implement this section.

102-23 SECTION 2.154. Section 531.116, Government Code, is amended
102-24 to read as follows:

102-25 Sec. 531.116. COMPLIANCE WITH LAW PROHIBITING
102-26 SOLICITATION. A provider who furnishes services under [the]
102-27 Medicaid [program] or the child health plan program is subject to
102-28 Chapter 102, Occupations Code, and the provider's compliance with
102-29 that chapter is a condition of the provider's eligibility to
102-30 participate as a provider under those programs.

102-31 SECTION 2.155. Section 531.117, Government Code, is amended
102-32 to read as follows:

102-33 Sec. 531.117. RECOVERY AUDIT CONTRACTORS. To the extent
102-34 required under Section 1902(a)(42), Social Security Act (42 U.S.C.
102-35 Section 1396a(a)(42)), the commission shall establish a program
102-36 under which the commission contracts with one or more recovery
102-37 audit contractors for purposes of identifying underpayments and
102-38 overpayments under [the] Medicaid [program] and recovering the
102-39 overpayments.

102-40 SECTION 2.156. Sections 531.121(2), (4), and (6),
102-41 Government Code, are amended to read as follows:

102-42 (2) "Guardian" has the meaning assigned by Section
102-43 1002.012, Estates [601, Texas Probate] Code.

102-44 (4) "Incapacitated individual" means an incapacitated
102-45 person as defined by Section 1002.017, Estates [601, Texas Probate]
102-46 Code.

102-47 (6) "Statutory probate court" has the meaning assigned
102-48 by Section 1002.008(b), Estates [601, Texas Probate] Code.

102-49 SECTION 2.157. Sections 531.122(c) and (f), Government
102-50 Code, are amended to read as follows:

102-51 (c) To be eligible for an appointment under this section, an
102-52 individual must have demonstrated experience working with:

102-53 (1) a guardianship program;
102-54 (2) an organization that advocates on behalf of or in
102-55 the interest of elderly individuals or individuals with mental
102-56 illness or an intellectual disability [mental retardation]; or
102-57 (3) incapacitated individuals.

102-58 (f) Sections 2110.002 and 2110.008 [2 and 8, Article
102-59 6252-33, Revised Statutes] do not apply to the advisory board.

102-60 SECTION 2.158. Section 531.125(a), Government Code, is
102-61 amended to read as follows:

102-62 (a) The commission in accordance with commission rules [by
102-63 rule] may award grants to:

102-64 (1) a local guardianship program, subject to the
102-65 requirements of this section; and

102-66 (2) a local legal guardianship program to enable
102-67 low-income family members and friends to have legal representation
102-68 in court if they are willing and able to be appointed guardians of
102-69 proposed wards who are indigent.

103-1 SECTION 2.159. Section 531.151(3), Government Code, is
 103-2 amended to read as follows:

103-3 (3) "Institution" means:

103-4 (A) an ICF-IID [ICF-MR], as defined by Section
 103-5 531.002, Health and Safety Code;

103-6 (B) a group home operated under the authority of
 103-7 the [Texas] Department of Aging and Disability Services [Mental
 103-8 Health and Mental Retardation], including a residential service
 103-9 provider under a Medicaid waiver program authorized under Section
 103-10 1915(c) of the federal Social Security Act (42 U.S.C. Section
 103-11 1396n), as amended, that provides services at a residence other
 103-12 than the child's home or foster home;

103-13 (C) a foster group home or an agency foster group
 103-14 home as defined by Section 42.002, Human Resources Code;

103-15 (D) a nursing facility;

103-16 (E) a general residential operation for children
 103-17 with an intellectual disability that is [an institution for the
 103-18 mentally retarded] licensed by the Department of Family and
 103-19 Protective [and Regulatory] Services; or

103-20 (F) another residential arrangement other than a
 103-21 foster home as defined by Section 42.002, Human Resources Code,
 103-22 that provides care to four or more children who are unrelated to
 103-23 each other.

103-24 SECTION 2.160. Sections 531.1521(a) and (b), Government
 103-25 Code, are amended to read as follows:

103-26 (a) The executive commissioner by rule shall develop and
 103-27 implement a system by which the Department of Aging and Disability
 103-28 Services ensures that, for each child with respect to whom the
 103-29 department or a local intellectual and developmental disability
 103-30 [mental retardation] authority is notified of a request for
 103-31 placement in an institution, the child's parent or guardian is
 103-32 fully informed before the child is placed in the institution of all
 103-33 community-based services and any other service and support options
 103-34 for which the child may be eligible. The system must be designed to
 103-35 ensure that the department provides the information through:

103-36 (1) a local intellectual and developmental disability
 103-37 [mental retardation] authority;

103-38 (2) any private entity that has knowledge and
 103-39 expertise regarding the needs of and full spectrum of care options
 103-40 available to children with disabilities as well as the philosophy
 103-41 and purpose of permanency planning; or

103-42 (3) a department employee.

103-43 (b) An institution in which a child's parent or guardian is
 103-44 considering placing the child may provide information required
 103-45 under Subsection (a), but the information must also be provided by a
 103-46 local intellectual and developmental disability [mental
 103-47 retardation] authority, private entity, or employee of the
 103-48 Department of Aging and Disability Services as required by
 103-49 Subsection (a).

103-50 SECTION 2.161. Sections 531.153(b), (d), (d-1), and (e),
 103-51 Government Code, are amended to read as follows:

103-52 (b) The Department of Family and Protective [and
 103-53 Regulatory] Services shall develop a permanency plan as required by
 103-54 this subchapter for each child who resides in an institution in this
 103-55 state for whom the department has been appointed permanent managing
 103-56 conservator. The department is not required to develop a
 103-57 permanency plan under this subchapter for a child for whom the
 103-58 department has been appointed temporary managing conservator, but
 103-59 may incorporate the requirements of this subchapter in a permanency
 103-60 plan developed for the child under Section 263.3025, Family Code.

103-61 (d) In implementing permanency planning procedures under
 103-62 Subsection (a) to develop a permanency plan for each child, the
 103-63 Department of Aging and Disability Services shall:

103-64 (1) delegate the department's duty to develop a
 103-65 permanency plan to a local intellectual and developmental
 103-66 disability [mental retardation] authority, as defined by Section
 103-67 531.002, Health and Safety Code, or enter into a memorandum of
 103-68 understanding with the local intellectual and developmental
 103-69 disability [mental retardation] authority to develop the

104-1 permanency plan for each child who resides in an institution in this
 104-2 state or with respect to whom the department is notified in advance
 104-3 that institutional care is sought;

104-4 (2) contract with a private entity, other than an
 104-5 entity that provides long-term institutional care, to develop a
 104-6 permanency plan for a child who resides in an institution in this
 104-7 state or with respect to whom the department is notified in advance
 104-8 that institutional care is sought; or

104-9 (3) perform the department's duties regarding
 104-10 permanency planning procedures using department personnel.

104-11 (d-1) A contract or memorandum of understanding under
 104-12 Subsection (d) must include performance measures by which the
 104-13 Department of Aging and Disability Services may evaluate the
 104-14 effectiveness of a local intellectual and developmental disability
 104-15 [mental retardation] authority's or private entity's permanency
 104-16 planning efforts.

104-17 (e) The commission, the Department of Aging and Disability
 104-18 Services, [~~Texas Department of Human Services, the Texas Department~~
 104-19 ~~of Mental Health and Mental Retardation,~~] and the Department of
 104-20 Family and Protective [and Regulatory] Services may solicit and
 104-21 accept gifts, grants, and donations to support the development of
 104-22 permanency plans for children residing in institutions by
 104-23 individuals or organizations not employed by or affiliated with
 104-24 those institutions.

104-25 SECTION 2.162. Section 531.1531, Government Code, is
 104-26 amended to read as follows:

104-27 Sec. 531.1531. ASSISTANCE WITH PERMANENCY PLANNING
 104-28 EFFORTS. An institution in which a child resides shall assist with
 104-29 providing effective permanency planning for the child by:

104-30 (1) cooperating with the health and human services
 104-31 agency, local intellectual and developmental disability [mental
 104-32 ~~retardation~~] authority, or private entity responsible for
 104-33 developing the child's permanency plan; and

104-34 (2) participating in meetings to review the child's
 104-35 permanency plan as requested by a health and human services agency,
 104-36 local intellectual and developmental disability [mental
 104-37 ~~retardation~~] authority, or private entity responsible for
 104-38 developing the child's permanency plan.

104-39 SECTION 2.163. Section 531.154, Government Code, is amended
 104-40 to read as follows:

104-41 Sec. 531.154. NOTIFICATION REQUIRED. (a) Not later than
 104-42 the third day after the date a child is initially placed in an
 104-43 institution, the institution shall notify:

104-44 (1) the Department of Aging and Disability Services
 104-45 [~~Texas Department of Human Services~~], if the child is placed in a
 104-46 nursing facility [home];

104-47 (2) the local intellectual and developmental
 104-48 disability [mental retardation] authority, as defined by Section
 104-49 531.002, Health and Safety Code, where the institution is located,
 104-50 if the child:

104-51 (A) is placed in an ICF-IID [ICF-MR], as defined
 104-52 by Section 531.002, Health and Safety Code; or

104-53 (B) is placed by a [state or local] child
 104-54 protective services agency in a general residential operation for
 104-55 children with an intellectual disability that is [an institution
 104-56 for the mentally retarded] licensed by the Department of Family and
 104-57 Protective [and Regulatory] Services;

104-58 (3) the community resource coordination group in the
 104-59 county of residence of a parent or guardian of the child;

104-60 (4) if the child is at least three years of age, the
 104-61 school district for the area in which the institution is located;
 104-62 and

104-63 (5) if the child is less than three years of age, the
 104-64 local early childhood intervention program for the area in which
 104-65 the institution is located.

104-66 (b) The [Texas] Department of Aging and Disability [Human]
 104-67 Services shall notify the local intellectual and developmental
 104-68 disability [mental retardation] authority, as defined by Section
 104-69 531.002, Health and Safety Code, of a child's placement in a nursing

105-1 facility [~~home~~] if the child is known or suspected to have an
 105-2 ~~intellectual disability [suffer from mental retardation]~~ or
 105-3 another disability for which the child may receive services through
 105-4 the [Texas] Department of Aging and Disability Services [~~Mental~~
 105-5 ~~Health and Mental Retardation~~].

105-6 SECTION 2.164. Section 531.156, Government Code, is amended
 105-7 to read as follows:

105-8 Sec. 531.156. DESIGNATION OF ADVOCATE. (a) The Department
 105-9 of Aging and Disability Services [~~Except as provided by Subsection~~
 105-10 ~~(b)~~, the Texas Department of Human Services] shall designate a
 105-11 person, including a member of a community-based organization, to
 105-12 serve as a volunteer advocate for a child residing in an institution
 105-13 to assist in developing a permanency plan for the child if:

105-14 (1) the child's parent or guardian requests the
 105-15 assistance of an advocate; [~~or~~]
 105-16 (2) the institution in which the child is placed
 105-17 cannot locate the child's parent or guardian; ~~or~~ [-]
 105-18 (3) [~~(b)~~] The Texas Department of Mental Health and
 105-19 ~~Mental Retardation~~ shall designate the person to serve as a
 105-20 ~~volunteer advocate for a child in accordance with Subsection (a)~~
 105-21 ~~if~~] the child resides in an institution operated by the department.

105-22 (b) [~~(c)~~] The person designated [~~by the Texas Department of~~
 105-23 ~~Human Services or the Texas Department of Mental Health and Mental~~
 105-24 ~~Retardation~~] to serve as the child's volunteer advocate under this
 105-25 section may be:
 105-26 (1) a person selected by the child's parent or
 105-27 guardian, except that the person may not be employed by or under a
 105-28 contract with the institution in which the child resides;
 105-29 (2) an adult relative of the child; or
 105-30 (3) a representative of a child advocacy group.

105-31 (c) [~~(d)~~] The [~~Texas Department of Human Services or the~~
 105-32 ~~Texas~~] Department of Aging and Disability Services [~~Mental Health~~
 105-33 ~~and Mental Retardation, as appropriate,~~] shall provide to each
 105-34 person designated to serve as a child's volunteer advocate
 105-35 information regarding permanency planning under this subchapter.

105-36 SECTION 2.165. Sections 531.159(b), (c), (d), (e), and (f),
 105-37 Government Code, are amended to read as follows:

105-38 (b) The chief executive officer of each appropriate health
 105-39 and human services agency or the officer's designee must approve
 105-40 the placement of a child in an institution. The initial placement
 105-41 of the child in the institution is temporary and may not exceed six
 105-42 months unless the appropriate chief executive officer or the
 105-43 officer's designee approves an extension of an additional six
 105-44 months after conducting a review of documented permanency planning
 105-45 efforts to unite the child with a family in a permanent living
 105-46 arrangement. After the initial six-month extension of a child's
 105-47 placement in an institution approved under this subsection, the
 105-48 chief executive officer or the officer's designee shall conduct a
 105-49 review of the child's placement in the institution at least
 105-50 semiannually to determine whether a continuation of that placement
 105-51 is warranted. If, based on the review, the chief executive officer
 105-52 or the officer's designee determines that an additional extension
 105-53 is warranted, the officer or the officer's designee shall recommend
 105-54 to the executive commissioner that the child continue residing in
 105-55 the institution.

105-56 (c) On receipt of a recommendation made under Subsection (b)
 105-57 for an extension of a child's placement, the executive
 105-58 commissioner, the executive commissioner's designee, or another
 105-59 person with whom the commission contracts shall conduct a review of
 105-60 the child's placement. Based on the results of the review, the
 105-61 executive commissioner or the executive commissioner's designee
 105-62 may approve a six-month extension of the child's placement if the
 105-63 extension is appropriate.

105-64 (d) The child may continue residing in the institution after
 105-65 the six-month extension approved under Subsection (c) only if the
 105-66 chief executive officer of the appropriate health and human
 105-67 services agency or the officer's designee makes subsequent
 105-68 recommendations as provided by Subsection (b) for each additional
 105-69 six-month extension and the executive commissioner or the executive

106-1 commissioner's designee approves each extension as provided by
 106-2 Subsection (c).

106-3 (e) The executive commissioner or the executive
 106-4 commissioner's designee shall conduct a semiannual review of data
 106-5 received from health and human services agencies regarding all
 106-6 children who reside in institutions in this state. The executive
 106-7 commissioner, the executive commissioner's designee, or a person
 106-8 with whom the commission contracts shall also review the
 106-9 recommendations of the chief executive officers of each appropriate
 106-10 health and human services agency or the officer's designee if the
 106-11 officer or the officer's designee repeatedly recommends that
 106-12 children continue residing in an institution.

106-13 (f) The executive commissioner [commission] by rule shall
 106-14 develop procedures by which to conduct the reviews required by
 106-15 Subsections (c), (d), and (e). In developing the procedures, the
 106-16 commission may seek input from the work group on children's
 106-17 long-term services, health services, and mental health services
 106-18 established under Section 22.035, Human Resources Code.

106-19 SECTION 2.166. Section 531.160, Government Code, is amended
 106-20 to read as follows:

106-21 Sec. 531.160. INSPECTIONS. As part of each inspection,
 106-22 survey, or investigation of an institution, including a nursing
 106-23 facility [home], general residential operation for children with an
 106-24 intellectual disability that is [institution for the mentally
 106-25 retarded] licensed by the Department of Family and Protective [and]
 106-26 Regulatory Services, or ICF-IID [ICF-MR], as defined by Section
 106-27 531.002, Health and Safety Code, in which a child resides, the
 106-28 agency or the agency's designee shall determine the extent to which
 106-29 the nursing facility [home], general residential operation
 106-30 [institution], or ICF-IID [ICF-MR] is complying with the permanency
 106-31 planning requirements under this subchapter.

106-32 SECTION 2.167. Section 531.161, Government Code, is amended
 106-33 to read as follows:

106-34 Sec. 531.161. ACCESS TO RECORDS. Each institution in which
 106-35 a child resides shall allow the following to have access to the
 106-36 child's records to assist in complying with the requirements of
 106-37 this subchapter:

106-38 (1) the commission;
 106-39 (2) appropriate health and human services agencies;
 106-40 and
 106-41 (3) to the extent not otherwise prohibited by state or
 106-42 federal confidentiality laws, a local intellectual and
 106-43 developmental disability [mental retardation] authority or private
 106-44 entity that enters into a contract or memorandum of understanding
 106-45 under Section 531.153(d) to develop a permanency plan for the
 106-46 child.

106-47 SECTION 2.168. Section 531.162(b), Government Code, is
 106-48 amended to read as follows:

106-49 (b) The executive commissioner shall submit a semiannual
 106-50 report to the governor and the committees of each house of the
 106-51 legislature that have primary oversight jurisdiction over health
 106-52 and human services agencies regarding:

106-53 (1) the number of children residing in institutions in
 106-54 this state and, of those children, the number for whom a
 106-55 recommendation has been made for a transition to a community-based
 106-56 residence but who have not yet made that transition;

106-57 (2) the circumstances of each child described by
 106-58 Subdivision (1), including the type of institution and name of the
 106-59 institution in which the child resides, the child's age, the
 106-60 residence of the child's parents or guardians, and the length of
 106-61 time in which the child has resided in the institution;

106-62 (3) the number of permanency plans developed for
 106-63 children residing in institutions in this state, the progress
 106-64 achieved in implementing those plans, and barriers to implementing
 106-65 those plans;

106-66 (4) the number of children who previously resided in
 106-67 an institution in this state and have made the transition to a
 106-68 community-based residence;

106-69 (5) the number of children who previously resided in

107-1 an institution in this state and have been reunited with their
 107-2 families or placed with alternate families;

107-3 (6) the community supports that resulted in the
 107-4 successful placement of children described by Subdivision (5) with
 107-5 alternate families; and

107-6 (7) the community supports that are unavailable but
 107-7 necessary to address the needs of children who continue to reside in
 107-8 an institution in this state after being recommended to make a
 107-9 transition from the institution to an alternate family or
 107-10 community-based residence.

107-11 SECTION 2.169. Sections 531.164(b), (e), (f), (g), and (h),
 107-12 Government Code, are amended to read as follows:

107-13 (b) An institution described by Section 531.151(3)(A) or
 107-14 (B) shall notify the local intellectual and developmental
 107-15 disability [mental retardation] authority for the region in which
 107-16 the institution is located of a request for placement of a child in
 107-17 the institution. An institution described by Section 531.151(3)(D)
 107-18 shall notify the Department of Aging and Disability Services of a
 107-19 request for placement of a child in the institution.

107-20 (e) Except as otherwise provided by Subsection (f):

107-21 (1) an ICF-IID [~~ICF-MR~~] must:

107-22 (A) attempt to notify the parent or guardian of a
 107-23 child who resides in the ICF-IID [~~ICF-MR~~] in writing of a periodic
 107-24 permanency planning meeting or annual service plan review and
 107-25 reauthorization meeting not later than the 21st day before the date
 107-26 the meeting is scheduled to be held; and

107-27 (B) request a response from the parent or
 107-28 guardian; and

107-29 (2) a nursing facility must:

107-30 (A) attempt to notify the parent or guardian of a
 107-31 child who resides in the facility in writing of an annual service
 107-32 plan review and reauthorization meeting not later than the 21st day
 107-33 before the date the meeting is scheduled to be held; and

107-34 (B) request a response from the parent or
 107-35 guardian.

107-36 (f) If an emergency situation involving a child residing in
 107-37 an ICF-IID [~~ICF-MR~~] or nursing facility occurs, the ICF-IID
 107-38 [~~ICF-MR~~] or nursing facility, as applicable, must:

107-39 (1) attempt to notify the child's parent or guardian as
 107-40 soon as possible; and

107-41 (2) request a response from the parent or guardian.

107-42 (g) If a child's parent or guardian does not respond to a
 107-43 notice under Subsection (e) or (f), the ICF-IID [~~ICF-MR~~] or nursing
 107-44 facility, as applicable, must attempt to locate the parent or
 107-45 guardian by contacting another person whose information was
 107-46 provided by the parent or guardian under Section 531.1533(1)(B).

107-47 (h) Not later than the 30th day after the date an ICF-IID
 107-48 [~~ICF-MR~~] or nursing facility determines that it is unable to locate
 107-49 a child's parent or guardian for participation in activities listed
 107-50 under Subsection (e)(1) or (2), the ICF-IID [~~ICF-MR~~] or nursing
 107-51 facility must notify the Department of Aging and Disability
 107-52 Services of that determination and request that the department
 107-53 initiate a search for the child's parent or guardian.

107-54 SECTION 2.170. Section 531.171, Government Code, is amended
 107-55 to read as follows:

107-56 Sec. 531.171. COMMITTEE DUTIES. (a) The standing or other
 107-57 committees of the house of representatives and the senate that have
 107-58 jurisdiction over the commission [~~Health and Human Services~~
 107-59 ~~Commission~~] and other agencies relating to implementation of this
 107-60 chapter, as identified by the speaker of the house of
 107-61 representatives and the lieutenant governor, shall:

107-62 (1) monitor the commission's implementation of Section
 107-63 531.0055 and the commission's other duties in consolidating and
 107-64 integrating health and human services to ensure implementation
 107-65 consistent with law;

107-66 (2) recommend, as needed, adjustments to the
 107-67 implementation of Section 531.0055 and the commission's other
 107-68 duties in consolidating and integrating health and human services;
 107-69 and

(3) review the rulemaking process used by the commission, including the commission's plan for obtaining public input.

(b) The commission shall provide copies of all required reports to the committees and shall provide the committees with copies of proposed rules before the rules are published in the Texas Register. At the request of a committee or the executive commissioner, a health and human services agency shall provide other information to the committee, including information relating to the health and human services system, and shall report on agency progress in implementing statutory directives identified by the committee and the directives of the commission.

SECTION 2.171. Section 531.191(a), Government Code, is amended to read as follows:

(a) The commission, subject to the approval of the governor and the Legislative Budget Board, shall develop and implement a plan for the integration of services and functions relating to eligibility determination and service delivery by health and human services agencies, the Texas Workforce Commission, and other agencies. The plan must include a reengineering of eligibility determination business processes, streamlined service delivery, a unified and integrated process for the transition from welfare to work, and improved access to benefits and services for clients. In developing and implementing the plan, the commission:

(1) shall give priority to the design and development of computer hardware and software for and provide technical support relating to the integrated eligibility determination system;

(2) shall consult with agencies whose programs are included in the plan, including the [Texas] Department of Aging and Disability [Human] Services, the Department of State Health Services [Texas Department of Health], and the Texas Workforce Commission;

(3) may contract for appropriate professional and technical assistance; and

(4) may use the staff and resources of agencies whose programs are included in the plan.

SECTION 2.172. Sections 531.251(a-1) and (a-2), Government Code, are amended to read as follows:

Code, are amended to read as follows:

(a-1) The consortium must include:

(1) representatives of the Department of State Health Services, Department of Family and Protective Services, commission's [Health and Human Services Commission's] Medicaid program, Texas Education Agency, Texas Juvenile Justice Department, and Texas Correctional Office on Offenders with Medical or Mental Impairments; and

(2) one member who is:
(A) a youth or young adult who has a serious emotional disturbance and has received mental health services and supports; or

(B) [(3)] a family member of a youth or young adult described by Paragraph (A) [Subdivision (2)].

(a-2) The consortium may coordinate with the Children's Policy Council for the purposes of including the representation required by Subsection [Subsections] (a-1)(2) [and (3)].

SECTION 2.173. The heading to Subchapter H, Chapter 531, Government Code, is amended to read as follows:

SUBCHAPTER H. OFFICE OF HEALTH [EARLY CHILDHOOD] COORDINATION AND CONSUMER SERVICES

SECTION 2.174. Section [531.281](#), Government Code, is amended to read as follows:

Sec. 531.281. DEFINITION [DEFINITIONS]. In this chapter, "office" [+]

[(1) "Office"] means the Office of Health [Early Childhood] Coordination and Consumer Services.

[(2) "Advisory committee" means the Office of Early Childhood Coordination Advisory Committee.]

SECTION 2.175. Sections 531.282(a) and (b), Government Code, are amended to read as follows:

(a) The Office of Health [Early Childhood] Coordination and

109-1 Consumer Services is an office within the commission.

109-2 (b) The executive commissioner shall employ staff as needed
109-3 to carry out the duties of the office.

109-4 SECTION 2.176. Section 531.284(b), Government Code, is
109-5 amended to read as follows:

109-6 (b) In developing the statewide strategic plan, the office
109-7 shall:

109-8 (1) consider existing programs and models to serve
109-9 children younger than six years of age, including:

109-10 (A) community resource coordination groups;
109-11 (B) the Texas System of Care [~~Integrated Funding~~
109-12 ~~Initiative~~];

109-13 (C) the Texas Information and Referral Network;
109-14 and

109-15 (D) efforts to create a 2-1-1 telephone number
109-16 for access to human services;

109-17 (2) attempt to maximize federal funds and local
109-18 existing infrastructure and funds; and

109-19 (3) provide for local participation to the greatest
109-20 extent possible.

109-21 SECTION 2.177. Section 531.285(a), Government Code, is
109-22 amended to read as follows:

109-23 (a) The office shall identify:

109-24 (1) gaps in early childhood services by functional
109-25 area and geographical area;

109-26 (2) state policies, rules, and service procedures that
109-27 prevent or inhibit children younger than six years of age from
109-28 accessing available services;

109-29 (3) sources of funds for early childhood services,
109-30 including federal, state, and private-public ventures;

109-31 (4) opportunities for collaboration between the Texas
109-32 Education Agency and health and human services agencies to better
109-33 serve the needs of children younger than six years of age;

109-34 (5) methods for coordinating the provision of early
109-35 childhood services provided by the Texas Head Start State
109-36 [Start-State] Collaboration Office [~~Project~~], the Texas Education
109-37 Agency, and the Texas Workforce Commission;

109-38 (6) quantifiable benchmarks for success within early
109-39 childhood service delivery; and

109-40 (7) national best practices in early care and
109-41 educational delivery models.

109-42 SECTION 2.178. Sections 531.301(a) and (b), Government
109-43 Code, are amended to read as follows:

109-44 (a) The commission shall develop and implement a state
109-45 prescription drug program that operates in the same manner as the
109-46 vendor drug program operates in providing prescription drug
109-47 benefits to Medicaid recipients [~~of medical assistance under~~
109-48 ~~Chapter 32, Human Resources Code~~].

109-49 (b) A person is eligible for prescription drug benefits
109-50 under the state program if the person is:

109-51 (1) a qualified Medicare beneficiary, as defined by 42
109-52 U.S.C. Section 1396d(p)(1), as amended;

109-53 (2) a specified low-income Medicare beneficiary who is
109-54 eligible for [~~medical~~] assistance under Medicaid for Medicare
109-55 cost-sharing payments under 42 U.S.C. Section
109-56 1396a(a)(10)(E)(iii), as amended;

109-57 (3) a qualified disabled and working individual, as
109-58 defined by 42 U.S.C. Section 1396d(s), as amended; or

109-59 (4) a qualifying individual who is eligible for that
109-60 assistance under 42 U.S.C. Section 1396a(a)(10)(E)(iv)
109-61 [~~1396a(a)(10)(E)(iv)(I)~~, as amended; or

109-62 [~~5~~] a qualifying individual who is eligible for that
109-63 assistance under 42 U.S.C. Section 1396a(a)(10)(E)(iv)(II), as
109-64 amended].

109-65 SECTION 2.179. Section 531.302, Government Code, is amended
109-66 to read as follows:

109-67 Sec. 531.302. RULES. (a) The executive commissioner
109-68 [~~commission~~] shall adopt all rules necessary for implementation of
109-69 the state prescription drug program.

110-1 (b) In adopting rules for the state prescription drug
110-2 program, the executive commissioner [~~commission~~] may:

110-3 (1) require a person who is eligible for prescription
110-4 drug benefits to pay a cost-sharing payment;

110-5 (2) authorize the use of a prescription drug formulary
110-6 to specify which prescription drugs the state program will cover;

110-7 (3) to the extent possible, require clinically
110-8 appropriate prior authorization for prescription drug benefits in
110-9 the same manner as prior authorization is required under the vendor
110-10 drug program; and

110-11 (4) establish a drug utilization review program to
110-12 ensure the appropriate use of prescription drugs under the state
110-13 program.

110-14 (c) In adopting rules for the state prescription drug
110-15 program, the executive commissioner [~~commission~~] shall consult
110-16 with an advisory panel composed of an equal number of physicians,
110-17 pharmacists, and pharmacologists appointed by the executive
110-18 commissioner.

110-19 SECTION 2.180. Section 531.303, Government Code, is amended
110-20 to read as follows:

110-21 Sec. 531.303. GENERIC EQUIVALENT AUTHORIZED. In adopting
110-22 rules under the state program, the executive commissioner
110-23 [~~commission~~] may require that, unless the practitioner's signature
110-24 on a prescription clearly indicates that the prescription must be
110-25 dispensed as written, the pharmacist may select a generic
110-26 equivalent of the prescribed drug.

110-27 SECTION 2.181. Section 531.304, Government Code, is amended
110-28 to read as follows:

110-29 Sec. 531.304. PROGRAM FUNDING PRIORITIES. If money
110-30 available for the state prescription drug program is insufficient
110-31 to provide prescription drug benefits to all persons who are
110-32 eligible under Section 531.301(b), the commission shall limit the
110-33 number of enrollees based on available funding and shall provide
110-34 the prescription drug benefits to eligible persons in the following
110-35 order of priority:

110-36 (1) persons eligible under Section 531.301(b)(1);
110-37 (2) persons eligible under Section 531.301(b)(2); and
110-38 (3) persons eligible under Sections 531.301(b)(3) and
110-39 [~~(4)~~] [~~, and (5)~~].

110-40 SECTION 2.182. Section 531.402(b), Government Code, is
110-41 amended to read as follows:

110-42 (b) The council is composed of nine members of the public
110-43 appointed by the governor with the advice and consent of the senate.
110-44 To be eligible for appointment to the council, a person must have
110-45 demonstrated an interest in and knowledge of problems and available
110-46 services related to Medicaid, the child health plan program, the
110-47 financial assistance program under Chapter 31, Human Resources
110-48 Code, [~~the medical assistance program under Chapter 32, Human~~
110-49 ~~Resources Code,~~] or the supplemental nutrition assistance program
110-50 [~~nutritional assistance programs~~] under Chapter 33, Human
110-51 Resources Code.

110-52 SECTION 2.183. Sections 531.421(1), (2), and (3),
110-53 Government Code, are amended to read as follows:

110-54 (1) "Children with severe emotional disturbances"
110-55 includes:

110-56 (A) children who are at risk of incarceration or
110-57 placement in a residential mental health facility;

110-58 (B) children for whom a court may appoint the
110-59 Department of Family and Protective [~~and Regulatory~~] Services as
110-60 managing conservator;

110-61 (C) children who are students in a special
110-62 education program under Subchapter A, Chapter 29, Education Code;
110-63 and

110-64 (D) children who have a substance abuse disorder
110-65 or a developmental disability.

110-66 (2) "Community resource coordination group" means a
110-67 coordination group established under a memorandum of understanding
110-68 adopted under Section 531.055[~~, as added by Chapter 114, Acts of the~~
110-69 ~~77th Legislature, Regular Session, 2001~~].

(3) "Consortium" means the Texas System of Care Consortium established under Subchapter G-1 [consortium that oversees the Texas Integrated Funding Initiative under Subchapter C, Chapter 531, as added by Chapter 446, Acts of the 76th Legislature, Regular Session, 1999].

SECTION 2.184. The heading to Section 531.423, Government Code, is amended to read as follows:

Sec. 531.423. SUMMARY REPORT BY [TEXAS INTEGRATED FUNDING INITIATIVE] CONSORTIUM.

SECTION 2.185. Section 531.423(c), Government Code, is amended to read as follows:

(c) The consortium may include in the report created under this section recommendations for the statewide expansion of sites participating in the Texas System of Care [~~Integrated Funding Initiative under Subchapter G, Chapter 531, as added by Chapter 446, Acts of the 76th Legislature, Regular Session, 1999~~] and the integration of services provided at those sites with services provided by community resource coordination groups.

SECTION 2.186. Section 531.424, Government Code, is amended to read as follows:

Sec. 531.424. AGENCY IMPLEMENTATION OF RECOMMENDATIONS. As appropriate, the person or entity responsible for adopting rules for an [An] agency described by Section 531.423(a) shall[, as appropriate] adopt rules, and the agency shall implement policy changes[~~T~~] and enter into memoranda of understanding with other agencies, to implement the recommendations in the report created under Section 531.423.

SECTION 2.187. Section 531.551(a), Government Code, is amended to read as follows:

(a) The executive commissioner shall adopt rules providing for:

(1) a standard definition of "uncompensated hospital care";

(2) a methodology to be used by hospitals in this state to compute the cost of that care that incorporates a [the] standard set of adjustments to a hospital's initial computation of the cost of uncompensated hospital care that account for all funding streams that:

(A) are not patient-specific; and
(B) are used to offset the hospital's initially computed amount of uncompensated care [described by Section 531.552(g)(4)]; and

(3) procedures to be used by those hospitals to report the cost of that care to the commission and to analyze that cost.

SECTION 2.188. The heading to Section [531.652](#), Government Code, is amended to read as follows:

Sec. 531.652. OPERATION [ESTABLISHMENT] OF NURSE-FAMILY PARTNERSHIP COMPETITIVE GRANT PROGRAM.

SECTION 2.189. Section 531.652(a), Government Code, is amended to read as follows:

(a) The commission shall operate [~~establish~~] a nurse-family partnership competitive grant program through which the commission will award grants for the implementation of nurse-family partnership programs, or the expansion of existing programs, and for the operation of those programs for a period of not less than two years.

SECTION 2.190. Section 531.659(a), Government Code, is amended to read as follows:

(a) The commission, with the assistance of the Nurse-Family Partnership National Service Office, shall:

(1) adopt performance indicators that are designed to measure a grant recipient's performance with respect to the partnership program standards adopted by the executive commissioner [~~commission~~] under Section 531.656;

(2) use the performance indicators to continuously monitor and formally evaluate on an annual basis the performance of each grant recipient; and

(3) prepare and submit an annual report, not later than December 1 of each year, to the Senate Health and Human

112-1 Services Committee, or its successor, and the House Human Services
 112-2 Committee, or its successor, regarding the performance of each
 112-3 grant recipient during the preceding state fiscal year with respect
 112-4 to providing partnership program services.

112-5 SECTION 2.191. Section 531.706(c), Government Code, is
 112-6 amended to read as follows:

112-7 (c) The advisory committee shall:

112-8 (1) develop strategies for implementing the
 112-9 regulation of health care interpreters and health care translators;
 112-10 (2) make recommendations to the commission for any
 112-11 legislation necessary to establish and enforce qualifications for
 112-12 health care interpreters and health care translators or for the
 112-13 adoption of rules by or for state agencies regulating health care
 112-14 practitioners, hospitals, physician offices, and health care
 112-15 facilities that hire health care interpreters or health care
 112-16 translators; and

112-17 (3) perform other activities assigned by the
 112-18 commission related to health care interpreters or health care
 112-19 translators.

112-20 SECTION 2.192. Section 531.754, Government Code, is amended
 112-21 to read as follows:

112-22 Sec. 531.754. TRAINING PROGRAM. The commission shall
 112-23 develop and administer a training program for navigators. The
 112-24 program must include training on:

112-25 (1) how to complete an online application for public
 112-26 assistance benefits through the Texas Integrated Eligibility
 112-27 Redesign System (TIERS);

112-28 (2) the importance of maintaining the confidentiality
 112-29 of information handled by a navigator;

112-30 (3) the importance of obtaining and submitting
 112-31 complete and accurate information when completing an application
 112-32 for public assistance benefits online through the Texas Integrated
 112-33 Eligibility Redesign System (TIERS);

112-34 (4) the financial assistance program, the
 112-35 supplemental nutrition assistance program, Medicaid [~~the medical~~
 112-36 ~~assistance program~~], the child health plan program, and any other
 112-37 public assistance benefits program for which an individual may
 112-38 complete an online application through the Texas Integrated
 112-39 Eligibility Redesign System (TIERS); and

112-40 (5) how an individual may apply for other public
 112-41 assistance benefits for which an individual may not complete an
 112-42 online application through the Texas Integrated Eligibility
 112-43 Redesign System (TIERS).

112-44 SECTION 2.193. Sections 531.802(c), (d), and (g),
 112-45 Government Code, are amended to read as follows:

112-46 (c) Subject to Subsection (d), the council is composed of
 112-47 the following:

112-48 (1) the executive commissioner;
 112-49 (2) the commissioner of state health services;
 112-50 (3) the commissioner of the Department of Family and
 112-51 Protective Services;

112-52 (4) the commissioner of aging and disability services;
 112-53 (5) the commissioner of assistive and rehabilitative
 112-54 services;

112-55 (6) the commissioner of education;
 112-56 (7) the executive director of the Texas Juvenile
 112-57 Justice Department [~~Probation Commission~~];

112-58 (8) [~~the executive commissioner of the Texas Youth~~
 112-59 ~~Commission~~],

112-60 [(-9)] the executive director of the Texas Workforce
 112-61 Commission;

112-62 (9) [~~(-10)~~] the director of the Texas Correctional
 112-63 Office on Offenders with Medical or Mental Impairments;

112-64 (10) [~~(-11)~~] two public representatives who are
 112-65 parents of children who have received services from an agency
 112-66 represented on the council, appointed by the executive
 112-67 commissioner; and

112-68 (11) [~~(-12)~~] two representatives who are young adults
 112-69 or adolescents who have received services from an agency

113-1 represented on the council, appointed by the executive
113-2 commissioner.

113-3 (d) An individual listed in Subsections (c)(1)-(9)
113-4 [~~(c)(1)-(10)~~] may designate another individual as having authority
113-5 to act on behalf of the individual at council meetings and with
113-6 respect to council functions.

113-7 (g) The council is administratively attached to the
113-8 commission but is independent of direction by the commission or the
113-9 executive commissioner. The commission, through the commission's
113-10 Office of Health [Program] Coordination and Consumer Services ~~for~~
113-11 ~~Children and Youth~~, shall provide administrative support and
113-12 resources to the council as necessary to enable the council to
113-13 perform its duties.

113-14 SECTION 2.194. The heading to Subchapter U, Chapter 531,
113-15 Government Code, is amended to read as follows:

113-16 SUBCHAPTER U. MORTALITY REVIEW FOR CERTAIN INDIVIDUALS WITH AN
113-17 INTELLECTUAL OR DEVELOPMENTAL DISABILITY [DISABILITIES]

113-18 SECTION 2.195. Section 531.8501, Government Code, is
113-19 amended to read as follows:

113-20 Sec. 531.8501. DEFINITION. In this subchapter, "contracted
113-21 organization" means an entity that contracts with the commission
113-22 ~~Health and Human Services Commission~~ for the provision of
113-23 services as described by Section 531.851(c).

113-24 SECTION 2.196. Sections 531.851(a), (c), and (e),
113-25 Government Code, are amended to read as follows:

113-26 (a) The executive commissioner shall establish an
113-27 independent mortality review system to review the death of a person
113-28 with an intellectual or developmental disability who, at the time
113-29 of the person's death or at any time during the 24-hour period
113-30 before the person's death:

113-31 (1) resided in or received services from:

113-32 (A) an ICF-IID ~~[intermediate care facility for~~
113-33 ~~persons with an intellectual or developmental disability~~
113-34 ~~(ICF/IID)~~ operated or licensed by the Department of Aging and
113-35 Disability Services or a community center; or

113-36 (B) the ICF-IID ~~[ICF/IID]~~ component of the Rio
113-37 Grande State Center; or

113-38 (2) received services through a Section 1915(c) waiver
113-39 program for individuals who are eligible for ICF-IID ~~[ICF/IID]~~
113-40 services.

113-41 (c) The executive commissioner shall contract with an
113-42 institution of higher education or a health care organization or
113-43 association with experience in conducting research-based mortality
113-44 studies to conduct independent mortality reviews of persons with an
113-45 intellectual or developmental disability. The contract must
113-46 require the contracted organization to form a review team
113-47 consisting of:

113-48 (1) a physician with expertise regarding the medical
113-49 treatment of individuals with an intellectual or developmental
113-50 disability [disabilities];

113-51 (2) a registered nurse with expertise regarding the
113-52 medical treatment of individuals with an intellectual or
113-53 developmental disability [disabilities];

113-54 (3) a clinician or other professional with expertise
113-55 in the delivery of services and supports for individuals with an
113-56 intellectual or developmental disability [disabilities]; and

113-57 (4) any other appropriate person as provided by the
113-58 executive commissioner.

113-59 (e) To ensure consistency across mortality review systems,
113-60 a review under this section must collect information consistent
113-61 with the information required to be collected by any other
113-62 independent mortality review process established specifically for
113-63 persons with an intellectual or developmental disability
113-64 [disabilities].

113-65 SECTION 2.197. Section 531.854(a), Government Code, is
113-66 amended to read as follows:

113-67 (a) The commission may use or publish information under this
113-68 subchapter only to advance statewide practices regarding the
113-69 treatment and care of individuals with an intellectual or ~~[and]~~

developmental disability [disabilities]. A summary of the data in the contracted organization's reports or a statistical compilation of data reports may be released by the commission for general publication if the summary or statistical compilation does not contain any information that would permit the identification of an individual or that is confidential or privileged under this subchapter or other state or federal law.

SECTION 2.198. Section 531.901(4), Government Code, is amended to read as follows:

(4) "Local or regional health information exchange" means a health information exchange operating in this state that securely exchanges electronic health information, including information for patients receiving services under the child health plan program or Medicaid [program], among hospitals, clinics, physicians' offices, and other health care providers that are not owned by a single entity or included in a single operational unit or network.

SECTION 2.199. Sections 531.903(a) and (c), Government Code, are amended to read as follows:

(a) The commission shall develop an electronic health information exchange system to improve the quality, safety, and efficiency of health care services provided under the child health plan program and Medicaid [programs]. In developing the system, the commission shall ensure that:

(1) the confidentiality of patients' health information is protected and the privacy of those patients is maintained in accordance with applicable federal and state law, including:

(A) Section 1902(a)(7), Social Security Act (42 U.S.C. Section 1396a(a)(7));

(B) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(C) Chapter 552 [~~Government Code~~];

(D) Subchapter G, Chapter 241, Health and Safety Code;

(E) Section 12.003, Human Resources Code; and

(F) federal and state rules and regulations,

including:

(i) 42 C.F.R. Part 431, Subpart F; and

(ii) 45 C.F.R. Part 164;

(2) appropriate information technology systems used by the commission and health and human services agencies are interoperable;

(3) the system and external information technology systems are interoperable in receiving and exchanging appropriate electronic health information as necessary to enhance:

(A) the comprehensive nature of the information 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;

(4) the system and other health information systems not described by Subdivision (3) and data warehousing initiatives are interoperable; and

(5) the system has the elements described by Subsection (b).

(c) The commission shall implement the health information exchange system in stages as described by this chapter [Sections 531.905 through 531.908], except that the commission may deviate from those stages if technological advances make a deviation advisable or more efficient.

SECTION 2.200. Section 531.904(b), Government Code, is amended to read as follows:

(b) The executive commissioner shall appoint to the advisory committee at least 12 and not more than 16 members who have an interest in health information technology and who have experience in serving persons receiving health care through the child health plan program and Medicaid [programs].

SECTION 2.201. Sections 531.906(a) and (d), Government

115-1 Code, are amended to read as follows:

115-2 (a) In stage one of implementing the health information
 115-3 exchange system, the commission shall support and coordinate
 115-4 electronic prescribing tools used by health care providers and
 115-5 health care facilities under the child health plan program and
 115-6 Medicaid [programs].

115-7 (d) The commission shall apply for and actively pursue any
 115-8 waiver to the child health plan program or the state Medicaid plan
 115-9 from the federal Centers for Medicare and Medicaid Services or any
 115-10 other federal agency as necessary to remove an identified
 115-11 impediment to supporting and implementing electronic prescribing
 115-12 tools under this section, including the requirement for handwritten
 115-13 certification of certain drugs under 42 C.F.R. Section 447.512. If
 115-14 the commission, with assistance from the Legislative Budget Board,
 115-15 determines that the implementation of operational modifications in
 115-16 accordance with a waiver obtained as required by this subsection
 115-17 has resulted in cost increases in the child health plan program or
 115-18 Medicaid [program], the commission shall take the necessary actions
 115-19 to reverse the operational modifications.

115-20 SECTION 2.202. Section 531.907(a), Government Code, is
 115-21 amended to read as follows:

115-22 (a) Based on the recommendations of the advisory committee
 115-23 established under Section 531.904 and feedback provided by
 115-24 interested parties, the commission in stage two of implementing the
 115-25 health information exchange system may expand the system by:

115-26 (1) providing an electronic health record for each
 115-27 child enrolled in the child health plan program;

115-28 (2) including state laboratory results information in
 115-29 an electronic health record, including the results of newborn
 115-30 screenings and tests conducted under the Texas Health Steps
 115-31 program, based on the system developed for the health passport
 115-32 under Section 266.006, Family Code;

115-33 (3) improving data-gathering capabilities for an
 115-34 electronic health record so that the record may include basic
 115-35 health and clinical information in addition to available claims
 115-36 information, as determined by the executive commissioner;

115-37 (4) using evidence-based technology tools to create a
 115-38 unique health profile to alert health care providers regarding the
 115-39 need for additional care, education, counseling, or health
 115-40 management activities for specific patients; and

115-41 (5) continuing to enhance the electronic health record
 115-42 created for each Medicaid recipient [under Section 531.905] as
 115-43 technology becomes available and interoperability capabilities
 115-44 improve.

115-45 SECTION 2.203. Section 531.911, Government Code, is amended
 115-46 to read as follows:

115-47 Sec. 531.911. RULES. The executive commissioner may adopt
 115-48 rules to implement Sections 531.903 through 531.909 [531.910].

115-49 SECTION 2.204. Sections 531.912(a), (b), and (c),
 115-50 Government Code, are amended to read as follows:

115-51 (a) In this section, "nursing facility" means a
 115-52 convalescent or nursing home or related institution licensed under
 115-53 Chapter 242, Health and Safety Code, that provides long-term care
 115-54 services, as defined by Section 22.0011, Human Resources Code, to
 115-55 Medicaid [medical assistance] recipients.

115-56 (b) If feasible, the executive commissioner by rule may
 115-57 establish an incentive payment program for nursing facilities that
 115-58 choose to participate. The program must be designed to improve the
 115-59 quality of care and services provided to Medicaid [medical
 115-60 assistance] recipients. Subject to Subsection (f), the program
 115-61 may provide incentive payments in accordance with this section to
 115-62 encourage facilities to participate in the program.

115-63 (c) In establishing an incentive payment program under this
 115-64 section, the executive commissioner shall, subject to Subsection
 115-65 (d), adopt common performance measures to be used in evaluating
 115-66 nursing facilities that are related to structure, process, and
 115-67 outcomes that positively correlate to nursing facility quality and
 115-68 improvement. The common performance measures:

115-69 (1) must be:

116-1 (A) recognized by the executive commissioner as
 116-2 valid indicators of the overall quality of care received by
 116-3 Medicaid [medical assistance] recipients; and
 116-4 (B) designed to encourage and reward
 116-5 evidence-based practices among nursing facilities; and
 116-6 (2) may include measures of:
 116-7 (A) quality of care, as determined by clinical
 116-8 performance ratings published by the federal Centers for Medicare
 116-9 and Medicaid Services, the Agency for Healthcare Research and
 116-10 Quality, or another federal agency;
 116-11 (B) direct-care staff retention and turnover;
 116-12 (C) recipient satisfaction, including the
 116-13 satisfaction of recipients who are short-term and long-term
 116-14 residents of facilities, and family satisfaction, as determined by
 116-15 the Nursing Home Consumer Assessment of Healthcare [Health]
 116-16 Providers and Systems surveys [survey] relied upon by the federal
 116-17 Centers for Medicare and Medicaid Services;
 116-18 (D) employee satisfaction and engagement;
 116-19 (E) the incidence of preventable acute care
 116-20 emergency room services use;
 116-21 (F) regulatory compliance;
 116-22 (G) level of person-centered care; and
 116-23 (H) direct-care staff training, including a
 116-24 facility's utilization of independent distance learning programs
 116-25 for the continuous training of direct-care staff.

116-26 SECTION 2.205. The heading to Section [531.982](#), Government
 116-27 Code, is amended to read as follows:

116-28 Sec. 531.982. IMPLEMENTATION [ESTABLISHMENT] OF TEXAS HOME
 116-29 VISITING PROGRAM.

116-30 SECTION 2.206. Section [531.982](#)(a), Government Code, is
 116-31 amended to read as follows:

116-32 (a) The commission shall Maintain [Create] a strategic plan
 116-33 to serve at-risk pregnant women and families with children under
 116-34 the age of six through home visiting programs that improve outcomes
 116-35 for parents and families.

116-36 SECTION 2.207. Section [531.988](#), Government Code, is amended
 116-37 to read as follows:

116-38 Sec. 531.988. RULES. The executive commissioner
 116-39 [commission] may adopt rules as necessary to implement this
 116-40 subchapter.

116-41 SECTION 2.208. The heading to Chapter 533, Government Code,
 116-42 is amended to read as follows:

116-43 CHAPTER 533. [IMPLEMENTATION OF] MEDICAID MANAGED CARE PROGRAM

116-44 SECTION 2.209. Sections [533.001](#)(2) and (6), Government
 116-45 Code, are amended to read as follows:

116-46 (2) "Executive commissioner" ["Commissioner"] means
 116-47 the executive commissioner of the Health and Human Services
 116-48 Commission [Health and Human Services].

116-49 (6) "Recipient" means a recipient of Medicaid [medical
 116-50 assistance under Chapter 32, Human Resources Code].

116-51 SECTION 2.210. Section [533.002](#), Government Code, is amended
 116-52 to read as follows:

116-53 Sec. 533.002. PURPOSE. The commission shall implement the
 116-54 Medicaid managed care program [as part of the health care delivery
 116-55 system developed under Chapter 532] by contracting with managed
 116-56 care organizations in a manner that, to the extent possible:

116-57 (1) improves the health of Texans by:

116-58 (A) emphasizing prevention;

116-59 (B) promoting continuity of care; and

116-60 (C) providing a medical home for recipients;

116-61 (2) ensures that each recipient receives high quality,
 116-62 comprehensive health care services in the recipient's local
 116-63 community;

116-64 (3) encourages the training of and access to primary
 116-65 care physicians and providers;

116-66 (4) maximizes cooperation with existing public health
 116-67 entities, including local departments of health;

116-68 (5) provides incentives to managed care organizations
 116-69 to improve the quality of health care services for recipients by

117-1 providing value-added services; and

117-2 (6) reduces administrative and other nonfinancial
117-3 barriers for recipients in obtaining health care services.

117-4 SECTION 2.211. Sections **533.0025**(b), (c), (d), (e), (f),
117-5 and (h), Government Code, are amended to read as follows:

117-6 (b) Except as otherwise provided by this section and
117-7 notwithstanding any other law, the commission shall provide
117-8 Medicaid [~~medical assistance for~~] acute care services through the
117-9 most cost-effective model of Medicaid capitated managed care as
117-10 determined by the commission. The commission shall require
117-11 mandatory participation in a Medicaid capitated managed care
117-12 program for all persons eligible for Medicaid acute care [~~medical~~
117-13 ~~assistance~~] benefits, but may implement alternative models or
117-14 arrangements, including a traditional fee-for-service arrangement,
117-15 if the commission determines the alternative would be more
117-16 cost-effective or efficient.

117-17 (c) In determining whether a model or arrangement described
117-18 by Subsection (b) is more cost-effective, the executive
117-19 commissioner must consider:

117-20 (1) the scope, duration, and types of health benefits
117-21 or services to be provided in a certain part of this state or to a
117-22 certain population of recipients;

117-23 (2) administrative costs necessary to meet federal and
117-24 state statutory and regulatory requirements;

117-25 (3) the anticipated effect of market competition
117-26 associated with the configuration of Medicaid service delivery
117-27 models determined by the commission; and

117-28 (4) the gain or loss to this state of a tax collected
117-29 under Chapter 222, Insurance Code.

117-30 (d) If the commission determines that it is not more
117-31 cost-effective to use a Medicaid managed care model to provide
117-32 certain types of Medicaid [~~medical assistance for~~] acute care in a
117-33 certain area or to certain [~~medical assistance~~] recipients as
117-34 prescribed by this section, the commission shall provide Medicaid
117-35 [~~medical assistance for~~] acute care through a traditional
117-36 fee-for-service arrangement.

117-37 (e) The commission shall determine the most cost-effective
117-38 alignment of managed care service delivery areas. The executive
117-39 commissioner may consider the number of lives impacted, the usual
117-40 source of health care services for residents in an area, and other
117-41 factors that impact the delivery of health care services in the
117-42 area.

117-43 (f) The commission shall:

117-44 (1) conduct a study to evaluate the feasibility of
117-45 automatically enrolling applicants determined eligible for
117-46 benefits under Medicaid [~~the medical assistance program~~] in a
117-47 Medicaid managed care plan chosen by the applicant; and

117-48 (2) report the results of the study to the legislature
117-49 not later than December 1, 2014.

117-50 (h) If the commission determines that it is feasible, the
117-51 commission may, notwithstanding any other law, implement an
117-52 automatic enrollment process under which applicants determined
117-53 eligible for Medicaid [~~medical assistance~~] benefits are
117-54 automatically enrolled in a Medicaid managed care plan chosen by
117-55 the applicant. The commission may elect to implement the automatic
117-56 enrollment process as to certain populations of recipients [~~under~~
117-57 ~~the medical assistance program~~].

117-58 SECTION 2.212. Section **533.00251**(a)(3), Government Code,
117-59 is amended to read as follows:

117-60 (3) "Nursing facility" means a convalescent or nursing
117-61 home or related institution licensed under Chapter 242, Health and
117-62 Safety Code, that provides long-term services and supports to
117-63 [Medicaid] recipients.

117-64 SECTION 2.213. Sections **533.00251**(b), (c), and (d),
117-65 Government Code, are amended to read as follows:

117-66 (b) Subject to Section **533.0025**, the commission shall
117-67 expand the STAR + PLUS Medicaid managed care program to all areas of
117-68 this state to serve individuals eligible for acute care services
117-69 and long-term services and supports under Medicaid [~~the medical~~

118-1 assistance program].

118-2 (c) Subject to Section 533.0025 and notwithstanding any
 118-3 other law, the commission, in consultation with the advisory
 118-4 committee, shall provide benefits under Medicaid [~~the medical~~
 118-5 ~~assistance program~~] to recipients who reside in nursing facilities
 118-6 through the STAR + PLUS Medicaid managed care program. In
 118-7 implementing this subsection, the commission shall ensure:

118-8 (1) that the commission is responsible for setting the
 118-9 minimum reimbursement rate paid to a nursing facility under the
 118-10 managed care program, including the staff rate enhancement paid to
 118-11 a nursing facility that qualifies for the enhancement;

118-12 (2) that a nursing facility is paid not later than the
 118-13 10th day after the date the facility submits a clean claim;

118-14 (3) the appropriate utilization of services
 118-15 consistent with criteria established [~~adopted~~] by the commission;

118-16 (4) a reduction in the incidence of potentially
 118-17 preventable events and unnecessary institutionalizations;

118-18 (5) that a managed care organization providing
 118-19 services under the managed care program provides discharge
 118-20 planning, transitional care, and other education programs to
 118-21 physicians and hospitals regarding all available long-term care
 118-22 settings;

118-23 (6) that a managed care organization providing
 118-24 services under the managed care program:

118-25 (A) assists in collecting applied income from
 118-26 recipients; and

118-27 (B) provides payment incentives to nursing
 118-28 facility providers that reward reductions in preventable acute care
 118-29 costs and encourage transformative efforts in the delivery of
 118-30 nursing facility services, including efforts to promote a
 118-31 resident-centered care culture through facility design and
 118-32 services provided;

118-33 (7) the establishment of a portal that is in
 118-34 compliance with state and federal regulations, including standard
 118-35 coding requirements, through which nursing facility providers
 118-36 participating in the STAR + PLUS Medicaid managed care program may
 118-37 submit claims to any participating managed care organization;

118-38 (8) that rules and procedures relating to the
 118-39 certification and decertification of nursing facility beds under
 118-40 Medicaid [~~the medical assistance program~~] are not affected; and

118-41 (9) that a managed care organization providing
 118-42 services under the managed care program, to the greatest extent
 118-43 possible, offers nursing facility providers access to:

118-44 (A) acute care professionals; and
 118-45 (B) telemedicine, when feasible and in
 118-46 accordance with state law, including rules adopted by the Texas
 118-47 Medical Board.

118-48 (d) Subject to Subsection (e), the commission shall ensure
 118-49 that a nursing facility provider authorized to provide services
 118-50 under Medicaid [~~the medical assistance program~~] on September 1,
 118-51 2013, is allowed to participate in the STAR + PLUS Medicaid managed
 118-52 care program through August 31, 2017.

118-53 SECTION 2.214. Section 533.002515(a), Government Code, is
 118-54 amended to read as follows:

118-55 (a) The commission shall develop a plan in preparation for
 118-56 implementing the requirement under Section 533.00251(c) that the
 118-57 commission provide benefits under Medicaid [~~the medical assistance~~
 118-58 ~~program~~] to recipients who reside in nursing facilities through the
 118-59 STAR + PLUS Medicaid managed care program. The plan required by
 118-60 this section must be completed in two phases as follows:

118-61 (1) phase one: contract planning phase; and

118-62 (2) phase two: initial testing phase.

118-63 SECTION 2.215. Section 533.00252(a), Government Code, is
 118-64 amended to read as follows:

118-65 (a) The STAR + PLUS Nursing Facility Advisory Committee is
 118-66 established to advise the commission on the implementation of and
 118-67 other activities related to the provision of Medicaid [~~medical~~
 118-68 ~~assistance~~] benefits to recipients who reside in nursing facilities
 118-69 through the STAR + PLUS Medicaid managed care program under Section

119-1 533.00251, including advising the commission regarding its duties
 119-2 with respect to:

119-3 (1) developing quality-based outcomes and process
 119-4 measures for long-term services and supports provided in nursing
 119-5 facilities;

119-6 (2) developing quality-based long-term care payment
 119-7 systems and quality initiatives for nursing facilities;

119-8 (3) transparency of information received from managed
 119-9 care organizations;

119-10 (4) the reporting of outcome and process measures;
 119-11 (5) the sharing of data among health and human
 119-12 services agencies; and

119-13 (6) patient care coordination, quality of care
 119-14 improvement, and cost savings.

119-15 SECTION 2.216. Section 533.00253(a)(2), Government Code,
 119-16 is amended to read as follows:

119-17 (2) "Health home" means a primary care provider
 119-18 practice, or, if appropriate, a specialty care provider practice,
 119-19 incorporating several features, including comprehensive care
 119-20 coordination, family-centered care, and data management, that are
 119-21 focused on improving outcome-based quality of care and increasing
 119-22 patient and provider satisfaction under Medicaid [~~the medical~~
 119-23 assistance program].

119-24 SECTION 2.217. Sections 533.00253(b), (d), and (e),
 119-25 Government Code, are amended to read as follows:

119-26 (b) Subject to Section 533.0025, the commission shall, in
 119-27 consultation with the advisory committee and the Children's Policy
 119-28 Council established under Section 22.035, Human Resources Code,
 119-29 establish a mandatory STAR Kids capitated managed care program
 119-30 tailored to provide Medicaid [~~medical assistance~~] benefits to
 119-31 children with disabilities. The managed care program developed
 119-32 under this section must:

119-33 (1) provide Medicaid [~~medical assistance~~] benefits
 119-34 that are customized to meet the health care needs of recipients
 119-35 under the program through a defined system of care;

119-36 (2) better coordinate care of recipients under the
 119-37 program;

119-38 (3) improve the health outcomes of recipients;
 119-39 (4) improve recipients' access to health care
 119-40 services;

119-41 (5) achieve cost containment and cost efficiency;
 119-42 (6) reduce the administrative complexity of
 119-43 delivering Medicaid [~~medical assistance~~] benefits;

119-44 (7) reduce the incidence of unnecessary
 119-45 institutionalizations and potentially preventable events by
 119-46 ensuring the availability of appropriate services and care
 119-47 management;

119-48 (8) require a health home; and
 119-49 (9) coordinate and collaborate with long-term care
 119-50 service providers and long-term care management providers, if
 119-51 recipients are receiving long-term services and supports outside of
 119-52 the managed care organization.

119-53 (d) The commission shall provide Medicaid [~~medical~~
 119-54 assistance] benefits through the STAR Kids managed care program
 119-55 established under this section to children who are receiving
 119-56 benefits under the medically dependent children (MDCP) waiver
 119-57 program. The commission shall ensure that the STAR Kids managed
 119-58 care program provides all of the benefits provided under the
 119-59 medically dependent children (MDCP) waiver program to the extent
 119-60 necessary to implement this subsection.

119-61 (e) The commission shall ensure that there is a plan for
 119-62 transitioning the provision of Medicaid [~~program~~] benefits to
 119-63 recipients 21 years of age or older from under the STAR Kids program
 119-64 to under the STAR + PLUS Medicaid managed care program that protects
 119-65 continuity of care. The plan must ensure that coordination between
 119-66 the programs begins when a recipient reaches 18 years of age.

119-67 SECTION 2.218. Section 533.0026(a), Government Code, is
 119-68 amended to read as follows:

119-69 (a) Notwithstanding any other law, the commission shall

120-1 ensure that a managed care plan offered by a managed care
 120-2 organization that contracts with the commission under this chapter
 120-3 and any other Medicaid managed care model or arrangement
 120-4 implemented under this chapter allow a [Medicaid] recipient who
 120-5 receives services through the plan or other model or arrangement
 120-6 to, in the manner and to the extent required by Section 32.072,
 120-7 Human Resources Code:

120-8 (1) select an in-network ophthalmologist or
 120-9 therapeutic optometrist in the managed care network to provide eye
 120-10 health care services, other than surgery; and

120-11 (2) have direct access to the selected in-network
 120-12 ophthalmologist or therapeutic optometrist for the provision of the
 120-13 nonsurgical services.

120-14 SECTION 2.219. Section 533.0028, Government Code, is
 120-15 amended to read as follows:

120-16 Sec. 533.0028. EVALUATION OF CERTAIN STAR + PLUS MEDICAID
 120-17 MANAGED CARE PROGRAM SERVICES. The external quality review
 120-18 organization shall periodically conduct studies and surveys to
 120-19 assess the quality of care and satisfaction with health care
 120-20 services provided to enrollees in the STAR + PLUS Medicaid managed
 120-21 care program who are eligible to receive health care benefits under
 120-22 both [the] Medicaid and the Medicare program [programs].

120-23 SECTION 2.220. Section 533.00281(d), Government Code, is
 120-24 amended to read as follows:

120-25 (d) In conjunction with the commission's office of contract
 120-26 management, the commission shall provide a report to the standing
 120-27 committees of the senate and house of representatives with
 120-28 jurisdiction over [the] Medicaid [program] not later than December
 120-29 1 of each year. The report must:

120-30 (1) summarize the results of the utilization reviews
 120-31 conducted under this section during the preceding fiscal year;

120-32 (2) provide analysis of errors committed by each
 120-33 reviewed managed care organization; and

120-34 (3) extrapolate those findings and make
 120-35 recommendations for improving the efficiency of the program.

120-36 SECTION 2.221. Section 533.003(b), Government Code, is
 120-37 amended to read as follows:

120-38 (b) The commission, in considering approval of a
 120-39 subcontract between a managed care organization and a pharmacy
 120-40 benefit manager for the provision of prescription drug benefits
 120-41 under [the] Medicaid [program], shall review and consider whether
 120-42 the pharmacy benefit manager has been in the preceding three years:

120-43 (1) convicted of an offense involving a material
 120-44 misrepresentation or an act of fraud or of another violation of
 120-45 state or federal criminal law;

120-46 (2) adjudicated to have committed a breach of
 120-47 contract; or

120-48 (3) assessed a penalty or fine in the amount of
 120-49 \$500,000 or more in a state or federal administrative proceeding.

120-50 SECTION 2.222. Section 533.005(a), Government Code, is
 120-51 amended to read as follows:

120-52 (a) A contract between a managed care organization and the
 120-53 commission for the organization to provide health care services to
 120-54 recipients must contain:

120-55 (1) procedures to ensure accountability to the state
 120-56 for the provision of health care services, including procedures for
 120-57 financial reporting, quality assurance, utilization review, and
 120-58 assurance of contract and subcontract compliance;

120-59 (2) capitation rates that ensure the cost-effective
 120-60 provision of quality health care;

120-61 (3) a requirement that the managed care organization
 120-62 provide ready access to a person who assists recipients in
 120-63 resolving issues relating to enrollment, plan administration,
 120-64 education and training, access to services, and grievance
 120-65 procedures;

120-66 (4) a requirement that the managed care organization
 120-67 provide ready access to a person who assists providers in resolving
 120-68 issues relating to payment, plan administration, education and
 120-69 training, and grievance procedures;

(5) a requirement that the managed care organization provide information and referral about the availability of educational, social, and other community services that could benefit a recipient;

(6) procedures for recipient outreach and education;

(7) a requirement that the managed care organization make payment to a physician or provider for health care services rendered to a recipient under a managed care plan on any claim for payment that is received with documentation reasonably necessary for the managed care organization to process the claim:

(A) not later than:

(i) the 10th day after the date the claim is received if the claim relates to services provided by a nursing facility, intermediate care facility, or group home;

(ii) the 30th day after the date the claim is received if the claim relates to the provision of long-term services and supports not subject to Subparagraph (i); and

(iii) the 45th day after the date the claim is received if the claim is not subject to Subparagraph (i) or (ii); or

(B) within a period, not to exceed 60 days, specified by a written agreement between the physician or provider and the managed care organization;

(7-a) a requirement that the managed care organization to the commission that the organization pays claims by Subdivision (7)(A)(ii) on average not later than the later the date the claim is received by the organization;

(8) a requirement that the commission, on the date of a recipient's enrollment in a managed care plan issued by the managed care organization, inform the organization of the recipient's Medicaid certification date;

(9) a requirement that the managed care organization comply with Section 533.006 as a condition of contract retention and renewal;

(10) a requirement that the managed care organization provide the information required by Section 533.012 and otherwise comply and cooperate with the commission's office of inspector general and the office of the attorney general;

(11) a requirement that the managed care organization's usages of out-of-network providers or groups of out-of-network providers may not exceed limits for those usages relating to total inpatient admissions, total outpatient services, and emergency room admissions determined by the commission;

(12) if the commission finds that a managed care organization has violated Subdivision (11), a requirement that the managed care organization reimburse an out-of-network provider for health care services at a rate that is equal to the allowable rate for those services, as determined under Sections [32.028](#) and [32.0281](#), Human Resources Code;

(13) a requirement that, notwithstanding any other law, including Sections 843.312 and 1301.052, Insurance Code, the organization:

(A) use advanced practice registered nurses and physician assistants in addition to physicians as primary care providers to increase the availability of primary care providers in the organization's provider network; and

(B) treat advanced practice registered nurses and physician assistants in the same manner as primary care physicians with regard to:

- (i) selection and assignment as primary care providers;
- (ii) inclusion as primary care providers in

the organization's provider network; and
(iii) inclusion as primary care providers
in any provider network directory maintained by the organization;
(iv) inclusion as primary care providers

(14) a requirement that the managed care organization reimburse a federally qualified health center or rural health clinic for health care services provided to a recipient outside of regular business hours, including on a weekend day or holiday, at a

rate that is equal to the allowable rate for those services as determined under Section [32.028](#), Human Resources Code, if the recipient does not have a referral from the recipient's primary care physician;

(15) a requirement that the managed care organization develop, implement, and maintain a system for tracking and resolving all provider appeals related to claims payment, including a process that will require:

(A) a tracking mechanism to document the status and final disposition of each provider's claims payment appeal;

(B) the contracting with physicians who are not network providers and who are of the same or related specialty as the appealing physician to resolve claims disputes related to denial on the basis of medical necessity that remain unresolved subsequent to a provider appeal;

(C) the determination of the physician resolving the dispute to be binding on the managed care organization and provider; and

(D) the managed care organization to allow a provider with a claim that has not been paid before the time prescribed by Subdivision (7)(A)(ii) to initiate an appeal of that claim;

(16) a requirement that a medical director who is authorized to make medical necessity determinations is available to the region where the managed care organization provides health care services;

(17) a requirement that the managed care organization ensure that a medical director and patient care coordinators and provider and recipient support services personnel are located in the South Texas service region, if the managed care organization provides a managed care plan in that region;

(18) a requirement that the managed care organization provide special programs and materials for recipients with limited English proficiency or low literacy skills;

(19) a requirement that the managed care organization develop and establish a process for responding to provider appeals in the region where the organization provides health care services;

(20) a requirement that the managed care organization:

(A) develop and submit to the commission, before the organization begins to provide health care services to recipients, a comprehensive plan that describes how the organization's provider network will provide recipients sufficient access to:

(i) preventive care;

(ii) primary care;

(iii) specialty care;

(iv) after-hours urgent care;

(v) chronic care;

(vi) long-term services and supports;

(vii) nursing services; and

(viii) therapy services, including

services provided in a clinical setting or in a home or community-based setting; and

(B) regularly, as determined by the commission, submit to the commission and make available to the public a report containing data on the sufficiency of the organization's provider network with regard to providing the care and services described under Paragraph (A) and specific data with respect to Paragraphs (A)(iii), (vi), (vii), and (viii) on the average length of time between:

(i) the date a provider makes a referral for the care or service and the date the organization approves or denies the referral; and

(ii) the date the organization approves a referral for the care or service and the date the care or service is initiated;

(21) a requirement that the managed care organization demonstrate to the commission, before the organization begins to provide health care services to recipients, that:

(A) the organization's provider network has the capacity to serve the number of recipients expected to enroll in a managed care plan offered by the organization;

(B) the organization's provider network includes:

- (i) a sufficient number of primary care providers;
- (ii) a sufficient variety of provider

types;

(iii) a sufficient number of providers of long-term services and supports and specialty pediatric care providers of home and community-based services; and

(iv) providers located throughout the

(iv) providers located throughout the region where the organization will provide health care services; and

recipients through the organization's provider network to a comparable extent that health care services would be available to recipients under a fee-for-service or primary care case management model of Medicaid managed care;

(22) a requirement that the managed care organization develop a monitoring program for measuring the quality of the health care services provided by the organization's provider network that:

(A) incorporates the National Committee for Quality Assurance's Healthcare Effectiveness Data and Information Set (HEDIS) measures;

(B) focuses on measuring outcomes; and
(C) includes the collection and analysis of clinical data relating to prenatal care, preventive care, mental health care, and the treatment of acute and chronic health conditions and substance abuse;

(23) subject to Subsection (a-1), a requirement that the managed care organization develop, implement, and maintain an outpatient pharmacy benefit plan for its enrolled recipients:

- (A) that exclusively employs the vendor drug program formulary and preserves the state's ability to reduce waste, fraud, and abuse under [the] Medicaid [program];
- (B) that adheres to the applicable preferred drug

list adopted by the commission under Section 531.072;
(C) that includes the prior authorization procedures and requirements prescribed by or implemented under Sections 531.073(b), (c), and (g) for the vendor drug program;

(D) for purposes of which the managed care organization:
(i) may not negotiate or collect rebates associated with pharmacy products on the vendor drug program

(ii) may not receive drug rebate or pricing information that is confidential under Section [531.071](#);

(E) that complies with the prohibition under Section 531.089; (F) under which the managed care organization may not prohibit, limit or interfere with a recipient's selection of a

(G) that allows the managed care organization or any subcontracted pharmacy benefit manager to contract with a pharmacist or pharmacy providers separately for specialty pharmacy services except that:

services, except that:

(i) the managed care organization and pharmacy benefit manager are prohibited from allowing exclusive contracts with a specialty pharmacy owned wholly or partly by the pharmacy benefit manager responsible for the administration of the pharmacy benefit program; and

(ii) the managed care organization and pharmacy benefit manager must adopt policies and procedures for reclassifying prescription drugs from retail to specialty drugs,

124-1 and those policies and procedures must be consistent with rules
 124-2 adopted by the executive commissioner and include notice to network
 124-3 pharmacy providers from the managed care organization;

124-4 (H) under which the managed care organization may
 124-5 not prevent a pharmacy or pharmacist from participating as a
 124-6 provider if the pharmacy or pharmacist agrees to comply with the
 124-7 financial terms and conditions of the contract as well as other
 124-8 reasonable administrative and professional terms and conditions of
 124-9 the contract;

124-10 (I) under which the managed care organization may
 124-11 include mail-order pharmacies in its networks, but may not require
 124-12 enrolled recipients to use those pharmacies, and may not charge an
 124-13 enrolled recipient who opts to use this service a fee, including
 124-14 postage and handling fees;

124-15 (J) under which the managed care organization or
 124-16 pharmacy benefit manager, as applicable, must pay claims in
 124-17 accordance with Section 843.339, Insurance Code; and

124-18 (K) under which the managed care organization or
 124-19 pharmacy benefit manager, as applicable:

124-20 (i) to place a drug on a maximum allowable
 124-21 cost list, must ensure that:

124-22 (a) the drug is listed as "A" or "B"
 124-23 rated in the most recent version of the United States Food and Drug
 124-24 Administration's Approved Drug Products with Therapeutic
 124-25 Equivalence Evaluations, also known as the Orange Book, has an "NR"
 124-26 or "NA" rating or a similar rating by a nationally recognized
 124-27 reference; and

124-28 (b) the drug is generally available
 124-29 for purchase by pharmacies in the state from national or regional
 124-30 wholesalers and is not obsolete;

124-31 (ii) must provide to a network pharmacy
 124-32 provider, at the time a contract is entered into or renewed with the
 124-33 network pharmacy provider, the sources used to determine the
 124-34 maximum allowable cost pricing for the maximum allowable cost list
 124-35 specific to that provider;

124-36 (iii) must review and update maximum
 124-37 allowable cost price information at least once every seven days to
 124-38 reflect any modification of maximum allowable cost pricing;

124-39 (iv) must, in formulating the maximum
 124-40 allowable cost price for a drug, use only the price of the drug and
 124-41 drugs listed as therapeutically equivalent in the most recent
 124-42 version of the United States Food and Drug Administration's
 124-43 Approved Drug Products with Therapeutic Equivalence Evaluations,
 124-44 also known as the Orange Book;

124-45 (v) must establish a process for
 124-46 eliminating products from the maximum allowable cost list or
 124-47 modifying maximum allowable cost prices in a timely manner to
 124-48 remain consistent with pricing changes and product availability in
 124-49 the marketplace;

124-50 (vi) must:

124-51 (a) provide a procedure under which a
 124-52 network pharmacy provider may challenge a listed maximum allowable
 124-53 cost price for a drug;

124-54 (b) respond to a challenge not later
 124-55 than the 15th day after the date the challenge is made;

124-56 (c) if the challenge is successful,
 124-57 make an adjustment in the drug price effective on the date the
 124-58 challenge is resolved, and make the adjustment applicable to all
 124-59 similarly situated network pharmacy providers, as determined by the
 124-60 managed care organization or pharmacy benefit manager, as
 124-61 appropriate;

124-62 (d) if the challenge is denied,
 124-63 provide the reason for the denial; and

124-64 (e) report to the commission every 90
 124-65 days the total number of challenges that were made and denied in the
 124-66 preceding 90-day period for each maximum allowable cost list drug
 124-67 for which a challenge was denied during the period;

124-68 (vii) must notify the commission not later
 124-69 than the 21st day after implementing a practice of using a maximum

allowable cost list for drugs dispensed at retail but not by mail; and

(viii) must provide a process for each of its network pharmacy providers to readily access the maximum allowable cost list specific to that provider;

(24) a requirement that the managed care organization and any entity with which the managed care organization contracts for the performance of services under a managed care plan disclose, at no cost, to the commission and, on request, the office of the attorney general all discounts, incentives, rebates, fees, free goods, bundling arrangements, and other agreements affecting the net cost of goods or services provided under the plan; and

(25) a requirement that the managed care organization not implement significant, nonnegotiated, across-the-board provider reimbursement rate reductions unless:

(A) subject to Subsection (a-3), the organization has the prior approval of the commission to make the reduction; or

(B) the rate reductions are based on changes to the Medicaid fee schedule or cost containment initiatives implemented by the commission.

SECTION 2.223. Section 533.0051(d), Government Code, is amended to read as follows:

(d) Subject to Subsection (f), the commission shall assess the feasibility and cost-effectiveness of including provisions in a contract described by Subsection (a) that require the health maintenance organization to provide to the providers in the organization's provider network pay-for-performance opportunities that support quality improvements in the care of [Medicaid] recipients. Pay-for-performance opportunities may include incentives for providers to provide care after normal business hours and to participate in the early and periodic screening, diagnosis, and treatment program and other activities that improve [Medicaid] recipients' access to care. If the commission determines that the provisions are feasible and may be cost-effective, the commission shall develop and implement a pilot program in at least one health care service region under which the commission will include the provisions in contracts with health maintenance organizations offering managed care plans in the region.

SECTION 2.224. Section 533.0055(b), Government Code, is amended to read as follows:

(b) The provider protection plan required under this section must provide for:

(1) prompt payment and proper reimbursement of providers by managed care organizations;

(2) prompt and accurate adjudication of claims through:

(A) provider education on the proper submission of clean claims and on appeals;

(B) acceptance of uniform forms, including HCFA Forms 1500 and UB-92 and subsequent versions of those forms, through an electronic portal; and

(C) the establishment of standards for claims payments in accordance with a provider's contract;

(3) adequate and clearly defined provider network standards that are specific to provider type, including physicians, general acute care facilities, and other provider types defined in the commission's network adequacy standards in effect on January 1, 2013, and that ensure choice among multiple providers to the greatest extent possible;

(4) a prompt credentialing process for providers;

(5) uniform efficiency standards and requirements for managed care organizations for the submission and tracking of preauthorization requests for services provided under [the] Medicaid [program];

(6) establishment of an electronic process, including the use of an Internet portal, through which providers in any managed care organization's provider network may:

(A) submit electronic claims, prior authorization requests, claims appeals and reconsiderations, clinical data, and other documentation that the managed care organization requests for prior authorization and claims processing; and

(B) obtain electronic remittance advice, explanation of benefits statements, and other standardized reports;

(7) the measurement of the rates of retention by managed care organizations of significant traditional providers;

(8) the creation of a work group to review and make recommendations to the commission concerning any requirement under this subsection for which immediate implementation is not feasible at the time the plan is otherwise implemented, including the required process for submission and acceptance of attachments for claims processing and prior authorization requests through an electronic process under Subdivision (6) and, for any requirement that is not implemented immediately, recommendations regarding the expected:

(A) fiscal impact of implementing the requirement; and

(B) timeline for implementation of the requirement; and

(9) any other provision that the commission determines will ensure efficiency or reduce administrative burdens on providers participating in a Medicaid managed care model or arrangement.

SECTION 2.225. Section 533.006, Government Code, is amended to read as follows:

Sec. 533.006. PROVIDER NETWORKS. (a) The commission shall require that each managed care organization that contracts with the commission to provide health care services to recipients in a region:

(1) seek participation in the organization's provider network from:

- (A) each health care provider in the region who has traditionally provided care to [Medicaid] recipients;
- (B) each hospital in the region that has been licensed by the state to provide medical services.

designated as a disproportionate share hospital under [the state] Medicaid [program]; and

(C) each specialized pediatric laboratory in the region, including those laboratories located in children's hospitals; and

(2) include in its provider network for not less than

three years:

(A) each health care provider in the region who:

(i) previously provided care to Medicaid and charity care recipients at a significant level as prescribed by the commission;

(ii) agrees to accept the prevailing provider contract rate of the managed care organization; and
(iii) has the credentials required by the managed care organization, provided that lack of board certification or accreditation by The [the] Joint Commission [~~on Accreditation of Healthcare Organizations~~] may not be the sole ground for exclusion from the provider network;

(B) each accredited primary care residency program in the region; and

(c) each disproportionate share hospital designated by the commission as a statewide significant traditional provider.

(b) A contract between a managed care organization and the commission for the organization to provide health care services to recipients in a health care service region that includes a rural area must require that the organization include in its provider network rural hospitals, physicians, home and community support services agencies, and other rural health care providers who:

- (1) are sole community providers;
- (2) provide care to Medicaid and charity care

recipients at a significant level as prescribed by the commission;

(3) agree to accept the prevailing provider contract rate of the managed care organization; and

(4) have the credentials required by the managed care organization, provided that lack of board certification or accreditation by The [the] Joint Commission [~~on Accreditation of Healthcare Organizations~~] may not be the sole ground for exclusion from the provider network.

SECTION 2.226. Sections [533.007\(b\)](#), (d), and (e), Government Code, are amended to read as follows:

(b) Each managed care organization that contracts with the commission to provide health care services to recipients in a health care service region shall submit an implementation plan not later than the 90th day before the date on which the managed care organization [~~commission~~] plans to begin to provide health care services to recipients in that region through managed care. The implementation plan must include:

(1) specific staffing patterns by function for all operations, including enrollment, information systems, member services, quality improvement, claims management, case management, and provider and recipient training; and

(2) specific time frames for demonstrating preparedness for implementation before the date on which the managed care organization [~~commission~~] plans to begin to provide health care services to recipients in that region through managed care.

(d) Each managed care organization that contracts with the commission to provide health care services to recipients in a region shall submit status reports on the implementation plan not later than the 60th day and the 30th day before the date on which the managed care organization [~~commission~~] plans to begin to provide health care services to recipients in that region through managed care and every 30th day after that date until the 180th day after that date.

(e) The commission shall conduct a compliance and readiness review of each managed care organization that contracts with the commission not later than the 15th day before the date on which the process of enrolling recipients in a managed care plan issued by the managed care organization is to begin [~~commission plans to begin the enrollment process~~] in a region and again not later than the 15th day before the date on which the managed care organization [~~commission~~] plans to begin to provide health care services to recipients in that region through managed care. The review must include an on-site inspection and tests of service authorization and claims payment systems, including the ability of the managed care organization to process claims electronically, complaint processing systems, and any other process or system required by the contract.

SECTION 2.227. Section [533.0075](#), Government Code, is amended to read as follows:

Sec. 533.0075. RECIPIENT ENROLLMENT. The commission shall:

(1) encourage recipients to choose appropriate managed care plans and primary health care providers by:

(A) providing initial information to recipients and providers in a region about the need for recipients to choose plans and providers not later than the 90th day before the date on which a managed care organization [~~the commission~~] plans to begin to provide health care services to recipients in that region through managed care;

(B) providing follow-up information before assignment of plans and providers and after assignment, if necessary, to recipients who delay in choosing plans and providers; and

(C) allowing plans and providers to provide information to recipients or engage in marketing activities under marketing guidelines established by the commission under Section [533.008](#) after the commission approves the information or activities;

(2) consider the following factors in assigning

128-1 managed care plans and primary health care providers to recipients
128-2 who fail to choose plans and providers:

128-3 (A) the importance of maintaining existing
128-4 provider-patient and physician-patient relationships, including
128-5 relationships with specialists, public health clinics, and
128-6 community health centers;

128-7 (B) to the extent possible, the need to assign
128-8 family members to the same providers and plans; and

128-9 (C) geographic convenience of plans and
128-10 providers for recipients;

128-11 (3) retain responsibility for enrollment and
128-12 disenrollment of recipients in managed care plans, except that the
128-13 commission may delegate the responsibility to an independent
128-14 contractor who receives no form of payment from, and has no
128-15 financial ties to, any managed care organization;

128-16 (4) develop and implement an expedited process for
128-17 determining eligibility for and enrolling pregnant women and
128-18 newborn infants in managed care plans; and

128-19 (5) ensure immediate access to prenatal services and
128-20 newborn care for pregnant women and newborn infants enrolled in
128-21 managed care plans, including ensuring that a pregnant woman may
128-22 obtain an appointment with an obstetrical care provider for an
128-23 initial maternity evaluation not later than the 30th day after the
128-24 date the woman applies for Medicaid.

128-25 SECTION 2.228. Section 533.009(c), Government Code, is
128-26 amended to read as follows:

128-27 (c) The executive commissioner, by rule, shall prescribe
128-28 the minimum requirements that a managed care organization, in
128-29 providing a disease management program, must meet to be eligible to
128-30 receive a contract under this section. The managed care
128-31 organization must, at a minimum, be required to:

128-32 (1) provide disease management services that have
128-33 performance measures for particular diseases that are comparable to
128-34 the relevant performance measures applicable to a provider of
128-35 disease management services under Section 32.057 [32.059], Human
128-36 Resources Code[, as added by Chapter 208, Acts of the 78th
128-37 Legislature, Regular Session, 2003]; and

128-38 (2) show evidence of ability to manage complex
128-39 diseases in the Medicaid population.

128-40 SECTION 2.229. Section 533.012(c), Government Code, is
128-41 amended to read as follows:

128-42 (c) The commission's office of inspector general
128-43 [~~investigations and enforcement~~] or the office of the attorney
128-44 general, as applicable, shall review the information submitted
128-45 under this section as appropriate in the investigation of fraud in
128-46 the Medicaid managed care program.

128-47 SECTION 2.230. Sections 533.013(a) and (b), Government
128-48 Code, are amended to read as follows:

128-49 (a) In determining premium payment rates paid to a managed
128-50 care organization under a managed care plan, the commission shall
128-51 consider:

128-52 (1) the regional variation in costs of health care
128-53 services;

128-54 (2) the range and type of health care services to be
128-55 covered by premium payment rates;

128-56 (3) the number of managed care plans in a region;

128-57 (4) the current and projected number of recipients in
128-58 each region, including the current and projected number for each
128-59 category of recipient;

128-60 (5) the ability of the managed care plan to meet costs
128-61 of operation under the proposed premium payment rates;

128-62 (6) the applicable requirements of the federal
128-63 Balanced Budget Act of 1997 and implementing regulations that
128-64 require adequacy of premium payments to managed care organizations
128-65 participating in [~~the state~~] Medicaid [program];

128-66 (7) the adequacy of the management fee paid for
128-67 assisting enrollees of Supplemental Security Income (SSI) (42
128-68 U.S.C. Section 1381 et seq.) who are voluntarily enrolled in the
128-69 managed care plan;

(8) the impact of reducing premium payment rates for the category of recipients who are pregnant; and

(9) the ability of the managed care plan to pay under the proposed premium payment rates inpatient and outpatient hospital provider payment rates that are comparable to the inpatient and outpatient hospital provider payment rates paid by the commission under a primary care case management model or a partially capitated model.

(b) In determining the maximum premium payment rates paid to a managed care organization that is licensed under Chapter 843, Insurance Code, the commission shall consider and adjust for the regional variation in costs of services under the traditional fee-for-service component of [the state] Medicaid [program], utilization patterns, and other factors that influence the potential for cost savings. For a service area with a service area factor of .93 or less, or another appropriate service area factor, as determined by the commission, the commission may not discount premium payment rates in an amount that is more than the amount necessary to meet federal budget neutrality requirements for projected fee-for-service costs unless:

(1) a historical review of managed care financial results among managed care organizations in the service area served by the organization demonstrates that additional savings are warranted;

(2) a review of Medicaid fee-for-service delivery in the service area served by the organization has historically shown a significant overutilization by recipients of certain services covered by the premium payment rates in comparison to utilization patterns throughout the rest of the state; or

(3) a review of Medicaid fee-for-service delivery in the service area served by the organization has historically shown an above-market cost for services for which there is substantial evidence that Medicaid managed care delivery will reduce the cost of those services.

SECTION 2.231. Section 533.01315(a), Government Code, is amended to read as follows:

(a) This section applies only to a recipient receiving benefits [medical assistance] through any Medicaid managed care model or arrangement.

SECTION 2.232. Sections 533.014(a) and (b), Government Code, are amended to read as follows:

(a) The executive commissioner [commission] shall adopt rules regarding the sharing of profits earned by a managed care organization through a managed care plan providing health care services under a contract with the commission under this chapter.

(b) Except as provided by Subsection (c), any amount received by the state under this section shall be deposited in the general revenue fund [for the purpose of funding the state Medicaid program].

SECTION 2.233. Section 533.015, Government Code, is amended to read as follows:

Sec. 533.015. COORDINATION OF EXTERNAL OVERSIGHT ACTIVITIES. To the extent possible, the commission shall coordinate all external oversight activities to minimize duplication of oversight of managed care plans under [~~the state~~] Medicaid [~~program~~] and disruption of operations under those plans.

SECTION 2.234. Section 533.020(a), Government Code, is amended to read as follows:

(a) The Texas Department of Insurance, in conjunction with the commission, shall establish fiscal solvency standards and complaint system guidelines for managed care organizations that serve [Medicaid] recipients.

SECTION 2.235. Section 533.021, Government Code, is amended to read as follows:

Sec. 533.021. MEDICAID MANAGED CARE ADVISORY COMMITTEES [APPOINTMENT]. A [Not later than the 180th day before the date the commission plans to begin to provide health care services to recipients in a health care service region through managed care, the commission, in consultation with health and human services

130-1 ~~agencies, shall appoint a] Medicaid managed care advisory committee~~
 130-2 ~~exists for each health care service [for that]~~ region. The
 130-3 commission, in consultation with health and human services
 130-4 agencies, appoints the committee members.

130-5 SECTION 2.236. Section 533.023, Government Code, is amended
 130-6 to read as follows:

130-7 Sec. 533.023. PRESIDING OFFICER; SUBCOMMITTEES. The
 130-8 ~~executive~~ commissioner or the ~~executive~~ commissioner's designated
 130-9 representative serves as the presiding officer of a committee. The
 130-10 presiding officer may appoint subcommittees as necessary.

130-11 SECTION 2.237. Section 533.028, Government Code, is amended
 130-12 to read as follows:

130-13 Sec. 533.028. OTHER LAW. Except as provided by this
 130-14 chapter, a committee is subject to Chapter 2110 [Article 6252-33,
 130-15 Revised Statutes].

130-16 SECTION 2.238. Sections 533.041(a) and (d), Government
 130-17 Code, are amended to read as follows:

130-18 (a) The executive commissioner shall appoint a state
 130-19 Medicaid managed care advisory committee. The advisory committee
 130-20 consists of representatives of:

130-21 (1) hospitals;
 130-22 (2) managed care organizations and participating
 130-23 health care providers;

130-24 (3) primary care providers and specialty care
 130-25 providers;

130-26 (4) state agencies;
 130-27 (5) low-income recipients or consumer advocates
 130-28 representing low-income recipients;

130-29 (6) recipients with disabilities, including
 130-30 recipients with ~~an intellectual or [and]~~ developmental disability
 130-31 ~~disabilities~~ or with physical disabilities, or consumer
 130-32 advocates representing those recipients;

130-33 (7) parents of children who are recipients;
 130-34 (8) rural providers;

130-35 (9) advocates for children with special health care
 130-36 needs;

130-37 (10) pediatric health care providers, including
 130-38 specialty providers;

130-39 (11) long-term services and supports providers,
 130-40 including nursing facility providers and direct service workers;

130-41 (12) obstetrical care providers;
 130-42 (13) community-based organizations serving low-income
 130-43 children and their families;

130-44 (14) community-based organizations engaged in
 130-45 perinatal services and outreach;

130-46 (15) recipients who are 65 years of age or older;

130-47 (16) recipients with mental illness;

130-48 (17) nonphysician mental health providers

130-49 participating in the Medicaid managed care program; and

130-50 (18) entities with responsibilities for the delivery

130-51 of long-term services and supports or other Medicaid [program]

130-52 service delivery, including:

130-53 (A) independent living centers;

130-54 (B) area agencies on aging;

130-55 (C) aging and disability resource centers
 130-56 established under the Aging and Disability Resource Center
 130-57 initiative funded in part by the federal Administration on Aging
 130-58 and the Centers for Medicare and Medicaid Services;

130-59 (D) community mental health and intellectual

130-60 disability centers; and

130-61 (E) the NorthSTAR Behavioral Health Program

130-62 provided under Chapter 534, Health and Safety Code.

130-63 (d) To the greatest extent possible, the executive
 130-64 commissioner shall appoint members of the advisory committee who
 130-65 reflect the geographic diversity of the state and include members
 130-66 who represent rural [Medicaid program] recipients.

130-67 SECTION 2.239. Section 533.045(b), Government Code, is
 130-68 amended to read as follows:

130-69 (b) A member of the advisory committee who is a [Medicaid

131-1 ~~program~~] recipient or the relative of a ~~Medicaid program~~]
 131-2 recipient is entitled to a per diem allowance and reimbursement at
 131-3 rates established in the General Appropriations Act.

131-4 SECTION 2.240. The heading to Chapter 534, Government Code,
 131-5 is amended to read as follows:

131-6 CHAPTER 534. SYSTEM REDESIGN FOR DELIVERY OF MEDICAID ACUTE CARE
 131-7 SERVICES AND LONG-TERM SERVICES AND SUPPORTS TO PERSONS WITH AN
 131-8 INTELLECTUAL OR ~~[AND]~~ DEVELOPMENTAL DISABILITY ~~[DISABILITIES]~~

131-9 SECTION 2.241. Sections 534.001(6), (7), (8), and (11),
 131-10 Government Code, are amended to read as follows:

131-11 (6) "ICF-IID" means the ~~Medicaid~~ program under
 131-12 Medicaid serving individuals with an intellectual or ~~[and]~~
 131-13 developmental disability ~~[disabilities]~~ who receive care in
 131-14 intermediate care facilities other than a state supported living
 131-15 center.

131-16 (7) "ICF-IID program" means a program under ~~[the]~~
 131-17 Medicaid ~~[program]~~ serving individuals with an intellectual or
 131-18 ~~[and]~~ developmental disability ~~[disabilities]~~ who reside in and
 131-19 receive care from:

131-20 (A) intermediate care facilities licensed under
 131-21 Chapter 252, Health and Safety Code; or

131-22 (B) community-based intermediate care facilities
 131-23 operated by local intellectual and developmental disability
 131-24 authorities.

131-25 (8) "Local intellectual and developmental disability
 131-26 authority" has the meaning assigned ~~[means an authority defined]~~ by
 131-27 Section 531.002 [Section 531.002(11)], Health and Safety Code.

131-28 (11) "Medicaid waiver program" means only the
 131-29 following programs that are authorized under Section 1915(c) of the
 131-30 federal Social Security Act (42 U.S.C. Section 1396n(c)) for the
 131-31 provision of services to persons with an intellectual or ~~[and]~~
 131-32 developmental disability ~~[disabilities]~~:

131-33 (A) the community living assistance and support
 131-34 services (CLASS) waiver program;

131-35 (B) the home and community-based services (HCS)
 131-36 waiver program;

131-37 (C) the deaf-blind with multiple disabilities
 131-38 (DBMD) waiver program; and

131-39 (D) the Texas home living (TxHmL) waiver program.

131-40 SECTION 2.242. Section 534.051, Government Code, is amended
 131-41 to read as follows:

131-42 Sec. 534.051. ACUTE CARE SERVICES AND LONG-TERM SERVICES
 131-43 AND SUPPORTS SYSTEM FOR INDIVIDUALS WITH AN INTELLECTUAL OR ~~[AND]~~
 131-44 DEVELOPMENTAL DISABILITY ~~[DISABILITIES]~~. In accordance with this
 131-45 chapter, the commission and the department shall jointly design and
 131-46 implement an acute care services and long-term services and
 131-47 supports system for individuals with an intellectual or ~~[and]~~
 131-48 developmental disability ~~[disabilities]~~ that supports the
 131-49 following goals:

131-50 (1) provide Medicaid services to more individuals in a
 131-51 cost-efficient manner by providing the type and amount of services
 131-52 most appropriate to the individuals' needs;

131-53 (2) improve individuals' access to services and
 131-54 supports by ensuring that the individuals receive information about
 131-55 all available programs and services, including employment and least
 131-56 restrictive housing assistance, and how to apply for the programs
 131-57 and services;

131-58 (3) improve the assessment of individuals' needs and
 131-59 available supports, including the assessment of individuals'
 131-60 functional needs;

131-61 (4) promote person-centered planning, self-direction,
 131-62 self-determination, community inclusion, and customized,
 131-63 integrated, competitive employment;

131-64 (5) promote individualized budgeting based on an
 131-65 assessment of an individual's needs and person-centered planning;

131-66 (6) promote integrated service coordination of acute
 131-67 care services and long-term services and supports;

131-68 (7) improve acute care and long-term services and
 131-69 supports outcomes, including reducing unnecessary

132-1 institutionalization and potentially preventable events;
 132-2 (8) promote high-quality care;
 132-3 (9) provide fair hearing and appeals processes in
 132-4 accordance with applicable federal law;
 132-5 (10) ensure the availability of a local safety net
 132-6 provider and local safety net services;
 132-7 (11) promote independent service coordination and
 132-8 independent ombudsmen services; and
 132-9 (12) ensure that individuals with the most significant
 132-10 needs are appropriately served in the community and that processes
 132-11 are in place to prevent inappropriate institutionalization of
 132-12 individuals.

132-13 SECTION 2.243. Section 534.052, Government Code, is amended
 132-14 to read as follows:

132-15 Sec. 534.052. IMPLEMENTATION OF SYSTEM REDESIGN. The
 132-16 commission and department shall, in consultation with the advisory
 132-17 committee, jointly implement the acute care services and long-term
 132-18 services and supports system for individuals with an intellectual
 132-19 or [and] developmental disability [disabilities] in the manner and
 132-20 in the stages described in this chapter.

132-21 SECTION 2.244. Sections 534.053(a), (b), and (e),
 132-22 Government Code, are amended to read as follows:

132-23 (a) The Intellectual and Developmental Disability System
 132-24 Redesign Advisory Committee shall [~~is established to~~] advise the
 132-25 commission and the department on the implementation of the acute
 132-26 care services and long-term services and supports system redesign
 132-27 under this chapter. Subject to Subsection (b), the executive
 132-28 commissioner and the commissioner of aging and disability services
 132-29 [~~the department~~] shall jointly appoint members of the advisory
 132-30 committee who are stakeholders from the intellectual and
 132-31 developmental disabilities community, including:

132-32 (1) individuals with an intellectual or [and]
 132-33 developmental disability [disabilities] who are recipients of
 132-34 services under the Medicaid waiver programs, individuals with an
 132-35 intellectual or [and] developmental disability [disabilities] who
 132-36 are recipients of services under the ICF-IID program, and
 132-37 individuals who are advocates of those recipients, including at
 132-38 least three representatives from intellectual and developmental
 132-39 disability advocacy organizations;

132-40 (2) representatives of Medicaid managed care and
 132-41 nonmanaged care health care providers, including:

132-42 (A) physicians who are primary care providers and
 132-43 physicians who are specialty care providers;
 132-44 (B) nonphysician mental health professionals;
 132-45 and

132-46 (C) providers of long-term services and
 132-47 supports, including direct service workers;

132-48 (3) representatives of entities with responsibilities
 132-49 for the delivery of Medicaid long-term services and supports or
 132-50 other Medicaid [~~program~~] service delivery, including:

132-51 (A) representatives of aging and disability
 132-52 resource centers established under the Aging and Disability
 132-53 Resource Center initiative funded in part by the federal
 132-54 Administration on Aging and the Centers for Medicare and Medicaid
 132-55 Services;

132-56 (B) representatives of community mental health
 132-57 and intellectual disability centers;

132-58 (C) representatives of and service coordinators
 132-59 or case managers from private and public home and community-based
 132-60 services providers that serve individuals with an intellectual or
 132-61 and developmental disability [disabilities]; and

132-62 (D) representatives of private and public
 132-63 ICF-IID providers; and

132-64 (4) representatives of managed care organizations
 132-65 contracting with the state to provide services to individuals with
 132-66 an intellectual or [and] developmental disability [disabilities].

132-67 (b) To the greatest extent possible, the executive
 132-68 commissioner and the commissioner of aging and disability services
 132-69 [~~the department~~] shall appoint members of the advisory committee

133-1 who reflect the geographic diversity of the state and include
 133-2 members who represent rural Medicaid [program] recipients.

133-3 (e) A member of the advisory committee serves without
 133-4 compensation. A member of the advisory committee who is a Medicaid
 133-5 [program] recipient or the relative of a Medicaid [program]
 133-6 recipient is entitled to a per diem allowance and reimbursement at
 133-7 rates established in the General Appropriations Act.

133-8 SECTION 2.245. Section 534.054(a), Government Code, is
 133-9 amended to read as follows:

133-10 (a) Not later than September 30 of each year, the commission
 133-11 shall submit a report to the legislature regarding:

133-12 (1) the implementation of the system required by this
 133-13 chapter, including appropriate information regarding the provision
 133-14 of acute care services and long-term services and supports to
 133-15 individuals with an intellectual or [and] developmental disability
 133-16 ~~[disabilities]~~ under [the] Medicaid [program]; and

133-17 (2) recommendations, including recommendations
 133-18 regarding appropriate statutory changes to facilitate the
 133-19 implementation.

133-20 SECTION 2.246. Section 534.055(a), Government Code, is
 133-21 amended to read as follows:

133-22 (a) The commission and department shall submit a report to
 133-23 the legislature not later than December 1, 2014, that includes the
 133-24 following information:

133-25 (1) the percentage of services provided by each local
 133-26 intellectual and developmental disability authority to individuals
 133-27 receiving ICF-IID or Medicaid waiver program services, compared to
 133-28 the percentage of those services provided by private providers;

133-29 (2) the types of evidence provided by local
 133-30 intellectual and developmental disability authorities to the
 133-31 department to demonstrate the lack of available private providers
 133-32 in areas of the state where local authorities provide services to
 133-33 more than 40 percent of the Texas home living (TxHmL) waiver program
 133-34 clients or 20 percent of the home and community-based services
 133-35 (HCS) waiver program clients;

133-36 (3) the types and amounts of services received by
 133-37 clients from local intellectual and developmental disability
 133-38 authorities compared to the types and amounts of services received
 133-39 by clients from private providers;

133-40 (4) the provider capacity of each local intellectual
 133-41 and developmental disability authority as determined under Section
 133-42 533A.0355(d) [~~Section 533.0355(d)~~], Health and Safety Code;

133-43 (5) the number of individuals served above or below
 133-44 the applicable provider capacity by each local intellectual and
 133-45 developmental disability authority; and

133-46 (6) if a local intellectual and developmental
 133-47 disability authority is serving clients over the authority's
 133-48 provider capacity, the length of time the local authority has
 133-49 served clients above the authority's approved provider capacity.

133-50 SECTION 2.247. Section 534.101(2), Government Code, is
 133-51 amended to read as follows:

133-52 (2) "Provider" means a person with whom the commission
 133-53 contracts for the provision of long-term services and supports
 133-54 under [the] Medicaid [program] to a specific population based on
 133-55 capitation.

133-56 SECTION 2.248. Section 534.102, Government Code, is amended
 133-57 to read as follows:

133-58 Sec. 534.102. PILOT PROGRAMS TO TEST MANAGED CARE
 133-59 STRATEGIES BASED ON CAPITATION. The commission and the department
 133-60 may develop and implement pilot programs in accordance with this
 133-61 subchapter to test one or more service delivery models involving a
 133-62 managed care strategy based on capitation to deliver long-term
 133-63 services and supports under [the] Medicaid [program] to individuals
 133-64 with an intellectual or [and] developmental disability
 133-65 ~~[disabilities]~~.

133-66 SECTION 2.249. Sections 534.104(a) and (f), Government
 133-67 Code, are amended to read as follows:

133-68 (a) The department shall identify private services
 133-69 providers that are good candidates to develop a service delivery

model involving a managed care strategy based on capitation and to test the model in the provision of long-term services and supports under [the] Medicaid [program] to individuals with an intellectual or [and] developmental disability [disabilities] through a pilot program established under this subchapter.

(f) For each pilot program service provider, the department shall develop and implement a pilot program. Under a pilot program, the pilot program service provider shall provide long-term services and supports under [the] Medicaid [program] to persons with an intellectual or [and] developmental disability [disabilities] to test its managed care strategy based on capitation.

SECTION 2.250. Section 534.107, Government Code, is amended to read as follows:

Sec. 534.107. COORDINATING SERVICES. In providing long-term services and supports under [the] Medicaid [program] to individuals with an intellectual or [and] developmental disability [disabilities], a pilot program service provider shall:

(1) coordinate through the pilot program institutional and community-based services available to the individuals, including services provided through:

(A) a facility licensed under Chapter 252, Health and Safety Code;

(B) a Medicaid waiver program; or
(C) a community-based ICF-IID operated by local authorities;

(2) collaborate with managed care organizations to provide integrated coordination of acute care services and long-term services and supports, including discharge planning from acute care services to community-based long-term services and supports;

(3) have a process for preventing inappropriate institutionalizations of individuals; and

(4) accept the risk of inappropriate institutionalizations of individuals previously residing in community settings.

SECTION 2.251. Section 534.109, Government Code, is amended to read as follows:

Sec. 534.109. PERSON-CENTERED PLANNING. The commission, in cooperation with the department, shall ensure that each individual with an intellectual or developmental disability who receives services and supports under [the] Medicaid [program] through a pilot program established under this subchapter, or the individual's legally authorized representative, has access to a facilitated, person-centered plan that identifies outcomes for the individual and drives the development of the individualized budget. The consumer direction model, as defined by Section 531.051, may be an outcome of the plan.

SECTION 2.252. Section 534.110, Government Code, is amended to read as follows:

Sec. 534.110. TRANSITION BETWEEN PROGRAMS. The commission shall ensure that there is a comprehensive plan for transitioning the provision of Medicaid [program] benefits between a Medicaid waiver program or an ICF-IID program and a pilot program under this subchapter to protect continuity of care.

SECTION 2.253. Section 534.151, Government Code, is amended to read as follows:

Sec. 534.151. DELIVERY OF ACUTE CARE SERVICES FOR INDIVIDUALS WITH AN INTELLECTUAL OR [AND] DEVELOPMENTAL DISABILITY [DISABILITIES]. Subject to Section 533.0025, the commission shall provide acute care Medicaid [program] benefits to individuals with an intellectual or [and] developmental disability [disabilities] through the STAR + PLUS Medicaid managed care program or the most appropriate integrated capitated managed care program delivery model and monitor the provision of those benefits.

SECTION 2.254. Sections 534.152(a), (b), (c), (e), and (f), Government Code, are amended to read as follows:

(a) The commission shall:

(1) implement the most cost-effective option for the

135-1 delivery of basic attendant and habilitation services for
135-2 individuals with an intellectual or [and] developmental disability
135-3 ~~[disabilities]~~ under the STAR + PLUS Medicaid managed care program
135-4 that maximizes federal funding for the delivery of services for
135-5 that program and other similar programs; and

135-6 (2) provide voluntary training to individuals
135-7 receiving services under the STAR + PLUS Medicaid managed care
135-8 program or their legally authorized representatives regarding how
135-9 to select, manage, and dismiss personal attendants providing basic
135-10 attendant and habilitation services under the program.

135-11 (b) The commission shall require that each managed care
135-12 organization that contracts with the commission for the provision
135-13 of basic attendant and habilitation services under the STAR + PLUS
135-14 Medicaid managed care program in accordance with this section:

135-15 (1) include in the organization's provider network for
135-16 the provision of those services:

135-17 (A) home and community support services agencies
135-18 licensed under Chapter 142, Health and Safety Code, with which the
135-19 department has a contract to provide services under the community
135-20 living assistance and support services (CLASS) waiver program; and

135-21 (B) persons exempted from licensing under
135-22 Section 142.003(a)(19), Health and Safety Code, with which the
135-23 department has a contract to provide services under:

135-24 (i) the home and community-based services
135-25 (HCS) waiver program; or

135-26 (ii) the Texas home living (TxHmL) waiver
135-27 program;

135-28 (2) review and consider any assessment conducted by a
135-29 local intellectual and developmental disability authority
135-30 providing intellectual and developmental disability service
135-31 coordination under Subsection (c); and

135-32 (3) enter into a written agreement with each local
135-33 intellectual and developmental disability authority in the service
135-34 area regarding the processes the organization and the authority
135-35 will use to coordinate the services of individuals with an
135-36 intellectual or [and] developmental disability ~~[disabilities]~~.

135-37 (c) The department shall contract with and make contract
135-38 payments to local intellectual and developmental disability
135-39 authorities to conduct the following activities under this section:

135-40 (1) provide intellectual and developmental disability
135-41 service coordination to individuals with an intellectual or [and]
135-42 developmental disability ~~[disabilities]~~ under the STAR + PLUS
135-43 Medicaid managed care program by assisting those individuals who
135-44 are eligible to receive services in a community-based setting,
135-45 including individuals transitioning to a community-based setting;

135-46 (2) provide an assessment to the appropriate managed
135-47 care organization regarding whether an individual with an
135-48 intellectual or developmental disability needs attendant or
135-49 habilitation services, based on the individual's functional need,
135-50 risk factors, and desired outcomes;

135-51 (3) assist individuals with an intellectual or [and]
135-52 developmental disability ~~[disabilities]~~ with developing the
135-53 individuals' plans of care under the STAR + PLUS Medicaid managed
135-54 care program, including with making any changes resulting from
135-55 periodic reassessments of the plans;

135-56 (4) provide to the appropriate managed care
135-57 organization and the department information regarding the
135-58 recommended plans of care with which the authorities provide
135-59 assistance as provided by Subdivision (3), including documentation
135-60 necessary to demonstrate the need for care described by a plan; and

135-61 (5) on an annual basis, provide to the appropriate
135-62 managed care organization and the department a description of
135-63 outcomes based on an individual's plan of care.

135-64 (e) During the first three years basic attendant and
135-65 habilitation services are provided to individuals with an
135-66 intellectual or [and] developmental disability ~~[disabilities]~~
135-67 under the STAR + PLUS Medicaid managed care program in accordance
135-68 with this section, providers eligible to participate in the home
135-69 and community-based services (HCS) waiver program, the Texas home

136-1 living (TxHmL) waiver program, or the community living assistance
 136-2 and support services (CLASS) waiver program on September 1, 2013,
 136-3 are considered significant traditional providers.

136-4 (f) A local intellectual and developmental disability
 136-5 authority with which the department contracts under Subsection (c)
 136-6 may subcontract with an eligible person, including a nonprofit
 136-7 entity, to coordinate the services of individuals with an
 136-8 intellectual or [and] developmental disability [disabilities]
 136-9 under this section. The executive commissioner by rule shall
 136-10 establish minimum qualifications a person must meet to be
 136-11 considered an "eligible person" under this subsection.

136-12 SECTION 2.255. Sections 534.201(a), (b), (e), and (f),
 136-13 Government Code, are amended to read as follows:

136-14 (a) This section applies to individuals with an
 136-15 intellectual or [and] developmental disability [disabilities] who
 136-16 are receiving long-term services and supports under the Texas home
 136-17 living (TxHmL) waiver program on the date the commission implements
 136-18 the transition described by Subsection (b).

136-19 (b) Not later than September 1, 2017, the commission shall
 136-20 transition the provision of Medicaid [~~program~~] benefits to
 136-21 individuals to whom this section applies to the STAR + PLUS Medicaid
 136-22 managed care program delivery model or the most appropriate
 136-23 integrated capitated managed care program delivery model, as
 136-24 determined by the commission based on cost-effectiveness and the
 136-25 experience of the STAR + PLUS Medicaid managed care program in
 136-26 providing basic attendant and habilitation services and of the
 136-27 pilot programs established under Subchapter C, subject to
 136-28 Subsection (c)(1).

136-29 (e) The commission shall ensure that there is a
 136-30 comprehensive plan for transitioning the provision of Medicaid
 136-31 [~~program~~] benefits under this section that protects the continuity
 136-32 of care provided to individuals to whom this section applies.

136-33 (f) In addition to the requirements of Section 533.005, a
 136-34 contract between a managed care organization and the commission for
 136-35 the organization to provide Medicaid [~~program~~] benefits under this
 136-36 section must contain a requirement that the organization implement
 136-37 a process for individuals with an intellectual or [and]
 136-38 developmental disability [disabilities] that:

136-39 (1) ensures that the individuals have a choice among
 136-40 providers;

136-41 (2) to the greatest extent possible, protects those
 136-42 individuals' continuity of care with respect to access to primary
 136-43 care providers, including the use of single-case agreements with
 136-44 out-of-network providers; and

136-45 (3) provides access to a member services phone line
 136-46 for individuals or their legally authorized representatives to
 136-47 obtain information on and assistance with accessing services
 136-48 through network providers, including providers of primary,
 136-49 specialty, and other long-term services and supports.

136-50 SECTION 2.256. Sections 534.202(a), (b), (e), (f), and (i),
 136-51 Government Code, are amended to read as follows:

136-52 (a) This section applies to individuals with an
 136-53 intellectual or [and] developmental disability [disabilities] who,
 136-54 on the date the commission implements the transition described by
 136-55 Subsection (b), are receiving long-term services and supports
 136-56 under:

136-57 (1) a Medicaid waiver program other than the Texas
 136-58 home living (TxHmL) waiver program; or
 136-59 (2) an ICF-IID program.

136-60 (b) After implementing the transition required by Section
 136-61 534.201 but not later than September 1, 2020, the commission shall
 136-62 transition the provision of Medicaid [~~program~~] benefits to
 136-63 individuals to whom this section applies to the STAR + PLUS Medicaid
 136-64 managed care program delivery model or the most appropriate
 136-65 integrated capitated managed care program delivery model, as
 136-66 determined by the commission based on cost-effectiveness and the
 136-67 experience of the transition of Texas home living (TxHmL) waiver
 136-68 program recipients to a managed care program delivery model under
 136-69 Section 534.201, subject to Subsections (c)(1) and (g).

137-1 (e) The commission shall ensure that there is a
 137-2 comprehensive plan for transitioning the provision of Medicaid
 137-3 [program] benefits under this section that protects the continuity
 137-4 of care provided to individuals to whom this section applies.

137-5 (f) Before transitioning the provision of Medicaid
 137-6 [program] benefits for children under this section, a managed care
 137-7 organization providing services under the managed care program
 137-8 delivery model selected by the commission must demonstrate to the
 137-9 satisfaction of the commission that the organization's network of
 137-10 providers has experience and expertise in the provision of services
 137-11 to children with an intellectual or [and] developmental disability
 137-12 [disabilities]. Before transitioning the provision of Medicaid
 137-13 [program] benefits for adults with an intellectual or [and]
 137-14 developmental disability [disabilities] under this section, a
 137-15 managed care organization providing services under the managed care
 137-16 program delivery model selected by the commission must demonstrate
 137-17 to the satisfaction of the commission that the organization's
 137-18 network of providers has experience and expertise in the provision
 137-19 of services to adults with an intellectual or [and] developmental
 137-20 disability [disabilities].

137-21 (i) In addition to the requirements of Section 533.005, a
 137-22 contract between a managed care organization and the commission for
 137-23 the organization to provide Medicaid [program] benefits under this
 137-24 section must contain a requirement that the organization implement
 137-25 a process for individuals with an intellectual or [and]
 137-26 developmental disability [disabilities] that:

137-27 (1) ensures that the individuals have a choice among
 137-28 providers;

137-29 (2) to the greatest extent possible, protects those
 137-30 individuals' continuity of care with respect to access to primary
 137-31 care providers, including the use of single-case agreements with
 137-32 out-of-network providers; and

137-33 (3) provides access to a member services phone line
 137-34 for individuals or their legally authorized representatives to
 137-35 obtain information on and assistance with accessing services
 137-36 through network providers, including providers of primary,
 137-37 specialty, and other long-term services and supports.

137-38 SECTION 2.257. Section 535.051(b), Government Code, is
 137-39 amended to read as follows:

137-40 (b) The chief administrative officer of each of the
 137-41 following state agencies, in consultation with the governor, shall
 137-42 designate one employee from the agency to serve as a liaison for
 137-43 faith- and community-based organizations:

137-44 (1) [~~the Texas Department of Rural Affairs,~~
 137-45 [~~(2)~~] the Texas Commission on Environmental Quality;
 137-46 (2) [~~(3)~~] the Texas Department of Criminal Justice;
 137-47 (3) [~~(4)~~] the Texas Department of Housing and
 137-48 Community Affairs;
 137-49 (4) [~~(5)~~] the Texas Juvenile Justice Department;
 137-50 (5) [~~(6)~~] the Texas Veterans Commission;
 137-51 (6) [~~(7)~~] the Texas Workforce Commission;
 137-52 (7) [~~(8)~~] the office of the governor;
 137-53 (8) [~~(9)~~] the Department of Public Safety;
 137-54 (9) [~~(10)~~] the Texas Department of Insurance;
 137-55 (10) [~~(11)~~] the Public Utility Commission of Texas;
 137-56 (11) [~~(12)~~] the office of the attorney general;
 137-57 (12) [~~(13)~~] the Department of Agriculture;
 137-58 (13) [~~(14)~~] the office of the comptroller;
 137-59 (14) [~~(15)~~] the Department of Information Resources;
 137-60 (15) [~~(16)~~] the Office of State-Federal Relations;
 137-61 (16) [~~(17)~~] the office of the secretary of state; and
 137-62 (17) [~~(18)~~] other state agencies as determined by the
 137-63 governor.

137-64 SECTION 2.258. Section 535.103(b), Government Code, is
 137-65 amended to read as follows:

137-66 (b) The account consists of:
 137-67 (1) all money appropriated for the purposes of this
 137-68 subchapter; and
 137-69 (2) any gifts, grants, or donations received for the

138-1 purposes of this subchapter [; and

138-2 [-(3) interest earned on money in the account].

138-3 SECTION 2.259. The heading to Chapter 536, Government Code,
138-4 is amended to read as follows:

138-5 CHAPTER 536. MEDICAID AND THE CHILD HEALTH PLAN PROGRAM [PROGRAMS]:
138-6 QUALITY-BASED OUTCOMES AND PAYMENTS

138-7 SECTION 2.260. Section 536.002(a), Government Code, is
138-8 amended to read as follows:

138-9 (a) The Medicaid and CHIP Quality-Based Payment Advisory
138-10 Committee advises [is established to advise] the commission on
138-11 establishing, for purposes of the child health plan program and
138-12 Medicaid [programs administered by the commission or a health and
138-13 human services agency]:

138-14 (1) reimbursement systems used to compensate
138-15 physicians or other health care providers under those programs that
138-16 reward the provision of high-quality, cost-effective health care
138-17 and quality performance and quality of care outcomes with respect
138-18 to health care services;

138-19 (2) standards and benchmarks for quality performance,
138-20 quality of care outcomes, efficiency, and accountability by managed
138-21 care organizations and physicians and other health care providers;

138-22 (3) programs and reimbursement policies that
138-23 encourage high-quality, cost-effective health care delivery models
138-24 that increase appropriate provider collaboration, promote wellness
138-25 and prevention, and improve health outcomes; and

138-26 (4) outcome and process measures under Section
138-27 536.003.

138-28 SECTION 2.261. Sections 536.003(a), (b), (d), and (e),
138-29 Government Code, are amended to read as follows:

138-30 (a) The commission, in consultation with the advisory
138-31 committee, shall develop quality-based outcome and process
138-32 measures that promote the provision of efficient, quality health
138-33 care and that can be used in the child health plan program and
138-34 Medicaid [programs] to implement quality-based payments for acute
138-35 care services and long-term services and supports across all
138-36 delivery models and payment systems, including fee-for-service and
138-37 managed care payment systems. Subject to Subsection (a-1), the
138-38 commission, in developing outcome and process measures under this
138-39 section, must include measures that are based on potentially
138-40 preventable events and that advance quality improvement and
138-41 innovation. The commission may change measures developed:

138-42 (1) to promote continuous system reform, improved
138-43 quality, and reduced costs; and

138-44 (2) to account for managed care organizations added to
138-45 a service area.

138-46 (b) To the extent feasible, the commission shall develop
138-47 outcome and process measures:

138-48 (1) consistently across all child health plan program
138-49 and Medicaid [program] delivery models and payment systems;

138-50 (2) in a manner that takes into account appropriate
138-51 patient risk factors, including the burden of chronic illness on a
138-52 patient and the severity of a patient's illness;

138-53 (3) that will have the greatest effect on improving
138-54 quality of care and the efficient use of services, including acute
138-55 care services and long-term services and supports;

138-56 (4) that are similar to outcome and process measures
138-57 used in the private sector, as appropriate;

138-58 (5) that reflect effective coordination of acute care
138-59 services and long-term services and supports;

138-60 (6) that can be tied to expenditures; and

138-61 (7) that reduce preventable health care utilization
138-62 and costs.

138-63 (d) The executive commissioner by rule may require managed
138-64 care organizations and physicians and other health care providers
138-65 participating in the child health plan program and Medicaid
138-66 [programs] to report to the commission in a format specified by the
138-67 executive commissioner information necessary to develop outcome
138-68 and process measures under this section.

138-69 (e) If the commission increases physician and other health

care provider reimbursement rates under the child health plan program or Medicaid [program] as a result of an increase in the amounts appropriated for the programs for a state fiscal biennium as compared to the preceding state fiscal biennium, the commission shall, to the extent permitted under federal law and to the extent otherwise possible considering other relevant factors, correlate the increased reimbursement rates with the quality-based outcome and process measures developed under this section.

SECTION 2.262. Sections 536.004(a), (c), and (e), Government Code, are amended to read as follows:

(a) Using quality-based outcome and process measures developed under Section 536.003 and subject to this section, the commission, after consulting with the advisory committee and other appropriate stakeholders with an interest in the provision of acute care and long-term services and supports under the child health plan program and Medicaid [programs], shall develop quality-based payment systems, and require managed care organizations to develop quality-based payment systems, for compensating a physician or other health care provider participating in the child health plan program or Medicaid [program] that:

(1) align payment incentives with high-quality, cost-effective health care;

(2) reward the use of evidence-based best practices;

(3) promote the coordination of health care;

(4) encourage appropriate physician and other health care provider collaboration;

(5) promote effective health care delivery models; and

(6) take into account the specific needs of the child health plan program enrollee and Medicaid recipient populations.

(c) In developing quality-based payment systems under this chapter, the commission shall examine and consider implementing:

(1) an alternative payment system;

used under the Medicare program that meets the requirements of this chapter, modified as necessary to account for programmatic differences, if implementing the system would:

(A) reduce unnecessary administrative burdens; and

(B) align quality-based payment incentives for physicians and other health care providers with the Medicare program; and

(3) alternative payment methodologies within the system that are used in the Medicare program, modified as necessary to account for programmatic differences, and that will achieve cost savings and improve quality of care in the child health plan program and Medicaid [programs].

(e) The commission may modify a quality-based payment system developed under this chapter to account for programmatic differences between the child health plan program and Medicaid [programs] and delivery systems under those programs.

SECTION 2.263. Sections 536.005(a) and (c), Government Code, are amended to read as follows:

(a) To the extent possible, the commission shall convert hospital reimbursement systems under the child health plan program and Medicaid [programs] to a diagnosis-related groups (DRG) methodology that will allow the commission to more accurately classify specific patient populations and account for severity of patient illness and mortality risk.

(c) Notwithstanding Subsection (a) and to the extent possible, the commission shall convert outpatient hospital reimbursement systems under the child health plan program and Medicaid [programs] to an appropriate prospective payment system that will allow the commission to:

(1) more accurately classify the full range of outpatient service episodes;

(2) more accurately account for the intensity of services provided; and

(3) motivate outpatient service providers to increase efficiency and effectiveness.

140-1 SECTION 2.264. Section 536.051(a), Government Code, is
140-2 amended to read as follows:

140-3 (a) Subject to Section 1903(m)(2)(A), Social Security Act
140-4 (42 U.S.C. Section 1396b(m)(2)(A)), and other applicable federal
140-5 law, the commission shall base a percentage of the premiums paid to
140-6 a managed care organization participating in the child health plan
140-7 program or Medicaid [program] on the organization's performance
140-8 with respect to outcome and process measures developed under
140-9 Section 536.003 that address potentially preventable events. The
140-10 percentage of the premiums paid may increase each year.

140-11 SECTION 2.265. Sections 536.052(a) and (d), Government
140-12 Code, are amended to read as follows:

140-13 (a) The commission may allow a managed care organization
140-14 participating in the child health plan program or Medicaid
140-15 [program] increased flexibility to implement quality initiatives
140-16 in a managed care plan offered by the organization, including
140-17 flexibility with respect to financial arrangements, in order to:

140-18 (1) achieve high-quality, cost-effective health care;
140-19 (2) increase the use of high-quality, cost-effective
140-20 delivery models;

140-21 (3) reduce the incidence of unnecessary
140-22 institutionalization and potentially preventable events; and

140-23 (4) increase the use of alternative payment systems,
140-24 including shared savings models, in collaboration with physicians
140-25 and other health care providers.

140-26 (d) In awarding contracts to managed care organizations
140-27 under the child health plan program and Medicaid [programs], the
140-28 commission shall, in addition to considerations under Section
140-29 533.003 of this code and Section 62.155, Health and Safety Code,
140-30 give preference to an organization that offers a managed care plan
140-31 that successfully implements quality initiatives under Subsection
140-32 (a) as determined by the commission based on data or other evidence
140-33 provided by the organization or meets quality of care and
140-34 cost-efficiency benchmarks under Subsection (b).

140-35 SECTION 2.266. Section 536.101(1), Government Code, is
140-36 amended to read as follows:

140-37 (1) "Health home" means a primary care provider
140-38 practice or, if appropriate, a specialty care provider practice,
140-39 incorporating several features, including comprehensive care
140-40 coordination, family-centered care, and data management, that are
140-41 focused on improving outcome-based quality of care and increasing
140-42 patient and provider satisfaction under the child health plan
140-43 program and Medicaid [programs].

140-44 SECTION 2.267. Section 536.151(b), Government Code, is
140-45 amended to read as follows:

140-46 (b) The commission shall establish a program to provide a
140-47 confidential report to each hospital in this state that
140-48 participates in the child health plan program or Medicaid [program]
140-49 regarding the hospital's performance with respect to each
140-50 potentially preventable event described under Subsection (a). To
140-51 the extent possible, a report provided under this section should
140-52 include all potentially preventable events across all child health
140-53 plan program and Medicaid [program] payment systems. A hospital
140-54 shall distribute the information contained in the report to
140-55 physicians and other health care providers providing services at
140-56 the hospital.

140-57 SECTION 2.268. Section 536.203(c), Government Code, is
140-58 amended to read as follows:

140-59 (c) The commission may limit a payment initiative to:
140-60 (1) one or more regions in this state;
140-61 (2) one or more organized networks of physicians and
140-62 other health care providers; or
140-63 (3) specified types of services provided under the
140-64 child health plan program or Medicaid [program], or specified types
140-65 of enrollees or recipients under those programs.

140-66 SECTION 2.269. Section 536.253(b), Government Code, is
140-67 amended to read as follows:

140-68 (b) The commission shall establish a program to provide a
140-69 report to each Medicaid long-term services and supports provider in

141-1 this state regarding the provider's performance with respect to
 141-2 potentially preventable admissions, potentially preventable
 141-3 readmissions, and potentially preventable emergency room
 141-4 visits. To the extent possible, a report provided under this
 141-5 section should include applicable potentially preventable events
 141-6 information across all Medicaid [program] payment systems.

141-7 SECTION 2.270. Section 537.002(b), Government Code, is
 141-8 amended to read as follows:

141-9 (b) The waiver under this section must be designed to
 141-10 achieve the following objectives regarding [the] Medicaid
 141-11 [program] and alternatives to Medicaid [the program]:

141-12 (1) provide flexibility to determine Medicaid
 141-13 eligibility categories and income levels;

141-14 (2) provide flexibility to design Medicaid benefits
 141-15 that meet the demographic, public health, clinical, and cultural
 141-16 needs of this state or regions within this state;

141-17 (3) encourage use of the private health benefits
 141-18 coverage market rather than public benefits systems;

141-19 (4) encourage people who have access to private
 141-20 employer-based health benefits to obtain or maintain those
 141-21 benefits;

141-22 (5) create a culture of shared financial
 141-23 responsibility, accountability, and participation in [the]
 141-24 Medicaid [program] by:

141-25 (A) establishing and enforcing copayment
 141-26 requirements similar to private sector principles for all
 141-27 eligibility groups;

141-28 (B) promoting the use of health savings accounts
 141-29 to influence a culture of individual responsibility; and

141-30 (C) promoting the use of vouchers for
 141-31 consumer-directed services in which consumers manage and pay for
 141-32 health-related services provided to them using program vouchers;

141-33 (6) consolidate federal funding streams, including
 141-34 funds from the disproportionate share hospitals and upper payment
 141-35 limit supplemental payment programs and other federal Medicaid
 141-36 funds, to ensure the most effective and efficient use of those
 141-37 funding streams;

141-38 (7) allow flexibility in the use of state funds used to
 141-39 obtain federal matching funds, including allowing the use of
 141-40 intergovernmental transfers, certified public expenditures, costs
 141-41 not otherwise matchable, or other funds and funding mechanisms to
 141-42 obtain federal matching funds;

141-43 (8) empower individuals who are uninsured to acquire
 141-44 health benefits coverage through the promotion of cost-effective
 141-45 coverage models that provide access to affordable primary,
 141-46 preventive, and other health care on a sliding scale, with fees paid
 141-47 at the point of service; and

141-48 (9) allow for the redesign of long-term care services
 141-49 and supports to increase access to patient-centered care in the
 141-50 most cost-effective manner.

141-51 SECTION 2.271. Section 538.002, Government Code, is amended
 141-52 to read as follows:

141-53 Sec. 538.002. EFFECT OF CHAPTER; AUTHORITY OF
 141-54 COMMISSION. This chapter does not affect or give the commission
 141-55 additional authority to:

141-56 (1) affect any individual health care treatment
 141-57 decision for a Medicaid recipient;

141-58 (2) replace or affect the process of determining
 141-59 Medicaid benefits, including the approval process for receiving
 141-60 benefits for durable medical equipment, or any applicable approval
 141-61 process required for reimbursement for services or other equipment
 141-62 under [the] Medicaid [program];

141-63 (3) implement a clinical initiative or associated rule
 141-64 or program policy that is otherwise prohibited under state or
 141-65 federal law; or

141-66 (4) implement any initiative that would expand
 141-67 eligibility for benefits under [the] Medicaid [program].

141-68 SECTION 2.272. Section 538.051, Government Code, is amended
 141-69 to read as follows:

142-1 Sec. 538.051. MEDICAID QUALITY IMPROVEMENT PROCESS. The
 142-2 commission shall, according to the provisions of this chapter,
 142-3 develop and implement a quality improvement process by which the
 142-4 commission:

142-5 (1) receives suggestions for clinical initiatives
 142-6 designed to improve:

142-7 (A) the quality of care provided under [the]
 142-8 Medicaid [program]; and

142-9 (B) the cost-effectiveness of [the] Medicaid
 142-10 [program];

142-11 (2) conducts a preliminary review under Section
 142-12 538.053(4) of each suggestion received under Section 538.052 to
 142-13 determine whether the suggestion warrants further consideration
 142-14 and analysis; and

142-15 (3) conducts an analysis under Section 538.054 of
 142-16 clinical initiative suggestions that are selected for analysis
 142-17 under Subdivision (2) [and of required clinical initiatives under
 142-18 Section 538.0521].

142-19 SECTION 2.273. Section 538.052(a), Government Code, is
 142-20 amended to read as follows:

142-21 (a) Subject to Subsection (b), the commission shall solicit
 142-22 and accept suggestions for clinical initiatives, in either written
 142-23 or electronic form, from:

142-24 (1) a member of the state legislature;
 142-25 (2) the executive commissioner;

142-26 (3) the commissioner of aging and disability services
 142-27 [~~the Department of Aging and Disability Services~~];

142-28 (4) the commissioner of state health services [~~the~~
 142-29 ~~Department of State Health Services~~];

142-30 (5) the commissioner of the Department of Family and
 142-31 Protective Services;

142-32 (6) the commissioner of assistive and rehabilitative
 142-33 services [~~the Department of Assistive and Rehabilitative~~
 142-34 ~~Services~~];

142-35 (7) the medical care advisory committee established
 142-36 under Section 32.022, Human Resources Code;

142-37 (8) the physician payment advisory committee created
 142-38 under Section 32.022(d), Human Resources Code; and

142-39 (9) the Electronic Health Information Exchange System
 142-40 Advisory Committee established under Section 531.904.

142-41 SECTION 2.274. Section 538.054, Government Code, is amended
 142-42 to read as follows:

142-43 Sec. 538.054. ANALYSIS OF CLINICAL INITIATIVES. The
 142-44 commission shall conduct an analysis of each clinical initiative
 142-45 selected by the commission after having conducted the commission's
 142-46 preliminary review under Section 538.053(4). The analysis
 142-47 required under this section must include a review of:

142-48 (1) any public comments and submitted research
 142-49 relating to the initiative;

142-50 (2) the available clinical research and historical
 142-51 utilization information relating to the initiative;

142-52 (3) published medical literature relating to the
 142-53 initiative;

142-54 (4) any adoption of the initiative by medical
 142-55 societies or other clinical groups;

142-56 (5) whether the initiative has been implemented under:

142-57 (A) the Medicare program;
 142-58 (B) another state medical assistance program; or
 142-59 (C) a state-operated health care program,
 142-60 including the child health plan program;

142-61 (6) the results of reports, research, pilot programs,
 142-62 or clinical studies relating to the initiative conducted by:

142-63 (A) institutions of higher education, including
 142-64 related medical schools;

142-65 (B) governmental entities and agencies; and

142-66 (C) private and nonprofit think tanks and
 142-67 research groups;

142-68 (7) the impact that the initiative would have on [the]
 142-69 Medicaid [program] if the initiative were implemented in this

state, including:

(A) an estimate of the number of recipients under [the] Medicaid [program] that would be impacted by implementation of the initiative; and

(B) a description of any potential cost savings to the state that would result from implementation of the initiative; and

(8) any statutory barriers to implementation of the initiative.

SECTION 2.275. Section 538.055, Government Code, is amended to read as follows:

Sec. 538.055. FINAL REPORT ON CLINICAL INITIATIVE. The commission shall prepare a final report based on the commission's analysis of a clinical initiative under Section 538.054. The final report must include:

(1) a final determination of:

(A) the feasibility of implementing the initiative;

(B) the likely impact implementing the initiative would have on the quality of care provided under [the] Medicaid [program]; and

(C) the anticipated cost savings to the state that would result from implementing the initiative;

(2) a summary of the public comments, including a description of any opposition to the initiative;

(3) an identification of any statutory barriers to implementation of the initiative; and

(4) if the initiative is not implemented, an explanation of the decision not to implement the initiative.

SECTION 2.276. Section 538.057, Government Code, is amended to read as follows:

Sec. 538.057. ACTION ON CLINICAL INITIATIVE BY COMMISSION. After the commission conducts an analysis of a clinical initiative under Section 538.054:

(A) if the commission has determined that the initiative is cost-effective and will improve the quality of care under [the] Medicaid [program], the commission may:

of the initiative is not otherwise prohibited by law; or
(B) if implementation requires a change in law, submit a copy of the final report together with recommendations relating to the initiative's implementation to the standing committees of the senate and house of representatives having jurisdiction over [the] Medicaid [program]; and

(2) if the commission has determined that the initiative is not cost-effective or will not improve quality of care under [the] Medicaid [program], the commission may not implement the initiative.

SECTION 2.277. Section 539.001, Government Code, is amended to read as follows:

Sec. 539.001. DEFINITION [DEFINITIONS]. In this chapter,
"department" [+] [-(1) "Department"] means the Department of State
Health Services.

[~~(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.~~] SECTION 2.278. Sections [2105.001](#)(1) and (4), Government Code, are amended to read as follows:

Code, are amended to read as follows:

(1) "Agency" means:

(A) the Health and Human Services Commission

(A) the Health and Human Services Commission
[Texas Department of Human Services];
(B) the [Texas] Department of State Health
Services; (C) the Texas Department of Human and Health Services

(C) the Texas Department of Housing and Community Affairs;

(D) the Texas Education Agency.

(D) the Texas Education Agency;
(E) the [Texas] Department of Aging and
Disability Services [Mental Health and Mental Retardation]; or
(F) [the Texas Department on Aging; or

144-1 [C] any other commission, board, department,
 144-2 or state agency designated to receive block grant funds.

144-3 (4) "Provider" means a public or private organization
 144-4 that receives block grant funds or may be eligible to receive block
 144-5 grant funds to provide services or benefits to the public,
 144-6 including:

144-7 (A) a local government unit;
 144-8 (B) a council of government;
 144-9 (C) a community action agency; or
 144-10 (D) a private new community developer or
 144-11 nonprofit community association in a community originally
 144-12 established as a new community development program under the former
 144-13 Urban Growth and New Community Development Act of 1970 (42 U.S.C.
 144-14 Section 4511 et seq.).

144-15 SECTION 2.279. Section 2105.002, Government Code, is
 144-16 amended to read as follows:

144-17 Sec. 2105.002. COMBINATION OF PROGRAMS NOT INTENDED TO
 144-18 REDUCE SERVICES. The process of combining categorical federal
 144-19 assistance programs into block grants should not have an overall
 144-20 effect of reducing the relative proportion of services and benefits
 144-21 made available to low-income individuals, elderly individuals,
 144-22 [disabled] individuals with disabilities, and migrant and seasonal
 144-23 agricultural workers.

144-24 SECTION 2.280. Section 2105.005(c), Government Code, is
 144-25 amended to read as follows:

144-26 (c) To the extent consistent with the purpose of the block
 144-27 grant, an agency's rules [~~agency by rule~~] shall ensure that
 144-28 providers use block grant funds to the maximum benefit of
 144-29 low-income recipients and intended recipients.

144-30 SECTION 2.281. Section 2105.009, Government Code, is
 144-31 amended to read as follows:

144-32 Sec. 2105.009. PRIMARY CARE BLOCK GRANT. (a) The [Texas]
 144-33 Department of State Health Services shall administer a [the]
 144-34 primary care block grant if that grant is authorized and if the
 144-35 department satisfies federal requirements relating to the
 144-36 designation of an agency to administer the grant.

144-37 (b) In administering the primary care block grant, the
 144-38 department may:

144-39 (1) receive the primary care block grant funds on
 144-40 behalf of the state;

144-41 (2) spend primary care block grant funds and state
 144-42 funds specifically appropriated by the legislature to match funds
 144-43 received under a primary care block grant;

144-44 (3) make grants to, advance funds to, contract with,
 144-45 and take other actions through community health centers that meet
 144-46 the requirements of 42 U.S.C. Section 254c(e)(3) to provide for the
 144-47 delivery of primary and supplemental health services to medically
 144-48 underserved populations of the state; and

144-49 (4) [~~adopt necessary rules; and~~
 144-50 [5] perform other activities necessary to
 144-51 administer the primary care block grant.

144-52 (b-1) The executive commissioner of the Health and Human
144-53 Services Commission may adopt necessary rules for administering the
144-54 primary care block grant.

144-55 (c) In this section:

144-56 (1) "Community health center" has the meaning assigned
 144-57 by 42 U.S.C. Section 254c(a), as that law existed on April 23, 1986.

144-58 (2) "Medically underserved population," "primary
 144-59 health services," and "supplemental health services" have the
 144-60 meanings assigned by 42 U.S.C. Section 254c(b), as that law existed
 144-61 on April 23, 1986.

144-62 SECTION 2.282. Section 2105.058(d), Government Code, is
 144-63 amended to read as follows:

144-64 (d) An agency's rules [~~agency by rule~~] may require a
 144-65 provider to undertake other reasonable efforts to seek public
 144-66 participation.

144-67 SECTION 2.283. Section 2105.152, Government Code, is
 144-68 amended to read as follows:

144-69 Sec. 2105.152. HEALTH AND [DEPARTMENT OF] HUMAN SERVICES

145-1 COMMISSION PROCEDURES FOR FAIR HEARING. The Health and Human
 145-2 Services Commission [~~Texas Department of Human Services~~] shall use
 145-3 procedures for conducting a fair hearing under this subchapter.

145-4 SECTION 2.284. Section 2105.202(a), Government Code, is
 145-5 amended to read as follows:

145-6 (a) The individual or entity responsible for adopting rules
 145-7 for an [An] agency shall adopt specific rules for the agency that
 145-8 define [defining] good cause for nonrenewal of a provider's
 145-9 contract or reduction of a provider's funding.

145-10 SECTION 2.285. Section 2165.301, Government Code, is
 145-11 amended by amending Subdivision (2) and adding Subdivision (2-a) to
 145-12 read as follows:

145-13 (2) "Department" means the [~~Texas~~] Department of State
 145-14 Health Services.

145-15 (2-a) "Executive commissioner" means the executive
 145-16 commissioner of the Health and Human Services Commission.

145-17 SECTION 2.286. Sections 2165.302(a), (d), and (e),
 145-18 Government Code, are amended to read as follows:

145-19 (a) Except as provided by Section 2165.303:

145-20 (1) the commission shall refer matters related to the
 145-21 investigation and testing of indoor air quality in state buildings
 145-22 under the charge and control of the commission to the department
 145-23 [~~Texas Department of Health~~]; and

145-24 (2) the department shall conduct any necessary
 145-25 investigation and testing of indoor air quality in state buildings,
 145-26 on request or referral of an entity with charge and control of the
 145-27 state building.

145-28 (d) The executive commissioner by rule [~~department~~] may
 145-29 establish a system of charges for indoor air quality investigation
 145-30 and testing in state buildings. A system established by the
 145-31 executive commissioner [~~department~~] shall ensure that the
 145-32 department is reimbursed for the cost of providing the services by
 145-33 the agency or agencies occupying the portions of a building that are
 145-34 investigated or tested.

145-35 (e) The executive commissioner [~~department~~] shall adopt
 145-36 rules and procedures relating to the investigation and testing of
 145-37 indoor air quality in state buildings.

145-38 SECTION 2.287. The following provisions of the Government
 145-39 Code are repealed:

- 145-40 (1) Section 531.02131;
- 145-41 (2) Section 531.0222;
- 145-42 (3) Section 531.0249;
- 145-43 (4) Section 531.030;
- 145-44 (5) Section 531.0314;
- 145-45 (6) Section 531.046;
- 145-46 (7) Section 531.049;
- 145-47 (8) Section 531.065;
- 145-48 (9) Section 531.0993;
- 145-49 (10) Section 531.1063;
- 145-50 (11) Section 531.286;
- 145-51 (12) Section 531.552;
- 145-52 (13) Section 531.902;
- 145-53 (14) Section 531.905;
- 145-54 (15) Section 533.0025(a);
- 145-55 (16) Subchapter D, Chapter 533;
- 145-56 (17) Section 534.001(10);
- 145-57 (18) Sections 536.001(4) and (13);
- 145-58 (19) Section 537.001; and
- 145-59 (20) Section 538.001.

ARTICLE 3. HEALTH AND SAFETY CODE

145-61 SECTION 3.0001. The heading to Subtitle A, Title 2, Health
 145-62 and Safety Code, is amended to read as follows:

145-63 SUBTITLE A. [~~TEXAS~~] DEPARTMENT OF STATE HEALTH SERVICES

145-64 SECTION 3.0002. The heading to Chapter 11, Health and
 145-65 Safety Code, is amended to read as follows:

145-66 CHAPTER 11. GENERAL PROVISIONS [~~ORGANIZATION OF TEXAS DEPARTMENT~~
 145-67 ~~OF HEALTH~~]

145-68 SECTION 3.0003. Section 11.001, Health and Safety Code, is
 145-69 amended to read as follows:

146-1 Sec. 11.001. DEFINITIONS. In this title:

146-2 (1) "Commission" means the Health and Human Services
 146-3 ~~Commission [Board] means the Texas Board of Health.~~

146-4 (2) "Commissioner" means the commissioner of state
 146-5 [~~public~~] health services.

146-6 (3) "Department" means the [~~Texas~~] Department of State
 146-7 Health Services.

146-8 (4) "Executive commissioner" means the executive
 146-9 commissioner of the Health and Human Services Commission.

146-10 SECTION 3.0004. Sections 11.003(b) and (c), Health and
 146-11 Safety Code, are amended to read as follows:

146-12 (b) In the review of the ~~department~~ [~~Department of State~~
 146-13 ~~Health Services~~] by the Sunset Advisory Commission, as required by
 146-14 [~~this section and~~] Section 1001.003, the sunset commission shall
 146-15 review the powers and duties exercised by the department under
 146-16 Chapter 108 and determine whether the department, under that
 146-17 chapter, is:

146-18 (1) achieving the legislature's intent of empowering
 146-19 consumers with information to make informed health care decisions;
 146-20 (2) maintaining appropriate privacy and security
 146-21 standards for patient information; and

146-22 (3) limiting the patient information the department
 146-23 collects to the information necessary for performing the
 146-24 department's duties under Chapter 108.

146-25 (c) The Sunset Advisory Commission shall report its
 146-26 findings to the legislature in the report required by Section
 146-27 325.010, Government Code. This section expires [~~subsection and~~
 146-28 ~~subsection (b) expire~~] September 1, 2015.

146-29 SECTION 3.0005. (a) Section 11.004(b), Health and Safety
 146-30 Code, is transferred to Section 1001.071, Health and Safety Code,
 146-31 redesignated as Section 1001.071(a), Health and Safety Code, and
 146-32 amended to read as follows:

146-33 (a) [~~(b)~~] The department is the state agency with primary
 146-34 responsibility to administer or provide [~~for providing~~] health
 146-35 services, including:

146-36 (1) disease prevention;
 146-37 (2) health promotion;
 146-38 (3) indigent health care;
 146-39 (4) certain acute care services;
 146-40 (5) [~~health care facility regulation, excluding~~
 146-41 ~~long-term care facilities,~~
 146-42 [~~6~~] licensing of certain health professions; and
 146-43 (6) [~~7~~] other health-related services as provided
 146-44 by law.

146-45 (b) Section 1001.071, Health and Safety Code, is amended to
 146-46 read as follows:

146-47 Sec. 1001.071. GENERAL POWERS AND DUTIES OF DEPARTMENT
 146-48 RELATED TO HEALTH CARE. (b) The department is responsible for
 146-49 administering human services programs regarding the public health,
 146-50 including:

146-51 (1) implementing the state's public health care
 146-52 delivery programs under the authority of the department;
 146-53 (2) administering state health facilities, hospitals,
 146-54 and health care systems;
 146-55 (3) developing and providing health care services, as
 146-56 directed by law;
 146-57 (4) providing for the prevention and control of
 146-58 communicable diseases;
 146-59 (5) providing public education on health-related
 146-60 matters, as directed by law;
 146-61 (6) compiling and reporting health-related
 146-62 information, as directed by law;
 146-63 (7) acting as the lead agency for implementation of
 146-64 state policies regarding the human immunodeficiency virus and
 146-65 acquired immunodeficiency syndrome and administering programs
 146-66 related to the human immunodeficiency virus and acquired
 146-67 immunodeficiency syndrome;
 146-68 (8) investigating the causes of injuries and methods
 146-69 of prevention;

(9) administering a grant program to provide appropriated money to counties, municipalities, public health districts, and other political subdivisions for their use to provide or pay for essential public health services;

(10) administering the registration of vital statistics;

(11) licensing, inspecting, and enforcing regulations regarding health facilities, other than long-term care facilities regulated by the Department of Aging and Disability Services;

(12) implementing established standards and procedures for the management and control of sanitation and for health protection measures;

(13) enforcing regulations regarding radioactive materials;

(14) enforcing regulations regarding food, bottled and vended drinking water, drugs, cosmetics, and health devices;

(15) enforcing regulations regarding food service establishments, retail food stores, mobile food units, and roadside food vendors;

(16) enforcing regulations controlling hazardous substances in households and workplaces; and

(17) implementing a mental health program for veterans.

SECTION 3. 2006. Sections 11, 912(a), (b), (c), (d), and (e).

SECTION 3.0006. Sections 11.012(a), (b), (c), (d), and (f), Health and Safety Code, are transferred to Section 1001.051, Health and Safety Code, redesignated respectively as Sections 1001.051(a-1), (a-2), (a-3), (a-4), and (b-1), Health and Safety Code, and amended to read as follows:

(a-1) [(a)] The executive commissioner [~~of health and human services~~] shall employ the commissioner in accordance with Section 531.0056, Government Code.

(a-2) [(b)] Except as provided in Subsection (a-3) [(c)],
the commissioner must:

- (1) have at least five years of experience in the administration of public health systems; and
- (2) be a person licensed to practise medicine in this

(a-3) [(c)] The executive commissioner [of health and human

(a-3) [c] The executive commissioner [~~or health and human services~~] may, based on the qualifications and experience in administering public health systems, employ a person other than a physician as the commissioner.

(a-4) [d] If the executive commissioner [~~of health and human services~~] employs a person as commissioner who is not a physician, then the executive commissioner [~~board~~] shall designate a person licensed to practice medicine in this state as chief medical executive.

(b-1) [f] The executive commissioner [board] may supplement the salary of the commissioner with the approval of the governor. The salary may not exceed 1.5 times the salary of the governor, from funds appropriated to the department. The use of funds from other sources are not limited by this subsection.

funds from other sources are not limited by this subsection.

SECTION 3.0007. Section 11.014, Health and Safety Code, is transferred to Subchapter B, Chapter 1001, Health and Safety Code, redesignated as Section 1001.034, Health and Safety Code, and amended to read as follows:

amended to read as follows:

Sec. 1001.034 [11.014]. INVESTIGATION OF DEPARTMENT. The executive commissioner [board] shall investigate the conduct of the work of the department. For that purpose, the executive commissioner [board] shall have access at any time to all department books and records and may require an officer or employee of the department to furnish written or oral information.

of the department to furnish written or oral information.

SECTION 3.0008. Section 11.016, Health and Safety Code, is transferred to Subchapter B, Chapter 1001, Health and Safety Code, redesignated as Section 1001.035, Health and Safety Code, and amended to read as follows:

Sec. 1001.035 [11.016]. ADVISORY COMMITTEES. (a) The executive commissioner [board] may appoint advisory committees to assist the executive commissioner and department [board] in performing [its] duties related to department functions.

(b) If the executive commissioner appoints [The board shall appoint] an advisory committee under this section, the appointment must be made in a manner that provides for:

- (1) a balanced representation of persons with knowledge and interest in the committee's field of work;
- (2) the inclusion on the committee of at least two members who represent the interests of the public; and
- (3) a balanced representation of the geographic

(d) A [Except as otherwise provided by law and contingent on the availability of department funds for this purpose, a] member of an advisory committee appointed under this section may [by the board is entitled to] receive reimbursement for[, with regard to] travel expenses as provided by Section 2110.004, Government Code[, the per diem and travel allowance authorized by the General Appropriations Act for state employees].

(e) The executive commissioner [board] shall specify each committee's purpose, powers, and duties, and shall require each committee to report to the executive commissioner or department [board] in the manner specified by the executive commissioner [board] concerning the committee's activities and the results of its work.

(f) The executive commissioner [board] shall establish procedures for receiving reports relating to the activities and accomplishments of an advisory committee established by statute to advise the [board or] department or executive commissioner on matters related to department functions. The executive commissioner [board] may appoint additional members to those advisory committees and may establish additional duties of those committees as the executive commissioner [board] determines to be necessary.

(g) The executive commissioner [board] shall adopt rules to implement this section.

SECTION 3.0009. The heading to Chapter 12, Health and Safety Code, is amended to read as follows:

CHAPTER 12. POWERS AND DUTIES OF [TEXAS] DEPARTMENT OF
STATE HEALTH SERVICES

SECTION 3.0010. Subchapter A, Chapter 12, Health and Safety Code, is amended to read as follows:

SUBCHAPTER A. GENERAL POWERS AND DUTIES [OF BOARD]
Sec. 12.0001. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
CONFLICT WITH OTHER LAW [OF COMMISSIONER OF HEALTH AND HUMAN
SERVICES]. [The commissioner of health and human services has the
powers and duties relating to the board and commissioner as
provided by Section 531.0055, Government Code.] To the extent a
power or duty given to the [board or] commissioner by this title or
another law conflicts with Section 531.0055, Government Code,
Section 531.0055 controls.

Sec. 12.001. GENERAL POWERS AND DUTIES OF EXECUTIVE
COMMISSIONER. (a) The executive commissioner [board] has general
supervision and control over all matters relating to the health of
the citizens of this state.

(b) The executive commissioner [board] shall[+
[(-1)] adopt rules for [its procedure and for] the
performance of each duty imposed by law on the executive
commissioner [board], the department, or the commissioner and file
a copy of those rules with the department.

Sec. 12.0011. INVESTIGATIONS IN GENERAL. Subject to the oversight of the executive commissioner, the department shall [+] and [-(2)] examine, investigate, enter, and inspect any public place or public building as the department [board] determines necessary for the discovery and suppression of disease and the enforcement of any health or sanitation law of this state.

[(c) The board has all the powers, duties, and functions granted by law to:

- [(1) the Texas Board of Health;
 - [(2) the state commissioner of health;
 - [(3) the Texas Department of Health;
 - [(4) the Texas Board of Health Resources; and

[(5) ~~the Texas Department of Health Resources.~~]

Sec. 12.002. CERTAIN PROCEDURES FOR [BOARD] INVESTIGATIONS. (a) The commissioner or the commissioner's designee [A member of the board] may administer oaths, summon witnesses, and compel the attendance of witnesses in any matter proper for [board] investigation by the department, subject to the executive commissioner's oversight, including the determination of nuisances and the investigation of:

- (1) public water supplies;
 - (2) sanitary conditions;
 - (3) the existence of infec
 - (4) any matter that require

(4) any matter that requires the department [board] to exercise its discretionary powers and that is within the general scope of its authority under this subchapter.

(b) Each district court shall aid the department [board] in its investigations and in compelling compliance with this subchapter. If a witness summoned by the commissioner or the commissioner's designee [board] is disobedient or disrespectful to the department's [board's] lawful authority, the district court of the county in which the witness is summoned to appear shall punish the witness in the manner provided for contempt of court.

Sec. 12.003. LEGAL REPRESENTATION. (a) A suit brought by the department [board] must be brought in the name of the state.

(b) The attorney general shall assign a special assistant to attend to the department's [board's] legal matters, and on the department's [board's] request shall furnish necessary assistance to the department [board] relating to its legal requirements.

[Sec. 12.004. DEVELOPMENT OF PROPOSED RULES. (a) This section applies to the process by which the department develops proposed rules for the board's consideration before the proposed rules are published in the Texas Register and before the board, commissioner, or department complies with the rulemaking requirements of the administrative procedure law, Chapter 2001, Government Code. This section does not affect the duty of the board, commissioner, or department to comply with the rulemaking requirements of that law.]

[~~(b)~~] The board shall require the department to establish a checklist of methods that, to the extent appropriate, the department will follow to obtain early in the rule development process the advice and opinions of the public and of persons who will be most affected by a proposed rule. The checklist must include methods for identifying persons who will be most affected and for soliciting at a minimum the advice and opinions of affected local health departments, of recipients and providers of affected services, and of advocates for affected recipients or providers.

[c] The checklist may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

[d) A rule adopted by the board may not be challenged on the grounds that the board, commissioner, or department did not comply with this section. If the department was unable to solicit a significant amount of advice and opinion from the public or from affected persons early in the rule development process, the department shall state in writing to the board the reasons why the department was unable to do so.

[Sec. 12.005. MEDICAL DIRECTOR: MEDICAID MANAGED CARE AND CHIPS PROGRAMS. (a) In addition to any other medical director employed by the department, the board shall require the department to employ a separate medical director whose duties consist of acting as the medical director for the children's health insurance program created under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.) and also as the medical director for the Medicaid managed care program, to the extent that those programs are administered by the department.]

[~~(b)~~] The medical director shall be primarily responsible for implementing and maintaining policies and systems for the programs that relate to clinical and professional medical issues, including clinical oversight.

~~[(c) The medical director must be a physician licensed to~~

150-1 ~~practice medicine in this state.]~~

150-2 SECTION 3.0011. Sections 12.0111(b) and (c), Health and
150-3 Safety Code, are amended to read as follows:

150-4 (b) Notwithstanding other law, the executive commissioner
150-5 by rule shall adopt and the department shall collect [charge] a fee
150-6 for issuing or renewing a license that is in an amount designed to
150-7 allow the department to recover from its license holders all of the
150-8 department's direct and indirect costs in administering and
150-9 enforcing the applicable licensing program.

150-10 (c) Notwithstanding other law, each regulatory board or
150-11 other agency that is under the jurisdiction of the department or
150-12 administratively attached to the department and that issues
150-13 licenses shall adopt by rule and collect [charge] a fee for issuing
150-14 or renewing a license that is in an amount designed to allow the
150-15 department and the regulatory board or agency to recover from the
150-16 license holders all of the direct and indirect costs to the
150-17 department and to the regulatory board or agency in administering
150-18 and enforcing the applicable licensing program.

150-19 SECTION 3.0012. Sections 12.0115(a), (e), and (h), Health
150-20 and Safety Code, are amended to read as follows:

150-21 (a) In this section, "health care delivery programs"
150-22 includes the department's primary health care services program, its
150-23 program to improve maternal and infant health, its services program
150-24 for [chronically ill and disabled] children with special health
150-25 care needs, any aspects of health care delivery under the state
150-26 Medicaid program assigned to the department by law or by the
150-27 commission [Health and Human Services Commission], and the part of
150-28 any other department program concerned with the department's
150-29 responsibility for the delivery of health care services.

150-30 (e) One of the primary goals of the department in
150-31 integrating the administration of [its] contracts entered into by
150-32 the executive commissioner or the executive commissioner's
150-33 designee on behalf of the department with providers of health care
150-34 services shall be designing an integrated contract administration
150-35 system that reduces the administrative and paperwork burden on
150-36 providers while still providing the department with the information
150-37 it needs to effectively administer the contracts. The department's
150-38 integration of contract administration must include:

150-39 (1) the integration of the initial procurement process
150-40 within and across programs, at least in part by efficiently
150-41 combining requests for bids or proposals within or across programs
150-42 to the extent it reduces the administrative burden for providers;

150-43 (2) the establishment of uniform contract terms,
150-44 including:

150-45 (A) contract terms that require information from
150-46 providers, or that prescribe performance standards for providers,
150-47 that could be made uniform within or across programs while
150-48 remaining effective as contract terms;

150-49 (B) the establishment of a procedure under which
150-50 a contractor or a person responding to a request for bids or
150-51 proposals may supply the department with requested information
150-52 whenever possible by referencing current and correct information
150-53 previously supplied to and on file with the department; and

150-54 (C) contract terms regarding incentives for
150-55 contractors to meet or exceed contract requirements;

150-56 (3) the integration of contract monitoring,
150-57 particularly with regard to monitoring providers that deliver
150-58 health services for the department under more than one contract or
150-59 under more than one department program; and

150-60 (4) the integration of reimbursement methods:

150-61 (A) particularly for a provider that delivers
150-62 health services for the department under more than one contract or
150-63 under more than one department program; and

150-64 (B) including the application across programs of
150-65 the most effective and efficient reimbursement technologies or
150-66 methods that are available to the department under any of its
150-67 programs.

150-68 (h) The department may not integrate health care delivery
150-69 programs under this section in a way that affects the single state

151-1 agency status of another state agency for federal purposes without
 151-2 obtaining the approval of the commission [~~Health and Human Services~~
 151-3 ~~Commission~~] and any necessary federal approval.

151-4 SECTION 3.0013. Sections 12.0121(b) and (d), Health and
 151-5 Safety Code, are amended to read as follows:

151-6 (b) The executive commissioner [~~board~~] by rule shall adopt a
 151-7 list of categories of licensed, certified, registered, or otherwise
 151-8 authorized providers to whom the department may award a grant for
 151-9 professional services under this section or with whom the
 151-10 department may contract or otherwise engage to perform professional
 151-11 services under this section.

151-12 (d) The department may award a grant, enter into a contract,
 151-13 or otherwise engage an individual or a group or association of
 151-14 individuals to perform professional services without complying
 151-15 with Subsection (c) if the executive commissioner by order
 151-16 [~~ratified by the board at its next regular meeting~~] determines that
 151-17 an emergency exists that necessitates the use of different
 151-18 procedures. A grant, contract, or engagement under this subsection
 151-19 is effective only for the period specified by the executive
 151-20 commissioner's order.

151-21 SECTION 3.0014. Section 12.0122(d), Health and Safety Code,
 151-22 is amended to read as follows:

151-23 (d) The executive commissioner [~~department~~] by rule may
 151-24 establish fees that the department may collect [~~charges~~] for the
 151-25 sale of laboratory services.

151-26 SECTION 3.0015. Section 12.01221, Health and Safety Code,
 151-27 is transferred to Subchapter B, Chapter 33, Health and Safety Code,
 151-28 redesignated as Section 33.0165, Health and Safety Code, and
 151-29 amended to read as follows:

151-30 Sec. 33.0165 [12.01221]. MUTUAL AID AGREEMENT FOR NEWBORN
 151-31 SCREENING LABORATORY SERVICES. (a) In this section, "newborn
 151-32 screening laboratory services" means the performance of tests to
 151-33 analyze specimens collected as part of the newborn screenings
 151-34 performed under this subchapter [~~Subchapter B, Chapter 33~~].

151-35 (b) Notwithstanding Section 12.0122 or other law, the
 151-36 department may enter into a mutual aid agreement to provide newborn
 151-37 screening laboratory services to another state and to receive
 151-38 newborn screening laboratory services from another state in the
 151-39 event of an unexpected interruption of service, including an
 151-40 interruption caused by a disaster.

151-41 (c) Each mutual aid agreement under Subsection (b) shall
 151-42 include provisions:

151-43 (1) to address the confidentiality of the identity of
 151-44 the newborn child and the newborn child's family; and
 151-45 (2) to ensure the return of blood specimens and
 151-46 related records to the state that received the newborn screening
 151-47 laboratory services.

151-48 SECTION 3.0016. Section 12.0123, Health and Safety Code, as
 151-49 added by Chapter 1411 (H.B. 2085), Acts of the 76th Legislature,
 151-50 Regular Session, 1999, is transferred to Subchapter B, Chapter 32,
 151-51 Human Resources Code, redesignated as Section 32.0705, Human
 151-52 Resources Code, amended to conform to Section 12.0123, Health and
 151-53 Safety Code, as added by Chapters 1447 (H.B. 2896) and 1460 (H.B.
 151-54 2641), Acts of the 76th Legislature, Regular Session, 1999, and
 151-55 further amended to read as follows:

151-56 Sec. 32.0705 [12.0123]. EXTERNAL AUDITS OF CERTAIN
 151-57 MEDICAID CONTRACTORS BASED ON RISK. (a) In this section, "Medicaid
 151-58 contractor" means an entity that:

151-59 (1) is not a health and human services agency as
 151-60 defined by Section 531.001, Government Code; and
 151-61 (2) under a contract with the commission or otherwise
 151-62 on behalf of the commission [~~department~~], performs one or more
 151-63 administrative services in relation to the commission's
 151-64 [~~department's~~] operation of [~~a part of the state~~] Medicaid
 151-65 [~~program~~], such as claims processing, utilization review, client
 151-66 enrollment, provider enrollment, quality monitoring, or payment of
 151-67 claims.

151-68 (b) The commission [~~department~~] shall contract with an
 151-69 independent auditor to perform annual independent external

152-1 financial and performance audits of any Medicaid contractor used
 152-2 [by the department] in the commission's [department's] operation of
 152-3 [a part of the state] Medicaid [program]. The commission
 152-4 [department] regularly shall review the [its] Medicaid contracts
 152-5 and ensure that:

152-6 (1) the frequency and extent of audits of a Medicaid
 152-7 contractor under this section are based on the amount of risk to the
 152-8 state involved in the administrative services being performed by
 152-9 the contractor;

152-10 (2) audit procedures related to financial audits and
 152-11 performance audits are used consistently in audits under this
 152-12 section; and

152-13 (3) to the extent possible, audits under this section
 152-14 are completed in a timely manner.

152-15 (c) If another state agency succeeds to the commission's
 152-16 [department's] operation of a part of [the state] Medicaid
 152-17 [program] for which the commission [department] used a Medicaid
 152-18 contractor, the successor agency shall comply with this section
 152-19 with regard to the Medicaid contractor, including the requirement
 152-20 to contract with an independent auditor to perform the external
 152-21 financial and performance audits required by this section.

152-22 (d) An audit required by this section must be completed
 152-23 before the end of the fiscal year immediately following the fiscal
 152-24 year for which the audit is performed.

152-25 SECTION 3.0017. Section 12.0124, Health and Safety Code, is
 152-26 transferred to Subchapter B, Chapter 32, Human Resources Code,
 152-27 redesignated as Section 32.0316, Human Resources Code, and amended
 152-28 to read as follows:

152-29 Sec. 32.0316 [12.0124]. ELECTRONIC TRANSACTIONS; [STATE]
 152-30 MEDICAID [PROGRAM]. The executive commissioner shall adopt and the
 152-31 commission [department or the department's successor in function in
 152-32 relation to the department's operation of a part of the state
 152-33 Medicaid program] shall implement policies that encourage the use
 152-34 of electronic transactions in Medicaid. The policies shall require
 152-35 payment to Medicaid [service] providers by electronic funds
 152-36 transfer, including electronic remittance and status reports. The
 152-37 policies shall also include the establishment of incentives to
 152-38 submit claims electronically and of disincentives to submit claims
 152-39 on paper that are reasonably based on the higher administrative
 152-40 costs to process claims submitted on paper.

152-41 SECTION 3.0018. Sections 12.0125(a) and (c), Health and
 152-42 Safety Code, are amended to read as follows:

152-43 (a) The department shall develop a voluntary drug
 152-44 manufacturer rebate program for drugs purchased by or on behalf of a
 152-45 client of the Kidney Health Care Program or the Children with
 152-46 Special Health Care Needs [Chronically Ill and Disabled Children's]
 152-47 Services Program for which rebates are not available under the
 152-48 Medicaid drug manufacturer rebate program.

152-49 (c) Amounts received by the department under the drug rebate
 152-50 program established under this section may be appropriated only for
 152-51 the Kidney Health Care Program or the Children with Special Health
 152-52 Care Needs [Chronically Ill and Disabled Children's] Services
 152-53 Program.

152-54 SECTION 3.0019. Section 12.0128, Health and Safety Code, is
 152-55 amended to read as follows:

152-56 Sec. 12.0128. HEALTH ALERT NETWORK. The department shall
 152-57 include local health officials [the Texas Association of Local
 152-58 Health Officials], the Texas Association of Community Health
 152-59 Centers, and the Texas Organization of Rural and Community
 152-60 Hospitals in the department's Texas Health Alert Network to the
 152-61 extent federal funds for bioterrorism preparedness are available
 152-62 for that purpose.

152-63 SECTION 3.0020. Section 12.014(b), Health and Safety Code,
 152-64 is amended to read as follows:

152-65 (b) The executive commissioner [board] by rule may adopt
 152-66 reasonable registration fees to cover the costs of establishing and
 152-67 maintaining a registry and may adopt other rules as necessary to
 152-68 administer this section.

152-69 SECTION 3.0021. Sections 12.0145(a), (d), and (g), Health

153-1 and Safety Code, are amended to read as follows:

153-2 (a) The department shall publish and provide information in
 153-3 accordance with this section regarding each final enforcement
 153-4 action taken by the department or [the] commissioner [~~, or board~~] against a person or facility regulated by the department in which
 153-5 any kind of sanction is imposed, including:

153-6 (1) the imposition of a reprimand, a period of probation, a monetary penalty, or a condition on a person's continued practice or a facility's continued operation; and

153-7 (2) the refusal to renew or the suspension, probation, or revocation of a license or other form of permission to engage in an activity.

153-8 (d) The department shall publish and provide the information promptly after the sanction has been imposed or, when applicable, promptly after the period during which the sanction is imposed has begun. The executive commissioner [~~department~~] by rule shall establish the length of time during which the required information will be published and provided under this section based on the executive commissioner's [~~department's~~] determination regarding the types of services provided by regulated entities and the length of time for which information about a category of enforcement actions is useful to a member of the public.

153-9 (g) A determination that the department is not required to publish and provide information under this section does not affect a determination regarding whether the information is subject to required disclosure under the open records law, Chapter 552, Government Code. The executive commissioner's [~~department's~~] determination regarding the length of the period during which information should continue to be published and provided under this section does not affect a determination regarding the period for which the information must be preserved under Chapter 441, Government Code, or under another law.

153-10 SECTION 3.0022. Section [12.015\(a\)](#), Health and Safety Code, is amended to read as follows:

153-11 (a) If the department determines that a person is not eligible for a level of care in a nursing facility [~~home~~], the department shall inform the person that community services might be available under a [~~the~~] community care for the aged and disabled program administered by the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services.

153-12 SECTION 3.0023. Section [12.016\(d\)](#), Health and Safety Code, is amended to read as follows:

153-13 (d) An applicant for a license, permit, registration, or similar form of permission required by law to be obtained from the department may not amend the application after the 31st day before the date on which a public hearing on the application is scheduled to begin. If an amendment of an application would be necessary within that period, the applicant shall resubmit the application to the department and must again comply with notice requirements and any other requirements of law or department [~~board~~] rule as though the application were originally submitted to the department on that date.

153-14 SECTION 3.0024. Section [12.019\(a\)](#), Health and Safety Code, is amended to read as follows:

153-15 (a) The executive commissioner by rule may set a fee to be collected by the department [~~may charge~~] for providing genetic counseling services. The fee may not exceed the actual cost of providing the services.

153-16 SECTION 3.0025. Section [12.020\(e\)](#), Health and Safety Code, is amended to read as follows:

153-17 (e) The executive commissioner shall institute intellectual property policies for the department that establish minimum standards for:

153-18 (1) the public disclosure or availability of products, technology, and scientific information, including inventions, discoveries, trade secrets, and computer software;

153-19 (2) review by the department of products, technology, and scientific information, including consideration of ownership and appropriate legal protection;

(3) the licensing of products, technology, and

scientific information;

(4) the identification of ownership and licensing responsibilities for each class of intellectual property; and

responsibilities for each class of intellectual property; and
(5) royalty participation by inventors and the department.

SECTION 3.0026. Section [12.032](#), Health and Safety Code, is amended to read as follows:

Sec. 12.032. FEES FOR PUBLIC HEALTH SERVICES. (a) The executive commissioner [board] by rule may adopt [charge] fees to be collected by the department from [to] a person who receives public health services from the department.

(b) The executive commissioner [board] by rule may require department contractors to collect [charge] fees for public health services provided by department contractors participating in the department's programs. A department contractor shall retain a fee collected under this subsection and shall use the fee in accordance with the contract provisions.

(c) The amount of a fee collected [~~charged~~] for a public health service may not exceed the cost to the department of providing the service.

(d) The executive commissioner by rule [board] may establish a fee schedule. In establishing the schedule, the executive commissioner [board] shall consider a person's ability to pay the entire amount of a fee.

(e) The executive commissioner [board] may not deny public health services to a person because of the person's inability to pay for the services.

SECTION 3.0027. Sections 12.033(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) Except as otherwise provided by this section, the executive commissioner [board] by rule shall adopt [charge] fees to be collected by the department for the distribution and administration of vaccines and sera provided under:

(1) Section 38.001 Education Code;

- (1) Section 38.001, Education Code;
- (2) Section 42.043, Human Resources Code;
- (3) Chapter 826 (Rabies Control Act of 1981);
- (4) Chapter 81 (Communicable Disease Prevention and Control Act); and
- (5) Section 161.005.

(5) Section 161.005.

(b) Except as otherwise provided by this section, the executive commissioner [board] by rule may require a department contractor to collect [charge] fees for public health services provided by a contractor participating in a department program under the laws specified by Subsection (a).

(c) Provided the executive commissioner [board] finds that the monetary savings of this subsection are greater than any costs associated with administering it, the executive commissioner [board] by rule shall establish a fee schedule for fees under this section. In establishing the fee schedule, the executive commissioner [board] shall consider a person's financial ability to pay all or part of the fee, including the availability of health insurance coverage. In the event the fee schedule conflicts with any federal law or regulation, the executive commissioner [board] shall seek a waiver from the applicable federal law or regulation to permit the fee schedule. In the event the waiver is denied, the fee schedule shall not go into effect.

SECTION 3.0028. Sections 12.034(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner [board] shall establish procedures for the collection of fees for public health services. The procedures shall be used by the department and by those department contractors required by the executive commissioner [board] to collect [charge] fees.

(c) The department shall make a reasonable effort to collect fees billed after services are performed. However, the executive commissioner [board] by rule may waive the collection procedures if the administrative costs exceed the fees to be collected.

(d) If the executive commissioner [board] elects to require

155-1 cash payments by program participants, the money received shall be
 155-2 deposited locally at the end of each day and retained by the
 155-3 department for not more than seven days. At the end of that time,
 155-4 the money shall be deposited in the state treasury.

155-5 SECTION 3.0029. Section 12.035, Health and Safety Code, is
 155-6 amended to read as follows:

155-7 Sec. 12.035. PUBLIC HEALTH SERVICES FEE ACCOUNT [~~FUND~~].

155-8 (a) The department shall deposit all money collected for fees and
 155-9 charges collected under Sections 12.0122(d) and 12.032(a) in the
 155-10 state treasury to the credit of the [Texas Department of Health]
 155-11 public health services fee account in the general revenue fund.

155-12 (b) The department shall maintain proper accounting records
 155-13 to allocate the money [~~fund~~] among the state and federal programs
 155-14 generating the fees and administrative costs incurred in collecting
 155-15 the fees.

155-16 [(c) The public health services fee fund is exempt from
 155-17 Section 403.095(b), Government Code.]

155-18 SECTION 3.0030. Sections 12.036(c) and (d), Health and
 155-19 Safety Code, are amended to read as follows:

155-20 (c) The executive commissioner [~~board~~] or the executive
 155-21 commissioner's [~~board's~~] designee may waive the department's right
 155-22 of subrogation in whole or in part if the executive commissioner
 155-23 [~~board~~] or the designee determines that:

155-24 (1) enforcement of the right would tend to defeat the
 155-25 purpose of the department's program; or

155-26 (2) the administrative expense of the enforcement
 155-27 would be greater than the expected recovery.

155-28 (d) The executive commissioner [~~board~~] may adopt rules for
 155-29 the enforcement of the department's right of subrogation.

155-30 SECTION 3.0031. Section 12.037(b), Health and Safety Code,
 155-31 is amended to read as follows:

155-32 (b) The executive commissioner [~~board~~] by rule shall
 155-33 prescribe the criteria for department action under this section.

155-34 SECTION 3.0032. Section 12.038, Health and Safety Code, is
 155-35 amended to read as follows:

155-36 Sec. 12.038. RULES. The executive commissioner [~~board~~] may
 155-37 adopt rules necessary to implement this subchapter.

155-38 SECTION 3.0033. Sections 12.055(b) and (d), Health and
 155-39 Safety Code, are amended to read as follows:

155-40 (b) A state agency or local unit of government under
 155-41 Subsection (a)(3) shall acquire goods or services by any
 155-42 procurement method approved by the commission [~~Health and Human~~
 155-43 ~~Services Commission~~] that provides the best value to the state
 155-44 agency or local unit of government. The state agency or local unit
 155-45 of government shall document that the state agency or local unit of
 155-46 government considered all relevant factors under Subsection (c) in
 155-47 making the acquisition.

155-48 (d) If a state agency to which this section applies acquires
 155-49 goods or services with a value that exceeds \$100,000, the state
 155-50 agency shall consult with and receive approval from the commission
 155-51 [~~Health and Human Services Commission~~] before considering factors
 155-52 other than price and meeting specifications.

155-53 SECTION 3.0034. Subchapter F, Chapter 12, Health and Safety
 155-54 Code, is amended to read as follows:

155-55 SUBCHAPTER F. OFFICE OF BORDER [~~TEXAS-MEXICO~~] HEALTH
 155-56 [~~AND ENVIRONMENTAL ISSUES~~]

155-57 Sec. 12.071. OFFICE OF BORDER [~~TEXAS-MEXICO~~] HEALTH [~~AND~~
 155-58 ~~ENVIRONMENTAL ISSUES~~]. The department shall establish and maintain
 155-59 an office in the department to coordinate and promote health and
 155-60 environmental issues between this state and Mexico.

155-61 SECTION 3.0035. Section 12.091, Health and Safety Code, is
 155-62 amended to read as follows:

155-63 Sec. 12.091. DEFINITION [~~DEFINITIONS~~]. In this subchapter,
 155-64 "panel" [~~+~~]

155-65 [(1) "Medical standards division" means the Medical
 155-66 Standards on Motor Vehicle Operations Division of the department.]

155-67 [(2) "Panel"] means a panel of the medical advisory
 155-68 board.

155-69 SECTION 3.0036. Section 12.092(a), Health and Safety Code,

156-1 is amended to read as follows:

156-2 (a) The commissioner shall appoint the medical advisory
156-3 board members from:

156-4 (1) persons licensed to practice medicine in this
156-5 state, including physicians who are board certified in internal
156-6 medicine, psychiatry, neurology, physical medicine, or
156-7 ophthalmology and who are jointly recommended by the department
156-8 [~~Texas Department of Health~~] and the Texas Medical Association; and

156-9 (2) persons licensed to practice optometry in this
156-10 state who are jointly recommended by the department and the Texas
156-11 Optometric Association.

156-12 SECTION 3.0037. Section [12.093](#), Health and Safety Code, is
156-13 amended to read as follows:

156-14 Sec. 12.093. ADMINISTRATION[~~RULES~~]. (a) The medical
156-15 advisory board is administratively attached to the department
156-16 [~~medical standards division~~].

156-17 (b) The department [~~medical standards division~~]:

156-18 (1) shall provide administrative support for the
156-19 medical advisory board and panels of the medical advisory board;
156-20 and

156-21 (2) may collect and maintain the individual medical
156-22 records necessary for use by the medical advisory board and the
156-23 panels under this section from a physician, hospital, or other
156-24 health care provider.

156-25 SECTION 3.0038. Section [12.094\(a\)](#), Health and Safety Code,
156-26 is amended to read as follows:

156-27 (a) The executive commissioner [~~board~~]:

156-28 (1) may adopt rules to govern the activities of the
156-29 medical advisory board;

156-30 (2) by rule may establish a reasonable fee to pay a
156-31 member of the medical advisory board for the member's professional
156-32 consultation services; and

156-33 (3) if appropriate, may authorize reimbursement for
156-34 [~~per diem and~~] travel expenses as provided by Section [2110.004](#),
156-35 Government Code, [allowances] for each meeting a member attends[~~not to exceed the amounts authorized for state employees by the~~
156-36 ~~General Appropriations Act~~].

156-38 SECTION 3.0039. Section [12.097\(b\)](#), Health and Safety Code,
156-39 is amended to read as follows:

156-40 (b) In a subsequent proceeding under Subchapter H, Chapter
156-41 411, Government Code, or Subchapter N, Chapter 521, Transportation
156-42 Code, the department [~~medical standards division~~] may provide a
156-43 copy of the report of the medical advisory board or panel and a
156-44 medical record or report relating to an applicant or license holder
156-45 to:

156-46 (1) the Department of Public Safety of the State of
156-47 Texas;

156-48 (2) the applicant or license holder; and
156-49 (3) the officer who presides at the hearing.

156-50 SECTION 3.0040. Section [12.113\(a\)](#), Health and Safety Code,
156-51 is amended to read as follows:

156-52 (a) Volunteers recruited under this subchapter may include
156-53 students in high school or an institution of higher education,
156-54 senior citizens, participants in the TANF [~~AFDC~~] job opportunities
156-55 and basic skills (JOBS) training program, VISTA and AmeriCorps
156-56 volunteers, and volunteers from business and community networks.

156-57 SECTION 3.0041. Section [12.133\(b\)](#), Health and Safety Code,
156-58 is amended to read as follows:

156-59 (b) Subject to the approval of the advisory committee, the
156-60 executive commissioner [~~board~~] shall adopt rules governing the
156-61 collection of information under Subsection (a). The rules may
156-62 provide for regular audits of randomly selected political
156-63 subdivisions and may govern the manner in which a political
156-64 subdivision is selected for an audit and the selection of an
156-65 auditor.

156-66 SECTION 3.0042. Section [12.134\(a\)](#), Health and Safety Code,
156-67 is amended to read as follows:

156-68 (a) Subject to the approval of the advisory committee, the
156-69 executive commissioner [~~board~~] shall adopt rules under which a

157-1 political subdivision or agency of this state may dispute
 157-2 information submitted by a political subdivision under Section
 157-3 12.133.

157-4 SECTION 3.0043. Section 12.136(a), Health and Safety Code,
 157-5 is amended to read as follows:

157-6 (a) If the department, pursuant to rules adopted by the
 157-7 executive commissioner, [board] finds, after an audit conducted
 157-8 under Section 12.133 or 12.134, that a political subdivision has
 157-9 overstated unreimbursed health care expenditures in the
 157-10 information submitted under Section 12.133 for any year, the
 157-11 department shall report that fact to the comptroller and shall
 157-12 reduce that political subdivision's percentage of the subsequent
 157-13 annual distribution of the earnings from the account appropriately.

157-14 SECTION 3.0044. Sections 12.137(a) and (b), Health and
 157-15 Safety Code, are amended to read as follows:

157-16 (a) The tobacco settlement permanent trust account
 157-17 administration advisory committee shall advise the department
 157-18 [board] on the implementation of the department's duties under this
 157-19 subchapter.

157-20 (b) The advisory committee is composed of 11 members
 157-21 appointed as follows:

157-22 (1) one member appointed by the executive commissioner
 157-23 [board] to represent a public hospital or hospital district located
 157-24 in a county with a population of 50,000 or less or a public hospital
 157-25 owned or maintained by a municipality;

157-26 (2) one member appointed by the political subdivision
 157-27 that, in the year preceding the appointment, received the largest
 157-28 annual distribution paid from the account;

157-29 (3) one member appointed by the political subdivision
 157-30 that, in the year preceding the appointment, received the second
 157-31 largest annual distribution paid from the account;

157-32 (4) four members appointed by the Texas Conference of
 157-33 Urban Counties from nominations received from political
 157-34 subdivisions that in the year preceding the appointment, received
 157-35 the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, or 12th largest
 157-36 annual distribution paid from the account;

157-37 (5) one member appointed by the County Judges and
 157-38 Commissioners Association of Texas;

157-39 (6) one member appointed by the North and East Texas
 157-40 County Judges and Commissioners Association;

157-41 (7) one member appointed by the South Texas County
 157-42 Judges and Commissioners Association; and

157-43 (8) one member appointed by the West Texas County
 157-44 Judges and Commissioners Association.

157-45 SECTION 3.0045. Section 12.138, Health and Safety Code, is
 157-46 amended to read as follows:

157-47 Sec. 12.138. APPROVAL OF RULES. A rule to be adopted by the
 157-48 executive commissioner [board] relating to certification of a
 157-49 percentage of an annual distribution under Section 12.132 or
 157-50 collection of information under Sections 12.132, 12.133, and 12.134
 157-51 must be submitted to the advisory committee and may not become
 157-52 effective before the rule is approved by the advisory committee. If
 157-53 the advisory committee disapproves a proposed rule, the advisory
 157-54 committee shall provide the executive commissioner [board] the
 157-55 specific reasons that the rule was disapproved.

157-56 SECTION 3.0046. Section 12.139, Health and Safety Code, is
 157-57 amended to read as follows:

157-58 Sec. 12.139. ANNUAL REVIEW. The advisory committee shall
 157-59 annually:

157-60 (1) review the results of any audit conducted under
 157-61 this subchapter and the results of any dispute filed under Section
 157-62 12.134; and

157-63 (2) review the rules adopted by the executive
 157-64 commissioner [board] under this subchapter and propose any
 157-65 amendments to the rules the advisory committee considers necessary.

157-66 SECTION 3.0047. The heading to Chapter 13, Health and
 157-67 Safety Code, is amended to read as follows:

157-68 CHAPTER 13. [HEALTH] DEPARTMENT HOSPITALS AND RESPIRATORY
 157-69 FACILITIES

158-1 SECTION 3.0048. The heading to Subchapter A, Chapter 13, Health and Safety Code, is amended to read as follows:

158-2 SUBCHAPTER A. CARE AND TREATMENT IN [HEALTH] DEPARTMENT HOSPITALS

158-3 SECTION 3.0049. Sections 13.002(a), (c), and (d), Health and Safety Code, are amended to read as follows:

158-4 (a) The department [board] may admit to any hospital under its supervision a patient who:

158-5 (1) is eligible to receive patient services under a department program; and

158-6 (2) will benefit from hospitalization.

158-7 (c) The executive commissioner [board] may adopt rules and the department may enter into contracts as necessary to implement this section.

158-8 (d) This section does not require the executive commissioner [board] or department to:

158-9 (1) admit a patient to a particular hospital;

158-10 (2) guarantee the availability of space at any hospital; or

158-11 (3) provide treatment for a particular medical need at any hospital.

158-12 SECTION 3.0050. Section 13.003(b), Health and Safety Code, is amended to read as follows:

158-13 (b) The department [board] may establish at the Rio Grande State Center:

158-14 (1) cancer screening;

158-15 (2) diagnostic services;

158-16 (3) educational services;

158-17 (4) obstetrical services;

158-18 (5) gynecological services;

158-19 (6) other inpatient health care services; and

158-20 (7) outpatient health care services, including diagnostic, treatment, disease management, and supportive care services.

158-21 SECTION 3.0051. The heading to Section 13.004, Health and Safety Code, is amended to read as follows:

158-22 Sec. 13.004. TREATMENT OF CERTAIN PERSONS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY [MENTALLY ILL OR MENTALLY RETARDED PERSONS].

158-23 SECTION 3.0052. Section 13.004(a), Health and Safety Code, is amended to read as follows:

158-24 (a) The department or the Department of Aging and Disability Services, as appropriate, [Texas Department of Mental Health and Mental Retardation] may transfer a [mentally ill or mentally retarded] person with mental illness or an intellectual disability who is infected with tuberculosis to a public health hospital as defined by Section 13.033 [the Texas Center for Infectious Disease].

158-25 SECTION 3.0053. Section 13.005, Health and Safety Code, is amended to read as follows:

158-26 Sec. 13.005. CARE AND TREATMENT OF CERTAIN PATIENTS. (a) The department [board] shall fully develop essential services needed for the control of tuberculosis. To provide those services, the department [board] may contract for the support, maintenance, care, and treatment of tuberculosis patients:

158-27 (1) admitted to facilities under the department's [board's] jurisdiction; or

158-28 (2) otherwise subject to the department's [board's] jurisdiction.

158-29 (b) The department [board] may contract with:

158-30 (1) municipal, county, or state hospitals;

158-31 (2) private physicians;

158-32 (3) licensed nursing facilities [homes] and hospitals; and

158-33 (4) hospital districts.

158-34 (c) The department [board] may contract for diagnostic and other services available in a community or region as necessary to prevent further spread of tuberculosis.

158-35 (d) A contract may not include the assignment of any lien accruing to the state.

(e) The department [board] may establish and operate outpatient clinics as necessary to provide follow-up treatment on discharged patients. A person who receives treatment as an outpatient is financially liable in the manner provided for inpatients.

SECTION 3.0054. Sections 13.033(3) and (5), Health and Safety Code, are amended to read as follows:

(3) "Physician" means a person licensed by the Texas [State Board of] Medical Board [Examiners] to practice medicine in this state.

(5) "Public health [State chest] hospital" means a hospital operated by the department to provide services under this subchapter, including the Texas Center for Infectious Disease [and the Rio Grande State Center].

SECTION 3.0055. Section 13.034, Health and Safety Code, is amended to read as follows:

Sec. 13.034. [BOARD] DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT. (a) The executive commissioner [board] shall adopt rules [and bylaws] relating to:

(1) the management of public health [~~state chest~~]
hospitals;

- (2) the duties of officers and employees of those hospitals; and
- (3) the enforcement of necessary discipline and restraint of patients.

(a-1) The executive commissioner may adopt rules as necessary for the proper and efficient hospitalization of tuberculosis patients.

(b) The department [board] shall supply each hospital with the necessary personnel for the operation and maintenance of the hospital.

(c) The department [board] may:

(1) prescribe the form and content of applications, certificates, records, and reports provided for under this subchapter;

(2) require reports from the administrator of a public
health [state chest] hospital relating to the admission,
examination, diagnosis, release, or discharge of a patient;

(3) visit each hospital regularly to review admitting procedures and the care and treatment of all new patients admitted since the last visit; and

(4) investigate by personal visit a complaint made by a patient or by another person on behalf of a patient[, and
[(5) adopt rules as necessary for the proper and efficient administration of the hospital.

~~efficient hospitalization of tuberculosis patients].~~

[~~(d) The board may delegate a power or duty of the board to an employee. The delegation does not relieve the board from its~~

responsibility.] SECTION 3.0056. Section 13.035(a), Health and Safety Code, is amended to read as follows:

is amended to read as follows:

(a) The department shall employ a qualified hospital administrator for each public health [~~state chest~~] hospital.

SECTION 3.0057. Sections 13.036(a) and (c), Health and Safety Code, are amended to read as follows:

(a) A resident of this state who has tuberculosis may be admitted to a public health [~~state chest~~] hospital. A person who is not a resident of this state and who has tuberculosis may be

(c) An application for admission to a public health [state chest] hospital shall be accompanied by a certificate issued by a

~~This~~ hospital shall be accompanied by a certificate issued by a physician stating that the physician has thoroughly examined the applicant and that the applicant has tuberculosis. In the case of an applicant who is not a resident of this state, the certificate may be issued by a physician who holds a license to practice medicine in the state of residence of the applicant.

SECTION 3.0058. Section 13.038(a), Health and Safety Code, is amended to read as follows:

(a) A patient admitted to a public health [state chest]

160-1 hospital is a public patient and classified as indigent,
 160-2 nonindigent, or nonresident.

160-3 SECTION 3.0059. Section 13.039(b), Health and Safety Code,
 160-4 is amended to read as follows:

160-5 (b) The action shall be brought on the written request of
 160-6 the public health [~~state chest~~] hospital administrator,
 160-7 accompanied by a certificate as to the amount owed to the state. In
 160-8 any action, the certificate is sufficient evidence of the amount
 160-9 owed to the state for the support of that patient.

160-10 SECTION 3.0060. Sections 13.041(a) and (c), Health and
 160-11 Safety Code, are amended to read as follows:

160-12 (a) The department [~~board~~] may:

160-13 (1) return a nonresident patient admitted to a public
 160-14 health [~~state chest~~] hospital to the proper agency of the state of
 160-15 the patient's residence; and

160-16 (2) permit the return of a resident of this state who
 160-17 has been admitted to a tuberculosis hospital in another state.

160-18 (c) The department [~~board~~] may enter into reciprocal
 160-19 agreements with the proper agencies of other states to facilitate
 160-20 the return to the states of their residence of nonresident patients
 160-21 admitted to tuberculosis [~~state chest~~] hospitals in other states.

160-22 SECTION 3.0061. Section 13.042, Health and Safety Code, is
 160-23 amended to read as follows:

160-24 Sec. 13.042. DISCRIMINATION PROHIBITED. (a) A public
 160-25 health [~~state chest~~] hospital may not discriminate against a
 160-26 patient.

160-27 (b) Each patient is entitled to equal facilities,
 160-28 attention, and treatment. However, a public health [~~state chest~~]
 160-29 hospital may provide different care and treatment of patients
 160-30 because of differences in the condition of the individual patients.

160-31 SECTION 3.0062. Sections 13.043(a) and (c), Health and
 160-32 Safety Code, are amended to read as follows:

160-33 (a) A patient in a public health [~~state chest~~] hospital may
 160-34 not offer an officer, agent, or employee of the hospital a tip,
 160-35 payment, or reward of any kind.

160-36 (c) The department [~~board~~] shall strictly enforce this
 160-37 section.

160-38 SECTION 3.0063. Sections 13.044(a), (d), and (e), Health
 160-39 and Safety Code, are amended to read as follows:

160-40 (a) On the request of any charitable organization in this
 160-41 state, the department [~~board~~] may permit the erection, furnishing,
 160-42 and maintenance by the charitable organization of accommodations on
 160-43 the grounds of a public health [~~state chest~~] hospital for persons
 160-44 who have tuberculosis and who are:

160-45 (1) members of the charitable organization;
 160-46 (2) members of the families of persons who are members
 160-47 of the charitable organization; or

160-48 (3) surviving spouses or minor children of deceased
 160-49 persons who are members of the charitable organization.

160-50 (d) The officers or a board or committee of the charitable
 160-51 organization and the department [~~board~~] must enter into a written
 160-52 agreement relating to the location, construction, style, and
 160-53 character, and terms of existence of buildings, and other questions
 160-54 arising in connection with the grant of permission to erect and
 160-55 maintain private accommodations. The department must maintain as a
 160-56 record a copy of the written agreement [~~must be recorded in the~~
 160-57 minutes of the board].

160-58 (e) Except for the preferential right to occupy vacant
 160-59 accommodations erected by the person's charitable organization, a
 160-60 person described by Subsection (a) shall be classified in the same
 160-61 manner as other public health [~~state chest~~] hospital patients and
 160-62 shall be admitted, maintained, cared for, and treated in those
 160-63 hospitals in the same manner and under the same conditions and rules
 160-64 that apply to other patients.

160-65 SECTION 3.0064. Section 13.045(a), Health and Safety Code,
 160-66 is amended to read as follows:

160-67 (a) A county may donate and convey land to the state in
 160-68 consideration of the establishment of a public health [~~state chest~~]
 160-69 hospital by the executive commissioner [~~board~~].

161-1 SECTION 3.0065. Section 13.046, Health and Safety Code, is
 161-2 amended to read as follows:

161-3 Sec. 13.046. ADMISSION OF NONRESIDENT PATIENTS. (a) The
 161-4 department may enter into an agreement with an agency of another
 161-5 state responsible for the care of residents of that state who have
 161-6 tuberculosis under which:

161-7 (1) residents of the other state who have tuberculosis
 161-8 may be admitted to a public health [~~state chest~~] hospital, subject
 161-9 to the availability of appropriate space after the needs of
 161-10 eligible tuberculosis and chronic respiratory disease patients who
 161-11 are residents of this state have been met; and

161-12 (2) the other state is responsible for paying all
 161-13 costs of the hospitalization and treatment of patients admitted
 161-14 under the agreement.

161-15 (b) Section 13.041 does not apply to the return of a
 161-16 nonresident patient admitted to a public health [~~state chest~~] hospital in accordance with an agreement entered into under this
 161-17 section. The return of that patient to the state of residence is
 161-18 governed by the agreement.

161-19 SECTION 3.0066. Section 31.002(a)(3), Health and Safety
 161-20 Code, is amended to read as follows:

161-21 (3) "Other benefit" means a benefit, other than a
 161-22 benefit provided under this chapter, to which an individual is
 161-23 entitled for payment of the costs of primary health care services,
 161-24 including benefits available from:

161-25 (A) an insurance policy, group health plan, or
 161-26 prepaid medical care plan;

161-27 (B) Title XVIII or XIX of the Social Security Act
 161-28 (42 U.S.C. Section 1395 et seq. or Section 1396 et seq.);

161-29 (C) the United States Department of Veterans
 161-30 Affairs [Administration];

161-31 (D) the TRICARE program of the United States
 161-32 Department of Defense [Civilian Health and Medical Program of the
 161-33 Uniformed Services];

161-34 (E) workers' compensation or any other
 161-35 compulsory employers' insurance program;

161-36 (F) a public program created by federal or state
 161-37 law, or by an ordinance or rule of a municipality or political
 161-38 subdivision of the state, excluding benefits created by the
 161-39 establishment of a municipal or county hospital, a joint
 161-40 municipal-county hospital, a county hospital authority, a hospital
 161-41 district, or the facilities of a publicly supported medical school;
 161-42 or

161-43 (G) a cause of action for medical, facility, or
 161-44 medical transportation expenses, or a settlement or judgment based
 161-45 on the cause of action, if the expenses are related to the need for
 161-46 services provided under this chapter.

161-47 SECTION 3.0067. Section 31.002(b), Health and Safety Code,
 161-48 is amended to read as follows:

161-49 (b) The executive commissioner [~~board~~] by rule may define a
 161-50 word or term not defined by Subsection (a) as necessary to
 161-51 administer this chapter. The executive commissioner [~~board~~] may
 161-52 not define a word or term so that the word or term is inconsistent or
 161-53 in conflict with the purposes of this chapter, or is in conflict
 161-54 with the definition and conditions of practice governing a provider
 161-55 who is required to be licensed, registered, certified, identified,
 161-56 or otherwise sanctioned under the laws of this state.

161-57 SECTION 3.0068. Sections 31.003(a), (b), (c), (d), (e), and
 161-58 (g), Health and Safety Code, are amended to read as follows:

161-59 (a) The executive commissioner [~~board~~] may establish a
 161-60 program in the department to provide primary health care services
 161-61 to eligible individuals.

161-62 (b) If the program is established, the executive
 161-63 commissioner [~~board~~] shall adopt rules relating to:

161-64 (1) the type, amount, and duration of services to be
 161-65 provided under this chapter; and

161-66 (2) the determination by the department of the
 161-67 services needed in each service area.

161-68 (c) If budgetary limitations exist, the executive

162-1 commissioner [board] by rule shall establish a system of priorities
162-2 relating to the types of services provided, geographic areas
162-3 covered, or classes of individuals eligible for services.

162-4 (d) The executive commissioner [board] shall adopt rules
162-5 under Subsection (c) relating to the geographic areas covered and
162-6 the classes of individuals eligible for services according to a
162-7 statewide determination of the need for services.

162-8 (e) The executive commissioner [board] shall adopt rules
162-9 under Subsection (c) relating to the types of services provided
162-10 according to the set of service priorities established under this
162-11 subsection. Initial service priorities shall focus on the funding
162-12 of, provision of, and access to:

162-13 (1) diagnosis and treatment;
162-14 (2) emergency services;
162-15 (3) family planning services;
162-16 (4) preventive health services, including
162-17 immunizations;
162-18 (5) health education; and
162-19 (6) laboratory, X-ray, nuclear medicine, or other
162-20 appropriate diagnostic services.

162-21 (g) The executive commissioner [board] should require that
162-22 the services provided under this chapter be reserved to the
162-23 greatest extent possible for low-income individuals who are not
162-24 eligible for similar services through any other publicly funded
162-25 program.

162-26 SECTION 3.0069. Sections 31.004(a) and (b), Health and
162-27 Safety Code, are amended to read as follows:

162-28 (a) The executive commissioner [board] shall adopt rules
162-29 necessary to administer this chapter, and the department shall
162-30 administer the program in accordance with those [board] rules.

162-31 (b) The executive commissioner [With the advice and
162-32 assistance of the commissioner and the department, the board] by
162-33 rule shall:

162-34 (1) establish the administrative structure of the
162-35 program;
162-36 (2) establish a plan of areawide administration to
162-37 provide authorized services;
162-38 (3) designate, if possible, local public and private
162-39 resources as providers; and
162-40 (4) prevent duplication by coordinating authorized
162-41 primary health care services with existing federal, state, and
162-42 local programs.

162-43 SECTION 3.0070. Sections 31.005(a), (b), (c), and (e),
162-44 Health and Safety Code, are amended to read as follows:

162-45 (a) The executive commissioner [board] shall adopt rules
162-46 relating to the department's determination of whether program
162-47 services are to be provided through a network of approved
162-48 providers, directly by the department, or by a combination of the
162-49 department and approved providers as prescribed by this section.

162-50 (b) The department shall provide services only as
162-51 prescribed by department [board] rule.

162-52 (c) The department may provide primary health care services
162-53 directly to eligible individuals to the extent that the department
162-54 [board] determines that existing private or public providers or
162-55 other resources in the service area are unavailable or unable to
162-56 provide those services. In making that determination, the
162-57 department shall:

162-58 (1) initially determine the proposed need for services
162-59 in the service area;

162-60 (2) notify existing private and public providers and
162-61 other resources in the service area of the department's initial
162-62 determination of need and the services the department proposes to
162-63 provide directly to eligible individuals;

162-64 (3) provide existing private and public providers and
162-65 other resources in the service area a reasonable opportunity to
162-66 comment on the department's initial determination of need and the
162-67 availability and ability of existing private or public providers or
162-68 other resources in the service area to satisfy the need;

162-69 (4) provide existing private and public providers and

163-1 other resources in the service area a reasonable opportunity to
 163-2 obtain approval as providers under the program; and

163-3 (5) eliminate, reduce, or otherwise modify the
 163-4 proposed scope or type of services the department proposes to
 163-5 provide directly to the extent that those services may be provided
 163-6 by existing private or public providers or other resources in the
 163-7 service area that meet the executive commissioner's [board's]
 163-8 criteria for approval as providers.

163-9 (e) If after a review the department [board] determines that
 163-10 a private or public provider or other resource is available to
 163-11 provide services and has been approved as a provider, the
 163-12 department shall, immediately after approving the provider,
 163-13 eliminate, reduce, or modify the scope and type of services the
 163-14 department provides directly to the extent the private or public
 163-15 provider or other resource is available and able to provide the
 163-16 service.

163-17 SECTION 3.0071. Sections 31.006(a), (b), (d), (f), and (i),
 163-18 Health and Safety Code, are amended to read as follows:

163-19 (a) The executive commissioner [board] shall adopt rules
 163-20 relating to:

163-21 (1) the selection and expedited selection of
 163-22 providers, including physicians, registered nurses, and
 163-23 facilities; and

163-24 (2) the denial, modification, suspension, and
 163-25 termination of program participation.

163-26 (b) The department shall select and approve providers to
 163-27 participate in the program according to the criteria and following
 163-28 the procedures prescribed by department [board] rules.

163-29 (d) The executive commissioner [board] may not adopt
 163-30 facility approval criteria that discriminate against a facility
 163-31 solely because it is operated for profit.

163-32 (f) The department [board] shall provide a due process
 163-33 hearing procedure in accordance with department rules for the
 163-34 resolution of conflicts between the department and a provider.
 163-35 Chapter 2001, Government Code, does [do] not apply to conflict
 163-36 resolution procedures adopted under this section.

163-37 (i) The notice and hearing required by this section do not
 163-38 apply if a grant or contract:

163-39 (1) is canceled by the department because of
 163-40 exhaustion of funds or because insufficient funds require the
 163-41 executive commissioner [board] to adopt service priorities; or

163-42 (2) expires according to its terms.

163-43 SECTION 3.0072. Sections 31.007(a), (c), (d), and (e),
 163-44 Health and Safety Code, are amended to read as follows:

163-45 (a) The executive commissioner [board] shall adopt rules
 163-46 relating to application procedures for admission to the program.

163-47 (c) The application form must be accompanied by:

163-48 (1) a statement by the applicant, or by the person with
 163-49 a legal obligation to provide for the applicant's support, that the
 163-50 applicant or person is financially unable to pay for all or part of
 163-51 the cost of the necessary services; and

163-52 (2) any other assurances from the applicant or any
 163-53 documentary evidence required by department rules [the board] that
 163-54 is necessary to support the applicant's eligibility.

163-55 (d) Except as permitted by department [program] rules, the
 163-56 department may not provide services or authorize payment for
 163-57 services delivered to an individual before the eligibility date
 163-58 assigned to the individual by the department.

163-59 (e) The department shall determine or cause to be determined
 163-60 the eligibility date in accordance with department [board] rules.
 163-61 The date may not be later than the date on which the individual
 163-62 submits a properly completed application form and all supporting
 163-63 documents required by this chapter or department [board] rules.

163-64 SECTION 3.0073. Section 31.008, Health and Safety Code, is
 163-65 amended to read as follows:

163-66 Sec. 31.008. ELIGIBILITY FOR SERVICES. (a) The executive
 163-67 commissioner [board] shall adopt rules relating to eligibility
 163-68 criteria for an individual to receive services under the program,
 163-69 including health, medical, and financial criteria. The department

164-1 shall determine or cause to be determined an applicant's
 164-2 eligibility in accordance with this chapter and department [board]
 164-3 rules.

164-4 (b) Except as modified by other rules adopted under this
 164-5 chapter, the executive commissioner [board] by rule shall provide
 164-6 that to be eligible to receive services, the individual must be a
 164-7 resident of this state.

164-8 SECTION 3.0074. Sections 31.009(c), (d), and (f), Health
 164-9 and Safety Code, are amended to read as follows:

164-10 (c) The executive commissioner [board] by rule shall
 164-11 provide criteria for action by the department under this section.

164-12 (d) Chapter 2001, Government Code, does [do] not apply to
 164-13 the granting, denial, modification, suspension, or termination of
 164-14 services. The department shall conduct hearings in accordance with
 164-15 the department's [board's] due process hearing rules.

164-16 (f) The notice and hearing required by this section do not
 164-17 apply if the department restricts program services to conform to
 164-18 budgetary limitations that require the executive commissioner
 164-19 [board] to establish service priorities.

164-20 SECTION 3.0075. Sections 31.010(b) and (e), Health and
 164-21 Safety Code, are amended to read as follows:

164-22 (b) Except as provided by department [board] rules, an
 164-23 individual is not eligible to receive services under this chapter
 164-24 to the extent that the individual, or a person with a legal
 164-25 obligation to support the individual, is eligible for some other
 164-26 benefit that would pay for all or part of the services.

164-27 (e) The department [commissioner] may waive enforcement of
 164-28 Subsections (b)-(d) [~~of this section~~] as prescribed by department
 164-29 [board] rules in certain individually considered cases in which
 164-30 enforcement will deny services to a class of otherwise eligible
 164-31 individuals because of conflicting federal, state, or local laws or
 164-32 rules.

164-33 SECTION 3.0076. Section 31.012, Health and Safety Code, is
 164-34 amended to read as follows:

164-35 Sec. 31.012. FEES. (a) The department [board] may charge
 164-36 fees for the services provided directly by the department or
 164-37 through approved providers in accordance with Subchapter D, Chapter
 164-38 12.

164-39 (b) The executive commissioner by rule [board] shall adopt
 164-40 standards and procedures to develop and implement a schedule of
 164-41 allowable charges for program services.

164-42 SECTION 3.0077. Section 31.013(a), Health and Safety Code,
 164-43 is amended to read as follows:

164-44 (a) Except as provided by this chapter or by other law, the
 164-45 department [board] may seek, receive, and spend funds received
 164-46 through an appropriation, grant, donation, or reimbursement from
 164-47 any public or private source to administer this chapter.

164-48 SECTION 3.0078. Sections 31.015(b) and (d), Health and
 164-49 Safety Code, are amended to read as follows:

164-50 (b) The executive commissioner [board] shall adopt rules
 164-51 relating to the information a provider is required to report to the
 164-52 department and shall adopt procedures to prevent unnecessary and
 164-53 duplicative reporting of data.

164-54 (d) The report required under Subsection (c) must include:

164-55 (1) the number of individuals receiving care under
 164-56 this chapter;

164-57 (2) the total cost of the program, including a
 164-58 delineation of the total administrative costs and the total cost
 164-59 for each service authorized under Section 31.003(e);

164-60 (3) the average cost per recipient of services;

164-61 (4) the number of individuals who received services in
 164-62 each public health region; and

164-63 (5) any other information required by the executive
 164-64 commissioner [board].

164-65 SECTION 3.0079. Section 32.002(a)(8), Health and Safety
 164-66 Code, is amended to read as follows:

164-67 (8) "Other benefit" means a benefit, other than a
 164-68 benefit provided under this chapter, to which an individual is
 164-69 entitled for payment of the costs of maternal and infant health

165-1 improvement services, ancillary services, educational services, or
 165-2 transportation services, including benefits available from:

165-3 (A) an insurance policy, group health plan, or
 165-4 prepaid medical care plan;

165-5 (B) Title XVIII of the Social Security Act (42
 165-6 U.S.C. Section 1395 et seq.);

165-7 (C) the United States Department of Veterans
 165-8 Affairs [Administration];

165-9 (D) the TRICARE program of the United States
 165-10 Department of Defense [Civilian Health and Medical Program of the
 165-11 Uniformed Services];

165-12 (E) workers' compensation or any other
 165-13 compulsory employers' insurance program;

165-14 (F) a public program created by federal or state
 165-15 law, other than Title XIX of the Social Security Act (42 U.S.C.
 165-16 Section 1396 et seq.), or by an ordinance or rule of a municipality
 165-17 or political subdivision of the state, excluding benefits created
 165-18 by the establishment of a municipal or county hospital, a joint
 165-19 municipal-county hospital, a county hospital authority, a hospital
 165-20 district, or the facilities of a publicly supported medical school;
 165-21 or

165-22 (G) a cause of action for medical, facility, or
 165-23 medical transportation expenses, or a settlement or judgment based
 165-24 on the cause of action, if the expenses are related to the need for
 165-25 services provided under this chapter.

165-26 SECTION 3.0080. Section 32.002(b), Health and Safety Code,
 165-27 is amended to read as follows:

165-28 (b) The executive commissioner [board] by rule may define a
 165-29 word or term not defined by Subsection (a) as necessary to
 165-30 administer this chapter. The executive commissioner [board] may
 165-31 not define a word or term so that the word or term is inconsistent or
 165-32 in conflict with the purposes of this chapter, or is in conflict
 165-33 with the definition and conditions of practice governing a provider
 165-34 who is required to be licensed, registered, certified, identified,
 165-35 or otherwise sanctioned under the laws of this state.

165-36 SECTION 3.0081. Section 32.003, Health and Safety Code, is
 165-37 amended to read as follows:

165-38 Sec. 32.003. MATERNAL AND INFANT HEALTH IMPROVEMENT
 165-39 SERVICES PROGRAM. (a) The executive commissioner [board] may
 165-40 establish a maternal and infant health improvement services program
 165-41 in the department to provide comprehensive maternal and infant
 165-42 health improvement services and ancillary services to eligible
 165-43 women and infants.

165-44 (b) If the program is established, the executive
 165-45 commissioner [board] shall adopt rules relating to:

165-46 (1) the type, amount, and duration of services to be
 165-47 provided under this chapter; and

165-48 (2) the determination by the department of the
 165-49 services needed in each service area.

165-50 (c) If budgetary limitations exist, the executive
 165-51 commissioner [board] by rule shall establish a system of priorities
 165-52 relating to the types of services provided, geographic areas
 165-53 covered, or classes of individuals eligible for services.

165-54 (d) The executive commissioner [board] shall adopt the
 165-55 rules according to a statewide determination of the need for
 165-56 services.

165-57 (e) In structuring the program and adopting rules, the
 165-58 department and executive commissioner [board] shall attempt to
 165-59 maximize the amount of federal matching funds available for
 165-60 maternal and infant health improvement services while continuing to
 165-61 serve targeted populations.

165-62 (f) If necessary, the executive commissioner [board] by
 165-63 rule may coordinate services and other parts of the program with the
 165-64 medical assistance program. However, the executive commissioner
 165-65 [board] may not adopt rules relating to the services under either
 165-66 program that would:

165-67 (1) cause the program established under this chapter
 165-68 not to conform with federal law to the extent that federal matching
 165-69 funds would not be available; or

(2) affect the status of the single state agency to administer the medical assistance program.

SECTION 3.0082. Section 32.006(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner [board] shall adopt rules necessary to administer this chapter, and the department shall administer the program in accordance with those [board] rules.

SECTION 3.0083. Sections 32.011(b), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(b) The executive commissioner [board] by rule

(c) Chapter 2001, Government Code, does not apply to the granting, denial, modification, suspension, or termination of services. The department shall provide [conduct] hearings in accordance with the department's [~~board's~~] due process hearing rules.

(d) The department shall render the final administrative decision following [~~in~~] a due process hearing to deny, modify, suspend, or terminate the receipt of services.

(e) The notice and hearing required by this section do not apply if the department restricts program services to conform to budgetary limitations that require the executive commissioner [board] to establish service priorities.

SECTION 3.0084. Sections 32.012(b) and (e), Health and Safety Code, are amended to read as follows:

(b) Except as provided by department [board] rules, an individual is not eligible to receive services under this chapter to the extent that the individual or a person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

(e) The department [commissioner] may waive enforcement of Subsections (b)-(d) [~~of this section~~] as prescribed by department [board] rules in certain individually considered cases in which enforcement will deny services to a class of otherwise eligible individuals because of conflicting federal, state, or local laws or rules.

SECTION 3.0085. Section 32.014, Health and Safety Code, is amended to read as follows:

Sec. 32.014. FEES. (a) Except as prohibited by federal law or regulation, the department [board] may collect [charge] fees for the services provided directly by the department or through approved providers in accordance with Subchapter D, Chapter 12.

(b) The executive commissioner by rule [board] shall adopt standards and procedures to develop and implement a schedule of allowable charges for program services.

SECTION 3.0086. Section 32.015(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by this chapter or by other law, the department [board] may seek, receive, and spend funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer this chapter.

SECTION 3.0087. Section 32.017(b), Health and Safety Code, is amended to read as follows:

(b) The executive commissioner [board] shall adopt rules relating to the information a provider is required to report to the department and shall adopt procedures to prevent unnecessary and duplicative reporting of data.

SECTION 3.0088. The heading to Section 32.021, Health and Safety Code, is amended to read as follows:

Sec. 32.021. REQUIREMENTS REGARDING THE WOMEN, INFANTS, AND CHILDREN PROGRAM.

SECTION 3.0089. Section 32.021(a), Health and Safety Code, is amended to read as follows:

(a) An agency, organization, or other entity that contracts with the Special Supplemental Nutrition Program for Women, Infants, and Children shall each month provide the clinical and nutritional services supported by that program during extended hours, as defined by the department.

SECTION 3.0090. The heading to Section 32.0211, Health and

167-1 Safety Code, is amended to read as follows:

167-2 Sec. 32.0211. WOMEN, INFANTS, AND CHILDREN PROGRAM OUTREACH
167-3 CAMPAIGN TO PROMOTE FATHERS' INVOLVEMENT.

167-4 SECTION 3.0091. Sections 32.0211(a), (c), and (d), Health
167-5 and Safety Code, are amended to read as follows:

167-6 (a) The attorney general shall:

167-7 (1) subject to Subsections (b) and (c), develop and
167-8 periodically update a publication that:

167-9 (A) describes the importance and long-term
167-10 positive effects on children of a father's involvement during a
167-11 mother's pregnancy; and

167-12 (B) provides guidance to prospective fathers on
167-13 the positive actions that they can take to support the pregnant
167-14 mother during pregnancy and the effect those actions have on
167-15 pregnancy outcomes; and

167-16 (2) make the publication described by Subdivision (1)
167-17 available to any agency, organization, or other entity that
167-18 contracts with the Special Supplemental Nutrition Program for
167-19 Women, Infants, and Children and on the attorney general's Internet
167-20 website in a format that allows the public to download and print the
167-21 publication.

167-22 (c) In developing the publication required by Subsection
167-23 (a), the attorney general shall consult with:

167-24 (1) the department as the state agency responsible for
167-25 administering the Special Supplemental Nutrition Program for
167-26 Women, Infants, and Children and this state's program under the
167-27 Maternal and Child Health Services Block Grant Act (42 U.S.C.
167-28 Section 701 et seq.); and

167-29 (2) the Texas Council on Family Violence.

167-30 (d) An agency, organization, or other entity that contracts
167-31 with the Special Supplemental Nutrition Program for Women, Infants,
167-32 and Children shall make the publication described by Subsection (a)
167-33 available to each client receiving clinical or nutritional services
167-34 under the program.

167-35 SECTION 3.0092. The heading to Section 32.042, Health and
167-36 Safety Code, is amended to read as follows:

167-37 Sec. 32.042. DUTIES OF EXECUTIVE COMMISSIONER [~~BOARD~~];
167-38 RULES.

167-39 SECTION 3.0093. Section 32.042(a), Health and Safety Code,
167-40 is amended to read as follows:

167-41 (a) The executive commissioner [~~board~~] by rule shall adopt:

167-42 (1) minimum standards and objectives to implement
167-43 voluntary perinatal health care systems; and

167-44 (2) policies for health promotion and education, risk
167-45 assessment, access to care, and perinatal system structure,
167-46 including the transfer and transportation of pregnant women and
167-47 infants.

167-48 SECTION 3.0094. Section 32.044(a), Health and Safety Code,
167-49 is amended to read as follows:

167-50 (a) Each voluntary perinatal health care system must have:

167-51 (1) a coordinating board responsible for ensuring,
167-52 providing, or coordinating planning access to services, data
167-53 collection, and provider education;

167-54 (2) access to appropriate emergency medical services;
167-55 (3) risk assessment, transport, and transfer
167-56 protocols for perinatal patients;

167-57 (4) one or more health care facilities categorized
167-58 according to perinatal care capabilities using standards adopted by
167-59 department [~~board~~] rule; and

167-60 (5) documentation of broad-based participation in
167-61 planning by providers of perinatal services and community
167-62 representatives throughout the defined geographic region.

167-63 SECTION 3.0095. Sections 32.045(b) and (c), Health and
167-64 Safety Code, are amended to read as follows:

167-65 (b) The executive commissioner [~~board~~] by rule shall
167-66 establish eligibility criteria for awarding the grants. The rules
167-67 must require the department to consider:

167-68 (1) the need of an area and the extent to which the
167-69 grant would meet the identified need;

programs;

- (2) the availability of personnel and training
- (3) the availability of other funding sources;
- (4) the assurance of providing quality services;
- (5) the need for emergency transportation of perinatal patients and the extent to which the system meets the identified needs; and

(6) the stage of development of a perinatal health care system.

(c) The department may approve grants according to rules adopted by the executive commissioner [board]. A grant awarded under this section is governed by Chapter 783, Government Code, and rules adopted under that chapter.

SECTION 3.0096. Section 32.062, Health and Safety Code, is amended to read as follows:

Sec. 32.062. ESTABLISHMENT; PRESIDING OFFICER. (a) The task force is composed of 25 members appointed by the executive commissioner [of the Health and Human Services Commission] as follows:

(1) four representatives of family violence centers, as defined by Section 51.002, Human Resources Code, from different geographic regions in this state, including both rural and urban areas;

(2) one representative of a statewide family violence advocacy organization;

(3) one representative of a statewide association of obstetricians and gynecologists;

(4) two representatives of the family and community health programs in the department [Department of State Health Services];

(5) one representative of a statewide sexual assault

(6) one representative of the commission's [Health and advocacy organization;

~~Human Services Commission~~] Texas Home Visiting Program;
(7) one representative of a statewide association of

midwifery; (8) one representative of a statewide family

association;
 (11) one representative of a statewide pediatric medical association;
 (12) one representative of a statewide medical

(12) one representative of a statewide medical association;

(13) one representative of The University of Texas School of Social Work Institute on Domestic Violence and Sexual Assault;

ASSault,
 (14) one representative of The University of Texas
School of Law Domestic Violence Clinic;
 (15) one representative of the governor's EMS and

(15) one representative of the governor's EMS and Trauma Advisory Council;

- (16) one representative of a Department of Family and Protective Services prevention and early intervention program;
- (17) one representative of a statewide osteopathic medical association;

(18) one representative of a statewide association of community health centers;

(19) one representative of the office of the attorney general;

(20) one representative from a medical school or a teaching hospital in the state who is either an attending physician of the hospital or a faculty member of the medical school; and

(21) one representative of the commission's [Health

(b) The executive commissioner [of the Health and Human Services Commission's] Family Violence Program.

169-1 SECTION 3.0097. Section 32.064, Health and Safety Code, is
 169-2 amended to read as follows:

169-3 Sec. 32.064. REPORT. Not later than September 1, 2015, the
 169-4 task force shall submit a report to the governor, the lieutenant
 169-5 governor, the speaker of the house of representatives, the
 169-6 presiding officers of the standing committees of the legislature
 169-7 having primary jurisdiction over health and human services, the
 169-8 executive commissioner [of the Health and Human Services
 169-9 Commission], and the commissioner [of state health services]
 169-10 containing:

169-11 (1) the findings and legislative, policy, and research
 169-12 recommendations of the task force; and

169-13 (2) a description of the activities of the task force.

169-14 SECTION 3.0098. Section 33.001(3), Health and Safety Code,
 169-15 is amended to read as follows:

169-16 (3) "Other benefit" means a benefit, other than a
 169-17 benefit under this chapter, to which an individual is entitled for
 169-18 the payment of the costs of services. The term includes:

169-19 (A) benefits available under:

169-20 (i) an insurance policy, group health plan,
 169-21 or prepaid medical care plan;

169-22 (ii) Title XVIII of the Social Security Act

169-23 (42 U.S.C. Section 1395 et seq.);

169-24 (iii) Title XIX of the Social Security Act

169-25 (42 U.S.C. Section 1396 et seq.);

169-26 (iv) the United States Department of
 169-27 Veterans Affairs [Veterans' Administration];

169-28 (v) the TRICARE program of the United
 169-29 States Department of Defense [Civilian Health and Medical Program
 169-30 of the Uniformed Services]; or

169-31 (vi) workers' compensation or any other
 169-32 compulsory employers insurance program;

169-33 (B) a public program created by federal or state
 169-34 law or by ordinance or rule of a municipality or political
 169-35 subdivision of the state, except those benefits created by the
 169-36 establishment of a municipal or county hospital, a joint
 169-37 municipal-county hospital, a county hospital authority, a hospital
 169-38 district, or by the facilities of a publicly supported medical
 169-39 school; and

169-40 (C) benefits resulting from a cause of action for
 169-41 health care expenses, or a settlement or judgment based on the cause
 169-42 of action, if the expenses are related to the need for services
 169-43 provided under this chapter.

169-44 SECTION 3.0099. Section 33.002(b), Health and Safety Code,
 169-45 is amended to read as follows:

169-46 (b) The executive commissioner [board] shall adopt rules
 169-47 necessary to carry out the program, including a rule specifying
 169-48 other heritable diseases covered by this chapter.

169-49 SECTION 3.0100. Section 33.004, Health and Safety Code, is
 169-50 amended to read as follows:

169-51 Sec. 33.004. [STUDY ON] NEWBORN SCREENING PROGRAM; FEES
 169-52 [METHODOLOGY AND EQUIPMENT]. [(a) Not later than March 1, 2006,
 169-53 the department shall:

169-54 (1) conduct a study to determine the most
 169-55 cost-effective method of conducting newborn screening, including
 169-56 screening for disorders listed in the core uniform panel of newborn
 169-57 screening conditions recommended in the 2005 report by the American
 169-58 College of Medical Genetics entitled "Newborn Screening: Toward a
 169-59 Uniform Screening Panel and System" or another report determined by
 169-60 the department to provide more appropriate newborn screening
 169-61 guidelines, to protect the health and welfare of this state's
 169-62 newborns and to maximize the number of newborn screenings that may
 169-63 be conducted with the funding available for the screening;

169-64 (2) determine the disorders to be studied under
 169-65 subdivision (1) and ensure the study does not examine screening and
 169-66 services provided under Chapter 47; and

169-67 (3) obtain proposals or information regarding the
 169-68 conduct of newborn screening and compare the costs of the
 169-69 department performing newborn screening services to the costs of

~~outsourcing screening to a qualified laboratory with at least two years' experience performing newborn screening tests.]~~

(b) In accordance with rules adopted by the executive commissioner [of the Health and Human Services Commission], the department shall [may] implement a newborn screening program.

(c) In implementing the newborn screening program [~~If the department determines under Subsection (a) that the department's performance of newborn screening services is more cost-effective than outsourcing newborn screening~~], the department shall obtain the use of screening methodologies[, including tandem mass spectrometers] and hire the employees necessary to administer newborn screening under this chapter.

[d) If the department determines under Subsection (a) that outsourcing of newborn screening is more cost-effective, the department shall contract for the resources and services necessary to conduct newborn screening using a competitive procurement process.]

(e) The department shall periodically review the newborn screening program [~~as revised under this section~~] to determine the efficacy and cost-effectiveness of the program and determine whether adjustments to the program are necessary to protect the health and welfare of this state's newborns and to maximize the number of newborn screenings that may be conducted with the funding available for the screening.

(f) The executive commissioner by rule [~~department~~] may establish [~~adjust~~] the amounts charged for newborn screening fees, including fees assessed for follow-up services, tracking confirmatory testing, and diagnosis.

SECTION 3.0101. Section 33.011(a-1), Health and Safety Code, is amended to read as follows:

(a-1) Except as provided by this subsection and to the extent funding is available for the screening, the department shall require newborn screening tests to screen for disorders listed as core and secondary conditions in the [~~December 2011~~] Recommended Uniform Screening Panel of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children or another report determined by the department to provide more stringent newborn screening guidelines to protect the health and welfare of this state's newborns. The department, with the advice of the Newborn Screening Advisory Committee, may require additional newborn screening tests under this subsection to screen for other disorders or conditions. The department may exclude from the newborn screening tests required under this subsection screenings for galactose epimerase and galactokinase.

SECTION 3.0102. Section 33.0112, Health and Safety Code, is amended to read as follows:

Sec. 33.0112. DESTRUCTION OF GENETIC MATERIAL. (a) The department shall destroy any genetic material obtained from a child under this chapter not later than the second anniversary of the date the department receives the genetic material unless a parent, managing conservator, or guardian of the child consents to disclosure under Section 33.018(c-1) [~~33.017(c-1)~~].

(b) The department shall destroy any genetic material obtained from a child under this chapter not later than the second anniversary of the date the department receives the genetic material if:

(1) a parent, managing conservator, or guardian of the child consents to disclosure under Section 33.018(c-1) [~~33.017(c-1)~~];

(2) the parent, managing conservator, or guardian who consented to the disclosure revokes the consent under Section 33.018(i) [~~33.017(i)~~]; and

(3) the department receives the written revocation of consent under Section 33.018(i) [~~33.017(i)~~] not later than the second anniversary of the date the department received the genetic material.

(c) The department shall destroy any genetic material obtained from a child under this chapter not later than the 60th day after the date the department receives a written revocation of

171-1 consent under Section 33.018(i) [33.017(i)] if:

171-2 (1) a parent, managing conservator, or guardian of the
 171-3 child consented to disclosure under Section 33.018(c-1)
 171-4 [33.017(c-1)];

171-5 (2) the parent, managing conservator, or guardian who
 171-6 consented to the disclosure or the child revokes the consent under
 171-7 Section 33.018(i) [33.017(i)]; and

171-8 (3) the department receives the written revocation of
 171-9 consent later than the second anniversary of the date the
 171-10 department received the genetic material.

171-11 [(d) A reference in this section to Section 33.017 means
 171-12 Section 33.017 as added by Chapter 179 (H.B. 1672), Acts of the 81st
 171-13 Legislature, Regular Session, 2009.]

171-14 SECTION 3.0103. Sections 33.016(a), (d), and (f), Health
 171-15 and Safety Code, are amended to read as follows:

171-16 (a) The department may develop a program to approve any
 171-17 laboratory that wishes to perform the tests required to be
 171-18 administered under this chapter. To the extent that they are not
 171-19 otherwise provided in this chapter, the executive commissioner
 171-20 [board] may adopt rules prescribing procedures and standards for
 171-21 the conduct of the program.

171-22 (d) The department may extend or renew any approval in
 171-23 accordance with reasonable procedures prescribed by the executive
 171-24 commissioner [board].

171-25 (f) Hearings under this section shall be conducted in
 171-26 accordance with the department's hearing rules [adopted by the
 171-27 board] and the applicable provisions of Chapter 2001, Government
 171-28 Code.

171-29 SECTION 3.0104. Sections 33.017(b) and (f), Health and
 171-30 Safety Code, are amended to read as follows:

171-31 (b) The advisory committee consists of members appointed by
 171-32 the commissioner [of state health services]. The advisory
 171-33 committee must include the following members:

171-34 (1) at least four physicians licensed to practice
 171-35 medicine in this state, including at least two physicians
 171-36 specializing in neonatal-perinatal medicine;

171-37 (2) at least two hospital representatives;

171-38 (3) at least two persons who have family members
 171-39 affected by a condition for which newborn screening is or may be
 171-40 required under this subchapter; and

171-41 (4) at least two health care providers who are
 171-42 involved in the delivery of newborn screening services, follow-up,
 171-43 or treatment in this state.

171-44 (f) The advisory committee shall meet at least three times
 171-45 each year and at other times at the call of the commissioner [of
 171-46 state health services].

171-47 SECTION 3.0105. Section 33.032, Health and Safety Code, is
 171-48 amended to read as follows:

171-49 Sec. 33.032. PROGRAM SERVICES. (a) Within the limits of
 171-50 funds available for this purpose and in cooperation with the
 171-51 individual's physician, the department may provide services
 171-52 directly or through approved providers to individuals of any age
 171-53 who meet the eligibility criteria specified by department [board]
 171-54 rules on the confirmation of a positive test for phenylketonuria,
 171-55 other heritable diseases, hypothyroidism, or another disorder for
 171-56 which the screening tests are required.

171-57 (b) The executive commissioner [board] may adopt:

171-58 (1) rules specifying the type, amount, and duration of
 171-59 program services to be offered;

171-60 (2) rules establishing the criteria for eligibility
 171-61 for services, including the medical and financial criteria;

171-62 (3) rules establishing the procedures necessary to
 171-63 determine the medical, financial, and other eligibility of the
 171-64 individual;

171-65 (4) substantive and procedural rules for applying for
 171-66 program services and processing those applications;

171-67 (5) rules for providing services according to a
 171-68 sliding scale of financial eligibility;

171-69 (6) substantive and procedural rules for the denial,

172-1 modification, suspension, and revocation of an individual's
 172-2 approval to receive services; and

172-3 (7) substantive and procedural rules for the approval
 172-4 of providers to furnish program services.

172-5 (c) The department may select providers according to the
 172-6 criteria in the department's [board's] rules.

172-7 (d) The executive commissioner by rule [board] may
 172-8 establish [charge] fees to be collected by the department for the
 172-9 provision of services, except that services may not be denied to an
 172-10 individual because of the individual's inability to pay the fees.

172-11 SECTION 3.0106. Section 33.035(d), Health and Safety Code,
 172-12 is amended to read as follows:

172-13 (d) The executive commissioner [board] by rule shall
 172-14 provide criteria for actions taken under this section.

172-15 SECTION 3.0107. Section 33.036(c), Health and Safety Code,
 172-16 is amended to read as follows:

172-17 (c) Chapter 2001, Government Code, does [do] not apply to
 172-18 the notice and hearing required by this section.

172-19 SECTION 3.0108. Section 33.037(a), Health and Safety Code,
 172-20 is amended to read as follows:

172-21 (a) The department [board] may require an individual or, if
 172-22 the individual is a minor, the minor's parent, managing
 172-23 conservator, or guardian, or other person with a legal obligation
 172-24 to support the individual to pay or reimburse the department for all
 172-25 or part of the cost of the services provided.

172-26 SECTION 3.0109. Sections 33.038(b) and (d), Health and
 172-27 Safety Code, are amended to read as follows:

172-28 (b) This section creates a separate and distinct cause of
 172-29 action, and the department [commissioner] may request the attorney
 172-30 general to bring suit in the appropriate court of Travis County on
 172-31 behalf of the department.

172-32 (d) The executive commissioner [board] by rule shall
 172-33 provide criteria for actions taken under this section.

172-34 SECTION 3.0110. Sections 35.0021(6), (7), (10), (11), and
 172-35 (12), Health and Safety Code, are amended to read as follows:

172-36 (6) "Other benefit" means a benefit, other than a
 172-37 benefit provided under this chapter, to which a person is entitled
 172-38 for payment of the costs of services provided under the program,
 172-39 including benefits available from:

172-40 (A) an insurance policy, group health plan,
 172-41 health maintenance organization, or prepaid medical or dental care
 172-42 plan;

172-43 (B) Title XVIII, Title XIX, or Title XXI of the
 172-44 Social Security Act (42 U.S.C. Sec. 1395 et seq., 42 U.S.C. Sec.
 172-45 1396 et seq., and 42 U.S.C. Sec. 1397aa et seq.), as amended;

172-46 (C) the United States Department of Veterans
 172-47 Affairs;

172-48 (D) the TRICARE program of the United States
 172-49 Department of Defense [Civilian Health and Medical Program of the
 172-50 Uniformed Services];

172-51 (E) workers' compensation or any other
 172-52 compulsory employers' insurance program;

172-53 (F) a public program created by federal or state
 172-54 law or the ordinances or rules of a municipality or other political
 172-55 subdivision of the state, excluding benefits created by the
 172-56 establishment of a municipal or county hospital, a joint
 172-57 municipal-county hospital, a county hospital authority, a hospital
 172-58 district, or the facilities of a publicly supported medical school;
 172-59 or

172-60 (G) a cause of action for the cost of care,
 172-61 including medical care, dental care, facility care, and medical
 172-62 supplies, required for a person applying for or receiving services
 172-63 from the department, or a settlement or judgment based on the cause
 172-64 of action, if the expenses are related to the need for services
 172-65 provided under this chapter.

172-66 (7) "Physician" means a person licensed by the Texas
 172-67 [State Board of] Medical Board [Examiners] to practice medicine in
 172-68 this state.

172-69 (10) "Rehabilitation services" means the process of

173-1 the physical restoration, improvement, or maintenance of a body
 173-2 function destroyed or impaired by congenital defect, disease, or
 173-3 injury and includes:

173-4 (A) facility care, medical and dental care, and
 173-5 occupational, speech, and physical therapy;

173-6 (B) the provision of braces, artificial
 173-7 appliances, durable medical equipment, and other medical supplies;
 173-8 and

173-9 (C) other types of care specified by department
 173-10 [~~the board in the program~~] rules.

173-11 (11) "Services" means the care, activities, and
 173-12 supplies provided under this chapter or department [~~program~~] rules,
 173-13 including medical care, dental care, facility care, medical
 173-14 supplies, occupational, physical, and speech therapy, and other
 173-15 care specified by department [~~program~~] rules.

173-16 (12) "Specialty center" means a facility and staff
 173-17 that meet minimum standards established under the program and are
 173-18 designated by the department [~~board~~] for program use in the
 173-19 comprehensive diagnostic and treatment services for a specific
 173-20 medical condition.

173-21 SECTION 3.0111. Sections 35.003(b) and (c), Health and
 173-22 Safety Code, are amended to read as follows:

173-23 (b) The executive commissioner [~~board~~] by rule shall:

173-24 (1) specify the type, amount, and duration of services
 173-25 to be provided under this chapter; and

173-26 (2) permit the payment of insurance premiums for
 173-27 eligible children.

173-28 (c) If budgetary limitations exist, the executive
 173-29 commissioner [~~board~~] by rule shall establish a system of priorities
 173-30 relating to the types of services or the classes of persons eligible
 173-31 for the services. A waiting list of eligible persons may be
 173-32 established if necessary for the program to remain within the
 173-33 budgetary limitations. The department shall collect from each
 173-34 applicant for services who is placed on a waiting list appropriate
 173-35 information to facilitate contacting the applicant when services
 173-36 become available and to allow efficient enrollment of the applicant
 173-37 in those services. The information collected must include:

173-38 (1) the applicant's name, address, and phone number;
 173-39 (2) the name, address, and phone number of a contact
 173-40 person other than the applicant;

173-41 (3) the date of the applicant's earliest application
 173-42 for services;

173-43 (4) the applicant's functional needs;
 173-44 (5) the range of services needed by the applicant; and
 173-45 (6) a date on which the applicant is scheduled for
 173-46 reassessment.

173-47 SECTION 3.0112. Section 35.0033(b), Health and Safety Code,
 173-48 is amended to read as follows:

173-49 (b) Except as required by [~~the~~] department rule, a health
 173-50 benefits plan provider under this chapter is not subject to a law
 173-51 that requires coverage or the offer of coverage of a health care
 173-52 service or benefit.

173-53 SECTION 3.0113. Sections 35.004(a), (b), (d), (e), (f),
 173-54 (h), and (i), Health and Safety Code, are amended to read as
 173-55 follows:

173-56 (a) The executive commissioner [~~board~~] shall adopt
 173-57 substantive and procedural rules for the selection of providers to
 173-58 participate in the program, including rules for the selection of
 173-59 specialty centers and rules requiring that providers accept program
 173-60 payments as payment in full for services provided.

173-61 (b) The department [~~board~~] shall approve physicians,
 173-62 dentists, licensed dietitians, facilities, specialty centers, and
 173-63 other providers to participate in the program according to the
 173-64 criteria and following the procedures prescribed by department
 173-65 rules [~~the board~~].

173-66 (d) Except as specified in the department [~~program~~] rules, a
 173-67 recipient of services may select any provider approved by the
 173-68 department [~~board~~]. If the recipient is a minor, the person legally
 173-69 authorized to consent to the treatment may select the provider.

(e) The executive commissioner [board] shall adopt substantive and procedural rules for the modification, suspension, or termination of the approval of a provider.

(f) The department [board] shall provide a due process hearing procedure in accordance with department rules for the resolution of conflicts between the department and a provider. Chapter 2001, Government Code, does [do] not apply to conflict resolution procedures adopted under this section.

(h) Subsection (f) does not apply if a contract:

(1) is canceled by the department because services are restricted to conform to budgetary limitations and service priorities are adopted by the executive commissioner [board] regarding types of services to be provided; or

(2) expires according to its terms.

(i) The Interagency Cooperation Act, Chapter 771, Government Code, [~~Article 4413(32), Vernon's Texas Civil Statutes~~] does not apply to a payment made by the department for services provided by a publicly supported medical school facility to an eligible child. A publicly supported medical school facility receiving payment under this chapter shall deposit the payment in local funds.

SECTION 3.0114. Sections 35.0041(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner [department] by rule shall develop and the department shall implement policies permitting reimbursement of a provider for services under the program performed using telemedicine medical services.

(c) In developing and implementing the policies required by this section, the executive commissioner and the department shall consult with:

(1) The University of Texas Medical Branch at Galveston;

(2) Texas Tech University Health Sciences Center;

(3) the commission [~~Health and Human Services Commission~~], including the state Medicaid office;

(4) providers of telemedicine medical services and telehealth services hub sites in this state;

(5) providers of services to children with special health care needs; and

(6) representatives of consumer or disability groups affected by changes to services for children with special health

care needs.

SECTION 3.0115. Section 35.005, Health and Safety Code, is

amended to read as follows:

Sec. 35.005. ELIGIBILITY FOR SERVICES. (a) The executive commission [should] be made shall

commissioner [board] by rule shall:

(1) define medical, financial, and other criteria for
eligibility to receive services; and

(2) establish a system for verifying eligibility information submitted by an applicant for or recipient of services.

(b) In defining medical and financial criteria for eligibility under Subsection (a), the executive commissioner

[board] may not:

(1) establish an exclusive list of coverable medical conditions, or

(2) consider as a source of support to provide services assets legally owned or available to a child's household

(c) A child is not eligible to receive rehabilitation services unless:

- (1) the child is a resident of this state;
- (2) at least one physician or dentist certifies to the

department that the physician or dentist has examined the child and finds the child to be a child with special health care needs whose disability meets the medical criteria established by the executive commissioner [board];

(3) the department determines that the persons who have any legal obligation to provide services for the child are unable to pay for the entire cost of the services;

(4) the child has a family income that is less than or

175-1 equal to 200 percent of the federal poverty level; and

175-2 (5) the child meets all other eligibility criteria
175-3 established by department [board] rules.

175-4 (d) A child is not eligible to receive services, other than
175-5 rehabilitation services, unless the child:

175-6 (1) is a resident of this state; and

175-7 (2) meets all other eligibility criteria established
175-8 by department [board] rules.

175-9 (e) Notwithstanding Subsection (c)(4), a child with special
175-10 health care needs who has a family income that is greater than 200
175-11 percent of the federal poverty level and who meets all other
175-12 eligibility criteria established by this section and by department
175-13 [board] rules is eligible for services if the department determines
175-14 that the child's family is or will be responsible for medical
175-15 expenses that are equal to or greater than the amount by which the
175-16 family's income exceeds 200 percent of the federal poverty level.

175-17 SECTION 3.0116. Sections 35.006(a), (c), (d), and (e),
175-18 Health and Safety Code, are amended to read as follows:

175-19 (a) The executive commissioner [board] shall adopt
175-20 substantive and procedural rules for the denial of applications and
175-21 the modification, suspension, or termination of services.

175-22 (c) The executive commissioner [board] by rule shall
175-23 provide criteria for action by the department under this section.

175-24 (d) The department shall conduct hearings under this
175-25 section in accordance with the department's [board's] due process
175-26 hearing rules. Chapter 2001, Government Code, does [do] not apply
175-27 to the granting, denial, modification, suspension, or termination
175-28 of services.

175-29 (e) This section does not apply if the department restricts
175-30 services to conform to budgetary limitations that require the
175-31 executive commissioner [board] to adopt service priorities
175-32 regarding types of services to be provided.

175-33 SECTION 3.0117. Sections 35.007(a) and (b), Health and
175-34 Safety Code, are amended to read as follows:

175-35 (a) The department [board] shall require a child receiving
175-36 services, or the person who has a legal obligation to support the
175-37 child, to pay for or reimburse the department for that part of the
175-38 cost of the services that the child or person is financially able to
175-39 pay.

175-40 (b) A child is not eligible to receive services under this
175-41 chapter to the extent that the child or a person with a legal
175-42 obligation to support the child is eligible for some other benefit
175-43 that would pay for all or part of the services. The executive
175-44 commissioner [board] may waive this subsection if its enforcement
175-45 will deny services to a class of children because of conflicting
175-46 state and federal laws or rules and regulations.

175-47 SECTION 3.0118. Section 35.008(b), Health and Safety Code,
175-48 is amended to read as follows:

175-49 (b) This section creates a separate cause of action, and the
175-50 department [commissioner] may request the attorney general to bring
175-51 suit in the appropriate court of Travis County on behalf of the
175-52 department.

175-53 SECTION 3.0119. Section 35.009, Health and Safety Code, is
175-54 amended to read as follows:

175-55 Sec. 35.009. FEES. The executive commissioner by rule
175-56 [board] may adopt reasonable procedures and standards for the
175-57 determination of fees and charges for program services.

175-58 SECTION 3.0120. Sections 36.004(a) and (c), Health and
175-59 Safety Code, are amended to read as follows:

175-60 (a) The executive commissioner [board] by rule shall
175-61 require screening of individuals who attend public or private
175-62 preschools or schools to detect vision and hearing disorders and
175-63 any other special senses or communication disorders specified by
175-64 the executive commissioner [board]. In developing the rules, the
175-65 executive commissioner [board] may consider the number of
175-66 individuals to be screened and the availability of:

175-67 (1) personnel qualified to administer the required
175-68 screening;

175-69 (2) appropriate screening equipment; and

(3) state and local funds for screening activities.

(c) The executive commissioner [board] shall adopt a schedule for implementing the screening requirements and shall give priority to the age groups that may derive the greatest educational and social benefits from early identification of special senses and communication disorders.

SECTION 3.0121. Sections 36.005(a) and (c), Health and Safety Code, are amended to read as follows:

(a) An individual required to be screened shall undergo approved screening for vision and hearing disorders and any other special senses and communication disorders specified by the executive commissioner [board]. The individual shall comply with the requirements as soon as possible after the individual's admission to a preschool or school and within the period set by the executive commissioner [board]. The individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, may substitute professional examinations for the screening.

(c) The chief administrator of each preschool or school shall ensure that each individual admitted to the preschool or school complies with the screening requirements set by the executive commissioner [board] or submits an affidavit of exemption.

SECTION 3.0122. Sections 36.006(a) and (d), Health and Safety Code, are amended to read as follows:

(a) The chief administrator of each preschool or school shall maintain, on a form prescribed by the department in accordance with department rules, screening records for each individual in attendance, and the records are open for inspection by the department or the local health department.

(d) Each preschool or school shall submit to the department an annual report on the screening status of the individuals in attendance during the reporting year and shall include in the report any other information required by the executive commissioner [board]. The report must be on a form prescribed by the department in accordance with department rules and must be submitted according to the [board's] rules.

SECTION 3.0123. Sections 36.007(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The executive commissioner [board] by rule shall:

(1) describe the type, amount, and duration of remedial services that the department provides;

(2) establish medical, financial, and other criteria to be applied by the department in determining an individual's eligibility for the services;

- (3) establish criteria for the selection by the department of providers of remedial services; and
- (4) establish procedures necessary to provide remedial services.

(c) The executive commissioner [board] may establish a schedule to determine financial eligibility.

SECTION 3.0124. Sections 36.008(d) and (e), Health and Safety Code, are amended to read as follows:

(d) The department may modify, suspend, or terminate the eligibility of an applicant for or recipient of remedial services after notice to the affected individual and an opportunity for a fair hearing that is conducted in accordance with the department's informal hearing rules [adopted by the board].

(e) The executive commissioner [board] by rule shall provide criteria for actions taken under this section.

SECTION 3.0125. Section 36.009(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner [board] may require an individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, to pay or reimburse the department for a part of the cost of the remedial services provided.

(d) The executive commissioner [board] by rule shall

(d) The executive commissioner [board] by rule shall

177-1 provide criteria for actions taken under this section.

177-2 SECTION 3.0127. Section 36.011(a), Health and Safety Code,
177-3 is amended to read as follows:

177-4 (a) The department in accordance with department rules may
177-5 require that persons who administer special senses and
177-6 communication disorders screening complete an approved training
177-7 program, and the department may train those persons and approve
177-8 training programs.

177-9 SECTION 3.0128. Sections 37.001(b), (c), and (d), Health
177-10 and Safety Code, are amended to read as follows:

177-11 (b) The executive commissioner [board], in cooperation with
177-12 the Texas Education Agency, shall adopt rules for the mandatory
177-13 spinal screening of children in grades 6 and 9 attending public or
177-14 private schools. The department shall coordinate the spinal
177-15 screening program with any other screening program conducted by the
177-16 department on those children.

177-17 (c) The executive commissioner [board] shall adopt
177-18 substantive and procedural rules necessary to administer screening
177-19 activities.

177-20 (d) A rule adopted by the executive commissioner [board]
177-21 under this chapter may not require any expenditure by a school,
177-22 other than an incidental expense required for certification
177-23 training for nonhealth practitioners and for notification
177-24 requirements under Section 37.003.

177-25 SECTION 3.0129. Sections 37.002(a) and (c), Health and
177-26 Safety Code, are amended to read as follows:

177-27 (a) Each individual required by a department [board] rule to
177-28 be screened shall undergo approved screening for abnormal spinal
177-29 curvature. The individual's parent, managing conservator, or
177-30 guardian may substitute professional examinations for the
177-31 screening.

177-32 (c) The chief administrator of each school shall ensure that
177-33 each individual admitted to the school complies with the screening
177-34 requirements set by the executive commissioner [board] or submits
177-35 an affidavit of exemption.

177-36 SECTION 3.0130. Section 39.002, Health and Safety Code, is
177-37 amended to read as follows:

177-38 Sec. 39.002. CHILDREN'S OUTREACH HEART PROGRAM. The
177-39 department, with approval of the executive commissioner [board],
177-40 may establish a children's outreach heart program to provide:

177-41 (1) prediagnostic cardiac screening and follow-up
177-42 evaluation services to persons under 21 years of age who are from
177-43 low-income families and who may have a heart disease or defect; and

177-44 (2) training to local physicians and public health
177-45 nurses in screening and diagnostic procedures for heart disease or
177-46 defect.

177-47 SECTION 3.0131. Section 39.003, Health and Safety Code, is
177-48 amended to read as follows:

177-49 Sec. 39.003. RULES. The executive commissioner [board]
177-50 shall adopt rules the executive commissioner [is] considers
177-51 necessary to define the scope of the children's outreach heart
177-52 program and the medical and financial standards for eligibility.

177-53 SECTION 3.0132. Section 39.004, Health and Safety Code, is
177-54 amended to read as follows:

177-55 Sec. 39.004. FEES. Recipients of services or training
177-56 provided by the program may be charged a fee for services or
177-57 training according to rules adopted by the executive commissioner
177-58 [board].

177-59 SECTION 3.0133. Section 40.002, Health and Safety Code, is
177-60 amended to read as follows:

177-61 Sec. 40.002. EPILEPSY PROGRAM. [a] The department, with
177-62 approval of the executive commissioner [board], may establish an
177-63 epilepsy program to provide diagnostic services, treatment, and
177-64 support services to eligible persons who have epilepsy.

177-65 [b] The commissioner may appoint an epilepsy advisory
177-66 board to assist the department in developing the epilepsy program.]

177-67 SECTION 3.0134. Section 40.003, Health and Safety Code, is
177-68 amended to read as follows:

177-69 Sec. 40.003. RULES. The executive commissioner [board] may

178-1 adopt rules the executive commissioner [~~it~~] considers necessary to
 178-2 define the scope of the epilepsy program and the medical and
 178-3 financial standards for eligibility.

178-4 SECTION 3.0135. Section 40.004(a), Health and Safety Code,
 178-5 is amended to read as follows:

178-6 (a) The commissioner, with the approval of the executive
 178-7 commissioner [~~board~~], may appoint an administrator to carry out the
 178-8 epilepsy program.

178-9 SECTION 3.0136. Section 40.005, Health and Safety Code, is
 178-10 amended to read as follows:

178-11 Sec. 40.005. FEES. Program patients may be charged a fee
 178-12 for services according to rules adopted by the executive
 178-13 commissioner [~~board~~].

178-14 SECTION 3.0137. Sections 41.001(1) and (2), Health and
 178-15 Safety Code, are amended to read as follows:

178-16 (1) "Hemophilia" means a human physical condition
 178-17 characterized by bleeding resulting from a genetically or
 178-18 hereditarily determined deficiency of a blood coagulation factor
 178-19 [~~or hereditarily~~] resulting in an abnormal or deficient plasma
 178-20 procoagulant.

178-21 (2) "Other benefit" means a benefit, other than a
 178-22 benefit under this chapter, to which a person is entitled for
 178-23 payment of the costs of blood factor replacement products [, ~~blood~~
 178-24 ~~derivatives and concentrates,~~] and other substances provided under
 178-25 this chapter, including benefits available from:

178-26 (A) an insurance policy, group health plan, or
 178-27 prepaid medical or dental care plan;

178-28 (B) Title XVIII or Title XIX of the Social
 178-29 Security Act (42 U.S.C. Sec. 1395 et seq. or 42 U.S.C. Sec. 1396 et
 178-30 seq.);

178-31 (C) the United States Department of Veterans
 178-32 Affairs [~~Administration~~];

178-33 (D) the TRICARE program of the United States
 178-34 Department of Defense [~~Civilian Health and Medical Program of the~~
 178-35 ~~Uniformed Services~~];

178-36 (E) workers' compensation or any compulsory
 178-37 employers' insurance program;

178-38 (F) a public program created by federal law,
 178-39 state law, or the ordinances or rules of a municipality or political
 178-40 subdivision of the state, excluding benefits created by the
 178-41 establishment of a municipal or county hospital, a joint
 178-42 municipal-county hospital, a county hospital authority, a hospital
 178-43 district, or the facilities of a publicly supported medical school;
 178-44 or

178-45 (G) a cause of action for medical or dental
 178-46 expenses to a person applying for or receiving services from the
 178-47 department, or a settlement or judgment based on the cause of
 178-48 action, if the expenses are related to the need for services
 178-49 provided under this chapter.

178-50 SECTION 3.0138. Section 41.002, Health and Safety Code, is
 178-51 amended to read as follows:

178-52 Sec. 41.002. HEMOPHILIA ASSISTANCE PROGRAM. (a) The
 178-53 hemophilia assistance program is in the department to assist
 178-54 persons who have hemophilia and who require continuing treatment
 178-55 with blood factor replacement [, ~~blood derivatives, or manufactured~~
 178-56 ~~pharmaceutical~~] products, but who are unable to pay the entire cost
 178-57 of the treatment.

178-58 (b) The executive commissioner [~~department~~] shall establish
 178-59 standards of eligibility for assistance under this chapter in
 178-60 accordance with Section 41.004.

178-61 (c) The department shall provide, through approved
 178-62 providers, financial assistance for medically eligible persons in
 178-63 obtaining blood factor replacement products [, ~~blood derivatives~~
 178-64 ~~and concentrates,~~] and other substances for use in medical or
 178-65 dental facilities or in the home.

178-66 SECTION 3.0139. Section 41.007(b), Health and Safety Code,
 178-67 is amended to read as follows:

178-68 (b) The department shall identify [investigate] any
 178-69 potential sources of funding from federal grants or programs.

179-1 SECTION 3.0140. Sections 42.001(b) and (c), Health and
 179-2 Safety Code, are amended to read as follows:

179-3 (b) The state finds that one of the most serious and tragic
 179-4 problems facing the public health and welfare is the death each year
 179-5 from end stage renal [chronic kidney] disease of hundreds of
 179-6 persons in this state, when the present state of medical art and
 179-7 technology could return many of those individuals to a socially
 179-8 productive life. Patients may die for lack of personal financial
 179-9 resources to pay for the expensive equipment and care necessary for
 179-10 survival. The state therefore recognizes a responsibility to allow
 179-11 its citizens to remain healthy without being pauperized and a
 179-12 responsibility to use the resources and organization of the state
 179-13 to gather and disseminate information on the prevention and
 179-14 treatment of end stage renal [chronic kidney] disease.

179-15 (c) A comprehensive program to combat end stage renal
 179-16 [kidney] disease must be implemented through the combined and
 179-17 correlated efforts of individuals, state and local governments,
 179-18 persons in the field of medicine, universities, and nonprofit
 179-19 organizations. The program provided by this chapter is designed to
 179-20 direct the use of resources and to coordinate the efforts of the
 179-21 state in this vital matter of public health.

179-22 SECTION 3.0141. Section 42.002(2), Health and Safety Code,
 179-23 is amended to read as follows:

179-24 (2) "Other benefit" means a benefit, other than one
 179-25 provided under this chapter, to which a person is entitled for
 179-26 payment of the costs of medical care and treatment, services,
 179-27 pharmaceuticals, transportation, and supplies, including benefits
 179-28 available from:

179-29 (A) an insurance policy, group health plan, or
 179-30 prepaid medical care plan;

179-31 (B) Title XVIII or Title XIX of the Social
 179-32 Security Act (42 U.S.C. Sec. 1395 et seq. and 42 U.S.C. Sec. 1396 et
 179-33 seq.);

179-34 (C) the United States Department of Veterans
 179-35 Affairs [Administration];

179-36 (D) the TRICARE program of the United States
 179-37 Department of Defense [Civilian Health and Medical Program of the
 179-38 Uniformed Services];

179-39 (E) workers' compensation or other compulsory
 179-40 employers' insurance programs [program];

179-41 (F) a public program created by federal law,
 179-42 state law, or the ordinances or rules of a municipality or other
 179-43 political subdivision of the state, excluding benefits created by
 179-44 the establishment of a municipal or county hospital, a joint
 179-45 municipal-county hospital, a county hospital authority, or a
 179-46 hospital district; or

179-47 (G) a cause of action for medical expenses
 179-48 brought by an applicant for or recipient of services from the
 179-49 department, or a settlement or judgment based on the cause of
 179-50 action, if the expenses are related to the need for services
 179-51 provided under this chapter.

179-52 SECTION 3.0142. Section 42.003, Health and Safety Code, is
 179-53 amended to read as follows:

179-54 Sec. 42.003. KIDNEY HEALTH CARE PROGRAM [DIVISION]. (a)
 179-55 The kidney health care program [division] is in the department to
 179-56 carry out this chapter. [The board shall administer the division.]

179-57 (b) The department [division] may develop and expand
 179-58 [assist in the development and expansion of] programs for the care
 179-59 and treatment of persons with end stage renal [chronic kidney]
 179-60 disease, including dialysis and other lifesaving medical
 179-61 procedures and techniques.

179-62 (c) The executive commissioner [board] may adopt rules
 179-63 necessary to carry out this chapter and to provide adequate kidney
 179-64 care and treatment for citizens of this state.

179-65 SECTION 3.0143. Section 42.004, Health and Safety Code, is
 179-66 amended to read as follows:

179-67 Sec. 42.004. SERVICES. (a) The department [division]
 179-68 shall provide kidney care services directly or through public or
 179-69 private resources to persons the department determines [determined]

180-1 by the board] to be eligible for services authorized under this
 180-2 chapter.

180-3 (b) The department [division] may cooperate with other
 180-4 departments, agencies, political subdivisions, and public and
 180-5 private institutions to provide the services authorized by this
 180-6 chapter to eligible persons, to study the public health and welfare
 180-7 needs involved, and to plan, establish, develop, and provide
 180-8 programs or facilities and services that are necessary or
 180-9 desirable, including any that are jointly administered with state
 180-10 agencies.

180-11 (c) The department [division] may conduct research and
 180-12 compile statistics relating to the provision of kidney care
 180-13 services and the need for the services by [disabled or handicapped]
 180-14 persons with disabilities.

180-15 (d) The department [division] may contract with schools,
 180-16 hospitals, corporations, agencies, and individuals, including
 180-17 doctors, nurses, and technicians, for training, physical
 180-18 restoration, transportation, and other services necessary to treat
 180-19 and care for persons with end stage renal [kidney] disease.

180-20 SECTION 3.0144. Sections 42.0045(a), (b), and (c), Health
 180-21 and Safety Code, are amended to read as follows:

180-22 (a) Sections 483.041(a) and 483.042 of this code, Subtitle
 180-23 J, Title 3, Occupations Code, and other applicable laws
 180-24 establishing prohibitions do not apply to a dialysate, device, or
 180-25 drug exclusively used or necessary to perform dialysis that a
 180-26 physician prescribes or orders for administration or delivery to a
 180-27 person with end stage renal disease [chronic kidney failure] if:

180-28 (1) the dialysate, device, or drug is lawfully held by
 180-29 a manufacturer or wholesaler licensed by the department [registered
 180-30 with the board];

180-31 (2) the manufacturer or wholesaler delivers the
 180-32 dialysate, device, or drug to:

180-33 (A) a person with end stage renal disease
 180-34 [chronic kidney failure] for self-administration at the person's
 180-35 home or a specified address, as ordered by a physician; or

180-36 (B) a physician for administration or delivery to
 180-37 a person with end stage renal disease [chronic kidney failure]; and

180-38 (3) the manufacturer or wholesaler has sufficient and
 180-39 qualified supervision to adequately protect the public health.

180-40 (b) The executive commissioner [board] shall adopt rules
 180-41 necessary to ensure the safe distribution, without the interruption
 180-42 of supply, of a dialysate, device, or drug covered by Subsection
 180-43 (a). The rules must include provisions regarding manufacturer and
 180-44 wholesaler licensing, record keeping, evidence of a delivery to a
 180-45 patient or a patient's designee, patient training, specific product
 180-46 and quantity limitation, physician prescriptions or order forms,
 180-47 adequate facilities, and appropriate labeling to ensure that
 180-48 necessary information is affixed to or accompanies the dialysate,
 180-49 device, or drug.

180-50 (c) If the department [board] determines that a dialysate,
 180-51 device, or drug distributed under this chapter is ineffective or
 180-52 unsafe for its intended use, the department [board] may immediately
 180-53 recall the dialysate, device, or drug distributed to an individual
 180-54 patient.

180-55 SECTION 3.0145. Sections 42.005(a), (b), (c), and (d),
 180-56 Health and Safety Code, are amended to read as follows:

180-57 (a) The executive commissioner [board] may establish [and
 180-58 maintain] standards for the accreditation of all facilities
 180-59 designed or intended to deliver care or treatment for persons with
 180-60 end stage renal [chronic kidney] disease, and the department shall
 180-61 maintain all established standards.

180-62 (b) The department [division] may conduct surveys of
 180-63 existing facilities in this state that diagnose, evaluate, and
 180-64 treat patients with end stage renal [kidney] disease and may
 180-65 prepare and submit its findings and a specific program of action.

180-66 (c) The department [division] may evaluate the need to
 180-67 create local or regional facilities and to establish a major kidney
 180-68 research center.

180-69 (d) The department [division] may:

(1) establish or construct rehabilitation facilities and workshops;

(2) make grants to public agencies and make contracts or other arrangements with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities; and

(3) operate facilities to carry out this chapter.

SECTION 3.0146. Sections 42.006(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The department shall select providers to furnish kidney health care services under the program according to the criteria and procedures adopted by the executive commissioner [board].

(b) The department [board] shall provide a hearing procedure in accordance with department rules for the resolution of conflicts between the department and a provider. Chapter 2001, Government Code, does [do] not apply to conflict resolution procedures adopted under this section.

(d) Subsections (b) and (c) do not apply if a contract:

(1) is canceled because program services are restricted to conform to budgetary limitations that require the executive commissioner [board] to adopt service priorities regarding types of services to be furnished or classes of eligible individuals; or

(2) expires according to its terms.

SECTION 3.0147. Section 42.007, Health and Safety Code, is amended to read as follows:

Sec. 42.007. ELIGIBILITY FOR SERVICES. The executive commissioner [board] may determine the terms, conditions, and standards, including medical and financial standards, for the eligibility of persons with end stage renal [~~chronic kidney~~] disease to receive the aid, care, or treatment provided under this chapter.

SECTION 3.0148. Sections 42.008(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) The program rules adopted by the executive commissioner [board] must contain the criteria for the department's action under this section.

(c) Chapter 2001, Government Code, does [do] not apply to the granting, denial, modification, suspension, or termination of services provided under this chapter. Hearings under this section must be conducted in accordance with the department's [board's] hearing rules.

(d) This section does not apply if program services are restricted to conform to budgetary limitations that require the executive commissioner [board] to adopt service priorities regarding types of services to be furnished or classes of eligible persons.

SECTION 3.0149. Section 42.009(d), Health and Safety Code, is amended to read as follows:

(d) The executive commissioner [board] may waive the provisions of Subsection (a) in certain individually considered cases when the enforcement of that provision will deny services to a class of end stage renal disease patients because of conflicting state or federal laws or rules.

SECTION 3.0150. Sections 42.011(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The department [division] may receive and use gifts to carry out this chapter.

(b) The department [board] may comply with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportions possible to carry out this chapter.

SECTION 3.0151. Section 42.012(a), Health and Safety Code, is amended to read as follows:

(a) The department [division] may enter into contracts and agreements with persons, colleges, universities, associations, corporations, municipalities, and other units of government as necessary to carry out this chapter.

SECTION 3.0152. Section 42.013, Health and Safety Code, is amended to read as follows:

182-1 Sec. 42.013. COOPERATION. (a) The department [division]
 182-2 may cooperate with private or public agencies to facilitate the
 182-3 availability of adequate care for all citizens with end stage renal
 182-4 [chronic kidney] disease.

182-5 (b) The department [board] shall make agreements,
 182-6 arrangements, or plans to cooperate with the federal government in
 182-7 carrying out the purposes of this chapter or of any federal statute
 182-8 or rule relating to the prevention, care, or treatment of end stage
 182-9 renal [kidney] disease or the care, treatment, or rehabilitation of
 182-10 persons with end stage renal [kidney] disease. The executive
 182-11 commissioner [board] may adopt rules and methods of administration
 182-12 found by the federal government to be necessary for the proper and
 182-13 efficient operation of the agreements, arrangements, or plans.

182-14 (c) The department [division] may enter into reciprocal
 182-15 agreements with other states.

182-16 SECTION 3.0153. Section 42.014, Health and Safety Code, is
 182-17 amended to read as follows:

182-18 Sec. 42.014. SCIENTIFIC INVESTIGATIONS. (a) The
 182-19 department [division] may develop and administer scientific
 182-20 investigations into the cause, prevention, methods of treatment,
 182-21 and cure of end stage renal [kidney] disease, including research
 182-22 into kidney transplantation.

182-23 (b) The department [division] may develop techniques for an
 182-24 effective method of mass testing to detect end stage renal [kidney]
 182-25 disease and urinary tract infections.

182-26 SECTION 3.0154. Section 42.015, Health and Safety Code, is
 182-27 amended to read as follows:

182-28 Sec. 42.015. EDUCATIONAL PROGRAMS. (a) The department
 182-29 [division] may develop, implement [institute, carry on], and
 182-30 supervise educational programs for the public and health providers,
 182-31 including physicians, hospitals, and public health departments,
 182-32 concerning end stage renal [chronic kidney] disease, including
 182-33 prevention and methods of care and treatment.

182-34 (b) The department [division] may use existing public or
 182-35 private programs or groups for the educational programs.

182-36 SECTION 3.0155. Section 42.016, Health and Safety Code, is
 182-37 amended to read as follows:

182-38 Sec. 42.016. REPORTS. The department [board] shall report
 182-39 to the governor and the legislature not later than February 1 of
 182-40 each year concerning its findings, progress, and activities under
 182-41 this chapter and the state's total need in the field of kidney
 182-42 health care.

182-43 SECTION 3.0156. Section 42.017, Health and Safety Code, is
 182-44 amended to read as follows:

182-45 Sec. 42.017. INSURANCE PREMIUMS. The department [board]
 182-46 may provide for payment of the premiums required to maintain
 182-47 coverage under Title XVIII of the Social Security Act (42 U.S.C.
 182-48 Section 1395 et seq.) for certain classes of persons with end stage
 182-49 renal disease, in individually considered instances according to
 182-50 criteria established by department [board] rules.

182-51 SECTION 3.0157. Section 42.018, Health and Safety Code, is
 182-52 amended to read as follows:

182-53 Sec. 42.018. FREEDOM OF SELECTION. The freedom of an
 182-54 eligible person to select a treating physician, a treatment
 182-55 facility, or a treatment modality is not limited by Section 42.009
 182-56 if the physician, facility, or modality is approved by the
 182-57 department [board] as required by this chapter.

182-58 SECTION 3.0158. Section 43.003(a)(3), Health and Safety
 182-59 Code, is amended to read as follows:

182-60 (3) "Other benefit" means a benefit, other than a
 182-61 benefit provided under this chapter, to which an individual is
 182-62 entitled for the payment of the costs of oral health treatment
 182-63 services, including benefits available from:

182-64 (A) an insurance policy, group oral health plan,
 182-65 or prepaid oral care plan;

182-66 (B) Title XVIII or Title XIX of the Social
 182-67 Security Act, as amended (42 U.S.C. Sec. 1395 et seq. and 42 U.S.C.
 182-68 Sec. 1396 et seq.);

182-69 (C) the United States Department of Veterans

Affairs [~~Administration~~];

(D) the TRICARE program of the United States

Department of Defense [Civilian Health and Medical Program of the
Uniformed Services];

(E) workers' compensation or any other compulsory employer's insurance program;

(F) a public program created by federal law,

state law, or the ordinances or rules of a municipality or other political subdivision of the state; or

(G) a cause of acti

or oral health treatment services, or a settlement or judgment based on the cause of action, if the expenses are related to the need for treatment services provided under this chapter.

SECTION 3.0159. Section 43.005(b), Health and Safety Code, is amended to read as follows:

(b) The executive commissioner [board] by rule may define a word or term not defined by Subsection (a) as necessary to administer this chapter. The executive commissioner [board] may not define a word or term so that the word or term is inconsistent or in conflict with the purposes of this chapter.

SECTION 3.0160. Sections 43.004(b) and (e), Health and Safety Code, are amended to read as follows:

(b) The executive commissioner [board] shall adopt rules to govern the program, to prescribe the type, amount, and duration of oral health services to be provided, and, if necessary to conform to budgetary limitations, to prescribe a system of program priorities regarding the types of services to be furnished, the geographic areas to be covered, or the classes of individuals eligible for services.

(e) The department may provide services only as prescribed by department [board] rules.

SECTION 3.0161. Section 43.005(a), Health and Safety Code, is amended to read as follows:

(a) The department shall:

- (1) administer the program of oral health services [established by the board]; and
- (2) develop [~~adopt~~] the design and content of all forms necessary for the program.

SECTION 3.0162. Sections 43.006(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner [board] may adopt substantive and procedural rules relating to:

- (1) the selection of dentists, physicians, facilities, and other providers to furnish program services, including criteria for the emergency selection of providers; and
- (2) the denial, modification, suspension, or termination of a provider's program participation.

(b) The department shall approve providers to participate in the program according to the criteria, rules, and procedures adopted by the executive commissioner [board].

(d) The department [board] shall provide a due process hearing procedure in accordance with department rules for the resolution of conflicts between the department and a provider. Chapter 2001, Government Code, does [do] not apply to conflict resolution procedures adopted under this section.

SECTION 3.0163. Section 43.007, Health and Safety Code, is amended to read as follows:

Sec. 43.007. INDIVIDUAL REFERRAL AND APPLICATION FOR SERVICES. (a) The executive commissioner [board] may adopt substantive and procedural rules to govern the application for admission to the program and the receipt of treatment services, including the dental, financial, and other criteria for eligibility to receive treatment services.

(b) An applicant for treatment services must be referred to the program by a person who knows the individual's economic condition, such as a school administrator or school nurse, social worker, municipal or county official, dentist, physician, public health clinic, community health center, hospital, or any other source acceptable to the executive commissioner [board].

(c) An applicant for treatment services must complete or cause to be completed an application form prescribed under Section 43.005 [by the department].

(d) The application form must include or be accompanied by:

(1) a statement by the individual, or by the person with a legal obligation to support the individual, that the individual or the person is financially unable to pay for all or part of the cost of the necessary treatment services;

(2) a statement from the referring person that the treatment services are necessary to prevent or reduce the

(3) any other assurances from the applicant or any other documentary evidence required by the department [board] to support the applicant's eligibility.

SECTION 3.0164. Section 43.008, Health and Safety Code, is amended to read as follows:

Sec. 43.008. ELIGIBILITY FOR SERVICES. (a) The department shall determine an individual's eligibility for treatment services according to this chapter and department [the program] rules.

(b) An individual is not eligible to receive treatment services provided under this chapter unless:

(1) the individual is a resident of this state;

(2) the department has determined that neither the individual nor a person with a legal obligation to support the individual is financially able to pay for all or part of the treatment services provided by this chapter;

(3) the individual complies with any other requirements stated in the department [program] rules; and

(4) at least one licensed dentist or licensed physician has certified to the department that the dentist or physician has examined the individual and has found that:

(A) the individual meets the department's [board's] dental criteria; and

(B) the dentist or physician has reason to expect that the treatment services provided by or through the department will prevent or reduce the probability of the individual's experiencing pain, infection, or disease.

(c) Except as permitted by department [program] rules, the department may not provide treatment services before an individual's eligibility date assigned by the department or authorize payment for treatment services furnished by a provider before that date.

SECTION 3.0165. Sections 43.009(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The executive commissioner [board] by rule shall provide criteria for action by the department under this section.

(c) Chapter 2001, Government Code, does [do] not apply to the granting, denial, modification, suspension, or termination of treatment services. The department shall conduct hearings in accordance with the department's [board's] due process hearing rules.

SECTION 3.0166. Section 43.010(e), Health and Safety Code, is amended to read as follows:

(e) The commissioner may waive the enforcement of Subsection (b) as prescribed by department [board] rules in certain individually considered cases in which enforcement will deny treatment services to a class of otherwise eligible individuals because of conflicting federal, state, or local laws or rules.

SECTION 3.0167. Section 43.012, Health and Safety Code, is amended to read as follows:

Sec. 43.012. FEES. The department, in accordance with department rules, [board] may charge fees for the oral health services provided directly by the department or through approved providers in accordance with Subchapter D, Chapter 12.

SECTION 3.0168. Section 43.013(a), Health and Safety Code, is amended to read as follows:

(a) The department [Subject to limitations or conditions prescribed by the legislature, the board] may seek, receive, and spend funds received from any public or private source for the

185-1 purposes of this chapter, subject to:

185-2 (1) the limitations or conditions prescribed by the
 185-3 legislature; and
 185-4 (2) any limitations or conditions prescribed by the
 185-5 executive commissioner.

185-6 SECTION 3.0169. Section 45.003, Health and Safety Code, is
 185-7 amended to read as follows:

185-8 Sec. 45.003. RULES. The executive commissioner [board] may
 185-9 adopt rules governing eligibility for a child passenger safety seat
 185-10 system from the program established under Section 45.002.

185-11 SECTION 3.0170. Sections 47.001(3), (4), (6), and (9),
 185-12 Health and Safety Code, are amended to read as follows:

185-13 (3) "Health care provider" means a registered nurse
 185-14 recognized as an advanced practice registered nurse by the Texas
 185-15 Board of Nursing or a physician assistant licensed by the Texas
 185-16 Physician Assistant Board.

185-17 (4) "Hearing loss" means a hearing loss of 30 dB HL or
 185-18 greater in the frequency region important for speech recognition
 185-19 and comprehension in one or both ears, approximately 500 through
 185-20 4,000 Hz. As technological advances permit the detection of less
 185-21 severe hearing loss, the executive commissioner [department] may
 185-22 modify this definition by rule.

185-23 (6) "Intervention or follow-up care" means the early
 185-24 intervention services described in Part C, Individuals with
 185-25 Disabilities Education Act (20 U.S.C. Sections 1431-1443)
 185-26 [1431-1445], as amended by Pub. L. No. 105-17].

185-27 (9) "Physician" means a person licensed to practice
 185-28 medicine by the Texas [State Board of] Medical Board [Examiners].

185-29 SECTION 3.0171. Sections 47.004(a), (b), and (d), Health
 185-30 and Safety Code, are amended to read as follows:

185-31 (a) The executive commissioner [department or the
 185-32 department's designee] shall establish certification criteria for
 185-33 implementing a program.

185-34 (b) In order to be certified, the program must:

185-35 (1) provide hearing screening using equipment
 185-36 recommended by the department;

185-37 (2) use appropriate staff to provide the screening;

185-38 (3) maintain and report data electronically as
 185-39 required by [the] department rule;

185-40 (4) distribute family, health care provider, and
 185-41 physician educational materials standardized by the department;

185-42 (5) provide information, as recommended by the
 185-43 department, to the parents on follow-up services for newborns and
 185-44 infants who do not pass the screening; and

185-45 (6) be supervised by:

185-46 (A) a physician;

185-47 (B) an audiologist;

185-48 (C) a registered nurse; or

185-49 (D) a physician assistant.

185-50 (d) The department may renew the certification of a program
 185-51 on a periodic basis as established by department [board] rule in
 185-52 order to ensure quality services to newborns, infants, and
 185-53 families.

185-54 SECTION 3.0172. Section 47.007, Health and Safety Code, as
 185-55 amended by Chapters 1273 (H.B. 411) and 601 (S.B. 229), Acts of the
 185-56 82nd Legislature, Regular Session, 2011, is reenacted and amended
 185-57 to read as follows:

185-58 Sec. 47.007. INFORMATION MANAGEMENT, REPORTING, AND
 185-59 TRACKING SYSTEM. (a) The department shall provide each birthing
 185-60 facility that provides newborn hearing screening under the state's
 185-61 medical assistance program provided under Chapter 32, Human
 185-62 Resources Code, with access to the appropriate information
 185-63 management, reporting, and tracking system for the program. The
 185-64 information management, reporting, and tracking system must be
 185-65 capable of providing the department with information and data
 185-66 necessary to plan, monitor, and evaluate the program, including the
 185-67 program's screening, follow-up, diagnostic, and intervention
 185-68 components.

185-69 (b) Subject to Section 47.008, a qualified hearing

screening provider, hospital, health care provider, physician, audiologist, or intervention specialist shall access the information management, reporting, and tracking system to provide information to the department and may obtain information from the department relating to:

(1) the results of each hearing screening performed under Section 47.003(a) or 47.0031(a);

(2) the results of each diagnostic audiological evaluation required under Section 47.0031(b)(2);

(3) infants who receive follow-up care;

(4) infants identified with hearing loss;

(5) infants who are referred for intervention services; and

(6) case level information necessary to report required statistics to:

(A) the federal Maternal and Child Health Bureau on an annual basis; and

(B) the federal Centers for Disease Control and Prevention.

(c) A birthing facility described by Subsection (a) shall report the resulting information in the format and within the time frame specified by the department.

(d) [A birthing facility described by Subsection (a) shall report the resulting information in the format and within the time frame specified by the department.]

[d] A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who receives a referral from a program under this chapter shall:

[1] provide the services needed by the child or refer the child to a person who provides the services needed by the child, and

[2] provide, with the consent of the child's parent, the following information to the department or the department's designee:

[A] results of follow-up care;

[B] results of audiologic testing of infants identified with hearing loss; and

[C] reports on the initiation of intervention services.

[e] A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who receives a referral from a program under this chapter shall:

(1) provide the services needed by the newborn or infant or refer the newborn or infant to a person who provides the services needed by the newborn or infant; and

(2) provide, with the consent of the newborn's or infant's parent, the following information to the department or the department's designee:

(A) results of follow-up care;

(B) results of audiologic testing of an infant identified with hearing loss; and

(C) reports on the initiation of intervention services.

[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:]

[1] results of follow-up services;

[2] results of audiologic testing of infants identified with hearing loss; and

[3] reports on the initiation of intervention services.

[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:

(1) results of follow-up care;

(2) results of audiologic testing; and
(3) reports on the initiation of intervention services.

(f) [A hospital that provides services under this chapter shall use the information management, reporting, and tracking system, which the department has provided the hospital with access to, to report, with the consent of the infant's parent, the following information to the department or the department's designee:

[(1) results of all follow-up services for infants who do not pass the birth admission screening if the hospital provides the follow-up services; or

[(2) the name of the provider or facility where the hospital refers an infant who does not pass the birth admission screening for follow-up services.

[~~(g)~~] A hospital that provides services under this chapter shall use the information management, reporting, and tracking system described by this section, access to which has been provided to the hospital by the department, to report, with the consent of the infant's parent, the following information to the department or the department's designee:

(1) results of all follow-up services for an infant who does not pass the screening described by Section 47.003(a) if the hospital provides the follow-up services; or

(2) the name of the provider or facility to which the hospital refers an infant who does not pass the screening described by Section 47.003(a) for follow-up services.

(g) The department shall ensure that the written consent of a parent is obtained before any information individually identifying the newborn or infant is released through the information management, reporting, and tracking system.

(h) Subject to Section 47.008, a qualified hearing screening provider, hospital, health care provider, physician, audiologist, or intervention specialist may obtain information from the department relating to:

- (1) the results of each hearing screening performed under Section 47.003(a) or 47.0031(a);
(2) the results of each diagnostic audiological

evaluation required under Section 47.0031(b)(2);
(3) infants who receive follow-up care;
(4) infants identified with hearing loss; and
(5) infants born to mothers with diabetes.

(5) infants who are referred for intervention services.

SECTION 3.0173. Section 47.008(c), Health and Safety Code, is amended to read as follows:

(c) The executive commissioner [department] by rule shall develop guidelines to protect the confidentiality of patients in accordance with Chapter 159, Occupations Code, and require the written consent of a parent or guardian of a patient before any individually identifying information is provided to the department as set out in this chapter. The department shall permit a parent or guardian at any time to withdraw information provided to the department under this chapter.

SECTION 3.0174. Section 47.010(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner [of the Health and Human Services Commission] may adopt rules for the department to implement this chapter.

SECTION 3.0175. Section 61.003(f), Health and Safety Code, is amended to read as follows:

(f) For purposes of this chapter, a person who is an inmate or resident of a state supported living center, as defined by Section 531.002, [school] or institution operated by the Texas Department of Criminal Justice, Department of Aging and Disability Services, Department of State Health Services, Texas Juvenile Justice Department [~~Youth Commission~~], Texas School for the Blind and Visually Impaired, Texas School for the Deaf, or any other state agency or who is an inmate, patient, or resident of a school or institution operated by a federal agency is not considered a

188-1 resident of a hospital district or of any governmental entity
 188-2 except the state or federal government.

188-3 SECTION 3.0176. Section 61.004(b), Health and Safety Code,
 188-4 is amended to read as follows:

188-5 (b) The provider of assistance and the governmental entity
 188-6 or hospital district shall submit all relevant information to the
 188-7 department in accordance with the application, documentation, and
 188-8 verification procedures established by [the] department rule under
 188-9 Section 61.006.

188-10 SECTION 3.0177. Sections 61.006(c) and (e), Health and
 188-11 Safety Code, are amended to read as follows:

188-12 (c) The department shall also define the services and
 188-13 establish the payment standards for the categories of services
 188-14 listed in Sections 61.028(a) and 61.0285 in accordance with
 188-15 commission [~~Texas Department of Human Services~~] rules relating to
 188-16 the Temporary Assistance for Needy Families-Medicaid program.

188-17 (e) The department shall ensure that each person who meets
 188-18 the basic income and resources requirements for Temporary
 188-19 Assistance for Needy Families program payments but who is
 188-20 categorically ineligible for Temporary Assistance for Needy
 188-21 Families will be eligible for assistance under Subchapter B.
 188-22 Except as provided by Section 61.023(b), the executive commissioner
 188-23 [~~department~~] by rule shall also provide that a person who receives
 188-24 or is eligible to receive Temporary Assistance for Needy Families,
 188-25 Supplemental Security Income, or Medicaid benefits is not eligible
 188-26 for assistance under Subchapter B even if the person has exhausted a
 188-27 part or all of that person's benefits.

188-28 SECTION 3.0178. Section 61.007, Health and Safety Code, is
 188-29 amended to read as follows:

188-30 Sec. 61.007. INFORMATION PROVIDED BY APPLICANT. The
 188-31 executive commissioner [~~department~~] by rule shall require each
 188-32 applicant to provide at least the following information:

188-33 (1) the applicant's full name and address;
 188-34 (2) the applicant's social security number, if
 188-35 available;

188-36 (3) the number of persons in the applicant's
 188-37 household, excluding persons receiving Temporary Assistance for
 188-38 Needy Families, Supplemental Security Income, or Medicaid
 188-39 benefits;

188-40 (4) the applicant's county of residence;
 188-41 (5) the existence of insurance coverage or other
 188-42 hospital or health care benefits for which the applicant is
 188-43 eligible;

188-44 (6) any transfer of title to real property that the
 188-45 applicant has made in the preceding 24 months;

188-46 (7) the applicant's annual household income, excluding
 188-47 the income of any household member receiving Temporary Assistance
 188-48 for Needy Families, Supplemental Security Income, or Medicaid
 188-49 benefits; and

188-50 (8) the amount of the applicant's liquid assets and the
 188-51 equity value of the applicant's car and real property.

188-52 SECTION 3.0179. Section 61.008(a), Health and Safety Code,
 188-53 is amended to read as follows:

188-54 (a) The executive commissioner [~~department~~] by rule shall
 188-55 provide that in determining eligibility:

188-56 (1) a county may not consider the value of the
 188-57 applicant's homestead;

188-58 (2) a county must consider the equity value of a car
 188-59 that is in excess of the amount exempted under department
 188-60 guidelines as a resource;

188-61 (3) a county must subtract the work-related and child
 188-62 care expense allowance allowed under department guidelines;

188-63 (4) a county must consider as a resource real property
 188-64 other than a homestead and, except as provided by Subsection (b),
 188-65 must count that property in determining eligibility;

188-66 (5) if an applicant transferred title to real property
 188-67 for less than market value to become eligible for assistance under
 188-68 this chapter, the county may not credit toward eligibility for
 188-69 state assistance an expenditure for that applicant made during a

189-1 two-year period beginning on the date on which the property is
 189-2 transferred; and

189-3 (6) if an applicant is a sponsored alien, a county may
 189-4 include in the income and resources of the applicant:

189-5 (A) the income and resources of a person who
 189-6 executed an affidavit of support on behalf of the applicant; and

189-7 (B) the income and resources of the spouse of a
 189-8 person who executed an affidavit of support on behalf of the
 189-9 applicant, if applicable.

189-10 SECTION 3.0180. Section 61.011, Health and Safety Code, is
 189-11 amended to read as follows:

189-12 Sec. 61.011. SERVICES BY STATE HOSPITAL OR CLINIC. A state
 189-13 hospital or clinic shall be entitled to payment for services
 189-14 rendered to an eligible resident under the provisions of this
 189-15 chapter applicable to other providers. The executive commissioner
 189-16 [~~department~~] may adopt rules as necessary to implement this
 189-17 section.

189-18 SECTION 3.0181. Section 61.0285(b), Health and Safety Code,
 189-19 is amended to read as follows:

189-20 (b) A county must notify the department of the county's
 189-21 intent to provide services specified by Subsection (a). If the
 189-22 services are approved in accordance with [~~by the department under~~]
 189-23 Section 61.006, or if the department fails to notify the county of
 189-24 the department's disapproval before the 31st day after the date the
 189-25 county notifies the department of its intent to provide the
 189-26 services, the county may credit the services toward eligibility for
 189-27 state assistance under this subchapter.

189-28 SECTION 3.0182. Section 61.034(b), Health and Safety Code,
 189-29 is amended to read as follows:

189-30 (b) A county may contract with a provider of assistance to
 189-31 provide a health care service at a rate below the payment standard
 189-32 set by [~~the~~] department rule.

189-33 SECTION 3.0183. Sections 61.036(c) and (d), Health and
 189-34 Safety Code, are amended to read as follows:

189-35 (c) Regardless of the application, documentation, and
 189-36 verification procedures or eligibility standards established [~~by~~
 189-37 ~~the department~~] under Subchapter A, a county may credit an
 189-38 expenditure for an eligible resident toward eligibility for state
 189-39 assistance if the eligible resident received the health care
 189-40 services at:

189-41 (1) a hospital maintained or operated by a state
 189-42 agency that has a contract with the county to provide health care
 189-43 services;

189-44 (2) a federally qualified health center delivering
 189-45 federally qualified health center services, as those terms are
 189-46 defined in 42 U.S.C. Sections 1396d(1)(2)(A) and (B), that has a
 189-47 contract with the county to provide health care services; or

189-48 (3) a hospital or other health care provider if the
 189-49 eligible resident is an inmate of a county jail or another county
 189-50 correctional facility.

189-51 (d) Regardless of the application, documentation, and
 189-52 verification procedures or eligibility standards established [~~by~~
 189-53 ~~the department~~] under Subchapter A, a county may credit an
 189-54 intergovernmental transfer to the state toward eligibility for
 189-55 state assistance if the transfer was made to provide health care
 189-56 services as part of the Texas Healthcare Transformation and Quality
 189-57 Improvement Program waiver issued under 42 U.S.C. Section 1315.

189-58 SECTION 3.0184. Section 61.037(h), Health and Safety Code,
 189-59 is amended to read as follows:

189-60 (h) The executive commissioner [~~department~~] shall adopt
 189-61 rules governing the circumstances under which a waiver may be
 189-62 granted under Subsection (g) and the procedures to be used by a
 189-63 county to apply for the waiver. The procedures must provide that
 189-64 the department shall make a determination with respect to an
 189-65 application for a waiver not later than the 90th day after the date
 189-66 the application is submitted to the department in accordance with
 189-67 the procedures established by [~~the~~] department rule. To be
 189-68 eligible for state assistance under Subsection (g), a county must
 189-69 submit monthly financial reports, in the form required by the

190-1 department, covering the 12-month period preceding the date on
 190-2 which the assistance is sought.

190-3 SECTION 3.0185. Section 61.0395(b), Health and Safety Code,
 190-4 is amended to read as follows:

190-5 (b) The executive commissioner [department] may adopt rules
 190-6 governing the distribution of state assistance under this chapter
 190-7 that establish a maximum annual allocation for each county eligible
 190-8 for assistance under this chapter in compliance with Subsection
 190-9 (a).

190-10 SECTION 3.0186. Section 61.042(a), Health and Safety Code,
 190-11 is amended to read as follows:

190-12 (a) A county may establish procedures consistent with those
 190-13 used by the commission [Texas Department of Human Services] under
 190-14 Chapter 31, Human Resources Code, for administering an employment
 190-15 services program and requiring an applicant or eligible resident to
 190-16 register for work with the Texas Workforce [Employment] Commission.

190-17 SECTION 3.0187. Section 61.065(c), Health and Safety Code,
 190-18 is amended to read as follows:

190-19 (c) If the contract for the sale of the hospital provides
 190-20 for the provision by the hospital of health care services to county
 190-21 residents, the value of the health care services credited or paid in
 190-22 a state fiscal year under the contract is included as part of the
 190-23 computation of a county expenditure under Section 61.037 to the
 190-24 extent that the value of the services does not exceed the payment
 190-25 standard established by [the] department rule for allowed inpatient
 190-26 and outpatient services.

190-27 SECTION 3.0188. Section 61.067(g), Health and Safety Code,
 190-28 is amended to read as follows:

190-29 (g) The lien does not attach to a claim under the workers'
 190-30 compensation law of this state, the Federal Employers' [Employees]
 190-31 Liability Act, or the Federal Longshore and Harbor Workers'
 190-32 Compensation Act.

190-33 SECTION 3.0189. Section 61.068(a), Health and Safety Code,
 190-34 is amended to read as follows:

190-35 (a) A public hospital or hospital district may establish
 190-36 procedures consistent with those used by the commission [Health and
 190-37 Human Services Commission] under Chapter 31, Human Resources Code,
 190-38 for administering an employment services program and requiring an
 190-39 applicant or eligible resident to register for work with the Texas
 190-40 Workforce Commission.

190-41 SECTION 3.0190. Section 62.002(4), Health and Safety Code,
 190-42 is amended to read as follows:

190-43 (4) "Household" [Net family] income" means the sum
 190-44 [amount] of the individual incomes of each individual in an
 190-45 applicant's or enrollee's household, minus the standard income
 190-46 disregard prescribed by federal law [income established for a
 190-47 family after reduction for offsets for child care expenses, in
 190-48 accordance with standards applicable under the Medicaid program].

190-49 SECTION 3.0191. Section 62.004, Health and Safety Code, is
 190-50 amended to read as follows:

190-51 Sec. 62.004. FEDERAL LAW AND REGULATIONS. The executive
 190-52 commissioner shall monitor federal legislation affecting Title XXI
 190-53 of the Social Security Act (42 U.S.C. Section 1397aa et seq.) and
 190-54 changes to the federal regulations implementing that law. If the
 190-55 executive commissioner determines that a change to Title XXI of the
 190-56 Social Security Act (42 U.S.C. Section 1397aa et seq.) or the
 190-57 federal regulations implementing that law conflicts with this
 190-58 chapter, the executive commissioner shall report the changes to the
 190-59 governor, lieutenant governor, and speaker of the house of
 190-60 representatives, with recommendations for legislation necessary to
 190-61 implement the federal law or regulations, seek a waiver, or
 190-62 withdraw from participation.

190-63 SECTION 3.0192. Sections 62.051 and 62.052, Health and
 190-64 Safety Code, are amended to read as follows:

190-65 Sec. 62.051. DUTIES OF EXECUTIVE COMMISSIONER AND
 190-66 COMMISSION IN GENERAL. (a) The executive commissioner
 190-67 [commission] shall administer [develop] a state-designed child
 190-68 health plan program to obtain health benefits coverage for children
 190-69 in low-income families. The executive commissioner [commission]

191-1 shall ensure that the child health plan program is designed and
 191-2 administered in a manner that qualifies for federal funding under
 191-3 Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et
 191-4 seq.), as amended, and any other applicable law or regulations.

191-5 (b) The executive commissioner [~~commission~~] is [~~the agency~~]
 191-6 responsible for making policy for the child health plan program,
 191-7 including policy related to covered benefits provided under the
 191-8 child health plan. The executive commissioner [~~commission~~] may not
 191-9 delegate this duty to another agency or entity.

191-10 (c) The executive commissioner [~~commission~~] shall oversee
 191-11 the implementation of the child health plan program and coordinate
 191-12 the activities of each agency necessary to the implementation of
 191-13 the program, including the [~~Texas Department of Health, Texas~~
 191-14 ~~Department of Human Services, and~~] Texas Department of Insurance.

191-15 (d) The executive commissioner [~~commission~~] shall adopt
 191-16 rules as necessary to implement this chapter. [~~The commission may~~
 191-17 ~~require the Texas Department of Health, the Texas Department of~~
 191-18 ~~Human Services, or any other health and human services agency to~~
 191-19 ~~adopt, with the approval of the commission, any rules that may be~~
 191-20 ~~necessary to implement the program. With the consent of another~~
 191-21 ~~agency, including the Texas Department of Insurance, the commission~~
 191-22 ~~may delegate to that agency the authority to adopt, with the~~
 191-23 ~~approval of the commission, any rules that may be necessary to~~
 191-24 ~~implement the program.]~~

191-25 (e) The commission shall conduct a review of each entity
 191-26 that enters into a contract under Section 62.055 or [Section]
 191-27 62.155[~~7~~] to ensure that the entity is available, prepared, and
 191-28 able to fulfill the entity's obligations under the contract in
 191-29 compliance with the contract, this chapter, and rules adopted under
 191-30 this chapter.

191-31 (f) The commission shall ensure that the amounts spent for
 191-32 administration of the child health plan program do not exceed any
 191-33 limit on those expenditures imposed by federal law.

191-34 Sec. 62.052. AUTHORITY OF COMMISSION RELATING TO HEALTH
 191-35 PLAN PROVIDER CONTRACTS [~~DUTIES OF TEXAS DEPARTMENT OF HEALTH~~].
 191-36 [(a)] The commission may [~~direct the Texas Department of Health~~
 191-37 ~~to~~] :

191-38 (1) implement contracts with health plan providers
 191-39 under Section 62.155;

191-40 (2) monitor the health plan providers, through
 191-41 reporting requirements and other means, to ensure performance under
 191-42 the contracts and quality delivery of services;

191-43 (3) monitor the quality of services delivered to
 191-44 enrollees through outcome measurements including:

191-45 (A) rate of hospitalization for ambulatory
 191-46 sensitive conditions, including asthma, diabetes, epilepsy,
 191-47 dehydration, gastroenteritis, pneumonia, and UTI/kidney infection;

191-48 (B) rate of hospitalization for injuries;

191-49 (C) percent of enrolled adolescents reporting
 191-50 risky health behavior such as injuries, tobacco use, alcohol/drug
 191-51 use, dietary behavior, physical activity, or other health related
 191-52 behaviors; and

191-53 (D) percent of adolescents reporting attempted
 191-54 suicide; and

191-55 (4) provide payment under the contracts to the health
 191-56 plan providers.

191-57 [(b) ~~The commission, or the Texas Department of Health under~~
 191-58 ~~the direction of and in consultation with the commission, shall~~
 191-59 ~~adopt rules as necessary to implement this section.~~]

191-60 SECTION 3.0193. Subchapter B, Chapter 62, Health and Safety
 191-61 Code, is amended by amending Section 62.053 and adding Section
 191-62 62.0531 to read as follows:

191-63 Sec. 62.053. AUTHORITY OF COMMISSION RELATING TO
 191-64 ELIGIBILITY AND MEDICAID COORDINATION [~~DUTIES OF TEXAS DEPARTMENT~~
 191-65 ~~OF HUMAN SERVICES~~]. The commission [(a) Under the direction of the
 191-66 commission, the Texas Department of Human Services] may:

191-67 (1) accept applications for coverage under the child
 191-68 health plan and implement the child health plan program eligibility
 191-69 screening and enrollment procedures;

(2) resolve grievances relating to eligibility determinations; and

(3) coordinate the child health plan program with the Medicaid program.

Sec. 62.0531. AUTHORITY OF COMMISSION RELATING TO THIRD PARTY ADMINISTRATOR. [(b)] If the commission contracts with a third party administrator under Section **62.055**, the commission may [direct the Texas Department of Human Services to]:

(1) implement the contract;

(2) monitor the third party administrator, through reporting requirements and other means, to ensure performance under the contract and quality delivery of services; and

(3) provide payment under the contract to the third party administrator.

[(c) The commission, or the Texas Department of Human Services under the direction of and in consultation with the commission, shall adopt rules as necessary to implement this section.]

SECTION 3.0194. Sections 62.054(a) and (b), Health and Safety Code, are amended to read as follows:

(a) At the request of the commission, the Texas Department of Insurance shall provide any necessary assistance with the [development of the] child health plan. The department shall monitor the quality of the services provided by health plan providers and resolve grievances relating to the health plan providers.

(b) The commission and the Texas Department of Insurance may adopt a memorandum of understanding that addresses the responsibilities of each agency with respect to [in developing] the plan.

¹ SECTION 3.0195. Section 62.055, Health and Safety Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) The executive commissioner [commission] shall[+] [(-)] retain all policymaking authority over the state child health plan.[+]

(f) The commission shall:

(1) [(2)] procure all contracts with a third party administrator through a competitive procurement process in compliance with all applicable federal and state laws or regulations; and

(2) [(3)] ensure that all contracts with child health plan providers under Section [62.155](#) are procured through a competitive procurement process in compliance with all applicable federal and state laws or regulations.

SECTION 3.0196. Sections 62.101(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) A child is eligible for health benefits coverage under the child health plan if the child:

(1) is younger than 19 years of age;
(2) is not eligible for medical assistance under the Medicaid program;

- (3) is not covered by a health benefits plan offering adequate benefits, as determined by the commission;
- (4) has a household [family] income that is less than or equal to the income eligibility level established under Subsection (b); and
- (5) satisfies any other eligibility standard imposed

(5) satisfies any other eligibility standard imposed under the child health plan program in accordance with 42 U.S.C. Section 1397bb, as amended, and any other applicable law or regulations.

(b) The executive commissioner [commission] shall establish income eligibility levels consistent with Title XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, and subject to the availability of appropriated money, so that a child who is younger than 19 years of age and whose household [net family] income is at or below 200 percent of the federal poverty level is eligible for health benefits coverage under the program. [In addition, the

193-1 commission may establish eligibility standards regarding the
 193-2 amount and types of allowable assets for a family whose net family
 193-3 income is above 150 percent of the federal poverty level.]

193-4 (c) The executive commissioner shall evaluate enrollment
 193-5 levels and program impact [every six months during the first 12
 193-6 months of implementation and] at least annually [~~thereafter~~] and
 193-7 shall submit a finding of fact to the Legislative Budget Board and
 193-8 the Governor's Office of Budget, [and] Planning, and Policy as to
 193-9 the adequacy of funding and the ability of the program to sustain
 193-10 enrollment at the eligibility level established by Subsection (b).
 193-11 In the event that appropriated money is insufficient to sustain
 193-12 enrollment at the authorized eligibility level, the executive
 193-13 commissioner shall:

- 193-14 (1) suspend enrollment in the child health plan;
- 193-15 (2) establish a waiting list for applicants for
 coverage; and
- 193-16 (3) establish a process for periodic or continued
 193-17 enrollment of applicants in the child health plan program as the
 193-18 availability of money allows.

193-19 SECTION 3.0197. Section 62.1011, Health and Safety Code, is
 193-20 amended to read as follows:

193-21 Sec. 62.1011. VERIFICATION OF INCOME. The commission shall
 193-22 continue employing methods of verifying the individual incomes [~~net~~
 193-23 ~~income~~] of the individuals considered in the calculation of an
 193-24 applicant's household [~~net family~~] income. The commission shall
 193-25 verify income under this section unless the applicant reports a
 193-26 household [~~net family~~] income that exceeds the income eligibility
 193-27 level established under Section 62.101(b).

193-28 SECTION 3.0198. Sections 62.1015(a) and (c), Health and
 193-29 Safety Code, are amended to read as follows:

193-30 (a) In this section:
 193-31 (1) "Charter school" [, "charter school," "employee,"]
 193-32 and "regional education service center" have the meanings assigned
 193-33 by Section 1579.002 [2, Article 3.50-7], Insurance Code.
 193-34 (2) "Employee" has the meaning assigned by Section
 193-35 1579.003, Insurance Code.

193-36 (c) The cost of health benefits coverage for children
 193-37 enrolled in the child health plan under this section shall be paid
 193-38 as provided in the General Appropriations Act. Expenditures made
 193-39 to provide health benefits coverage under this section may not be
 193-40 included for the purpose of determining the state children's health
 193-41 insurance expenditures, as that term is defined by 42 U.S.C.
 193-42 Section 1397ee(d)(2)(B), as amended, unless the commission [~~Health~~
 193-43 ~~and Human Services Commission~~], after consultation with the
 193-44 appropriate federal agencies, determines that the expenditures may
 193-45 be included without adversely affecting federal matching funding
 193-46 for the child health plan provided under this chapter.

193-47 SECTION 3.0199. Sections 62.102(b) and (c), Health and
 193-48 Safety Code, are amended to read as follows:

193-49 (b) During the sixth month following the date of initial
 193-50 enrollment or reenrollment of an individual whose household [~~net~~
 193-51 ~~family~~] income exceeds 185 percent of the federal poverty level,
 193-52 the commission shall:

193-53 (1) review the individual's household [~~net family~~]
 193-54 income and may use electronic technology if available and
 193-55 appropriate; and

193-56 (2) continue to provide coverage if the individual's
 193-57 household [~~net family~~] income does not exceed the income
 193-58 eligibility limits prescribed by this chapter.

193-59 (c) If, during the review required under Subsection (b), the
 193-60 commission determines that the individual's household [~~net family~~]
 193-61 income exceeds the income eligibility limits prescribed by this
 193-62 chapter, the commission may not disenroll the individual until:

193-63 (1) the commission has provided the family an
 193-64 opportunity to demonstrate that the family's household [~~net family~~]
 193-65 income is within the income eligibility limits prescribed by this
 193-66 chapter; and

193-67 (2) the family fails to demonstrate such eligibility.

193-68 SECTION 3.0200. Sections 62.103(a) and (d), Health and

194-1 Safety Code, are amended to read as follows:

194-2 (a) The executive commissioner [~~commission, or the Texas~~
 194-3 ~~Department of Human Services at the direction of and in~~
 194-4 ~~consultation with the commission,~~] shall adopt an application form
 194-5 and application procedures for requesting child health plan
 194-6 coverage under this chapter.

194-7 (d) The executive commissioner [~~commission~~] may permit
 194-8 application to be made by mail, over the telephone, or through the
 194-9 Internet.

194-10 SECTION 3.0201. Sections [62.104\(a\)](#) and [\(g\)](#), Health and
 194-11 Safety Code, are amended to read as follows:

194-12 (a) The executive commissioner [~~commission, or the Texas~~
 194-13 ~~Department of Human Services at the direction of and in~~
 194-14 ~~consultation with the commission,~~] shall develop eligibility
 194-15 screening and enrollment procedures for children that comply with
 194-16 the requirements of 42 U.S.C. Section 1397bb, as amended, and any
 194-17 other applicable law or regulations. The procedures shall ensure
 194-18 that Medicaid-eligible children are identified and referred to the
 194-19 Medicaid program.

194-20 (g) The executive commissioner [~~In the first year of~~
 194-21 ~~implementation of the child health plan, enrollment shall be open.~~
 194-22 ~~Thereafter, the commission~~] may establish enrollment periods for
 194-23 the child health plan.

194-24 SECTION 3.0202. Sections [62.151\(b\)](#), [\(c\)](#), [\(e\)](#), and [\(f\)](#),
 194-25 Health and Safety Code, are amended to read as follows:

194-26 (b) In modifying [~~developing~~] the covered benefits, the
 194-27 executive commissioner [~~commission~~] shall consider the health care
 194-28 needs of healthy children and children with special health care
 194-29 needs.

194-30 (c) In modifying [~~developing~~] the plan, the executive
 194-31 commissioner [~~commission~~] shall ensure that primary and preventive
 194-32 health benefits do not include reproductive services, other than
 194-33 prenatal care and care related to diseases, illnesses, or
 194-34 abnormalities related to the reproductive system.

194-35 (e) In modifying [~~developing~~] the covered benefits, the
 194-36 executive commissioner [~~commission~~] shall seek input from the
 194-37 Public Assistance Health Benefit Review and Design Committee
 194-38 established under Section [531.067](#), Government Code.

194-39 (f) If the executive commissioner [~~The commission, if it~~]
 194-40 determines the policy to be cost-effective, the executive
 194-41 commissioner may ensure that an enrolled child does not, unless
 194-42 authorized by the commission in consultation with the child's
 194-43 attending physician or advanced practice nurse, receive under the
 194-44 child health plan:

194-45 (1) more than four different outpatient brand-name
 194-46 prescription drugs during a month; or

194-47 (2) more than a 34-day supply of a brand-name
 194-48 prescription drug at any one time.

194-49 SECTION 3.0203. Sections [62.153\(a\)](#) and [\(c\)](#), Health and
 194-50 Safety Code, are amended to read as follows:

194-51 (a) To the extent permitted under 42 U.S.C. Section 1397cc,
 194-52 as amended, and any other applicable law or regulations, the
 194-53 executive commissioner [~~commission~~] shall require enrollees to
 194-54 share the cost of the child health plan, including provisions
 194-55 requiring enrollees under the child health plan to pay:

194-56 (1) a copayment for services provided under the plan;

194-57 (2) an enrollment fee; or

194-58 (3) a portion of the plan premium.

194-59 (c) If cost-sharing provisions imposed under Subsection (a)
 194-60 include requirements that enrollees pay a portion of the plan
 194-61 premium, the executive commissioner [~~commission~~] shall specify the
 194-62 manner in which the premium is paid. The commission may require
 194-63 that the premium be paid to the [~~Texas Department of Health, the~~
 194-64 ~~Texas Department of Human Services, or the~~] health plan provider.

194-65 SECTION 3.0204. Section [62.154\(b\)](#), Health and Safety Code,
 194-66 is amended to read as follows:

194-67 (b) A child is not subject to a waiting period adopted under
 194-68 Subsection (a) if:

194-69 (1) the family lost coverage for the child as a result

195-1 of:

- 195-2 (A) termination of employment because of a layoff
195-3 or business closing;
- 195-4 (B) termination of continuation coverage under
195-5 the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L.
195-6 No. 99-272);
- 195-7 (C) change in marital status of a parent of the
195-8 child;
- 195-9 (D) termination of the child's Medicaid
195-10 eligibility because:
 - 195-11 (i) the child's family's earnings or
195-12 resources increased; or
 - 195-13 (ii) the child reached an age at which
195-14 Medicaid coverage is not available; or
 - 195-15 (E) a similar circumstance resulting in the
195-16 involuntary loss of coverage;
 - 195-17 (2) the family terminated health benefits plan
195-18 coverage for the child because the cost to the child's family for
195-19 the coverage exceeded 9.5 [10] percent of the family's household
195-20 [~~net~~] income;
 - 195-21 (3) the child has access to group-based health
195-22 benefits plan coverage and is required to participate in the health
195-23 insurance premium payment reimbursement program administered by
195-24 the commission; [ex]
 - 195-25 (4) the commission has determined that other grounds
195-26 exist for a good cause exception; or
 - 195-27 (5) federal law provides that the child is not subject
195-28 to a waiting period adopted under Subsection (a).

195-29 SECTION 3.0205. Sections 62.155(a) and (d), Health and
195-30 Safety Code, are amended to read as follows:

195-31 (a) The commission[~~, or the Texas Department of Health at
the direction of and in consultation with the commission,~~] shall
195-32 select the health plan providers under the program through a
195-33 competitive procurement process. A health plan provider, other
195-34 than a state administered primary care case management network,
195-35 must hold a certificate of authority or other appropriate license
195-36 issued by the Texas Department of Insurance that authorizes the
195-37 health plan provider to provide the type of child health plan
195-38 offered and must satisfy, except as provided by this chapter, any
195-39 applicable requirement of the Insurance Code or another insurance
195-40 law of this state.

195-41 (d) The executive commissioner may authorize an exception
195-42 to Subsection (c)(2) if there is only one acceptable applicant to
195-43 become a health plan provider in the service area.

195-44 SECTION 3.0206. Section 62.1551, Health and Safety Code, is
195-45 amended to read as follows:

195-46 Sec. 62.1551. INCLUSION OF CERTAIN HEALTH CARE PROVIDERS IN
195-47 PROVIDER NETWORKS. Notwithstanding any other law, including
195-48 Sections 843.312 and 1301.052, Insurance Code, the executive
195-49 commissioner [~~of the commission~~] shall adopt rules to require a
195-50 managed care organization or other entity to ensure that advanced
195-51 practice registered nurses and physician assistants are available
195-52 as primary care providers in the organization's or entity's
195-53 provider network. The rules must require advanced practice
195-54 registered nurses and physician assistants to be treated in the
195-55 same manner as primary care physicians with regard to:

- 195-56 (1) selection and assignment as primary care
195-57 providers;
- 195-58 (2) inclusion as primary care providers in the
195-59 provider network; and
- 195-60 (3) inclusion as primary care providers in any
195-61 provider network directory maintained by the organization or
195-62 entity.

195-63 SECTION 3.0207. Section 62.156, Health and Safety Code, is
195-64 amended to read as follows:

195-65 Sec. 62.156. HEALTH CARE PROVIDERS. Health care providers
195-66 who provide health care services under the child health plan must
195-67 satisfy certification and licensure requirements, as required by
195-68 [~~the~~] commission rules and[~~to~~] consistent with other law.

196-1 SECTION 3.0208. Section 62.1561, Health and Safety Code, is
 196-2 amended to read as follows:

196-3 Sec. 62.1561. PROHIBITION OF CERTAIN HEALTH CARE PROVIDERS.
 196-4 The executive commissioner [~~of the commission~~] shall adopt rules
 196-5 for prohibiting a person from participating in the child health
 196-6 plan program as a health care provider for a reasonable period, as
 196-7 determined by the executive commissioner, if the person:

196-8 (1) fails to repay overpayments under the program; or
 196-9 (2) owns, controls, manages, or is otherwise
 196-10 affiliated with and has financial, managerial, or administrative
 196-11 influence over a provider who has been suspended or prohibited from
 196-12 participating in the program.

196-13 SECTION 3.0209. Sections 62.157(b) and (c), Health and
 196-14 Safety Code, as added by Chapter 959 (S.B. 1536), Acts of the 77th
 196-15 Legislature, Regular Session, 2001, are amended to read as follows:

196-16 (b) The policies must provide for:

196-17 (1) the availability of covered benefits
 196-18 appropriately provided through telemedicine medical services and
 196-19 telehealth services that are comparable to the same types of
 196-20 covered benefits provided without the use of telemedicine medical
 196-21 services and telehealth services; and

196-22 (2) the availability of covered benefits for different
 196-23 services performed by multiple health care providers during a
 196-24 single telemedicine medical services and telehealth services
 196-25 session, if the executive commissioner [~~commission~~] determines
 196-26 that delivery of the covered benefits in that manner is
 196-27 cost-effective in comparison to the costs that would be involved in
 196-28 obtaining the services from providers without the use of
 196-29 telemedicine medical services and telehealth services, including
 196-30 the costs of transportation and lodging and other direct costs.

196-31 (c) In developing the policies required by Subsection (a),
 196-32 the executive commissioner [~~commission~~] shall consult with:

196-33 (1) The University of Texas Medical Branch at
 196-34 Galveston;
 196-35 (2) Texas Tech University Health Sciences Center;
 196-36 (3) the [~~Texas~~] Department of State Health Services;
 196-37 (4) providers of telemedicine hub sites in this state;
 196-38 (5) providers of services to children with special
 196-39 health care needs; and
 196-40 (6) representatives of consumer or disability groups
 196-41 affected by changes to services for children with special health
 196-42 care needs.

196-43 SECTION 3.0210. Section 62.157, Health and Safety Code, as
 196-44 added by Chapter 1255 (S.B. 789), Acts of the 77th Legislature,
 196-45 Regular Session, 2001, is redesignated as Section 62.1571, Health
 196-46 and Safety Code, and amended to read as follows:

196-47 Sec. 62.1571 [62.157]. TELEMEDICINE MEDICAL SERVICES. (a)
 196-48 In providing covered benefits to a child, a health plan provider
 196-49 must permit benefits to be provided through telemedicine medical
 196-50 services in accordance with policies developed by the commission.

196-51 (b) The policies must provide for:

196-52 (1) the availability of covered benefits
 196-53 appropriately provided through telemedicine medical services that
 196-54 are comparable to the same types of covered benefits provided
 196-55 without the use of telemedicine medical services; and

196-56 (2) the availability of covered benefits for different
 196-57 services performed by multiple health care providers during a
 196-58 single session of telemedicine medical services, if the executive
 196-59 commissioner [~~commission~~] determines that delivery of the covered
 196-60 benefits in that manner is cost-effective in comparison to the
 196-61 costs that would be involved in obtaining the services from
 196-62 providers without the use of telemedicine medical services,
 196-63 including the costs of transportation and lodging and other direct
 196-64 costs.

196-65 (c) In developing the policies required by Subsection (a),
 196-66 the executive commissioner [~~commission~~] shall consult with the
 196-67 telemedicine and telehealth advisory committee.

196-68 (d) In this section, "telemedicine medical service" has the
 196-69 meaning assigned by Section 531.001, Government [~~57.042~~]

197-1 utilities] Code.

197-2 SECTION 3.0211. Section 62.159, Health and Safety Code, is
197-3 amended to read as follows:

197-4 Sec. 62.159. DISEASE MANAGEMENT SERVICES. (a) In this
197-5 section, "disease management services" means services to assist a
197-6 child manage a disease or other chronic health condition, such as
197-7 heart disease, diabetes, respiratory illness, end-stage renal
197-8 disease, HIV infection, or AIDS, and with respect to which the
197-9 executive commissioner [~~commission~~] identifies populations for
197-10 which disease management would be cost-effective.

197-11 (b) The child health plan must provide disease management
197-12 services or coverage for disease management services in the manner
197-13 required by the executive commissioner [~~commission~~], including:

197-14 (1) patient self-management education;
197-15 (2) provider education;
197-16 (3) evidence-based models and minimum standards of
197-17 care;
197-18 (4) standardized protocols and participation
197-19 criteria; and
197-20 (5) physician-directed or physician-supervised care.

197-21 SECTION 3.0212. Section 63.003, Health and Safety Code, is
197-22 amended to read as follows:

197-23 Sec. 63.003. HEALTH BENEFITS PLAN COVERAGE FOR CERTAIN
197-24 CHILDREN. The executive commissioner [~~commission~~] shall develop
197-25 and implement a program to provide health benefits plan coverage
197-26 for a child who:

197-27 (1) is a qualified alien, as that term is defined by 8
197-28 U.S.C. Section 1641(b);

197-29 (2) is younger than 19 years of age;
197-30 (3) entered the United States after August 22, 1996;
197-31 (4) has resided in the United States for less than five
197-32 years; and

197-33 (5) meets the income eligibility requirement of, but
197-34 is not eligible for assistance under:

197-35 (A) the child health plan program under Chapter
197-36 62; or

197-37 (B) the medical assistance program under Chapter
197-38 32, Human Resources Code.

197-39 SECTION 3.0213. Section 63.005(b), Health and Safety Code,
197-40 is amended to read as follows:

197-41 (b) Except as required by the executive commissioner
197-42 [~~commission~~], a health benefits plan provider under this chapter is
197-43 not subject to a law that requires coverage or the offer of coverage
197-44 of a health care service or benefit.

197-45 SECTION 3.0214. Section 63.006, Health and Safety Code, is
197-46 amended to read as follows:

197-47 Sec. 63.006. COST-SHARING PAYMENTS. (a) Except as provided
197-48 by Subsection (b), the executive commissioner [~~commission~~] may not
197-49 require a child who is provided health benefits plan coverage under
197-50 Section 63.003 and who meets the income eligibility requirement of
197-51 the medical assistance program under Chapter 32, Human Resources
197-52 Code, to pay a premium, deductible, coinsurance, or other
197-53 cost-sharing payment as a condition of health benefits plan
197-54 coverage under this chapter.

197-55 (b) The executive commissioner [~~commission~~] may require a
197-56 child described by Subsection (a) to pay a copayment as a condition
197-57 of health benefits plan coverage under this chapter that is equal to
197-58 any copayment required under the child health plan program under
197-59 Chapter 62.

197-60 (c) The executive commissioner [~~commission~~] may require a
197-61 child who is provided health benefits plan coverage under Section
197-62 63.003 and who meets the income eligibility requirement of the
197-63 child health plan program under Chapter 62 to pay a premium,
197-64 deductible, coinsurance, or other cost-sharing payment as a
197-65 condition of health benefits plan coverage under this chapter. The
197-66 payment must be equal to any premium, deductible, coinsurance, or
197-67 other cost-sharing payment required under the child health plan
197-68 program under Chapter 62.

197-69 SECTION 3.0215. Section 64.001, Health and Safety Code, is

198-1 amended to read as follows:

198-2 Sec. 64.001. TEACHING HOSPITAL ACCOUNT. The [Texas]
 198-3 Department of State Health Services state-owned multi-categorical
 198-4 teaching hospital account is an account in the general revenue
 198-5 fund. Money in the account may be appropriated only to the
 198-6 department to provide funding for indigent health care.

198-7 SECTION 3.0216. Section 81.003(5), Health and Safety Code,
 198-8 is amended to read as follows:

198-9 (5) "Physician" means a person licensed to practice
 198-10 medicine by the Texas [State Board of] Medical Board [Examiners].

198-11 SECTION 3.0217. Sections 81.004(b) and (c), Health and
 198-12 Safety Code, are amended to read as follows:

198-13 (b) The executive commissioner [board] may adopt rules
 198-14 necessary for the effective administration and implementation of
 198-15 this chapter.

198-16 (c) A designee of the executive commissioner [board] may
 198-17 exercise a power granted to or perform a duty imposed on the
 198-18 executive commissioner [board] under this chapter except as
 198-19 otherwise required by law.

198-20 SECTION 3.0218. Section 81.008, Health and Safety Code, is
 198-21 amended to read as follows:

198-22 Sec. 81.008. COMMUNICABLE DISEASE IN ANIMALS; EXCHANGE OF
 198-23 INFORMATION. The Texas Animal Health Commission and the Texas A&M
 198-24 University Veterinary Medical Diagnostic Laboratory shall each
 198-25 adopt by rule a memorandum of understanding, adopted also by rule by
 198-26 the executive commissioner, governing the [with the department to]
 198-27 exchange of information on communicable diseases in animals between
 198-28 the department and those entities.

198-29 SECTION 3.0219. Sections 81.010(c), (e), (h), (i), and (k),
 198-30 Health and Safety Code, are amended to read as follows:

198-31 (c) The council consists of one representative from each of
 198-32 the following agencies appointed by the executive director or
 198-33 commissioner of each agency:

198-34 (1) the Department of State Health Services;
 198-35 (2) the Department of Aging and Disability Services;
 198-36 (3) the Department of Assistive and Rehabilitative
 198-37 Services;

198-38 (4) the Department of Family and Protective Services;
 198-39 (5) [the Texas Youth Commission];
 198-40 [6] the Texas Department of Criminal Justice;
 198-41 (6) [7] the Texas Juvenile Justice Department
 198-42 [Probation Commission];

198-43 (7) [8] the Texas Medical Board;
 198-44 (8) [9] the Texas Board of Nursing;
 198-45 (9) [10] the State Board of Dental Examiners;
 198-46 (10) [11] the Health and Human Services Commission;
 198-47 (11) [12] the Texas Workforce Commission; and
 198-48 (12) [13] the Texas Higher Education Coordinating
 198-49 Board.

198-50 (e) The representative from the commission [Health and
 198-51 Human Services Commission] serves as chairperson of the council.

198-52 (h) The council shall:

198-53 (1) coordinate communication among the member
 198-54 agencies listed in Subsection (c) concerning each agency's programs
 198-55 in providing services related to AIDS, HIV, and hepatitis;

198-56 (2) develop a plan that facilitates coordination of
 198-57 agency programs based on statistical information regarding this
 198-58 state for:

198-59 (A) prevention of AIDS, HIV infection, and
 198-60 hepatitis; and

198-61 (B) provision of services to individuals who have
 198-62 hepatitis or are infected with HIV;

198-63 (3) identify all statewide plans related to AIDS, HIV,
 198-64 and hepatitis;

198-65 (4) compile a complete inventory of all federal,
 198-66 state, and local money spent in this state on HIV infection, AIDS,
 198-67 and hepatitis prevention and health care services, including
 198-68 services provided through or covered under Medicaid and Medicare;

198-69 (5) identify the areas with respect to which state

199-1 agencies interact on HIV, AIDS, and hepatitis issues and the policy
 199-2 issues arising from that interaction;

199-3 (6) assess gaps in prevention and health care services
 199-4 for HIV infection, AIDS, and hepatitis in this state, including
 199-5 gaps in services that result from provision of services by
 199-6 different state agencies, and develop strategies to address these
 199-7 gaps through service coordination;

199-8 (7) identify barriers to prevention and health care
 199-9 services for HIV infection, AIDS, and hepatitis faced by
 199-10 marginalized populations;

199-11 (8) identify the unique health care service and other
 199-12 service needs of persons who are infected with HIV or who have AIDS
 199-13 or hepatitis;

199-14 (9) evaluate the level of service and quality of
 199-15 health care in this state for persons who are infected with HIV or
 199-16 who have AIDS or hepatitis as compared to national standards;

199-17 (10) identify issues that emerge related to HIV, AIDS,
 199-18 and hepatitis and the potential impact on delivery of prevention
 199-19 and health care services; and

199-20 (11) provide the information required under
 199-21 Subdivisions (1) through (10) to the department [~~Department of~~
 199-22 ~~State Health Services~~].

199-23 (i) Not later than September 1 of each year, the department
 199-24 [~~Department of State Health Services~~] shall file a report with the
 199-25 legislature and the governor containing policy recommendations
 199-26 based on information reported to the council in Subsection (h)
 199-27 relating to:

199-28 (1) prevention of AIDS, HIV infection, and hepatitis;
 199-29 and

199-30 (2) delivery of health services to individuals who
 199-31 have AIDS or hepatitis or are infected with HIV.

199-32 (k) The commission [~~Health and Human Services Commission~~]
 199-33 shall provide administrative support to the council.

199-34 SECTION 3.0220. Section 81.021, Health and Safety Code, is
 199-35 amended to read as follows:

199-36 Sec. 81.021. PROTECTION OF PUBLIC HEALTH [~~BOARD'S DUTY~~].
 199-37 The executive commissioner and department [~~board~~] shall exercise
 199-38 their powers [~~its power~~] in matters relating to protecting the
 199-39 public health to prevent the introduction of disease into the
 199-40 state.

199-41 SECTION 3.0221. Section 81.023, Health and Safety Code, is
 199-42 amended to read as follows:

199-43 Sec. 81.023. IMMUNIZATION. (a) The department [~~board~~]
 199-44 shall develop immunization requirements for children.

199-45 (b) The department [~~board~~] shall cooperate with the
 199-46 Department of Family and Protective [~~and Regulatory~~] Services in
 199-47 formulating and implementing the immunization requirements for
 199-48 children admitted to child-care facilities.

199-49 (c) The department [~~board~~] shall cooperate with the State
 199-50 Board of Education in formulating and implementing immunization
 199-51 requirements for students admitted to public or private primary or
 199-52 secondary schools.

199-53 SECTION 3.0222. Section 81.024, Health and Safety Code, is
 199-54 amended to read as follows:

199-55 Sec. 81.024. REPORTS BY DEPARTMENT [~~BOARD~~]. The department
 199-56 [~~board~~] shall provide regular reports of the incidence, prevalence,
 199-57 and medical and economic effects of each disease that the
 199-58 department [~~board~~] determines is a threatening risk to the public
 199-59 health. A disease may be a risk because of its indirect
 199-60 complications.

199-61 SECTION 3.0223. Section 81.041, Health and Safety Code, is
 199-62 amended to read as follows:

199-63 Sec. 81.041. REPORTABLE DISEASES. (a) The executive
 199-64 commissioner [~~board~~] shall identify each communicable disease or
 199-65 health condition that shall be reported under this chapter.

199-66 (b) The executive commissioner [~~board~~] shall classify each
 199-67 reportable disease according to its nature and the severity of its
 199-68 effect on the public health.

199-69 (c) The executive commissioner [~~board~~] shall maintain and

200-1 revise as necessary the list of reportable diseases.

200-2 (d) The executive commissioner [board] may establish
200-3 registries for reportable diseases and other communicable diseases
200-4 and health conditions. The provision to the department of
200-5 information relating to a communicable disease or health condition
200-6 that is not classified as reportable is voluntary only.

200-7 (e) Acquired immune deficiency syndrome and human
200-8 immunodeficiency virus infection are reportable diseases under
200-9 this chapter for which the executive commissioner [board] shall
200-10 require reports.

200-11 (f) In a public health disaster, the commissioner may
200-12 require reports of communicable diseases or other health conditions
200-13 from providers without the adoption of a [board] rule or other
200-14 action by the executive commissioner. The commissioner shall issue
200-15 appropriate instructions relating to complying with the reporting
200-16 requirements of this section.

200-17 SECTION 3.0224. Sections 81.042(c) and (d), Health and
200-18 Safety Code, are amended to read as follows:

200-19 (c) A local school authority shall report a child attending
200-20 school who is suspected of having a reportable disease. The
200-21 executive commissioner [board] by rule shall establish procedures
200-22 to determine if a child should be suspected and reported and to
200-23 exclude the child from school pending appropriate medical diagnosis
200-24 or recovery.

200-25 (d) A person in charge of a clinical or hospital laboratory,
200-26 blood bank, mobile unit, or other facility in which a laboratory
200-27 examination of a specimen derived from a human body yields
200-28 microscopical, cultural, serological, or other evidence of a
200-29 reportable disease shall report the findings, in accordance with
200-30 this section and procedures adopted by the executive commissioner
200-31 [board], in the jurisdiction in which:

200-32 (1) the physician's office is located, if the
200-33 laboratory examination was requested by a physician; or

200-34 (2) the laboratory is located, if the laboratory
200-35 examination was not requested by a physician.

200-36 SECTION 3.0225. Section 81.043(b), Health and Safety Code,
200-37 is amended to read as follows:

200-38 (b) A [Except as provided by Subsection (c), a] health
200-39 authority shall report reportable diseases to the department's
200-40 central office at least as frequently as the interval set by
200-41 department [board] rule.

200-42 SECTION 3.0226. Sections 81.044(a), (b), and (d), Health
200-43 and Safety Code, are amended to read as follows:

200-44 (a) The executive commissioner [board] shall prescribe the
200-45 form and method of reporting under this chapter, which may be in
200-46 writing, by telephone, by electronic data transmission, or by other
200-47 means.

200-48 (b) The executive commissioner [board] may require the
200-49 reports to contain any information relating to a case that is
200-50 necessary for the purposes of this chapter, including:

200-51 (1) the patient's name, address, age, sex, race, and
200-52 occupation;

200-53 (2) the date of onset of the disease or condition;

200-54 (3) the probable source of infection; and

200-55 (4) the name of the attending physician or dentist.

200-56 (d) For a case of acquired immune deficiency syndrome or
200-57 human immunodeficiency virus infection, the executive commissioner
200-58 [department] shall require the reports to contain:

200-59 (1) the information described by Subsection (b); and

200-60 (2) the patient's ethnicity, national origin, and city
200-61 and county of residence.

200-62 SECTION 3.0227. Sections 81.048(a) and (g), Health and
200-63 Safety Code, are amended to read as follows:

200-64 (a) The executive commissioner [board] shall:

200-65 (1) designate certain reportable diseases for
200-66 notification under this section; and

200-67 (2) define the conditions that constitute possible
200-68 exposure to those diseases.

200-69 (g) A hospital that gives notice of a possible exposure

201-1 under Subsection (c) or a local health authority that receives
201-2 notice of a possible exposure under Subsection (c) may give notice
201-3 of the possible exposure to a person other than emergency medical
201-4 personnel, a peace officer, a detention officer, a county jailer,
201-5 or a fire fighter if the person demonstrates that the person was
201-6 exposed to the reportable disease while providing emergency care.
201-7 The executive commissioner [of the Health and Human Services
201-8 Commission] shall adopt rules to implement this subsection.

201-9 SECTION 3.0228. Sections 81.050(a), (b), (c), (d), (e),
201-10 (g), (j), (k), and (l), Health and Safety Code, are amended to read
201-11 as follows:

201-12 (a) The executive commissioner [board] by rule shall
201-13 prescribe the criteria that constitute exposure to reportable
201-14 diseases[, including HIV infection]. The criteria must be based on
201-15 activities that the United States Public Health Service determines
201-16 pose a risk of infection.

201-17 (b) A person whose occupation or whose volunteer service is
201-18 included in one or more of the following categories may request the
201-19 department or a health authority to order testing of another person
201-20 who may have exposed the person to a reportable disease[, including
201-21 HIV infection]:

201-22 (1) a law enforcement officer;
201-23 (2) a fire fighter;
201-24 (3) an emergency medical service employee or
201-25 paramedic;
201-26 (4) a correctional officer;
201-27 (5) an employee, contractor, or volunteer, other than
201-28 a correctional officer, who performs a service in a correctional
201-29 facility as defined by Section 1.07, Penal Code, or a secure
201-30 correctional facility or secure detention facility as defined by
201-31 Section 51.02, Family Code; or
201-32 (6) an employee of a juvenile probation department.

201-33 (c) A request under this section may be made only if the
201-34 person:

201-35 (1) has experienced the exposure in the course of the
201-36 person's employment or volunteer service;
201-37 (2) believes that the exposure places the person at
201-38 risk of a reportable disease[, including HIV infection]; and
201-39 (3) presents to the department or health authority a
201-40 sworn affidavit that delineates the reasons for the request.

201-41 (d) The department or the department's designee who meets
201-42 the minimum training requirements prescribed by department [board]
201-43 rule shall review the person's request and inform the person
201-44 whether the request meets the criteria establishing risk of
201-45 infection with a reportable disease[, including HIV infection].

201-46 (e) The department or the department's designee shall give
201-47 the person who is subject to the order prompt and confidential
201-48 written notice of the order. The order must:

201-49 (1) state the grounds and provisions of the order,
201-50 including the factual basis for its issuance;
201-51 (2) refer the person to appropriate health care
201-52 facilities where the person can be tested for reportable diseases[,-
201-53 including HIV infection]; and
201-54 (3) inform the person who is subject to the order of
201-55 that person's right to refuse to be tested and the authority of the
201-56 department or health authority to ask for a court order requiring
201-57 the test.

201-58 (g) In reviewing the order, the court shall determine
201-59 whether exposure occurred and whether that exposure presents a
201-60 possible risk of infection as defined by department [board] rule.
201-61 The attorney for the state and the attorney for the person subject
201-62 to the order may introduce evidence at the hearing in support of or
201-63 opposition to the testing of the person. On conclusion of the
201-64 hearing, the court shall either issue an appropriate order
201-65 requiring counseling and testing of the person for reportable
201-66 diseases[, including HIV infection,] or refuse to issue the order
201-67 if the court has determined that the counseling and testing of the
201-68 person is unnecessary. The court may assess court costs against the
201-69 person who requested the test if the court finds that there was not

202-1 reasonable cause for the request.

202-2 (j) For the purpose of qualifying for workers' compensation
 202-3 or any other similar benefits for compensation, an employee who
 202-4 claims a possible work-related exposure to a reportable disease[~~, including HIV infection,~~] must provide the employer with a sworn
 202-5 affidavit of the date and circumstances of the exposure and
 202-6 document that, not later than the 10th day after the date of the
 202-7 exposure, the employee had a test result that indicated an absence
 202-8 of the reportable disease[~~, including HIV infection~~].

202-9 (k) A person listed in Subsection (b) who may have been
 202-10 exposed to a reportable disease[~~, including HIV infection,~~] may not
 202-11 be required to be tested.

202-12 (l) In this section, [~~HIV~~ and] "test result" has [have]
 202-13 the meaning [~~meanings~~] assigned by Section 81.101.

202-14 SECTION 3.0229. Section 81.051(j), Health and Safety Code,
 202-15 is amended to read as follows:

202-16 (j) A partner notification program shall routinely evaluate
 202-17 the performance of counselors and other program personnel to ensure
 202-18 that high quality services are being delivered. A program shall
 202-19 adopt quality assurance and training guidelines according to
 202-20 recommendations of the Centers for Disease Control and Prevention
 202-21 of the United States Public Health Service for professionals
 202-22 participating in the program.

202-23 SECTION 3.0230. Section 81.062(b), Health and Safety Code,
 202-24 is amended to read as follows:

202-25 (b) A witness or deponent who is not a party and who is
 202-26 subpoenaed or otherwise compelled to appear at a hearing or
 202-27 proceeding under this section conducted outside the witness's or
 202-28 deponent's county of residence is entitled to a travel and per diem
 202-29 allowance. The executive commissioner [board] by rule shall set
 202-30 the allowance in an amount not to exceed the travel and per diem
 202-31 allowance authorized for state employees traveling in this state on
 202-32 official business.

202-33 SECTION 3.0231. Section 81.064(a), Health and Safety Code,
 202-34 is amended to read as follows:

202-35 (a) The department or a health authority may enter at
 202-36 reasonable times and inspect within reasonable limits a public
 202-37 place in the performance of that person's duty to prevent or control
 202-38 the entry into or spread in this state of communicable disease by
 202-39 enforcing this chapter or the rules [~~of the board~~] adopted under
 202-40 this chapter.

202-41 SECTION 3.0232. Section 81.081, Health and Safety Code, is
 202-42 amended to read as follows:

202-43 Sec. 81.081. DEPARTMENT'S [BOARD'S] DUTY. The department
 202-44 [board] shall impose control measures to prevent the spread of
 202-45 disease in the exercise of its power to protect the public health.

202-46 SECTION 3.0233. Sections 81.082(a) and (c-1), Health and
 202-47 Safety Code, are amended to read as follows:

202-48 (a) A health authority has supervisory authority and
 202-49 control over the administration of communicable disease control
 202-50 measures in the health authority's jurisdiction unless
 202-51 specifically preempted by the department. Control measures imposed
 202-52 by a health authority must be consistent with, and at least as
 202-53 stringent as, the control measure standards in rules adopted by the
 202-54 executive commissioner [board].

202-55 (c-1) A health authority may designate health care
 202-56 facilities within the health authority's jurisdiction that are
 202-57 capable of providing services for the examination, observation,
 202-58 quarantine, isolation, treatment, or imposition of control
 202-59 measures during a public health disaster or during an area
 202-60 quarantine under Section 81.085. A health authority may not
 202-61 designate a nursing facility [home] or other institution licensed
 202-62 under Chapter 242.

202-63 SECTION 3.0234. Section 81.084(d), Health and Safety Code,
 202-64 is amended to read as follows:

202-65 (d) The department or health authority shall remove the
 202-66 quarantine and return control of the property to the person who owns
 202-67 or controls it if the control measures are effective. If the
 202-68 control measures are ineffective or if there is not a technically
 202-69

203-1 feasible control measure available for use, the department or
203-2 health authority may continue the quarantine and order the person
203-3 who owns or controls the property:

203-4 (1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent
203-5 the spread of infection or contamination;

203-6 (2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or
203-7 contaminated; or

203-8 (3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the
203-9 infected or contaminated area until the quarantine is removed by the department [board] or health authority.

203-10 SECTION 3.0235. Sections 81.086(d), (e), and (h), Health and Safety Code, are amended to read as follows:

203-11 (d) The owner or operator of a carrier or conveyance placed in quarantine by order of the department or health authority, or of a county or district court under Section 81.083 or 81.084, shall bear the expense of the control measures employed to disinfect or decontaminate the carrier or conveyance. The department or health authority, as appropriate, shall charge and be reimbursed for the cost of control measures performed by the department's or health authority's employees. The department [board] shall deposit the reimbursements to the credit of the general revenue fund to be used to administer this chapter. A health authority shall distribute the reimbursements to each county, municipality, or other governmental entity in an amount proportional to that entity's contribution to the quarantine and control expense.

203-12 (e) The owner or claimant of cargo or an object on board the carrier or conveyance shall pay the expense of the control measures employed in the manner provided by Section 81.084. The cost of services rendered or provided by the department [board] or health authority is subject to reimbursement as provided by Subsection (d).

203-13 (h) If the department or health authority has reasonable cause to believe that a carrier or conveyance is transporting cargo or an object that is or may be infected or contaminated with a communicable disease, the department or health authority may:

203-14 (1) require that the cargo or object be transported in secure confinement or sealed in a car, trailer, hold, or compartment, as appropriate, that is secured on the order and instruction of the department [board] or health authority, if the cargo or object is being transported through this state;

203-15 (2) require that the cargo or object be unloaded at an alternate location equipped with adequate investigative and disease control facilities if the cargo or object is being transported to an intermediate or ultimate destination in this state that cannot provide the necessary facilities; and

203-16 (3) investigate and, if necessary, quarantine the cargo or object and impose any required control measure as authorized by Section 81.084.

203-17 SECTION 3.0236. Sections 81.091(a), (c), and (d), Health and Safety Code, are amended to read as follows:

203-18 (a) A physician, nurse, midwife, or other person in attendance at childbirth shall use or cause to be used prophylaxis approved by the executive commissioner [board] to prevent ophthalmia neonatorum.

203-19 (c) Subject to the availability of funds, the department shall furnish prophylaxis approved by the executive commissioner [board] free of charge to:

203-20 (1) health care providers if the newborn's financially responsible adult is unable to pay; and

203-21 (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.

203-22 (d) If a physician is not available to issue a standing delegation order or if no physician will agree to issue a standing

204-1 delegation order, a midwife shall administer or cause to be
 204-2 administered by an appropriately trained and licensed individual
 204-3 prophylaxis approved by the executive commissioner [~~Texas Board of~~
 204-4 ~~Health~~] to prevent ophthalmia neonatorum to each infant that the
 204-5 midwife delivers.

204-6 SECTION 3.0237. Section 81.0955(b), Health and Safety Code,
 204-7 is amended to read as follows:

204-8 (b) A hospital, certified emergency medical services
 204-9 personnel, or a physician on behalf of the person exposed,
 204-10 following a report of the exposure incident, shall take reasonable
 204-11 steps to test the deceased person for communicable diseases. The
 204-12 hospital, certified emergency medical services personnel, or
 204-13 physician shall provide the test results to the department or to the
 204-14 local health authority responsible for following the procedures
 204-15 prescribed by Section 81.050(h) to inform the person exposed and,
 204-16 if applicable, the next of kin of the deceased person regarding the
 204-17 test results. The hospital, certified emergency medical services
 204-18 personnel, or physician shall follow applicable reporting
 204-19 requirements prescribed by Subchapter C. This subsection does not
 204-20 impose a duty on a hospital, certified emergency medical services
 204-21 personnel, or a physician to provide any further testing,
 204-22 treatment, or services or to perform further procedures. The
 204-23 executive commissioner [~~of the Health and Human Services~~
 204-24 ~~Commission~~] shall adopt rules to implement this subsection.

204-25 SECTION 3.0238. Sections 81.101(1) and (4), Health and
 204-26 Safety Code, are amended to read as follows:

204-27 (1) "AIDS" means acquired immune deficiency syndrome
 204-28 as defined by the Centers for Disease Control and Prevention of the
 204-29 United States Public Health Service.

204-30 (4) "Blood bank" means a blood bank, blood center,
 204-31 regional collection center, tissue bank, transfusion service, or
 204-32 other similar facility licensed by the Center for [~~Bureau of~~
 204-33 Biologics Evaluation and Research of the United States Food and
 204-34 Drug Administration, accredited for membership in the AABB
 204-35 (formerly known as the American Association of Blood Banks), or
 204-36 qualified for membership in the American Association of Tissue
 204-37 Banks.

204-38 SECTION 3.0239. Sections 81.102(a), (c), and (d), Health
 204-39 and Safety Code, are amended to read as follows:

204-40 (a) A person may not require another person to undergo a
 204-41 medical procedure or test designed to determine or help determine
 204-42 if a person has AIDS or HIV infection, antibodies to HIV, or
 204-43 infection with any other probable causative agent of AIDS unless:

204-44 (1) the medical procedure or test is required under
 204-45 Subsection (d), under Section 81.050, or under Article 21.31, Code
 204-46 of Criminal Procedure;

204-47 (2) the medical procedure or test is required under
 204-48 Section 81.090, and no objection has been made under Section
 204-49 81.090(1);

204-50 (3) the medical procedure or test is authorized under
 204-51 Chapter 545, Insurance Code;

204-52 (4) a medical procedure is to be performed on the
 204-53 person that could expose health care personnel to AIDS or HIV
 204-54 infection, according to department rules [~~board guidelines~~]
 204-55 defining the conditions that constitute possible exposure to AIDS
 204-56 or HIV infection, and there is sufficient time to receive the test
 204-57 result before the procedure is conducted; or

204-58 (5) the medical procedure or test is necessary:

204-59 (A) as a bona fide occupational qualification and
 204-60 there is not a less discriminatory means of satisfying the
 204-61 occupational qualification;

204-62 (B) to screen blood, blood products, body fluids,
 204-63 organs, or tissues to determine suitability for donation;

204-64 (C) in relation to a particular person under this
 204-65 chapter;

204-66 (D) to manage accidental exposure to blood or
 204-67 other body fluids, but only if the test is conducted under written
 204-68 infectious disease control protocols adopted by the health care
 204-69 agency or facility;

(E) to test residents and clients of residential facilities of the department or the Department of Aging and Disability Services [Texas Department of Mental Health and Mental Retardation], but only if:

(i) the test result would change the medical or social management of the person tested or others who associated with that person; and

(ii) the test is conducted in accordance with guidelines adopted by the residential facility or rules of the appropriate department [Texas Department of Mental Health and Mental Retardation and approved by the department]; or

(F) to test residents and clients of residential facilities of the Texas Juvenile Justice Department [~~Youth Commission~~], but only if:

(i) the test result would change the medical or social management of the person tested or others who associate with that person; and

(ii) the test is conducted in accordance with guidelines adopted by the Texas Juvenile Justice Department [Youth Commission].

(c) Protocols adopted under Subsection (a)(5)(D) [~~(a)(4)(D)~~] must clearly establish procedural guidelines with criteria for testing that respect the rights of the person with the infection and the person who may be exposed to that infection. The protocols may not require the person who may have been exposed to be tested and must ensure the confidentiality of the person with the infection in accordance with this chapter.

(d) The executive commissioner [board] may adopt emergency rules for mandatory testing for HIV infection if the commissioner files a certificate of necessity with the executive commissioner [board] that contains supportive findings of medical and scientific fact and that declares a sudden and imminent threat to public health. The rules must provide for:

(1) the narrowest application of HIV testing necessary for the protection of the public health;

(2) procedures and guidelines to be followed by an affected entity or state agency that clearly specify the need and justification for the testing, specify methods to be used to assure confidentiality, and delineate responsibility and authority for carrying out the recommended actions;

(3) counseling of persons with seropositive test results; and

(4) confidentiality regarding persons tested and

SECTION 3.0240. Section 81.107(a), Health and Safety Code,

(a) In a case of accidental exposure to blood or other body

fluids under Section 81.102(a)(5)(D) [~~81.102(a)(4)(D)~~], the health care agency or facility may test a person who may have exposed the health care worker to HIV without the person's specific consent to the test.

SECTION 3.0241. Section 81.108, Health and Safety Code, is amended to read as follows:

Sec. 81.108. TESTING BY INSURERS. The Insurance Code and any rules adopted by the commissioner of insurance for the Texas Department [State Board] of Insurance exclusively govern all practices of insurers in testing applicants to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.

SECTION 3.0242. Section 81.159(a), Health and Safety Code, is amended to read as follows:

(a) The commissioner shall designate health care facilities throughout the state that are capable of providing services for the examination, observation, isolation, or treatment of persons having or suspected of having a communicable disease. However, the commissioner may not designate:

(1) a nursing facility [home] or custodial care home required to be licensed under Chapter 242; or

(2) an ICF-IID [intermediate care facility for the

206-1 ~~mentally retarded~~] required to be licensed under Chapter 252.

206-2 SECTION 3.0243. Section 81.166(d), Health and Safety Code,
206-3 is amended to read as follows:

206-4 (d) The notification of probable cause hearing shall read as
206-5 follows:

206-6 (Style of Case)

206-7 NOTIFICATION OF PROBABLE CAUSE HEARING

206-8 On this the _____ day of _____, 20____ [19____], the
206-9 undersigned hearing officer heard evidence concerning the need for
206-10 protective custody of _____ (hereinafter referred to as
206-11 proposed patient). The proposed patient was given the opportunity
206-12 to challenge the allegations that the proposed patient [s]he
206-13 presents a substantial risk of serious harm to self or others.

206-14 The proposed patient and the proposed patient's [his or her]
206-15 attorney _____ have been given written notice
206-16 that the proposed patient was placed under an order of protective
206-17 custody and the reasons for such order on _____ (date of
206-18 notice).

206-19 I have examined the affidavit of medical evaluation and
206-20 _____ (other evidence considered). Based on this
206-21 evidence, I find that there is probable cause to believe that the
206-22 proposed patient presents a substantial risk of serious harm to
206-23 self [himself or herself] (yes _____ or no _____) or others (yes _____
206-24 or no _____) such that the proposed patient [s]he cannot be at
206-25 liberty pending final hearing because the proposed patient [s]he
206-26 is infected with or is reasonably suspected of being infected with a
206-27 communicable disease that presents an immediate threat to the
206-28 public health and the proposed patient [s]he has failed or
206-29 refused to comply with the orders of the health authority or the
206-30 [Texas] Department of State Health Services delivered on _____
206-31 (date of service) _____.

206-32 SECTION 3.0244. Section 81.178(d), Health and Safety Code,
206-33 is amended to read as follows:

206-34 (d) The appropriate courts of this state retain
206-35 jurisdiction to inquire at any time into the person's [mental]
206-36 condition and the necessity of the person's continued commitment.

206-37 SECTION 3.0245. Sections 81.211(a) and (b), Health and
206-38 Safety Code, are amended to read as follows:

206-39 (a) In the case of a person who is not a resident of this
206-40 state and who may be admitted to a public health [state chest]
206-41 hospital in accordance with Section 13.046, the attorney general,
206-42 at the request of the department, shall file a copy of an order
206-43 issued by a court of another state that authorizes the commitment of
206-44 the person to a health care facility for inpatient care in the
206-45 manner provided by Chapter 35, Civil Practice and Remedies Code,
206-46 for enforcement of foreign judgments.

206-47 (b) The application must be filed with the district court in
206-48 the county in which the public health [state chest] hospital to
206-49 which the person will be admitted is located.

206-50 SECTION 3.0246. Section 81.304, Health and Safety Code, is
206-51 amended to read as follows:

206-52 Sec. 81.304. MINIMUM STANDARDS. The executive commissioner
206-53 [board] by rule shall adopt minimum standards to implement the
206-54 exposure control plan and the other provisions of this subchapter.
206-55 The rules shall be analogous to standards adopted by the federal
206-56 Occupational Safety and Health Administration. Each governmental
206-57 unit shall comply with the minimum standards adopted under this
206-58 subchapter.

206-59 SECTION 3.0247. Section 81.305(a), Health and Safety Code,
206-60 is amended to read as follows:

206-61 (a) The executive commissioner [board] by rule shall
206-62 recommend that governmental units implement needleless systems and
206-63 sharps with engineered sharps injury protection for employees.

206-64 SECTION 3.0248. Sections 81.306(a) and (c), Health and
206-65 Safety Code, are amended to read as follows:

206-66 (a) The executive commissioner [board] by rule shall
206-67 require that information concerning exposure incidents be recorded
206-68 in a written or electronic sharps injury log to be maintained by a
206-69 governmental unit. This information must be reported to the

207-1 department and must include:

207-2 (1) the date and time of the exposure incident;

207-3 (2) the type and brand of sharp involved in the
207-4 exposure incident; and

207-5 (3) a description of the exposure incident, including:

207-6 (A) the job classification or title of the
207-7 exposed employee;

207-8 (B) the department or work area where the
207-9 exposure incident occurred;

207-10 (C) the procedure that the exposed employee was
207-11 performing at the time of the incident;

207-12 (D) how the incident occurred;

207-13 (E) the employee's body part that was involved in
207-14 the exposure incident; and

207-15 (F) whether the sharp had engineered sharps
207-16 injury protection and, if so, whether the protective mechanism was
207-17 activated and whether the injury occurred before, during, or after
207-18 the activation of the protective mechanism.

207-19 (c) All information and materials obtained or compiled by
207-20 the department in connection with a report under this section are
207-21 confidential and not subject to disclosure under Chapter 552,
207-22 Government Code, and not subject to disclosure, discovery,
207-23 subpoena, or other means of legal compulsion for their release by
207-24 the department. The department shall make available, in aggregate
207-25 form, the information described in Section 81.305(b) and this
207-26 section, provided that the name and other information identifying
207-27 the facility is deleted and the information is provided according
207-28 to public health regions established by the executive commissioner
207-29 [department].

207-30 SECTION 3.0249. Sections 81.307(a) and (c), Health and
207-31 Safety Code, are amended to read as follows:

207-32 (a) The department, in accordance with rules adopted by the
207-33 executive commissioner [board], shall implement a registration
207-34 program for existing needless systems and sharps with engineered
207-35 sharps injury protection.

207-36 (c) The department shall collect [charge] a fee to register
207-37 a device in an amount established by rule by the executive
207-38 commissioner [board]. The fees collected under this section may be
207-39 appropriated only to the department to implement this subchapter.

207-40 SECTION 3.0250. Section 81.352(b), Health and Safety Code,
207-41 is amended to read as follows:

207-42 (b) The executive commissioner [department] shall adopt
207-43 rules to govern:

207-44 (1) the form and content of the sign required by
207-45 Subsection (a) and the manner and place of posting of the sign; and
207-46 (2) the form and content of the written warning
207-47 required by Subsection (a).

207-48 SECTION 3.0251. Sections 81.353(a) and (d), Health and
207-49 Safety Code, are amended to read as follows:

207-50 (a) The department may assess an administrative penalty if a
207-51 person violates this subchapter [section] or a rule adopted under
207-52 this subchapter [section].

207-53 (d) The enforcement of the penalty may be stayed during the
207-54 time the order is under judicial review if the person pays the
207-55 penalty to the clerk of the court or files a supersedeas bond with
207-56 the court in the amount of the penalty. A person who cannot afford
207-57 to pay the penalty or file the bond may stay the enforcement by
207-58 filing an affidavit in the manner required by the Texas Rules of
207-59 Civil Procedure for a party who cannot afford to file security for
207-60 costs, subject to the right of the department [board] to contest the
207-61 affidavit as provided by those rules.

207-62 SECTION 3.0252. Section 82.004, Health and Safety Code, is
207-63 amended to read as follows:

207-64 Sec. 82.004. REGISTRY REQUIRED. The department [board]
207-65 shall maintain a cancer registry for the state.

207-66 SECTION 3.0253. Section 82.005(b), Health and Safety Code,
207-67 is amended to read as follows:

207-68 (b) The cancer registry must include:

207-69 (1) a record of the cases of cancer that occur in the

208-1 state; and

208-2 (2) information concerning cancer cases as the
208-3 executive commissioner [board] considers necessary and appropriate
208-4 for the recognition, prevention, cure, or control of cancer.

208-5 SECTION 3.0254. Section 82.006, Health and Safety Code, is
208-6 amended to read as follows:

208-7 Sec. 82.006. EXECUTIVE COMMISSIONER AND DEPARTMENT [BOARD]
208-8 POWERS. (a) To implement this chapter, the executive commissioner
208-9 [board] may [+]

208-10 [+] adopt rules that the executive commissioner
208-11 [board] considers necessary. [+]

208-12 (b) To implement this chapter, the department may:

208-13 (1) [+] execute contracts considered [that the
208-14 board considers] necessary;

208-15 (2) [+] receive the data from medical records of
208-16 cases of cancer that are in the custody or under the control of
208-17 clinical laboratories, health care facilities, and health care
208-18 practitioners to record and analyze the data directly related to
208-19 those diseases;

208-20 (3) [+] compile and publish statistical and other
208-21 studies derived from the patient data obtained under this chapter
208-22 to provide, in an accessible form, information that is useful to
208-23 physicians, other medical personnel, and the general public;

208-24 (4) [+] comply with requirements as necessary to
208-25 obtain federal funds in the maximum amounts and most advantageous
208-26 proportions possible;

208-27 (5) [+] receive and use gifts made for the purpose
208-28 of this chapter; and

208-29 (6) [+] limit cancer reporting activities under
208-30 this chapter to specified geographic areas of the state to ensure
208-31 optimal use of funds available for obtaining the data.

208-32 SECTION 3.0255. Sections 82.008(a), (b), and (e), Health
208-33 and Safety Code, are amended to read as follows:

208-34 (a) To ensure an accurate and continuing source of data
208-35 concerning cancer, each health care facility, clinical laboratory,
208-36 and health care practitioner shall furnish to the department [board
208-37 or its representative], on request, data the executive commissioner
208-38 [board] considers necessary and appropriate that is derived from
208-39 each medical record pertaining to a case of cancer that is in the
208-40 custody or under the control of the health care facility, clinical
208-41 laboratory, or health care practitioner. The department may not
208-42 request data that is more than three years old unless the department
208-43 is investigating a possible cancer cluster.

208-44 (b) A health care facility, clinical laboratory, or health
208-45 care practitioner shall furnish the data requested under Subsection
208-46 (a) in a reasonable format prescribed by [the] department rule and
208-47 within six months of the patient's admission, diagnosis, or
208-48 treatment for cancer unless a different period is prescribed by the
208-49 United States Department of Health and Human Services.

208-50 (e) The executive commissioner [board] shall adopt
208-51 procedures that ensure adequate notice is given to the health care
208-52 facility, clinical laboratory, or health care practitioner before
208-53 the department accesses data under Subsection (d).

208-54 SECTION 3.0256. Section 82.009(b), Health and Safety Code,
208-55 is amended to read as follows:

208-56 (b) Medical or epidemiological information may be released:

208-57 (1) for statistical purposes in a manner that prevents
208-58 identification of individuals, health care facilities, clinical
208-59 laboratories, or health care practitioners;

208-60 (2) with the consent of each person identified in the
208-61 information; or

208-62 (3) to promote cancer research, including release of
208-63 information to other cancer registries and appropriate state and
208-64 federal agencies, under rules adopted by the executive commissioner
208-65 [board] to ensure confidentiality as required by state and federal
208-66 laws.

208-67 SECTION 3.0257. Section 82.011, Health and Safety Code, is
208-68 amended to read as follows:

208-69 Sec. 82.011. EXAMINATION AND SUPERVISION NOT REQUIRED.

209-1 This chapter does not require an individual to submit to any medical
 209-2 examination or supervision or to examination or supervision by the
 209-3 department [board or its representatives].

209-4 SECTION 3.0258. Sections 84.003(b), (c), (d), and (e),
 209-5 Health and Safety Code, are amended to read as follows:

209-6 (b) Blood lead levels in adults are laboratory findings that
 209-7 are reportable to the department as provided by department [board]
 209-8 rule.

209-9 (c) The executive commissioner [board] may adopt rules that
 209-10 require other occupational conditions to be reported under this
 209-11 chapter. Before the executive commissioner [board] requires
 209-12 another occupational condition to be reported, the executive
 209-13 commissioner [board] must find that the condition:

209-14 (1) has a well-understood etiology;
 209-15 (2) results predominantly from occupational
 209-16 exposures; and
 209-17 (3) is preventable.

209-18 (d) The executive commissioner [board] shall maintain a
 209-19 list of reportable conditions.

209-20 (e) The executive commissioner [board] shall adopt rules
 209-21 necessary to administer and implement this chapter.

209-22 SECTION 3.0259. Section 84.004(c), Health and Safety Code,
 209-23 is amended to read as follows:

209-24 (c) The executive commissioner [board] shall prescribe the
 209-25 form and method of reporting. The executive commissioner [board]
 209-26 may require the reports to contain any information necessary to
 209-27 achieve the purposes of this chapter, including the person's name,
 209-28 address, age, sex, race, occupation, employer, and attending
 209-29 physician.

209-30 SECTION 3.0260. Section 84.005(b), Health and Safety Code,
 209-31 is amended to read as follows:

209-32 (b) The department may seek, receive, and spend any funds
 209-33 received through appropriations, grants, or donations from public
 209-34 or private sources for the purpose of identifying, reporting, or
 209-35 preventing those occupational conditions that have been determined
 209-36 by the executive commissioner [board] to be injurious or to be a
 209-37 threat to the public health, subject to any limitations or
 209-38 conditions prescribed by the legislature.

209-39 SECTION 3.0261. Section 84.006(b), Health and Safety Code,
 209-40 is amended to read as follows:

209-41 (b) The executive commissioner [board] shall adopt rules
 209-42 establishing procedures to ensure that all information and records
 209-43 maintained by the department under this chapter are kept
 209-44 confidential and protected from release to unauthorized persons.

209-45 SECTION 3.0262. Section 84.007(b), Health and Safety Code,
 209-46 is amended to read as follows:

209-47 (b) In performing the department's [commissioner's] duty to
 209-48 prevent an occupational condition, the department's [commissioner
 209-49 or the commissioner's] designee may enter at reasonable times and
 209-50 inspect within reasonable limits all or any part of an area,
 209-51 structure, or conveyance, regardless of ownership, that is not used
 209-52 for private residential purposes.

209-53 SECTION 3.0263. Sections 85.002(1), (2), and (6), Health
 209-54 and Safety Code, are amended to read as follows:

209-55 (1) "AIDS" means acquired immune deficiency syndrome
 209-56 as defined by the Centers for Disease Control and Prevention of the
 209-57 United States Public Health Service.

209-58 (2) "Communicable disease" has the meaning assigned by
 209-59 Section 81.003 [~~Communicable Disease Prevention and Control~~
 209-60 ~~Act~~].

209-61 (6) "Testing program" means a [medical] program using
 209-62 a diagnostic test approved by the United States Food and Drug
 209-63 Administration to indicate the presence of HIV [to test for AIDS,
 209-64 HIV infection, antibodies to HIV, or infection with any other
 209-65 probable causative agent of AIDS].

209-66 SECTION 3.0264. The heading to Subchapter A, Chapter 85,
 209-67 Health and Safety Code, is amended to read as follows:

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SUBCHAPTER A. GENERAL PROVISIONS AND EDUCATIONAL MATERIALS
[EDUCATION PROGRAMS]

SECTION 3.0265. Sections 85.004 and 85.005, Health and Safety Code, are amended to read as follows:

Sec. 85.004. EDUCATIONAL MATERIALS [EDUCATION PROGRAMS].

(a) The department shall develop model educational materials [education programs] to be available on the department's Internet website to educate the public about AIDS and HIV infection.

(b) The [As part of the programs, the department shall develop a model] educational materials must:

(1) include information [pamphlet] about methods of transmission and prevention of HIV infection, [about] state laws relating to the transmission, and [to] conduct that may result in the transmission of HIV; and [.]

(2) [(c) The programs must] be scientifically accurate and factually correct and designed to:

(A) [1] communicate to the public knowledge about methods of transmission and prevention of HIV infection; and

(B) [2] educate the public about transmission risks in social, employment, and educational situations[+]
[2] educate health care workers and health facility

[(3) educate health care workers and health facility employees about methods of transmission and prevention in their particular workplace environments; and

[(4) educate the public about state laws relating to the transmission and conduct that may result in the transmission of HIV.]

Sec. 85.005. EDUCATIONAL MATERIALS DESIGNED FOR CERTAIN PERSONS; SPECIFIC INFORMATION [SPECIAL COMPONENTS OF EDUCATION PROGRAMS] (a) The department shall include in the educational

~~PROGRAMS~~. (a) The department shall include in the educational materials specific information [~~education programs special components~~] designed to reach:

(1) persons with behavior conducive to HIV transmission;

(2) persons younger than 18 years of age; and
(3) minority groups.

(b) In developing educational materials [designing education programs] for ethnic minorities and in assisting local community organizations in developing educational materials [education programs] for minority groups, the department shall ensure that the educational materials [programs] reflect the nature and spread of HIV infection in minorities in this state.

SECTION 3.0266. The heading to Section 85.006, Health and Safety Code, is amended to read as follows:

Sec. 85.006. EDUCATIONAL MATERIALS [EDUCATION PROGRAMS] FOR DISABLED PERSONS WITH DISABILITIES.

SECTION 3.0267. Sections 85.006(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The department shall develop and promote the availability of educational materials concerning HIV [education] and prevention of HIV infection [programs] specifically designed to address the concerns of persons with physical or mental disabilities.

(b) In developing [designing] those educational materials [programs], the department shall consult persons with disabilities or consult experts in the appropriate professional disciplines.

Safety Code, is amended to read as follows:

Sec. 85.007. EDUCATIONAL MATERIALS [EDUCATION PROGRAMS]

FOR MINORS.

SECTION 3.0269. Sections 85.007(a) and (c), Health and

Safety Code, are amended to read as follows:

(a) The department shall give priority to developing model educational materials for education programs for persons younger than 18 years of age.

(c) In addition, the educational materials [~~in the education program~~] intended for persons younger than 18 years of age must:

(1) teach that sexual activity before marriage is likely to have harmful psychological and physical consequences;

(2) teach adolescents ways to recognize and respond to unwanted physical and verbal sexual advances;

- (3) teach that the use of alcohol or drugs increases a person's vulnerability to unwanted sexual advances; and
- (4) emphasize the importance of attaining self-sufficiency before engaging in sexual activity.

SECTION 3.0270. Sections 85.008, 85.009, 85.010, and 85.011, Health and Safety Code, are amended to read as follows:

Sec. 85.008. PROMOTION [~~DISTRIBUTION~~] OF AVAILABILITY OF EDUCATIONAL MATERIALS [~~EDUCATION PROGRAMS~~]. [a] The department shall determine where HIV education efforts are needed in this state and shall promote the availability of educational materials on the department's Internet website [~~initiate programs~~] in those areas [~~by identifying local resources~~].

[(b) The department shall assist communities, especially those in rural areas, in establishing self-sustaining education programs, using public and private resources.]

Sec. 85.009. AVAILABILITY OF EDUCATIONAL MATERIALS
[EDUCATION PROGRAMS AVAILABLE ON REQUEST]. The department shall make the educational materials [the education programs] available on the department's Internet website for [to] local governments and private businesses [on request].

Sec. 85.010. EDUCATIONAL COURSE FOR EMPLOYEES AND CLIENTS OF HEALTH CARE FACILITIES. A health care facility licensed by the department or [] the [Texas] Department of Aging and Disability Services [Mental Health and Mental Retardation, or the Texas Department of Human Services] shall require its employees to complete an educational course about HIV infection based on the model educational materials [education programs] developed by the department.

Sec. 85.011. CONTRACTS FOR EDUCATIONAL MATERIALS [EDUCATION PROGRAMS]. (a) The department may contract with any person, other than a person who advocates or promotes conduct that violates state law, for the design and[-] development[, and distribution] of educational materials [education programs].

(b) This section does not restrict the inclusion in educational materials of [an education program from providing] accurate information about different ways to reduce the risk of exposure to or the transmission of HIV.

SECTION 3.0271. Sections 85.012(b) and (e), Health and Safety Code, are amended to read as follows:

(b) The model workplace guidelines must include provisions stating that:

(1) all employees will receive some education about methods of transmission and prevention of HIV infection and related conditions;

- (2) accommodations will be made to keep persons with HIV infection employed and productive for as long as possible;
- (3) the confidentiality of employee medical records will be protected;

(4) HIV-related policies will be consistent with current information from public health authorities, such as the Centers for Disease Control and Prevention of the United States Public Health Service, and with state and federal law and regulations;

(5) persons with HIV infection are entitled to the same rights and opportunities as persons with other communicable diseases; and

(e) Employers should be encouraged to adopt HIV-related workplace guidelines that incorporate, at a minimum, the guidelines established by the National Institute of Allergy and Infectious Diseases.

established by the department [board] under this section.

SECTION 3.0272. Section 85.015(b), Health and Safety Code, is amended to read as follows:

(b) Subsection (a)(2) does not restrict the inclusion in educational materials of [an education program from providing] accurate information about ways to reduce the risk of exposure to or

212-1 transmission of HIV.

212-2 SECTION 3.0273. Section 85.016, Health and Safety Code, is
212-3 amended to read as follows:

212-4 Sec. 85.016. RULES. The executive commissioner [board] may
212-5 adopt rules necessary to implement Subchapters A through F.

212-6 SECTION 3.0274. Sections 85.032 and 85.033, Health and
212-7 Safety Code, are amended to read as follows:

212-8 Sec. 85.032. RULES; PROGRAM STRUCTURE. (a) The executive
212-9 commissioner [board] may adopt rules relating to:

212-10 (1) the services that may be furnished under the
212-11 program;

212-12 (2) a system of priorities regarding the types of
212-13 services provided, geographic areas covered, or classes of
212-14 individuals or communities targeted for services under the program;
212-15 and

212-16 (3) a process for resolving conflicts between the
212-17 department and a program receiving money under this subchapter.

212-18 (b) Executive commissioner [Board] or department actions
212-19 relating to service, geographic, and other priorities shall be
212-20 based on the set of priorities and guidelines established under
212-21 this section.

212-22 (c) In structuring the program and adopting rules, the
212-23 department and the executive commissioner, as appropriate, [board]
212-24 shall attempt to:

212-25 (1) coordinate the use of federal, local, and private
212-26 funds;

212-27 (2) encourage the provision of community-based
212-28 services;

212-29 (3) address needs that are not met by other sources of
212-30 funding;

212-31 (4) provide funding as extensively as possible across
212-32 the regions of the state in amounts that reflect regional needs; and

212-33 (5) encourage cooperation among local service
212-34 providers.

212-35 Sec. 85.033. COORDINATION OF SERVICES. (a) To prevent
212-36 unnecessary duplication of services, the executive commissioner
212-37 [board] and the department shall seek to coordinate the services
212-38 provided by eligible programs under Subchapters A through G with
212-39 existing federal, state, and local programs.

212-40 (b) The department shall consult with the [Texas]
212-41 Department of Aging and Disability [Human] Services and the
212-42 commission to ensure that programs funded under this subchapter
212-43 complement and do not unnecessarily duplicate services provided
212-44 through the [Texas] Department of Aging and Disability [Human]
212-45 Services and the commission.

212-46 SECTION 3.0275. Section 85.041(b), Health and Safety Code,
212-47 is amended to read as follows:

212-48 (b) The executive commissioner [board] may adopt rules
212-49 relating to the information a program is required to report to the
212-50 department and shall adopt procedures and forms for reporting the
212-51 information to prevent unnecessary and duplicative reporting of
212-52 data.

212-53 SECTION 3.0276. Section 85.044, Health and Safety Code, is
212-54 amended to read as follows:

212-55 Sec. 85.044. ADVISORY COMMITTEE. The executive
212-56 commissioner [board] may appoint an advisory committee to assist in
212-57 the development of procedures and guidelines required by this
212-58 subchapter.

212-59 SECTION 3.0277. Section 85.061(b), Health and Safety Code,
212-60 is amended to read as follows:

212-61 (b) The program shall assist hospital districts, local
212-62 health departments, public or nonprofit hospitals and clinics,
212-63 nonprofit community organizations, and HIV-infected individuals in
212-64 the purchase of medications approved by the commissioner [board]
212-65 that have been shown to be effective in reducing hospitalizations
212-66 due to HIV-related conditions.

212-67 SECTION 3.0278. Section 85.062(a), Health and Safety Code,
212-68 is amended to read as follows:

212-69 (a) To be eligible for the program, an individual:

213-1 (1) must not be eligible for Medicaid benefits;
 213-2 (2) must meet financial eligibility criteria set by
 213-3 department [board] rule;
 213-4 (3) must not qualify for any other state or federal
 213-5 program available for financing the purchase of the prescribed
 213-6 medication; and
 213-7 (4) must be diagnosed by a licensed physician as
 213-8 having AIDS or an HIV-related condition or illness of at least the
 213-9 minimal severity set by the executive commissioner [board].

213-10 SECTION 3.0279. Section 85.063, Health and Safety Code, is
 213-11 amended to read as follows:

213-12 Sec. 85.063. PROCEDURES AND ELIGIBILITY GUIDELINES. The
 213-13 executive commissioner [board] by rule shall establish:

213-14 (1) application and distribution procedures;
 213-15 (2) eligibility guidelines to ensure the most
 213-16 appropriate distribution of funds available each year; and
 213-17 (3) appellate procedures to resolve any eligibility or
 213-18 funding conflicts.

213-19 SECTION 3.0280. Section 85.064(d), Health and Safety Code,
 213-20 is amended to read as follows:

213-21 (d) The department shall deposit money received under this
 213-22 section in the state treasury to the credit of the general revenue
 213-23 fund [HIV medication fund and to the credit of a special account in
 213-24 that fund that shall be established for each entity sending funds
 213-25 under this section].

213-26 SECTION 3.0281. Section 85.081(a), Health and Safety Code,
 213-27 is amended to read as follows:

213-28 (a) The department shall develop, and the executive
 213-29 commissioner shall adopt, model protocols for counseling and
 213-30 testing related to HIV infection. The protocols shall be made
 213-31 available to health care providers on request.

213-32 SECTION 3.0282. Section 85.087(d), Health and Safety Code,
 213-33 is amended to read as follows:

213-34 (d) The executive commissioner by rule [board] shall set the
 213-35 fee in an amount that is reasonable and necessary to cover the costs
 213-36 of providing the course.

213-37 SECTION 3.0283. Section 85.088(a), Health and Safety Code,
 213-38 is amended to read as follows:

213-39 (a) State-funded primary health, women's reproductive
 213-40 health, and sexually transmitted disease clinics shall:

213-41 (1) make available to patients and clients information
 213-42 and educational materials concerning the prevention of HIV
 213-43 infection; and

213-44 (2) provide or refer patients and clients to
 213-45 voluntary [anonymous] and affordable counseling and HIV testing
 213-46 services, including the patient's or client's choice of anonymous
 213-47 or confidential HIV testing or counseling [programs concerning HIV
 213-48 infection or provide referrals to those programs].

213-49 SECTION 3.0284. Sections 85.111(a), (b), and (c), Health
 213-50 and Safety Code, are amended to read as follows:

213-51 (a) Each state agency annually shall provide to each state
 213-52 employee [an] educational information [pamphlet] about:

213-53 (1) methods of transmission and prevention of HIV
 213-54 infection;
 213-55 (2) state laws relating to the transmission of HIV
 213-56 infection; and
 213-57 (3) conduct that may result in the transmission of HIV
 213-58 infection.

213-59 (b) The educational information [pamphlet] shall be
 213-60 provided to a newly hired state employee on the first day of
 213-61 employment.

213-62 (c) The educational information [pamphlet] shall be based
 213-63 on the model developed by the department and shall include the
 213-64 workplace guidelines adopted by the state agency.

213-65 SECTION 3.0285. Section 85.113, Health and Safety Code, is
 213-66 amended to read as follows:

213-67 Sec. 85.113. WORKPLACE GUIDELINES FOR STATE CONTRACTORS.
 213-68 An entity that contracts with or is funded by any of the following
 213-69 state agencies to operate a program involving direct client contact

214-1 shall adopt and implement workplace guidelines similar to the
214-2 guidelines adopted by the agency that funds or contracts with the
214-3 entity:

214-4 (1) the Department of Assistive and Rehabilitative
214-5 Services [~~Texas Commission on Alcohol and Drug Abuse;~~
214-6 [~~(2) the Texas Commission for the Blind;~~
214-7 [~~(3) the Texas Commission for the Deaf and Hard of~~
214-8 ~~Hearing~~];
214-9 (2) [~~(4)~~] the Texas Juvenile Justice Department
214-10 [~~Probation Commission~~];
214-11 (3) [~~(5)~~] the Texas Department of Criminal Justice;
214-12 (~~(4) [~~(6)~~ the Texas Youth Commission;~~
214-13 [~~(7)~~] the department;
214-14 (5) [~~(8)~~] the [~~Texas~~] Department of Aging and
214-15 Disability [~~Human~~] Services; and
214-16 (6) [~~(9)~~] the commission [~~Texas Department of Mental~~
214-17 ~~Health and Mental Retardation; and~~
214-18 [~~(10) the Texas Rehabilitation Commission.~~].

214-19 SECTION 3.0286. Section 85.114(b), Health and Safety Code,
214-20 is amended to read as follows:

214-21 (b) Education available under this section shall be based on
214-22 the model educational materials [~~education program~~] developed by
214-23 the department and tailored to the cultural, educational, language,
214-24 and developmental needs of the clients, inmates, patients, or
214-25 residents, including the use of Braille or telecommunication
214-26 devices for the deaf.

214-27 SECTION 3.0287. Sections 85.116(b) and (d), Health and
214-28 Safety Code, are amended to read as follows:

214-29 (b) The executive commissioner [~~board~~] by rule shall
214-30 prescribe the criteria that constitute possible exposure to HIV
214-31 under this section. The criteria must be based on activities the
214-32 United States Public Health Service determines pose a risk of HIV
214-33 infection.

214-34 (d) The cost of a state employee's testing and counseling
214-35 shall be paid from funds appropriated for payment of workers'
214-36 compensation benefits to state employees. The State Office of Risk
214-37 Management [~~director of the workers' compensation division of the~~
214-38 ~~attorney general's office~~] shall adopt rules necessary to
214-39 administer this subsection.

214-40 SECTION 3.0288. Section 85.201(a), Health and Safety Code,
214-41 is amended to read as follows:

214-42 (a) The legislature finds that:

214-43 (1) the Centers for Disease Control and Prevention of
214-44 the United States Public Health Service have made recommendations
214-45 for preventing transmission of human immunodeficiency virus (HIV)
214-46 and hepatitis B virus (HBV) to patients in the health care setting;

214-47 (2) the Centers for Disease Control and Prevention of
214-48 the United States Public Health Service have found that when health
214-49 care workers adhere to recommended infection-control procedures,
214-50 the risk of transmitting HBV from an infected health care worker to
214-51 a patient is small, and the risk of transmitting HIV is likely to be
214-52 even smaller;

214-53 (3) the risk of transmission of HIV and HBV in health
214-54 care settings will be minimized if health care workers adhere to the
214-55 Centers for Disease Control and Prevention of the United States
214-56 Public Health Service recommendations; and

214-57 (4) health care workers who perform exposure-prone
214-58 procedures should know their HIV antibody status; health care
214-59 workers who perform exposure-prone procedures and who do not have
214-60 serologic evidence of immunity to HBV from vaccination or from
214-61 previous infection should know their HBsAg status and, if that is
214-62 positive, should also know their HBeAg status.

214-63 SECTION 3.0289. Section 85.202(4), Health and Safety Code,
214-64 is amended to read as follows:

214-65 (4) "Universal precautions" means procedures for
214-66 disinfection and sterilization of reusable medical devices and the
214-67 appropriate use of infection control, including hand washing, the
214-68 use of protective barriers, and the use and disposal of needles and
214-69 other sharp instruments as those procedures are defined by the

215-1 Centers for Disease Control and Prevention of the United States
215-2 Public Health Service.

215-3 SECTION 3.0290. Sections 85.257(c) and (d), Health and
215-4 Safety Code, are amended to read as follows:

215-5 (c) Counseling provided by a service provider, including
215-6 written information provided under Subsection (a) and referrals,
215-7 must conform with counseling protocols adopted by the executive
215-8 commissioner [board]. Except as provided by Section 85.256, the
215-9 counseling protocols must be consistent with the requirements of
215-10 Section 81.109 and the protocols adopted under Section 85.081.

215-11 (d) Counseling provided by a service provider under this
215-12 section must be provided in English and in Spanish. The department
215-13 [board] may require a service provider to provide counseling in
215-14 another language if the department [board] finds that the service
215-15 provider is marketing home collection kits in a community in which a
215-16 significant portion of the population speaks a language other than
215-17 English or Spanish.

215-18 SECTION 3.0291. Section 85.258(c), Health and Safety Code,
215-19 is amended to read as follows:

215-20 (c) In addition to the labeling requirements in Subsections
215-21 (a) and (b), a home collection kit labeled in Spanish must also be
215-22 available. The department [board] may require a service provider
215-23 to label a home collection kit in another language if the department
215-24 [board] finds that the service provider is marketing home
215-25 collection kits in a community in which a significant portion of the
215-26 population speaks a language other than English or Spanish.

215-27 SECTION 3.0292. Section 85.275(f), Health and Safety Code,
215-28 is amended to read as follows:

215-29 (f) The assistant presiding officer shall:

215-30 (1) perform the duties of the presiding officer if the
215-31 presiding officer is absent or is not able to perform those duties
215-32 because of disability [becomes disabled]; and

215-33 (2) complete the unexpired portion of the presiding
215-34 officer's term if the office of the presiding officer becomes
215-35 vacant.

215-36 SECTION 3.0293. Section 87.001(7), Health and Safety Code,
215-37 is amended to read as follows:

215-38 (7) "Health facility" includes:

215-39 (A) a general or special hospital licensed by the
215-40 department under Chapter 241;

215-41 (B) a physician-owned or physician-operated
215-42 clinic;

215-43 (C) a publicly or privately funded medical
215-44 school;

215-45 (D) a state hospital operated by the department
215-46 or a state supported living center operated [school maintained and
215-47 managed] by the [Texas] Department of Aging and Disability Services
215-48 [Mental Health and Mental Retardation];

215-49 (E) a genetic evaluation and counseling center;

215-50 (F) a public health clinic conducted by a local
215-51 health unit, health department, or public health district organized
215-52 and recognized under Chapter 121;

215-53 (G) a physician peer review organization; and

215-54 (H) another facility specified by department
215-55 [board] rule.

215-56 SECTION 3.0294. Sections 87.002(c) and (d), Health and
215-57 Safety Code, are amended to read as follows:

215-58 (c) The department may release medical, epidemiological, or
215-59 toxicological information:

215-60 (1) for statistical purposes, if released in a manner
215-61 that prevents the identification of any person;

215-62 (2) with the consent of each person identified in the
215-63 information or, if the person is a minor, the minor's parents,
215-64 managing conservator, guardian, or other person who is legally
215-65 authorized to consent;

215-66 (3) to medical personnel, appropriate state agencies,
215-67 health authorities, regional directors, and public officers of
215-68 counties and municipalities as necessary to comply with this
215-69 chapter and department [board] rules relating to the

216-1 identification, monitoring, and referral of children with birth
216-2 defects;

216-3 (4) to appropriate federal agencies, such as the
216-4 Centers for Disease Control and Prevention of the United States
216-5 Public Health Service; or

216-6 (5) to medical personnel to the extent necessary to
216-7 protect the health or life of the child identified in the
216-8 information.

216-9 (d) The executive commissioner [~~A board member~~], the
216-10 commissioner, another employee of the department, or an authorized
216-11 agent may not be examined in a civil, criminal, special, or other
216-12 proceeding as to the existence or contents of pertinent records of
216-13 or reports or information about a child identified or monitored for
216-14 a birth defect by the department without the consent of the child's
216-15 parents, managing conservator, guardian, or other person
216-16 authorized by law of this state or another state or by a court order
216-17 to give consent.

216-18 SECTION 3.0295. Section 87.021, Health and Safety Code, is
216-19 amended to read as follows:

216-20 Sec. 87.021. SURVEILLANCE PROGRAM; REGISTRY ESTABLISHED.

216-21 (a) The executive commissioner [~~board~~] shall establish in the
216-22 department a program to:

216-23 (1) identify and investigate certain birth defects in
216-24 children; and

216-25 (2) maintain a central registry of cases of birth
216-26 defects.

216-27 (b) The executive commissioner [~~board~~] may authorize the
216-28 department to implement a statewide program or to limit the program
216-29 to a part or all of one or more public health regions, depending on
216-30 the funding available to the department. In establishing the
216-31 program, the executive commissioner [~~board~~] shall consider:

216-32 (1) the number and geographic distribution of births
216-33 in the state;

216-34 (2) the trained personnel and other departmental
216-35 resources that may be assigned to the program activities; and

216-36 (3) the occurrence or probable occurrence of an urgent
216-37 situation that requires or will require an unusual commitment of
216-38 the department's personnel and other resources.

216-39 (c) The [~~board and the~~] department shall design the program
216-40 so that the program will:

216-41 (1) provide information to identify risk factors and
216-42 causes of birth defects;

216-43 (2) provide information on other possible causes of
216-44 birth defects;

216-45 (3) provide for the development of strategies to
216-46 prevent birth defects;

216-47 (4) provide for interview studies about the causes of
216-48 birth defects;

216-49 (5) together with other departmental programs,
216-50 contribute birth defects data to a central registry;

216-51 (6) provide for the appointment of authorized agents
216-52 to collect birth defects information; and

216-53 (7) provide for the active collection of birth defects
216-54 information.

216-55 (d) The executive commissioner [~~board~~] shall adopt rules to
216-56 govern the operation of the program and carry out the intent of this
216-57 chapter. At a minimum, the rules shall:

216-58 (1) use a medically recognized system to specify the
216-59 birth defects to be identified and investigated;

216-60 (2) select a system for classifying the birth defects
216-61 according to the public health significance of each defect to
216-62 prioritize the use of resources;

216-63 (3) develop a system to select and specify the cases to
216-64 be investigated;

216-65 (4) specify a system for selecting the demographic
216-66 areas in which the department may undertake investigations; and

216-67 (5) prescribe the training and experience a person
216-68 must have for appointment as an authorized agent of the department.

216-69 (e) In adopting the rules required by Subsection (d), the

217-1 executive commissioner [board] shall consider at least:

217-2 (1) the known incidence and prevalence rates of a
217-3 birth defect in the state or portions of the state;

217-4 (2) the known incidence and prevalence rates of a
217-5 particular birth defect in specific population groups who live in
217-6 the state or portions of the state;

217-7 (3) the morbidity and mortality resulting from the
217-8 birth defect; and

217-9 (4) the existence, cost, and availability of a
217-10 strategy to prevent and treat the birth defect.

217-11 (f) In addition to providing for the active collection of
217-12 birth defects information under Subsection (c)(7), the ~~[board and~~
217-13 ~~the~~ department may design the program to also provide for the
217-14 passive collection of that information.

217-15 SECTION 3.0296. Section 87.022, Health and Safety Code, is
217-16 amended to read as follows:

217-17 Sec. 87.022. DATA COLLECTION. (a) To ensure an accurate
217-18 source of data necessary to investigate the incidence, prevalence,
217-19 and trends of birth defects, the executive commissioner [board] may
217-20 require a health facility, health professional, or midwife to make
217-21 available for review by the department or by an authorized agent
217-22 medical records or other information that is in the facility's,
217-23 professional's, or midwife's custody or control and that relates to
217-24 the occurrence of a birth defect specified by the executive
217-25 commissioner [board].

217-26 (b) The executive commissioner [board] by rule shall
217-27 prescribe the manner in which records and other information are
217-28 made available to the department.

217-29 (c) The executive commissioner [board] shall adopt
217-30 procedural rules to facilitate cooperation between the health care
217-31 facility, health professional, or midwife and a department employee
217-32 or authorized agent, including rules for notice, requests for
217-33 medical records, times for record reviews, and record management
217-34 during review.

217-35 SECTION 3.0297. Section 87.023, Health and Safety Code, is
217-36 amended to read as follows:

217-37 Sec. 87.023. REFERRAL FOR SERVICES. A child who meets the
217-38 medical criteria prescribed by department [board] rule, and the
217-39 child's family, shall be referred to the department's case
217-40 management program for guidance in applying for financial or
217-41 medical assistance available through existing state and federal
217-42 programs.

217-43 SECTION 3.0298. Sections 87.061(b) and (c), Health and
217-44 Safety Code, are amended to read as follows:

217-45 (b) The department shall use the registry to:

217-46 (1) investigate the causes of birth defects and other
217-47 health conditions as authorized by Texas statutes;

217-48 (2) design and evaluate measures to prevent the
217-49 occurrence of birth defects and other health conditions; and

217-50 (3) conduct other investigations and activities
217-51 necessary for the executive commissioner [board] and department to
217-52 fulfill their obligation to protect the health of the public.

217-53 (c) The department may store in the central registry
217-54 information that is obtained from the section of the birth
217-55 certificate entitled "For Medical and Health Use Only." This
217-56 information may be used only as provided by Section 192.002(b),
217-57 [191.002(b)], relating to the form and contents of the birth
217-58 certificate.

217-59 SECTION 3.0299. Section 87.063(a), Health and Safety Code,
217-60 is amended to read as follows:

217-61 (a) The commissioner and the department's committee for the
217-62 protection of human subjects shall review each research proposal
217-63 that requests the use of information in the central registry. The
217-64 executive commissioner [board] shall adopt rules establishing
217-65 criteria to be used in deciding if the research design should be
217-66 approved. A proposal that meets the approval criteria is
217-67 considered to establish a valid interest as required by Section
217-68 87.062(a), and the commissioner and the committee shall authorize
217-69 the researcher to review the records relevant to the research

218-1 proposal and to contact cases and controls.

218-2 SECTION 3.0300. Sections **88.001(6)**, (7), (9), and (11),
218-3 Health and Safety Code, are amended to read as follows:

218-4 (6) "Reference level" [Blood lead levels of concern] means the presence of blood lead concentrations suspected to be
218-5 associated with mental and physical disorders due to absorption,
218-6 ingestion, or inhalation of lead as specified in the most recent
218-7 reference value [criteria] issued by the [United States Department
218-8 of Health and Human Services, United States Public Health Service,]
218-9 Centers for Disease Control and Prevention of the United States
218-10 Public Health Service.

218-11 (7) "Lead poisoning" means the presence of a confirmed
218-12 venous blood level established by department [board] rule in the
218-13 range specified for medical evaluation and possible pharmacologic
218-14 treatment in the most recent criteria issued by the [United States
218-15 Department of Health and Human Services, United States Public
218-16 Health Service,] Centers for Disease Control and Prevention of the
218-17 United States Public Health Service.

218-18 (9) "Physician" means a person licensed to practice
218-19 medicine by the Texas [State Board of] Medical Board [Examiners].

218-20 (11) "Regional director" means a physician appointed
218-21 under Section **121.007** [by the board] as the chief administrative
218-22 officer of a public health region as designated under Chapter 121.

218-23 SECTION 3.0301. Sections **88.002(a), (b), and (d)**, Health
218-24 and Safety Code, are amended to read as follows:

218-25 (a) Except as specifically authorized by this chapter,
218-26 reports, records, and information furnished to a health authority,
218-27 a regional director, or the department that relate to cases or
218-28 suspected cases of children with reportable blood lead levels [of
218-29 concern or lead poisoning] are confidential and may be used only for
218-30 the purposes of this chapter.

218-31 (b) Reports, records, and information relating to cases or
218-32 suspected cases of childhood lead poisoning and children with
218-33 reportable blood lead levels [of concern] are not public
218-34 information under the open records law, Chapter 552, Government
218-35 Code, and may not be released or made public on subpoena or
218-36 otherwise except as provided by this chapter.

218-37 (d) The commissioner, a regional director or other
218-38 department employee, a health authority or employee of a public
218-39 health district, a health authority or employee of a county or
218-40 municipal health department, or a public official of a county or
218-41 municipality may not be examined in a civil, criminal, special, or
218-42 other proceeding as to the existence or contents of pertinent
218-43 records of or reports or information about a child identified,
218-44 examined, or treated for lead poisoning or about a child possessing
218-45 reportable blood lead levels [of concern] by the department, a
218-46 public health district, a local health department, or a health
218-47 authority without the consent of the child's parents, managing
218-48 conservator, guardian, or other person authorized by law to give
218-49 consent.

218-50 SECTION 3.0302. Section **88.0025**, Health and Safety Code, is
218-51 amended to read as follows:

218-52 Sec. 88.0025. CHILDHOOD LEAD POISONING PREVENTION. The
218-53 executive commissioner may adopt [board may implement] policies and
218-54 procedures to promote the elimination of childhood lead poisoning
218-55 within the state, and the department shall implement all adopted
218-56 policies and procedures. The executive commissioner [board] may
218-57 adopt measures to:

218-58 (1) significantly reduce the incidence of childhood
218-59 lead poisoning throughout the state;

218-60 (2) improve public awareness of lead safety issues and
218-61 educate both property owners and tenants about practices that can
218-62 reduce the incidence of lead poisoning; and

218-63 (3) encourage the testing of children likely to suffer
218-64 the consequences of lead poisoning so that prompt diagnosis and
218-65 treatment and the prevention of harm are possible.

218-66 SECTION 3.0303. Section **88.003**, Health and Safety Code, is
218-67 amended to read as follows:

218-68 Sec. 88.003. REPORTABLE HEALTH CONDITION. (a) Childhood

219-1 blood lead levels that exceed the reference level [~~of concern~~] are
219-2 reportable.

219-3 (b) The executive commissioner [~~board~~] by rule may
219-4 designate:

219-5 (1) blood lead concentrations in children that must be
219-6 reported; and
219-7 (2) the ages of children for whom the reporting
219-8 requirements apply.

219-9 (c) The executive commissioner [~~board~~] may adopt rules that
219-10 establish a registry of children with blood lead levels that exceed
219-11 the reference level [~~of concern~~] and lead poisoning.

219-12 SECTION 3.0304. Section 88.004, Health and Safety Code, is
219-13 amended to read as follows:

219-14 Sec. 88.004. PERSONS REQUIRED TO REPORT. (a) A person
219-15 required to report childhood blood lead levels [~~of concern~~] shall
219-16 report to the department in the manner specified by department
219-17 [~~board~~] rule. Except as provided by this section, a person required
219-18 by this section to report must make the report immediately after the
219-19 person gains knowledge of [~~the case or suspected case of~~] a child
219-20 with a reportable blood lead level [~~of concern~~].

219-21 (b) A physician shall report a case or suspected case of
219-22 childhood lead poisoning or of a child with a reportable blood lead
219-23 level [~~of concern~~] after the physician's first examination of a
219-24 child for whom reporting is required by this chapter or department
219-25 [~~board~~] rule.

219-26 (c) A person in charge of an independent clinical
219-27 laboratory, a hospital or clinic laboratory, or other facility in
219-28 which a laboratory examination of a specimen derived from the human
219-29 body yields evidence of a child with a reportable blood lead level
219-30 [~~of concern~~] shall report the findings to the department as
219-31 required by department [~~board~~] rule.

219-32 (d) If a report is not made as required by Subsection (b) or
219-33 (c), the following persons shall report [~~a case or suspected case of~~
219-34 ~~a child with lead poisoning or~~] a child's reportable blood lead
219-35 level [~~of concern~~] and all information known concerning the child:

219-36 (1) the administrator of a hospital licensed under
219-37 Chapter 241;

219-38 (2) a [~~professional~~] registered nurse;
219-39 (3) an administrator or director of a public or
219-40 private child care facility;

219-41 (4) an administrator of a home and community support
219-42 services [~~health~~] agency;

219-43 (5) an administrator or health official of a public or
219-44 private institution of higher education;

219-45 (6) a superintendent, manager, or health official of a
219-46 public or private camp, home, or institution;

219-47 (7) a parent, managing conservator, or guardian; and
219-48 (8) a health professional.

219-49 SECTION 3.0305. Sections 88.005(a) and (b), Health and
219-50 Safety Code, are amended to read as follows:

219-51 (a) The executive commissioner [~~board~~] shall prescribe the
219-52 form and method of reporting under this chapter, including a report
219-53 in writing, by telephone, or by electronic data transmission.

219-54 (b) The executive commissioner by rule [~~Board rules~~] may
219-55 require the reports to contain any information relating to a case
219-56 that is necessary for the purposes of this chapter, including:

219-57 (1) the child's name, address, age, sex, and race;
219-58 (2) the child's blood lead concentration;
219-59 (3) the procedure used to determine the child's blood
219-60 lead concentration; and

219-61 (4) the name of the attending physician.

219-62 SECTION 3.0306. Section 88.006(a), Health and Safety Code,
219-63 is amended to read as follows:

219-64 (a) A physician who attends a child during the child's
219-65 hospitalization shall immediately notify the department if the
219-66 physician knows or suspects that the child has lead poisoning or a
219-67 blood lead level that exceeds the reference level [~~of concern~~] and
219-68 the physician believes the lead poisoning or blood lead level [~~of~~
219-69 ~~concern~~] resulted from the child's exposure to a dangerous level of

220-1 lead that may be a threat to the public health.

220-2 SECTION 3.0307. Section 88.007, Health and Safety Code, is
220-3 amended to read as follows:

220-4 Sec. 88.007. DEPARTMENT RULES FOR FOLLOW-UP CARE;
220-5 COORDINATION OF CARE. (a) The executive commissioner [~~department~~]
220-6 may adopt rules establishing standards for follow-up care provided
220-7 to children with a confirmed blood lead level that exceeds the
220-8 reference level [~~of concern~~].

220-9 (b) Rules adopted under this section must meet any federal
220-10 requirements for coordinated follow-up care for children with
220-11 confirmed blood lead levels that exceed the reference level [~~of~~
220-12 ~~concern~~] and may include, in a manner consistent with current
220-13 federal guidelines:

220-14 (1) an environmental lead investigation of all or
220-15 parts of a child's home environment, child-care facility, or
220-16 child-occupied facility that may be a source of a lead hazard
220-17 causing or contributing to the child's lead exposure; and

220-18 (2) guidance to parents, guardians, and consulting
220-19 physicians on how to eliminate or control lead exposures that may be
220-20 contributing to the child's blood lead level.

220-21 SECTION 3.0308. Section 88.009, Health and Safety Code, is
220-22 amended to read as follows:

220-23 Sec. 88.009. ENVIRONMENTAL LEAD INVESTIGATION PROCEDURES.
220-24 The executive commissioner [~~department~~] may adopt rules
220-25 establishing procedures for environmental lead investigations of
220-26 dwellings and other premises subject to this chapter. The rules
220-27 must meet, but may not exceed, any requirements established under
220-28 regulations adopted by the federal Environmental Protection Agency
220-29 under Subchapter IV, Toxic Substances Control Act (15 U.S.C.
220-30 Section 2681 et seq.).

220-31 SECTION 3.0309. Section 89.001(5), Health and Safety Code,
220-32 is amended to read as follows:

220-33 (5) "Jail" means:

220-34 (A) a county jail; or

220-35 (B) a facility for the confinement of persons
220-36 accused of an offense that is:

220-37 (i) operated by a municipality or a vendor
220-38 under contract with a municipality under Subchapter F [~~E~~], Chapter
220-39 351, Local Government Code; or

220-40 (ii) operated by a vendor under contract
220-41 with a community supervision and corrections department under
220-42 Chapter 76, Government Code.

220-43 SECTION 3.0310. Section 89.011(a), Health and Safety Code,
220-44 is amended to read as follows:

220-45 (a) The governing body of a jail or community corrections
220-46 facility, through the community supervision and corrections
220-47 department, shall require that each employee or volunteer working
220-48 or providing services in a jail or a community corrections
220-49 facility, who meets the screening guidelines prescribed by
220-50 department [~~board~~] rule, present to the governing body a
220-51 certificate signed by a physician that states that:

220-52 (1) the employee or volunteer has been tested for
220-53 tuberculosis infection in accordance with department [~~board~~]
220-54 rules; and

220-55 (2) the results of the test indicate that the person
220-56 does not have tuberculosis.

220-57 SECTION 3.0311. Section 89.051(a), Health and Safety Code,
220-58 is amended to read as follows:

220-59 (a) Each inmate in a jail or community corrections facility
220-60 shall undergo a screening test for tuberculosis infection approved
220-61 by the executive commissioner [~~board~~] if:

220-62 (1) the inmate will probably be confined in jail or a
220-63 community corrections facility for more than seven days; and

220-64 (2) the inmate meets the screening guidelines
220-65 prescribed by department [~~board~~] rules.

220-66 SECTION 3.0312. Section 89.073, Health and Safety Code, is
220-67 amended to read as follows:

220-68 Sec. 89.073. ADOPTION OF LOCAL STANDARDS. (a) The
220-69 standards prescribed by this chapter and the rules adopted by the

221-1 executive commissioner [board] relating to screening tests or
 221-2 examinations for tuberculosis required for certain employees and
 221-3 volunteers are minimum standards.

221-4 (b) With the prior approval of the department:

221-5 (1) a governing body may adopt and enforce standards
 221-6 for carrying out this chapter if the standards are compatible with
 221-7 and equal to or more stringent than the standards prescribed by this
 221-8 chapter and department [~~the board's~~] rules; and

221-9 (2) a private facility may adopt and enforce standards
 221-10 for carrying out this chapter if the standards are compatible with
 221-11 and equal to or more stringent than the standards prescribed by this
 221-12 chapter and department [~~the board's~~] rules.

221-13 (c) The executive commissioner [board] shall adopt
 221-14 substantive and procedural rules to govern the submission of
 221-15 standards adopted under Subsection (b). At a minimum these rules
 221-16 must contain:

221-17 (1) a procedure for the submission of standards for
 221-18 departmental review; and

221-19 (2) an internal departmental appeal process by which a
 221-20 governing body or private entity may seek a review of the
 221-21 department's decision to reject proposed standards.

221-22 SECTION 3.0313. Section 89.101(1), Health and Safety Code,
 221-23 is amended to read as follows:

221-24 (1) "Corrections facility" means:

221-25 (A) a jail or community corrections facility,
 221-26 without regard to whether the jail or facility satisfies the
 221-27 requirements of Section 89.002;

221-28 (B) any correctional facility operated by or
 221-29 under contract with a division of the Texas Department of Criminal
 221-30 Justice; or

221-31 (C) a detention facility operated by the Texas
 221-32 Juvenile Justice Department [~~Youth Commission~~].

221-33 SECTION 3.0314. Section 92.002, Health and Safety Code, is
 221-34 amended to read as follows:

221-35 Sec. 92.002. REPORTABLE INJURY; RULES. (a) Spinal cord
 221-36 injuries, traumatic brain injuries, and submersion injuries are
 221-37 reportable to the department. The executive commissioner [board]
 221-38 by rule shall define those terms for reporting purposes.

221-39 (b) The executive commissioner [board] may adopt rules that
 221-40 require other injuries to be reported under this subchapter.

221-41 (c) The executive commissioner [board] shall maintain and
 221-42 revise, as necessary, the list of reportable injuries.

221-43 (d) The executive commissioner [board] shall adopt rules
 221-44 necessary to administer this subchapter.

221-45 SECTION 3.0315. Section 92.003(c), Health and Safety Code,
 221-46 is amended to read as follows:

221-47 (c) The department [board] shall prescribe the form and
 221-48 method of reporting. The department [board] may require the
 221-49 reports to contain any information, including the person's name,
 221-50 address, age, sex, race, occupation, employer, and attending
 221-51 physician, necessary to achieve the purposes of this subchapter.

221-52 SECTION 3.0316. Section 92.004(b), Health and Safety Code,
 221-53 is amended to read as follows:

221-54 (b) The department may seek, receive, and spend any funds
 221-55 received through appropriations, grants, donations, or
 221-56 contributions from public or private sources for the purpose of
 221-57 identifying, reporting, or preventing those injuries [~~that have~~
 221-58 been] determined by the executive commissioner [board] to be
 221-59 harmful or to be a threat to the public health.

221-60 SECTION 3.0317. Sections 92.006(b) and (c), Health and
 221-61 Safety Code, are amended to read as follows:

221-62 (b) The executive commissioner [board] shall adopt rules
 221-63 establishing procedures to ensure that all information and records
 221-64 maintained by the department under this subchapter are kept
 221-65 confidential and protected from release to unauthorized persons.

221-66 (c) The commissioner [~~director~~], the commissioner's
 221-67 [~~director's~~] designee, the executive commissioner, or an employee
 221-68 of the department or commission may not be examined in a judicial or
 221-69 other proceeding about the existence or contents of pertinent

222-1 records of, investigation reports of, or reports or information
 222-2 about a person examined or treated for an injury without that
 222-3 person's consent.

222-4 SECTION 3.0318. Sections 92.007(b) and (c), Health and
 222-5 Safety Code, are amended to read as follows:

222-6 (b) The department [director or the director's designee]
 222-7 may enter at reasonable times and inspect within reasonable limits
 222-8 a public place or building, including a public conveyance, in the
 222-9 department's [director's] duty to prevent an injury.

222-10 (c) The department [director or the director's designee]
 222-11 may not enter a private residence to conduct an investigation about
 222-12 the causes of injuries without first receiving permission from a
 222-13 lawful adult occupant of the residence.

222-14 SECTION 3.0319. Section 92.010, Health and Safety Code, is
 222-15 amended to read as follows:

222-16 Sec. 92.010. COORDINATION WITH DEPARTMENT OF ASSISTIVE AND
 222-17 REHABILITATIVE SERVICES [TEXAS REHABILITATION COMMISSION]. The
 222-18 department and the Department of Assistive and Rehabilitative
 222-19 Services [Texas Rehabilitation Commission] shall enter into a
 222-20 memorandum of understanding to:

222-21 (1) exchange relevant injury data on an ongoing basis
 222-22 notwithstanding Section 92.006;

222-23 (2) maintain the confidentiality of injury data
 222-24 provided to the department by the Department of Assistive and
 222-25 Rehabilitative Services [commission] in accordance with Section
 222-26 92.006 and Section 111.057, Human Resources Code; and

222-27 (3) cooperate in conducting investigations of spinal
 222-28 cord and traumatic brain injuries.

222-29 SECTION 3.0320. Section 92.011(a), Health and Safety Code,
 222-30 is amended to read as follows:

222-31 (a) The department and the Texas Traumatic Brain Injury
 222-32 Advisory Council established [within the department] under
 222-33 Subchapter B shall:

222-34 (1) exchange relevant injury data on an ongoing basis
 222-35 to the extent allowed by Section 92.006;

222-36 (2) maintain the confidentiality of injury data
 222-37 provided to the council by the department in accordance with
 222-38 Section 92.006;

222-39 (3) permit the council to review and comment on the
 222-40 department's [board's] rules under Section 92.002(b) before the
 222-41 rules are proposed; and

222-42 (4) cooperate in conducting investigations of
 222-43 traumatic brain injuries.

222-44 SECTION 3.0321. Section 92.052, Health and Safety Code, is
 222-45 amended to read as follows:

222-46 Sec. 92.052. ADVISORY COUNCIL [~~, ASSOCIATED AGENCY~~]. [(a)]
 222-47 The Texas Traumatic Brain Injury Advisory Council is an advisory
 222-48 council within the commission [department].

222-49 [(b)] Notwithstanding Subsection (a), if, as a result of
 222-50 legislation enacted in the 78th Legislature, Regular Session, 2003,
 222-51 a state agency other than the department is designated to serve as
 222-52 the agency with primary responsibility in relation to persons with
 222-53 physical disabilities, the council is an advisory council within
 222-54 that state agency and a reference in this chapter to the department
 222-55 means that agency.]

222-56 SECTION 3.0322. Section 92.053(b), Health and Safety Code,
 222-57 is amended to read as follows:

222-58 (b) The council is composed of 21 [22] members appointed as
 222-59 follows:

222-60 (1) eight public consumer members appointed by the
 222-61 executive commissioner [~~of health and human services~~], at least
 222-62 three of whom must be individuals related to persons with a
 222-63 traumatic brain injury and at least three of whom must be persons
 222-64 with a brain injury;

222-65 (2) six professional members appointed by the
 222-66 executive commissioner [~~of health and human services~~], each of whom
 222-67 must have special training and interest in the care, treatment, or
 222-68 rehabilitation of persons with a traumatic brain injury, with one
 222-69 representative each from:

(A) acute hospital trauma units;
(B) the National Institute on [for] Disability
and Rehabilitation Research Traumatic Brain Injury Model System in
this state;

facilities; (C) acute or post-acute rehabilitation facilities; (D) community-based services; (E) faculties of institutions of higher education; and

(F) providers in the areas of physical therapy, occupational therapy, or cognitive rehabilitation; and
(3) seven [~~eight~~] state agency members, with one representative from each of the following agencies appointed by the chief executive officer of the agency:

(A) [Texas] Department of State Health Services;
(B) [Texas] Department of Aging and Disability
[Human] Services;
(C) Department of Assistive and Rehabilitative
Services [Texas Department of Mental Health and Mental Retardation;
[D] Texas Rehabilitation Commission];
(D) [(E)] Health and Human Services Commission;
(E) [(F)] Texas Education Agency;
(F) [(G)] Texas [Planning] Council for
Developmental Disabilities; and

(G) [H] Texas Department of Insurance.
SECTION 3.0323. Section 92.057, Health and Safety Code, is amended by amending Subsections (b) and (c) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsection (b-1), a [A] member who is a representative of a state agency shall be reimbursed for travel expenses incurred while conducting council business from the funds of the agency the person represents in accordance with the General Appropriations Act.

(b-1) A member who is a representative of a health and human services agency listed by Section [531.001\(4\)](#), Government Code, shall be reimbursed for travel expenses incurred while conducting council business from the funds of the commission in accordance with the General Appropriations Act.

(c) If money is available for this purpose in the account established under Section 92.062(b), the commission [department] shall reimburse a public consumer member for the member's actual and necessary expenses incurred in performing council duties, including travel, meals, lodging, respite care for a dependent with a disability, and telephone long-distance charges.

SECTION 3.0324. Section 92.060, Health and Safety Code, is amended to read as follows:

Sec. 92.060. COMMISSION DUTIES [OF THE DEPARTMENT]. (a) The commission [department] shall:

(1) provide administrative support services to the council;

- (2) accept gifts and grants on behalf of the council from any public or private entity;
- (3) receive, deposit, and disburse gifts and grants for the council in accordance with this subchapter and provide other administrative services in support of the council as requested by and negotiated with the council; and

(4) enter into a memorandum of understanding with the council that delineates the responsibilities of the commission [department] and the council under this subchapter and amend the memorandum as necessary to reflect changes in those responsibilities.

(b) The executive commissioner [board] may adopt rules as necessary to implement the commission's [department's] duties under this subchapter and federal developmental disability laws.

SECTION 3.0325. Section 92.062(b), Health and Safety Code, is amended to read as follows:

(b) The [health and human services] commission shall deposit any money received under Subsection (a) to the credit of the Texas Traumatic Brain Injury Advisory Council account. The Texas

224-1 Traumatic Brain Injury Advisory Council account is an account in
 224-2 the general revenue fund that may be appropriated only for the
 224-3 purpose of carrying out this subchapter.

224-4 SECTION 3.0326. Section 93.013(a), Health and Safety Code,
 224-5 is amended to read as follows:

224-6 (a) The council may receive gifts and grants from any public
 224-7 or private source to perform its duties under this chapter. The
 224-8 department shall accept the gifts on behalf of the council [and
 224-9 shall deposit any funds accepted under this section to the credit of
 224-10 a special account in the general revenue fund as required by Section
 224-11 93.014].

224-12 SECTION 3.0327. Section 93.014, Health and Safety Code, is
 224-13 amended to read as follows:

224-14 Sec. 93.014. FUNDS FOR CLINICAL RESEARCH [HEART DISEASE
 224-15 AND STROKE RESOURCE FUND. (a) The heart disease and stroke
 224-16 resource fund is an account of the general revenue fund].

224-17 [(b) The legislature may appropriate money deposited to the
 224-18 credit of the heart disease and stroke resource fund only to the
 224-19 council for:

224-20 [(1) heart disease and stroke prevention, research,
 224-21 and medical care for heart attack and stroke victims; and
 224-22 [(2) grants to nonprofit heart disease and stroke
 224-23 organizations.]

224-24 [(c)] The council shall develop a policy governing the award
 224-25 of funds for clinical research that follows scientific peer review
 224-26 guidelines for primary and secondary prevention of heart disease or
 224-27 stroke or that follows other review procedures that are designed to
 224-28 distribute those funds on the basis of scientific merit.

224-29 [(d) Interest earned from the investment of the heart
 224-30 disease and stroke resource fund shall be deposited to the credit of
 224-31 the fund.]

224-32 SECTION 3.0328. Section 94.004(c), Health and Safety Code,
 224-33 is amended to read as follows:

224-34 (c) The department may charge a fee for the course to
 224-35 persons other than employees of entities receiving state or federal
 224-36 funds for hepatitis C counseling and testing programs through a
 224-37 contract with the department. The executive commissioner by rule
 224-38 [board] shall set the fee in an amount necessary to cover the costs
 224-39 of providing the course.

224-40 SECTION 3.0329. Section 95.002(f), Health and Safety Code,
 224-41 is amended to read as follows:

224-42 (f) The office shall:

224-43 (1) provide educational and other material to assist
 224-44 local risk assessment activities;

224-45 (2) monitor the quality of risk assessment activities
 224-46 provided under this chapter; and

224-47 (3) consult with the Texas Board of Nursing [Nurse
 224-48 Examiners] to determine the training requirements necessary for a
 224-49 nurse or other person to conduct risk assessment activities under
 224-50 this chapter.

224-51 SECTION 3.0330. Section 95.051, Health and Safety Code, is
 224-52 amended to read as follows:

224-53 Sec. 95.051. DEFINITION [DEFINITIONS]. In this subchapter,
 224-54 "public" [+]

224-55 [(1) "Department" means the Department of State Health
 224-56 services.]

224-57 [(2) "Executive commissioner" means the executive
 224-58 commissioner of the Health and Human Services Commission.]

224-59 [(3) "Public" health district" means a district
 224-60 created under Chapter 121.]

224-61 SECTION 3.0331. Section 95A.001, Health and Safety Code, is
 224-62 amended to read as follows:

224-63 Sec. 95A.001. DEFINITION [DEFINITIONS]. In this chapter,
 224-64 "council" [+]

224-65 [(1) "Commission" means the Health and Human Services
 224-66 Commission.]

224-67 [(2) "Council" means the Texas Diabetes Council.]

224-68 SECTION 3.0332. Section 96.001(3), Health and Safety Code,
 224-69 is amended to read as follows:

(3) "Health facility" includes:

(A) a general or special hospital licensed by the department under Chapter 241;

(B) a physician-owned or physician-operated clinic;

(C) a publicly or privately funded medical school;

(D) a state hospital operated [~~or state school maintained and managed~~] by the department or a state supported living center operated by [Department of State Health Services or] the Department of Aging and Disability Services;

(E) a public health clinic conducted by a local health unit, health department, or public health district organized and recognized under Chapter 121; and

(F) another facility specified by a rule adopted by the executive commissioner.

SECTION 3.0333. Section 98.110(a), Health and Safety Code, is amended to read as follows:

(a) Notwithstanding any other law, the department may disclose information reported by health care facilities under Section 98.103 or 98.1045 to other programs within the department, to the commission [Health and Human Services Commission], to other health and human services agencies, as defined by Section 531.001, Government Code, and to the federal Centers for Disease Control and Prevention, or any other agency of the United States Department of Health and Human Services, for public health research or analysis purposes only, provided that the research or analysis relates to health care-associated infections or preventable adverse events. The privilege and confidentiality provisions contained in this chapter apply to such disclosures.

SECTION 3.0334. Sections 101.001(1) and (3), Health and Safety Code, are amended to read as follows:

(1) "Alzheimer's disease and related disorders support group" means a local, state, or national organization that:

(A) is established to provide support services to aid persons with [victims of] Alzheimer's disease and related disorders and their caregivers;

(B) encourages research into the cause, prevention, treatment, and care of persons with [victims of] Alzheimer's disease and related disorders; and

(C) is dedicated to the development of essential services for persons with [victims of] Alzheimer's disease and related disorders and their caregivers.

(3) Primary family caregiver means an individual who is a relative of a person with [victim of] Alzheimer's disease or related disorders, who has or has had a major responsibility for care and supervision of the person [victim], and who is not a professional health care provider paid to care for the person [victim].

SECTION 3.0335. Section 101.002(a), Health and Safety Code, is amended to read as follows:

(a) The Texas Council on Alzheimer's Disease and Related Disorders is composed of:

(1) five public members, one of whom is an individual related to a person with [victim of] Alzheimer's disease or related disorders but who is not a primary family caregiver, one of whom is a primary family caregiver, two of whom are members of an Alzheimer's disease and related disorders support group, and one of whom is an interested citizen;

(2) seven professional members with special training and interest in Alzheimer's disease and related disorders, with one representative each from nursing facilities [homes], physicians, nurses, public hospitals, private hospitals, home health agencies, and faculty of institutions of higher education; and

(3) the [chief executive officer or the officer's designated] representative from the commission, department, and [Texas] Department of [on] Aging and Disability Services designated by the executive commissioner or commissioner of each agency, as applicable[, Texas Department of Human Services, Texas Department

226-1 ~~of Mental Health and Mental Retardation, and Long-Term Care~~
 226-2 ~~Coordinating Council for the Elderly].~~

226-3 SECTION 3.0336. Section 101.007(a), Health and Safety Code,
 226-4 is amended to read as follows:

226-5 (a) The council shall:

226-6 (1) advise the department [board] and recommend needed
 226-7 action for the benefit of persons with [victims of] Alzheimer's
 226-8 disease and related disorders and for their caregivers;

226-9 (2) coordinate public and private family support
 226-10 networking systems for primary family caregivers;

226-11 (3) disseminate information on services and related
 226-12 activities for persons with [victims of] Alzheimer's disease and
 226-13 related disorders to the medical and health care community, the
 226-14 academic community, primary family caregivers, advocacy
 226-15 associations, and the public;

226-16 (4) coordinate a volunteer assistance program
 226-17 primarily for in-home and respite care services;

226-18 (5) encourage research to benefit persons with
 226-19 [victims of] Alzheimer's disease and related disorders;

226-20 (6) recommend to the department [board] disbursement
 226-21 of grants and funds available for the council; and

226-22 (7) facilitate coordination of state agency services
 226-23 and activities relating to persons with [victims of] Alzheimer's
 226-24 disease and related disorders.

226-25 SECTION 3.0337. Section 101.008, Health and Safety Code, is
 226-26 amended to read as follows:

226-27 Sec. 101.008. DUTIES OF DEPARTMENT. The department shall:

226-28 (1) provide administrative assistance, services, and
 226-29 materials to the council;

226-30 (2) accept, deposit, and disburse funds made available
 226-31 to the council at the direction of the executive commissioner
 226-32 [board];

226-33 (3) accept gifts and grants on behalf of the council
 226-34 from any public or private entity;

226-35 (4) maintain a population data base of persons with
 226-36 [victims of] Alzheimer's disease and related disorders in this
 226-37 state; and

226-38 (5) apply for and receive on behalf of the council any
 226-39 appropriations, gifts, or other funds from the state or federal
 226-40 government or any other public or private entity, subject to
 226-41 limitations and conditions prescribed by legislative
 226-42 appropriation.

226-43 SECTION 3.0338. Section 101.009(b), Health and Safety Code,
 226-44 is amended to read as follows:

226-45 (b) The department [board] shall deposit any money received
 226-46 under Subsection (a) in the state treasury [to the credit of the
 226-47 Alzheimer's disease and related disorders council fund] to be used
 226-48 for the purposes of this chapter.

226-49 SECTION 3.0339. Section 101.010, Health and Safety Code, is
 226-50 amended to read as follows:

226-51 Sec. 101.010. REPORT. Before September 1 of each
 226-52 even-numbered year, the council shall submit a biennial report of
 226-53 the council's activities and recommendations to the governor,
 226-54 lieutenant governor, speaker of the house of representatives, and
 226-55 members of the legislature[, Long-Term Care Coordinating Council
 226-56 for the Elderly, and board].

226-57 SECTION 3.0340. Sections 103.002(a), (b), and (c), Health
 226-58 and Safety Code, are amended to read as follows:

226-59 (a) The Texas Diabetes Council is composed of 11 citizen
 226-60 members appointed from the public and one representative each from
 226-61 the department, the commission [Health and Human Services
 226-62 Commission], and the Department of Assistive and Rehabilitative
 226-63 Services.

226-64 (b) The governor, with the advice and consent of the senate,
 226-65 shall appoint the following citizen members:

226-66 (1) a licensed physician with a specialization in
 226-67 treating diabetes;

226-68 (2) a registered nurse with a specialization in
 226-69 diabetes education and training;

(3) a registered and licensed dietitian with a specialization in the diabetes education field;

(4) a person with experience and training in public health policy;

(5) three consumer members, with special consideration given to persons active in the Texas affiliates of the Juvenile Diabetes Research Foundation (JDRF) or the American Diabetes Association; and

(6) four members from the general public with expertise or demonstrated commitment to diabetes issues.

(c) The commissioner, executive commissioner, and commissioner of assistive and rehabilitative services [chairman of the board of each agency listed in Subsection (a)] shall appoint that agency's representative to the council. Agency representatives shall be nonvoting members of the council.

SECTION 3.0341. Section 103.008(b), Health and Safety Code, is amended to read as follows:

(b) If the office of a member who is an agency representative becomes vacant, the commissioner or executive commissioner, as appropriate, [chairman of the board] of that agency shall appoint an agency representative to serve for the remainder of that member's term.

SECTION 3.0342. Section 103.009, Health and Safety Code, is amended to read as follows:

Sec. 103.009. REIMBURSEMENT. [at] The department shall reimburse council and advisory committee members for travel and other necessary expenses incurred in performing official duties as provided by Section 2110.004, Government Code [at the same rate provided for state employees in the General Appropriations Act].

[(b) Funds for travel reimbursement shall be appropriated to the department.] SECTION 3.0242 Section 103.013(g), Health and Safety Code

SECTION 3.0343. Section 103.013(c), Health and Safety Code, is amended to read as follows:

(c) The council shall make written recommendations for performing its duties under this chapter to the executive commissioner [board] and the legislature. If the council considers a recommendation that will affect an agency not represented on the council, the council shall seek the advice and assistance of the agency before taking action on the recommendation. The council's recommendations shall be implemented by the agencies affected by the recommendations.

SECTION 3.0344. Section 103.0131(a), Health and Safety Code, is amended to read as follows:

(a) In conjunction with developing each state plan described in Section 103.013, the council shall conduct a statewide assessment of existing programs for the prevention of diabetes and treatment of individuals with diabetes that are administered by the commission [Health and Human Services Commission] or a health and human services agency, as defined by Section 531.001, Government Code. As part of the assessment, the council shall collect data regarding:

- (1) the number of individuals served by the programs;
- (2) the areas where services to prevent diabetes and treat individuals with diabetes are unavailable; and
- (3) the number of health care providers treating individuals with diabetes under the programs.

SECTION 3.0345. Section 103.015(a), Health and Safety Code, is amended to read as follows:

(a) The council may receive gifts and grants from any public or private source to perform its duties under this chapter. The department shall accept the gifts on behalf of the council and shall deposit any funds accepted under this section to the credit of [a special account in] the general revenue fund.

SECTION 3.0346. Sections 103.01(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The department, commission, and [the] Department of Assistive and Rehabilitative Services[, and the Health and Human Services Commission] shall work with the council to jointly develop, produce, and implement a general public awareness strategy

228-1 focusing on diabetes, its complications, and techniques for
 228-2 achieving good management. Each agency shall pay for the costs of
 228-3 producing and disseminating information on diabetes to clients
 228-4 served by that agency.

228-5 (c) The department, commission, and [the] Department of
 228-6 Assistive and Rehabilitative Services[~~, and the Health and Human~~
~~Services Commission~~] may jointly develop and implement a statewide
 228-7 plan for conducting regional training sessions for public and
 228-8 private service providers, including institutional health care
 228-9 providers, who have routine contact with persons with diabetes.

228-10 SECTION 3.0347. Section 103A.007, Health and Safety Code,
 228-11 is amended to read as follows:

228-12 Sec. 103A.007. DUTIES OF COUNCIL. The council using
 228-13 existing resources may conduct studies and advise the department,
 228-14 the commission [~~Health and Human Services Commission~~], and the
 228-15 Texas Department of Insurance on:

228-16 (1) public use data, outcome data, and other
 228-17 information submitted to or collected by the department under
 228-18 Chapter 108 or other law related to hemophilia or other bleeding or
 228-19 clotting disorders and the department's disclosure and
 228-20 dissemination of that information within and outside the
 228-21 department; and

228-22 (2) other issues that affect the health and wellness
 228-23 of persons living with hemophilia or other bleeding or clotting
 228-24 disorders.

228-25 SECTION 3.0348. Section 104.011(a), Health and Safety Code,
 228-26 is amended to read as follows:

228-27 (a) The statewide health coordinating council is composed
 228-28 of 17 members determined as follows:

228-29 (1) the executive commissioner or a representative
 228-30 designated by the executive commissioner;

228-31 (2) the chair of the Texas Higher Education
 228-32 Coordinating Board or a representative designated by the presiding
 228-33 officer;

228-34 (3) the commissioner or a representative designated by
 228-35 the commissioner;

228-36 (4) the commissioner [~~presiding officer~~] of aging [~~the~~
 228-37 ~~Department of Aging~~] and disability services [~~Disability Services~~]
 228-38 or a representative designated by the commissioner of aging and
 228-39 disability services [~~presiding officer~~]; and

228-40 (5) the following members appointed by the governor:

228-41 (A) three health care professionals from the
 228-42 allied health, dental, medical, mental health, and pharmacy
 228-43 professions, no two of whom may be from the same profession;

228-44 (B) one registered nurse;

228-45 (C) two representatives of a university or
 228-46 health-related institution of higher education;

228-47 (D) one representative of a junior or community
 228-48 college with a nursing program;

228-49 (E) one hospital administrator;

228-50 (F) one managed care administrator; and

228-51 (G) four public members.

228-52 SECTION 3.0349. Section 104.0112(c), Health and Safety
 228-53 Code, is amended to read as follows:

228-54 (c) If the executive commissioner has knowledge that a
 228-55 potential ground for removal exists, the executive commissioner
 228-56 shall notify the presiding officer of the council of the potential
 228-57 ground. The presiding officer shall then notify the governor and
 228-58 the attorney general that a potential ground for removal exists. If
 228-59 the potential ground for removal involves the presiding officer,
 228-60 the executive commissioner shall notify the next highest ranking
 228-61 officer of the council, who shall then notify the governor and the
 228-62 attorney general that a potential ground for removal exists.

228-63 SECTION 3.0350. Section 104.023, Health and Safety Code, is
 228-64 amended to read as follows:

228-65 Sec. 104.023. REVIEW OF STATE HEALTH PLAN. The statewide
 228-66 health coordinating council shall submit the state health plan to
 228-67 the commission [~~Health and Human Services Commission~~] for review
 228-68 and comment before the plan is sent to the governor.

229-1 SECTION 3.0351. Section 104.043(a), Health and Safety Code,
229-2 is amended to read as follows:

229-3 (a) If the department does not receive necessary data from
229-4 an entity as required by department [~~the executive commissioner's~~]
229-5 rules, the department shall send to the entity a notice requiring
229-6 the entity to submit the data not later than the 30th day after the
229-7 date on which the entity receives the notice.

229-8 SECTION 3.0352. Section 105.005, Health and Safety Code, is
229-9 amended to read as follows:

229-10 Sec. 105.005. RULES. The executive commissioner [~~of the~~
229-11 ~~Health and Human Services Commission~~] may adopt rules to govern the
229-12 reporting and collection of data.

229-13 SECTION 3.0353. Section 107A.001, Health and Safety Code,
229-14 is amended to read as follows:

229-15 Sec. 107A.001. CENTER FOR ELIMINATION OF
229-16 DISPROPORTIONALITY AND DISPARITIES. The executive commissioner
229-17 [~~of the Health and Human Services Commission~~] shall maintain a
229-18 center for elimination of disproportionality and disparities in the
229-19 commission [~~Health and Human Services Commission~~] to:

229-20 (1) assume a leadership role in working or contracting
229-21 with state and federal agencies, universities, private interest
229-22 groups, communities, foundations, and offices of minority health to
229-23 develop health initiatives to decrease or eliminate health and
229-24 health access disparities among racial, multicultural,
229-25 disadvantaged, ethnic, and regional populations, including
229-26 appropriate language services; and

229-27 (2) maximize use of existing resources without
229-28 duplicating existing efforts.

229-29 SECTION 3.0354. Section 107A.003, Health and Safety Code,
229-30 is amended to read as follows:

229-31 Sec. 107A.003. FUNDING. The commission [~~Health and Human~~
229-32 ~~Services Commission~~] may distribute to the center unobligated and
229-33 unexpended appropriations to be used to carry out its powers.

229-34 SECTION 3.0355. Chapter 108, Health and Safety Code, is
229-35 amended to read as follows:

229-36 CHAPTER 108. [~~TEXAS~~] HEALTH CARE DATA COLLECTION [~~INFORMATION~~
229-37 ~~COUNCIL~~]

229-38 Sec. 108.001. DEPARTMENT DUTIES [~~CREATION OF COUNCIL~~]. The
229-39 department [~~Texas Health Care Information Council~~] shall
229-40 administer this chapter and report to the governor, the
229-41 legislature, and the public.

229-42 Sec. 108.002. DEFINITIONS. In this chapter:

229-43 (1) "Accurate and consistent data" means data that has
229-44 been edited by the department [council] and subject to provider
229-45 validation and certification.

229-46 [(2) "Board" means the Texas Board of Health.]

229-47 (3) "Certification" means the process by which a
229-48 provider confirms the accuracy and completeness of the data set
229-49 required to produce the public use data file in accordance with
229-50 department [council] rule.

229-51 (4) "Charge" or "rate" means the amount billed by a
229-52 provider for specific procedures or services provided to a patient
229-53 before any adjustment for contractual allowances. The term does
229-54 not include copayment charges to enrollees in health benefit plans
229-55 charged by providers paid by capitation or salary.

229-56 (4-a) "Commission" means the Health and Human Services
229-57 Commission.

229-58 (6) "Data" means information collected under Section
229-59 108.0065 or 108.009 in the form initially received.

229-60 [(7) "Department" means the Department of State Health
229-61 Services.]

229-62 (8) "Edit" means to use an electronic standardized
229-63 process developed and implemented by department [council] rule to
229-64 identify potential errors and mistakes in data elements by
229-65 reviewing data fields for the presence or absence of data and the
229-66 accuracy and appropriateness of data.

229-67 [(8-a) "Executive commissioner" means the executive
229-68 commissioner of the Health and Human Services Commission.]

229-69 (9) "Health benefit plan" means a plan provided by:

(A) a health maintenance organization; or
(B) an approved nonprofit health corporation that is certified under Section 162.001, Occupations Code, and that holds a certificate of authority issued by the commissioner of insurance under Chapter 844, Insurance Code.

(10) "Health care facility" means:

(A) a hospital;

(B) an ambulatory surgical center licensed under

Chapter 243;

(C) a chemical dependency treatment facility licensed under Chapter 464;

(D) a renal dialysis facility;
(E) a birthing center.

(E) a birthing center;
(F) a rural health clinic

(F) a rural health clinic;
(G) a federally qualifi

(G) a federally qualified health center under section 1396d(l)(2)(B);

(H) a free-standing imaging center.

"Health maintenance organization

organization as defined in Section 843.002, Insurance Code.

(12) "Hospital" means a public, for-profit, or nonprofit institution licensed or owned by this state that is a general or special hospital, private mental hospital, chronic disease hospital, or other type of hospital.

(13) "Outcome data" means measures related to the provision of care, including:

- (A) patient demographic information;
- (B) patient length of stay;

- (B) patient length of stay;
- (C) mortality;

(C) mortality;
(D) co-morbidity;

(D) co-morbidity;
(E) complications

(E) complications, and
(F) charges.

(14) "Physician" means an individual licensed under the laws of this state to practice medicine under Subtitle B, Title 3, Occupations Code.

(15) "Provider" means a physician or health care facility.

(16) "Provider quality" means the extent to which a provider renders care that, within the capabilities of modern medicine, obtains for patients medically acceptable health outcomes and prognoses, after severity adjustment.

(17) "Public use data" means patient level data relating to individual hospitalizations that has not been summarized or analyzed, that has had patient identifying information removed, that identifies physicians only by use of uniform physician identifiers, and that is severity and risk adjusted, edited, and verified for accuracy and consistency. Public use data may exclude some data elements submitted to the department [council].

(19) "Severity adjustment" means a method to stratify patient groups by degrees of illness and mortality.

(20) "Uniform patient identifier" means a number assigned by the department [council] to an individual patient and composed of numeric, alpha, or alphanumeric characters.

(21) "Uniform physician identifier" means a number assigned by the department [~~council~~] to an individual physician and composed of numeric, alpha, or alphanumeric characters.

(22) "Validation" means the process by which a provider verifies the accuracy and completeness of data and corrects any errors identified before certification in accordance with department [council] rule.

Sec 108-0026 TRANSFER OF DUTIES; REFERENCE TO COUNCIL

(a) The powers and duties of the Texas Health Care Information Council under this chapter were transferred to the Department of State Health Services in accordance with Section 1.19, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.

[b] In this chapter or other law, a reference to the Texas Health Care Information Council means the Department of State Health Services.

[Sec. 108.003. COUNCIL COMPOSITION, EXPENSES. (a) The

231-1 council is composed of four ex officio state agency members and 15
231-2 members appointed by the governor in accordance with this section.

231-3 [(b) The ex officio members of the council are:

231-4 [(1) the commissioner of public health or the
231-5 commissioner's designee;

231-6 [(2) the commissioner of health and human services or
231-7 the commissioner's designee;

231-8 [(3) the commissioner of insurance or the
231-9 commissioner's designee; and

231-10 [(4) the public insurance counsel or the counsel's
231-11 designee.

231-12 [(c) The governor shall appoint the following members of the
231-13 council:

231-14 [(1) three representatives of the business community,
231-15 with at least one representing small businesses, who are purchasers
231-16 of health care but who are not involved in the provision of health
231-17 care or health insurance;

231-18 [(2) two representatives from labor, one of whom is
231-19 not directly involved with management of health care benefits;

231-20 [(3) two representatives of consumers who are not
231-21 professionally involved in the purchase, provision,
231-22 administration, or review of health care or health care insurance;

231-23 [(4) two representatives of hospitals;

231-24 [(5) one representative of health maintenance
231-25 organizations;

231-26 [(6) three representatives of physicians who are
231-27 involved in direct patient care; and

231-28 [(7) two members who are not professionally involved
231-29 in the purchase, provision, administration, or utilization review
231-30 of health care or health care insurance and who have expertise in:

231-31 [(A) health planning;

231-32 [(B) health economics;

231-33 [(C) provider quality assurance;

231-34 [(D) information systems; or

231-35 [(E) the reimbursement of medical education and
231-36 research costs.

231-37 [(d) The chairman is appointed by and serves at the pleasure
231-38 of the governor. Members annually shall elect a vice chairman.

231-39 [(e) A majority of voting members constitutes a quorum for
231-40 the transaction of any business. An act by the majority of the
231-41 voting members present at any meeting at which there is a quorum is
231-42 considered to be an act of the council.

231-43 [(f) The council may appoint committees and may elect any
231-44 officers subordinate to those provided for in Subsection (d).

231-45 [(g) The council shall appoint technical advisory
231-46 committees and shall consult with the appropriate technical
231-47 advisory committee with respect to a rule before the rule is finally
231-48 adopted by the council. The council is not required to consult with
231-49 a technical advisory committee before adopting an emergency rule in
231-50 accordance with Section 2001.034, Government Code. The council
231-51 shall submit an emergency rule adopted by the council to the
231-52 appropriate advisory committee for review not later than the first
231-53 advisory committee meeting that occurs after the rule is adopted.
231-54 The council may consult with the appropriate technical advisory
231-55 committee with respect to other formal action of the council. A
231-56 technical advisory committee may consult with other professionals
231-57 as necessary. Chapter 2110, Government Code, does not apply to an
231-58 advisory committee appointed under this subsection. The technical
231-59 advisory committees shall include:

231-60 [(1) a technical advisory committee that includes,
231-61 among other individuals, at least five practicing physicians
231-62 licensed in this state to provide advice and recommendations to the
231-63 council on the development and implementation of the methodology
231-64 and the interpretation of a provider quality report and data under
231-65 Section 108.010;

231-66 [(2) a technical advisory committee composed of at
231-67 least five practicing physicians licensed in this state who have
231-68 been actively engaged in organized peer review at a hospital in this
231-69 state to provide advice, recommendations, and peer review expertise

232-1 to the council on:

232-2 [(A) the use of peer review in the determination
232-3 of quality inpatient care;

232-4 [(B) the development and interpretation of data
232-5 elements necessary to the determination of quality inpatient care;
232-6 and

232-7 [(C) the development and format of reports and
232-8 information relating to provider quality;

232-9 [(3) a technical advisory committee that includes
232-10 providers and consumers to provide advice and recommendations to
232-11 the council relating to education about the development and
232-12 dissemination of provider reports and data;

232-13 [(4) a technical advisory committee that includes
232-14 representatives of consumers and each type of issuer of health
232-15 benefit plans to assist the council in complying with Section
232-16 108.009(o); and

232-17 [(5) a technical advisory committee composed of
232-18 providers, consumers, and individuals who have expertise in
232-19 hospital information systems, health information management,
232-20 quality management, and security of confidential data.

232-21 [(h) A member of the council may not receive compensation
232-22 for service on the council. However, the member shall be reimbursed
232-23 for the member's actual and necessary meals, lodging,
232-24 transportation, and incidental expenses if incurred while
232-25 performing council business.

232-26 [(i) A member of an advisory committee appointed by the
232-27 council may not receive compensation or reimbursement of any
232-28 expense incurred while serving on the committee.

232-29 [(j) Appointments to the council shall be made without
232-30 regard to the race, color, disability, sex, religion, age, or
232-31 national origin of appointees. Additionally, in making the
232-32 appointments to the council, the governor shall consider
232-33 geographical representation.

232-34 [(k) A person may not serve as a member of the council if the
232-35 person is required to register as a lobbyist under Chapter 305,
232-36 Government Code, because of the person's activities for
232-37 compensation on behalf of a profession related to the operation of
232-38 the council.

232-39 [Sec. 108.004. MEETINGS. (a) The council, council
232-40 committees, and technical advisory committees are subject to the
232-41 open meetings law, Chapter 551, Government Code.

232-42 [(b) The council shall meet as often as necessary, but not
232-43 less often than quarterly, to perform its duties under this
232-44 chapter.

232-45 [(c) The council shall publish a notice of its meetings in
232-46 the Texas Register.

232-47 [Sec. 108.0045. OPEN RECORDS. Subject to the restrictions
232-48 of this chapter, the council is subject to the open records law,
232-49 Chapter 552, Government Code.

232-50 [Sec. 108.005. TERMS. (a) The terms of the agency members
232-51 are concurrent with their terms of office. The appointed council
232-52 members serve six-year staggered terms, with the terms of five
232-53 members expiring September 1 of each odd-numbered year.

232-54 [(b) An appointed member may not serve more than two full
232-55 consecutive terms.

232-56 [(c) It is a ground for removal from the council if a member
232-57 of the council:

232-58 [(1) does not have at the time of appointment the
232-59 qualifications required by Section 108.003;

232-60 [(2) does not maintain during service the
232-61 qualifications required by Section 108.003;

232-62 [(3) cannot discharge the member's duties for a
232-63 substantial part of the term for which the member is appointed
232-64 because of illness or disability; or

232-65 [(4) fails to attend at least one-half of the
232-66 regularly scheduled meetings that the member is eligible to attend
232-67 during a calendar year.]

232-68 Sec. 108.006. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
232-69 AND DEPARTMENT [COUNCIL]. (a) The department [council] shall

233-1 develop a statewide health care data collection system to collect
233-2 health care charges, utilization data, provider quality data, and
233-3 outcome data to facilitate the promotion and accessibility of
233-4 cost-effective, good quality health care. The executive
233-5 commissioner or department, as applicable, [council] shall perform
233-6 the following duties:

233-7 (1) the department shall direct the collection,
233-8 dissemination, and analysis of data under this chapter;

233-9 (2) [contract with] the department shall [~~to~~] collect
233-10 the data under this chapter;

233-11 (3) the executive commissioner shall adopt policies
233-12 and rules necessary to carry out this chapter, including rules
233-13 concerning data collection requirements;

233-14 (4) the department shall build on and not duplicate
233-15 other data collection required by state or federal law, by an
233-16 accreditation organization, or by department [board] rule;

233-17 (5) working with appropriate agencies, the
233-18 department, with the approval of the executive commissioner, shall
233-19 review public health data collection programs in this state and
233-20 recommend, where appropriate, consolidation of the programs and any
233-21 legislation necessary to effect the consolidation;

233-22 (6) the department shall assure that public use data
233-23 is made available and accessible to interested persons;

233-24 (7) the executive commissioner shall prescribe by rule
233-25 the process for providers to submit data consistent with Section
233-26 [108.009](#);

233-27 (8) the executive commissioner shall adopt by rule and
233-28 the department shall implement a methodology to collect and
233-29 disseminate data reflecting provider quality in accordance with
233-30 Section [108.010](#);

233-31 (9) the department shall make reports to the
233-32 legislature, the governor, and the public on:

233-33 (A) the charges and rate of change in the charges
233-34 for health care services in this state;

233-35 (B) the effectiveness of the department
233-36 [council] in carrying out the legislative intent of this chapter;

233-37 (C) if applicable, any recommendations on the
233-38 need for further legislation; and

233-39 (D) the quality and effectiveness of health care
233-40 and access to health care for all citizens of this state;

233-41 (10) the department shall develop an annual work plan
233-42 and establish priorities to accomplish its duties;

233-43 (11) the department shall provide consumer education
233-44 on the interpretation and understanding of the public use or
233-45 provider quality data before the data is disseminated to the
233-46 public;

233-47 (12) the department shall work with the commission
233-48 [Health and Human Services Commission] and each health and human
233-49 services agency that administers a part of the state Medicaid
233-50 program to avoid duplication of expenditures of state funds for
233-51 computer systems, staff, or services in the collection and analysis
233-52 of data relating to the state Medicaid program;

233-53 (13) the department shall work with the Department of
233-54 Information Resources in developing and implementing the statewide
233-55 health care data collection system and maintain consistency with
233-56 Department of Information Resources standards; and

233-57 (14) the department shall develop and implement a
233-58 health care information plan [~~to be used by the department~~] to:

233-59 (A) support public health and preventative
233-60 health initiatives;

233-61 (B) assist in the delivery of primary and
233-62 preventive health care services;

233-63 (C) facilitate the establishment of appropriate
233-64 benchmark data to measure performance improvements;

233-65 (D) establish and maintain a systematic approach
233-66 to the collection, storage, and analysis of health care data for
233-67 longitudinal, epidemiological, and policy impact studies; and

233-68 (E) develop and use system-based protocols to
233-69 identify individuals and populations at risk.

(b) The department [council] may:

(1) employ a [or contract with the department to employ an executive] director and other staff, including administrative personnel, necessary to comply with this chapter and rules adopted under this chapter;

(2) engage professional consultants as it considers necessary to the performance of its duties; and

(3) [adopt rules clarifying which health care facilities must provide data under this chapter; and

[~~(4)~~] apply for and receive any appropriation, donation, or other funds from the state or federal government or any other public or private source, subject to Section [108.015](#) and limitations and conditions provided by legislative appropriation.

(b-1) The executive commissioner may adopt rules clarifying which health care facilities must provide data under this chapter.

(d) The department [council] may not establish or recommend rates of payment for health care services.

(d) The department [council] may not take an action that affects or relates to the validity, status, or terms of an interagency agreement [~~or a contract with the department~~] without the executive commissioner's [beard's] approval.

(e) In the collection of data, the department [council]

(e) In the collection of data, the department [~~council~~] shall consider the research and initiatives being pursued by the United States Department of Health and Human Services, the National Committee for Quality Assurance, and The [~~the~~] Joint Commission [~~on Accreditation of Healthcare Organizations~~] to reduce potential duplication or inconsistencies. The executive commissioner [~~council~~] may not adopt rules that conflict with or duplicate any federally mandated data collection programs or requirements of comparable scope.

(f) The executive commissioner [council] shall prescribe by rule a public use data file minimum data set that maintains patient confidentiality and establishes data accuracy and consistency.

(g) The public use data file minimum data set as defined by department [council] rule is subject to annual review by the department [council with the assistance of the advisory committee under Section 108.003(g)(5)]. The purpose of the review is to evaluate requests to modify the existing minimum data set and editing process. A decision to modify the minimum data set by the addition or deletion of data elements shall include consideration of the value of the specific data to be added or deleted and the technical feasibility of establishing data accuracy and consistency. The department [council] may also consider the costs to the department [council] and providers associated with modifying the minimum data set.

(h) In accordance with Section [108.0135](#), the department [council] may release data collected under Section [108.009](#) that is not included in the public use data file minimum data set established under Subsection (f).

[Sec. 108.0062. DRUG PURCHASING COOPERATIVES. (a) The council shall develop criteria for evaluating drug purchasing cooperatives that purchase drugs on behalf of consumers and create an evaluation form for consumers to evaluate drug purchasing cooperatives.]

[(b) The council shall distribute the evaluation forms to the department, local health departments, the Texas Department of Insurance, and the consumer protection division of the office of the attorney general.]

[~~(c) The council shall compile the information from completed evaluation forms and make the information available to the public.~~]

Sec. 108.0065. POWERS AND DUTIES OF COMMISSION AND
DEPARTMENT [COUNCIL] RELATING TO MEDICAID MANAGED CARE. (a) In
this section, [+]
[(1) "Commission" means the Health and Human Services

Commission. [(2)] "Medicaid managed care organization" means a managed care organization, as defined by Section 533.001, Government Code, that is contracting with the commission to

235-1 implement the Medicaid managed care program under Chapter 533,
 235-2 Government Code.

235-3 (b) The commission may direct the department [council] to
 235-4 collect data under this chapter with respect to Medicaid managed
 235-5 care organizations. The department [council] shall coordinate the
 235-6 collection of the data with the collection of data for health
 235-7 benefit plan providers, but with the approval of the commission may
 235-8 collect data in addition to the data otherwise required of health
 235-9 benefit plan providers.

235-10 (c) Each Medicaid managed care organization shall provide
 235-11 to the department the data required by the executive commissioner
 235-12 [council] in the form required by the executive commissioner
 235-13 [council] or, if the data is also being submitted to the commission
 235-14 [or Medicaid operating agency], in the form required by the
 235-15 commission [or Medicaid operating agency].

235-16 (d) Dissemination of data collected under this section is
 235-17 subject to Sections 108.010, 108.011, 108.012, 108.013, 108.014,
 235-18 and 108.0141.

235-19 (e) The commission shall analyze the data collected in
 235-20 accordance with this section and shall use the data to:

235-21 (1) evaluate the effectiveness and efficiency of the
 235-22 Medicaid managed care system;

235-23 (2) determine the extent to which Medicaid managed
 235-24 care does or does not serve the needs of Medicaid recipients in this
 235-25 state; and

235-26 (3) assess the cost-effectiveness of the Medicaid
 235-27 managed care system in comparison to the fee-for-service system,
 235-28 considering any improvement in the quality of care provided.

235-29 (h) The commission, using existing funds, may contract with
 235-30 an entity to comply with the requirements under Subsection (e).

235-31 Sec. 108.007. REVIEW POWERS. (a) The [council, through
 235-32 the] department, [and] subject to reasonable rules and guidelines,
 235-33 may:

235-34 (1) inspect documents and records used by data sources
 235-35 that are required to compile data and reports; and

235-36 (2) compel providers to produce accurate documents and
 235-37 records.

235-38 (b) The department [council] may enter into a memorandum of
 235-39 understanding with a state agency, including the division of the
 235-40 commission [Health and Human Services Commission] responsible for
 235-41 the state Medicaid program, or with a school of public health or
 235-42 another institution of higher education, to share data and
 235-43 expertise, to obtain data for the department [council], or to make
 235-44 data available to the department [council]. An agreement entered
 235-45 into under this subsection must protect patient confidentiality.

235-46 [Sec. 108.008. DUTIES OF DEPARTMENT. (a) The department,
 235-47 as the state health planning and development agency under Chapter
 235-48 104, is responsible for the collection of data under Chapter 311.

235-49 (b) The department shall:

235-50 (1) contract with the council to collect data under
 235-51 this chapter;

235-52 (2) provide administrative assistance to the
 235-53 council,

235-54 (3) coordinate administrative responsibilities with
 235-55 the council to avoid unnecessary duplication of the collection of
 235-56 data and other duties;

235-57 (4) on request of the council, give the council
 235-58 access to data collected by the department;

235-59 (5) submit or assist in the council's budget request
 235-60 to the legislature; and

235-61 (6) work with the Department of Information Resources
 235-62 in developing and implementing the statewide health care data
 235-63 collection system and maintain consistency with Department of
 235-64 Information Resources standards.

235-65 (c) The department may not take an action that affects or
 235-66 relates to the validity, status, or terms of an interagency
 235-67 agreement or a contract with the council without the council's
 235-68 approval.

235-69 [Sec. 108.0081. MEMORANDUM OF UNDERSTANDING. The council

236-1 and the department shall enter into a memorandum of understanding
 236-2 to implement the department's duties under Section 108.008(b). The
 236-3 memorandum of understanding must address:

236-4 [1] payroll and travel reimbursement services;

236-5 [2] purchasing services;

236-6 [3] personnel services;

236-7 [4] budget management services;

236-8 [5] computer support and maintenance services;

236-9 [6] meeting coordination services;

236-10 [7] any other administrative support or other
 236-11 services to be provided by the department for the council; and
 236-12 [8] the manner in which the council will reimburse
 236-13 the department for the cost of services provided by the department
 236-14 for the council.]

236-15 Sec. 108.0085. DUTIES OF ATTORNEY GENERAL. The attorney
 236-16 general shall furnish the department [council] with advice and
 236-17 legal assistance that may be required to implement this chapter.

236-18 Sec. 108.009. DATA SUBMISSION AND COLLECTION. (a) The
 236-19 department [council] may collect, and, except as provided by
 236-20 Subsection [Subsections (c) and] (d), providers shall submit to the
 236-21 department [council] or another entity as determined by the
 236-22 department [council], all data required by this section. The data
 236-23 shall be collected according to uniform submission formats, coding
 236-24 systems, and other technical specifications necessary to make the
 236-25 incoming data substantially valid, consistent, compatible, and
 236-26 manageable using electronic data processing, if available.

236-27 (b) The executive commissioner [council] shall adopt rules
 236-28 to implement the data submission requirements imposed by Subsection
 236-29 (a) in appropriate stages to allow for the development of efficient
 236-30 systems for the collection and submission of the data. A rule
 236-31 adopted by the executive commissioner [council] that requires
 236-32 submission of a data element that, before adoption of the rule, was
 236-33 not required to be submitted may not take effect before the 90th day
 236-34 after the date the rule is adopted and must take effect not later
 236-35 than the first anniversary after the date the rule is adopted.

236-36 (d) The department [council] may not collect data from
 236-37 individual physicians or from an entity that is composed entirely
 236-38 of physicians and that is a professional association organized
 236-39 under the former Texas Professional Association Act (Article 1528f,
 236-40 Vernon's Texas Civil Statutes) or formed under the Texas
Professional Association Law, as described by Section 1.008(1),
 236-41 Business Organizations Code, a limited liability partnership
 236-42 organized under former Section 3.08, Texas Revised Partnership Act
 236-43 (Article 6132b-3.08, Vernon's Texas Civil Statutes), or formed as
 236-44 described by Subchapter J, Chapter 152, Business Organizations
 236-45 Code, or a limited liability company organized under the former
 236-46 Texas Limited Liability Company Act (Article 1528n, Vernon's Texas
 236-47 Civil Statutes) or formed under the Texas Limited Liability Company
 236-48 Law, as described by Section 1.008(e), Business Organizations Code,
 236-49 except to the extent the entity owns and operates a health care
 236-50 facility in this state. This subsection does not prohibit the
 236-51 release of data about physicians using uniform physician
 236-52 identifiers that has been collected from a health care facility
 236-53 under this chapter.

236-54 (e) The department [council] shall establish [the
 236-55 department as] the single collection point for receipt of data from
 236-56 providers. With the approval of the executive commissioner
 236-57 [council and the board], the department may transfer collection of
 236-58 any data required to be collected by the department under any other
 236-59 law to the statewide health care data collection system.

236-60 (f) The executive commissioner [council] may not require
 236-61 providers to submit data more frequently than quarterly, but
 236-62 providers may submit data on a more frequent basis.

236-63 (g) The department [council] shall coordinate data
 236-64 collection with the data collection formats used by federally
 236-65 qualified health centers. To satisfy the requirements of this
 236-66 chapter:

236-67 (1) a federally qualified health center shall submit
 236-68 annually to the department [council] a copy of the Medicaid cost

237-1 report of federally qualified health centers; and
237-2 (2) a provider receiving federal funds under 42 U.S.C.
237-3 Section 254b or [7] 254c[~~, or 256~~] shall submit annually to the
237-4 department [council] a copy of the Uniform Data System [Bureau of
237-5 Common Reporting Requirements] data report developed by the United
237-6 States Department of [Public] Health and Human Services [Service].

237-7 (h) The department shall coordinate data collection with
237-8 the data submission formats used by hospitals and other providers.
237-9 The department shall accept data in the format developed by the
237-10 American National Standards Institute or its successor or other
237-11 nationally accepted standardized forms that hospitals and other
237-12 providers use for other complementary purposes.

237-13 (i) The executive commissioner [council] shall develop by
237-14 rule reasonable alternate data submission procedures for providers
237-15 that do not possess electronic data processing capacity.

237-16 (k) The department [council] shall collect health care data
237-17 elements relating to payer type, the racial and ethnic background
237-18 of patients, and the use of health care services by consumers. The
237-19 department [council] shall prioritize data collection efforts on
237-20 inpatient and outpatient surgical and radiological procedures from
237-21 hospitals, ambulatory surgical centers, and free-standing imaging
237-22 [radiology] centers.

237-23 (m) To the extent feasible, the department [council] shall
237-24 obtain from public records the information that is available from
237-25 those records.

237-26 (o) A provider of a health benefit plan shall annually
237-27 submit to the department [council] aggregate data by service area
237-28 required by the Healthcare Effectiveness [Health Plan Employer]
237-29 Data and Information Set (HEDIS) as operated by the National
237-30 Committee for Quality Assurance. The department [council] may
237-31 approve the submission of data in accordance with other methods
237-32 generally used by the health benefit plan industry. If the
237-33 Healthcare Effectiveness [Health Plan Employer] Data and
237-34 Information Set does not generally apply to a health benefit plan,
237-35 the department [council] shall require submission of data in
237-36 accordance with other methods. This subsection does not relieve a
237-37 health care facility that provides services under a health benefit
237-38 plan from the requirements of this chapter. Information submitted
237-39 under this section is subject to Section 108.011 but is not subject
237-40 to Section 108.010.

237-41 Sec. 108.010. COLLECTION AND DISSEMINATION OF PROVIDER
237-42 QUALITY DATA. (a) Subject to Section 108.009, the department
237-43 [council] shall collect data reflecting provider quality based on a
237-44 methodology and review process established through the executive
237-45 commissioner's [council's] rulemaking process. The methodology
237-46 shall identify and measure quality standards and adhere to any
237-47 federal mandates.

237-48 (b) The department [council] shall study and analyze
237-49 initial methodologies for obtaining provider quality data,
237-50 including outcome data.

237-51 (c) The department [council] shall test the methodology by
237-52 collecting provider quality data for one year, subject to Section
237-53 108.009. The department [council] may test using pilot
237-54 methodologies. After collecting provider quality data for one
237-55 year, the department [council] shall report findings applicable to
237-56 a provider to that provider and allow the provider to review and
237-57 comment on the initial provider quality data applicable to that
237-58 provider. The department [council] shall verify the accuracy of
237-59 the data during this review and revision process. After the review
237-60 and revision process, provider quality data for subsequent reports
237-61 shall be published and made available to the public, on a time
237-62 schedule the department [council] considers appropriate.

237-63 (d) If the department [council] determines that provider
237-64 quality data to be published under Subsection (c) does not provide
237-65 the intended result or is inaccurate or inappropriate for
237-66 dissemination, the department [council] is not required to publish
237-67 the data or reports based in whole or in part on the data. This
237-68 subsection does not affect the release of public use data in
237-69 accordance with Section 108.011 or the release of information

238-1 submitted under Section 108.009(o).

238-2 (e) The executive commissioner [council] shall adopt rules
238-3 allowing a provider to submit concise written comments regarding
238-4 any specific provider quality data to be released concerning the
238-5 provider. The department [council] shall make the comments
238-6 available to the public at the office of the department [council]
238-7 and in an electronic form accessible through the Internet. The
238-8 comments shall be attached to any public release of provider
238-9 quality data. Providers shall submit the comments to the
238-10 department [council] to be attached to the public release of
238-11 provider quality data in the same format as the provider quality
238-12 data that is to be released.

238-13 (f) The methodology adopted [by the council] for measuring
238-14 quality shall include case-mix qualifiers, severity adjustment
238-15 factors, adjustments for medical education and research, and any
238-16 other factors necessary to accurately reflect provider quality.

238-17 (g) In addition to the requirements of this section, any
238-18 release of provider quality data shall comply with Sections
238-19 108.011(e) and (f).

238-20 (h) A provider quality data report may not identify an
238-21 individual physician by name, but must identify the physician by
238-22 the uniform physician identifier designated by the department
238-23 [council] under Section 108.011(c).

238-24 (i) The department [council] shall release provider quality
238-25 data in an aggregate form without uniform physician identifiers
238-26 when [+]

238-27 [(1) the data relates to providers described by
238-28 Section 108.0025(1), or]

238-29 [(2) the cell size of the data is below the minimum
238-30 size established by department [council] rule that would enable
238-31 identification of an individual patient or physician.]

238-32 Sec. 108.011. DISSEMINATION OF PUBLIC USE DATA AND
238-33 DEPARTMENT [COUNCIL] PUBLICATIONS. (a) The department [council]
238-34 shall promptly provide public use data and data collected in
238-35 accordance with Section 108.009(o) to those requesting it. The
238-36 public use data does not include provider quality data prescribed
238-37 by Section 108.010 or confidential data prescribed by Section
238-38 108.013.

238-39 (b) Subject to the restrictions on access to department
238-40 [council] data prescribed by Sections 108.010 and 108.013, and
238-41 using the public use data and other data, records, and matters of
238-42 record available to it, the department [council] shall prepare and
238-43 issue reports to the governor, the legislature, and the public as
238-44 provided by this section and Section 108.006(a). The department
238-45 [council] must issue the reports at least annually.

238-46 (c) Subject to the restrictions on access to department
238-47 [council] data prescribed by Sections 108.010 and 108.013, the
238-48 department [council] shall use public use data to prepare and issue
238-49 reports that provide information relating to providers, such as the
238-50 incidence rate of selected medical or surgical procedures. The
238-51 reports must provide the data in a manner that identifies
238-52 individual providers, including individual physicians, and that
238-53 identifies and compares data elements for all providers.
238-54 Individual physicians may not be identified by name, but shall be
238-55 identified by uniform physician identifiers. The executive
238-56 commissioner [council] by rule shall designate the characters to be
238-57 used as uniform physician identifiers.

238-58 (c-1) The department [council] shall use public use data to
238-59 prepare and issue reports that provide information for review and
238-60 analysis by the commission [Health and Human Services Commission]
238-61 relating to services that are provided in a niche hospital, as
238-62 defined by Section 105.002, Occupations Code, and that are provided
238-63 by a physician with an ownership interest in the niche hospital.

238-64 (c-2) Subsection (c-1) does not apply to an ownership
238-65 interest in publicly available shares of a registered investment
238-66 company, such as a mutual fund, that owns publicly traded equity
238-67 securities or debt obligations issued by a niche hospital or an
238-68 entity that owns the niche hospital.

238-69 (d) The executive commissioner [council] shall adopt

239-1 procedures to establish the accuracy and consistency of the public
239-2 use data before releasing the public use data to the public. The
239-3 department may adopt additional procedures as the department
239-4 determines necessary.

239-5 (e) If public use data is requested from the department
239-6 [council] about a specific provider, the department [council] shall
239-7 notify the provider about the release of the data. This subsection
239-8 does not authorize the provider to interfere with the release of
239-9 that data.

239-10 (f) A report issued by the department [council] shall
239-11 include a reasonable review and comment period for the affected
239-12 providers before public release of the report.

239-13 (g) The executive commissioner [council] shall adopt rules
239-14 allowing a provider to submit concise written comments regarding
239-15 any specific public use data to be released concerning the
239-16 provider. The department [council] shall make the comments
239-17 available to the public at [and] the office of the department
239-18 [council] and in an electronic form accessible through the
239-19 Internet. The comments shall be attached to any public release of
239-20 the public use data. Providers shall submit the comments to the
239-21 department [council] to be attached to the public release of public
239-22 use data in the same format as the public use data that is to be
239-23 released.

239-24 (h) Tapes containing public use data and provider quality
239-25 reports that are released to the public must include general
239-26 consumer education material, including an explanation of the
239-27 benefits and limitations of the information provided in the public
239-28 use data and provider quality reports.

239-29 (i) The department [council] shall release public use data
239-30 in an aggregate form without uniform physician identifiers when [+]
239-31 [+] the data relates to providers described by
239-32 Section 108.0025(1); or

239-33 [+] the cell size of the data is below the minimum
239-34 size established by department [council] rule that would enable
239-35 identification of an individual patient or physician.

239-36 Sec. 108.012. COMPUTER ACCESS TO DATA. (a) The department
239-37 [council] shall provide a means for computer-to-computer access to
239-38 the public use data. All reports shall maintain patient
239-39 confidentiality as provided by Section 108.013.

239-40 (b) The department [council] may charge a person requesting
239-41 public use or provider quality data a fee for the data. The fees may
239-42 reflect the quantity of information provided and the expense
239-43 incurred by the department [council] in collecting and providing
239-44 the data. The executive commissioner by rule [and] shall [be] set
239-45 the fees at a level that will raise revenue sufficient for the
239-46 operation of the department [council]. The department [council]
239-47 may not charge a fee for providing public use data to another state
239-48 agency.

239-49 Sec. 108.013. CONFIDENTIALITY AND GENERAL ACCESS TO DATA.
239-50 (a) The data received by the department under this chapter shall be
239-51 used by the department and commission for the benefit of the public.
239-52 Subject to specific limitations established by this chapter and
239-53 department [executive commissioner] rule, the department shall
239-54 make determinations on requests for information in favor of access.

239-55 (b) The executive commissioner by rule shall designate the
239-56 characters to be used as uniform patient identifiers. The basis for
239-57 assignment of the characters and the manner in which the characters
239-58 are assigned are confidential.

239-59 (c) Unless specifically authorized by this chapter, the
239-60 department may not release and a person or entity may not gain
239-61 access to any data obtained under this chapter:

239-62 (1) that could reasonably be expected to reveal the
239-63 identity of a patient;

239-64 (2) that could reasonably be expected to reveal the
239-65 identity of a physician;

239-66 (3) disclosing provider discounts or differentials
239-67 between payments and billed charges;

239-68 (4) relating to actual payments to an identified
239-69 provider made by a payer; or

(5) submitted to the department in a uniform submission format that is not included in the public use data set established under Sections 108.006(f) and (g), except in accordance with Section 108.0135.

(d) Except as provided by this section, all data collected and used by the department under this chapter is subject to the confidentiality provisions and criminal penalties of:

- (1) Section 311.037;
(2) Section 81.103; and
(3) Section 159.002, Oc

(e) Data on patients and compilations produced from the data collected that identify patients are not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this section; or

(2) admissible in any civil, administrative, or criminal proceeding.

(f) Data on physicians and compilations produced from the data collected that identify physicians are not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this section; or

(2) admissible in any civil, administrative, or criminal proceeding.

(g) Unless specifically authorized by this chapter, the department may not release data elements in a manner that will reveal the identity of a patient. The department may not release data elements in a manner that will reveal the identity of a physician.

(h) Subsections (c) and (g) do not prohibit the release of a uniform physician identifier in conjunction with associated public use data in accordance with Section 108.011 or a provider quality report in accordance with Section 108.010.

(i) Notwithstanding any other law and except as provided by this section, the department may not provide information made confidential by this section to any other agency of this state.

(j) The executive commissioner shall by rule develop and implement a mechanism to comply with Subsections (c)(1) and (2).

(k) The department may disclose data collected under this chapter that is not included in public use data to any department or commission program if the disclosure is reviewed and approved by the institutional review board under Section 108.0135.

(1) Confidential data collected under this chapter that is disclosed to a department or commission program remains subject to the confidentiality provisions of this chapter and other applicable law. The department shall identify the confidential data that is disclosed to a program under Subsection (k). The program shall maintain the confidentiality of the disclosed confidential data.

(m) The following provisions do not apply to the disclosure of data to a department or commission program:

- (1) Section 81.103;
 - (2) Sections 108.010(g) and (h);
 - (3) Sections 108.011(e) and (f);
 - (4) Section 311.037; and
 - (5) Section 159.002, Occupations Code.

(n) Nothing in this section authorizes the disclosure of physician identifying data.

Sec. 108.0131. LIST OF PURCHASERS OR RECIPIENTS OF DATA.
The department shall post on the department's Internet website a list of each entity that purchases or receives data collected under this chapter.

Sec. 108.0135. INSTITUTIONAL REVIEW BOARD. (a) The department shall establish an institutional review board to review and approve requests for access to data not contained in public use data. The members of the institutional review board must have experience and expertise in ethics, patient confidentiality, and health care data.

(b) To assist the institutional review board in determining whether to approve a request for information, the executive

241-1 commissioner shall adopt rules similar to the federal Centers for
241-2 Medicare and Medicaid Services' guidelines on releasing data.

241-3 (c) A request for information other than public use data
241-4 must be made on the form prescribed by the department.

241-5 (d) Any approval to release information under this section
241-6 must require that the confidentiality provisions of this chapter be
241-7 maintained and that any subsequent use of the information conform
241-8 to the confidentiality provisions of this chapter.

241-9 Sec. 108.014. CIVIL PENALTY. (a) A person who knowingly or
241-10 negligently releases data in violation of this chapter is liable
241-11 for a civil penalty of not more than \$10,000.

241-12 (b) A person who fails to supply available data under
241-13 Sections 108.009 and 108.010 is liable for a civil penalty of not
241-14 less than \$1,000 or more than \$10,000 for each act of violation.

241-15 (c) The attorney general, at the request of the department
241-16 [council], shall enforce this chapter. The venue of an action
241-17 brought under this section is in Travis County.

241-18 (d) A civil penalty recovered in a suit instituted by the
241-19 attorney general under this chapter shall be deposited in the
241-20 general revenue fund to the credit of the health care information
241-21 account.

241-22 Sec. 108.0141. CRIMINAL PENALTY. (a) A person who
241-23 knowingly accesses data in violation of this chapter or who with
241-24 criminal negligence releases data in violation of this chapter
241-25 commits an offense.

241-26 (b) An offense under this section is a state jail felony.

241-27 Sec. 108.015. CONFLICT OF INTEREST. The department
241-28 [council] may not accept a donation from a person required to
241-29 provide data under this chapter or from a person or business entity
241-30 who provides goods or services to the department [council] for
241-31 compensation.

241-32 Sec. 108.016. SUNSET REVIEW. Unless continued in existence
241-33 in accordance with Chapter 325, Government Code (Texas Sunset Act),
241-34 after the review required by Section 11.003(b), this chapter
241-35 expires September 1, 2015.

241-36 SECTION 3.0356. Section 114.002, Health and Safety Code, is
241-37 amended to read as follows:

241-38 Sec. 114.002. INTERAGENCY OBESITY COUNCIL. The council is
241-39 composed of the commissioner, the commissioner of agriculture, [the
241-40 commissioner of state health services,] and the commissioner of
241-41 education, or a staff member designated by each of those
241-42 commissioners.

241-43 SECTION 3.0357. Section 114.005, Health and Safety Code, is
241-44 amended to read as follows:

241-45 Sec. 114.005. REVIEW OF AGENCY PROGRAMS. The council shall
241-46 review the status of the programs of the department, the Department
241-47 of Agriculture, [the Department of State Health Services,] and the
241-48 Texas Education Agency that promote better health and nutrition and
241-49 prevent obesity among children and adults in this state.

241-50 SECTION 3.0358. Section 114.006(d), Health and Safety Code,
241-51 is amended to read as follows:

241-52 (d) The council shall provide to the department [Department
241-53 of State Health Services] information on effective strategies for
241-54 employers to use to promote workplace wellness, including
241-55 information on the projected costs and benefits. The department
241-56 [Department of State Health Services] shall post the information on
241-57 its Internet website.

241-58 SECTION 3.0359. Section 114.007(c), Health and Safety Code,
241-59 is amended to read as follows:

241-60 (c) A report submitted by the council under Subsection (a)
241-61 must include the following information regarding the
241-62 evidence-based public health awareness plan under Section 114.006:

241-63 (1) a cost estimate for an ongoing program to
241-64 implement the plan;

241-65 (2) projected benefits of the program;

241-66 (3) a summary of the information provided to the
241-67 department [Department of State Health Services] for its Internet
241-68 website; and

241-69 (4) recommendations for goals and future legislation.

242-1 SECTION 3.0360. Section 115.007(a), Health and Safety Code,
 242-2 is amended to read as follows:

242-3 (a) The task force consists of:

242-4 (1) the commissioner, the executive director or
 242-5 director, or a deputy or assistant commissioner of:
 242-6 (A) the commission, designated by the executive
 242-7 commissioner;

242-8 (B) the Department of Aging and Disability
 242-9 Services, designated by the commissioner of aging and disability
 242-10 services [~~that agency~~];

242-11 (C) the Department of Assistive and
 242-12 Rehabilitative Services, designated by the commissioner of
 242-13 assistive and rehabilitative services [~~that agency~~];

242-14 (D) the division of early childhood intervention
 242-15 services, designated by the commissioner of assistive and
 242-16 rehabilitative services [~~the Department of Assistive and~~
 242-17 ~~Rehabilitative Services~~];

242-18 (E) the Department of Family and Protective
 242-19 Services, designated by the commissioner of family and protective
 242-20 services [~~that agency~~];

242-21 (F) the department [~~Department of State Health~~
 242-22 ~~Services~~], designated by the commissioner [~~of that agency~~];

242-23 (G) the Texas Education Agency, designated by the
 242-24 commissioner of education [~~that agency~~];

242-25 (H) the Texas Juvenile Justice Department [~~Youth~~
 242-26 ~~Commission~~], designated by the executive director [~~commissioner~~]
 242-27 of that agency; and

242-28 (I) [~~the Texas Juvenile Probation Commission~~,
 242-29 ~~designated by the executive director of that agency~~, and

242-30 [(J)] the Texas Correctional Office on Offenders
 242-31 with Medical or Mental Impairments, designated by the director of
 242-32 that office; and

242-33 (2) eight nonvoting members who are:

242-34 (A) a representative of a local mental health
 242-35 authority or a local intellectual and developmental disability
 242-36 [~~mental retardation~~] authority, appointed by the governor;

242-37 (B) two members of the house of representatives,
 242-38 appointed by the speaker of the house of representatives;

242-39 (C) two senators, appointed by the lieutenant
 242-40 governor; and

242-41 (D) three parents or consumer advocates, one each
 242-42 appointed by the commission, the Texas Education Agency, and the
 242-43 Texas Juvenile Justice Department [~~Youth Commission~~].

242-44 SECTION 3.0361. Section 121.002(2), Health and Safety Code,
 242-45 is amended to read as follows:

242-46 (2) "Physician" means a person licensed to practice
 242-47 medicine by the Texas Medical [~~State~~] Board [~~of Medical Examiners~~].

242-48 SECTION 3.0362. Section 121.003(b), Health and Safety Code,
 242-49 is amended to read as follows:

242-50 (b) The governing bodies of municipalities and the
 242-51 commissioners courts of counties may cooperate with one another in
 242-52 making necessary improvements and providing services to promote the
 242-53 public health in accordance with Chapter 791, Government Code [~~The~~
 242-54 ~~Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas~~
 242-55 ~~Civil Statutes)~~].

242-56 SECTION 3.0363. Section 121.004, Health and Safety Code, is
 242-57 amended to read as follows:

242-58 Sec. 121.004. LOCAL HEALTH UNITS. A local health unit is a
 242-59 division of municipal or county government that provides public
 242-60 health services but does not provide each service listed [~~required~~
 242-61 ~~of a local health department~~] under Section 121.006(d) [~~121.032(a)~~]
 242-62 or required of a public health district under Section 121.043(a).

242-63 SECTION 3.0364. Section 121.005(d), Health and Safety Code,
 242-64 is amended to read as follows:

242-65 (d) The executive commissioner [~~board~~] may adopt rules
 242-66 necessary to implement this section.

242-67 SECTION 3.0365. Section 121.006(c), Health and Safety Code,
 242-68 is amended to read as follows:

242-69 (c) Chapter 783, Government Code, [~~The Uniform Grant and~~

243-1 ~~Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas
243-2 Civil Statutes)~~ and standards adopted under that chapter [Act]
243-3 control, if applicable, if the local health unit, local health
243-4 department, or public health district receives state support for
243-5 the provision of public health services.

243-6 SECTION 3.0366. Section 121.0065(c), Health and Safety
243-7 Code, is amended to read as follows:

243-8 (c) The executive commissioner [board] shall adopt rules
243-9 governing:

243-10 (1) the allocation formula for grants awarded under
243-11 this section;

243-12 (2) the manner in which a municipality, county, public
243-13 health district, or other political subdivision applies for a
243-14 grant;

243-15 (3) the procedures for awarding grants; and

243-16 (4) the minimum essential public health services to be
243-17 provided under the grant and other standards applicable to the
243-18 services to be provided under the grant.

243-19 SECTION 3.0367. Section 121.007, Health and Safety Code, is
243-20 amended to read as follows:

243-21 Sec. 121.007. PUBLIC HEALTH REGIONS. (a) The department
243-22 [board] may designate geographic areas of the state as public
243-23 health regions to provide public health services.

243-24 (b) The department [board] shall appoint a physician to
243-25 serve as regional director for each public health region. The
243-26 regional director is the chief administrative officer of the
243-27 region. The department [board] shall establish the qualifications
243-28 and terms of employment of a regional director.

243-29 (c) The department [board or its designee] may require a
243-30 regional director to perform the duties of a health authority. The
243-31 regional director may perform those duties, as authorized by the
243-32 department [board or commissioner], in a jurisdiction in the region
243-33 in which the health authority fails to perform duties prescribed
243-34 [by the board] under Section 121.024. The regional director shall
243-35 perform the duties of a health authority in a jurisdiction in the
243-36 region in which there is not a health authority.

243-37 SECTION 3.0368. Section 121.008(a), Health and Safety Code,
243-38 is amended to read as follows:

243-39 (a) The department [board] shall hold an annual conference
243-40 for health authorities and for directors of local health
243-41 departments and public health districts. The commissioner or the
243-42 commissioner's designee shall preside over the conference.

243-43 SECTION 3.0369. Section 121.022(b), Health and Safety Code,
243-44 is amended to read as follows:

243-45 (b) To be qualified to serve as a health authority, the
243-46 appointee must:

243-47 (1) take and subscribe to the official oath; and
243-48 (2) file a copy of the oath and appointment with the
243-49 department [board].

243-50 SECTION 3.0370. Sections 121.024(b) and (c), Health and
243-51 Safety Code, are amended to read as follows:

243-52 (b) A health authority shall perform each duty that is:
243-53 (1) necessary to implement and enforce a law to
243-54 protect the public health; or
243-55 (2) prescribed by the department [board].

243-56 (c) The duties of a health authority include:
243-57 (1) establishing, maintaining, and enforcing
243-58 quarantine in the health authority's jurisdiction;
243-59 (2) aiding the department [board] in relation to local
243-60 quarantine, inspection, disease prevention and suppression, birth
243-61 and death statistics, and general sanitation in the health
243-62 authority's jurisdiction;

243-63 (3) reporting the presence of contagious, infectious,
243-64 and dangerous epidemic diseases in the health authority's
243-65 jurisdiction to the department [board] in the manner and at the
243-66 times prescribed by the department [board];

243-67 (4) reporting to the department [board] on any subject
243-68 on which it is proper for the department [board] to direct that a
243-69 report be made; and

(5) aiding the department [board] in the enforcement of the following in the health authority's jurisdiction:

- (A) proper rules, requirements, and ordinances;
- (B) sanitation laws;
- (C) quarantine rules; and
- (D) vital statistics collections.

SECTION 3.0371. Sections 121.029(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the department [board], or by this or any other law, to a properly qualified physician to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

(1) meet the qualifications set out in Section 121.022(a);

- (2) be appointed as a designee in the same manner as the appointment of the health authority;
- (3) take, subscribe, and file the official oath and appointment with the department [board] as required by Section 121.022(b); and

(4) file a certified copy of the written delegation with the department [board].

SECTION 3.0372. Section 121.033(d), Health and Safety Code, is amended to read as follows:

(d) A director of a local health department who is not a physician shall appoint a physician as the health authority in the local health department's jurisdiction, subject to the approval of the governing body or the commissioners court, as appropriate, and the department [board].

SECTION 3.0373. Sections 121.0331(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the department [board], or by this or any other law, to a properly qualified physician who is employed by the municipality's or county's local health department to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

(1) meet the qualifications set out in Section

121.022(a);

(2) be appointed as a designee in the same manner as the appointment of the health authority;

(3) take, subscribe, and file the official oath and appointment with the department [board] as required by Section

(4) file a certified copy of the written delegation with the department [board].

SECTION 3.0374. Section 121.043(b), Health and Safety Code, is amended to read as follows:

(b) For purposes of Section 121.005, a public health district shall be identified by its program of public health services and shall, at a minimum, provide the services listed [for a local health department] under Section 121.006(d) [121.032(b)].

SECTION 3.0375. Section 121.045(d), Health and Safety Code, is amended to read as follows:

(d) A director of a public health district who is not a physician shall appoint a physician as the health authority for the district, subject to the approval of the members and the department [board].

[REDACTED] SECTION 3.0376. Sections [121.0451](#)(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the department [board], or by this or any other law, to a properly qualified physician who is employed by the public health district to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

(1) meet the qualifications set out in Section

245-1 121.022(a);

245-2 (2) be appointed as a designee in the same manner as
245-3 the appointment of the health authority;

245-4 (3) take, subscribe, and file the official oath and
245-5 appointment with the department [board] as required by Section
245-6 121.022(b); and

245-7 (4) file a certified copy of the written delegation
245-8 with the department [board].

245-9 SECTION 3.0377. Section 122.008(b), Health and Safety Code,
245-10 is amended to read as follows:

245-11 (b) A nurse employed under Subsection (a) shall:

245-12 (1) investigate the health conditions and sanitary
245-13 surroundings of the schools and the personal, physical, and health
245-14 condition of students in the schools;

245-15 (2) cooperate with the department [~~Texas Department of~~
245-16 ~~Health~~] and local health authorities; and

245-17 (3) perform other duties required by the commissioners
245-18 court.

245-19 SECTION 3.0378. Sections 141.002(2) and (5), Health and
245-20 Safety Code, are amended to read as follows:

245-21 (2) "Day camp" includes any camp that primarily
245-22 operates during any portion of the day between 7 a.m. and 10 p.m.
245-23 for a period of four or more consecutive days but may incidentally
245-24 offer not more than two overnight stays each camp session. The term
245-25 does not include a facility required to be licensed with the
245-26 Department of Family and Protective [and Regulatory] Services.

245-27 (5) "Youth camp" means a facility or property, other
245-28 than a facility required to be licensed by the Department of Family
245-29 and Protective [and Regulatory] Services, that:

245-30 (A) has the general characteristics of a day
245-31 camp, resident camp, or travel camp;

245-32 (B) is used primarily or partially for
245-33 recreational, athletic, religious, or educational activities; and

245-34 (C) accommodates at least five minors who attend
245-35 or temporarily reside at the camp for all or part of at least four
245-36 days.

245-37 SECTION 3.0379. Section 141.0035, Health and Safety Code,
245-38 is amended to read as follows:

245-39 Sec. 141.0035. LICENSE FEES. (a) The executive
245-40 commissioner [board] by rule shall establish the amount of the fee
245-41 for obtaining or renewing a license under this chapter. The
245-42 executive commissioner [board] shall set the fee in a reasonable
245-43 amount designed to recover the direct and indirect costs to the
245-44 department of administering and enforcing this chapter. The
245-45 executive commissioner [board] may set fees in a different amount
245-46 for resident youth camps and day youth camps to reflect differences
245-47 in the costs of administering and enforcing this chapter for
245-48 resident and day camps.

245-49 (b) Before the executive commissioner adopts or amends
245-50 [adopting or amending] a rule under Subsection (a), the department
245-51 [board] shall solicit comments and information from the operators
245-52 of affected youth camps and allow affected youth camp operators the
245-53 opportunity to meet with appropriate department staff who are
245-54 involved with the rulemaking process.

245-55 SECTION 3.0380. Section 141.004(a), Health and Safety Code,
245-56 is amended to read as follows:

245-57 (a) To obtain a license, a person must submit a license
245-58 application accompanied by a license fee in an amount set by the
245-59 executive commissioner by rule [board].

245-60 SECTION 3.0381. Section 141.005, Health and Safety Code, is
245-61 amended to read as follows:

245-62 Sec. 141.005. LICENSE RENEWAL. (a) A person holding a
245-63 license issued under this chapter must renew the license annually
245-64 by submitting a renewal application on a date determined by
245-65 department [board] rule on a form provided by the department.

245-66 (b) The application must be accompanied by a renewal fee in
245-67 an amount set by the executive commissioner by rule [board].

245-68 (c) The department may not renew the license of a youth camp
245-69 which has not corrected deficiencies before the application for

246-1 renewal is submitted. The executive commissioner [board] shall
 246-2 adopt substantive and procedural rules for the submission by a
 246-3 youth camp operator of evidence that a deficiency or deficiencies
 246-4 have been corrected.

246-5 SECTION 3.0382. Sections 141.007(b) and (c), Health and
 246-6 Safety Code, are amended to read as follows:

246-7 (b) An employee or agent who enters a youth camp to
 246-8 investigate and inspect conditions shall notify the person in
 246-9 charge of the camp of the inspector's presence and shall present
 246-10 proper credentials. The department may exercise the remedies
 246-11 authorized by Section 141.015(b) [141.014(b)] if the employee or
 246-12 agent is not allowed to enter.

246-13 (c) The executive commissioner [department] may prescribe
 246-14 reasonable record-keeping requirements for licensed youth camps,
 246-15 including a requirement that the youth camp keep records relating
 246-16 to matters involving the health and safety of campers. An employee
 246-17 or agent of the department may examine, during regular business
 246-18 hours, any records relating to the health and safety of campers.

246-19 SECTION 3.0383. Section 141.008(a), Health and Safety Code,
 246-20 is amended to read as follows:

246-21 (a) The executive commissioner [board] may adopt rules to
 246-22 implement this chapter. In adopting the rules the executive
 246-23 commissioner [board] shall comply with Subchapter B, Chapter 2001,
 246-24 Government Code, including Sections 2001.032(b) and 2001.033,
 246-25 Government Code. In developing the rules to be adopted by the
 246-26 executive commissioner, the department [board] shall consult
 246-27 parents, youth camp operators, and appropriate public and private
 246-28 officials and organizations.

246-29 SECTION 3.0384. Section 141.009, Health and Safety Code, is
 246-30 amended to read as follows:

246-31 Sec. 141.009. STANDARDS. The executive commissioner
 246-32 [board] by rule shall establish health and safety standards for
 246-33 youth camps. The standards may relate to:

246-34 (1) adequate and proper supervision at all times of
 246-35 camp activities;

246-36 (2) qualifications for directors, supervisors, and
 246-37 staff and sufficient numbers of those persons;

246-38 (3) proper safeguards for sanitation and public
 246-39 health;

246-40 (4) adequate medical services for personal health and
 246-41 first aid;

246-42 (5) proper procedures for food preparation, handling,
 246-43 and mass feeding;

246-44 (6) healthful and sufficient water supply;

246-45 (7) proper waste disposal;

246-46 (8) proper water safety procedures for swimming pools,
 246-47 lakes, and waterways;

246-48 (9) safe boating equipment;

246-49 (10) proper maintenance and safe use of motor
 246-50 vehicles;

246-51 (11) safe buildings and physical facilities;

246-52 (12) proper fire precautions;

246-53 (13) safe and proper recreational and other equipment;

246-54 (14) proper regard for density and use of the
 246-55 premises; and

246-56 (15) records of criminal convictions of camp
 246-57 personnel.

246-58 SECTION 3.0385. Sections 141.0095(d) and (f), Health and
 246-59 Safety Code, are amended to read as follows:

246-60 (d) In accordance with this section and the criteria and
 246-61 guidelines developed by the training advisory committee
 246-62 established under Section 141.0096, the executive commissioner [or
 246-63 the Health and Human Services Commission] by rule shall establish
 246-64 criteria and guidelines for training and examination programs on
 246-65 sexual abuse and child molestation. The department may approve
 246-66 training and examination programs offered by trainers under
 246-67 contract with youth camps or by online training organizations or
 246-68 may approve programs offered in another format authorized by the
 246-69 department.

(f) The department may assess a fee in the amount set by the executive commissioner by rule as necessary to cover the costs of administering this section to each person that applies for the department's approval of a training and examination program on sexual abuse and child molestation under this section.

SECTION 3.0386. Sections 141.0096(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) The department shall appoint a training advisory committee to advise the department and the executive commissioner [~~of the Health and Human Services Commission~~] in the development of criteria and guidelines for the training and examination program on sexual abuse and child molestation required under Section 141.0095 and to perform any other functions requested by the department.

(b) The training advisory committee consists of not more than nine members selected by the commissioner [of state health services] as follows:

(1) at least two members who represent the general public; and

(2) other members, who include experienced camping professionals representing the camping communities of this state, representatives of youth camps selected by the department, and representatives of the Council on Sex Offender Treatment established under Chapter 110, Occupations Code.

(c) The training advisory committee shall meet at the call of the commissioner [of state health services].

SECTION 3.0387. Sections 141.010(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner [board] shall appoint a committee to advise the executive commissioner [board] in the development of standards and procedures, make recommendations to the executive commissioner [board] regarding the content of the rules adopted to implement this chapter [Act], and perform any other functions requested by the executive commissioner [board] in the implementation and administration of the chapter [Act].

(b) The advisory committee may not exceed nine members, at least two of whom shall be members of the general public. The other members should be experienced camping professionals who represent the camping communities of the state. In making the appointments, the executive commissioner [board] shall attempt to reflect the geographic diversity of the state in proportion to the number of camps licensed by the department in each geographic area of the state.

(d) A vacancy on the advisory committee is filled by the executive commissioner [board] in the same manner as other appointments to the advisory committee.

SECTION 3.0388. The heading to Section 141.013, Health and Safety Code, is amended to read as follows:

Sec. 141.013. [BOARD] HEARINGS.

SECTION 3.0389. Section 141.013(a), Health and Safety Code, is amended to read as follows:

(a) The department [board] may:

- (1) call and conduct hearings;
- (2) administer oaths;
- (3) -

(3) receive evidence;

(4) issue subpoenas for witnesses, papers, and documents related to the hearing; and

(5) make findings of fact and decisions concerning the administration of this chapter and rules adopted under this chapter.

SECTION 3.0390. Sections 141.016(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The department [commissioner] may assess an administrative penalty if a person violates this chapter [Act] or a rule or order adopted or license issued under this chapter [Act].

(b) In determining the amount of the penalty, the department [commissioner] shall consider:

(1) the person's previous
(2) the seriousness of the

(2) the seriousness of the violation;
(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and
(5) such other matters as justice may require.

SECTION 3.0391. Sections 141.017(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) If a hearing is held, the administrative law judge [commissioner] shall make findings of fact and shall issue a written proposal for decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the department [~~commissioner~~] may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the department [commissioner] shall issue an order requiring that the person pay the penalty.

SECTION 3.0392. Section 141.018, Health and Safety Code, is amended to read as follows:

Sec. 141.018. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the department [~~commissioner~~] shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or
(2) file a petition for [if the person seeks] judicial review of the department's order contesting the amount of the penalty, the fact of the violation, or both.

(b-1) Within the period prescribed by Subsection (b), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying [~~send the amount of~~] the penalty to the court [~~commissioner~~] for placement in an escrow account; or
(B) posting [~~post~~] with the court [~~commissioner~~] a supersedeas bond for the amount of the penalty; or
(C) paying [~~send the amount of~~] the penalty to the court [~~commissioner~~] for placement in an escrow account; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b-2) If the department receives a copy of an affidavit under Subsection (b-1)(2), the department may file with the court

under Subsection (b-1)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) A bond posted under this section must be in a form approved by the court [commissioner] and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to, [the commissioner or] post the bond with, or file the affidavit with the court within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

SECTION 3.0393. Section 141.019, Health and Safety Code, is amended to read as follows:

Sec. 141.019. REFUND OF ADMINISTRATIVE PENALTY. On [Not later than the 30th day after] the date the court's judgment [of a judicial determination] that an administrative penalty against a person should be reduced or not assessed becomes final, the court [commissioner] shall order that:

(1) [remit to the person] the appropriate amount of any penalty payment plus accrued interest be remitted to the person

249-1 not later than the 30th day after that date; or

249-2 (2) [execute a release of] the bond be released, if the
249-3 person has posted a bond.

249-4 SECTION 3.0394. Section 141.020, Health and Safety Code, is
249-5 amended to read as follows:

249-6 Sec. 141.020. RECOVERY OF ADMINISTRATIVE PENALTY BY
249-7 ATTORNEY GENERAL. The attorney general at the request of the
249-8 department [commissioner] may bring a civil action to recover an
249-9 administrative penalty under this chapter.

249-10 SECTION 3.0395. Sections 142.001(6) and (22), Health and
249-11 Safety Code, are amended to read as follows:

249-12 (6) "Certified agency" means a home and community
249-13 support services agency, or a portion of the agency, that:

249-14 (A) provides a home health service; and

249-15 (B) is certified by an official of the United
249-16 States Department of Health and Human Services as in compliance
249-17 with conditions of participation in Title XVIII, Social Security
249-18 Act (42 U.S.C. Section 1395 et seq.).

249-19 (22) "Personal assistance service" means routine
249-20 ongoing care or services required by an individual in a residence or
249-21 independent living environment that enable the individual to engage
249-22 in the activities of daily living or to perform the physical
249-23 functions required for independent living, including respite
249-24 services. The term includes:

249-25 (A) personal care;

249-26 (B) health-related services performed under
249-27 circumstances that are defined as not constituting the practice of
249-28 professional nursing by the Texas Board of Nursing under the terms
249-29 of [through] a memorandum of understanding executed by [with] the
249-30 board and the department [in accordance with Section 142.016]; and

249-31 (C) health-related tasks provided by unlicensed
249-32 personnel under the delegation of a registered nurse or that a
249-33 registered nurse determines do not require delegation.

249-34 SECTION 3.0396. Section 142.0011, Health and Safety Code,
249-35 is amended by amending Subsection (b) and adding Subsection (c) to
249-36 read as follows:

249-37 (b) The executive commissioner [department] shall protect
249-38 clients of home and community support services agencies by
249-39 [regulating those agencies and]

249-40 (1) adopting rules relating to quality of care and
249-41 quality of life.

249-42 (c) The department shall protect clients of home and
249-43 community support services agencies by:

249-44 (1) regulating those agencies;

249-45 (2) strictly monitoring factors relating to the
249-46 health, safety, welfare, and dignity of each client;

249-47 (3) imposing prompt and effective remedies for
249-48 violations of this chapter and rules and standards adopted under
249-49 this chapter;

249-50 (4) enabling agencies to provide services that allow
249-51 clients to maintain the highest possible degree of independence and
249-52 self-determination; and

249-53 (5) providing the public with helpful and
249-54 understandable information relating to agencies in this state.

249-55 SECTION 3.0397. Section 142.0012(d), Health and Safety
249-56 Code, is amended to read as follows:

249-57 (d) The executive commissioner [department] may adopt rules
249-58 that specify the ownership interests and other relationships that
249-59 qualify a person as a controlling person.

249-60 SECTION 3.0398. Section 142.004(c), Health and Safety Code,
249-61 is amended to read as follows:

249-62 (c) The executive commissioner [board] by rule shall
249-63 require that, at a minimum, before the department may approve a
249-64 license application, the applicant must provide to the department:

249-65 (1) documentation establishing that, at a minimum, the
249-66 applicant has sufficient financial resources to provide the
249-67 services required by this chapter and by the department during the
249-68 term of the license;

249-69 (2) a list of the management personnel for the

250-1 proposed home and community support services agency, a description
 250-2 of personnel qualifications, and a plan for providing continuing
 250-3 training and education for the personnel during the term of the
 250-4 license;

250-5 (3) documentation establishing that the applicant is
 250-6 capable of meeting the minimum standards established by the
 250-7 executive commissioner [board] relating to the quality of care;

250-8 (4) a plan that provides for the orderly transfer of
 250-9 care of the applicant's clients if the applicant cannot maintain or
 250-10 deliver home health, hospice, or personal assistance services under
 250-11 the license;

250-12 (5) identifying information on the home and community
 250-13 support services agency owner, administrator, and chief financial
 250-14 officer to enable the department to conduct criminal background
 250-15 checks on those persons;

250-16 (6) identification of any controlling person with
 250-17 respect to the applicant; and

250-18 (7) documentation relating to any controlling person
 250-19 identified under Subdivision (6), if requested by the department
 250-20 and relevant to the controlling person's compliance with any
 250-21 applicable licensing standard required or adopted [by the board]
 250-22 under this chapter.

250-23 SECTION 3.0399. Sections 142.006(a), (b), and (c), Health
 250-24 and Safety Code, are amended to read as follows:

250-25 (a) The department shall issue a home and community support
 250-26 services agency license to provide home health, hospice, or
 250-27 personal assistance services for each place of business to an
 250-28 applicant if:

250-29 (1) the applicant:

250-30 (A) qualifies for the license to provide the type
 250-31 of service that is to be offered by the applicant;

250-32 (B) submits an application and license fee as
 250-33 required by this chapter; and

250-34 (C) complies with all applicable licensing
 250-35 standards required or adopted [by the board] under this chapter;
 250-36 and

250-37 (2) any controlling person with respect to the
 250-38 applicant complies with all applicable licensing standards
 250-39 required or adopted [by the board] under this chapter.

250-40 (b) A license issued under this chapter expires two years
 250-41 after the date of issuance. The executive commissioner [of the
 250-42 Health and Human Services Commission] by rule may adopt a system
 250-43 under which licenses expire on various dates during the two-year
 250-44 period. For the year in which a license expiration date is changed,
 250-45 the department shall prorate the license fee on a monthly basis.
 250-46 Each license holder shall pay only that portion of the license fee
 250-47 allocable to the number of months for which the license is valid. A
 250-48 license holder shall pay the total license renewal fee at the time
 250-49 of renewal. The department may issue an initial license for a
 250-50 shorter term to conform expiration dates for a locality or an
 250-51 applicant. The department may issue a temporary license to an
 250-52 applicant for an initial license.

250-53 (c) The department may find that a home and community
 250-54 support services agency has satisfied the requirements for
 250-55 licensing if the agency is accredited by an accreditation
 250-56 organization, such as The [the] Joint Commission [on Accreditation
 250-57 of Healthcare Organizations] or the Community Health Accreditation
 250-58 Program, and the department finds that the accreditation
 250-59 organization has standards that meet or exceed the requirements for
 250-60 licensing under this chapter. A license fee is required of the home
 250-61 and community support services agency at the time of a license
 250-62 application.

250-63 SECTION 3.0400. Section 142.008(b), Health and Safety Code,
 250-64 is amended to read as follows:

250-65 (b) The executive commissioner [board] by rule shall
 250-66 establish eligibility requirements for a branch office license.

250-67 SECTION 3.0401. Section 142.0085(b), Health and Safety
 250-68 Code, is amended to read as follows:

250-69 (b) The executive commissioner [board] by rule shall

251-1 establish standards required for the issuance of an alternate
 251-2 delivery site license.

251-3 SECTION 3.0402. Sections 142.009(h) and (1), Health and
 251-4 Safety Code, are amended to read as follows:

251-5 (h) Except for the investigation of complaints, a home and
 251-6 community support services agency licensed by the department under
 251-7 this chapter is not subject to additional surveys relating to home
 251-8 health, hospice, or personal assistance services while the agency
 251-9 maintains accreditation for the applicable service from The [the]
 251-10 Joint Commission [~~for Accreditation of Healthcare Organizations~~],
 251-11 the Community Health Accreditation Program, or other accreditation
 251-12 organizations that meet or exceed the regulations adopted under
 251-13 this chapter. Each provider must submit to the department
 251-14 documentation from the accrediting body indicating that the
 251-15 provider is accredited when the provider is applying for the
 251-16 initial license and annually when the license is renewed.

251-17 (l) The department and other state agencies that are under
 251-18 the commission [~~Health and Human Services Commission~~] and that
 251-19 contract with home and community support services agencies to
 251-20 deliver services for which a license is required under this chapter
 251-21 shall execute a memorandum of understanding that establishes
 251-22 procedures to eliminate or reduce duplication of standards or
 251-23 conflicts between standards and of functions in license,
 251-24 certification, or compliance surveys and complaint investigations.
 251-25 [~~The Health and Human Services Commission shall review the~~
 251-26 ~~recommendation of the council relating to the memorandum of~~
 251-27 ~~understanding before considering approval.~~] The memorandum of
 251-28 understanding must be approved by the commission.

251-29 SECTION 3.0403. Sections 142.010(a) and (b), Health and
 251-30 Safety Code, are amended to read as follows:

251-31 (a) The executive commissioner by rule [~~department~~] shall
 251-32 set license fees for home and community support services agencies
 251-33 in amounts that are reasonable to meet the costs of administering
 251-34 this chapter, except that the fees may not be less than \$600 or more
 251-35 than \$2,000 for a license to provide home health, hospice, or
 251-36 personal assistance services.

251-37 (b) The executive commissioner [~~board~~] shall consider the
 251-38 size of the home and community support services agency, the number
 251-39 of clients served, the number of services provided, and the
 251-40 necessity for review of other accreditation documentation in
 251-41 determining the amount collected by the department for [off] initial
 251-42 and renewal license fees.

251-43 SECTION 3.0404. Section 142.0104(a), Health and Safety
 251-44 Code, is amended to read as follows:

251-45 (a) If certain application information as specified by
 251-46 department [~~executive commissioner~~] rule changes after the
 251-47 applicant submits an application to the department for a license
 251-48 under this chapter or after the department issues the license, the
 251-49 license holder shall report the change to the department and pay a
 251-50 fee not to exceed \$50 not later than the time specified by
 251-51 department [~~executive commissioner~~] rule.

251-52 SECTION 3.0405. Section 142.011(d), Health and Safety Code,
 251-53 is amended to read as follows:

251-54 (d) A person whose application is denied or whose license is
 251-55 suspended or revoked is entitled to a hearing [~~before the~~
 251-56 ~~department~~] if the person submits a written request to the
 251-57 commission [~~department~~]. Chapter 2001, Government Code, and the
 251-58 department's rules for contested case hearings apply to hearings
 251-59 conducted under this section and to appeals from department
 251-60 decisions.

251-61 SECTION 3.0406. Sections 142.017(c), (d), (e), and (g),
 251-62 Health and Safety Code, are amended to read as follows:

251-63 (c) The executive commissioner [~~department~~] by rule shall
 251-64 specify each violation for which the department may assess an
 251-65 administrative penalty [~~may be assessed~~]. In determining which
 251-66 violations warrant penalties, the department shall consider:

251-67 (1) the seriousness of the violation, including the
 251-68 nature, circumstances, extent, and gravity of the violation and the
 251-69 hazard of the violation to the health or safety of clients; and

(2) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) The executive commissioner [department] by rule shall establish a schedule of appropriate and graduated penalties for each violation based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or safety of clients;

(2) the history of previous violations by the person or a controlling person with respect to that person;

(3) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation; and

(6) any other matters that justice may require.

(e) Except as provided by Subsection (j), the executive commissioner [department] by rule shall provide the home and community support services agency with a reasonable period of time following the first day of a violation to correct the violation before the department assesses [assessing] an administrative penalty if a plan of correction has been implemented.

(g) The executive commissioner [department] shall establish a system to ensure standard and consistent application of penalties regardless of the home and community support services agency location.

SECTION 3.0407. Section 142.0171(c), Health and Safety Code, is amended to read as follows:

(c) If the person notified of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the department [~~commissioner or the commissioner's designee~~] shall [~~issue an~~] order [~~approving the determination and ordering that~~] the person to pay the proposed penalty.

SECTION 3.0408. Section 142.0172, Health and Safety Code, is amended to read as follows:

Sec. 142.0172. HEARING; ORDER. (a) If the person notified requests a hearing, the department shall refer the case to the State Office of Administrative Hearings and an administrative law judge of that office shall conduct the hearing.

(a-1) The department shall [÷
[(1) ~~set a hearing;~~
[(2) give written notice of the hearing to the
person [; and
[(3) ~~designate a hearings examiner to conduct the~~
~~hearing~~].

(b) The administrative law judge [hearings examiner] shall make findings of fact and conclusions of law and shall promptly issue to the department [commissioner or the commissioner's designee] a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the administrative law judge [~~hearings examiner~~], the department [~~commissioner or the commissioner's designee~~] by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

SECTION 3.0409. Sections 142.018(a) and (b), Health and Safety Code, are amended to read as follows:

(a) In this section, "abuse," "exploitation," and "neglect" have the meanings applicable through a rule adopted by the executive commissioner [of the Health and Human Services Commission] under Section 48.002(c), Human Resources Code, except that if the executive commissioner has not adopted applicable rules under that section, the statutory definitions of those terms under Section 48.002(a), Human Resources Code, shall be used.

(b) A home and community support services agency that has cause to believe that a person receiving services from the agency has been abused, exploited, or neglected by an employee of the agency shall report the information to:

(1) the department; and

(2) the Department of Family and Protective [and Regulatory] Services or other appropriate state agency as required by Section **48.051**, Human Resources Code.

SECTION 3.0410. Section 142.021, Health and Safety Code, is amended to read as follows:

Sec. 142.021. ADMINISTRATION OF MEDICATION. A person may not administer medication to a client of a home and community support services agency unless the person:

(1) holds a license under state law that authorizes the person to administer medication;

(2) holds a permit issued under Section 142.025 and acts under the delegated authority of a person who holds a license under state law that authorizes the person to administer medication;

(3) administers a medication to a client of a home and community support service agency in accordance with rules of the Texas Board of Nursing that permit delegation of the administration of medication to a person not holding a permit under Section 142.025; or

(4) administers noninjectable medication under circumstances authorized by the memorandum of understanding executed by the department and the Texas Board of Nursing [adopted under Section 142.016].

SECTION 3.0411. Section 142.023, Health and Safety Code, is amended to read as follows:

Sec. 142.023. RULES FOR ADMINISTRATION OF MEDICATION. The executive commissioner [board] by rule shall establish:

- (1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide;
- (2) curricula to train a home health medication aide;

- (2) curricula to train a home health medication aide;
- (3) minimum standards for the approval of home health medication aide training programs and for rescinding approval;
- (4) the acts and practices that are allowed or

(4) the acts and practices that are allowed or prohibited to a permit holder; and
(5) minimum standards for on-site supervision of a permit holder by a registered nurse.

SECTION 3.0412. Section 142.024(a), Health and Safety Code, is amended to read as follows:

(a) An application for the approval of a home health medication aide training program must be made to the department on a form prescribed by the department and under department rules [prescribed by the board].

SECTION 3.0413. Sections 142.025(a) and (d), Health and Safety Code, are amended to read as follows:

(d) To be issued or to have renewed a home health medication aide permit, a person shall apply to the department on a form prescribed by the department and under department rules [adopted by the board].

(1) meets the minimum requirements adopted under

(2) successfully completes the examination or the continuing education requirements; and

(3) pays a nonrefundable application fee specified in
department rules [determined by the board].

is amended to read as follows:

(a) The executive commissioner by rule [board] shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions under this subchapter. The fees may not exceed

254-1 examination fee; and

254-2 (2) \$15 for a renewal permit application fee.

254-3 SECTION 3.0415. Section 144.013(f), Health and Safety Code,
254-4 is amended to read as follows:

254-5 (f) If the department denies an application twice, the
254-6 application is canceled. The applicant is entitled to a hearing
254-7 [before the commissioner] on the denial if the applicant requests
254-8 the hearing not later than the 30th day after the date of the second
254-9 denial.

254-10 SECTION 3.0416. Section 144.021(b), Health and Safety Code,
254-11 is amended to read as follows:

254-12 (b) As a condition of licensure, the department, in
254-13 accordance with department rules, may prescribe other reasonable
254-14 and appropriate construction, operational, maintenance, and
254-15 inspection requirements to ensure compliance with this chapter and
254-16 other applicable rules [of the department].

254-17 SECTION 3.0417. Section 144.022(a), Health and Safety Code,
254-18 is amended to read as follows:

254-19 (a) Each licensed rendering establishment, related station,
254-20 or dead animal hauler shall have a dead animal log that meets the
254-21 requirements prescribed by [the] department rule. The name of the
254-22 licensed rendering establishment, related station, or dead animal
254-23 hauler must be on the front of the log.

254-24 SECTION 3.0418. Section 144.026(b), Health and Safety Code,
254-25 is amended to read as follows:

254-26 (b) Liquid waste shall be treated in the manner required by
254-27 the department and disposed of in a manner approved by [the]
254-28 department rule.

254-29 SECTION 3.0419. Section 144.043(e), Health and Safety Code,
254-30 is amended to read as follows:

254-31 (e) If the department denies an application twice, the
254-32 application is canceled. The applicant is entitled to a hearing
254-33 [before the commissioner] on the denial if the applicant requests
254-34 the hearing not later than the 30th day after the date of the second
254-35 denial.

254-36 SECTION 3.0420. Sections 144.063(b) and (c), Health and
254-37 Safety Code, are amended to read as follows:

254-38 (b) The term of a [An operating] license issued under this
254-39 chapter is two years [is valid for one year and may be renewed
254-40 annually by the license holder]. The executive commissioner by
254-41 rule [department] shall set a [an annual] renewal fee.

254-42 (c) A license holder may renew a license by paying the
254-43 renewal fee to the department on or before the expiration date of
254-44 the license [January 1 of each year]. On receipt of the fee, the
254-45 license is automatically renewed [for the next calendar year].

254-46 SECTION 3.0421. Section 144.064, Health and Safety Code, is
254-47 amended to read as follows:

254-48 Sec. 144.064. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE
254-49 OR PERMIT; REINSTATEMENT. (a) The department [commissioner] may
254-50 deny, suspend, or revoke an operating license, construction permit,
254-51 or renewal of an operating license or construction permit if the
254-52 department [commissioner] finds that:

254-53 (1) the license holder or permit holder has violated
254-54 this chapter or a rule or order adopted under this chapter or did
254-55 not exercise due care to prevent the violation; or

254-56 (2) a fact or condition exists that would have
254-57 justified the denial of the license or permit application if the
254-58 fact or condition was known at the time the original application was
254-59 filed.

254-60 (b) On the discovery of such a violation, the department
254-61 [commissioner] shall notify the license holder or permit holder of
254-62 the violation. If the license holder or permit holder fails to make
254-63 the necessary corrections, the department shall notify the license
254-64 holder or permit holder of a hearing to suspend or revoke the
254-65 license or permit.

254-66 (c) The department [commissioner] may reinstate a suspended
254-67 license or permit, or may issue a new license or permit to a person
254-68 whose license or permit has been revoked, if a ground to deny the
254-69 original license or permit application does not exist.

255-1 SECTION 3.0422. Section 144.072(e), Health and Safety Code,
 255-2 is amended to read as follows:

255-3 (e) The executive commissioner [department] by rule shall
 255-4 set the fees authorized by this chapter in amounts that allow the
 255-5 department to recover the annual expenditures of state funds by the
 255-6 department in:

255-7 (1) reviewing and acting on a license renewal or
 255-8 registration;

255-9 (2) amending a license, renewal license, or
 255-10 registration;

255-11 (3) inspecting a licensed facility or vehicles and
 255-12 equipment regulated under this chapter; and

255-13 (4) implementing and enforcing this chapter,
 255-14 including a rule or order adopted or a license issued under this
 255-15 chapter.

255-16 SECTION 3.0423. Section 144.073, Health and Safety Code, is
 255-17 amended to read as follows:

255-18 Sec. 144.073. FEES [ACCOUNT]. All fees collected under
 255-19 this chapter are payable to the department and shall be deposited to
 255-20 the credit of the [~~rendering fee account in the~~] general revenue
 255-21 fund[~~. Money in the account may be appropriated only to the~~
 255-22 ~~department~~] to be used to process and investigate applications
 255-23 filed under this chapter and to administer this chapter.

255-24 SECTION 3.0424. Section 144.074, Health and Safety Code, is
 255-25 amended to read as follows:

255-26 Sec. 144.074. ADOPTION OF RULES. The executive
 255-27 commissioner [~~board~~] may adopt rules consistent with this chapter
 255-28 as necessary for the enforcement of this chapter.

255-29 SECTION 3.0425. Section 144.076, Health and Safety Code, is
 255-30 amended to read as follows:

255-31 Sec. 144.076. PUBLIC RECORDS. The transcript of any
 255-32 hearing held by the State Office of Administrative Hearings
 255-33 [~~commissioner~~] and findings made by the administrative law judge
 255-34 [~~commissioner~~] or the department under this chapter are public
 255-35 records open to inspection at all reasonable times.

255-36 SECTION 3.0426. Sections 144.081(a) and (b), Health and
 255-37 Safety Code, are amended to read as follows:

255-38 (a) The department [~~commissioner~~] may assess an
 255-39 administrative penalty against a person who violates this chapter,
 255-40 a rule adopted [~~by the board~~] under the authority of this chapter,
 255-41 or an order or license issued under this chapter.

255-42 (b) In determining the amount of the penalty, the department
 255-43 [~~commissioner~~] shall consider:

- 255-44 (1) the person's previous violations;
- 255-45 (2) the seriousness of the violation;
- 255-46 (3) any hazard to the health and safety of the public;
- 255-47 (4) the person's demonstrated good faith; and
- 255-48 (5) such other matters as justice may require.

255-49 SECTION 3.0427. Sections 144.082(b), (c), and (d), Health
 255-50 and Safety Code, are amended to read as follows:

255-51 (b) If a hearing is held, the administrative law judge
 255-52 [~~commissioner~~] shall make findings of fact and shall issue a
 255-53 written proposal for decision regarding the occurrence of the
 255-54 violation and the amount of the penalty that may be warranted.

255-55 (c) If the person notified of the violation does not request
 255-56 a hearing, the department [~~commissioner~~] may assess a penalty after
 255-57 determining that a violation has occurred and the amount of the
 255-58 penalty that may be warranted.

255-59 (d) After making a determination under this section that a
 255-60 penalty is to be assessed against a person, the department
 255-61 [~~commissioner~~] shall issue an order requiring that the person pay
 255-62 the penalty.

255-63 SECTION 3.0428. Section 144.083, Health and Safety Code,
 255-64 is amended to read as follows:

255-65 Sec. 144.083. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
 255-66 later than the 30th day after the date an order finding that a
 255-67 violation has occurred is issued, the department [~~commissioner~~]
 255-68 shall inform the person against whom the order is issued of the
 255-69 amount of the penalty for the violation.

256-1 (b) Not later than the 30th day after the date on which a
 256-2 decision or order charging a person with a penalty is final, the
 256-3 person shall:

256-4 (1) pay the penalty in full; or

256-5 (2) file a petition for [if the person seeks] judicial
 256-6 review of the department's order contesting the amount of the
 256-7 penalty, the fact of the violation, or both.

256-8 (b-1) Within the period prescribed by Subsection (b), a
 256-9 person who files a petition for judicial review may:

256-10 (1) stay enforcement of the penalty by:

256-11 (A) paying [send the amount of] the penalty to
 256-12 the court [commissioner] for placement in an escrow account; or

256-13 (B) posting [post] with the court [commissioner]

256-14 a supersedeas bond for the amount of the penalty; or

256-15 (2) request that the department stay enforcement of

256-16 the penalty by:

256-17 (A) filing with the court a sworn affidavit of
 256-18 the person stating that the person is financially unable to pay the
 256-19 penalty and is financially unable to give the supersedeas bond; and

256-20 (B) sending a copy of the affidavit to the

256-21 department.

256-22 (b-2) If the department receives a copy of an affidavit
 256-23 under Subsection (b-1)(2), the department may file with the court,
 256-24 within five days after the date the copy is received, a contest to
 256-25 the affidavit. The court shall hold a hearing on the facts alleged
 256-26 in the affidavit as soon as practicable and shall stay the
 256-27 enforcement of the penalty on finding that the alleged facts are
 256-28 true. The person who files an affidavit has the burden of proving
 256-29 that the person is financially unable to pay the penalty or to give
 256-30 a supersedeas bond.

256-31 (c) A bond posted under this section must be in a form
 256-32 approved by the court [commissioner] and be effective until all
 256-33 judicial review of the order or decision is final.

256-34 (d) A person who does not send money to, [the commissioner
 256-35 ex] post the bond with, or file the affidavit with the court within
 256-36 the period prescribed by Subsection (b) waives all rights to
 256-37 contest the violation or the amount of the penalty.

256-38 SECTION 3.0429. Section 144.084, Health and Safety Code, is
 256-39 amended to read as follows:

256-40 Sec. 144.084. REFUND OF ADMINISTRATIVE PENALTY. On [Not
 256-41 later than the 30th day after] the date the court's judgment [of a
 256-42 judicial determination] that an administrative penalty against a
 256-43 person should be reduced or not assessed becomes final, the court
 256-44 [commissioner] shall order that:

256-45 (1) [remit to the person] the appropriate amount of
 256-46 any penalty payment plus accrued interest be remitted to the person
 256-47 not later than the 30th day after that date; or

256-48 (2) [execute a release of] the bond be released, if the
 256-49 person has posted a bond.

256-50 SECTION 3.0430. Section 144.085, Health and Safety Code, is
 256-51 amended to read as follows:

256-52 Sec. 144.085. RECOVERY OF ADMINISTRATIVE PENALTY BY
 256-53 ATTORNEY GENERAL. The attorney general at the request of the
 256-54 department [commissioner] may bring a civil action to recover an
 256-55 administrative penalty under this subchapter.

256-56 SECTION 3.0431. Section 145.004(b), Health and Safety Code,
 256-57 is amended to read as follows:

256-58 (b) The department [Texas Department of Health] may enforce
 256-59 Chapter 431 against a person who adulterates or misbrands a tanning
 256-60 device. The department may investigate a person accused of
 256-61 adulterating or misbranding a tanning device. For the purposes of
 256-62 this subsection, a tanning device is adulterated or misbranded if
 256-63 the tanning device would be an adulterated or misbranded device
 256-64 under Section 431.111 or 431.112 [Health and Safety Code].

256-65 SECTION 3.0432. Section 145.006, Health and Safety Code, is
 256-66 amended to read as follows:

256-67 Sec. 145.006. WARNING SIGNS. (a) A tanning facility shall
 256-68 post a warning sign in a conspicuous location where it is readily
 256-69 visible by persons entering the establishment. The executive

257-1 commissioner [board] by rule shall specify the size, design, and
257-2 graphic design of the sign. The sign must have dimensions of at
257-3 least 11 inches by 17 inches and must contain the following wording:
257-4 Repeated exposure to ultraviolet radiation may cause chronic
257-5 sun damage characterized by wrinkling, dryness, fragility,
257-6 bruising of the skin, and skin cancer.

257-7 DANGER: ULTRAVIOLET RADIATION

257-8 Failure to use protective eyewear may result in severe burns
257-9 or permanent injury to the eyes.

257-10 Medications or cosmetics may increase your sensitivity to
257-11 ultraviolet radiation. Consult a physician before using a sunlamp
257-12 if you are using medications, have a history of skin problems, or
257-13 believe you are especially sensitive to sunlight. Pregnant women
257-14 or women taking oral contraceptives who use this product may
257-15 develop discolored skin.

257-16 A customer may call the [Texas] Department of State Health
257-17 Services at (insert toll-free telephone number) to report an
257-18 alleged injury regarding this tanning facility.

257-19 IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF AN
257-20 ULTRAVIOLET LAMP OR SUNLAMP.

257-21 (b) A tanning facility operator shall also post a warning
257-22 sign at each tanning device in a conspicuous location that is
257-23 readily visible to a person about to use the device. The executive
257-24 commissioner [board] by rule shall specify the size, design, and
257-25 graphic design of the sign. The sign must have dimensions of at
257-26 least 11 inches by 17 inches and must contain the following wording:

257-27 DANGER: ULTRAVIOLET RADIATION

257-28 1. Follow the manufacturer's instructions for use of this
257-29 device.

257-30 2. Avoid too frequent or lengthy exposure. As with natural
257-31 sunlight, exposure can cause serious eye and skin injuries and
257-32 allergic reactions. Repeated exposure may cause skin cancer.

257-33 3. Wear protective eyewear. Failure to use protective
257-34 eyewear may result in severe burns or permanent damage to the eyes.

257-35 4. Do not sunbathe before or after exposure to ultraviolet
257-36 radiation from sunlamps.

257-37 5. Medications or cosmetics may increase your sensitivity
257-38 to ultraviolet radiation. Consult a physician before using a
257-39 sunlamp if you are using medication, have a history of skin
257-40 problems, or believe you are especially sensitive to sunlight.
257-41 Pregnant women or women using oral contraceptives who use this
257-42 product may develop discolored skin.

257-43 A customer may call the [Texas] Department of State Health
257-44 Services at (insert toll-free telephone number) to report an
257-45 alleged injury regarding this tanning device.

257-46 IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF
257-47 THIS DEVICE.

257-48 (c) The department [Texas Department of Health] shall
257-49 include with a license application and an application for renewal
257-50 of a license a description of the design standards required for
257-51 signs under this section.

257-52 SECTION 3.0433. Sections 145.008(i), (j), and (k), Health
257-53 and Safety Code, are amended to read as follows:

257-54 (i) A record of each customer using a tanning device shall
257-55 be maintained at the tanning facility at least until the third
257-56 anniversary of the date of the customer's last use of a tanning
257-57 device. The executive commissioner [of the Health and Human
257-58 Services Commission] by rule shall prescribe the form and content
257-59 of the records. The record shall include:

257-60 (1) the date and time of the customer's use of a
257-61 tanning device;

257-62 (2) the length of time the tanning device was used;

257-63 (3) any injury or illness resulting from the use of a
257-64 tanning device;

257-65 (4) any written informed consent statement required to
257-66 be signed under Subsection (e);

257-67 (5) the customer's skin type, as determined by the
257-68 customer by using the Fitzpatrick scale for classifying a skin
257-69 type;

(6) whether the customer has a family history of skin cancer; and
(7) whether the customer has a past medical history of skin cancer.

(j) An operator shall keep an incident log at each tanning facility. The log shall be maintained at the tanning facility at least until the third anniversary of the date of an incident. The executive commissioner [board] by rule shall prescribe the form and content of the log. The log shall include each:

- (1) alleged injury;
- (2) use of a tanning device by a customer not wearing protective eyewear;
- (3) mechanical problem with a tanning device; and
- (4) customer complaint.

(k) The department [Texas Department of Health] shall provide to each applicant for an original or renewal license a written copy of the Fitzpatrick scale.

SECTION 3.0434. Sections 145.009(a), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) A person may not operate a tanning facility unless the person holds a license issued by the department to operate the facility. Unless revoked or suspended, a license is valid until the second [~~first~~] anniversary of the date the license was issued. A separate license is required for each tanning facility.

(c) The department [board annually] shall renew licenses after application for renewal is made on forms provided by the department for this purpose and after receipt of renewal fees.

(d) The executive commissioner [department] by rule may adopt a system under which licenses expire on various dates during the year. As part of this system the license fees and [~~the annual~~] renewal fees may be prorated on a monthly basis to reflect the actual number of months the license is valid.

(e) The department may revoke, suspend, suspend on an emergency basis, or probate by an emergency order of the commissioner, or the commissioner's designee, a license to operate a tanning facility for:

- (1) a failure to pay a license fee or [an annual] renewal fee for a license;
- (2) an applicant's acquisition or attempted acquisition of a license by fraud or deception;
- (3) a violation of this chapter;
- (4) a violation of a rule of the department adopted under this chapter; or
- (5) a violation of an order issued under this chapter.

SECTION 3.0435. Sections 145.010(a), (b), (c), and (e), Health and Safety Code, are amended to read as follows:

(a) The department [board] shall collect a fee for:

(1) a license issued or renewed; or
(2) a license that is modified.

(b) The department [board] may charge prorated [~~or annual~~]
fees.

(c) The executive commissioner [board] by rule shall set the fees for issuance or renewal of a license in the amounts prescribed by Section 12.0111 and for modification of a license in an amount [in amounts] that allows [allow] the department to recover not less than 50 percent of the costs to the department in:

- (1) reviewing and acting on a license application;
- (2) modifying [or renewing] a license;
- (3) inspecting a licensed facility; and
- (4) implementing and enforcing this chapter or rules relating to this chapter.

(e) A license fee received by the department shall be deposited in the state treasury to the credit of the food and drug registration account in the general revenue fund. The fees are dedicated to the department for the administration and enforcement of this chapter.

SECTION 3.0436. Section 145.011(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner [board] may adopt rules as

259-1 necessary to implement this chapter.

259-2 SECTION 3.0437. Section 145.012(c), Health and Safety Code,
259-3 is amended to read as follows:

259-4 (c) If an emergency order is issued without a hearing, the
259-5 department shall refer the matter to the State Office of
259-6 Administrative Hearings. An administrative law judge of that
259-7 office shall determine a time and place for a hearing and hold the
259-8 hearing [at which the emergency order is affirmed, modified, or set
259-9 aside]. The hearing shall be held under rules of the department.

259-10 SECTION 3.0438. Sections 145.0121(a) and (f), Health and
259-11 Safety Code, are amended to read as follows:

259-12 (a) If it appears that a person has violated or is violating
259-13 this chapter or an order issued or a rule adopted under this
259-14 chapter, the department [commissioner] may request the attorney
259-15 general or the district or county attorney or the municipal
259-16 attorney of a municipality in the jurisdiction where the violation
259-17 is alleged to have occurred or may occur to institute a civil suit
259-18 for:

259-19 (1) an order enjoining the violation;

259-20 (2) a permanent or temporary injunction, a temporary
259-21 restraining order, or other appropriate remedy if the department
259-22 shows that the person has engaged in or is engaging in a violation;

259-23 (3) the assessment and recovery of a civil penalty; or

259-24 (4) both injunctive relief and a civil penalty.

259-25 (f) The department [commissioner] or the attorney general
259-26 may each recover reasonable expenses incurred in obtaining
259-27 injunctive relief or a civil penalty under this section, including
259-28 investigation and court costs, reasonable attorney's fees, witness
259-29 fees, and other expenses. The expenses recovered by the department
259-30 [commissioner] under this section shall be used for the
259-31 administration and enforcement of this chapter. The expenses
259-32 recovered by the attorney general shall be used by the attorney
259-33 general.

259-34 SECTION 3.0439. Sections 145.0122(a), (d), (e), (f), (g),
259-35 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
259-36 amended to read as follows:

259-37 (a) The department [board or the board's designee] may
259-38 impose an administrative penalty against a person licensed or
259-39 regulated under this chapter who violates this chapter or a rule or
259-40 order adopted under this chapter.

259-41 (d) If the department [commissioner or the commissioner's
259-42 designee] determines a violation has occurred, the department shall
259-43 give to the person written notice [commissioner or the
259-44 commissioner's designee may issue to the board or the board's
259-45 designee a report] that states the facts on which the determination
259-46 is based and the department's [commissioner's or the designee's]
259-47 recommendation on the imposition of a penalty[, including a
259-48 recommendation on the amount of the penalty].

259-49 [(e) Within 14 days after the date the report is issued, the
259-50 commissioner or the commissioner's designee shall give written
259-51 notice of the report to the person.] The notice may be given by
259-52 certified mail. The notice must include a brief summary of the
259-53 alleged violation and a statement of the amount of the recommended
259-54 penalty and must inform the person that the person has a right to a
259-55 hearing on the occurrence of the violation, the amount of the
259-56 penalty, or both the occurrence of the violation and the amount of
259-57 the penalty.

259-58 (f) Within 20 days after the date the person receives the
259-59 notice, the person in writing may accept the determination and
259-60 recommended penalty of the department [commissioner or the
259-61 commissioner's designee] or may make a written request for a
259-62 hearing on the occurrence of the violation, the amount of the
259-63 penalty, or both the occurrence of the violation and the amount of
259-64 the penalty.

259-65 (g) If the person accepts the determination and recommended
259-66 penalty of the department [commissioner or the commissioner's
259-67 designee], the department [board] by order shall [approve the
259-68 determination and] impose the recommended penalty.

259-69 (h) If the person requests a hearing or fails to respond

timely to the notice, the department shall refer the matter to the State Office of Administrative Hearings [~~commissioner or the commissioner's designee shall set a hearing]~~ and shall give notice of the hearing to the person. The hearing shall be held by an administrative law judge of that office [~~the department~~]. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department [~~board~~] a written proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the department [~~board~~] by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the department's [~~board's~~] order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the department's [~~board's~~] order becomes final as provided by Section [2001.144](#), Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review in a district court in Travis County contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's [~~board's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department [~~commissioner~~] by certified mail.

(l) If the department [~~commissioner~~] receives a copy of an affidavit under Subsection (k)(2), the department [~~commissioner~~] may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department [~~commissioner~~] may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the department's order [~~of the board~~]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 3.0440. Section [146.0025\(a\)](#), Health and Safety Code, is amended to read as follows:

(a) This chapter does not apply to:

(1) a medical facility licensed under other law;

(2) an office or clinic of a person licensed by the Texas [State Board of] Medical Board [Examiners];

(3) a person who performs only ear piercing; or

(4) a facility in which only ear piercing is performed.

SECTION 3.0441. Section 146.003(b), Health and Safety Code, as amended by Chapters 516 (S.B. 61) and 1528 (S.B. 932), Acts of the 76th Legislature, Regular Session, 1999, is reenacted to read as follows:

(b) The department may issue a license or temporary location license for a tattoo or body piercing studio after determining that the studio is in compliance with applicable statutes, rules, and zoning codes.

SECTION 3.0442. Section 146.004, Health and Safety Code, is amended to read as follows:

Sec. 146.004. LICENSE TERM; RENEWAL. (a) A tattoo studio or body piercing studio license is valid for two years [~~one year~~] from the date of issuance. A temporary tattooing or body piercing location license is valid for a specified period not to exceed seven days.

(b) A tattoo studio or body piercing studio license may be renewed [annually] on payment of the required renewal fee.

SECTION 3.0443. Section 146.0041(a), Health and Safety Code, is amended to read as follows:

(a) The department may refuse to issue an original or renewal tattoo studio or body piercing studio license if it has reasonable grounds to believe and finds that any of the following circumstances exist:

(1) the applicant has been convicted of a violation of this chapter during the two years immediately preceding the filing of the application;

(2) three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for a conviction associated with tattooing or body piercing;

(3) the applicant violated or caused to be violated a provision of this chapter or a rule [of the department] adopted under this chapter involving moral turpitude during the six months immediately preceding the filing of the application;

(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(5) the applicant is indebted to the state for a fee or penalty imposed by this chapter or by rule [of the department] adopted under this chapter;

(6) the applicant is a minor; or
(7) the applicant does not provide an adequate building available at the address for which the license is sought before conducting any activity authorized by the license.

SECTION 3.0444. Section 146.0042(b), Health and Safety Code, is amended to read as follows:

(b) The department may suspend for not more than 60 days or revoke an original or renewal tattoo studio or body piercing studio license if it is found, after notice and hearing, that any of the following is true:

(1) the license holder has been finally convicted of a

(2) the license holder violated a provision of this

(2) the license holder violated a provision of this chapter or a rule [of the department] adopted under this chapter;

(3) the license holder made a false or misleading statement in connection with the original or renewal application.

(4) the license holder is indebted to the state for fees or payment of penalties imposed by this chapter or by a rule [of the department] adopted under this chapter;

(5) the license holder knowingly misrepresented to a customer or the public any tattoo or body piercing jewelry sold by the license holder; or

(6) the license holder was intoxicated on the licensed premises.

SECTION 3.0445. Section 146.005, Health and Safety Code, is amended to read as follows:

Sec. 146.005. FEES. [(a)] The executive commissioner by rule [board] shall set license and registration fees and license and registration renewal fees in amounts necessary for the department to administer this chapter.

department to administer this chapter.

[(b) Fees collected under this section may only be appropriated to the department to administer and enforce this chapter.]

SECTION 3.0446. Section 146.007(b), Health and Safety Code, is amended to read as follows:

(b) The [board, commissioner, and] department may enforce Chapter 431 in relation to a drug, cosmetic, or device that is used in tattooing and that is not otherwise subject to that chapter as if the drug, cosmetic, or device satisfied the definitions assigned those terms under Section 431.002.

SECTION 3.0447. Section 146.010(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner [board] by rule shall establish sanitation requirements for tattoo and body piercing studios and any other necessary requirements relating to the building or part of the building in which a tattoo or body piercing studio is located.

SECTION 3.0448. Section 146.013(a), Health and Safety Code, is amended to read as follows:

(a) A tattooist shall maintain a permanent record of each person tattooed by the tattooist for a period established by department rule [~~the board~~]. A person who performs body piercing shall maintain a permanent record of each individual whose body is pierced by the person for a period established by department rule [~~the board~~].

SECTION 3.0449. Section 146.015(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner [board] shall adopt rules to implement this chapter.

SECTION 3.0450. Section 146.017(b), Health and Safety Code, is amended to read as follows:

(b) The refusal to issue a license, the suspension or revocation of a license, and any appeals are governed by the department's [board's] formal hearing procedures and the procedures for a contested case hearing under Chapter 2001, Government Code. A person may appeal a final decision of the department as provided by that chapter.

SECTION 3.0451. Sections 146.019(a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are amended to read as follows:

(a) The department [commissioner] may impose an administrative penalty against a person who violates a rule adopted under Section 146.007 or an order adopted or license issued under this chapter.

(d) The department [commissioner who determines that a violation has occurred] shall issue an order that states the facts on which a [the] determination that a violation occurred is based, including an assessment of the penalty.

(e) The department [Within 14 days after the date the report is issued, the commissioner] shall give written notice of the order [report] to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department [commissioner] or may make written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation

263-1 and the amount of the penalty.

263-2 (g) If the person accepts the determination and recommended
 263-3 penalty of the department [commissioner], the department
 263-4 [commissioner] by order shall [approve the determination and]
 263-5 impose the recommended penalty.

263-6 (h) If the person requests a hearing or fails to respond
 263-7 timely to the notice, the department [commissioner] shall refer the
 263-8 case to the State Office of Administrative Hearings and [set a
 263-9 hearing and give notice of the hearing to the person. The hearing
 263-10 shall be held by] an administrative law judge of that office shall
 263-11 hold the hearing. The department shall give written notice of the
 263-12 hearing to the person [the State Office of Administrative
 263-13 Hearings]. The administrative law judge shall make findings of
 263-14 fact and conclusions of law and promptly issue to the department
 263-15 [commissioner] a proposal for a decision about the occurrence of
 263-16 the violation and the amount of a proposed penalty. Based on the
 263-17 findings of fact, conclusions of law, and proposal for a decision,
 263-18 the department [commissioner] by order may find that a violation
 263-19 has occurred and impose a penalty or may find that no violation
 263-20 occurred.

263-21 (i) The notice of the department's [commissioner's] order
 263-22 given to the person under Chapter 2001, Government Code, must
 263-23 include a statement of the right of the person to judicial review of
 263-24 the order.

263-25 (j) Within 30 days after the date the department's
 263-26 [commissioner's] order is final as provided by Subchapter F,
 263-27 Chapter 2001, Government Code, the person shall:

263-28 (1) pay the amount of the penalty;

263-29 (2) pay the amount of the penalty and file a petition
 263-30 for judicial review contesting the occurrence of the violation, the
 263-31 amount of the penalty, or both the occurrence of the violation and
 263-32 the amount of the penalty; or

263-33 (3) without paying the amount of the penalty, file a
 263-34 petition for judicial review contesting the occurrence of the
 263-35 violation, the amount of the penalty, or both the occurrence of the
 263-36 violation and the amount of the penalty.

263-37 (k) Within the 30-day period, a person who acts under
 263-38 Subsection (j)(3) [of this section] may:

263-39 (1) stay enforcement of the penalty by:

263-40 (A) paying the amount of the penalty to the court
 263-41 for placement in an escrow account; or

263-42 (B) giving to the court a supersedeas bond
 263-43 approved by the court for the amount of the penalty and that is
 263-44 effective until all judicial review of the department's
 263-45 [commissioner's] order is final; or

263-46 (2) request the court to stay enforcement of the
 263-47 penalty by:

263-48 (A) filing with the court a sworn affidavit of
 263-49 the person stating that the person is financially unable to pay the
 263-50 amount of the penalty and is financially unable to give the
 263-51 supersedeas bond; and

263-52 (B) giving a copy of the affidavit to the
 263-53 department [commissioner] by certified mail.

263-54 (l) The department on receipt of [commissioner who
 263-55 receives] a copy of an affidavit under Subsection (k)(2) [of this
 263-56 section] may file, with the court within five days after the date
 263-57 the copy is received, a contest to the affidavit. The court shall
 263-58 hold a hearing on the facts alleged in the affidavit as soon as
 263-59 practicable and shall stay the enforcement of the penalty on
 263-60 finding that the alleged facts are true. The person who files an
 263-61 affidavit has the burden of proving that the person is financially
 263-62 unable to pay the amount of the penalty and to give a supersedeas
 263-63 bond.

263-64 (m) If the person does not pay the amount of the penalty and
 263-65 the enforcement of the penalty is not stayed, the department
 263-66 [commissioner] may refer the matter to the attorney general for
 263-67 collection of the amount of the penalty.

263-68 (n) Judicial review of the order of the department
 263-69 [commissioner]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code [and its subsequent amendments]; and

(2) is under the substantial evidence rule.

SECTION 3.0452. Section 146.024, Health and Safety Code, is amended to read as follows:

Sec. 146.024. REGISTRATION TERM; RENEWAL. (a) A tattooist or body piercer registration is valid for two years [~~one year~~] from the date of issuance.

(b) A tattooist or body piercer registration may be renewed [annually] on:

- (1) payment of the required renewal fee; and
- (2) submission of proof of completion of a training course approved by the department that includes not less than four hours related to bloodborne pathogens, infection control, and aseptic technique.

SECTION 3.0453. Sections 146.025(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The department may approve a course of instruction based on any standards set by the executive commissioner [department] to reasonably ensure that a tattooist or body piercer develops the job skills and knowledge necessary to protect public health and safety.

(d) The executive commissioner [department] by rule shall set a fee in an amount reasonable and necessary to cover the cost to the department of reviewing the course content and issuing the approval.

SECTION 3.0454. Section 161.001(a), Health and Safety Code, is amended to read as follows:

(a) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable for an injury caused by the vaccine or immunizing agent if the immunization is required by department rule [~~the board~~] or is otherwise required by law or other rules [~~rule~~].

SECTION 3.0455. Sections 161.004(a) and (f), Health and Safety Code, are amended to read as follows:

(a) Every child in the state shall be immunized against vaccine preventable diseases caused by infectious agents in accordance with the immunization schedule adopted in department rules [~~by the board~~].

(f) The executive commissioner [board] shall adopt rules that are necessary to administer this section.

SECTION 3.0456. Sections 161.005(a) and (b), Health and Safety Code, are amended to read as follows:

(a) On admission of a child to a mental health facility of the department, a state supported living center of the [Texas] Department of Aging and Disability Services, or a facility of [Mental Health and Mental Retardation,] the Texas Department of Criminal Justice[–] or the Texas Juvenile Justice Department [Youth Commission], the facility physician shall review the immunization history of the child and administer any needed vaccinations or refer the child for immunization.

(b) The department and the executive commissioner [board] have the same powers and duties under this section as the department and the executive commissioner [~~those entities~~] have under Sections 38.001 and 51.933, Education Code. In addition, the provisions of those sections relating to provisional admissions and exceptions apply to this section.

SECTION 3.0457. Sections 161.0051(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The executive commissioner [board] by rule may require nursing facilities [homes] to offer, in accordance with an immunization schedule adopted in department rules [by the board], immunizations to elderly residents or to staff who are in contact with elderly residents against diseases that the executive commissioner [board] determines to be:

(1) caused by infectious agents;

(2) potentially deadly; and

(3) preventable by vaccine.

(c) The executive commissioner [board] by rule shall

265-1 require nursing homes to offer, in accordance with an immunization
265-2 schedule adopted in department rules [by the board]:

265-3 (1) pneumococcal vaccine to elderly residents; and
265-4 (2) influenza vaccine to elderly residents and to
265-5 staff who are in contact with elderly residents.

265-6 SECTION 3.0458. Sections 161.0052(b), (c), (d), (f), and
265-7 (h), Health and Safety Code, are amended to read as follows:

265-8 (b) The executive commissioner [~~of the Health and Human~~
265-9 ~~Services Commission~~] by rule shall require a hospital to inform
265-10 each elderly person admitted to the hospital for a period of 24
265-11 hours or more that the pneumococcal and influenza vaccines are
265-12 available. If the elderly person requests a vaccine, and if a
265-13 physician, or an advanced nurse practitioner or physician assistant
265-14 on behalf of a physician, determines that the vaccine is in the
265-15 person's best interest, the hospital must make the vaccination
265-16 available to the person before the person is discharged from the
265-17 hospital.

265-18 (c) The executive commissioner [~~of the Health and Human~~
265-19 ~~Services Commission~~] by rule shall require an end stage renal
265-20 disease facility to offer, to the extent possible as determined by
265-21 the facility, the opportunity to receive the pneumococcal and
265-22 influenza vaccines to each elderly person who receives ongoing care
265-23 at the facility if a physician, or an advanced nurse practitioner or
265-24 physician assistant on behalf of a physician, determines that the
265-25 vaccine is in the person's best interest. If the facility decides
265-26 it is not feasible to offer the vaccine, the facility must provide
265-27 the person with information on other options for obtaining the
265-28 vaccine.

265-29 (d) The Texas [~~State Board of~~] Medical Board [~~Examiners~~] by
265-30 rule shall require a physician responsible for the management of a
265-31 physician's office that provides ongoing medical care to elderly
265-32 persons to offer, to the extent possible as determined by the
265-33 physician, the opportunity to receive the pneumococcal and
265-34 influenza vaccines to each elderly person who receives ongoing care
265-35 at the office. If the physician decides it is not feasible to offer
265-36 the vaccine, the physician must provide the person with information
265-37 on other options for obtaining the vaccine.

265-38 (f) In adopting rules under this section, the executive
265-39 commissioner [~~of the Health and Human Services Commission~~] and the
265-40 Texas [~~State Board of~~] Medical Board [~~Examiners~~] shall consider the
265-41 recommendations of the Advisory Committee on Immunization
265-42 Practices of the Centers for Disease Control and Prevention.

265-43 (h) The department shall make available to hospitals and end
265-44 stage renal disease facilities, and the Texas [~~State Board of~~]
265-45 Medical Board [~~Examiners~~] shall make available to physicians'
265-46 offices, educational and informational materials concerning
265-47 vaccination against influenza virus and pneumococcal disease.

265-48 SECTION 3.0459. Sections 161.007(a), (a-3), and (k), Health
265-49 and Safety Code, are amended to read as follows:

265-50 (a) The department, for the primary purpose of establishing
265-51 and maintaining a single repository of accurate, complete, and
265-52 current immunization records to be used in aiding, coordinating,
265-53 and promoting efficient and cost-effective communicable disease
265-54 prevention and control efforts, shall establish and maintain an
265-55 immunization registry. The executive commissioner [~~of the Health~~
265-56 ~~and Human Services Commission~~] by rule shall develop guidelines to:

265-57 (1) protect the confidentiality of patients in
265-58 accordance with Section 159.002, Occupations Code;

265-59 (2) inform the individual or the individual's legally
265-60 authorized representative about the registry and that registry
265-61 information may be released under Section 161.00735;

265-62 (3) require the written or electronic consent of the
265-63 individual or the individual's legally authorized representative
265-64 before any information relating to the individual is included in
265-65 the registry;

265-66 (4) permit the individual or the individual's legally
265-67 authorized representative to withdraw consent for the individual to
265-68 be included in the registry; and

265-69 (5) determine the process by which consent is

verified, including affirmation by a health care provider, birth registrar, regional health information exchange, or local immunization registry that consent has been obtained.

(a-3) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall develop guidelines and procedures for obtaining consent from an individual after the individual's 18th birthday, including procedures for retaining immunization information in a separate database that is inaccessible by any person other than the department during the one-year period during which an 18-year-old may consent to inclusion in the registry under Subsection (a-2).

(k) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules to implement this section.

SECTION 3.0460. Sections [161.00705\(e\)](#) and (i), Health and Safety Code, are amended to read as follows:

(e) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall determine the period during which the information collected under this section must remain in the immunization registry following the end of the disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(i) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules necessary to implement this section.

SECTION 3.0461. Section [161.00706\(c\)](#), Health and Safety Code, is amended to read as follows:

(c) The executive commissioner [~~of the Health and Human Services Commission~~] shall:

(1) develop rules to ensure that immunization history submitted under Subsection (a)(2) is medically verified immunization information;

(2) develop guidelines for use by the department in informing first responders about the registry and that registry information may be released under Section [161.00735](#); and

(3) adopt rules necessary for the implementation of this section.

SECTION 3.0462. Section [161.0072\(c\)](#), Health and Safety Code, is amended to read as follows:

(c) The executive commissioner [~~board~~] shall develop rules to ensure that the immunization history submitted by an individual or the individual's legally authorized representative is medically verified immunization information.

SECTION 3.0463. Sections [161.00735\(e\)](#) and (h), Health and Safety Code, are amended to read as follows:

(e) The executive commissioner [~~of the Health and Human Services Commission~~] by rule[~~–~~] shall determine the period during which the information collected under Subsection (c) must remain in the immunization registry following the end of the disaster.

(h) The executive commissioner [~~of the Health and Human Services Commission~~] shall make every effort to enter into a memorandum of agreement with each state to which residents of this state are likely to evacuate in a disaster on:

(1) the release and use of registry information under this section to the appropriate health authority or local health authority of that state, including the length of time the information may be retained by that state; and

(2) the receipt and use of information submitted by the health authority or local health authority of that state for inclusion in the registry under this section.

SECTION 3.0464. Section [161.008\(h\)](#), Health and Safety Code, is amended to read as follows:

(h) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules to implement this section.

SECTION 3.0465. Section [161.0105\(c\)](#), Health and Safety Code, is amended to read as follows:

(c) The immunity created by this section is in addition to any immunity created by Sections [161.001](#) and [161.007\(i\)](#) [[161.007\(g\)](#)].

SECTION 3.0466. Section [161.0107\(c\)](#), Health and Safety

267-1 Code, is amended to read as follows:

267-2 (c) The executive commissioner [of the Health and Human
267-3 Services Commission] by rule shall specify:

267-4 (1) the fields necessary to populate the immunization
267-5 registry, including a field that indicates the patient's consent to
267-6 be listed in the immunization registry has been obtained; and

267-7 (2) the data standards that must be used for
267-8 electronic submission of immunization information.

267-9 SECTION 3.0467. Section 161.0109(b), Health and Safety
267-10 Code, is amended to read as follows:

267-11 (b) The department shall collaborate with the Cancer
267-12 Prevention and Research Institute of Texas [Cancer Council] or its
267-13 successor entity to develop educational programs for parents
267-14 regarding human papillomavirus and promoting awareness of a minor's
267-15 need for preventive services for cervical cancer and its
267-16 precursors.

267-17 SECTION 3.0468. Section 161.021(a), Health and Safety Code,
267-18 is amended to read as follows:

267-19 (a) Unless prohibited by other law, a person, including a
267-20 hospital, sanatorium, nursing facility [home], rest home, medical
267-21 society, cancer registry, or other organization, may provide
267-22 interviews, reports, statements, memoranda, or other information
267-23 relating to the condition and treatment of any person, to be used in
267-24 a study to reduce morbidity or mortality or to identify persons who
267-25 may need immunization, to:

267-26 (1) the department;

267-27 (2) a person that makes inquiries under immunization
267-28 surveys conducted for the department;

267-29 (3) a medical organization;

267-30 (4) a hospital;

267-31 (5) a hospital committee; or

267-32 (6) a cancer registry, including a cancer registry of
267-33 a cancer treatment center [as defined by Section 82.002].

267-34 SECTION 3.0469. Section 161.0213, Health and Safety Code,
267-35 is amended to read as follows:

267-36 Sec. 161.0213. CONFIDENTIALITY. Reports, records, and
267-37 information furnished to the commissioner or the commissioner's
267-38 designee or the Texas [Natural Resource Conservation] Commission on
267-39 Environmental Quality that relate to an epidemiologic or
267-40 toxicologic investigation of human illnesses or conditions and of
267-41 environmental exposures that are harmful or believed to be harmful
267-42 to the public health are not public information under Chapter 552,
267-43 Government Code, and are subject to the same confidentiality
267-44 requirements as described by Section 81.046.

267-45 SECTION 3.0470. Sections 161.0315(c) and (e), Health and
267-46 Safety Code, are amended to read as follows:

267-47 (c) A hospital district may require in a contract with a
267-48 health care facility described by Subsection (b) a provision that
267-49 allows the governing body of the district to appoint a specified
267-50 number of members to the facility's medical peer review committee
267-51 or medical committee to evaluate medical and health care services
267-52 for which the district contracts with the facility to provide. The
267-53 governing body of a hospital district may receive a report from the
267-54 facility's medical peer review committee or medical committee under
267-55 this section in a closed meeting. A report, information, or a
267-56 record that the district receives from the facility related to a
267-57 review action conducted under the terms of the contract is:

267-58 (1) confidential;

267-59 (2) not subject to disclosure under Chapter 552,
267-60 Government Code; and

267-61 (3) subject to the same confidentiality and disclosure
267-62 requirements to which a report, information, or record of a medical
267-63 peer review committee under Section 160.007 [160.006], Occupations
267-64 Code, is subject.

267-65 (e) The governing body of a hospital district may receive a
267-66 report under Subsection (d)(3) in a closed meeting. A report,
267-67 information, or a record that the hospital district receives under
267-68 Subsection (d)(3) is:

267-69 (1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.007 [160.006], Occupations Code, is subject.

SECTION 3.0471. Section 161.083(a), Health and Safety Code, is amended to read as follows:

(a) Pursuant to federal regulation under 21 C.F.R. Section 1140.14(b) [~~897.14(b)~~], a person may not sell, give, or cause to be sold or given a cigarette or tobacco product to someone who is younger than 27 years of age unless the person to whom the cigarette or tobacco product was sold or given presents an apparently valid proof of identification.

SECTION 3.0472. Section 161.101(c), Health and Safety Code, is amended to read as follows:

(c) The executive commissioner [board] shall adopt rules to implement this section.

SECTION 3.0473. Sections 161.131(1) and (8), Health and Safety Code, are amended to read as follows:

(1) "Abuse" has the meaning assigned by the federal Protection and Advocacy for [Mentally Ill] Individuals with Mental Illness Act [of 1986] (42 U.S.C. Section 10801 et seq.).

(8) "Neglect" has the meaning assigned by the federal Protection and Advocacy for [Mentally Ill] Individuals with Mental Illness Act [of 1986] (42 U.S.C. Section 10801 et seq.).

SECTION 3.0474. Sections 161.132(d) and (f), Health and Safety Code, are amended to read as follows:

(d) The executive commissioner by rule for the department and the Department of Aging and Disability Services, and [Texas Board of Mental Health and Mental Retardation, Texas Board of Health, Texas Commission on Alcohol and Drug Abuse, and] each state health care regulatory agency by rule, shall:

(1) prescribe procedures for the investigation of reports received under Subsection (a) or (b) and for coordination with and referral of reports to law enforcement agencies or other appropriate agencies; and

(f) The executive commissioner by rule and each [each] state

(1) The executive commissioner by rule and each [each] state health care regulatory agency by rule shall provide for appropriate disciplinary action against a health care professional licensed by the agency who fails to report as required by this section.

SECTION 3.0475. Section 161.133, Health and Safety Code, is amended to read as follows:

Sec. 161.133. [MEMORANDUM OF UNDERSTANDING ON] INSERVICE 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 mental health facility, treatment facility, or hospital that provides comprehensive medical rehabilitation services to annually provide as a condition of continued licensure a minimum of eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the facility.

(b) The rules [~~memorandum~~] must prescribe:

(1) minimum standards for the training program; and
(2) a means for monitoring compliance with the requirement

(c) The department [~~Each agency~~] shall review and the executive commissioner shall modify the rules [~~memorandum~~] as necessary not later than the last month of each state fiscal year.

SECTION 3.0476. Section 161.134(a), Health and Safety Code, is amended to read as follows:

(a) A hospital, mental health facility, or treatment facility may not suspend or terminate the employment of or discipline or otherwise discriminate against an employee for

269-1 reporting to the employee's supervisor, an administrator of the
 269-2 facility, a state regulatory agency, or a law enforcement agency a
 269-3 violation of law, including a violation of this chapter, a rule
 269-4 adopted under this chapter, or a rule of another agency [adopted by
 269-5 the Texas Board of Mental Health and Mental Retardation, the Texas
 269-6 Board of Health, or the Texas Commission on Alcohol and Drug Abuse].
 269-7 SECTION 3.0477. Sections 161.135(a) and (c), Health and
 269-8 Safety Code, are amended to read as follows:

269-9 (a) A hospital, mental health facility, or treatment
 269-10 facility may not retaliate against a person who is not an employee
 269-11 for reporting a violation of law, including a violation of this
 269-12 chapter, a rule adopted under this chapter, or a rule of another
 269-13 agency [adopted by the Texas Board of Mental Health and Mental
 269-14 Retardation, the Texas Board of Health, or the Texas Commission on
 269-15 Alcohol and Drug Abuse].

269-16 (c) A person suing under this section has the burden of
 269-17 proof, except that it is a rebuttable presumption that the
 269-18 plaintiff was retaliated against if:

269-19 (1) before the 60th day after the date on which the
 269-20 plaintiff made a report in good faith, the hospital, mental health
 269-21 facility, or treatment facility:

269-22 (A) discriminates in violation of Section
 269-23 161.134 against a relative who is an employee of the facility;

269-24 (B) transfers, disciplines, suspends,
 269-25 terminates, or otherwise discriminates against the person or a
 269-26 relative who is a volunteer in the facility or who is employed under
 269-27 the patient work program administered by the department [Texas
 269-28 Department of Mental Health and Mental Retardation];

269-29 (C) commits or threatens to commit, without
 269-30 justification, the person or a relative of the person; or
 269-31 (D) transfers, discharges, punishes, or
 269-32 restricts the privileges of the person or a relative of the person
 269-33 who is receiving inpatient or outpatient services in the facility;
 269-34 or

269-35 (2) a person expected to testify on behalf of the
 269-36 plaintiff is intentionally made unavailable through an action of
 269-37 the facility, including a discharge, resignation, or transfer.

269-38 SECTION 3.0478. Sections 161.301(a), (b), and (d), Health
 269-39 and Safety Code, are amended to read as follows:

269-40 (a) The department [commissioner] shall develop and
 269-41 implement a public awareness campaign designed to reduce tobacco
 269-42 use by minors in this state. The campaign may use advertisements or
 269-43 similar media to provide educational information about tobacco use.

269-44 (b) The department [commissioner] may contract with another
 269-45 person to develop and implement the public awareness campaign. The
 269-46 contract shall be awarded on the basis of competitive bids.

269-47 (d) The department [commissioner] may not award a contract
 269-48 under Subsection (b) to:

269-49 (1) a person or entity that is required to register
 269-50 with the Texas Ethics Commission under Chapter 305, Government
 269-51 Code, except as provided by Subsection (f);

269-52 (2) any partner, employee, employer, relative,
 269-53 contractor, consultant, or related entity of a person or entity
 269-54 described by Subdivision (1) and not described by Subsection (f);
 269-55 or

269-56 (3) a person or entity who has been hired to represent
 269-57 associations or other entities for the purpose of affecting the
 269-58 outcome of legislation, agency rules, or other government policies
 269-59 through grassroots or media campaigns.

269-60 SECTION 3.0479. Section 161.352(c), Health and Safety Code,
 269-61 is amended to read as follows:

269-62 (c) The executive commissioner [department] by rule shall
 269-63 establish the time for filing an annual report under this section
 269-64 and shall prescribe the form for the report.

269-65 SECTION 3.0480. Section 161.353(a), Health and Safety Code,
 269-66 is amended to read as follows:

269-67 (a) Each manufacturer shall assign a nicotine yield rating
 269-68 to each cigarette or tobacco product distributed in this state. The
 269-69 rating shall be assigned in accordance with department standards

270-1 [adopted by the department].

270-2 SECTION 3.0481. Section 161.402, Health and Safety Code, is
270-3 amended to read as follows:

270-4 Sec. 161.402. MATERIAL SAFETY DATA SHEET REQUIRED; ASBESTOS
270-5 INSTALLATION OR REINSTALLATION PROHIBITED. The executive
270-6 commissioner [~~board~~] shall adopt rules designating the materials or
270-7 replacement parts for which a person must obtain a material safety
270-8 data sheet before installing the materials or parts in a public
270-9 building. A person may not install materials or replacement parts
270-10 in a public building if:

270-11 (1) the person does not obtain a required material
270-12 safety data sheet; or

270-13 (2) the materials or parts, according to the material
270-14 safety data sheet, contain more than one percent asbestos and there
270-15 is an alternative material or part.

270-16 SECTION 3.0482. Section 161.501(a), Health and Safety Code,
270-17 is amended to read as follows:

270-18 (a) A hospital, birthing center, physician, nurse midwife,
270-19 or midwife who provides prenatal care to a pregnant woman during
270-20 gestation or at delivery of an infant shall:

270-21 (1) provide the woman and the father of the infant, if
270-22 possible, or another adult caregiver for the infant, with a
270-23 resource pamphlet that includes:

270-24 (A) a list of the names, addresses, and phone
270-25 numbers of professional organizations that provide postpartum
270-26 counseling and assistance to parents relating to postpartum
270-27 depression and other emotional trauma associated with pregnancy and
270-28 parenting;

270-29 (B) information regarding the prevention of
270-30 shaken baby syndrome including:

270-31 (i) techniques for coping with anger caused
270-32 by a crying baby;

270-33 (ii) different methods for preventing a
270-34 person from shaking a newborn, infant, or other young child;

270-35 (iii) the dangerous effects of shaking a
270-36 newborn, infant, or other young child; and

270-37 (iv) the symptoms of shaken baby syndrome
270-38 and who to contact, as recommended by the American Academy of
270-39 Pediatrics, if a parent suspects or knows that a baby has been
270-40 shaken in order to receive prompt medical treatment;

270-41 (C) a list of diseases for which a child is
270-42 required by state law to be immunized and the appropriate schedule
270-43 for the administration of those immunizations;

270-44 (D) the appropriate schedule for follow-up
270-45 procedures for newborn screening;

270-46 (E) information regarding sudden infant death
270-47 syndrome, including current recommendations for infant sleeping
270-48 conditions to lower the risk of sudden infant death syndrome; and

270-49 (F) educational information in both English and
270-50 Spanish on pertussis disease and the availability of a vaccine to
270-51 protect against pertussis, including information on the Centers for
270-52 Disease Control and Prevention recommendation that parents receive
270-53 Tdap during the postpartum period to protect newborns from the
270-54 transmission of pertussis;

270-55 (2) if the woman is a recipient of medical assistance
270-56 under Chapter 32, Human Resources Code, provide the woman and the
270-57 father of the infant, if possible, or another adult caregiver with a
270-58 resource guide that includes information in both English and
270-59 Spanish relating to the development, health, and safety of a child
270-60 from birth until age five, including information relating to:

270-61 (A) selecting and interacting with a primary
270-62 health care practitioner and establishing a "medical home" for the
270-63 child;

270-64 (B) dental care;

270-65 (C) effective parenting;

270-66 (D) child safety;

270-67 (E) the importance of reading to a child;

270-68 (F) expected developmental milestones;

270-69 (G) health care resources available in the state;

- (H) selecting appropriate child care; and
- (I) other resources available in the state

- (3) document in the woman's record that the woman received the resource pamphlet described in Subdivision (1) and the resource guide described in Subdivision (2), if applicable; and
- (4) retain the documentation for at least five years in the hospital's, birthing center's, physician's, nurse midwife's, or midwife's records.

SECTION 3.0483. The heading to Section 161.502, Health and Safety Code, is amended to read as follows:

Sec. 161.502. DUTIES OF DEPARTMENT, EXECUTIVE
COMMISSIONER, AND COMMISSION.

SECTION 3.0484. Sections 161.502(c) and (d), Health and Safety Code, are amended to read as follows:

(c) The executive commissioner [~~Health and Human Services Commission~~] shall develop specific performance measures by which the commission may evaluate the effectiveness of the resource guide under Section 161.501(a)(2) in:

- (1) reducing costs to the state; and
- (2) improving outcomes for children.

(d) Not later than December 1 of each even-numbered year, the commission [Health and Human Services Commission] shall submit a report to the legislature on the effectiveness of the resource guide under Section 161.501(a)(2), including legislative recommendations concerning the guide.

SECTION 3.0485. Section 161.551, Health and Safety Code, is amended to read as follows:

Sec. 161.551. DEFINITIONS. (a) In this subchapter, "servicemember" [·]

"servicemember" [+]
[(1) "Commission" means the Health and Human Services
Commission

[(2) "Department" means the Department of State Health Services.]

[~~(3) "Servicemember"~~] means a member or former member of the state military forces or a component of the United States armed forces, including a reserve component.

(b) In this section, "state military forces" has the meaning assigned by Section 437.001, Government Code.

SECTION 3.0486. Sections 162.001(1) and (2), Health and Safety Code, are amended to read as follows:

(1) "Blood bank" means a facility that obtains blood from voluntary donors, as that term is defined by the United States Food and Drug Administration, the AABB (formerly known as the American Association of Blood Banks), and the American Red Cross.

American Association of Blood Banks), and the American Red Cross Blood Services and that is registered or licensed by the Center for [Office of] Biologics Evaluation and Research of the United States Food and Drug Administration and accredited by the AABB [American Association of Blood Banks] or the American Red Cross Blood Services, or is qualified for membership in the American Association of Tissue Banks. The term includes a blood center, regional collection center, tissue bank, and transfusion service.

(2) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

SECTION 3.0487. Section 162.002(a), Health and Safety Code, is amended to read as follows:

(a) For each donation of blood, a blood bank shall require the donor to submit to tests for communicable [~~infectious~~] diseases, including tests for AIDS, HIV, or hepatitis, and serological tests for contagious venereal diseases.

SECTION 3.0488. Section 162.004, Health and Safety Code, is amended to read as follows:

Sec. 162.004. DISCLOSURE REQUIRED BY LAW. A blood bank shall disclose all information required by law, including HIV test results, to:

- (1) the department and a local health authority as required under Chapter 81 (Communicable Disease Prevention and Control Act);
- (2) the Centers for Disease Control and Prevention of

(2) the Centers for Disease Control and Prevention of

272-1 the United States Public Health Service, as required by federal law
 272-2 or regulation; or

272-3 (3) any other local, state, or federal entity, as
 272-4 required by law, rule, or regulation.

272-5 SECTION 3.0489. Sections 162.006(a) and (b), Health and
 272-6 Safety Code, are amended to read as follows:

272-7 (a) A blood bank may report to other blood banks the name of
 272-8 a donor with a possible communicable [~~infectious~~] disease according
 272-9 to positive blood test results.

272-10 (b) A blood bank that reports a donor's name to other blood
 272-11 banks under this section may not disclose the communicable
 272-12 [~~infectious~~] disease that the donor has or is suspected of having.

272-13 SECTION 3.0490. Section 162.007(a), Health and Safety Code,
 272-14 is amended to read as follows:

272-15 (a) A blood bank shall report blood test results for blood
 272-16 confirmed as HIV positive by the normal procedures blood banks
 272-17 presently use or found to be contaminated by any other communicable
 272-18 [~~infectious~~] disease to:

272-19 (1) the hospital or other facility in which the blood
 272-20 was transfused or provided;

272-21 (2) the physician who transfused the infected blood;
 272-22 or

272-23 (3) the recipient of the blood.

272-24 SECTION 3.0491. Section 162.016, Health and Safety Code, is
 272-25 amended to read as follows:

272-26 Sec. 162.016. BE A BLOOD DONOR ACCOUNT; DEDICATION. (a)
 272-27 The be a blood donor account is a separate account in the general
 272-28 revenue fund. The account is composed of:

272-29 (1) money deposited to the credit of the account under
 272-30 Section 504.641, Transportation Code; and

272-31 (2) gifts, grants, donations, and legislative
 272-32 appropriations.

272-33 (b) The department administers the account.

272-34 (b-1) The department [~~and~~] may spend money credited to the
 272-35 account or money deposited to the associated trust fund account
 272-36 created under Section 504.6012, Transportation Code, only to:

272-37 (1) make grants to nonprofit blood centers in this
 272-38 state for programs to recruit and retain volunteer blood donors;
 272-39 and

272-40 (2) defray the cost of administering the account.

272-41 (c) The department [~~board~~].

272-42 [~~1~~] may accept gifts, grants, and donations from any
 272-43 source for the benefit of the account. The executive commissioner
 272-44 of the Health and Human Services Commission [~~; and~~

272-45 [~~2~~] by rule shall establish guidelines for spending
 272-46 money described by Subsection (b-1) [~~credited to the account~~].

272-47 SECTION 3.0492. Section 162.018, Health and Safety Code, is
 272-48 amended to read as follows:

272-49 Sec. 162.018. BROCHURE ON UMBILICAL CORD BLOOD OPTIONS.

272-50 (a) The executive commissioner [~~of the Health and Human Services~~
 272-51 ~~Commission~~] shall prepare and update as necessary a brochure based
 272-52 on nationally accepted, peer reviewed, scientific research
 272-53 information regarding stem cells contained in the umbilical cord
 272-54 blood after delivery of an infant. The information in the brochure
 272-55 must include:

272-56 (1) the current and potential uses, risks, and
 272-57 benefits of stem cells contained in umbilical cord blood to a
 272-58 potential recipient of donated stem cells, including a biological
 272-59 family member, extended family member, or nonrelated individual;

272-60 (2) the options available for future use or storage of
 272-61 umbilical cord blood after delivery of an infant, including:

272-62 (A) discarding the stem cells;
 272-63 (B) donating the stem cells to a public umbilical
 272-64 cord blood bank;

272-65 (C) storing the stem cells in a private family
 272-66 umbilical cord blood bank for use by immediate and extended family
 272-67 members; and

272-68 (D) storing the stem cells for immediate and
 272-69 extended family use through a family or sibling donor banking

273-1 program that provides free collection, processing, and storage when
273-2 a medical need exists;

273-3 (3) the medical process used to collect umbilical cord
273-4 blood after delivery of an infant;

273-5 (4) any risk associated with umbilical cord blood
273-6 collection to the mother and the infant;

273-7 (5) any costs that may be incurred by a pregnant woman
273-8 who chooses to donate or store umbilical cord blood after delivery
273-9 of the woman's infant; and

273-10 (6) the average cost of public and private umbilical
273-11 cord blood banking.

273-12 (b) The ~~Department of State Health Services~~ shall make the brochure available on the department's website and
273-13 shall distribute the brochure on request to physicians or other
273-14 persons permitted by law to attend a pregnant woman during
273-15 gestation or at delivery of an infant.

273-16 SECTION 3.0493. Section 164.003(5), Health and Safety Code,
273-17 is amended to read as follows:

273-18 (5) "Mental health facility" means:

273-19 (A) a "mental health facility" as defined by
273-20 Section 571.003;

273-21 (B) a residential treatment facility, other than
273-22 a mental health facility, in which persons are treated for
273-23 emotional problems or disorders in a 24-hour supervised living
273-24 environment; and

273-25 (C) an adult day-care facility [~~or adult day~~
273-26 ~~health care facility~~] as defined by Section 103.003, Human
273-27 Resources Code.

273-28 SECTION 3.0494. Section 164.004, Health and Safety Code, is
273-29 amended to read as follows:

273-30 Sec. 164.004. EXEMPTIONS. This chapter does not apply to:

273-31 (1) a treatment facility:

273-32 (A) operated by the ~~department [Texas Department~~
273-33 ~~of Mental Health and Mental Retardation]~~, a federal agency, or a
273-34 political subdivision; or

273-35 (B) funded by the ~~department [Texas Commission on~~
273-36 ~~Alcohol and Drug Abuse]~~;

273-37 (2) a community center established under Subchapter A,
273-38 Chapter 534, or a facility operated by a community center; or

273-39 (3) a facility owned and operated by a nonprofit or
273-40 not-for-profit organization offering counseling concerning family
273-41 violence, help for runaway children, or rape.

273-42 SECTION 3.0495. Section 164.006, Health and Safety Code, is
273-43 amended to read as follows:

273-44 Sec. 164.006. SOLICITING AND CONTRACTING WITH CERTAIN
273-45 REFERRAL SOURCES. A treatment facility or a person employed or
273-46 under contract with a treatment facility, if acting on behalf of the
273-47 treatment facility, may not:

273-48 (1) contact a referral source or potential client for
273-49 the purpose of soliciting, directly or indirectly, a referral of a
273-50 patient to the treatment facility without disclosing its soliciting
273-51 agent's, employee's, or contractor's affiliation with the treatment
273-52 facility;

273-53 (2) offer to provide or provide mental health or
273-54 chemical dependency services to a public or private school in this
273-55 state, on a part-time or full-time basis, the services of any of its
273-56 employees or agents who make, or are in a position to make, a
273-57 referral, if the services are provided on an individual basis to
273-58 individual students or their families. Nothing herein prohibits a
273-59 treatment facility from:

273-60 (A) offering or providing educational programs
273-61 in group settings to public schools in this state if the affiliation
273-62 between the educational program and the treatment facility is
273-63 disclosed;

273-64 (B) providing counseling services to a public
273-65 school in this state in an emergency or crisis situation if the
273-66 services are provided in response to a specific request by a school;
273-67 provided that, under no circumstances may a student be referred to
273-68 the treatment facility offering the services; or

(C) entering into a contract under Section 464.020 with the board of trustees of a school district with a disciplinary alternative education program, or with the board's designee, for the provision of chemical dependency treatment services;

(3) provide to an entity of state or local government, on a part-time or full-time basis, the mental health or chemical dependency services of any of its employees, agents, or contractors who make or are in a position to make referrals unless:

(A) the treatment facility discloses to the governing authority of the entity:

(i) the employee's, agent's, or contractor's relationship to the facility; and
(ii) the fact that the employee, agent, or contractor might make a referral, if permitted, to the facility; and

(B) the employee, agent, or contractor makes a referral only if:

(i) the treatment facility obtains the governing authority's authorization in writing for the employee, agent, or contractor to make the referrals; and

(ii) the employee, agent, or contractor discloses to the prospective patient the employee's, agent's, or contractor's relationship to the facility at initial contact; or

(4) in relation to intervention and assessment

(4) In relation to intervention and assessment services, contract with, offer to remunerate, or remunerate a person who operates an intervention and assessment service that makes referrals to a treatment facility for inpatient treatment of mental illness or chemical dependency unless the intervention and assessment service is:

(A) operated by a community mental health and intellectual disability [mental retardation] center funded by the department and the Department of Aging and Disability Services [Texas Department of Mental Health and Mental Retardation];

(B) operated by a county or regional medical society;

- (C) a qualified mental health referral service as defined by Section 164.007; or
- (D) owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape.

SECTION 3.0496. Section 164.007(a), Health and Safety Code, is amended to read as follows:

(a) A qualified mental health referral service means a service that conforms to all of the following standards:

(1) the referral service does not exclude as a participant in the referral service an individual who meets the qualifications for participation and qualifications for participation cannot be based in whole or in part on an individual's or entity's affiliation or nonaffiliation with other participants in the referral service;

(2) a payment the participant makes to the referral service is assessed equally against and collected equally from all participants, and is only based on the cost of operating the referral service and not on the volume or value of any referrals to or business otherwise generated by the participants of the referral service;

(3) the referral service imposes no requirements on the manner in which the participant provides services to a referred person, except that the referral service may require that the participant charge the person referred at the same rate as it charges other persons not referred by the referral service, or that these services be furnished free of charge or at a reduced charge;

(4) a referral made to a mental health professional or chemical dependency treatment facility is made only in accordance with Subdivision (1) and the referral service does not make referrals to mental health facilities other than facilities maintained or operated by the department [Texas Department of Mental Health and Mental Retardation], community mental health [and]

275-1 ~~mental retardation~~ centers, or other political subdivisions,
 275-2 provided that a physician may make a referral directly to any mental
 275-3 health facility;

275-4 (5) the referral service is staffed by appropriately
 275-5 licensed and trained mental health professionals and a person who
 275-6 makes assessments for the need for treatment of mental illness or
 275-7 chemical dependency is a mental health professional as defined by
 275-8 this chapter;

275-9 (6) in response to each inquiry or after personal
 275-10 assessment, the referral service makes referrals, on a clinically
 275-11 appropriate, rotational basis, to at least three mental health
 275-12 professionals or chemical dependency treatment facilities whose
 275-13 practice addresses or facilities are located in the county of
 275-14 residence of the person seeking the referral or assessment, but if
 275-15 there are not three providers in the inquirer's county of
 275-16 residence, the referral service may include additional providers
 275-17 from other counties nearest the inquirer's county of residence;

275-18 (7) no information that identifies the person seeking
 275-19 a referral, such as name, address, or telephone number, is used,
 275-20 maintained, distributed, or provided for a purpose other than
 275-21 making the requested referral or for administrative functions
 275-22 necessary to operating the referral service;

275-23 (8) the referral service makes the following
 275-24 disclosures to each person seeking a referral:

275-25 (A) the manner in which the referral service
 275-26 selects the group of providers participating in the referral
 275-27 service;

275-28 (B) whether the provider participant has paid a
 275-29 fee to the referral service;

275-30 (C) the manner in which the referral service
 275-31 selects a particular provider from its list of provider
 275-32 participants to which to make a referral;

275-33 (D) the nature of the relationship or any
 275-34 affiliation between the referral service and the group of provider
 275-35 participants to whom it could make a referral; and

275-36 (E) the nature of any restriction that would
 275-37 exclude a provider from continuing as a provider participant;

275-38 (9) the referral service maintains each disclosure in
 275-39 a written record certifying that the disclosure has been made and
 275-40 the record certifying that the disclosure has been made is signed by
 275-41 either the person seeking a referral or by the person making the
 275-42 disclosure on behalf of the referral service; and

275-43 (10) if the referral service refers callers to a 1-900
 275-44 telephone number or another telephone number that requires the
 275-45 payment of a toll or fee payable to or collected by the referral
 275-46 service, the referral service discloses the per minute charge.

275-47 SECTION 3.0497. Section [164.009\(a\)](#), Health and Safety Code,
 275-48 is amended to read as follows:

275-49 (a) A treatment facility may not admit a patient to its
 275-50 facilities without fully disclosing to the patient or, if the
 275-51 patient is a minor, the patient's parent, managing conservator, or
 275-52 guardian, in, if possible, the primary language of the patient,
 275-53 managing conservator, or guardian, as the case may be, the
 275-54 following information in writing before admission:

275-55 (1) the treatment facility's estimated average daily
 275-56 charge for inpatient treatment with an explanation that the patient
 275-57 may be billed separately for services provided by mental health
 275-58 professionals;

275-59 (2) the name of the attending physician, if the
 275-60 treatment facility is a mental health facility, or the name of the
 275-61 attending mental health professional, if the facility is a chemical
 275-62 dependency facility; and

275-63 (3) the current "patient's bill of rights" as adopted
 275-64 by the executive commissioner [~~Texas Department of Mental Health~~
 275-65 ~~and Mental Retardation, the Texas Commission on Alcohol and Drug~~
 275-66 ~~Abuse, or the Texas Department of Health~~] that sets out
 275-67 restrictions to the patient's freedom that may be imposed on the
 275-68 patient during the patient's stay in a treatment facility.

275-69 SECTION 3.0498. Section [164.014](#), Health and Safety Code, is

276-1 amended to read as follows:

276-2 Sec. 164.014. RULE-MAKING AUTHORITY. The executive
 276-3 commissioner [~~Texas Commission on Alcohol and Drug Abuse and Texas~~
 276-4 ~~Board of Mental Health and Mental Retardation~~] may adopt rules
 276-5 interpreting the provisions of this chapter relating to the
 276-6 activities of a chemical dependency facility or mental health
 276-7 facility under the department's [its] jurisdiction.

276-8 SECTION 3.0499. Section 166.002(12), Health and Safety
 276-9 Code, is amended to read as follows:

276-10 (12) "Physician" means:

276-11 (A) a physician licensed by the Texas Medical
 276-12 [~~State~~ Board [~~of Medical Examiners~~]]; or
 276-13 (B) a properly credentialed physician who holds a
 276-14 commission in the uniformed services of the United States and who is
 276-15 serving on active duty in this state.

276-16 SECTION 3.0500. Section 166.004(a), Health and Safety Code,
 276-17 is amended to read as follows:

276-18 (a) In this section, "health care provider" means:

276-19 (1) a hospital;
 276-20 (2) an institution licensed under Chapter 242,
 276-21 including a skilled nursing facility;
 276-22 (3) a home and community support services agency;
 276-23 (4) an assisted living [~~a personal care~~] facility;
 276-24 and

276-25 (5) a special care facility.

276-26 SECTION 3.0501. Section 166.011(c), Health and Safety Code,
 276-27 is amended to read as follows:

276-28 (c) The executive commissioner [~~of the Health and Human~~
 276-29 ~~Services Commission~~] by rule shall modify the advance directive
 276-30 forms required under this chapter as necessary to provide for the
 276-31 use of a digital or electronic signature that complies with the
 276-32 requirements of this section.

276-33 SECTION 3.0502. Section 166.039(g), Health and Safety Code,
 276-34 is amended to read as follows:

276-35 (g) A person listed in Subsection (b) who wishes to
 276-36 challenge a treatment decision made under this section must apply
 276-37 for temporary guardianship under Chapter 1251, Estates [~~Section~~
 276-38 ~~875, Texas Probate~~] Code. The court may waive applicable fees in
 276-39 that proceeding.

276-40 SECTION 3.0503. Sections 166.046(b) and (c), Health and
 276-41 Safety Code, are amended to read as follows:

276-42 (b) The patient or the person responsible for the health
 276-43 care decisions of the individual who has made the decision
 276-44 regarding the directive or treatment decision:

276-45 (1) may be given a written description of the ethics or
 276-46 medical committee review process and any other policies and
 276-47 procedures related to this section adopted by the health care
 276-48 facility;

276-49 (2) shall be informed of the committee review process
 276-50 not less than 48 hours before the meeting called to discuss the
 276-51 patient's directive, unless the time period is waived by mutual
 276-52 agreement;

276-53 (3) at the time of being so informed, shall be
 276-54 provided:

276-55 (A) a copy of the appropriate statement set forth
 276-56 in Section 166.052; and

276-57 (B) a copy of the registry list of health care
 276-58 providers and referral groups that have volunteered their readiness
 276-59 to consider accepting transfer or to assist in locating a provider
 276-60 willing to accept transfer that is posted on the website maintained
 276-61 by the department [~~Texas Health Care Information Council~~] under
 276-62 Section 166.053; and

276-63 (4) is entitled to:

276-64 (A) attend the meeting; and
 276-65 (B) receive a written explanation of the decision
 276-66 reached during the review process.

276-67 (c) The written explanation required by Subsection
 276-68 (b)(4)(B) [~~(b)(2)(B)~~] must be included in the patient's medical
 276-69 record.

277-1 SECTION 3.0504. Sections 166.052(a) and (b), Health and
 277-2 Safety Code, are amended to read as follows:

277-3 (a) In cases in which the attending physician refuses to
 277-4 honor an advance directive or treatment decision requesting the
 277-5 provision of life-sustaining treatment, the statement required by
 277-6 Section 166.046(b)(3)(A) [~~166.046(b)(2)(A)~~] shall be in
 277-7 substantially the following form:

277-8 When There Is A Disagreement About Medical Treatment: The
 277-9 Physician Recommends Against Life-Sustaining Treatment That You
 277-10 Wish To Continue

277-11 You have been given this information because you have
 277-12 requested life-sustaining treatment,* which the attending
 277-13 physician believes is not appropriate. This information is being
 277-14 provided to help you understand state law, your rights, and the
 277-15 resources available to you in such circumstances. It outlines the
 277-16 process for resolving disagreements about treatment among
 277-17 patients, families, and physicians. It is based upon Section
 277-18 166.046 of the Texas Advance Directives Act, codified in Chapter
 277-19 166 of the Texas Health and Safety Code.

277-20 When an attending physician refuses to comply with an advance
 277-21 directive or other request for life-sustaining treatment because of
 277-22 the physician's judgment that the treatment would be inappropriate,
 277-23 the case will be reviewed by an ethics or medical committee.
 277-24 Life-sustaining treatment will be provided through the review.

277-25 You will receive notification of this review at least 48
 277-26 hours before a meeting of the committee related to your case. You
 277-27 are entitled to attend the meeting. With your agreement, the
 277-28 meeting may be held sooner than 48 hours, if possible.

277-29 You are entitled to receive a written explanation of the
 277-30 decision reached during the review process.

277-31 If after this review process both the attending physician and
 277-32 the ethics or medical committee conclude that life-sustaining
 277-33 treatment is inappropriate and yet you continue to request such
 277-34 treatment, then the following procedure will occur:

277-35 1. The physician, with the help of the health care facility,
 277-36 will assist you in trying to find a physician and facility willing
 277-37 to provide the requested treatment.

277-38 2. You are being given a list of health care providers and
 277-39 referral groups that have volunteered their readiness to consider
 277-40 accepting transfer, or to assist in locating a provider willing to
 277-41 accept transfer, maintained by the Department of State Health
277-42 Services [Texas Health Care Information Council]. You may wish to
 277-43 contact providers or referral groups on the list or others of your
 277-44 choice to get help in arranging a transfer.

277-45 3. The patient will continue to be given life-sustaining
 277-46 treatment until he or she can be transferred to a willing provider
 277-47 for up to 10 days from the time you were given the committee's
 277-48 written decision that life-sustaining treatment is not
 277-49 appropriate.

277-50 4. If a transfer can be arranged, the patient will be
 277-51 responsible for the costs of the transfer.

277-52 5. If a provider cannot be found willing to give the requested
 277-53 treatment within 10 days, life-sustaining treatment may be
 277-54 withdrawn unless a court of law has granted an extension.

277-55 6. You may ask the appropriate district or county court to
 277-56 extend the 10-day period if the court finds that there is a
 277-57 reasonable expectation that a physician or health care facility
 277-58 willing to provide life-sustaining treatment will be found if the
 277-59 extension is granted.

277-60 * "Life-sustaining treatment" means treatment that, based on
 277-61 reasonable medical judgment, sustains the life of a patient and
 277-62 without which the patient will die. The term includes both
 277-63 life-sustaining medications and artificial life support, such as
 277-64 mechanical breathing machines, kidney dialysis treatment, and
 277-65 artificial nutrition and hydration. The term does not include the
 277-66 administration of pain management medication or the performance of
 277-67 a medical procedure considered to be necessary to provide comfort
 277-68 care, or any other medical care provided to alleviate a patient's
 277-69 pain.

(b) In cases in which the attending physician refuses to comply with an advance directive or treatment decision requesting the withholding or withdrawal of life-sustaining treatment, the statement required by Section 166.046(b)(3)(A) shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Life-Sustaining Treatment That You Wish To 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 life-sustaining treatment for any reason, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least 48 hours before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than 48 hours, if possible.

You are entitled to receive a written explanation of the decision reached during the review process.

If you or the attending physician do not agree with the decision reached during the review process, and the attending physician still refuses to comply with your request to withhold or withdraw life-sustaining treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to withdraw or withhold the life-sustaining treatment.

2. You are being given a list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Department of State Health Services [~~Texas Health Care Information Council~~]. You may wish to contact providers or referral groups on the list or others of your choice to get help in arranging a transfer.

*"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

SECTION 3.0505. Sections 166.053(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(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.

(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

279-1 transfer of:

- 279-2 (1) those patients on whose behalf life-sustaining
279-3 treatment is being sought;
- 279-4 (2) those patients on whose behalf the withholding or
279-5 withdrawal of life-sustaining treatment is being sought; and
- 279-6 (3) patients described in both Subdivisions (1) and
279-7 (2).

279-8 (d) The registry list described in this section shall
279-9 include the following disclaimer:

279-10 "This registry lists providers and groups that have
279-11 indicated to the Department of State Health Services [~~Texas Health~~
279-12 ~~Care Information Council~~] their interest in assisting the transfer
279-13 of patients in the circumstances described, and is provided for
279-14 information purposes only. Neither the Department of State Health
279-15 Services [~~Texas Health Care Information Council~~] nor the State of
279-16 Texas endorses or assumes any responsibility for any
279-17 representation, claim, or act of the listed providers or groups."

279-18 SECTION 3.0506. Sections 166.081(2), (6), and (10), Health
279-19 and Safety Code, are amended to read as follows:

279-20 (2) "DNR identification device" means an
279-21 identification device specified by department rule [~~the board~~]
279-22 under Section 166.101 that is worn for the purpose of identifying a
279-23 person who has executed or issued an out-of-hospital DNR order or on
279-24 whose behalf an out-of-hospital DNR order has been executed or
279-25 issued under this subchapter.

279-26 (6) "Out-of-hospital DNR order":

279-27 (A) means a legally binding out-of-hospital
279-28 do-not-resuscitate order, in the form specified by department rule
279-29 [~~the board~~] under Section 166.083, prepared and signed by the
279-30 attending physician of a person, that documents the instructions of
279-31 a person or the person's legally authorized representative and
279-32 directs health care professionals acting in an out-of-hospital
279-33 setting not to initiate or continue the following life-sustaining
279-34 treatment:

- 279-35 (i) cardiopulmonary resuscitation;
- 279-36 (ii) advanced airway management;
- 279-37 (iii) artificial ventilation;
- 279-38 (iv) defibrillation;
- 279-39 (v) transcutaneous cardiac pacing; and
- 279-40 (vi) other life-sustaining treatment

279-41 specified by department rule [~~the board~~] under Section 166.101(a);
279-42 and

279-43 (B) does not include authorization to withhold
279-44 medical interventions or therapies considered necessary to provide
279-45 comfort care or to alleviate pain or to provide water or nutrition.

279-46 (10) "Statewide out-of-hospital DNR protocol" means a
279-47 set of statewide standardized procedures adopted by the executive
279-48 commissioner [~~board~~] under Section 166.101(a) for withholding
279-49 cardiopulmonary resuscitation and certain other life-sustaining
279-50 treatment by health care professionals acting in out-of-hospital
279-51 settings.

279-52 SECTION 3.0507. Sections 166.082(a) and (f), Health and
279-53 Safety Code, are amended to read as follows:

279-54 (a) A competent person may at any time execute a written
279-55 out-of-hospital DNR order directing health care professionals
279-56 acting in an out-of-hospital setting to withhold cardiopulmonary
279-57 resuscitation and certain other life-sustaining treatment
279-58 designated by department rule [~~the board~~].

279-59 (f) The executive commissioner [~~board~~], on the
279-60 recommendation of the department, shall by rule adopt procedures
279-61 for the disposition and maintenance of records of an original
279-62 out-of-hospital DNR order and any copies of the order.

279-63 SECTION 3.0508. Sections 166.083(a), (b), and (c), Health
279-64 and Safety Code, are amended to read as follows:

279-65 (a) A written out-of-hospital DNR order shall be in the
279-66 standard form specified by department [~~board~~] rule as recommended
279-67 by the department.

279-68 (b) The standard form of an out-of-hospital DNR order
279-69 specified by department rule [~~the board~~] must, at a minimum,

280-1 contain the following:

280-2 (1) a distinctive single-page format that readily
280-3 identifies the document as an out-of-hospital DNR order;
280-4 (2) a title that readily identifies the document as an
280-5 out-of-hospital DNR order;

280-6 (3) the printed or typed name of the person;
280-7 (4) a statement that the physician signing the
280-8 document is the attending physician of the person and that the
280-9 physician is directing health care professionals acting in
280-10 out-of-hospital settings, including a hospital emergency
280-11 department, not to initiate or continue certain life-sustaining
280-12 treatment on behalf of the person, and a listing of those procedures
280-13 not to be initiated or continued;

280-14 (5) a statement that the person understands that the
280-15 person may revoke the out-of-hospital DNR order at any time by
280-16 destroying the order and removing the DNR identification device, if
280-17 any, or by communicating to health care professionals at the scene
280-18 the person's desire to revoke the out-of-hospital DNR order;

280-19 (6) places for the printed names and signatures of the
280-20 witnesses or the notary public's acknowledgment and for the printed
280-21 name and signature of the attending physician of the person and the
280-22 medical license number of the attending physician;

280-23 (7) a separate section for execution of the document
280-24 by the legal guardian of the person, the person's proxy, an agent of
280-25 the person having a medical power of attorney, or the attending
280-26 physician attesting to the issuance of an out-of-hospital DNR order
280-27 by nonwritten means of communication or acting in accordance with a
280-28 previously executed or previously issued directive to physicians
280-29 under Section 166.082(c) that includes the following:

280-30 (A) a statement that the legal guardian, the
280-31 proxy, the agent, the person by nonwritten means of communication,
280-32 or the physician directs that each listed life-sustaining treatment
280-33 should not be initiated or continued in behalf of the person; and

280-34 (B) places for the printed names and signatures
280-35 of the witnesses and, as applicable, the legal guardian, proxy,
280-36 agent, or physician;

280-37 (8) a separate section for execution of the document
280-38 by at least one qualified relative of the person when the person
280-39 does not have a legal guardian, proxy, or agent having a medical
280-40 power of attorney and is incompetent or otherwise mentally or
280-41 physically incapable of communication, including:

280-42 (A) a statement that the relative of the person
280-43 is qualified to make a treatment decision to withhold
280-44 cardiopulmonary resuscitation and certain other designated
280-45 life-sustaining treatment under Section 166.088 and, based on the
280-46 known desires of the person or a determination of the best interest
280-47 of the person, directs that each listed life-sustaining treatment
280-48 should not be initiated or continued in behalf of the person; and

280-49 (B) places for the printed names and signatures
280-50 of the witnesses and qualified relative of the person;

280-51 (9) a place for entry of the date of execution of the
280-52 document;

280-53 (10) a statement that the document is in effect on the
280-54 date of its execution and remains in effect until the death of the
280-55 person or until the document is revoked;

280-56 (11) a statement that the document must accompany the
280-57 person during transport;

280-58 (12) a statement regarding the proper disposition of
280-59 the document or copies of the document, as the executive
280-60 commissioner [board] determines appropriate; and

280-61 (13) a statement at the bottom of the document, with
280-62 places for the signature of each person executing the document,
280-63 that the document has been properly completed.

280-64 (c) The executive commissioner [board] may, by rule and as
280-65 recommended by the department, modify the standard form of the
280-66 out-of-hospital DNR order described by Subsection (b) in order to
280-67 accomplish the purposes of this subchapter.

280-68 SECTION 3.0509. Sections 166.088(e) and (g), Health and
280-69 Safety Code, are amended to read as follows:

(e) The fact that an adult person has not executed or issued an out-of-hospital DNR order does not create a presumption that the person does not want a treatment decision made to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment designated by department rule [~~the board~~].

(g) A person listed in Section 166.039(b) who wishes to challenge a decision made under this section must apply for temporary guardianship under Chapter 1251, Estates [Section 875, Texas Probate] Code. The court may waive applicable fees in that proceeding.

SECTION 3.0510. Section 166.089(h), Health and Safety Code, is amended to read as follows:

(h) An out-of-hospital DNR order executed or issued and documented or evidenced in the manner prescribed by this subchapter is valid and shall be honored by responding health care professionals unless the person or persons found at the scene:

(1) identify themselves as the declarant or as the attending physician, legal guardian, qualified relative, or agent of the person having a medical power of attorney who executed or issued the out-of-hospital DNR order on behalf of the person; and

(2) request that cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule [~~the board~~] be initiated or continued.

SECTION 3.0511. Section 166.090(a), Health and Safety Code, is amended to read as follows:

(a) A person who has a valid out-of-hospital DNR order under this subchapter may wear a DNR identification device around the neck or on the wrist as prescribed by department [board] rule adopted under Section 166.101.

SECTION 3.0512. Section 166.092(b), Health and Safety Code, is amended to read as follows:

(b) An oral revocation under Subsection (a)(3) or (a)(4) takes effect only when the declarant or a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The responding health care professionals shall record the time, date, and place of the revocation in accordance with the statewide out-of-hospital DNR protocol and rules adopted by the executive commissioner [board] and any applicable local out-of-hospital DNR protocol. The attending physician or the physician's designee shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designee shall also enter the word "VOID" on each page of the copy of the order in the person's medical record.

SECTION 3.0513. Section 166.094, Health and Safety Code, is amended to read as follows:

Sec. 166.094. LIMITATION ON LIABILITY FOR WITHHOLDING CARDIOPULMONARY RESUSCITATION AND CERTAIN OTHER LIFE-SUSTAINING PROCEDURES. (a) A health care professional or health care facility or entity that in good faith causes cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule [~~the board~~] to be withheld from a person in accordance with this subchapter is not civilly liable for that action.

(b) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule [~~the board~~] from a person in accordance with this subchapter is not civilly liable for that action.

(c) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule [the board] from a person

282-1 in accordance with this subchapter is not criminally liable or
 282-2 guilty of unprofessional conduct as a result of that action.

282-3 (d) A health care professional or health care facility or
 282-4 entity that in good faith causes or participates in withholding
 282-5 cardiopulmonary resuscitation or certain other life-sustaining
 282-6 treatment designated by department rule [~~the board~~] from a person
 282-7 in accordance with this subchapter and rules adopted under this
 282-8 subchapter is not in violation of any other licensing or regulatory
 282-9 laws or rules of this state and is not subject to any disciplinary
 282-10 action or sanction by any licensing or regulatory agency of this
 282-11 state as a result of that action.

282-12 SECTION 3.0514. Section [166.096](#), Health and Safety Code, is
 282-13 amended to read as follows:

282-14 Sec. 166.096. HONORING OUT-OF-HOSPITAL DNR ORDER DOES NOT
 282-15 CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an
 282-16 offense under Section [22.08](#), Penal Code, by withholding
 282-17 cardiopulmonary resuscitation or certain other life-sustaining
 282-18 treatment designated by department rule [~~the board~~] from a person
 282-19 in accordance with this subchapter.

282-20 SECTION 3.0515. Section [166.097\(b\)](#), Health and Safety Code,
 282-21 is amended to read as follows:

282-22 (b) A person is subject to prosecution for criminal homicide
 282-23 under Chapter 19, Penal Code, if the person, with the intent to
 282-24 cause cardiopulmonary resuscitation or certain other
 282-25 life-sustaining treatment designated by department rule [~~the~~
 282-26 ~~board~~] to be withheld from another person contrary to the other
 282-27 person's desires, falsifies or forges an out-of-hospital DNR order
 282-28 or intentionally conceals or withholds personal knowledge of a
 282-29 revocation and thereby directly causes cardiopulmonary
 282-30 resuscitation and certain other life-sustaining treatment
 282-31 designated by department rule [~~the board~~] to be withheld from the
 282-32 other person with the result that the other person's death is
 282-33 hastened.

282-34 SECTION 3.0516. Section [166.098](#), Health and Safety Code, is
 282-35 amended to read as follows:

282-36 Sec. 166.098. PREGNANT PERSONS. A person may not withhold
 282-37 cardiopulmonary resuscitation or certain other life-sustaining
 282-38 treatment designated by department rule [~~the board~~] under this
 282-39 subchapter from a person known by the responding health care
 282-40 professionals to be pregnant.

282-41 SECTION 3.0517. Sections [166.100](#) and [166.101](#), Health and
 282-42 Safety Code, are amended to read as follows:

282-43 Sec. 166.100. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED.
 282-44 This subchapter does not impair or supersede any legal right or
 282-45 responsibility a person may have under a constitution, other
 282-46 statute, regulation, or court decision to effect the withholding of
 282-47 cardiopulmonary resuscitation or certain other life-sustaining
 282-48 treatment designated by department rule [~~the board~~].

282-49 Sec. 166.101. DUTIES OF DEPARTMENT AND EXECUTIVE
 282-50 COMMISSIONER [~~BOARD~~]. (a) The executive commissioner [~~board~~]
 282-51 shall, on the recommendation of the department, adopt all
 282-52 reasonable and necessary rules to carry out the purposes of this
 282-53 subchapter, including rules:

282-54 (1) adopting a statewide out-of-hospital DNR order
 282-55 protocol that sets out standard procedures for the withholding of
 282-56 cardiopulmonary resuscitation and certain other life-sustaining
 282-57 treatment by health care professionals acting in out-of-hospital
 282-58 settings;

282-59 (2) designating life-sustaining treatment that may be
 282-60 included in an out-of-hospital DNR order, including all procedures
 282-61 listed in Sections [166.081\(6\)\(A\)\(i\)](#) through (v); and

282-62 (3) governing recordkeeping in circumstances in which
 282-63 an out-of-hospital DNR order or DNR identification device is
 282-64 encountered by responding health care professionals.

282-65 (b) The rules adopted [~~by the board~~] under Subsection (a)
 282-66 are not effective until approved by the Texas Medical [~~State~~] Board
 282-67 [~~of Medical Examiners~~].

282-68 (c) Local emergency medical services authorities may adopt
 282-69 local out-of-hospital DNR order protocols if the local protocols do

283-1 not conflict with the statewide out-of-hospital DNR order protocol
283-2 adopted by the executive commissioner [board].

283-3 (d) The executive commissioner [board] by rule shall
283-4 specify a distinctive standard design for a necklace and a bracelet
283-5 DNR identification device that signifies, when worn by a person,
283-6 that the possessor has executed or issued a valid out-of-hospital
283-7 DNR order under this subchapter or is a person for whom a valid
283-8 out-of-hospital DNR order has been executed or issued.

283-9 (e) The department shall report to the executive
283-10 commissioner [board] from time to time regarding issues identified
283-11 in emergency medical services responses in which an out-of-hospital
283-12 DNR order or DNR identification device is encountered. The report
283-13 may contain recommendations to the executive commissioner [board]
283-14 for necessary modifications to the form of the standard
283-15 out-of-hospital DNR order or the designated life-sustaining
283-16 procedures listed in the standard out-of-hospital DNR order, the
283-17 statewide out-of-hospital DNR order protocol, or the DNR
283-18 identification devices.

283-19 SECTION 3.0518. Section 171.012(a-1), Health and Safety
283-20 Code, is amended to read as follows:

283-21 (a-1) During a visit made to a facility to fulfill the
283-22 requirements of Subsection (a), the facility and any person at the
283-23 facility may not accept any form of payment, deposit, or exchange or
283-24 make any financial agreement for an abortion or abortion-related
283-25 services other than for payment of a service required by Subsection
283-26 (a). The amount charged for a service required by Subsection (a)
283-27 may not exceed the reimbursement rate established for the service
283-28 by the executive commissioner [Health and Human Services
283-29 Commission] for statewide medical reimbursement programs.

283-30 SECTION 3.0519. Section 171.0124, Health and Safety Code,
283-31 is amended to read as follows:

283-32 Sec. 171.0124. EXCEPTION FOR MEDICAL EMERGENCY. A
283-33 physician may perform an abortion without obtaining informed
283-34 consent under this subchapter in a medical emergency. A physician
283-35 who performs an abortion in a medical emergency shall:

283-36 (1) include in the patient's medical records a
283-37 statement signed by the physician certifying the nature of the
283-38 medical emergency; and

283-39 (2) not later than the 30th day after the date the
283-40 abortion is performed, certify to the department [Department of
283-41 State Health Services] the specific medical condition that
283-42 constituted the emergency.

283-43 SECTION 3.0520. Section 171.014(d), Health and Safety Code,
283-44 is amended to read as follows:

283-45 (d) The department shall annually review the materials to
283-46 determine if changes to the contents of the materials are
283-47 necessary. The executive commissioner [department] shall adopt
283-48 rules necessary for considering and making changes to the
283-49 materials.

283-50 SECTION 3.0521. Section 181.053, Health and Safety Code, is
283-51 amended to read as follows:

283-52 Sec. 181.053. NONPROFIT AGENCIES. The executive
283-53 commissioner [department] shall by rule exempt from this chapter a
283-54 nonprofit agency that pays for health care services or prescription
283-55 drugs for an indigent person only if the agency's primary business
283-56 is not the provision of health care or reimbursement for health care
283-57 services.

283-58 SECTION 3.0522. Section 181.102(c), Health and Safety Code,
283-59 is amended to read as follows:

283-60 (c) For purposes of Subsection (a), the executive
283-61 commissioner, in consultation with the department [Department of
283-62 State Health Services], the Texas Medical Board, and the Texas
283-63 Department of Insurance, by rule may recommend a standard
283-64 electronic format for the release of requested health records. The
283-65 standard electronic format recommended under this section must be
283-66 consistent, if feasible, with federal law regarding the release of
283-67 electronic health records.

283-68 SECTION 3.0523. Section 181.103, Health and Safety Code, is
283-69 amended to read as follows:

284-1 Sec. 181.103. CONSUMER INFORMATION WEBSITE. The attorney
 284-2 general shall maintain an Internet website that provides:

284-3 (1) information concerning a consumer's privacy rights
 284-4 regarding protected health information under federal and state law;
 284-5 (2) a list of the state agencies, including the
 284-6 ~~department [Department of State Health Services]~~, the Texas Medical
 284-7 Board, and the Texas Department of Insurance, that regulate covered
 284-8 entities in this state and the types of entities each agency
 284-9 regulates;

284-10 (3) detailed information regarding each agency's
 284-11 complaint enforcement process; and

284-12 (4) contact information, including the address of the
 284-13 agency's Internet website, for each agency listed under Subdivision
 284-14 (2) for reporting a violation of this chapter.

284-15 SECTION 3.0524. Section 182.053(b), Health and Safety Code,
 284-16 is amended to read as follows:

284-17 (b) The governor shall also appoint at least two ex officio,
 284-18 nonvoting members representing the ~~department~~ [Department of State
 284-19 Health Services].

284-20 SECTION 3.0525. Section 182.103(b), Health and Safety Code,
 284-21 is amended to read as follows:

284-22 (b) The corporation shall comply with all state and federal
 284-23 laws and rules relating to the transmission of health information,
 284-24 including Chapter 181, and rules adopted under that chapter, and
 284-25 the Health Insurance Portability and Accountability Act of 1996
 284-26 (Pub. L. No. 104-191) and rules adopted under that Act.

284-27 SECTION 3.0526. Section 182.108(b), Health and Safety Code,
 284-28 is amended to read as follows:

284-29 (b) The commission shall review and the executive
 284-30 commissioner by rule shall adopt acceptable standards submitted for
 284-31 ratification under Subsection (a).

284-32 SECTION 3.0527. Section 191.001, Health and Safety Code, is
 284-33 amended to read as follows:

284-34 Sec. 191.001. DEFINITIONS. In this title:

284-35 (1) ~~"Board"~~ means the ~~Texas Board of Health~~.
 284-36 [2] "Department" means the ~~Texas~~ Department of
 284-37 State Health Services.

284-38 (2) "Executive commissioner" means the executive
 284-39 commissioner of the Health and Human Services Commission.

284-40 (3) "Vital statistics unit" means the vital statistics
 284-41 unit established in the Department of State Health Services.

284-42 SECTION 3.0528. Subchapter A, Chapter 191, Health and
 284-43 Safety Code, is amended by adding Section 191.0011 to read as
 284-44 follows:

284-45 Sec. 191.0011. REFERENCE IN OTHER LAW. A reference in other
 284-46 law to the bureau of vital statistics of the department or of the
 284-47 former Texas Department of Health means the vital statistics unit
 284-48 established in the department.

284-49 SECTION 3.0529. Section 191.002(b), Health and Safety Code,
 284-50 is amended to read as follows:

284-51 (b) The department shall:

284-52 (1) establish a ~~bureau of~~ vital statistics unit in
 284-53 the department with suitable offices that are properly equipped for
 284-54 the preservation of its official records;

284-55 (2) establish a statewide system of vital statistics;

284-56 (3) provide instructions and prescribe forms for
 284-57 collecting, recording, transcribing, compiling, and preserving
 284-58 vital statistics;

284-59 (4) require the enforcement of this title and rules
 284-60 adopted under this title;

284-61 (5) prepare, print, and supply to local registrars
 284-62 forms for registering, recording, and preserving returns or
 284-63 otherwise carrying out the purposes of this title; and

284-64 (6) propose legislation necessary for the purposes of
 284-65 this title.

284-66 SECTION 3.0530. Section 191.003, Health and Safety Code, is
 284-67 amended to read as follows:

284-68 Sec. 191.003. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
 284-69 AND DEPARTMENT [BOARD]. (a) The executive commissioner [board]

285-1 shall~~+~~

285-2 [41] adopt necessary rules for collecting,
 285-3 recording, transcribing, compiling, and preserving vital
 285-4 statistics.

285-5 (a-1) The department shall:

285-6 (1) [7-2] supervise the [bureau of] vital
 285-7 statistics unit; and
 285-8 (2) [43] appoint the director of the [bureau of]
 285-9 vital statistics unit.

285-10 (b) In an emergency, the executive commissioner [board] may
 285-11 suspend any part of this title that hinders the uniform and
 285-12 efficient registration of vital events and may substitute emergency
 285-13 rules designed to expedite that registration under disaster
 285-14 conditions.

285-15 SECTION 3.0531. Section 191.004(a), Health and Safety Code,
 285-16 is amended to read as follows:

285-17 (a) The director of the [bureau of] vital statistics unit is
 285-18 the state registrar of vital statistics. The director must be a
 285-19 competent vital statistician.

285-20 SECTION 3.0532. Sections 191.0045(a), (b), (c), (d), (e),
 285-21 and (g), Health and Safety Code, are amended to read as follows:

285-22 (a) The department [bureau of vital statistics] may collect
 285-23 [charge] fees for providing services to the public and performing
 285-24 other activities in connection with maintenance of the vital
 285-25 statistics system, including:

285-26 (1) performing searches of birth, death, fetal death,
 285-27 marriage, divorce, annulment, and other records;

285-28 (2) preparing and issuing copies and certified copies
 285-29 of birth, death, fetal death, marriage, divorce, annulment, and
 285-30 other records; and

285-31 (3) filing a record, amendment, or affidavit under
 285-32 this title.

285-33 (b) The executive commissioner [board] by rule may
 285-34 prescribe a schedule of fees for vital statistics services. The
 285-35 aggregate of the amounts of the fees may not exceed the cost of
 285-36 administering the vital statistics system.

285-37 (c) The department [bureau of vital statistics] shall
 285-38 refund to an applicant any fee received for services that the
 285-39 department [bureau] cannot perform. If the money has been
 285-40 deposited to the credit of the vital statistics account in the
 285-41 general revenue fund, the comptroller shall issue a warrant against
 285-42 the fund for refund of the payment on presentation of a claim signed
 285-43 by the state registrar.

285-44 (d) A local registrar or county clerk who issues a certified
 285-45 copy of a birth or death certificate shall collect [charge] the same
 285-46 fees as collected [charged] by the department [bureau of vital
 285-47 statistics], including the additional fee required under
 285-48 Subsection (e), except as provided by Subsections (g) and (h).

285-49 (e) In addition to fees charged [collected] by the
 285-50 department [bureau of vital statistics] under Subsection (b), the
 285-51 department [bureau] shall collect an additional \$2 fee for each of
 285-52 the following:

285-53 (1) issuing a certified copy of a certificate of
 285-54 birth;

285-55 (2) issuing a wallet-sized certification of birth; and

285-56 (3) conducting a search for a certificate of birth.

285-57 (g) A local registrar or county clerk that on March 31,
 285-58 1995, was collecting [charging] a fee for the issuance of a
 285-59 certified copy of a birth certificate that exceeded the fee
 285-60 collected [charged] by the department [bureau of vital statistics]
 285-61 for the same type of certificate may continue to do so but shall not
 285-62 raise this fee until the fee collected [charged] by the department
 285-63 [bureau] exceeds the fee collected [charged] by the local registrar
 285-64 or county clerk. A local registrar or county clerk to which this
 285-65 subsection applies shall collect [charge] the additional fee as
 285-66 required under Subsection (e).

285-67 SECTION 3.0533. Section 191.0047, Health and Safety Code,
 285-68 is amended to read as follows:

285-69 Sec. 191.0047. BIRTH INFORMATION FOR DEPARTMENT OF FAMILY

286-1 AND PROTECTIVE SERVICES. (a) The department [~~Department of State~~
286-2 ~~Health Services~~] shall implement an efficient and effective method
286-3 to verify birth information or provide a certified copy of a birth
286-4 record necessary to provide services for the benefit of a minor
286-5 being served by the Department of Family and Protective Services.

286-6 (b) The department [~~Department of State Health Services~~]
286-7 shall enter into a memorandum of understanding with the Department
286-8 of Family and Protective Services to implement this section.
286-9 Subject to Subsection (c), the terms of the memorandum of
286-10 understanding must include methods for reimbursing the department
286-11 [~~Department of State Health Services~~] in an amount that is not more
286-12 than the actual costs the department incurs in verifying the birth
286-13 information or providing the birth record to the Department of
286-14 Family and Protective Services.

286-15 (c) The department [~~Department of State Health Services~~]
286-16 may not collect a fee or other amount for verification of birth
286-17 information or provision of a certified copy of the birth record
286-18 under Subsection (a) for a child in the managing conservatorship of
286-19 the Department of Family and Protective Services if parental rights
286-20 to the child have been terminated and the child is eligible for
286-21 adoption.

286-22 SECTION 3.0534. Section 191.0048(b), Health and Safety
286-23 Code, is amended to read as follows:

286-24 (b) On each paper or electronic application form for a copy
286-25 or certified copy of a birth, marriage, or divorce record, the
286-26 department [~~bureau of vital statistics~~] shall include a printed box
286-27 for the applicant to check indicating that the applicant wishes to
286-28 make a voluntary contribution of \$5 to promote healthy early
286-29 childhood by supporting the Texas Home Visiting Program
286-30 administered by the Office of Early Childhood Coordination of the
286-31 Health and Human Services Commission.

286-32 SECTION 3.0535. Section 191.005, Health and Safety Code, is
286-33 amended to read as follows:

286-34 Sec. 191.005. VITAL STATISTICS ACCOUNT [~~FUND~~]. (a) The
286-35 vital statistics account [~~fund~~] is an account in the general
286-36 revenue fund in the state treasury.

286-37 (b) The legislature shall make appropriations to the
286-38 department from the vital statistics account [~~fund~~] to be used to
286-39 defray expenses incurred in the administration and enforcement of
286-40 the system of vital statistics.

286-41 (c) All fees collected by the department under this chapter
286-42 [~~bureau of vital statistics~~] shall be deposited to the credit of the
286-43 vital statistics account [~~fund~~].

286-44 SECTION 3.0536. Section 191.021(b), Health and Safety Code,
286-45 is amended to read as follows:

286-46 (b) To facilitate registration, the department [~~board~~] may
286-47 combine or divide registration districts.

286-48 SECTION 3.0537. Section 191.022(d), Health and Safety Code,
286-49 is amended to read as follows:

286-50 (d) The local registrar shall sign each report made to the
286-51 department [~~bureau of vital statistics~~].

286-52 SECTION 3.0538. Section 191.025(c), Health and Safety Code,
286-53 is amended to read as follows:

286-54 (c) A local registrar shall supply forms of certificates to
286-55 persons who need them. The executive commissioner [~~board~~] shall
286-56 establish and promulgate rules for strict accountability of birth
286-57 certificates to prevent birth certificate fraud.

286-58 SECTION 3.0539. Sections 191.026(c) and (e), Health and
286-59 Safety Code, are amended to read as follows:

286-60 (c) The local registrar shall copy in the record book
286-61 required under Section 191.025 each certificate that the local
286-62 registrar registers, unless the local registrar keeps duplicates
286-63 under Subsection (d) or makes photographic duplications as
286-64 authorized by Chapter [~~181 or~~] 201, Local Government Code, or the
286-65 provisions of Chapter 204, Local Government Code, derived from
286-66 former Chapter 181, Local Government Code. Except as provided by
286-67 Subsection (e), the copies shall be permanently preserved in the
286-68 local registrar's office as the local record, in the manner
286-69 directed by the state registrar.

(e) The local registrar may, after the first anniversary of the date of registration of a birth, death, or fetal death, destroy the permanent record of the birth, death, or fetal death maintained by the local registrar if:

(1) the local registrar has access to electronic records of births, deaths, and fetal deaths maintained by the [bureau of] vital statistics unit; and

(2) before destroying the records, the local registrar certifies to the state registrar that each record maintained by the local office that is to be destroyed has been verified against the records contained in the unit's [bureau's] database and that each record is included in the database or otherwise accounted for.

SECTION 3.0540. Section 191.032(b), Health and Safety Code, is amended to read as follows:

(b) The executive commissioner [board] shall adopt rules necessary to implement this section.

SECTION 3.0541. Section 191.033(a), Health and Safety Code, is amended to read as follows:

(a) The state registrar may attach to the original record an addendum that sets out any information received by the state registrar that may contradict the information in a birth, death, or fetal death record required to be maintained in the [bureau of] vital statistics unit.

SECTION 3.0542. Section 191.051(a), Health and Safety Code, is amended to read as follows:

(a) Subject to department [board] rules controlling the accessibility of vital records, the state registrar shall supply to a properly qualified applicant, on request, a certified copy of a record, or part of a record, of a birth, death, or fetal death registered under this title.

SECTION 3.0543. Section 191.056(b), Health and Safety Code, is amended to read as follows:

(b) The department [~~bureau of vital statistics~~] may contract with the national agency to have copies of vital records that are filed with the vital statistics unit [~~bureau~~] transcribed for that agency.

SECTION 3.0544. Section 191.057(b), Health and Safety Code, is amended to read as follows:

(b) If the [bureau of] vital statistics unit or any local registration official receives an application for a certified copy of a birth, death, or fetal death record to which an addendum has been attached under Section 191.033, the application shall be sent immediately to the state registrar. After examining the application, the original record, and the addendum, the state registrar may refuse to issue a certified copy of the record or part of the record to the applicant.

SECTION 3.0545. Sections 192.002(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The section of the birth certificate entitled "For Medical and Health Use Only" is not part of the legal birth certificate. Information held by the department under that section of the certificate is confidential. That information may not be released or made public on subpoena or otherwise, except that release may be made for statistical purposes only so that no person, patient, or facility is identified, or to medical personnel of a health care entity, as that term is defined in Subtitle B, Title 3, Occupations Code, or to a faculty member at a medical school, as that term is defined in Section [61.501](#), Education Code, for statistical or medical research, or to appropriate state or federal agencies for statistical research. The executive commissioner [board] may adopt rules to implement this subsection.

(d) The social security numbers of the mother and father recorded on the form shall be made available to the United States [federal] Social Security Administration.

SECTION 3.0546. Sections 192.0021(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The department shall promote and sell copies of an heirloom birth certificate. The department shall solicit donated designs for the certificate from Texas artists and select the best

288-1 donated designs for the form of the certificate. An heirloom birth
 288-2 certificate must contain the same information as, and have the same
 288-3 effect of, a certified copy of another birth record. The executive
 288-4 commissioner by rule [department] shall prescribe a fee for the
 288-5 issuance of an heirloom birth certificate in an amount that does not
 288-6 exceed \$50. The heirloom birth certificate must be printed on
 288-7 high-quality paper with the appearance of parchment not smaller
 288-8 than 11 inches by 14 inches.

288-9 (b) The department shall deposit 50 percent of the proceeds
 288-10 from the sale of heirloom birth certificates to the credit of the
 288-11 childhood immunization account and the other 50 percent to the
 288-12 credit of the undedicated portion of the general revenue fund. The
 288-13 childhood immunization account is an account in the general revenue
 288-14 fund. Money in the account may be used only by the department
 288-15 [~~Department of State Health Services~~] for:

288-16 (1) making grants to fund childhood immunizations and
 288-17 related education programs; and
 288-18 (2) administering this section.

288-19 SECTION 3.0547. Sections 192.0022(b), (c), (f), (g), (h),
 288-20 and (i), Health and Safety Code, are amended to read as follows:

288-21 (b) The person who is required to file a fetal death
 288-22 certificate under Section 193.002 shall advise the parent or
 288-23 parents of a stillborn child:

288-24 (1) that a parent may, but is not required to, request
 288-25 the preparation of a certificate of birth resulting in stillbirth;

288-26 (2) that a parent may obtain a certificate of birth
 288-27 resulting in stillbirth by contacting the [~~bureau of~~] vital
 288-28 statistics unit to request the certificate and paying the required
 288-29 fee; and

288-30 (3) regarding the way or ways in which a parent may
 288-31 contact the [~~bureau of~~] vital statistics unit to request the
 288-32 certificate.

288-33 (c) A parent may provide a name for a stillborn child on the
 288-34 request for a certificate of birth resulting in stillbirth. If the
 288-35 requesting parent does not wish to provide a name, the [~~bureau of~~]
 288-36 vital statistics unit shall fill in the certificate with the name
 288-37 "baby boy" or "baby girl" and the last name of the parent. The name
 288-38 of the stillborn child provided on or later added by amendment to
 288-39 the certificate of birth resulting in stillbirth shall be the same
 288-40 name as placed on the original or amended fetal death certificate.

288-41 (f) The department [~~bureau of vital statistics~~] may not use
 288-42 a certificate of birth resulting in stillbirth to calculate live
 288-43 birth statistics.

288-44 (g) On issuance of a certificate of birth resulting in
 288-45 stillbirth to a parent who has requested the certificate as
 288-46 provided by this section, the [~~bureau of~~] vital statistics unit
 288-47 shall file an exact copy of the certificate with the local registrar
 288-48 of the registration district in which the stillbirth occurred. The
 288-49 local registrar shall file the certificate of birth resulting in
 288-50 stillbirth with the fetal death certificate.

288-51 (h) A parent may request the [~~bureau of~~] vital statistics
 288-52 unit to issue a certificate of birth resulting in stillbirth
 288-53 without regard to the date on which the fetal death certificate was
 288-54 issued.

288-55 (i) The executive commissioner [~~of the Health and Human~~
 288-56 ~~Services Commission~~] may adopt rules necessary to administer this
 288-57 section.

288-58 SECTION 3.0548. Section 192.005(a), Health and Safety Code,
 288-59 is amended to read as follows:

288-60 (a) The items on a birth certificate relating to the child's
 288-61 father shall be completed only if:

288-62 (1) the child's mother was married to the father:

288-63 (A) at the time of the child's conception;
 288-64 (B) at the time of the child's birth; or
 288-65 (C) after the child's birth;

288-66 (2) paternity is established by order of a court of
 288-67 competent jurisdiction; or

288-68 (3) a valid acknowledgment of paternity executed by
 288-69 the father has been filed with the [~~bureau of~~] vital statistics unit

289-1 as provided by Subchapter D, Chapter 160, Family Code.

289-2 SECTION 3.0549. Sections 192.006(c), (d), and (e), Health
289-3 and Safety Code, are amended to read as follows:

289-4 (c) The state registrar shall require proof of the change in
289-5 status that the executive commissioner [board] by rule may
289-6 prescribe.

289-7 (d) Supplementary birth certificates and applications for
289-8 supplementary birth certificates shall be prepared and filed in
289-9 accordance with department [board] rules.

289-10 (e) In accordance with department [board] rules, a
289-11 supplementary birth certificate may be filed for a person whose
289-12 parentage has been determined by an acknowledgment of paternity.

289-13 SECTION 3.0550. Section 192.008(c), Health and Safety Code,
289-14 is amended to read as follows:

289-15 (c) The executive commissioner [board] shall adopt rules
289-16 and procedures to ensure that birth records and indexes under the
289-17 control of the department or local registrars and accessible to the
289-18 public do not contain information or cross-references through which
289-19 the confidentiality of adoption placements may be directly or
289-20 indirectly violated. The rules and procedures may not interfere
289-21 with the registries established under Subchapter E, Chapter 162,
289-22 Family Code, or with a court order under this section.

289-23 SECTION 3.0551. Section 192.009(d), Health and Safety Code,
289-24 is amended to read as follows:

289-25 (d) If the department [bureau of vital statistics] determines that a certificate filed with the state registrar under
289-26 this section requires correction, the department [bureau] shall
289-27 mail the certificate directly to an attorney of record with respect
289-28 to the petition of adoption, annulment of adoption, or revocation
289-29 of adoption. The attorney shall return the corrected certificate to
289-30 the department [bureau]. If there is no attorney of record, the
289-31 department [bureau] shall mail the certificate to the clerk of the
289-32 court for correction.

289-33 SECTION 3.0552. Section 192.010, Health and Safety Code, is
289-34 amended to read as follows:

289-35 Sec. 192.010. CHANGE OF NAME. (a) Subject to department
289-36 [board] rules, an adult whose name is changed by court order, or the
289-37 legal representative of any person whose name is changed by court
289-38 order, may request that the state registrar attach an amendment
289-39 showing the change to the person's original birth record.

289-40 (b) The state registrar shall require proof of the change of
289-41 name that the executive commissioner [board] by rule may prescribe.

289-42 SECTION 3.0553. Section 192.012(a), Health and Safety Code,
289-43 is amended to read as follows:

289-44 (a) If the mother of a child is not married to the father of
289-45 the child, a person listed in Section 192.003 who is responsible for
289-46 filing the birth certificate shall:

289-47 (1) provide an opportunity for the child's mother and
289-48 putative father to sign an acknowledgment of paternity as provided
289-49 by Subchapter D [E], Chapter 160, Family Code; and

289-50 (2) provide oral and written information to the
289-51 child's mother and putative father about:

289-52 (A) establishing paternity, including an
289-53 explanation of the rights and responsibilities that result from
289-54 acknowledging paternity; and

289-55 (B) the availability of child support services.

289-56 SECTION 3.0554. Section 192.021(c), Health and Safety Code,
289-57 is amended to read as follows:

289-58 (c) Registration under this section is subject to
289-59 department [board] rules.

289-60 SECTION 3.0555. Section 192.022, Health and Safety Code, is
289-61 amended to read as follows:

289-62 Sec. 192.022. DELAY OF ONE YEAR OR MORE: APPLICATION FILED
289-63 WITH STATE REGISTRAR. Subject to department [board] rules, an
289-64 application to file a delayed birth certificate for a birth in this
289-65 state not registered before the one-year anniversary of the date of
289-66 birth shall be made to the state registrar.

289-67 SECTION 3.0556. Section 193.001(d), Health and Safety Code,
289-68 is amended to read as follows:

290-1 (d) The department [~~bureau of vital statistics~~] and each
 290-2 local registrar shall make the information provided under
 290-3 Subsection (c) available to the public and may collect [~~charge~~] a
 290-4 fee in an amount prescribed under Section **191.0045** for providing
 290-5 that service.

290-6 SECTION 3.0557. Section **193.003**(b), Health and Safety Code,
 290-7 is amended to read as follows:

290-8 (b) Subject to department [~~board~~] rules, a certificate of a
 290-9 fetal death that occurs in this state shall be filed with the local
 290-10 registrar of the registration district in which:

290-11 (1) the fetal death occurs; or
 290-12 (2) the body is found, if the place of fetal death is
 290-13 not known.

290-14 SECTION 3.0558. Section **193.006**(d), Health and Safety Code,
 290-15 is amended to read as follows:

290-16 (d) When the death certificate is filed with the [~~bureau of~~]
 290-17 vital statistics unit, the state registrar shall notify the Texas
 290-18 Veterans Commission.

290-19 SECTION 3.0559. Sections **193.007**(c) and (f), Health and
 290-20 Safety Code, are amended to read as follows:

290-21 (c) The department [~~bureau of vital statistics~~] shall
 290-22 furnish a form for filing records under this section. Records
 290-23 submitted under this section must be on the form furnished by the
 290-24 department [~~bureau~~]. The state registrar may accept a certificate
 290-25 that is verified as provided by this section.

290-26 (f) Not later than the seventh day after the date on which a
 290-27 certificate is accepted and ordered filed by a court under this
 290-28 section, the clerk of the court shall forward to the [~~bureau of~~]
 290-29 vital statistics unit:

290-30 (1) the certificate; and
 290-31 (2) an order from the court that the state registrar
 290-32 accept the certificate.

290-33 SECTION 3.0560. Section **194.001**, Health and Safety Code, is
 290-34 amended to read as follows:

290-35 Sec. 194.001. REPORT OF MARRIAGE. (a) The county clerk
 290-36 shall file with the [~~bureau of~~] vital statistics unit a copy of each
 290-37 completed marriage license application and a copy of any affidavit
 290-38 of an absent applicant submitted with an application. The clerk
 290-39 shall file the copies not later than the 90th day after the date of
 290-40 the application. The clerk may not collect a fee for filing the
 290-41 copies.

290-42 (b) The county clerk shall file with the [~~bureau of~~] vital
 290-43 statistics unit a copy of each declaration of informal marriage
 290-44 executed under Section **2.402** [~~1.92~~], Family Code. The clerk shall
 290-45 file the copy not later than the 90th day after the date on which the
 290-46 declaration is executed.

290-47 SECTION 3.0561. Section **194.0011**, Health and Safety Code,
 290-48 is amended to read as follows:

290-49 Sec. 194.0011. MARRIAGE LICENSE APPLICATIONS. (a) The
 290-50 executive commissioner [~~board~~] by rule shall prescribe the format
 290-51 and content of the department form used for the marriage license
 290-52 application.

290-53 (b) The [~~bureau of~~] vital statistics unit shall print and
 290-54 distribute the department forms to each county clerk throughout the
 290-55 state.

290-56 (c) The department form [~~adopted by the board~~] shall replace
 290-57 locally adopted forms.

290-58 (d) A county clerk may reproduce the department [~~board's~~]
 290-59 form locally.

290-60 SECTION 3.0562. Sections **194.002**(a), (b), (d), (e), and
 290-61 (f), Health and Safety Code, are amended to read as follows:

290-62 (a) The department [~~bureau of vital statistics~~] shall
 290-63 prescribe a form for reporting divorces and annulments of marriage.
 290-64 The form must require the following information:

290-65 (1) each party's:
 290-66 (A) full name;
 290-67 (B) usual residence;
 290-68 (C) age;
 290-69 (D) place of birth;

(E) color or race; and
(F) number of children;
(2) the date and place of the parties' marriage;
(3) the date the divorce or annulment of marriage was granted; and

(4) the court and the style and docket number of the case in which the divorce or annulment of marriage was granted.

(b) The [bureau of] vital statistics unit shall furnish sufficient copies of the form to each district clerk.

(d) Not later than the ninth day of each month, each district clerk shall file with the [bureau of] vital statistics unit a completed report for each divorce or annulment of marriage granted in the district court during the preceding calendar month. If a report does not include the information required by Subsection (a)(3) or (4), the clerk must complete that information on the report before the clerk files the report with the unit [bureau].

(e) For each report that a district clerk files with the [bureau of] vital statistics unit under this section, the clerk may collect a \$1 fee as costs in the case in which the divorce or annulment of marriage is granted.

(f) If the department [bureau of vital statistics] determines that a report filed with the department [bureau] under this section requires correction, the department [bureau] shall mail the report form directly to an attorney of record with respect to the divorce or annulment of marriage. The attorney shall return the corrected report form to the department [bureau]. If there is no attorney of record, the department [bureau] shall mail the report form to the district clerk for correction.

SECTION 3.0563. Section 194.003, Health and Safety Code, is amended to read as follows:

Sec. 194.003. STATE INDEX. (a) The [bureau of] vital statistics unit shall maintain a statewide alphabetical index, under the names of both parties, of each marriage license application or declaration of informal marriage. The statewide index does not replace the indexes required in each county.

(b) The [bureau of] vital statistics unit shall maintain a statewide alphabetical index, under the names of both parties, of each report of divorce or annulment of marriage.

SECTION 3.0564. Section 194.004, Health and Safety Code, is amended to read as follows:

Sec. 194.004. RELEASE OF INFORMATION. (a) The [bureau of] vital statistics unit shall furnish on request any information it has on record relating to any marriage, divorce, or annulment of marriage.

(b) The [bureau of] vital statistics unit may not issue:

(1) a certificate or a certified copy of information relating to a marriage; or

(2) a certified copy of a report of divorce or annulment of marriage.

SECTION 3.0565. Sections 194.005(b) and (c), Health and Safety Code, are amended to read as follows:

(c) The executive commissioner [of the Health and Human

(c) The executive commissioner [or the Health and Human Services Commission] shall adopt rules designating certain milestone wedding anniversary dates and shall design and promote heirloom wedding anniversary certificates celebrating those anniversary dates.

SECTION 3.0566. Chapter 222, Health and Safety Code, is amended to read as follows:

**CHAPTER 222. HEALTH CARE FACILITY SURVEY, CONSTRUCTION,
INSPECTION, AND REGULATION**
SUBCHAPTER A SURVEY AND CONSTRUCTION OF HOSPITALS

Sec. 222-001 SHORT TITLE This subchapter may be

sec. 222.001. SHORT TITLE. This subchapter may be known as Hospital Survey and Construction Act.

the Texas Hospital Survey and Construction Act.

Sec. 222.002. DEFINITIONS. In this subchapter:

[(1) "Board" means the Texas Board of Health.]

(2) "Commissioner" means the commission

(2) Commissioner means the commissioner of state health services.

(3) "Department" means the [Texas] Department of State Health Services.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Hospital" includes a public health center, a general hospital, or a tuberculosis, mental, chronic disease, or other type of hospital, and related facilities such as a laboratory, outpatient department, nurses' home and training facility, or central service facility operated in connection with a hospital.

(5) "Public health center" means a publicly owned facility for providing public health services and includes related facilities such as a laboratory, clinic, or administrative office operated in connection with a facility for providing public health services.

Sec. 222.003. EXCEPTION. This subchapter does not apply to a hospital furnishing primarily domiciliary care.

[Sec. 222.004. DIVISION OF HOSPITAL SURVEY AND CONSTRUCTION. (a) The division of hospital survey and construction is a division of the department.

[(b) The division is administered by a full-time salaried director appointed by the commissioner and under the supervision and direction of the board.]

[(c) The commissioner shall appoint other personnel of the division.]

Sec. 222.005. SURVEY, PLANNING, AND CONSTRUCTION OF HOSPITALS. (a) The department[~~, through the division of hospital survey and construction,~~] is the only agency of the state authorized to make an inventory of existing hospitals, survey the need for construction of hospitals, and develop a program of hospital construction as provided by the federal Hospital Survey and Construction Act (42 U.S.C. Section 291 et seq.).

(b) The executive commissioner [board] may [establish methods of administration and] adopt rules to meet the requirements of the federal Hospital Survey and Construction Act relating to survey, planning, and construction of hospitals and public health centers. The executive commissioner shall adopt other rules the executive commissioner considers necessary.

(c) The commissioner may establish methods of administration and shall:

(1) require reports and [] make inspections and investigations [] and prescribe rules] as the commissioner considers necessary; and

(2) take other action that the commissioner considers necessary to carry out the federal Hospital Survey and Construction Act and the regulations adopted under that Act.

Sec. 222.06. FUNDING. (a) The department [COMMISSIONER] shall accept, on behalf of the state, a payment of federal funds or a gift or grant made to assist in meeting the cost of carrying out the purpose of this subchapter, and may spend the payment, gift, or grant for that purpose.

(b) The department [~~commissioner~~] shall deposit the payment, gift, or grant in the state treasury to the credit of the hospital construction fund.

(c) The department [~~commissioner~~] shall deposit to the credit of the hospital construction fund money received from the federal government for a construction project approved by the surgeon general of the United States Public Health Service. The department [~~commissioner~~] shall use the money only for payments to applicants for work performed and purchases made in carrying out approved projects.

Sec. 222.007. AGREEMENTS FOR USE OF FACILITIES AND SERVICES OF OTHER ENTITIES. To the extent the department [~~commissioner~~] considers desirable to carry out the purposes of this subchapter, the department [~~commissioner~~] may enter into an agreement for the use of a facility or service of another public or private department, agency, or institution.

Sec. 222.008. EXPERTS AND CONSULTANTS. The department [commissioner] may contract for services of experts or consultants,

293-1 or organizations of experts or consultants, on a part-time or
 293-2 fee-for-service basis. The contracts may not involve the
 293-3 performance of administrative duties.

293-4 Sec. 222.009. [COMMISSIONER'S] REPORT. (a) The department
 293-5 [commissioner] annually shall report to the executive commissioner
 293-6 [board] on activities and expenditures under this subchapter.

293-7 (b) The department [commissioner] shall include in the
 293-8 report recommendations for additional legislation that the
 293-9 department [commissioner] considers appropriate to furnish
 293-10 adequate hospital, clinic, and similar facilities to the public.

293-11 SUBCHAPTER B. LIMITATION ON INSPECTION AND OTHER REGULATION OF
 293-12 HEALTH CARE FACILITIES

293-13 [Sec. 222.021. PURPOSE. The purpose of this subchapter is
 293-14 to require that state agencies that perform inspections of health
 293-15 care facilities, including the Texas Department of Health, the
 293-16 Texas Department of Human Services, the Texas Department of Mental
 293-17 Health and Mental Retardation, and other agencies with which each
 293-18 of those agencies contracts, do not duplicate their procedures or
 293-19 subject health care facilities to duplicative rules.]

293-20 Sec. 222.022. DEFINITIONS. In this subchapter:

293-21 (1) "Executive commissioner" means the executive
 293-22 commissioner of the Health and Human Services Commission.

293-23 (2) "Health care facility" has the meaning assigned by
 293-24 Section 104.002, except that the term does not include a chemical
 293-25 dependency treatment facility licensed by the Department of State
 293-26 Health Services under Chapter 464 [Texas Commission on Alcohol and
 293-27 Drug Abuse].

293-28 (3) [(+) "Inspection" includes a survey, inspection,
 293-29 investigation, or other procedure necessary for a state agency to
 293-30 carry out an obligation imposed by federal and state laws, rules,
 293-31 and regulations.

293-32 Sec. 222.023. LIMITATION ON INSPECTIONS. (a) A state
 293-33 agency may make or require only those inspections necessary to
 293-34 carry out obligations imposed on the agency by federal and state
 293-35 laws, rules, and regulations.

293-36 (b) Instead of making an on-site inspection, a state agency
 293-37 shall accept an on-site inspection by another state agency charged
 293-38 with making an inspection if the inspection substantially complies
 293-39 with the accepting agency's inspection requirements.

293-40 (c) A state agency shall coordinate its inspections within
 293-41 the agency and with inspections required of other agencies to
 293-42 ensure compliance with this section.

293-43 Sec. 222.024. CERTIFICATION OR ACCREDITATION INSTEAD OF
 293-44 INSPECTION. (a) Except as provided by Subsection (c), a hospital
 293-45 licensed by the [Texas] Department of State Health Services is not
 293-46 subject to additional annual licensing inspections before the
 293-47 department issues the hospital a license while the hospital
 293-48 maintains:

293-49 (1) certification under Title XVIII of the Social
 293-50 Security Act (42 U.S.C. Section 1395 et seq.); or
 293-51 (2) accreditation from The [the] Joint Commission [~~on~~
 293-52 Accreditation of Healthcare Organizations], the American
 293-53 Osteopathic Association, or other national accreditation
 293-54 organization for the offered services.

293-55 (b) If the Department of State Health Services [department]
 293-56 licenses a hospital exempt from an annual licensing inspection
 293-57 under Subsection (a), the department shall issue a renewal license
 293-58 to the hospital if the hospital annually:

293-59 (1) submits a complete application required by the
 293-60 department;

293-61 (2) remits any applicable fees;

293-62 (3) submits a copy of documentation from the
 293-63 certification or accreditation body showing that the hospital is
 293-64 certified or accredited; and

293-65 (4) submits a copy of the most recent fire safety
 293-66 inspection report from the fire marshal in whose jurisdiction the
 293-67 hospital is located.

293-68 (c) The Department of State Health Services [department]
 293-69 may conduct an inspection of a hospital exempt from an annual

294-1 licensing inspection under Subsection (a) before issuing a renewal
 294-2 license to the hospital if the certification or accreditation body
 294-3 has not conducted an on-site inspection of the hospital in the
 294-4 preceding three years and the department determines that an
 294-5 inspection of the hospital by the certification or accreditation
 294-6 body is not scheduled within 60 days.

294-7 [Sec. 222.025. ~~LIMITATION OF OTHER REGULATION.~~ (a) The
 294-8 ~~Texas Department of Human Services, the Texas Department of Health,~~
 294-9 ~~and the Texas Department of Mental Health and Mental Retardation~~
 294-10 ~~each by rule shall execute a memorandum of understanding that~~
 294-11 ~~establishes procedures to eliminate or reduce duplication of~~
 294-12 ~~functions in certifying or licensing hospitals, nursing homes, or~~
 294-13 ~~other facilities under their jurisdiction for payments under the~~
 294-14 ~~requirements of Chapter 32, Human Resources Code, and federal law~~
 294-15 ~~and regulations relating to Titles XVIII and XIX of the Social~~
 294-16 ~~Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.).~~
 294-17 ~~The procedures must provide for use by each agency of information~~
 294-18 ~~collected by the agencies in making inspections for certification~~
 294-19 ~~purposes and in investigating complaints regarding matters that~~
 294-20 ~~would affect the certification of a nursing home or other facility~~
 294-21 ~~under their jurisdiction.~~

294-22 [(b) The Texas Department of Health shall coordinate all
 294-23 licensing or certification procedures conducted by the state
 294-24 agencies covered by this section.

294-25 [Sec. 222.0255. ~~NURSING HOMES.~~ (a) The Texas Department of
 294-26 ~~Human Services shall develop one set of standards for nursing homes~~
 294-27 ~~that apply to licensing and to certification for participation in~~
 294-28 ~~the medical assistance program under Chapter 32, Human Resources~~
 294-29 ~~Code.~~

294-30 [(b) The standards must comply with federal regulations. If
 294-31 the federal regulations at the time of adoption are less stringent
 294-32 than the state standards, the department shall keep and comply with
 294-33 the state standards.

294-34 [(c) The department by rule shall adopt the standards and
 294-35 any amendments to the standards.

294-36 [(d) The department shall maintain a set of standards for
 294-37 nursing homes that are licensed only.

294-38 [(e) Chapter 242 establishes the minimum licensing
 294-39 standards for an institution. The licensing standards adopted by
 294-40 the department under this chapter shall be adopted subject to
 294-41 Section 242.037(b) and must comply with Section 242.037(c) and the
 294-42 other provisions of Chapter 242.]

294-43 Sec. 222.026. COMPLAINT INVESTIGATIONS AND ENFORCEMENT
 294-44 AUTHORITY. (a) ~~Section [Sections] 222.024 does~~[, 222.025, and
 294-45 222.025 do] not affect the authority of the ~~Texas~~ Department of
 294-46 State Health Services to implement and enforce the provisions of
 294-47 Chapter 241 (Texas Hospital Licensing Law) to:

294-48 (1) reinspect a hospital if a hospital applies for the
 294-49 reissuance of its license after a final ruling upholding the
 294-50 suspension or revocation of a hospital's license, the assessment of
 294-51 administrative or civil penalties, or the issuance of an injunction
 294-52 against the hospital for violations of provisions of the licensing
 294-53 law, rules adopted under the licensing law, special license
 294-54 conditions, or orders of the commissioner of ~~state~~ health services;
 294-55 or

294-56 (2) investigate a complaint against a hospital and, if
 294-57 appropriate, enforce the provisions of the licensing law on a
 294-58 finding by the ~~Department of State Health Services~~ [department]
 294-59 that reasonable cause exists to believe that the hospital has
 294-60 violated provisions of the licensing law, rules adopted under the
 294-61 licensing law, special license conditions, or orders of the
 294-62 commissioner of ~~state~~ health services; provided, however, that the
 294-63 ~~Department of State Health Services~~ [department] shall coordinate
 294-64 with the federal Centers for Medicare and Medicaid Services [Health
 294-65 Care Financing Administration] and its agents responsible for the
 294-66 inspection of hospitals to determine compliance with the conditions
 294-67 of participation under Title XVIII of the Social Security Act (42
 294-68 U.S.C. Section 1395 et seq.), so as to avoid duplicate
 294-69 investigations.

(b) The executive commissioner [department] shall by rule establish a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection.

Sec. 222.027. PHYSICIAN ON SURVEY TEAM. The [Texas] Department of State Health Services shall ensure that a licensed physician involved in direct patient care as defined by the Texas Medical [State] Board [of Medical Examiners] is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) when surveying the quality of services provided by physicians in hospitals.

SUBCHAPTER C. SURVEYS OF INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY [~~MENTALLY RETARDED~~]

Sec. 222.041. DEFINITIONS. In this subchapter:

(1) ["Board" means the Texas Board of Human Services.]

[(2)] "Commissioner" means the commissioner of aging and disability services [human services].

(2) [(3)] "Department" means the [Texas] Department of Aging and Disability [Human] Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "ICF-IID" ["ICF-MR"] means the medical assistance program serving individuals with an intellectual or developmental disability who receive [persons receiving] care in intermediate care facilities [for mentally retarded persons].

Sec. 222.042. LICENSING OF [ICF-MR] BEDS AND FACILITIES. The department may not license or approve as meeting licensing standards new ICF-IID [ICF-MR] beds or the expansion of an existing ICF-IID [ICF-MR] facility unless the new beds or the expansion was included in the plan approved by the Health and Human Services Commission in accordance with Section 533.062.

[Sec. 222.043. REVIEW OF ICF-MR SURVEYS.] (a) The board by rule shall establish policies and procedures as prescribed by this section to conduct an informal review of ICF-MR surveys when the survey findings are disputed by the provider. The board shall provide that the procedure may be used only if the deficiencies cited in the survey report do not pose an imminent threat of danger to the health or safety of a resident.

[(b) The department shall designate at least one employee to conduct on a full-time basis the review provided by this section. The person must be impartial and may not be directly involved in or supervise any initial or recertification surveys. The person may participate in or direct follow-up surveys for quality assurance purposes only at the discretion of the commissioner or the commissioner's designated representative or under Chapter 242.]

[(c) The employee designated under Subsection (b) should have current knowledge of applicable federal laws and survey processes. The employee reports directly to the commissioner or the commissioner's designated representative.

[(d) If a provider disputes the findings of a survey team or files a complaint relating to the conduct of the survey, the employee designated under Subsection (b) shall conduct an informal review as soon as possible, but before the 45th day after the date of receiving the request for a review or the expiration of the period during which the provider is required to correct the alleged deficiency, whichever is sooner.

[(e) The employee conducting the review shall sustain, alter, or reverse the original findings of the survey team after consulting with the commissioner or the commissioner's designated representative.]

Sec. 222.044. FOLLOW-UP SURVEYS. (a) The department shall conduct follow-up surveys of ICF-IID [ICF-MR] facilities to:

(1) evaluate and monitor the findings of the certification or licensing survey teams; and

(2) ensure consistency in deficiencies cited and in punitive actions recommended throughout the state.

296-1 additional punitive action for the deficiency unless the provider
 296-2 fails to correct the deficiency within the period during which the
 296-3 provider is required to correct the deficiency.

296-4 Sec. 222.046. SURVEYS OF ICF-IID [~~ICF-MR~~] FACILITIES. (a)
 296-5 The department shall ensure that each survey team sent to survey an
 296-6 ICF-IID [~~ICF-MR~~] facility includes a qualified intellectual
 296-7 disabilities [~~mental retardation~~] professional, as that term is
 296-8 defined by federal law.

296-9 (b) The department shall require that each survey team sent
 296-10 to survey an ICF-IID [~~ICF-MR~~] facility conduct a final interview
 296-11 with the provider to ensure that the survey team informs the
 296-12 provider of the survey findings and that the survey team has
 296-13 requested the necessary information from the provider. The survey
 296-14 team shall allow the provider to record the interview. The provider
 296-15 shall immediately give the survey team a copy of any recording.

296-16 SECTION 3.0567. Section 241.003, Health and Safety Code, is
 296-17 amended by amending Subdivisions (2), (4), (11), and (12) and
 296-18 adding Subdivisions (2-a) and (4-a) to read as follows:

296-19 (2) "Commission" means the Health and Human Services
 296-20 Commission.

296-21 (2-a) "Commissioner" means the commissioner of state
 296-22 health services [~~Board~~ means the Texas Board of Health].

296-23 (4) "Department" means the [Texas] Department of State
 296-24 Health Services.

296-25 (4-a) "Executive commissioner" means the executive
 296-26 commissioner of the Health and Human Services Commission.

296-27 (11) "Physician" means a physician licensed by the
 296-28 Texas [State Board of] Medical Board [~~Examiners~~].

296-29 (12) "Physician assistant" means a physician
 296-30 assistant licensed by the Texas Physician Assistant [State] Board
 296-31 [~~of Physician Assistant Examiners~~].

296-32 SECTION 3.0568. Section 241.006(a), Health and Safety Code,
 296-33 is amended to read as follows:

296-34 (a) The department is authorized to review current and
 296-35 proposed state rules, including [~~issued by the~~] department rules
 296-36 and rules of [~~or by~~] other state agencies, that mandate that a
 296-37 hospital place or post a notice, poster, or sign in a conspicuous
 296-38 place or in an area of high public traffic, concerning the rights of
 296-39 patients or others or the responsibilities of the hospital, which
 296-40 is directed at patients, patients' families, or others. The
 296-41 purpose of this review shall be to coordinate the placement,
 296-42 format, and language contained in the required notices in order to:

296-43 (1) eliminate the duplication of information;

296-44 (2) reduce the potential for confusion to patients,
 296-45 patients' families, and others; and

296-46 (3) reduce the administrative burden of compliance on
 296-47 hospitals.

296-48 SECTION 3.0569. Section 241.009, Health and Safety Code, is
 296-49 amended to read as follows:

296-50 Sec. 241.009. PHOTO IDENTIFICATION BADGE REQUIRED. (a) In
 296-51 this section, "health[+]

296-52 [~~(1) "Health~~] care provider" means a person who
 296-53 provides health care services at a hospital as a physician, as an
 296-54 employee of the hospital, under a contract with the hospital, or in
 296-55 the course of a training or educational program at the hospital.

296-56 [~~(2) "Hospital~~] means a hospital licensed under this
 296-57 chapter.]

296-58 (b) A hospital licensed under this chapter shall adopt a
 296-59 policy requiring a health care provider providing direct patient
 296-60 care at the hospital to wear a photo identification badge during all
 296-61 patient encounters, unless precluded by adopted isolation or
 296-62 sterilization protocols. The badge must be of sufficient size and
 296-63 worn in a manner to be visible and must clearly state:

296-64 (1) at minimum the provider's first or last name;

296-65 (2) the department of the hospital with which the
 296-66 provider is associated;

296-67 (3) the type of license held by the provider, if the
 296-68 provider holds a license under Title 3, Occupations Code; and

296-69 (4) if applicable, the provider's status as a student,

297-1 intern, trainee, or resident.

297-2 SECTION 3.0570. Section 241.022(d), Health and Safety Code,
297-3 is amended to read as follows:

297-4 (d) The application must be accompanied by:

297-5 (1) a copy of the hospital's current patient transfer
297-6 policy;
297-7 (2) a nonrefundable license fee;
297-8 (3) copies of the hospital's patient transfer
297-9 agreements, unless the filing of copies has been waived by the
297-10 ~~department [hospital licensing director]~~ in accordance with the
297-11 rules adopted under this chapter; and

297-12 (4) a copy of the most recent annual fire safety
297-13 inspection report from the fire marshal in whose jurisdiction the
297-14 hospital is located.

297-15 SECTION 3.0571. Sections 241.023(b), (c-2), (c-3), (d), and
297-16 (e), Health and Safety Code, are amended to read as follows:

297-17 (b) A license may be renewed every two years [~~annually~~]
297-18 after payment of the required fee and submission of an application
297-19 for license renewal that contains the information required by
297-20 Section 241.022(b).

297-21 (c-2) The ~~department [hospital licensing director]~~ may
297-22 recommend a waiver of the requirement of Subsection (c-1)(7) for a
297-23 hospital if another hospital that is to be included in the license:

297-24 (1) complies with the emergency services standards for
297-25 a general hospital; and

297-26 (2) is in close geographic proximity to the hospital.

297-27 (c-3) The executive commissioner [~~of the Health and Human~~
297-28 ~~Services Commission~~] shall adopt rules to implement the waiver
297-29 provision of Subsection (c-2). The rules must provide for a
297-30 determination by the department that the waiver will facilitate the
297-31 creation or operation of the hospital seeking the waiver and that
297-32 the waiver is in the best interest of the individuals served or to
297-33 be served by the hospital.

297-34 (d) Subject to Subsection (e), a license issued under this
297-35 section for a hospital includes each outpatient facility that is
297-36 not separately licensed, that is located apart from the hospital,
297-37 and for which the hospital has submitted to the department:

297-38 (1) a copy of a fire safety survey that is dated not
297-39 earlier than one year before the submission date indicating
297-40 approval by:

297-41 (A) the local fire authority in whose
297-42 jurisdiction the outpatient facility is located; or

297-43 (B) the nearest fire authority, if the outpatient
297-44 facility is located outside of the jurisdiction of a local fire
297-45 authority; and

297-46 (2) if the hospital is accredited by The [the] Joint
297-47 Commission [~~on Accreditation of Healthcare Organizations~~] or the
297-48 American Osteopathic Association, a copy of documentation from the
297-49 accrediting body showing that the outpatient facility is included
297-50 within the hospital's accreditation.

297-51 (e) Subsection (d) applies only if the federal Department of
297-52 Health and Human Services, Centers for Medicare and Medicaid
297-53 Services [Health Care Financing Administration], or Office of
297-54 Inspector General adopts final or interim final rules requiring
297-55 state licensure of outpatient facilities as a condition of the
297-56 determination of provider-based status for Medicare reimbursement
297-57 purposes.

297-58 SECTION 3.0572. Sections 241.025(a), (b), (d), and (e),
297-59 Health and Safety Code, are amended to read as follows:

297-60 (a) The department shall charge each hospital a [~~an annual~~]
297-61 license fee for an initial license or a license renewal.

297-62 (b) The executive commissioner [board] by rule shall adopt
297-63 the fees authorized by Subsection (a) in amounts as prescribed by
297-64 Section 12.0111 and according to a schedule under which the number
297-65 of beds in the hospital determines the amount of the fee. [~~The fee~~
297-66 ~~may not exceed \$15 a bed.~~] A minimum license fee may be
297-67 established. [~~The minimum fee may not exceed \$1,000.~~]

297-68 (d) All license fees collected shall be deposited in the
297-69 state treasury to the credit of the department to administer and

298-1 enforce this chapter. [These fees are hereby appropriated to the
298-2 department.]

298-3 (e) Notwithstanding Subsection (d), to the extent that
298-4 money received from the fees collected under this chapter exceeds
298-5 the costs to the department to conduct the activity for which the
298-6 fee is imposed, the department may use the money to administer
298-7 Chapter 324 and similar laws that require the department to provide
298-8 information related to hospital care to the public. The executive
298-9 commissioner [department] may not consider the costs of
298-10 administering Chapter 324 or similar laws in adopting a fee imposed
298-11 under this section.

298-12 SECTION 3.0573. Sections 241.026(a) through (e), Health and
298-13 Safety Code, are amended to read as follows:

298-14 (a) The executive commissioner [board] shall adopt rules
298-15 and the department shall enforce the rules to further the purposes
298-16 of this chapter. The rules at a minimum shall address:

298-17 (1) minimum requirements for staffing by physicians
298-18 and nurses;

298-19 (2) hospital services relating to patient care;

298-20 (3) fire prevention, safety, and sanitation
298-21 requirements in hospitals;

298-22 (4) patient care and a patient bill of rights;

298-23 (5) compliance with other state and federal laws
298-24 affecting the health, safety, and rights of hospital patients; and

298-25 (6) compliance with nursing peer review under
298-26 Subchapter I, Chapter 301, and Chapter 303, Occupations Code, and
298-27 the rules of the Texas Board of Nursing relating to peer review.

298-28 (b) In adopting rules, the executive commissioner [board]
298-29 shall consider the conditions of participation for certification
298-30 under Title XVIII of the Social Security Act (42 U.S.C. Section 1395
298-31 et seq.) and the standards of The [the] Joint Commission [~~on~~
298-32 Accreditation of Healthcare Organizations] and will attempt to
298-33 achieve consistency with those conditions and standards.

298-34 (c) The department [~~Upon the recommendation of the hospital~~
298-35 ~~licensing director and the council, the board~~] by order may waive or
298-36 modify the requirement of a particular provision of this chapter
298-37 [Act] or minimum standard adopted by department [board] rule under
298-38 this section to a particular general or special hospital if the
298-39 department [board] determines that the waiver or modification will
298-40 facilitate the creation or operation of the hospital and that the
298-41 waiver or modification is in the best interests of the individuals
298-42 served or to be served by the hospital.

298-43 (d) The executive commissioner [board] shall adopt rules
298-44 establishing procedures and criteria for the issuance of the waiver
298-45 or modification order. The criteria must include at a minimum a
298-46 statement of the appropriateness of the waiver or modification
298-47 against the best interests of the individuals served by the
298-48 hospital.

298-49 (e) If the department [board] orders a waiver or
298-50 modification of a provision or standard, the licensing record of
298-51 the hospital granted the waiver or modification shall contain
298-52 documentation to support the [board's] action. Department [~~The~~
298-53 ~~board's~~] rules shall specify the type and specificity of the
298-54 supporting documentation that must be included.

298-55 SECTION 3.0574. Section 241.0265, Health and Safety Code, is
298-56 amended to read as follows:

298-57 Sec. 241.0265. STANDARDS FOR CARE FOR MENTAL HEALTH AND
298-58 CHEMICAL DEPENDENCY. (a) The care and treatment of a patient
298-59 receiving mental health services in a facility licensed by the
298-60 department under this chapter or Chapter 577 are governed by the
298-61 applicable department standards adopted [~~by the Texas Department of~~
298-62 ~~Mental Health and Mental Retardation to the same extent as if the~~
298-63 ~~standards adopted by that department were rules adopted by the~~
298-64 ~~board~~] under this chapter or Chapter 577.

298-65 (b) The care and treatment of a patient receiving chemical
298-66 dependency treatment in a facility licensed by the department under
298-67 this chapter are governed by the same standards that govern the care
298-68 and treatment of a patient receiving treatment in a treatment
298-69 facility licensed under Chapter 464 [~~and that are adopted by the~~

299-1 ~~Texas Commission on Alcohol and Drug Abuse~~, to the same extent as
299-2 if the standards [adopted by the commission] were rules adopted [by
299-3 the board] under this chapter.

299-4 (c) The department shall enforce the standards provided by
299-5 Subsections (a) and (b). A violation of a standard is subject to
299-6 the same consequence as a violation of a rule adopted [by the board]
299-7 under this chapter or Chapter 577. The department is not required
299-8 to enforce a standard if the enforcement violates a federal law,
299-9 rule, or regulation.

299-10 SECTION 3.0575. Section 241.027(a), Health and Safety Code,
299-11 is amended to read as follows:

299-12 (a) The executive commissioner [board] shall adopt rules to
299-13 govern the transfer of patients between hospitals that do not have a
299-14 transfer agreement and governing services not included in transfer
299-15 agreements.

299-16 SECTION 3.0576. Sections 241.051(a) and (b), Health and
299-17 Safety Code, are amended to read as follows:

299-18 (a) The department may make any inspection, survey, or
299-19 investigation that it considers necessary. A representative of the
299-20 department may enter the premises of a hospital at any reasonable
299-21 time to make an inspection, a survey, or an investigation to assure
299-22 compliance with or prevent a violation of this chapter, the rules
299-23 adopted under this chapter, an order or special order of the
299-24 commissioner [~~of health~~], a special license provision, a court
299-25 order granting injunctive relief, or other enforcement procedures.
299-26 The department shall maintain the confidentiality of hospital
299-27 records as applicable under state or federal law.

299-28 (b) The department or a representative of the department is
299-29 entitled to access to all books, records, or other documents
299-30 maintained by or on behalf of the hospital to the extent necessary
299-31 to enforce this chapter, the rules adopted under this chapter, an
299-32 order or special order of the commissioner [~~of health~~], a special
299-33 license provision, a court order granting injunctive relief, or
299-34 other enforcement procedures.

299-35 SECTION 3.0577. Sections 241.053(a) and (d), Health and
299-36 Safety Code, are amended to read as follows:

299-37 (a) The department, after providing notice and an
299-38 opportunity for a hearing to the applicant or license holder, may
299-39 deny, suspend, or revoke a hospital's license if the department
299-40 finds that the hospital:

299-41 (1) failed to comply with:

- 299-42 (A) a provision of this chapter;
- 299-43 (B) a rule adopted under this chapter;
- 299-44 (C) a special license condition;
- 299-45 (D) an order or emergency order by the

299-46 commissioner [~~of health~~]; or
299-47 (E) another enforcement procedure permitted
299-48 under this chapter;

299-49 (2) has a history of noncompliance with the rules
299-50 adopted under this chapter relating to patient health, safety, and
299-51 rights which reflects more than nominal noncompliance; or

299-52 (3) has aided, abetted, or permitted the commission of
299-53 an illegal act.

299-54 (d) Administrative hearings required under this section
299-55 shall be conducted under the department's [board's] formal hearing
299-56 rules and the contested case provisions of Chapter 2001, Government
299-57 Code.

299-58 SECTION 3.0578. Sections 241.0531(a) and (c), Health and
299-59 Safety Code, are amended to read as follows:

299-60 (a) Following notice to the hospital and opportunity for
299-61 hearing, the commissioner [~~of health~~] or a person designated by the
299-62 commissioner may issue an emergency order, either mandatory or
299-63 prohibitory in nature, in relation to the operation of a hospital
299-64 licensed under this chapter if the commissioner or the
299-65 commissioner's designee determines that the hospital is violating
299-66 or threatening to violate this chapter, a rule adopted pursuant to
299-67 this chapter, a special license provision, injunctive relief issued
299-68 pursuant to Section 241.054, an order of the commissioner or the
299-69 commissioner's designee, or another enforcement procedure

300-1 permitted under this chapter and the provision, rule, license
 300-2 provision, injunctive relief, order, or enforcement procedure
 300-3 relates to the health or safety of the hospital's patients.

300-4 (c) The hearing shall not be governed by the contested case
 300-5 provisions of Chapter 2001, Government Code, but shall instead be
 300-6 held in accordance with the department's [board's] informal hearing
 300-7 rules.

300-8 SECTION 3.0579. Section 241.054(b), Health and Safety Code,
 300-9 is amended to read as follows:

300-10 (b) After the notice and opportunity to comply, the
 300-11 commissioner [~~of health~~] may request the attorney general or the
 300-12 appropriate district or county attorney to institute and conduct a
 300-13 suit for a violation of this chapter or a rule adopted under this
 300-14 chapter.

300-15 SECTION 3.0580. Section 241.058, Health and Safety Code, is
 300-16 amended to read as follows:

300-17 Sec. 241.058. MINOR VIOLATIONS. (a) This chapter does not
 300-18 require the commissioner [~~of health~~] or a designee of the
 300-19 commissioner to report a minor violation for prosecution or the
 300-20 institution of any other enforcement proceeding authorized under
 300-21 this chapter, if the commissioner or [a] designee [~~of the~~
 300-22 ~~commissioner~~] determines that prosecution or enforcement is not in
 300-23 the best interests of the persons served or to be served by the
 300-24 hospital.

300-25 (b) For the purpose of this section, a "minor violation"
 300-26 means a violation of this chapter, the rules adopted under this
 300-27 chapter, a special license provision, an order or emergency order
 300-28 issued by the commissioner [~~of health~~] or the commissioner's
 300-29 designee, or another enforcement procedure permitted under this
 300-30 chapter by a hospital that does not constitute a threat to the
 300-31 health, safety, and rights of the hospital's patients or other
 300-32 persons.

300-33 SECTION 3.0581. Sections 241.059(a), (b), and (d) through
 300-34 (n), Health and Safety Code, are amended to read as follows:

300-35 (a) The department [~~commissioner of health~~] may assess an
 300-36 administrative penalty against a hospital that violates this
 300-37 chapter, a rule adopted pursuant to this chapter, a special license
 300-38 provision, an order or emergency order issued by the commissioner
 300-39 or the commissioner's designee, or another enforcement procedure
 300-40 permitted under this chapter. The department [~~commissioner~~] shall
 300-41 assess an administrative penalty against a hospital that violates
 300-42 Section 166.004.

300-43 (b) In determining the amount of the penalty, the department
 300-44 [~~commissioner of health~~] shall consider:

300-45 (1) the hospital's previous violations;
 300-46 (2) the seriousness of the violation;
 300-47 (3) any threat to the health, safety, or rights of the
 300-48 hospital's patients;

300-49 (4) the demonstrated good faith of the hospital; and
 300-50 (5) such other matters as justice may require.

300-51 (d) When it is determined that a violation has occurred, the
 300-52 department [~~commissioner of health shall issue a report that states~~
 300-53 ~~the facts on which the determination is based and the~~
 300-54 ~~commissioner's recommendation on the imposition of a penalty,~~
 300-55 ~~including a recommendation on the amount of the penalty.~~

300-56 [(e) Within 14 days after the date the report is issued, the
 300-57 ~~commissioner of health~~] shall give written notice of the violation
 300-58 [~~report~~] to the person, delivered by certified mail. The notice
 300-59 must include a brief summary of the alleged violation and a
 300-60 statement of the amount of the recommended penalty and must inform
 300-61 the person that the person has a right to a hearing on the
 300-62 occurrence of the violation, the amount of the penalty, or both the
 300-63 occurrence of the violation and the amount of the penalty.

300-64 (f) Within 20 days after the date the person receives the
 300-65 notice, the person in writing may accept the determination and
 300-66 recommended penalty of the department [~~commissioner of health~~] or
 300-67 may make a written request for a hearing on the occurrence of the
 300-68 violation, the amount of the penalty, or both the occurrence of the
 300-69 violation and the amount of the penalty.

301-1 (g) If the person accepts the determination and recommended
 301-2 penalty of the department [~~commissioner of health~~], the department
 301-3 [~~commissioner~~] by order shall impose the recommended penalty.

301-4 (h) If the person requests a hearing or fails to respond
 301-5 timely to the notice, the department shall refer the matter to the
 301-6 State Office of Administrative Hearings and an administrative law
 301-7 judge of that office shall hold the hearing. The department
 301-8 [~~commissioner of health~~] shall [set a hearing and] give notice of
 301-9 the hearing to the person. [~~The hearing shall be held by the~~
 301-10 ~~department~~.] The administrative law judge [person] conducting the
 301-11 hearing shall make findings of fact and conclusions of law and
 301-12 promptly issue to the department [~~commissioner~~] a written proposal
 301-13 for a decision about the occurrence of the violation and the amount
 301-14 of the penalty. Based on the findings of fact, conclusions of law,
 301-15 and proposal for a decision, the department [~~commissioner~~] by order
 301-16 may find that a violation has occurred and impose a penalty or may
 301-17 find that no violation occurred.

301-18 (i) The notice of the department's [~~commissioner of~~
 301-19 ~~health's~~] order given to the person under Chapter 2001, Government
 301-20 Code, must include a statement of the right of the person to
 301-21 judicial review of the order.

301-22 (j) Within 30 days after the date the department's
 301-23 [~~commissioner of health's~~] order is final as provided by Subchapter
 301-24 F, Chapter 2001, Government Code, the person shall:

301-25 (1) pay the amount of the penalty;

301-26 (2) pay the amount of the penalty and file a petition
 301-27 for judicial review contesting the occurrence of the violation, the
 301-28 amount of the penalty, or both the occurrence of the violation and
 301-29 the amount of the penalty; or

301-30 (3) without paying the amount of the penalty, file a
 301-31 petition for judicial review contesting the occurrence of the
 301-32 violation, the amount of the penalty, or both the occurrence of the
 301-33 violation and the amount of the penalty.

301-34 (k) Within the 30-day period, a person who acts under
 301-35 Subsection (j)(3) may:

301-36 (1) stay enforcement of the penalty by:

301-37 (A) paying the amount of the penalty to the court
 301-38 for placement in an escrow account; or

301-39 (B) giving to the court a supersedeas bond that
 301-40 is approved by the court for the amount of the penalty and that is
 301-41 effective until all judicial review of the department's [~~board's~~]
 301-42 order is final; or

301-43 (2) request the court to stay enforcement of the
 301-44 penalty by:

301-45 (A) filing with the court a sworn affidavit of
 301-46 the person stating that the person is financially unable to pay the
 301-47 amount of the penalty and is financially unable to give the
 301-48 supersedeas bond; and

301-49 (B) giving a copy of the affidavit to the
 301-50 department [~~commissioner of health~~] by certified mail.

301-51 (l) When the department [~~commissioner of health~~] receives a
 301-52 copy of an affidavit under Subsection (k)(2), the department [~~he~~]
 301-53 may file with the court, within five days after the date the copy is
 301-54 received, a contest to the affidavit. The court shall hold a
 301-55 hearing on the facts alleged in the affidavit as soon as practicable
 301-56 and shall stay the enforcement of the penalty on finding that the
 301-57 alleged facts are true. The person who files an affidavit has the
 301-58 burden of proving that the person is financially unable to pay the
 301-59 amount of the penalty and to give a supersedeas bond.

301-60 (m) If the person does not pay the amount of the penalty and
 301-61 the enforcement of the penalty is not stayed, the department
 301-62 [~~commissioner of health~~] may refer the matter to the attorney
 301-63 general for collection of the amount of the penalty.

301-64 (n) Judicial review of the order of the department
 301-65 [~~commissioner of health~~]:

301-66 (1) is instituted by filing a petition as provided by
 301-67 Subchapter G, Chapter 2001, Government Code; and

301-68 (2) is under the substantial evidence rule.

301-69 SECTION 3.0582. Sections 241.060(a), (d), (e), (f), (g),

302-1 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
302-2 amended to read as follows:

302-3 (a) The department [board] may impose an administrative
302-4 penalty against a person licensed or regulated under this chapter
302-5 who violates this chapter or a rule or order adopted under this
302-6 chapter relating to the provision of mental health, chemical
302-7 dependency, or rehabilitation services.

302-8 (d) If the department [commissioner] determines that a
302-9 violation has occurred, the department [commissioner may issue to
302-10 the board a report that states the facts on which the determination
302-11 is based and the commissioner's recommendation on the imposition of
302-12 a penalty, including a recommendation on the amount of the penalty.

302-13 (e) Within 14 days after the date the report is issued, the
302-14 commissioner shall give written notice of the violation [report]
302-15 to the person. The notice may be given by certified mail. The
302-16 notice must include a brief summary of the alleged violation and a
302-17 statement of the amount of the recommended penalty and must inform
302-18 the person that the person has a right to a hearing on the
302-19 occurrence of the violation, the amount of the penalty, or both the
302-20 occurrence of the violation and the amount of the penalty.

302-21 (f) Within 20 days after the date the person receives the
302-22 notice, the person in writing may accept the determination and
302-23 recommended penalty of the department [commissioner] or may make a
302-24 written request for a hearing on the occurrence of the violation,
302-25 the amount of the penalty, or both the occurrence of the violation
302-26 and the amount of the penalty.

302-27 (g) If the person accepts the determination and recommended
302-28 penalty of the department [commissioner], the department [board] by
302-29 order shall [approve the determination and] impose the recommended
302-30 penalty.

302-31 (h) If the person requests a hearing or fails to respond
302-32 timely to the notice, the department [commissioner] shall refer the
302-33 matter to the State Office of Administrative Hearings and an
302-34 administrative law judge of that office shall hold the hearing. The
302-35 department shall [set a hearing and] give notice of the hearing to
302-36 the person. The administrative law judge shall make findings of
302-37 fact and conclusions of law and promptly issue to the department
302-38 [board] a written proposal for a decision about the occurrence of
302-39 the violation and the amount of a proposed penalty. Based on the
302-40 findings of fact, conclusions of law, and proposal for a decision,
302-41 the department [board] by order may find that a violation has
302-42 occurred and impose a penalty or may find that no violation
302-43 occurred.

302-44 (i) The notice of the department's [board's] order given to
302-45 the person under Chapter 2001, Government Code, must include a
302-46 statement of the right of the person to judicial review of the
302-47 order.

302-48 (j) Within 30 days after the date the department's [board's]
302-49 order is final as provided by Subchapter F, Chapter 2001,
302-50 Government Code, the person shall:

302-51 (1) pay the amount of the penalty;
302-52 (2) pay the amount of the penalty and file a petition
302-53 for judicial review contesting the occurrence of the violation, the
302-54 amount of the penalty, or both the occurrence of the violation and
302-55 the amount of the penalty; or

302-56 (3) without paying the amount of the penalty, file a
302-57 petition for judicial review contesting the occurrence of the
302-58 violation, the amount of the penalty, or both the occurrence of the
302-59 violation and the amount of the penalty.

302-60 (k) Within the 30-day period, a person who acts under
302-61 Subsection (j)(3) may:

302-62 (1) stay enforcement of the penalty by:
302-63 (A) paying the amount of the penalty to the court
302-64 for placement in an escrow account; or
302-65 (B) giving to the court a supersedeas bond that
302-66 is approved by the court for the amount of the penalty and that is
302-67 effective until all judicial review of the department's [board's]
302-68 order is final; or

302-69 (2) request the court to stay enforcement of the

303-1 penalty by:

303-2 (A) filing with the court a sworn affidavit of
 303-3 the person stating that the person is financially unable to pay the
 303-4 amount of the penalty and is financially unable to give the
 303-5 supersedeas bond; and

303-6 (B) giving a copy of the affidavit to the
 303-7 commissioner by certified mail.

303-8 (1) The department [~~commissioner~~] on receipt of a copy of an
 303-9 affidavit under Subsection (k)(2) may file with the court within
 303-10 five days after the date the copy is received a contest to the
 303-11 affidavit. The court shall hold a hearing on the facts alleged in
 303-12 the affidavit as soon as practicable and shall stay the enforcement
 303-13 of the penalty on finding that the alleged facts are true. The
 303-14 person who files an affidavit has the burden of proving that the
 303-15 person is financially unable to pay the amount of the penalty and to
 303-16 give a supersedeas bond.

303-17 (m) If the person does not pay the amount of the penalty and
 303-18 the enforcement of the penalty is not stayed, the department
 303-19 [~~commissioner~~] may refer the matter to the attorney general for
 303-20 collection of the amount of the penalty.

303-21 (n) Judicial review of the department's order [~~of the~~
 303-22 ~~board~~]:

303-23 (1) is instituted by filing a petition as provided by
 303-24 Subchapter G, Chapter 2001, Government Code; and

303-25 (2) is under the substantial evidence rule.

303-26 SECTION 3.0583. Section 241.101(i), Health and Safety Code,
 303-27 is amended to read as follows:

303-28 (i) Graduate medical education may be used as a standard or
 303-29 qualification for medical staff membership or privileges for a
 303-30 physician, provided that equal recognition is given to training
 303-31 programs accredited by the Accreditation Council for [~~on~~] Graduate
 303-32 Medical Education and by the American Osteopathic Association.

303-33 SECTION 3.0584. Sections 241.104(a) and (c), Health and
 303-34 Safety Code, are amended to read as follows:

303-35 (a) The executive commissioner [~~board~~] by rule shall adopt
 303-36 fees for hospital plan reviews according to a schedule based on the
 303-37 estimated construction costs.

303-38 (c) The department shall charge a fee for field surveys of
 303-39 construction plans reviewed under this section. The executive
 303-40 commissioner [~~board~~] by rule shall adopt a fee schedule for the
 303-41 surveys that provides a minimum fee of \$500 and a maximum fee of
 303-42 \$1,000 for each survey conducted.

303-43 SECTION 3.0585. Sections 241.123(a), (b), (d), (e), (f),
 303-44 and (g), Health and Safety Code, are amended to read as follows:

303-45 (a) The executive commissioner [~~board~~] by rule shall adopt
 303-46 standards for the provision of rehabilitation services by a
 303-47 hospital to ensure the health and safety of a patient receiving the
 303-48 services.

303-49 (b) The standards [~~adopted by the board~~] at a minimum shall
 303-50 require a hospital that provides comprehensive medical
 303-51 rehabilitation:

303-52 (1) to have a director of comprehensive medical
 303-53 rehabilitation who is:

303-54 (A) a licensed physician;

303-55 (B) either board certified or eligible for board
 303-56 certification in a medical specialty related to rehabilitation; and
 303-57 (C) qualified by training and experience to serve
 303-58 as medical director;

303-59 (2) to have medical supervision by a licensed
 303-60 physician for 24 hours each day; and

303-61 (3) to provide appropriate therapy to each patient by
 303-62 an interdisciplinary team consisting of licensed physicians,
 303-63 rehabilitation nurses, and therapists as are appropriate for the
 303-64 patient's needs.

303-65 (d) A hospital shall prepare for each patient receiving
 303-66 inpatient rehabilitation services a written treatment plan
 303-67 designed for that patient's needs for treatment and care. The
 303-68 executive commissioner [~~board~~] by rule shall specify a time after
 303-69 admission of a patient for inpatient rehabilitation services by

304-1 which a hospital must evaluate the patient for the patient's
 304-2 initial treatment plan and by which a hospital must provide copies
 304-3 of the plan after evaluation.

304-4 (e) A hospital shall prepare for each patient receiving
 304-5 inpatient rehabilitation services a written continuing care plan
 304-6 that addresses the patient's needs for care after discharge,
 304-7 including recommendations for treatment and care and information
 304-8 about the availability of resources for treatment or care. The
 304-9 executive commissioner [board] by rule shall specify the time
 304-10 before discharge by which the hospital must provide a copy of the
 304-11 continuing care plan. Department [~~The board's~~] rules may allow a
 304-12 facility to provide the continuing care plan by a specified time
 304-13 after discharge if providing the plan before discharge is
 304-14 impracticable.

304-15 (f) A hospital shall provide a copy of a treatment or
 304-16 continuing care plan prepared under this section to the following
 304-17 persons in the person's primary language, if practicable:

304-18 (1) the patient;
 304-19 (2) a person designated by the patient; and
 304-20 (3) as specified by department [board] rule, family
 304-21 members or other persons with responsibility for or demonstrated
 304-22 participation in the patient's care or treatment.

304-23 (g) Rules adopted by the executive commissioner [board]
 304-24 under this subchapter may not conflict with a federal rule,
 304-25 regulation, or standard.

304-26 SECTION 3.0586. Section 241.151(5), Health and Safety Code,
 304-27 is amended to read as follows:

304-28 (5) "Legally authorized representative" means:
 304-29 (A) a parent or legal guardian if the patient is a
 304-30 minor;
 304-31 (B) a legal guardian if the patient has been
 304-32 adjudicated incapacitated to manage the patient's personal
 304-33 affairs;
 304-34 (C) an agent of the patient authorized under a
 304-35 medical [~~durable~~] power of attorney [~~for health care~~];
 304-36 (D) an attorney ad litem appointed for the
 304-37 patient;
 304-38 (E) a person authorized to consent to medical
 304-39 treatment on behalf of the patient under Chapter 313;
 304-40 (F) a guardian ad litem appointed for the
 304-41 patient;
 304-42 (G) a personal representative or heir of the
 304-43 patient, as defined by Chapter 22, Estates [~~Section 3, Texas~~
 304-44 ~~Probate~~] Code, if the patient is deceased;
 304-45 (H) an attorney retained by the patient or by the
 304-46 patient's legally authorized representative; or
 304-47 (I) a person exercising a power granted to the
 304-48 person in the person's capacity as an attorney-in-fact or agent of
 304-49 the patient by a statutory durable power of attorney that is signed
 304-50 by the patient as principal.

304-51 SECTION 3.0587. Section 241.183(c), Health and Safety Code,
 304-52 as added by Chapter 217 (H.B. 15), Acts of the 83rd Legislature,
 304-53 Regular Session, 2013, is amended to read as follows:

304-54 (c) The commission [~~Health and Human Services Commission~~]
 304-55 shall study patient transfers that are not medically necessary but
 304-56 would be cost-effective. Based on the study under this subsection,
 304-57 if the executive commissioner determines that the transfers are
 304-58 feasible and desirable, the executive commissioner may adopt rules
 304-59 addressing those transfers.

304-60 SECTION 3.0588. Section 241.183, Health and Safety Code, as
 304-61 added by Chapter 917 (H.B. 1376), Acts of the 83rd Legislature,
 304-62 Regular Session, 2013, is amended to read as follows:

304-63 Sec. 241.183. POSTED NOTICE. Subject to Section 241.006,
 304-64 the executive commissioner [department] shall adopt rules for a
 304-65 notice to be posted in a conspicuous place in the facility described
 304-66 by Section 241.181 that notifies prospective patients that the
 304-67 facility is an emergency room and charges rates comparable to a
 304-68 hospital emergency room.

304-69 SECTION 3.0589. Section 241.184, Health and Safety Code, as

305-1 added by Chapter 917 (H.B. 1376), Acts of the 83rd Legislature,
 305-2 Regular Session, 2013, is amended to read as follows:

305-3 Sec. 241.184. ADMINISTRATIVE PENALTY. The department
 305-4 [~~commissioner of health~~] may assess an administrative penalty under
 305-5 Section 241.059 against a hospital that violates this subchapter.

305-6 SECTION 3.0590. The heading to Chapter 242, Health and
 305-7 Safety Code, is amended to read as follows:

305-8 CHAPTER 242. CONVALESCENT AND NURSING FACILITIES [~~HOMES~~] AND
 305-9 RELATED INSTITUTIONS

305-10 SECTION 3.0591. Sections 242.002(1) and (2), Health and
 305-11 Safety Code, are amended to read as follows:

305-12 (1) "Commission" means the Health and [~~Board~~ means
 305-13 the Texas Board of] Human Services Commission.

305-14 (2) "Commissioner" means the commissioner of aging and
 305-15 disability [~~human~~] services.

305-16 SECTION 3.0592. Section 242.0021(d), Health and Safety
 305-17 Code, is amended to read as follows:

305-18 (d) The executive commissioner [~~department~~] may adopt rules
 305-19 that define the ownership interests and other relationships that
 305-20 qualify a person as a controlling person.

305-21 SECTION 3.0593. Section 242.003, Health and Safety Code, is
 305-22 amended to read as follows:

305-23 Sec. 242.003. EXEMPTIONS. Except as otherwise provided,
 305-24 this chapter does not apply to:

305-25 (1) a hotel or other similar place that furnishes only
 305-26 food, lodging, or both, to its guests;

305-27 (2) a hospital;

305-28 (3) an establishment conducted by or for the adherents
 305-29 of a well-recognized church or religious denomination for the
 305-30 purpose of providing facilities for the care or treatment of the
 305-31 sick who depend exclusively on prayer or spiritual means for
 305-32 healing, without the use of any drug or material remedy, if the
 305-33 establishment complies with safety, sanitary, and quarantine laws
 305-34 and rules;

305-35 (4) an establishment that furnishes, in addition to
 305-36 food, shelter, and laundry, only baths and massages;

305-37 (5) an institution operated by a person licensed by
 305-38 the Texas Board of Chiropractic Examiners;

305-39 (6) a facility that:

305-40 (A) primarily engages in training, habilitation,
 305-41 rehabilitation, or education of clients or residents;

305-42 (B) is operated under the jurisdiction of a state
 305-43 or federal agency, including the commission, department,
 305-44 Department of Assistive and Rehabilitative Services, [~~Department~~
 305-45 ~~of Aging and Disability Services,~~] Department of State Health
 305-46 Services, [~~Health and Human Services Commission~~], Texas Department
 305-47 of Criminal Justice, and United States Department of Veterans
 305-48 Affairs; and

305-49 (C) is certified through inspection or
 305-50 evaluation as meeting the standards established by the state or
 305-51 federal agency;

305-52 (7) a foster care type residential facility that
 305-53 serves fewer than five persons and operates under rules adopted by
 305-54 [~~the Texas Department of Human Services or~~] the executive
 305-55 commissioner [~~of the Health and Human Services Commission, as~~
 305-56 ~~applicable~~]; and

305-57 (8) a facility licensed under Chapter 252 or exempt
 305-58 from licensure under Section 252.003.

305-59 SECTION 3.0594. Section 242.013, Health and Safety Code, is
 305-60 amended to read as follows:

305-61 Sec. 242.013. PAPERWORK REDUCTION RULES. (a) The
 305-62 executive commissioner [~~department~~] shall[+]

305-63 [+] adopt rules to reduce the amount of paperwork an
 305-64 institution must complete and retain.

305-65 (a-1) The department shall[+and]

305-66 [+] attempt to reduce the amount of paperwork to the
 305-67 minimum amount required by state and federal law unless the
 305-68 reduction would jeopardize resident safety.

305-69 (b) The department[, ~~the contracting agency~~,] and providers

306-1 shall work together to review rules and propose changes in
306-2 paperwork requirements so that additional time is available for
306-3 direct resident care.

306-4 SECTION 3.0595. Section 242.032(e), Health and Safety Code,
306-5 is amended to read as follows:

306-6 (e) In making the evaluation required by Subsection (d), the
306-7 department shall require the applicant or license holder to file a
306-8 sworn affidavit of a satisfactory compliance history and any other
306-9 information required by the department to substantiate a
306-10 satisfactory compliance history relating to each state or other
306-11 jurisdiction in which the applicant or license holder and any other
306-12 person described by Subsection (d) operated an institution at any
306-13 time before the date on which the application is made. The
306-14 executive commissioner [department] by rule shall determine what
306-15 constitutes a satisfactory compliance history. The department may
306-16 consider and evaluate the compliance history of the applicant and
306-17 any other person described by Subsection (d) for any period during
306-18 which the applicant or other person operated an institution in this
306-19 state or in another state or jurisdiction. The department may also
306-20 require the applicant or license holder to file information
306-21 relating to the history of the financial condition of the applicant
306-22 or license holder and any other person described by Subsection (d)
306-23 with respect to an institution operated in another state or
306-24 jurisdiction at any time before the date on which the application is
306-25 made.

306-26 SECTION 3.0596. Section 242.033(e), Health and Safety Code,
306-27 is amended to read as follows:

306-28 (e) The report required for license renewal under
306-29 Subsection (d)(3) must comply with department rules [~~adopted by the~~
306-30 ~~board~~] that specify the date of submission of the report, the
306-31 information it must contain, and its form.

306-32 SECTION 3.0597. Sections 242.0335(a) and (c), Health and
306-33 Safety Code, are amended to read as follows:

306-34 (a) The department shall maintain, and keep current, a list
306-35 of license holders that operate an institution in this state and
306-36 that have excellent operating records according to the information
306-37 available to the department. The executive commissioner
306-38 [department] by rule shall establish specific criteria for the
306-39 department to designate [~~designating~~] a license holder as eligible
306-40 for the list.

306-41 (c) An applicant for a change of ownership license must meet
306-42 all applicable requirements that an applicant for renewal of a
306-43 license must meet under this subchapter, including under Section
306-44 242.032(d), and under rules [~~that the department has~~] adopted under
306-45 this subchapter. Any requirement relating to inspections or to an
306-46 accreditation review applies only to institutions operated by the
306-47 license holder at the time the application is made for the change of
306-48 ownership license.

306-49 SECTION 3.0598. Sections 242.0336(b-2), (b-3), (b-4), and
306-50 (d-1), Health and Safety Code, are amended to read as follows:

306-51 (b-2) Notwithstanding Section 242.0335, the executive
306-52 commissioner [department] shall establish criteria under which the
306-53 department may waive the 30-day requirement or the notification
306-54 requirement of Subsection (b-1). The criteria may include the
306-55 occurrence of forcible entry and detainer, death, or divorce or
306-56 other events that affect the ownership of the institution by the
306-57 existing license holder.

306-58 (b-3) After receipt of an application or written
306-59 notification described by Subsection (b-1), the department may
306-60 place a hold on payments to the existing license holder in an amount
306-61 not to exceed the average of the monthly vendor payments paid to the
306-62 facility, as determined by the department. The department shall
306-63 release funds to the previous license holder not later than the
306-64 120th day after the date on which the final reporting requirements
306-65 are met and any resulting informal reviews or formal appeals are
306-66 resolved. The department may reduce the amount of funds released to
306-67 the previous license holder by the amount owed to the department or
306-68 the commission [Health and Human Services Commission] under the
306-69 previous license holder's Medicaid contract or license.

(b-4) The executive commissioner [of the Health and Human Services Commission] shall adopt rules for the department that define a change of ownership. In adopting the rules, the executive commissioner shall consider:

(1) the proportion of ownership interest that is being transferred to another person;

(2) the addition or removal of a stockholder, partner, owner, or other controlling person;

(3) the reorganization of the license holder into a different type of business entity; and

(d-1) The executive commissioner [department] shall

(a-1) The executive commissioner [department] shall establish criteria under which the department may substitute a desk review of the facility's compliance with applicable requirements [~~may be substituted~~] for the on-site inspection or survey under Subsection (d).

SECTION 3.0599. Sections 242.034(a), (d), and (h), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner [board] may establish by rule license fees for institutions licensed by the department under this chapter. The license fee may not exceed \$375 plus:

- (1) \$15 for each unit of capacity or bed space for which a license is sought; and
- (2) a background examination fee imposed under Subsection (d).

(d) The executive commissioner by rule [board] may establish a background examination fee in an amount necessary to defray the department's expenses in administering its duties under Sections 242.032(d) and (e).

(h) The license fees established under this chapter are an allowable cost for reimbursement under the medical assistance program administered by the commission [Texas Department of Human Services] under Chapter 32, Human Resources Code. Any fee increases shall be reflected in reimbursement rates prospectively.

SECTION 3.0600. Section 242.035(b), Health and Safety Code, is amended to read as follows:

(b) Unless prohibited by another state or federal requirement, the department shall allow a licensed institution to operate a portion of the institution under the standards of a lower licensing category. The executive commissioner [board] shall establish procedures and standards to accommodate an institution's operation under the lower category.

SECTION 3.0601. Section 242.036(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner [board] may adopt and [] publish [] and the department may enforce minimum standards relating to the grading of an institution[, other than an institution that provides maternity care,] in order to recognize those institutions that provide more than the minimum level of services and personnel as established by the executive commissioner [board].

SECTION 3.0602. Sections 242.037(a), (c), (d), (e), (f), (h), and (i), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner [department] shall make and the department shall enforce rules and minimum standards to implement this chapter, including rules and minimum standards relating to quality of life, quality of care, and residents' rights.

(c) The rules and standards adopted by the executive
commissioner [department] may not be less stringent than the
Medicaid certification standards and regulations imposed under the
Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L.
No. 100-203.

(d) To implement Sections 242.032(d) and (e), the executive
commissioner [department] by rule shall adopt minimum standards for
the background and qualifications of any person described by
Section 242.032(d). The department may not issue or renew a license

308-1 if a person described by Section 242.032 does not meet the minimum
 308-2 standards adopted under this section.

308-3 (e) In addition to standards or rules required by other
 308-4 provisions of this chapter, the executive commissioner [board]
 308-5 shall adopt and[–] publish[–] and the department shall enforce
 308-6 minimum standards relating to:

308-7 (1) the construction of an institution, including
 308-8 plumbing, heating, lighting, ventilation, and other housing
 308-9 conditions, to ensure the residents' health, safety, comfort, and
 308-10 protection from fire hazard;

308-11 (2) the regulation of the number and qualification of
 308-12 all personnel, including management and nursing personnel,
 308-13 responsible for any part of the care given to the residents;

308-14 (3) requirements for in-service education of all
 308-15 employees who have any contact with the residents;

308-16 (4) training on the care of persons with Alzheimer's
 308-17 disease and related disorders for employees who work with those
 308-18 persons;

308-19 (5) sanitary and related conditions in an institution
 308-20 and its surroundings, including water supply, sewage disposal, food
 308-21 handling, and general hygiene in order to ensure the residents'
 308-22 health, safety, and comfort;

308-23 (6) the nutritional needs of each resident according
 308-24 to good nutritional practice or the recommendations of the
 308-25 physician attending the resident;

308-26 (7) equipment essential to the residents' health and
 308-27 welfare;

308-28 (8) the use and administration of medication in
 308-29 conformity with applicable law and rules;

308-30 (9) care and treatment of residents and any other
 308-31 matter related to resident health, safety, and welfare;

308-32 (10) licensure of institutions; and

308-33 (11) implementation of this chapter.

308-34 (f) The executive commissioner [board] shall adopt and[–]
 308-35 publish[–] and the department shall enforce minimum standards
 308-36 requiring appropriate training in geriatric care for each
 308-37 individual who provides services to geriatric residents in an
 308-38 institution and who holds a license or certificate issued by an
 308-39 agency of this state that authorizes the person to provide the
 308-40 services. The minimum standards may require that each licensed or
 308-41 certified individual complete an appropriate program of continuing
 308-42 education or in-service training, as determined by department
 308-43 [board] rule, on a schedule determined by department [board] rule.

308-44 (h) [The board shall adopt each rule adopted by the Texas
 308-45 Board of Health under] Section 161.0051 applies [as part of the
 308-46 rules and standards adopted under this chapter that apply] to
 308-47 institutions serving residents who are elderly persons, and any
 308-48 rules and standards adopted under that section are considered to be
 308-49 rules and standards adopted under this chapter.

308-50 (i) The minimum standards adopted [by the board] under this
 308-51 section must require that each institution, as part of an existing
 308-52 training program, provide each registered nurse, licensed
 308-53 vocational nurse, nurse aide, and nursing assistant who provides
 308-54 nursing services in the institution at least one hour of training
 308-55 each year in caring for people with dementia.

308-56 SECTION 3.0603. Section 242.038, Health and Safety Code, is
 308-57 amended to read as follows:

308-58 Sec. 242.038. REASONABLE TIME TO COMPLY. The executive
 308-59 commissioner [board] by rule shall give an institution that is in
 308-60 operation when a rule or standard is adopted under this chapter a
 308-61 reasonable time to comply with the rule or standard.

308-62 SECTION 3.0604. Sections 242.0385(a) and (d), Health and
 308-63 Safety Code, are amended to read as follows:

308-64 (a) The executive commissioner [department] by rule shall
 308-65 adopt a procedure under which a person proposing to construct or
 308-66 modify an institution may submit building plans to the department
 308-67 for review for compliance with the department's architectural
 308-68 requirements before beginning construction or modification. In
 308-69 adopting the procedure, the executive commissioner [department]

309-1 shall set reasonable deadlines by which the department must
 309-2 complete review of submitted plans.

309-3 (d) A fee collected under this section shall be deposited in
 309-4 the general revenue fund [and may be appropriated only to the
 309-5 ~~department to conduct reviews under this section~~].

309-6 SECTION 3.0605. Section 242.039, Health and Safety Code, is
 309-7 amended to read as follows:

309-8 Sec. 242.039. FIRE SAFETY REQUIREMENTS. (a) The executive
 309-9 commissioner [board] shall adopt rules necessary to specify the
 309-10 edition of the Life Safety Code of the National Fire Protection
 309-11 Association that will be used to establish the life safety
 309-12 requirements for an institution licensed under this chapter.

309-13 (b) The executive commissioner [board] shall adopt the
 309-14 edition of the Life Safety Code of the National Fire Protection
 309-15 Association for fire safety as designated by federal law and
 309-16 regulations for an institution or portion of an institution that is
 309-17 constructed after September 1, 1993, and for an institution or
 309-18 portion of an institution that was operating or approved for
 309-19 construction on or before September 1, 1993.

309-20 (c) The executive commissioner [board] may not require more
 309-21 stringent fire safety standards than those required by federal law
 309-22 and regulation. The rules adopted under this section may not
 309-23 prevent an institution licensed under this chapter from voluntarily
 309-24 conforming to fire safety standards that are compatible with, equal
 309-25 to, or more stringent than those adopted by the executive
 309-26 commissioner [board].

309-27 (d) Licensed health care facilities in existence at the time
 309-28 of the effective date of this subsection may have their existing use
 309-29 or occupancy continued if such facilities comply with fire safety
 309-30 standards and ordinances in existence at the time of the effective
 309-31 date of this subsection.

309-32 (e) Notwithstanding any other provision of this section, a
 309-33 municipality shall have the authority to enact additional and
 309-34 higher fire safety standards applicable to new construction
 309-35 beginning on or after the effective date of this subsection.

309-36 [(f)(1) An advisory committee is created to propose rules
 309-37 for adoption by the department concerning the applicability of
 309-38 municipal ordinances and regulations to the remodeling and
 309-39 renovation of existing structures to be used as health care
 309-40 facilities licensed under this chapter.]

309-41 [(2) The advisory committee shall be appointed by the
 309-42 board and composed as follows:

309-43 [(A) two municipal fire marshals;
 309-44 [(B) four individuals representing the nursing
 309-45 home industry;
 309-46 [(C) the commissioner of human services or a
 309-47 designee;
 309-48 [(D) one building official from a municipality
 309-49 that has adopted the Uniform Building Code;
 309-50 [(E) one building official from a municipality
 309-51 that has adopted the Standard Building Code;
 309-52 [(F) one architect licensed under state law;
 309-53 [(G) one member of the Texas Board of Human
 309-54 Services; and
 309-55 [(H) one state Medicaid director or designee.]

309-56 [(3) The advisory committee shall serve without
 309-57 compensation or remuneration of any kind.]

309-58 (g) The executive commissioner [of the Health and Human
 309-59 Services Commission] shall adopt rules to implement an expedited
 309-60 inspection process that allows an applicant for a license or for a
 309-61 renewal of a license to obtain a life safety code and physical plant
 309-62 inspection not later than the 15th day after the date the request is
 309-63 made. The department may charge a fee to recover the cost of the
 309-64 expedited inspection. The rules must permit the department to
 309-65 charge [set] different fee amounts based on the size and type of
 309-66 institution.

309-67 SECTION 3.0606. Sections 242.040(a), (c), and (d), Health
 309-68 and Safety Code, are amended to read as follows:

309-69 (a) The department shall establish a system for certifying

310-1 institutions that meet standards adopted by the executive
 310-2 commissioner [board] concerning the specialized care and treatment
 310-3 of persons with Alzheimer's disease and related disorders.

310-4 (c) The executive commissioner [board] by rule may adopt
 310-5 standards for the specialized care and treatment of persons with
 310-6 Alzheimer's disease and related disorders and provide procedures
 310-7 for institutions applying for certification under this section.
 310-8 The rules must provide for a three-year certification period.

310-9 (d) The executive commissioner by rule [board] may
 310-10 establish and the department may collect [charge] fees for the
 310-11 certification in an amount necessary to administer this section.

310-12 SECTION 3.0607. Section 242.042(a), Health and Safety Code,
 310-13 is amended to read as follows:

310-14 (a) Each institution shall prominently and conspicuously
 310-15 post for display in a public area of the institution that is readily
 310-16 available to residents, employees, and visitors:

310-17 (1) the license issued under this chapter;

310-18 (2) a sign prescribed by the department that specifies
 310-19 complaint procedures established under this chapter or rules
 310-20 adopted under this chapter and that specifies how complaints may be
 310-21 registered with the department;

310-22 (3) a notice in a form prescribed by the department
 310-23 stating that licensing inspection reports and other related reports
 310-24 which show deficiencies cited by the department are available at
 310-25 the institution for public inspection and providing the
 310-26 department's toll-free telephone number that may be used to obtain
 310-27 information concerning the institution;

310-28 (4) a concise summary of the most recent inspection
 310-29 report relating to the institution;

310-30 (5) notice that the department can provide summary
 310-31 reports relating to the quality of care, recent investigations,
 310-32 litigation, and other aspects of the operation of the institution;

310-33 (6) notice that the Texas Board of Nursing Facility
 310-34 Administrators, if applicable, can provide information about the
 310-35 nursing facility administrator;

310-36 (7) any notice or written statement required to be
 310-37 posted under Section 242.072(c);

310-38 (8) notice that informational materials relating to
 310-39 the compliance history of the institution are available for
 310-40 inspection at a location in the institution specified by the sign;

310-41 (9) notice that employees, other staff, residents,
 310-42 volunteers, and family members and guardians of residents are
 310-43 protected from discrimination or retaliation as provided by
 310-44 Sections 260A.014 and 260A.015; and

310-45 (10) a sign required to be posted under Section
 310-46 260A.006(a).

310-47 SECTION 3.0608. Sections 242.043(a) and (h), Health and
 310-48 Safety Code, are amended to read as follows:

310-49 (a) The department or the department's representative may
 310-50 make any inspection, survey, or investigation that it considers
 310-51 necessary and may enter the premises of an institution at
 310-52 reasonable times to make an inspection, survey, or investigation in
 310-53 accordance with department [board] rules.

310-54 (h) The executive commissioner [department] shall establish
 310-55 proper procedures to ensure that copies of all forms and reports
 310-56 under this section are made available to consumers, service
 310-57 recipients, and the relatives of service recipients as the
 310-58 executive commissioner [department] considers proper.

310-59 SECTION 3.0609. Section 242.044(b), Health and Safety Code,
 310-60 is amended to read as follows:

310-61 (b) For at least two unannounced inspections each licensing
 310-62 period of an institution [other than one that provides maternity
 310-63 care], the department shall invite at least one person as a citizen
 310-64 advocate from:

310-65 (1) the AARP [American Association of Retired
 310-66 Persons];

310-67 (2) the Texas Senior Citizen Association;

310-68 (3) [the Texas Retired Federal Employees;

310-69 (4) the department's Certified Long-term [Long Term]

311-1 Care Ombudsman; or

311-2 (4) [(-5)] another statewide organization for the
311-3 elderly.

311-4 SECTION 3.0610. Section 242.045(b), Health and Safety Code,
311-5 is amended to read as follows:

311-6 (b) In this section, "unauthorized person" does not
311-7 include:

311-8 (1) the department;

311-9 (2) the office of the attorney general;

311-10 (3) a statewide organization for the elderly,
311-11 including the AARP and [American Association of Retired Persons,]
311-12 the Texas Senior Citizen Association[, and the Texas Retired
311-13 Federal Employees];

311-14 (4) an ombudsman or representative of the department
311-15 [Texas Department on Aging];

311-16 (5) a representative of an agency or organization when
311-17 a Medicare or Medicaid survey is made concurrently with a licensing
311-18 inspection; or

311-19 (6) any other person or entity authorized by law to
311-20 make an inspection or to accompany an inspector.

311-21 SECTION 3.0611. Section 242.046(a), Health and Safety Code,
311-22 is amended to read as follows:

311-23 (a) The department shall hold an open hearing in a licensed
311-24 institution[, other than an institution that provides maternity
311-25 care] if the department has taken a punitive action against the
311-26 institution in the preceding 12 months or if the department
311-27 receives a complaint from an ombudsman, advocate, resident, or
311-28 relative of a resident relating to a serious or potentially serious
311-29 problem in the institution and the department has reasonable cause
311-30 to believe the complaint is valid. The department is not required
311-31 to hold more than one open meeting in a particular institution in
311-32 each year.

311-33 SECTION 3.0612. Sections 242.047(a), (b), (c), and (e),
311-34 Health and Safety Code, are amended to read as follows:

311-35 (a) The department shall accept an annual accreditation
311-36 review from The [the] Joint Commission [on Accreditation of Health
311-37 Organizations] for a nursing facility [home] instead of an
311-38 inspection for renewal of a license under Section 242.033 and in
311-39 satisfaction of the requirements for certification [by the
311-40 department] for participation in the medical assistance program
311-41 under Chapter 32, Human Resources Code, and the federal Medicare
311-42 program, but only if:

311-43 (1) the nursing facility [home] is accredited by The
311-44 Joint Commission [the commission] under The Joint Commission's [the
311-45 commission's] long-term care standards;

311-46 (2) The Joint Commission [the commission] maintains an
311-47 annual inspection or review program [that] for each nursing
311-48 facility that the department determines [home,] meets the
311-49 [department's] applicable minimum standards [as confirmed by the
311-50 board];

311-51 (3) The Joint Commission [the commission] conducts an
311-52 annual on-site inspection or review of the facility [home];

311-53 (4) the nursing facility [home] submits to the
311-54 department a copy of its annual accreditation review from The Joint
311-55 Commission [the commission] in addition to the application, fee,
311-56 and any report required for renewal of a license or for
311-57 certification, as applicable; and

311-58 (5) the department has:

311-59 (A) determined whether a waiver or authorization
311-60 from a federal agency is necessary under federal law, including for
311-61 federal funding purposes, before the department accepts an annual
311-62 accreditation review from The Joint Commission [the joint
311-63 commission]:

311-64 (i) instead of an inspection for license
311-65 renewal purposes;

311-66 (ii) as satisfying the requirements for
311-67 certification [by the department] for participation in the medical
311-68 assistance program; or

311-69 (iii) as satisfying the requirements for

certification [by the department] for participation in the federal Medicare program; and

(B) obtained any necessary federal waivers or authorizations.

(b) The department shall coordinate its licensing and certification activities with The Joint Commission [~~the commission~~].

(c) The department and The Joint Commission [~~the commission~~] shall sign a memorandum of agreement to implement this section. The memorandum must provide that if all parties to the memorandum do not agree in the development, interpretation, and implementation of the memorandum, any area of dispute is to be resolved by the executive commissioner [~~board~~].

(e) This section does not require a nursing facility [~~home~~] to obtain accreditation from The Joint Commission [~~the commission~~].

SECTION 3.0613. Sections 242.049(a), (b), (c), (e), (f), (g), and (i), Health and Safety Code, are amended to read as follows:

(a) The department may evaluate data for quality of care in nursing facilities [~~homes~~].

(b) The department may gather data on a form or forms to be provided by the department to improve the quality of care in nursing facilities [~~homes~~] and may provide information to nursing facilities [~~homes~~] which will allow them to improve and maintain the quality of care which they provide. Data referred to in this section can include information compiled from documents otherwise available under Chapter 552, Government Code, including but not limited to individual survey reports and investigation reports.

(c) All licensed nursing facilities [~~homes~~] in the state may be required to submit information designated by the department as necessary to improve the quality of care in nursing facilities [~~homes~~].

(e) The information and reports, compilations, and analyses developed by the department for quality improvement shall be used only for the evaluation and improvement of quality care in nursing facilities [~~homes~~]. No department proceeding or record shall be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity, and shall not be admissible in any civil, administrative, or criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas Rules of Evidence.

(f) Notwithstanding Subsection (d), the department shall transmit reports, compilations, and analyses of the information provided by a nursing facility [~~home~~] to that nursing facility [~~home~~], and such disclosure shall not be violative of this section nor shall it constitute a waiver of confidentiality.

(g) A member, agent, or employee of the department may not disclose or be required to disclose a communication made to the department or a record or proceeding of the department required to be submitted under this section except to the nursing facility [~~home~~] in question or its agents or employees.

(i) Any information, reports, and other documents produced which are subject to any means of legal compulsion or which are considered to be public information under Chapter 260A [~~Subchapter E~~] and the rules adopted under that chapter [~~subchapter~~] shall continue to be subject to legal compulsion and be treated as public information under Chapter 260A [~~Subchapter E after the effective date of this Act~~], even though such information, reports, and other documents may be used in the collection, compilation, and analysis described in Subsections (b) and (d).

SECTION 3.0614. Section 242.052, Health and Safety Code, is amended to read as follows:

Sec. 242.052. DRUG TESTING OF EMPLOYEES. (a) An institution may establish a drug testing policy for employees of the institution. An institution that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the executive commissioner [~~board~~] or may use another drug testing policy.

(b) The executive commissioner [~~board~~] by rule shall adopt a

313-1 model drug testing policy for use by institutions. The model drug
 313-2 testing policy must be designed to ensure the safety of residents
 313-3 through appropriate drug testing and to protect the rights of
 313-4 employees. The model drug testing policy must:

313-5 (1) require at least one scheduled drug test each year
 313-6 for each employee of an institution that has direct contact with a
 313-7 resident in the institution; and

313-8 (2) authorize random, unannounced drug testing for
 313-9 employees described by Subdivision (1).

313-10 SECTION 3.0615. Section [242.062\(b\)](#), Health and Safety Code,
 313-11 is amended to read as follows:

313-12 (b) The executive commissioner [board] by rule shall
 313-13 provide for the placement of residents during the institution's
 313-14 suspension or closing to ensure their health and safety.

313-15 SECTION 3.0616. Sections [242.065\(e\)](#) and (i), Health and
 313-16 Safety Code, are amended to read as follows:

313-17 (e) If a person who is liable under this section fails to pay
 313-18 any amount the person is obligated to pay under this section, the
 313-19 state may seek satisfaction from any owner, other controlling
 313-20 person, or affiliate of the person found liable. The owner, other
 313-21 controlling person, or affiliate may be found liable in the same
 313-22 suit or in another suit on a showing by the state that the amount to
 313-23 be paid has not been paid or otherwise legally discharged. The
 313-24 executive commissioner [department] by rule may establish a method
 313-25 for satisfying an obligation imposed under this section from an
 313-26 insurance policy, letter of credit, or other contingency fund.

313-27 (i) In this section, "affiliate" means:

313-28 (1) with respect to a partnership other than a limited
 313-29 partnership, each partner of the partnership;

313-30 (2) with respect to a corporation:

313-31 (A) an officer;

313-32 (B) a director;

313-33 (C) a stockholder who owns, holds, or has the
 313-34 power to vote at least 10 percent of any class of securities issued
 313-35 by the corporation, regardless of whether the power is of record or
 313-36 beneficial; and

313-37 (D) a controlling individual;

313-38 (3) with respect to an individual:

313-39 (A) each partnership and each partner in the
 313-40 partnership in which the individual or any other affiliate of the
 313-41 individual is a partner; and

313-42 (B) each corporation or other business entity in
 313-43 which the individual or another affiliate of the individual is:

313-44 (i) an officer;

313-45 (ii) a director;

313-46 (iii) a stockholder who owns, holds, or has

313-47 the power to vote at least 10 percent of any class of securities
 313-48 issued by the corporation, regardless of whether the power is of
 313-49 record or beneficial; and

313-50 (iv) a controlling individual;

313-51 (4) with respect to a limited partnership:

313-52 (A) a general partner; and

313-53 (B) a limited partner who is a controlling
 313-54 individual;

313-55 (5) with respect to a limited liability company:

313-56 (A) an owner who is a manager as described by the
 313-57 Texas Limited Liability Company Law, as described by Section
 313-58 [1.008\(e\)](#), Business Organizations Code [Act (Article 1528n,
 313-59 Vernon's Texas Civil Statutes)]; and

313-60 (B) each owner who is a controlling individual;
 313-61 and

313-62 (6) with respect to any other business entity, a
 313-63 controlling individual.

313-64 SECTION 3.0617. Section [242.066\(d\)](#), Health and Safety Code,
 313-65 is amended to read as follows:

313-66 (d) The executive commissioner [board] shall establish
 313-67 gradations of penalties in accordance with the relative seriousness
 313-68 of the violation.

313-69 SECTION 3.0618. Sections [242.067\(g\)](#) and (h), Health and

314-1 Safety Code, are amended to read as follows:

314-2 (g) If the person charged with the violation consents to the
 314-3 administrative penalty recommended by the department, does not
 314-4 timely respond to a notice sent under Subsection (c) or (e), or
 314-5 fails to correct the violation to the department's satisfaction,
 314-6 the department [commissioner or the commissioner's designee] shall
 314-7 assess the recommended administrative penalty [~~recommended by the~~
 314-8 ~~department~~].

314-9 (h) If the department [commissioner or the commissioner's
 314-10 designee] assesses the recommended penalty, the department shall
 314-11 give written notice to the person charged of the decision and the
 314-12 person shall pay the penalty.

314-13 SECTION 3.0619. Section 242.068(a), Health and Safety Code,
 314-14 is amended to read as follows:

314-15 (a) An administrative law judge of the State Office of
 314-16 Administrative Hearings shall order a hearing and the department
 314-17 shall give notice of the hearing if a person charged under Section
 314-18 242.067(c) requests a hearing.

314-19 SECTION 3.0620. Sections 242.069(a), (b), (e), (f), and
 314-20 (g), Health and Safety Code, are amended to read as follows:

314-21 (a) The department [commissioner] shall give notice of the
 314-22 decision taken under Section 242.068(d) to the person charged. If
 314-23 the department [commissioner] finds that a violation has occurred
 314-24 and has assessed an administrative penalty, the department
 314-25 [commissioner] shall give written notice to the person charged of:

314-26 (1) the findings;
 314-27 (2) the amount of the penalty;
 314-28 (3) the rate of interest payable with respect to the
 314-29 penalty and the date on which interest begins to accrue;
 314-30 (4) whether payment of the penalty or other action
 314-31 under Section 242.071 is required; and
 314-32 (5) the person's right to judicial review of the order.

314-33 (b) Not later than the 30th day after the date on which the
 314-34 department's [commissioner's] order is final, the person charged
 314-35 with the penalty shall:

314-36 (1) pay the full amount of the penalty; or
 314-37 (2) file a petition for judicial review contesting the
 314-38 occurrence of the violation, the amount of the penalty, the failure
 314-39 to correct the violation to the department's satisfaction, or all
 314-40 of the above.

314-41 (e) If a penalty is reduced or not assessed, the department
 314-42 [commissioner] shall:

314-43 (1) remit to the person charged the appropriate amount
 314-44 of any penalty payment plus accrued interest; or
 314-45 (2) execute a release of the supersedeas bond if one
 314-46 has been posted.

314-47 (f) Accrued interest on amounts remitted by the department
 314-48 [commissioner] under Subsection (e)(1) shall be paid:

314-49 (1) at a rate equal to the rate charged on loans to
 314-50 depository institutions by the New York Federal Reserve Bank; and
 314-51 (2) for the period beginning on the date the penalty is
 314-52 paid under Subsection (b) and ending on the date the penalty is
 314-53 remitted.

314-54 (g) Interest under Subsection (d) shall be paid:

314-55 (1) at a rate equal to the rate charged on loans to
 314-56 depository institutions by the New York Federal Reserve Bank; and
 314-57 (2) for the period beginning on the date the notice of
 314-58 the department's [commissioner's] order is received by the person
 314-59 and ending on the date the penalty is paid.

314-60 SECTION 3.0621. Sections 242.071(a) and (i), Health and
 314-61 Safety Code, are amended to read as follows:

314-62 (a) In lieu of demanding payment of an administrative
 314-63 penalty assessed under Section 242.066, the department
 314-64 [commissioner] may, in accordance with this section, allow the
 314-65 person to use, under the supervision of the department, any portion
 314-66 of the penalty to ameliorate the violation or to improve services,
 314-67 other than administrative services, in the institution affected by
 314-68 the violation.

314-69 (i) The department shall approve or deny an amelioration

315-1 plan not later than the 45th day after the date the department
 315-2 receives the plan. On approval of a person's plan, [~~the department~~
 315-3 shall deny] a pending request for a hearing submitted by the person
 315-4 under Section **242.067(d)** shall be denied.

315-5 SECTION 3.0622. Section **242.072(a)**, Health and Safety Code,
 315-6 is amended to read as follows:

315-7 (a) If the ~~department~~ [commissioner] finds that an
 315-8 institution has committed an act for which a civil penalty may be
 315-9 imposed under Section **242.065**, the ~~department~~ [commissioner] may,
 315-10 as appropriate under the circumstances, order the institution to
 315-11 immediately suspend admissions.

315-12 SECTION 3.0623. Section **242.074(d)**, Health and Safety Code,
 315-13 is amended to read as follows:

315-14 (d) The ~~executive commissioner~~ [~~department~~] shall adopt
 315-15 rules to implement this section. The rules shall include the
 315-16 conditions that constitute a significant change in an institution's
 315-17 financial condition that are required to be reported under
 315-18 Subsection (a).

315-19 SECTION 3.0624. Section **242.095(b)**, Health and Safety Code,
 315-20 is amended to read as follows:

315-21 (b) The trustee may petition the court to order the release
 315-22 to the trustee of any payment owed the trustee for care and services
 315-23 provided to the residents if the payment has been withheld,
 315-24 including a payment withheld by the ~~commission~~ [~~Texas Department of~~
 315-25 ~~Human Services~~] at the recommendation of the department.

315-26 SECTION 3.0625. Section **242.096(d)**, Health and Safety Code,
 315-27 is amended to read as follows:

315-28 (d) The department shall disburse money from the nursing and
 315-29 convalescent home trust fund as ordered by the court in accordance
 315-30 with ~~department~~ [board] rules.

315-31 SECTION 3.0626. Sections **242.096(d)** and (e), Health and
 315-32 Safety Code, are amended to read as follows:

315-33 (d) The department shall disburse money from the assisted
 315-34 living facility trust fund as ordered by the court in accordance
 315-35 with ~~department~~ [board] rules.

315-36 (e) Any unencumbered amount in the assisted living facility
 315-37 trust fund in excess of \$500,000 at the end of each fiscal year
 315-38 shall be transferred to the credit of the general revenue fund [~~and~~
 315-39 ~~may be appropriated only to the department for its use in~~
 315-40 ~~administering and enforcing Chapter 247~~].

315-41 SECTION 3.0627. Sections **242.097(a)** and (c), Health and
 315-42 Safety Code, are amended to read as follows:

315-43 (a) In addition to the license fee provided by Section
 315-44 **242.034**, the ~~executive commissioner by rule~~ [~~department~~] shall
 315-45 adopt an annual fee to be [~~charged and~~] collected by the department
 315-46 if the amount of the nursing and convalescent home trust fund is
 315-47 less than \$10,000,000. The fee shall be deposited to the credit of
 315-48 the nursing and convalescent home trust fund created by this
 315-49 subchapter.

315-50 (c) The ~~executive commissioner~~ [~~department~~] shall set the
 315-51 fee for each nursing and convalescent home at \$1 for each licensed
 315-52 unit of capacity or bed space in that home or in an amount necessary
 315-53 to provide not more than \$10,000,000 in the fund. The total fees
 315-54 assessed in a year may not exceed \$20 for each licensed unit of
 315-55 capacity or bed space in a home.

315-56 SECTION 3.0628. Sections **242.097(a)** and (c), Health and
 315-57 Safety Code, are amended to read as follows:

315-58 (a) In addition to the license fee provided by Section
 315-59 **247.024**, the ~~executive commissioner by rule~~ [~~department~~] shall
 315-60 adopt an annual fee to be [~~charged and~~] collected by the department
 315-61 if the amount of the assisted living facility trust fund is less
 315-62 than \$500,000. The fee shall be deposited to the credit of the
 315-63 assisted living facility trust fund created by this subchapter.

315-64 (c) The ~~executive commissioner~~ [~~department~~] shall set the
 315-65 fee on the basis of the number of beds in assisted living facilities
 315-66 required to pay the fee and in an amount necessary to provide not
 315-67 more than \$500,000 in the assisted living facility trust fund.

315-68 SECTION 3.0629. Section **242.098(d)**, Health and Safety Code,
 315-69 is amended to read as follows:

(d) The amount that remains unreimbursed on the expiration of one year after the date on which the funds were received is delinquent and the department [Texas Department of Human Services] may determine that the home is ineligible for a Medicaid provider contract.

SECTION 3.0630. Section 242.156(b), Health and Safety Code, is amended to read as follows:

(b) The executive commissioner [department] shall specify the details of the examination.

SECTION 3.0631. Section 242.158, Health and Safety Code, is amended to read as follows:

Sec. 242.158. IDENTIFICATION OF CERTAIN NURSING FACILITY
[HOME] RESIDENTS REQUIRING MENTAL HEALTH OR INTELLECTUAL
DISABILITY [MENTAL RETARDATION] SERVICES. (a) Each resident of a
nursing facility [home] who is considering making a transition to a
community-based care setting shall be identified to determine the
presence of a mental illness or intellectual disability [mental
retardation], regardless of whether the resident is receiving
treatment or services for a mental illness or intellectual
disability [mental retardation].

(b) In identifying residents having a mental illness or intellectual disability [mental retardation], the department shall use an identification process that is at least as effective as the mental health and intellectual disability [mental retardation] identification process established by federal law. The results of the identification process may not be used to prevent a resident from remaining in the nursing facility [home] unless the nursing facility [home] is unable to provide adequate care for the resident.

(c) The department shall compile [and provide to the Texas Department of Mental Health and Mental Retardation] information regarding each resident identified as having a mental illness or intellectual disability [mental retardation] before the resident makes a transition from the nursing facility [home] to a community-based care setting. The department shall provide to the Department of State Health Services information regarding each resident identified as having a mental illness.

(d) The department and the [Texas] Department of State Health Services [Mental Health and Mental Retardation] shall use the information compiled and provided under Subsection (c) solely for the purposes of:

(1) determining the need for and funding levels of mental health and intellectual disability [~~mental retardation~~] services for residents making a transition from a nursing facility [home] to a community-based care setting;

- (2) providing mental health or intellectual disability [mental retardation] services to an identified resident after the resident makes that transition; and
- (3) referring an identified resident to a local mental health or local intellectual and developmental disability [mental retardation] authority or private provider for additional mental health or intellectual disability [mental retardation] services.

(e) This section does not authorize the department to decide for a resident of a nursing facility [home] that the resident will make a transition from the nursing facility [home] to a community-based care setting.

SECTION 3.0632. Section 242.181(1), Health and Safety Code, is amended to read as follows:

(1) "Person with a disability [~~Handicapped person~~]" means a person whose physical or mental functioning is impaired to the extent that the person needs medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

SECTION 3.0633. Section 242.182, Health and Safety Code, is amended to read as follows:

Sec. 242.182. RESPITE CARE. (a) An institution licensed under this chapter may provide respite care for an elderly person or a [handicapped] person with a disability according to a plan of care.

(b) The executive commissioner [board] may adopt rules for the regulation of respite care provided by an institution licensed under this chapter.

SECTION 3.0634. Section 242.185, Health and Safety Code, is amended to read as follows:

Sec. 242.185. INSPECTIONS. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect an institution's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter and with any rules the executive commissioner [board] may adopt to regulate respite care services.

SECTION 3.0635. Section 242.204, Health and Safety Code, is amended to read as follows:

Sec. 242.204. RULES. The executive commissioner [board] shall adopt rules governing:

(1) the content of the disclosure statement required by this subchapter, consistent with the information categories required by Section 242.202(d); and

(2) the amount of an administrative penalty to be assessed for a violation of this subchapter.

SECTION 3.0636. Sections 242.221(c) and (e), Health and Safety Code, are amended to read as follows:

(c) The department and the commission [~~Health and Human Services Commission~~] shall work together to apply for all available federal funds to help pay for the automated system.

(e) The department shall charge a fee to nursing facilities that do not receive their Medicaid reimbursements electronically. The executive commissioner by rule [department] shall set the fee in an amount necessary to cover the costs of manually processing and sending the reimbursements.

SECTION 3.0637. Section 242.226, Health and Safety Code, is amended to read as follows:

Sec. 242.226. RULES. The executive commissioner [department] shall adopt rules and make policy changes as necessary to improve the efficiency of the reimbursement process and to maximize the automated reimbursement system's capabilities.

SECTION 3.0638. Section 242.251, Health and Safety Code, is amended to read as follows:

Sec. 242.251. SCOPE OF SUBCHAPTER. This subchapter applies to any dispute between an institution licensed under this chapter and the department relating to:

(1) renewal of a license under Section 242.033;
(2) suspension or revocation of a license under
Section 242.061;
(3) assessment of a civil penalty under Section
242.065;
(4) assessment of a monetary penalty under Section
242.066; or
(5) assessment of a penalty as described by Section
32.021(n) [32.021(k)], Human Resources Code.

SECTION 3.0639. Section 242.264(a), Health and Safety Code, is amended to read as follows:

(a) The arbitrator may enter any order that may be entered by the department, executive commissioner [board], commissioner, or court under this chapter in relation to a dispute described by Section 242.251.

SECTION 3.0640. Section 242.302, Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 242.302. POWERS AND DUTIES OF DEPARTMENT AND EXECUTIVE COMMISSIONER. (a) The executive commissioner [board] may adopt rules consistent with this subchapter. The executive commissioner shall adopt and publish a code of ethics for nursing facility administrators.

(b) The department shall:

(1) [adopt and publish a code of ethics for nursing facility administrators;

318-1 [42] establish the qualifications of applicants for
 318-2 ~~licenses and the renewal of licenses issued under this subchapter;~~

318-3 [43] spend funds necessary for the proper
 318-4 administration of the department's assigned duties under this
 318-5 subchapter; and

318-6 (2) periodically assess the continuing education
 318-7 needs of license holders to determine whether specific course
 318-8 content should be required [44] establish reasonable and
 318-9 necessary fees for the administration and implementation of this
 318-10 subchapter; and

318-11 [45] establish a minimum number of hours of continuing
 318-12 education required to renew a license issued under this subchapter
 318-13 and periodically assess the continuing education needs of license
 318-14 holders to determine whether specific course content should be
 318-15 required].

318-16 (c) The department is the licensing agency for the healing
 318-17 arts, as provided by 42 U.S.C. Section 1396g.

318-18 (d) The executive commissioner shall establish:

318-19 (1) the qualifications of applicants for licenses and
 318-20 the renewal of licenses issued under this subchapter;

318-21 (2) reasonable and necessary fees for the
 318-22 administration and implementation of this subchapter; and

318-23 (3) a minimum number of hours of continuing education
 318-24 required to renew a license issued under this subchapter.

318-25 SECTION 3.0641. Section 242.303(d), Health and Safety Code,
 318-26 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
 318-27 Legislature, Regular Session, 1997, is amended to read as follows:

318-28 (d) The committee shall advise the department [board] on the
 318-29 licensing of nursing facility administrators, including the
 318-30 content of applications for licensure and of the examination
 318-31 administered to license applicants under Section 242.306. The
 318-32 committee shall review and recommend rules and minimum standards of
 318-33 conduct for the practice of nursing facility administration. The
 318-34 committee shall review all complaints against administrators and
 318-35 make recommendations to the department regarding disciplinary
 318-36 actions. Failure of the committee to review complaints and make
 318-37 recommendations in a timely manner shall not prevent the department
 318-38 from taking disciplinary action.

318-39 SECTION 3.0642. Section 242.304(a), Health and Safety Code,
 318-40 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
 318-41 Legislature, Regular Session, 1997, is amended to read as follows:

318-42 (a) The executive commissioner, in consultation with the
 318-43 department, [board] by rule shall set reasonable and necessary fees
 318-44 in amounts necessary to cover the cost of administering this
 318-45 subchapter. The executive commissioner [board] by rule may set
 318-46 different licensing fees for different categories of licenses.

318-47 SECTION 3.0643. Sections 242.306(b) and (c), Health and
 318-48 Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts
 318-49 of the 75th Legislature, Regular Session, 1997, are amended to read
 318-50 as follows:

318-51 (b) The department [board] shall prescribe the form of the
 318-52 application and the executive commissioner may by rule establish
 318-53 dates by which applications and fees must be received.

318-54 (c) An applicant for a nursing facility administrator's
 318-55 license must take a licensing examination under this subchapter.
 318-56 To qualify for the licensing examination, the applicant must have
 318-57 satisfactorily completed a course of instruction and training
 318-58 prescribed by the executive commissioner [board] that is conducted
 318-59 by or in cooperation with an accredited postsecondary educational
 318-60 institution and that is designed and administered to provide
 318-61 sufficient knowledge of:

318-62 (1) the needs served by nursing facilities;
 318-63 (2) the laws governing the operation of nursing
 318-64 facilities and the protection of the interests of facility
 318-65 residents; and

318-66 (3) the elements of nursing facility administration.

318-67 SECTION 3.0644. Section 242.307(d), Health and Safety Code,
 318-68 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
 318-69 Legislature, Regular Session, 1997, is amended to read as follows:

(d) The executive commissioner [board] may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.

SECTION 3.0645. Sections 242.308(c), (d), and (e), Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, are amended to read as follows:

(c) A license is valid for two years. The executive
commissioner [board] by rule may adopt a system under which
licenses expire on various dates during the two-year period. For
the year in which a license expiration date is changed, license fees
payable on the original expiration date shall be prorated on a
monthly basis so that each license holder shall pay only that
portion of the license fee that is allocable to the number of months
during which the license is valid. On renewal of the license on the
new expiration date, the total license renewal fee is payable.

(d) The executive commissioner [board] by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.

(e) The executive commissioner [board] by rule may provide for a license holder to be placed on inactive status.

SECTION 3.0646. Section 242.309, Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 242.309. PROVISIONAL LICENSE. (a) The department [board] shall issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a nursing facility administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;

(2) has passed a national or other examination recognized by the department [board] relating to the practice of nursing facility administration; and

(3) is sponsored by a person licensed by the department [board] under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The department [board] may waive the requirement of Subsection (a)(3) for an applicant if the department [board] determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the department [board] approves or denies the provisional license holder's application for a license. The department [board] shall issue a license under this subchapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 242.306; or

(2) the provisional license holder passes the part of the examination under Section 242.307 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of nursing facility administration in this state and:

(A) the department [board] verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter; and

(B) the provisional license holder satisfies all other license requirements under this subchapter.

(d) The department [board] must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The department [board] may extend the 180-day period if the results of an examination have not been received by the department [board] before the end of that period.

(e) The executive commissioner by rule [board] may

320-1 establish a fee for provisional licenses in an amount reasonable
 320-2 and necessary to cover the cost of issuing the license.

320-3 SECTION 3.0647. Section 242.311, Health and Safety Code, as
 320-4 added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
 320-5 Legislature, Regular Session, 1997, is amended to read as follows:

320-6 Sec. 242.311. MANDATORY CONTINUING EDUCATION. (a) The
 320-7 executive commissioner [board] by rule shall establish a minimum
 320-8 number of hours of continuing education required to renew a license
 320-9 under this subchapter. The department may assess the continuing
 320-10 education needs of license holders and may require license holders
 320-11 to attend continuing education courses specified by department rule
 320-12 [~~the board~~].

320-13 (b) The executive commissioner [board] shall identify the
 320-14 key factors for the competent performance by a license holder of the
 320-15 license holder's professional duties. The department shall adopt a
 320-16 procedure to assess a license holder's participation in continuing
 320-17 education programs.

320-18 SECTION 3.0648. Sections 242.312(c), (e), (f), and (g),
 320-19 Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B.
 320-20 84), Acts of the 75th Legislature, Regular Session, 1997, are
 320-21 amended to read as follows:

320-22 (c) The executive commissioner [board] by rule shall adopt a
 320-23 form to standardize information concerning complaints made to the
 320-24 department. The executive commissioner [board] by rule shall
 320-25 prescribe information to be provided to a person when the person
 320-26 files a complaint with the department.

320-27 (e) The executive commissioner [board] shall adopt rules
 320-28 concerning the investigation of complaints filed with the
 320-29 department. The rules adopted under this subsection shall:

320-30 (1) distinguish between categories of complaints;
 320-31 (2) ensure that complaints are not dismissed without
 320-32 appropriate consideration;
 320-33 (3) require that the executive commissioner [board] be
 320-34 advised at least quarterly of complaints that have been dismissed
 320-35 and require that a letter be sent to each person who has filed a
 320-36 complaint that is dismissed explaining the action taken on the
 320-37 complaint;

320-38 (4) ensure that the person who filed the complaint has
 320-39 an opportunity to explain the allegations made in the complaint;
 320-40 and

320-41 (5) prescribe guidelines concerning the categories of
 320-42 complaints that may require the use of a private investigator and
 320-43 the procedures to be followed by the department in obtaining the
 320-44 services of a private investigator.

320-45 (f) The department shall dispose of all complaints in a
 320-46 timely manner. The executive commissioner [board] by rule shall
 320-47 establish a schedule for initiating a complaint investigation that
 320-48 is under the control of the department not later than the 30th day
 320-49 after the date the complaint is received by the department. The
 320-50 schedule shall be kept in the information file for the complaint,
 320-51 and all parties shall be notified of the projected time
 320-52 requirements for pursuing the complaint. A change in the schedule
 320-53 must be noted in the complaint information file and all parties to
 320-54 the complaint must be notified not later than the seventh day after
 320-55 the date the change is made.

320-56 (g) The commissioner shall notify the executive
 320-57 commissioner [board] at least quarterly of complaints that have
 320-58 extended beyond the time prescribed by the executive commissioner
 320-59 [~~board~~] for resolving complaints so that the department may take
 320-60 any necessary corrective actions on the processing of complaints.

320-61 SECTION 3.0649. Section 242.315(a), Health and Safety Code,
 320-62 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
 320-63 Legislature, Regular Session, 1997, is amended to read as follows:

320-64 (a) The department may impose an administrative penalty
 320-65 against a person licensed or regulated under this subchapter who
 320-66 violates this subchapter or a rule adopted [~~by the board~~] under this
 320-67 subchapter.

320-68 SECTION 3.0650. Section 242.316(d), Health and Safety Code,
 320-69 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th

321-1 Legislature, Regular Session, 1997, is amended to read as follows:
 321-2 (d) If the person requests a hearing, the department shall
 321-3 [set a hearing and] give notice of the hearing to the person. The
 321-4 hearing shall be held in accordance with the rules on contested case
 321-5 hearings adopted by the executive commissioner.

321-6 SECTION 3.0651. Section 242.317(a), Health and Safety Code,
 321-7 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
 321-8 Legislature, Regular Session, 1997, is amended to read as follows:

321-9 (a) The executive commissioner [department] by rule shall
 321-10 adopt procedures governing:

321-11 (1) informal disposition of a contested case under
 321-12 Section 2001.056, Government Code; and
 321-13 (2) informal proceedings held in compliance with
 321-14 Section 2001.054, Government Code.

321-15 SECTION 3.0652. Section 242.318, Health and Safety Code, as
 321-16 added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
 321-17 Legislature, Regular Session, 1997, is amended to read as follows:

321-18 Sec. 242.318. MONITORING OF LICENSE HOLDER. The executive
 321-19 commissioner [department] by rule shall develop a system for
 321-20 monitoring a license holder's compliance with the requirements of
 321-21 this subchapter. Rules adopted under this section shall include
 321-22 procedures for monitoring a license holder who is required by the
 321-23 department to perform certain acts to ascertain that the license
 321-24 holder performs the required acts and to identify and monitor
 321-25 license holders who represent a risk to the public.

321-26 SECTION 3.0653. Section 242.403, Health and Safety Code, is
 321-27 amended to read as follows:

321-28 Sec. 242.403. STANDARDS FOR QUALITY OF LIFE AND QUALITY OF
 321-29 CARE. (a) The executive commissioner [department] shall adopt
 321-30 standards to implement Sections 242.401 and 242.402. Those
 321-31 standards must, at a minimum, address:

321-32 (1) admission of residents;
 321-33 (2) care of residents younger than 18 years of age;
 321-34 (3) an initial assessment and comprehensive plan of
 321-35 care for residents;

321-36 (4) transfer or discharge of residents;
 321-37 (5) clinical records;
 321-38 (6) infection control at the institution;
 321-39 (7) rehabilitative services;
 321-40 (8) food services;
 321-41 (9) nutrition services provided by a director of food
 321-42 services who is licensed by the Texas State Board of Examiners of
 321-43 Dietitians or, if not so licensed, who is in scheduled consultation
 321-44 with a person who is so licensed as frequently and for such time as
 321-45 the executive commissioner [department] shall determine necessary
 321-46 to assure each resident a diet that meets the daily nutritional and
 321-47 special dietary needs of each resident;

321-48 (10) social services and activities;
 321-49 (11) prevention of pressure sores;
 321-50 (12) bladder and bowel retraining programs for
 321-51 residents;
 321-52 (13) prevention of complications from nasogastric or
 321-53 gastrostomy tube feedings;
 321-54 (14) relocation of residents within an institution;
 321-55 (15) postmortem procedures; and
 321-56 (16) appropriate use of chemical and physical
 321-57 restraints.

321-58 (b) The executive commissioner [department] may require an
 321-59 institution to submit information to the department, including
 321-60 Minimum Data Set Resident Assessments, necessary to ensure the
 321-61 quality of care in institutions. Information submitted to the
 321-62 department that identifies a resident of an institution is
 321-63 confidential and not subject to disclosure under Chapter 552,
 321-64 Government Code.

321-65 (c) The executive commissioner [department] may adopt
 321-66 standards in addition to those required by Subsection (a) to
 321-67 implement Sections 242.401 and 242.402.

321-68 SECTION 3.0654. Sections 242.501(a) and (c), Health and
 321-69 Safety Code, are amended to read as follows:

(a) The executive commissioner [department] by rule shall adopt a statement of the rights of a resident. The statement must be consistent with Chapter 102, Human Resources Code, but shall reflect the unique circumstances of a resident at an institution. At a minimum, the statement of the rights of a resident must address the resident's constitutional, civil, and legal rights and the resident's right:

- (1) to be free from abuse and exploitation;
 - (2) to safe, decent, and clean conditions;
 - (3) to be treated with courtesy, consideration, and respect;
 - (4) to not be subjected to discrimination based on age, race, religion, sex, nationality, or disability and to practice the resident's own religious beliefs;
 - (5) to place in the resident's room an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative;
 - (6) to privacy, including privacy during visits and telephone calls;
 - (7) to complain about the institution and to organize or participate in any program that presents residents' concerns to the administrator of the institution;
 - (8) to have information about the resident in the possession of the institution maintained as confidential;
 - (9) to retain the services of a physician the resident chooses, at the resident's own expense or through a health care plan, and to have a physician explain to the resident, in language that the resident understands, the resident's complete medical condition, the recommended treatment, and the expected results of the treatment, including reasonably expected effects, side effects, and risks associated with psychoactive medications;
 - (10) to participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;
 - (11) to a written statement or admission agreement describing the services provided by the institution and the related charges;
 - (12) to manage the resident's own finances or to delegate that responsibility to another person;
 - (13) to access money and property that the resident has deposited with the institution and to an accounting of the resident's money and property that are deposited with the institution and of all financial transactions made with or on behalf of the resident;
 - (14) to keep and use personal property, secure from theft or loss;
 - (15) to not be relocated within the institution, except in accordance with standards adopted [by the department] under Section 242.403;
 - (16) to receive visitors;
 - (17) to receive unopened mail and to receive assistance in reading or writing correspondence;
 - (18) to participate in activities inside and outside the institution;
 - (19) to wear the resident's own clothes;
 - (20) to discharge himself or herself from the institution unless the resident is an adjudicated mental incompetent;
 - (21) to not be discharged from the institution except as provided in the standards adopted [by the department] under Section 242.403;
 - (22) to be free from any physical or chemical restraints imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms; and
 - (23) to receive information about prescribed psychoactive medication from the person prescribing the medication or that person's designee, to have any psychoactive medications prescribed and administered in a responsible manner, as mandated by Section 242.505, and to refuse to consent to the prescription of

323-1 psychoactive medications.

323-2 (c) The executive commissioner [department] may adopt
323-3 rights of residents in addition to those required by Subsection (a)
323-4 and may consider additional rights applicable to residents in other
323-5 jurisdictions.

323-6 SECTION 3.0655. Section 242.601(b), Health and Safety Code,
323-7 is amended to read as follows:

323-8 (b) The medication administration procedures must comply
323-9 with this subchapter and the rules adopted [by the board] under
323-10 Section 242.608.

323-11 SECTION 3.0656. Section 242.608, Health and Safety Code, is
323-12 amended to read as follows:

323-13 Sec. 242.608. RULES FOR ADMINISTRATION OF MEDICATION. The
323-14 executive commissioner [board] by rule shall establish:

323-15 (1) minimum requirements for the issuance, denial,
323-16 renewal, suspension, emergency suspension, and revocation of a
323-17 permit to administer medication to a resident;

323-18 (2) curricula to train persons to administer
323-19 medication to a resident;

323-20 (3) minimum standards for the approval of programs to
323-21 train persons to administer medication to a resident and for
323-22 rescinding approval; and

323-23 (4) the acts and practices that are allowed or
323-24 prohibited to a permit holder.

323-25 SECTION 3.0657. Section 242.609(a), Health and Safety Code,
323-26 is amended to read as follows:

323-27 (a) An application for the approval of a training program
323-28 must be made to the department on a form and under rules prescribed
323-29 by the executive commissioner [board].

323-30 SECTION 3.0658. Sections 242.610(a), (c), (d), and (g),
323-31 Health and Safety Code, are amended to read as follows:

323-32 (a) To be issued or to have renewed a permit to administer
323-33 medication, a person shall apply to the department on a form
323-34 prescribed and under rules adopted by the executive commissioner
323-35 [board].

323-36 (c) The executive commissioner [department] shall require a
323-37 permit holder to satisfactorily complete a continuing education
323-38 course approved by the department for renewal of the permit.

323-39 (d) Subject to Subsections (h)-(m), the department shall
323-40 issue a permit or renew a permit to an applicant who:

323-41 (1) meets the minimum requirements adopted under
323-42 Section 242.608;

323-43 (2) successfully completes the examination or the
323-44 continuing education requirements; and

323-45 (3) pays a nonrefundable application fee determined by
323-46 the executive commissioner by rule [board].

323-47 (g) The executive commissioner [board] by rule may adopt a
323-48 system under which permits expire on various dates during the year.
323-49 For the year in which the permit expiration date is changed, the
323-50 department shall prorate permit fees on a monthly basis so that each
323-51 permit holder pays only that portion of the permit fee that is
323-52 allocable to the number of months during which the permit is valid.
323-53 On renewal of the permit on the new expiration date, the total
323-54 permit renewal fee is payable.

323-55 SECTION 3.0659. Section 242.611, Health and Safety Code, is
323-56 amended to read as follows:

323-57 Sec. 242.611. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO
323-58 ADMINISTER MEDICATION. The executive commissioner by rule [board]
323-59 shall set the fees in amounts reasonable and necessary to recover
323-60 the amount projected by the department as required to administer
323-61 its functions. Except as otherwise provided by Section 242.610,
323-62 the fees may not exceed:

323-63 (1) \$25 for a combined permit application and
323-64 examination fee; and

323-65 (2) \$15 for a renewal permit application fee.

323-66 SECTION 3.0660. Sections 242.612(a) and (c), Health and
323-67 Safety Code, are amended to read as follows:

323-68 (a) The department [board] shall revoke, suspend, or refuse
323-69 to renew a permit or shall reprimand a permit holder for a violation

324-1 of this subchapter or a rule [~~of the board~~] adopted under this
 324-2 subchapter. In addition, the department [~~board~~] may suspend a
 324-3 permit in an emergency or rescind training program approval.

324-4 (c) The department [~~board~~] may place on probation a person
 324-5 whose permit is suspended. If a permit suspension is probated, the
 324-6 department [~~board~~] may require the person:

324-7 (1) to report regularly to the department on matters
 324-8 that are the basis of the probation;

324-9 (2) to limit practice to the areas prescribed by the
 324-10 department [~~board~~]; or

324-11 (3) to continue or review professional education until
 324-12 the person attains a degree of skill satisfactory to the department
 324-13 [~~board~~] in those areas that are the basis of the probation.

324-14 SECTION 3.0661. Section 242.613(c), Health and Safety Code,
 324-15 is amended to read as follows:

324-16 (c) If requested in writing by a permit holder whose permit
 324-17 is suspended, an administrative law judge of the State Office of
 324-18 Administrative Hearings [~~department~~] shall conduct a hearing to
 324-19 continue, modify, or rescind the emergency suspension.

324-20 SECTION 3.0662. Section 242.844, Health and Safety Code, is
 324-21 amended to read as follows:

324-22 Sec. 242.844. REQUIRED FORM ON ADMISSION. The executive
 324-23 commissioner [~~department~~] by rule shall prescribe a form that must
 324-24 be completed and signed on a resident's admission to an institution
 324-25 by or on behalf of the resident. The form must state:

324-26 (1) that a person who places an electronic monitoring
 324-27 device in the room of a resident or who uses or discloses a tape or
 324-28 other recording made by the device may be civilly liable for any
 324-29 unlawful violation of the privacy rights of another;

324-30 (2) that a person who covertly places an electronic
 324-31 monitoring device in the room of a resident or who consents to or
 324-32 acquiesces in the covert placement of the device in the room of a
 324-33 resident has waived any privacy right the person may have had in
 324-34 connection with images or sounds that may be acquired by the device;

324-35 (3) that a resident or the resident's guardian or legal
 324-36 representative is entitled to conduct authorized electronic
 324-37 monitoring under Subchapter R, Chapter 242, Health and Safety Code,
 324-38 and that if the institution refuses to permit the electronic
 324-39 monitoring or fails to make reasonable physical accommodations for
 324-40 the authorized electronic monitoring that the person should contact
 324-41 the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services;

324-42 (4) the basic procedures that must be followed to
 324-43 request authorized electronic monitoring;

324-44 (5) the manner in which this chapter affects the legal
 324-45 requirement to report abuse or neglect when electronic monitoring
 324-46 is being conducted; and

324-47 (6) any other information regarding covert or
 324-48 authorized electronic monitoring that the executive commissioner
 324-49 [~~department~~] considers advisable to include on the form.

324-50 SECTION 3.0663. Section 242.845(c), Health and Safety Code,
 324-51 is amended to read as follows:

324-52 (c) If a resident does not have capacity to request
 324-53 electronic monitoring but has not been judicially declared to lack
 324-54 the required capacity, only the legal representative of the
 324-55 resident may request electronic monitoring under this subchapter.
 324-56 The executive commissioner [~~department~~] by rule shall prescribe:

324-57 (1) guidelines that will assist institutions, family
 324-58 members of residents, advocates for residents, and other interested
 324-59 persons to determine when a resident lacks the required capacity;
 324-60 and

324-61 (2) who may be considered to be a resident's legal
 324-62 representative for purposes of this subchapter, including:

324-63 (A) persons who may be considered the legal
 324-64 representative under the terms of an instrument executed by the
 324-65 resident when the resident had capacity; and

324-66 (B) persons who may become the legal
 324-67 representative for the limited purpose of this subchapter under a
 324-68 procedure prescribed by the executive commissioner [~~department~~].

324-69 SECTION 3.0664. Section 242.846(h), Health and Safety Code,

325-1 is amended to read as follows:

325-2 (h) The executive commissioner [department] may adopt rules
 325-3 prescribing the place or places that a form signed under this
 325-4 section must be maintained and the period for which it must be
 325-5 maintained.

325-6 SECTION 3.0665. Section 242.847(g), Health and Safety Code,
 325-7 is amended to read as follows:

325-8 (g) An institution may require an electronic monitoring
 325-9 device to be installed in a manner that is safe for residents,
 325-10 employees, or visitors who may be moving about the room. The
 325-11 executive commissioner [department] may adopt rules regarding the
 325-12 safe placement of an electronic monitoring device.

325-13 SECTION 3.0666. Section 242.849(c), Health and Safety Code,
 325-14 is amended to read as follows:

325-15 (c) A person who sends more than one tape or recording to the
 325-16 department shall identify for the department each tape or recording
 325-17 on which the person believes that an incident of abuse or evidence
 325-18 of neglect may be found. The executive commissioner [department]
 325-19 may adopt rules encouraging persons who send a tape or recording to
 325-20 the department to identify the place on the tape or recording that
 325-21 an incident of abuse or evidence of neglect may be found.

325-22 SECTION 3.0667. Section 242.850, Health and Safety Code, is
 325-23 amended to read as follows:

325-24 Sec. 242.850. NOTICE AT ENTRANCE TO INSTITUTION. Each
 325-25 institution shall post a notice at the entrance to the institution
 325-26 stating that the rooms of some residents may be being monitored
 325-27 electronically by or on behalf of the residents and that the
 325-28 monitoring is not necessarily open and obvious. The executive
 325-29 commissioner [department] by rule shall prescribe the format and
 325-30 the precise content of the notice.

325-31 SECTION 3.0668. Section 242.901, Health and Safety Code, is
 325-32 amended to read as follows:

325-33 Sec. 242.901. DEFINITION [DEFINITIONS]. In this
 325-34 subchapter, "family" [+] [1] "Department" means the Department of Aging and
 325-35 Disability Services.

325-36 [2] "Executive commissioner" means the executive
 325-37 commissioner of the Health and Human Services Commission.

325-38 [3] "Family" council" means a group of family
 325-39 members, friends, or legal guardians of residents, who organize and
 325-40 meet privately or openly.

325-41 SECTION 3.0669. Section 243.002, Health and Safety Code, is
 325-42 amended by amending Subdivisions (2) and (3) and adding Subdivision
 325-43 (3-a) to read as follows:

325-44 (2) "Commissioner" means the commissioner of state
 325-45 health services [Board] means the Texas Board of Health.

325-46 (3) "Department" means the [Texas] Department of State
 325-47 Health Services.

325-48 (3-a) "Executive commissioner" means the executive
 325-49 commissioner of the Health and Human Services Commission.

325-50 SECTION 3.0670. Sections 243.005(b), (e), and (f), Health
 325-51 and Safety Code, are amended to read as follows:

325-52 (b) Each application must be accompanied by a nonrefundable
 325-53 license fee in an amount set by the executive commissioner by rule
 325-54 [board].

325-55 (e) The license fee must be paid every two years [annually]
 325-56 on renewal of the license.

325-57 (f) The department shall issue a renewal license to a center
 325-58 certified under Title XVIII of the Social Security Act (42 U.S.C.
 325-59 Section 1395 et seq.) when the center:

325-60 (1) remits any [annual] license fee; and
 325-61 (2) submits the inspection results or the inspection
 325-62 results report from the certification body.

325-63 SECTION 3.0671. Section 243.007, Health and Safety Code, is
 325-64 amended to read as follows:

325-65 Sec. 243.007. FEE AMOUNTS [FEES]. The executive
 325-66 commissioner by rule [board] shall set fees imposed by this chapter
 325-67 in amounts reasonable and necessary to defray the cost of
 325-68 administering this chapter and as prescribed by Section 12.0111.

326-1 SECTION 3.0672. Section 243.008, Health and Safety Code, is
 326-2 amended to read as follows:

326-3 Sec. 243.008. DEPOSIT OF FEES [AMBULATORY SURGICAL CENTER
 326-4 LICENSING FUND]. All fees collected under this chapter shall be
 326-5 deposited in the state treasury to the credit of the general revenue
 326-6 [ambulatory surgical center licensing] fund [and may be
 326-7 appropriated to the department only to administer and enforce this
 326-8 chapter].

326-9 SECTION 3.0673. Section 243.009, Health and Safety Code, is
 326-10 amended to read as follows:

326-11 Sec. 243.009. ADOPTION OF RULES. The executive
 326-12 commissioner [board] shall adopt rules necessary to implement this
 326-13 chapter, including requirements for the issuance, renewal, denial,
 326-14 suspension, and revocation of a license to operate an ambulatory
 326-15 surgical center.

326-16 SECTION 3.0674. Section 243.010(c), Health and Safety Code,
 326-17 is amended to read as follows:

326-18 (c) This section does not authorize the executive
 326-19 commissioner [board] to:

326-20 (1) establish the qualifications of a licensed
 326-21 practitioner; or

326-22 (2) permit a person to provide health care services
 326-23 who is not authorized to provide those services under another state
 326-24 law.

326-25 SECTION 3.0675. Section 243.0115, Health and Safety Code,
 326-26 is amended to read as follows:

326-27 Sec. 243.0115. EMERGENCY SUSPENSION. The department may
 326-28 issue an emergency order to suspend a license issued under this
 326-29 chapter if the department has reasonable cause to believe that the
 326-30 conduct of a license holder creates an immediate danger to the
 326-31 public health and safety. An emergency suspension is effective
 326-32 immediately without a hearing on notice to the license holder. On
 326-33 written request of the license holder to the department for a
 326-34 hearing, the department shall refer the matter to the State Office
 326-35 of Administrative Hearings. An administrative law judge of the
 326-36 office [, the department] shall conduct a hearing not earlier than
 326-37 the 10th day or later than the 30th day after the date the hearing
 326-38 request is received by the department to determine if the emergency
 326-39 suspension is to be continued, modified, or rescinded. The hearing
 326-40 and any appeal are governed by the department's rules for a
 326-41 contested case hearing and Chapter 2001, Government Code.

326-42 SECTION 3.0676. Sections 243.015(h), (i), (j), (k), and
 326-43 (l), Health and Safety Code, are amended to read as follows:

326-44 (h) If the person accepts the determination and recommended
 326-45 penalty or if the person fails to respond to the notice, the
 326-46 department [commissioner of public health] by order shall [approve
 326-47 the determination and] impose the recommended penalty.

326-48 (i) If the person requests a hearing, the department
 326-49 [commissioner of public health] shall refer the matter to the State
 326-50 Office of Administrative Hearings, which shall promptly set a
 326-51 hearing date, and the department shall give written notice of the
 326-52 time and place of the hearing to the person. An administrative law
 326-53 judge of that office [the State Office of Administrative Hearings]
 326-54 shall conduct the hearing.

326-55 (j) The administrative law judge shall make findings of fact
 326-56 and conclusions of law and promptly issue to the department
 326-57 [commissioner of public health] a proposal for a decision about the
 326-58 occurrence of the violation and the amount of a proposed penalty.

326-59 (k) Based on the findings of fact, conclusions of law, and
 326-60 proposal for a decision, the department [commissioner of public
 326-61 health] by order may:

326-62 (1) find that a violation occurred and impose a
 326-63 penalty; or

326-64 (2) find that a violation did not occur.

326-65 (1) The notice of the department's [commissioner's] order
 326-66 under Subsection (k) that is sent to the person in accordance with
 326-67 Chapter 2001, Government Code, must include a statement of the
 326-68 right of the person to judicial review of the order.

326-69 SECTION 3.0677. Sections 243.016(a), (b), and (c), Health

327-1 and Safety Code, are amended to read as follows:

327-2 (a) Within 30 days after the date an order of the department
 327-3 [~~commissioner of public health~~] under Section 243.015(k) that
 327-4 imposes an administrative penalty becomes final, the person shall:

327-5 (1) pay the penalty; or

327-6 (2) file a petition for judicial review of the
 327-7 department's [~~commissioner's~~] order contesting the occurrence of
 327-8 the violation, the amount of the penalty, or both.

327-9 (b) Within the 30-day period prescribed by Subsection (a), a
 327-10 person who files a petition for judicial review may:

327-11 (1) stay enforcement of the penalty by:

327-12 (A) paying the penalty to the court for placement
 327-13 in an escrow account; or

327-14 (B) giving the court a supersedeas bond approved
 327-15 by the court that:

327-16 (i) is for the amount of the penalty; and

327-17 (ii) is effective until all judicial review
 327-18 of the department's [~~commissioner's~~] order is final; or

327-19 (2) request the court to stay enforcement of the
 327-20 penalty by:

327-21 (A) filing with the court a sworn affidavit of
 327-22 the person stating that the person is financially unable to pay the
 327-23 penalty and is financially unable to give the supersedeas bond; and

327-24 (B) sending a copy of the affidavit to the
 327-25 department [~~commissioner of public health~~] by certified mail.

327-26 (c) If the department [~~commissioner of public health~~]
 327-27 receives a copy of an affidavit under Subsection (b)(2), the
 327-28 department [~~commissioner~~] may file with the court, within five days
 327-29 after the date the copy is received, a contest to the affidavit.
 327-30 The court shall hold a hearing on the facts alleged in the affidavit
 327-31 as soon as practicable and shall stay the enforcement of the penalty
 327-32 on finding that the alleged facts are true. The person who files an
 327-33 affidavit has the burden of proving that the person is financially
 327-34 unable to pay the penalty or to give a supersedeas bond.

327-35 SECTION 3.0678. Section 244.002, Health and Safety Code, is
 327-36 amended by amending Subdivision (3) and adding Subdivision (3-a) to
 327-37 read as follows:

327-38 (3) "Department" means the [Texas] Department of State
 327-39 Health Services.

327-40 (3-a) "Executive commissioner" means the executive
 327-41 commissioner of the Health and Human Services Commission.

327-42 SECTION 3.0679. Sections 244.005(b), (c), and (e), Health
 327-43 and Safety Code, are amended to read as follows:

327-44 (b) Each application must be accompanied by a nonrefundable
 327-45 license fee in an amount set by the executive commissioner by rule
 327-46 [~~board~~].

327-47 (c) The application must contain evidence that the
 327-48 composition of the center's staff meets the standards adopted [~~by~~
 327-49 ~~the board~~] under this chapter for the level of license for which the
 327-50 application is submitted.

327-51 (e) The license fee shall be paid every two years [~~annually~~]
 327-52 on renewal of the license.

327-53 SECTION 3.0680. Section 244.007, Health and Safety Code, is
 327-54 amended to read as follows:

327-55 Sec. 244.007. FEES. The executive commissioner by rule
 327-56 [~~board~~] shall set fees imposed by this chapter in amounts
 327-57 reasonable and necessary to defray the cost of administering this
 327-58 chapter and as prescribed by Section 12.0111.

327-59 SECTION 3.0681. Section 244.009, Health and Safety Code, is
 327-60 amended to read as follows:

327-61 Sec. 244.009. ADOPTION OF RULES. (a) The executive
 327-62 commissioner [~~board~~] shall adopt rules necessary to implement this
 327-63 chapter.

327-64 (b) The executive commissioner [~~board~~] shall adopt rules
 327-65 that establish different levels of licenses to operate a birthing
 327-66 center and that provide requirements for the issuance, renewal,
 327-67 denial, suspension, and revocation of each level of license.

327-68 SECTION 3.0682. Section 244.010, Health and Safety Code, is
 327-69 amended to read as follows:

328-1 Sec. 244.010. MINIMUM STANDARDS. (a) For each level of
 328-2 license of a birthing center, the rules must contain minimum
 328-3 standards for:

- 328-4 (1) the qualifications for professional and
 nonprofessional personnel;
- 328-5 (2) the supervision of professional and
 nonprofessional personnel;
- 328-6 (3) the provision and coordination of treatment and
 services;
- 328-7 (4) the organizational structure, including the lines
 of authority and the delegation of responsibility;
- 328-8 (5) the keeping of clinical records; and
- 328-9 (6) any other aspect of the operation of a birthing
 center that the executive commissioner [board] considers necessary
 to protect the public.

328-10 (b) This section does not authorize the executive
 328-11 commissioner [board] to:

- 328-12 (1) establish the qualifications of a licensed
 practitioner; or
- 328-13 (2) permit a person to provide health care services
 who is not authorized to provide those services under another state
 law.

328-14 SECTION 3.0683. Sections 244.015(h), (i), (j), (k), and
 328-15 (l), Health and Safety Code, are amended to read as follows:

328-16 (h) If the person accepts the determination and recommended
 328-17 penalty or if the person fails to respond to the notice, the
 328-18 department [commissioner of public health] by order shall approve
 328-19 the determination and impose the recommended penalty.

328-20 (i) If the person requests a hearing, the department
 328-21 [commissioner of public health] shall refer the matter to the State
 328-22 Office of Administrative Hearings, which shall promptly set a
 328-23 hearing date. The department shall [and] give written notice of the
 328-24 time and place of the hearing to the person. An administrative law
 328-25 judge of that office [the State Office of Administrative Hearings]
 328-26 shall conduct the hearing.

328-27 (j) The administrative law judge shall make findings of fact
 328-28 and conclusions of law and promptly issue to the department
 328-29 [commissioner of public health] a proposal for a decision about the
 328-30 occurrence of the violation and the amount of a proposed penalty.

328-31 (k) Based on the findings of fact, conclusions of law, and
 328-32 proposal for a decision, the department [commissioner of public
 328-33 health] by order may:

328-34 (1) find that a violation occurred and impose a
 328-35 penalty; or

328-36 (2) find that a violation did not occur.

328-37 (l) The notice of the department's [commissioner's] order
 328-38 under Subsection (k) that is sent to the person in accordance with
 328-39 Chapter 2001, Government Code, must include a statement of the
 328-40 right of the person to judicial review of the order.

328-41 SECTION 3.0684. Sections 244.016(a), (b), and (c), Health
 328-42 and Safety Code, are amended to read as follows:

328-43 (a) Within 30 days after the date an order of the department
 328-44 [commissioner of public health] under Section 244.015(k) that
 328-45 imposes an administrative penalty becomes final, the person shall:

328-46 (1) pay the penalty; or

328-47 (2) file a petition for judicial review of the
 328-48 department's [commissioner's] order contesting the occurrence of
 328-49 the violation, the amount of the penalty, or both.

328-50 (b) Within the 30-day period prescribed by Subsection (a), a
 328-51 person who files a petition for judicial review may:

328-52 (1) stay enforcement of the penalty by:

328-53 (A) paying the penalty to the court for placement
 328-54 in an escrow account; or

328-55 (B) giving the court a supersedeas bond approved
 328-56 by the court that:

328-57 (i) is for the amount of the penalty; and

328-58 (ii) is effective until all judicial review
 328-59 of the department's [commissioner's] order is final; or

328-60 (2) request the court to stay enforcement of the

329-1 penalty by:

329-2 (A) filing with the court a sworn affidavit of
 329-3 the person stating that the person is financially unable to pay the
 329-4 penalty and is financially unable to give the supersedeas bond; and
 329-5 (B) sending a copy of the affidavit to the
 329-6 ~~department [commissioner of public health]~~ by certified mail.

329-7 (c) If the ~~department [commissioner of public health]~~
 329-8 receives a copy of an affidavit under Subsection (b)(2), the
 329-9 ~~department [commissioner]~~ may file with the court, within five days
 329-10 after the date the copy is received, a contest to the affidavit.
 329-11 The court shall hold a hearing on the facts alleged in the affidavit
 329-12 as soon as practicable and shall stay the enforcement of the penalty
 329-13 on finding that the alleged facts are true. The person who files an
 329-14 affidavit has the burden of proving that the person is financially
 329-15 unable to pay the penalty or to give a supersedeas bond.

329-16 SECTION 3.0685. Section 245.002, Health and Safety Code, is
 329-17 amended by amending Subdivision (4) and adding Subdivision (4-a) to
 329-18 read as follows:

329-19 (4) "Department" means the ~~Texas~~ Department of State
 329-20 Health Services.

329-21 (4-a) "Executive commissioner" means the executive
 329-22 commissioner of the Health and Human Services Commission.

329-23 SECTION 3.0686. Sections 245.005(b) and (c), Health and
 329-24 Safety Code, are amended to read as follows:

329-25 (b) Each application must be accompanied by a nonrefundable
 329-26 license fee in an amount set by the executive commissioner by rule
 329-27 ~~[board]~~.

329-28 (c) The application must contain evidence that there are one
 329-29 or more physicians on the staff of the facility who are licensed by
 329-30 the Texas ~~State Board of~~ Medical Board ~~[Examiners]~~.

329-31 SECTION 3.0687. Section 245.007, Health and Safety Code, is
 329-32 amended to read as follows:

329-33 Sec. 245.007. FEES. The executive commissioner by rule
 329-34 ~~[board]~~ shall set fees imposed by this chapter in amounts
 329-35 reasonable and necessary to defray the cost of administering this
 329-36 chapter and Chapter 171.

329-37 SECTION 3.0688. Section 245.009, Health and Safety Code, is
 329-38 amended to read as follows:

329-39 Sec. 245.009. ADOPTION OF RULES. The executive
 329-40 commissioner [board] shall adopt rules necessary to implement this
 329-41 chapter, including requirements for the issuance, renewal, denial,
 329-42 suspension, and revocation of a license to operate an abortion
 329-43 facility.

329-44 SECTION 3.0689. Section 245.010(d), Health and Safety Code,
 329-45 is amended to read as follows:

329-46 (d) This section does not authorize the executive
 329-47 commissioner [board] to:

329-48 (1) establish the qualifications of a licensed
 329-49 practitioner; or

329-50 (2) permit a person to provide health care services
 329-51 who is not authorized to provide those services under other laws of
 329-52 this state.

329-53 SECTION 3.0690. Section 245.018(c), Health and Safety Code,
 329-54 is amended to read as follows:

329-55 (c) If the person notified of the violation accepts the
 329-56 determination of the department, the ~~department [commissioner of~~
 329-57 ~~public health or the commissioner's designee]~~ shall ~~[issue an]~~
 329-58 order ~~[approving the determination and ordering]~~ the person to pay
 329-59 the recommended penalty.

329-60 SECTION 3.0691. Section 245.019, Health and Safety Code, is
 329-61 amended to read as follows:

329-62 Sec. 245.019. HEARING; ORDER. (a) If the person requests a
 329-63 hearing, the ~~department shall transfer the case to the State Office~~
 329-64 ~~of Administrative Hearings and an administrative law judge of that~~
 329-65 ~~office shall hold the hearing.~~

329-66 (a-1) The ~~department [commissioner of public health or the~~
 329-67 ~~commissioner's designee]~~ shall ~~[+]~~

329-68 ~~[+1] set a hearing;~~

329-69 ~~[+2] give written notice of the hearing to the~~

330-1 person[; and]

330-2 [(3) designate a hearings examiner to conduct the
330-3 hearing].

330-4 (b) The administrative law judge [hearings examiner] shall
330-5 make findings of fact and conclusions of law and shall promptly
330-6 issue to the department [commissioner] a proposal for decision as
330-7 to the occurrence of the violation and a recommendation as to the
330-8 amount of the proposed penalty, if a penalty is determined to be
330-9 warranted.

330-10 (c) Based on the findings of fact and conclusions of law and
330-11 the recommendations of the administrative law judge [hearings
330-12 examiner], the department [commissioner] by order may find that a
330-13 violation has occurred and may assess a penalty or may find that no
330-14 violation has occurred.

330-15 SECTION 3.0692. Sections **245.020**(a), (c), and (f), Health
330-16 and Safety Code, are amended to read as follows:

330-17 (a) The department [commissioner of public health or the
330-18 commissioner's designee] shall give notice of the department's
330-19 [commissioner's] order under Section **245.019**(c) to the person
330-20 alleged to have committed the violation. The notice must include:

330-21 (1) separate statements of the findings of fact and
330-22 conclusions of law;

330-23 (2) the amount of any penalty assessed; and

330-24 (3) a statement of the right of the person to judicial
330-25 review of the department's [commissioner's] order.

330-26 (c) Within the 30-day period, a person who acts under
330-27 Subsection (b)(3) may:

330-28 (1) stay enforcement of the penalty by:

330-29 (A) paying the amount of the penalty to the court
330-30 for placement in an escrow account; or

330-31 (B) giving to the court a supersedeas bond that
330-32 is approved by the court for the amount of the penalty and that is
330-33 effective until all judicial review of the department's
330-34 [commissioner's] order is final; or

330-35 (2) request the court to stay enforcement of the
330-36 penalty by:

330-37 (A) filing with the court a sworn affidavit of
330-38 the person stating that the person is financially unable to pay the
330-39 amount of the penalty and is financially unable to give the
330-40 supersedeas bond; and

330-41 (B) giving a copy of the affidavit to the
330-42 department by certified mail.

330-43 (f) Judicial review of the order of the department
330-44 [commissioner of public health]:

330-45 (1) is instituted by filing a petition as provided by
330-46 Subchapter G, Chapter 2001, Government Code; and

330-47 (2) is under the substantial evidence rule.

330-48 SECTION 3.0693. Section **245.022**(a), Health and Safety Code,
330-49 is amended to read as follows:

330-50 (a) The department may assess reasonable expenses and costs
330-51 against a person in an administrative hearing if, as a result of the
330-52 hearing, the person's license is denied, suspended, or revoked or
330-53 if administrative penalties are assessed against the person. The
330-54 person shall pay expenses and costs assessed under this subsection
330-55 not later than the 30th day after the date a department [board]
330-56 order requiring the payment of expenses and costs is final. The
330-57 department may refer the matter to the attorney general for
330-58 collection of the expenses and costs.

330-59 SECTION 3.0694. Sections **245.023**(b) and (d), Health and
330-60 Safety Code, are amended to read as follows:

330-61 (b) Subsection (a) does not require the department to
330-62 provide information that is not in the possession of the
330-63 department. The Texas [State Board of] Medical Board [Examiners]
330-64 shall provide to the department information in the possession of
330-65 the board that the department is required to provide under
330-66 Subsection (a).

330-67 (d) An abortion facility shall provide to a woman, at the
330-68 time the woman initially consults the facility, a written statement
330-69 indicating the number of the toll-free telephone line maintained

331-1 under Subsection (c). The written statement must be available in
 331-2 English and Spanish and be in substantially the following form:

331-3 "(toll-free telephone number)"

331-4 You have a right to access certain information
 331-5 concerning this abortion facility by using the toll-free
 331-6 telephone number listed above. If you make a call to the
 331-7 number, your identity will remain anonymous. The toll-free
 331-8 telephone line can provide you with the following
 331-9 information:

331-10 (1) Whether this abortion facility is
 331-11 licensed by the Texas Department of State Health Services.

331-12 (2) The date of the last inspection of this
 331-13 facility by the Texas Department of State Health Services and
 331-14 any violations of law or rules discovered during that
 331-15 inspection that may pose a health risk to you.

331-16 (3) Any relevant fine, penalty, or judgment
 331-17 rendered against this facility or a doctor who provides
 331-18 services at this facility."

331-19 SECTION 3.0695. Section 247.0011, Health and Safety Code,
 331-20 is amended by amending Subsection (b) and adding Subsection (b-1)
 331-21 to read as follows:

331-22 (b) The executive commissioner [~~department~~] shall protect
 331-23 residents of assisted living facilities by:

331-24 (1) adopting rules relating to quality of care and
 331-25 quality of life; and

331-26 (2) adopting rules relating to the assessment of the
 331-27 condition and service needs of each resident. [+]

331-28 (b-1) The department shall protect residents of assisted
 331-29 living facilities by:

331-30 (1) [(3)] promoting policies that maximize the
 331-31 dignity, autonomy, privacy, and independence of each resident;

331-32 (2) [(4)] regulating the construction, maintenance,
 331-33 and operation of assisted living facilities;

331-34 (3) [(5)] strictly monitoring factors relating to the
 331-35 health, safety, welfare, and dignity of each resident;

331-36 (4) [(6)] imposing prompt and effective remedies for
 331-37 violations of this chapter and rules and standards adopted under
 331-38 this chapter;

331-39 (5) promoting [(7) providing] a residential
 331-40 environment that allows residents to maintain the highest possible
 331-41 degree of independence and self-determination; and

331-42 (6) [(8)] providing the public with helpful and
 331-43 understandable information relating to the operation of assisted
 331-44 living facilities in this state.

331-45 SECTION 3.0696. Section 247.002, Health and Safety Code, is
 331-46 amended by amending Subdivision (2) and adding Subdivision (4-a) to
 331-47 read as follows:

331-48 (2) "Commission" means the Health and Human Services
 331-49 Commission [~~Board~~ means the executive commissioner of the Health
 331-50 and Human Services Commission].

331-51 (4-a) "Executive commissioner" means the executive
 331-52 commissioner of the Health and Human Services Commission.

331-53 SECTION 3.0697. Subdivision (7), Section 247.002, Health
 331-54 and Safety Code, is redesignated as Subdivision (2-a), Section
 331-55 247.002, Health and Safety Code, and amended to read as follows:

331-56 (2-a) [(7)] "Commissioner" means the commissioner of
 331-57 aging and disability services [~~the department~~].

331-58 SECTION 3.0698. Section 247.004, Health and Safety Code, is
 331-59 amended to read as follows:

331-60 Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

331-61 (1) a boarding home facility as defined by Section
 331-62 260.001;

331-63 (2) an establishment conducted by or for the adherents
 331-64 of the Church of Christ, Scientist, for the purpose of providing
 331-65 facilities for the care or treatment of the sick who depend
 331-66 exclusively on prayer or spiritual means for healing without the
 331-67 use of any drug or material remedy if the establishment complies
 331-68 with local safety, sanitary, and quarantine ordinances and
 331-69 regulations;

(3) a facility conducted by or for the adherents of a qualified religious society classified as a tax-exempt organization under an Internal Revenue Service group exemption ruling for the purpose of providing personal care services without charge solely for the society's professed members or ministers in retirement, if the facility complies with local safety, sanitation, and quarantine ordinances and regulations; or

(4) a facility that provides personal care services only to persons enrolled in a program that:

(A) is funded in whole or in part by the department and that is monitored by the department or its designated local intellectual and developmental disability [mental retardation] authority in accordance with department rules [standards set by the department]; or

(B) is funded in whole or in part by the Department of State Health Services and that is monitored by that department, or by its designated local mental health authority in accordance with department rules [standards set by the department].

SECTION 3.0699. Section 247.005(d), Health and Safety Code, is amended to read as follows:

(d) The executive commissioner [department] may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

SECTION 3.0700. Section 247.021(d), Health and Safety Code, is amended to read as follows:

(d) The executive commissioner [department] by rule shall establish procedures to issue a six-month provisional license to existing facilities with residents. The department may issue a provisional license if:

- (1) the facility is in compliance with resident care standards;
- (2) the facility complies with all applicable laws.

(2) the facility voluntarily discloses that the facility needs additional time to comply with life safety code and physical plant standards;

(3) the disclosure is made in writing by certified mail to the department;

(4) an investigation of the violation was not initiated and the violation was not independently detected by the department; and

(5) the disclosure is made promptly after knowledge of the information disclosed is obtained by the facility.

SECTION 3.0701. Section 241.0211(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner [of the Health and Human

(a) The executive commissioner [of the health and human Services Commission] shall adopt rules to implement an expedited inspection process that allows an applicant for an assisted living

facility license or for a renewal of a license to obtain a life safety code and physical plant inspection not later than the 15th day after the date the request is made.

SECTION 3.0702. Section 247.022(b), Health and Safety Code, is amended to read as follows:

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule [board].

SECTION 3.0703. Sections 247.023(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The department shall issue a license if, after inspection and investigation, it finds that the applicant, the assisted living facility, and all controlling persons with respect to the applicant or facility meet the requirements of this chapter and the standards adopted under this chapter. The license expires on the second anniversary of the date of its issuance. The executive commissioner [of the Health and Human Services Commission] by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, the department shall prorate the license fee on a monthly basis. Each license holder shall pay only that portion of the license fee allocable to the number of months during which the license is valid. A license holder shall

333-1 pay the total license renewal fee at the time of renewal.

333-2 (c) The department [board] may require participation in a
 333-3 continuing education program as a condition of renewal of a
 333-4 license. The executive commissioner [board] shall adopt rules to
 333-5 implement this subsection.

333-6 SECTION 3.0704. Sections 247.024(a), (b), and (c), Health
 333-7 and Safety Code, are amended to read as follows:

333-8 (a) The executive commissioner by rule [department] shall
 333-9 set license fees imposed by this chapter:

333-10 (1) on the basis of the number of beds in assisted
 333-11 living facilities required to pay the fee; and

333-12 (2) in amounts reasonable and necessary to defray the
 333-13 cost of administering this chapter, but not to exceed \$1,500.

333-14 (b) The executive commissioner [board] shall establish by
 333-15 rule a base fee schedule and a per bed fee schedule.

333-16 (c) All fees or penalties collected under this chapter shall
 333-17 be deposited in the state treasury to the credit of the general
 333-18 revenue fund [and shall be appropriated to the department only to
 333-19 administer and enforce this chapter].

333-20 SECTION 3.0705. Section 247.025, Health and Safety Code, is
 333-21 amended to read as follows:

333-22 Sec. 247.025. ADOPTION OF RULES. The executive
 333-23 commissioner [board] shall adopt rules necessary to implement this
 333-24 chapter, including requirements for the issuance, renewal, denial,
 333-25 suspension, and revocation of a license to operate an assisted
 333-26 living facility.

333-27 SECTION 3.0706. Sections 247.026(a), (c), (d), (f), and
 333-28 (i), Health and Safety Code, are amended to read as follows:

333-29 (a) The executive commissioner [board] by rule shall
 333-30 prescribe minimum standards to protect the health and safety of an
 333-31 assisted living facility resident.

333-32 (c) The executive commissioner [board] shall require an
 333-33 assisted living facility that provides brain injury rehabilitation
 333-34 services to include in the facility's consumer disclosure statement
 333-35 a specific statement that licensure as an assisted living facility
 333-36 does not indicate state review, approval, or endorsement of the
 333-37 facility's rehabilitation services.

333-38 (d) The executive commissioner [board] may prescribe
 333-39 different levels of minimum standards for assisted living
 333-40 facilities according to the number of residents, the type of
 333-41 residents, the level of personal care provided, the nutritional
 333-42 needs of residents, and other distinctions the executive
 333-43 commissioner [board] considers relevant. If the executive
 333-44 commissioner [board] does not prescribe minimum standards for
 333-45 facilities serving non-geriatric residents, the executive
 333-46 commissioner [is] must develop procedures for consideration and
 333-47 approval of alternate methods of compliance by such facilities with
 333-48 the department's [board's] standards.

333-49 (f) The executive commissioner [board] by rule shall
 333-50 prescribe minimum standards requiring appropriate training in
 333-51 geriatric care for each individual who provides services to
 333-52 geriatric residents as an employee of an assisted living facility
 333-53 and who holds a license or certificate issued by an agency of this
 333-54 state that authorizes the person to provide the services. The
 333-55 minimum standards may require that each licensed or certified
 333-56 individual complete an appropriate program of continuing education
 333-57 or in-service training, as determined by department [board] rule,
 333-58 on a schedule determined by department [board] rule.

333-59 (i) The executive commissioner [board] by rule shall
 333-60 require each manager of an assisted living facility that has 17 beds
 333-61 or more to complete at least one educational course on the
 333-62 management of assisted living facilities not later than the first
 333-63 anniversary of the date the manager begins employment in that
 333-64 capacity.

333-65 SECTION 3.0707. Sections 247.0261(a) and (d), Health and
 333-66 Safety Code, are amended to read as follows:

333-67 (a) The executive commissioner [department] by rule shall
 333-68 adopt a procedure under which a person proposing to construct or
 333-69 modify an assisted living facility may submit building plans to the

334-1 department for review for compliance with the department's
334-2 architectural requirements before beginning construction or
334-3 modification. In adopting the procedure, the executive
334-4 commissioner [department] shall set reasonable deadlines by which
334-5 the department must complete review of submitted plans.

334-6 (d) A fee collected under this section shall be deposited in
334-7 the general revenue fund to the credit of the assisted living
334-8 account [and shall be appropriated only to the department to
334-9 conduct reviews under this section].

334-10 SECTION 3.0708. Sections 247.029(a) and (b), Health and
334-11 Safety Code, are amended to read as follows:

334-12 (a) The executive commissioner [board] by rule shall
334-13 establish a classification and license for a facility that
334-14 advertises, markets, or otherwise promotes that the facility
334-15 provides personal care services to residents who have Alzheimer's
334-16 disease or related disorders. A facility is not required to be
334-17 classified under this section to provide care or treatment to
334-18 residents who have Alzheimer's disease or related disorders.

334-19 (b) The executive commissioner [board] shall adopt minimum
334-20 standards for an assisted living facility classified under this
334-21 section.

334-22 SECTION 3.0709. Sections 247.032(a) and (b), Health and
334-23 Safety Code, are amended to read as follows:

334-24 (a) In this section, "accreditation commission" means the
334-25 Commission on Accreditation of Rehabilitation Facilities (CARF),
334-26 The [the] Joint Commission [on Accreditation of Healthcare
334-27 Organizations], or another organization approved by the executive
334-28 commissioner [of the Health and Human Services Commission].

334-29 (b) The department shall accept an accreditation survey
334-30 from an accreditation commission for an assisted living facility
334-31 instead of an inspection under Section 247.023 or an annual
334-32 inspection or survey conducted under the authority of Section
334-33 247.027, but only if:

334-34 (1) the accreditation commission's standards meet or
334-35 exceed the requirements for licensing of the executive commissioner
334-36 [of the Health and Human Services Commission] for an assisted
334-37 living facility;

334-38 (2) the accreditation commission maintains an
334-39 inspection or survey program that, for each assisted living
334-40 facility, meets the department's applicable minimum standards as
334-41 confirmed by the executive commissioner [of the Health and Human
334-42 Services Commission];

334-43 (3) the accreditation commission conducts an on-site
334-44 inspection or survey of the facility at least as often as required
334-45 by Section 247.023 or 247.027 and in accordance with the
334-46 department's minimum standards;

334-47 (4) the assisted living facility submits to the
334-48 department a copy of its required accreditation reports to the
334-49 accreditation commission in addition to the application, the fee,
334-50 and any report required for renewal of a license;

334-51 (5) the inspection or survey results are available for
334-52 public inspection to the same extent that the results of an
334-53 investigation or survey conducted under Section 247.023 or 247.027
334-54 are available for public inspection; and

334-55 (6) the department ensures that the accreditation
334-56 commission has taken reasonable precautions to protect the
334-57 confidentiality of personally identifiable information concerning
334-58 the residents of the assisted living facility.

334-59 SECTION 3.0710. Section 247.033(a), Health and Safety Code,
334-60 is amended to read as follows:

334-61 (a) The department may develop and implement a pilot program
334-62 to authorize the use of an accreditation survey that complies with
334-63 Section 247.032(b) to fulfill the requirements for a life and
334-64 safety code survey or inspection or another survey or inspection
334-65 required by this subchapter. If the department implements the
334-66 pilot program, the department may implement the pilot program with
334-67 the goal that [not later than August 31, 2014,] at least one
334-68 assisted living facility will have used an accreditation survey for
334-69 the purposes of this section. The accreditation commission's

335-1 standards must meet or exceed the assisted living facility
335-2 licensing requirements established by the executive commissioner
335-3 [~~of the Health and Human Services Commission~~] as required by
335-4 Section 247.032(b)(1).

335-5 SECTION 3.0711. Section 247.043(b), Health and Safety Code,
335-6 is amended to read as follows:

335-7 (b) If the thorough investigation reveals that abuse,
335-8 exploitation, or neglect has occurred, the department shall:

335-9 (1) implement enforcement measures, including closing
335-10 the facility, revoking the facility's license, relocating
335-11 residents, and making referrals to law enforcement agencies;

335-12 (2) notify the Department of Family and Protective
335-13 [and Regulatory] Services of the results of the investigation;

335-14 (3) notify a health and human services agency, as
335-15 defined by Section 531.001, Government Code, that contracts with
335-16 the facility for the delivery of personal care services of the
335-17 results of the investigation; and

335-18 (4) provide to a contracting health and human services
335-19 agency access to the department's documents or records relating to
335-20 the investigation.

335-21 SECTION 3.0712. Sections 247.045(g), (h), and (i), Health
335-22 and Safety Code, are amended to read as follows:

335-23 (g) The commissioner [~~of human services~~] must approve any
335-24 settlement agreement to a suit brought under this chapter.

335-25 (h) If a person who is liable under this section fails to pay
335-26 any amount the person is obligated to pay under this section, the
335-27 state may seek satisfaction from any owner, other controlling
335-28 person, or affiliate of the person found liable. The owner, other
335-29 controlling person, or affiliate may be found liable in the same
335-30 suit or in another suit on a showing by the state that the amount to
335-31 be paid has not been paid or otherwise legally discharged. The
335-32 executive commissioner [~~department~~] by rule may establish a method
335-33 for satisfying an obligation imposed under this section from an
335-34 insurance policy, letter of credit, or other contingency fund.

335-35 (i) In this section, "affiliate" means:

335-36 (1) with respect to a partnership other than a limited
335-37 partnership, each partner of the partnership;

335-38 (2) with respect to a corporation:

335-39 (A) an officer;

335-40 (B) a director;

335-41 (C) a stockholder who owns, holds, or has the
335-42 power to vote at least 10 percent of any class of securities issued
335-43 by the corporation, regardless of whether the power is of record or
335-44 beneficial; and

335-45 (D) a controlling individual;

335-46 (3) with respect to an individual:

335-47 (A) each partnership and each partner in the
335-48 partnership in which the individual or any other affiliate of the
335-49 individual is a partner; and

335-50 (B) each corporation or other business entity in
335-51 which the individual or another affiliate of the individual is:

335-52 (i) an officer;

335-53 (ii) a director;

335-54 (iii) a stockholder who owns, holds, or has

335-55 the power to vote at least 10 percent of any class of securities
335-56 issued by the corporation, regardless of whether the power is of
335-57 record or beneficial; and

335-58 (iv) a controlling individual;

335-59 (4) with respect to a limited partnership:

335-60 (A) a general partner; and

335-61 (B) a limited partner who is a controlling
335-62 individual;

335-63 (5) with respect to a limited liability company:

335-64 (A) an owner who is a manager under [~~as described~~
335-65 by] the Texas Limited Liability Company Law as described by Section
335-66 1.008(e), Business Organizations Code [~~Act (Article 1528n,~~
335-67 ~~Vernon's Texas Civil Statutes)~~]; and

335-68 (B) each owner who is a controlling individual;
335-69 and

(6) with respect to any other business entity, a controlling individual.

SECTION 3.0713. Section 247.0451(c), Health and Safety Code, is amended to read as follows:

(c) The executive commissioner [board] shall establish gradations of penalties in accordance with the relative seriousness of the violation.

SECTION 3.0714. Sections 247.0453(h) and (i), Health and Safety Code, are amended to read as follows:

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the department [~~commissioner or the commissioner's designee~~] shall assess the [penalty] recommended penalty [~~by the department~~].

(i) If the department [~~commissioner or the commissioner's designee~~] assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

SECTION 3.0715. Sections 247.0454(a), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) An administrative law judge shall order a hearing and the department shall give notice of the hearing if a person charged with a violation under Section 247.0451 timely requests a hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department [~~commissioner or the commissioner's designee~~] a written proposal for decision regarding the occurrence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the department [commissioner or the commissioner's designee] by order may:

- (1) find that a violation has occurred and assess an administrative penalty; or
- (2) find that a violation has not occurred.

(e) If the department [~~commissioner or the commissioner's designee~~] finds that a violation has not occurred, the department [~~commissioner or the commissioner's designee~~] shall order that all records reflecting that the department found a violation had occurred and attempted to impose an administrative penalty shall be expunged except:

(1) records obtained by the department during its investigation; and

(2) the administrative law judge's findings of fact.

SECTION 3.0716. Sections [247.0455\(a\)](#), (b), (f), and (g),

Health and Safety Code, are amended to read as follows:

(a) The department [commissioner or the commissioner's

~~designee~~] shall give notice of the findings made under Section 247.0454(d) to the person charged. If the department [~~commissioner or the commissioner's designee~~] finds that a violation has occurred, the department [~~commissioner or the commissioner's designee~~] shall give to the person charged written notice of:

- (1) the findings;
- (2) the amount of the administrative penalty;
- (3) the date of imposition; and

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;

(4) whether action under Section 247.0451 is required in lieu of payment of all or part of the penalty; and
(5) the person's right to judicial review of the department order [of the commissioner or the commissioner's

(b) Not later than the 30th day after the date on which the order [of the commissioner or the commissioner's designee].

~~designee~~ is final, the person charged with the penalty shall:

- (1) pay the full amount of the penalty; or
- (2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the

337-1 department's dissatisfaction with efforts to correct the
 337-2 violation, or any combination of these issues.

337-3 (f) If the amount of the penalty is reduced or the
 337-4 assessment of a penalty is not upheld on judicial review, the
 337-5 department [commissioner] shall:

337-6 (1) remit to the person charged the appropriate amount
 337-7 of any penalty payment plus accrued interest; or
 337-8 (2) execute a release of the supersedeas bond if one
 337-9 has been posted.

337-10 (g) Accrued interest on amounts remitted by the department
 337-11 [commissioner] under Subsection (f)(1) shall be paid:

337-12 (1) at a rate equal to the rate charged on loans to
 337-13 depository institutions by the New York Federal Reserve Bank; and
 337-14 (2) for the period beginning on the date the penalty is
 337-15 paid and ending on the date the penalty is remitted to the person
 337-16 charged.

337-17 SECTION 3.0717. Sections 247.0457(a) and (h), Health and
 337-18 Safety Code, are amended to read as follows:

337-19 (a) In lieu of demanding payment of an administrative
 337-20 penalty assessed under Section 247.0451, the department
 337-21 [commissioner] in accordance with this section may allow the person
 337-22 to use, under the supervision of the department, any portion of the
 337-23 penalty to ameliorate the violation or to improve services, other
 337-24 than administrative services, in the assisted living facility
 337-25 affected by the violation.

337-26 (h) The department shall approve or deny an amelioration
 337-27 plan not later than the 45th day after the date the department
 337-28 receives the plan. On approval of a person's plan, the commission
 337-29 or the State Office of Administrative Hearings, as appropriate,
 337-30 [department] shall deny a pending request for a hearing submitted
 337-31 by the person under Section 247.0453.

337-32 SECTION 3.0718. Section 247.046, Health and Safety Code, is
 337-33 amended to read as follows:

337-34 Sec. 247.046. COOPERATION AMONG AGENCIES. The executive
 337-35 commissioner by rule for the department and [board] the Department
 337-36 of Family and Protective [and Regulatory] Services[•] and the
 337-37 attorney general by rule shall adopt [by rule] a memorandum of
 337-38 understanding that:

337-39 (1) defines those agencies' [each agency's]
 337-40 responsibilities concerning assisted living facilities and
 337-41 coordinates those agencies' [each agency's] activities;

337-42 (2) details coordinated procedures to be used by those
 337-43 agencies [each agency] in responding to complaints relating to
 337-44 neglect or abuse of residents of facilities, to substandard
 337-45 facilities, and to unlicensed facilities;

337-46 (3) identifies enforcement needs those agencies [each
 337-47 agency] may have in order to perform their [its] duties under the
 337-48 memorandum of understanding, including any need for access to
 337-49 information or to facilities under investigation or operating under
 337-50 a plan of correction; and

337-51 (4) provides a plan for correcting violations in
 337-52 substandard or unlicensed assisted living facilities that
 337-53 specifies the conditions under which it is appropriate to impose
 337-54 such a plan and that outlines a schedule of implementation for the
 337-55 plan.

337-56 SECTION 3.0719. Section 247.050(a), Health and Safety Code,
 337-57 is amended to read as follows:

337-58 (a) The executive commissioner [board] shall adopt
 337-59 procedures to monitor the status of unlicensed assisted living
 337-60 facilities. As part of these procedures, the department shall:

337-61 (1) maintain a registry of all reported unlicensed
 337-62 assisted living facilities for the purpose of periodic follow-up by
 337-63 the field staff in each region; and

337-64 (2) prepare a quarterly report that shows the number
 337-65 of:

337-66 (A) complaints relating to unlicensed assisted
 337-67 living facilities that are received;

337-68 (B) complaints that are investigated;

337-69 (C) unsubstantiated complaints;

- (D) substantiated complaints; and
- (E) cases referred to the attorney general.

SECTION 3.0720. Sections 247.051(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner [Health and Human Services Commission] by rule shall establish an informal dispute resolution process to address disputes between a facility and the department concerning a statement of violations prepared by the department in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a statement of violations. The informal dispute resolution process must require:

(1) the assisted living facility to request informal dispute resolution not later than the 10th day after the date of notification by the department of the violation of a standard or standards;

(2) the commission [Health and Human Services Commission] to complete the process not later than the 90th day after the date of receipt of a request from the assisted living facility for informal dispute resolution;

(3) that, not later than the 10th business day after the date an assisted living facility requests an informal dispute resolution, the department forward to the assisted living facility a copy of all information that is referred to in the disputed statement of violations or on which a citation is based in connection with the survey, inspection, investigation, or other visit, excluding:

(A) the name of any complainant, witness, or informant;

(B) any information that would reasonably lead to the identification of a complainant, witness, or informant;

(C) information obtained from or contained in the records of the facility;

(D) information that is publicly available; or
(E) information that is confidential by law;

(4) the commission [Health and Human Services]

(4) the Commission [Health and Human Services Commission] to give full consideration to all factual arguments raised during the informal dispute resolution process that:

(A) are supported by references to specific information that the facility or department relies on to dispute or

support findings in the statement of violations; and
(B) are provided by the proponent of the argument
to the commission [Health and Human Services Commission] and the
opposing party;

(5) that informal dispute resolution staff give full consideration to the information provided by the assisted living facility and the department;

(6) that ex parte communications concerning the substance of any argument relating to a survey, inspection, investigation, visit, or statement of violations under consideration not occur between the informal dispute resolution staff and the assisted living facility or the department; and

(7) that the assisted living facility and the department be given a reasonable opportunity to submit arguments and information supporting the position of the assisted living facility or the department and to respond to arguments and information presented against them.

(b) The commission [Health and Human Services Commission] may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

SECTION 3.0721. Section 247.061(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner [department] and the attorney general shall adopt by rule a memorandum of understanding that:

(1) defines the department's and the attorney general's [each agency's] responsibilities concerning assisted living facilities;

(2) outlines and coordinates procedures to be used by those agencies in responding to complaints concerning assisted living facilities; and

(3) provides a plan for correcting violations or deficiencies in assisted living facilities.

SECTION 3.0722. Section 247.062(a), Health and Safety Code, is amended to read as follows:

(a) The department shall prepare a directory of assisted living facilities that includes the name of the owner, the address and telephone number of the facility, the number of beds in the facility, and the facility's accessibility to persons with disabilities [disabled persons].

SECTION 3.0723. Section 247.063, Health and Safety Code, is amended to read as follows:

Sec. 247.063. REFERRALS. (a) If the [Texas] Department of State Health Services, the department, [Mental Health and Mental Retardation or] a local mental health authority, or a local intellectual and developmental disability [mental retardation] authority refers a patient or client to an assisted living facility, the referral may not be made to a facility that is not licensed under this chapter.

(b) If the [Texas] Department of State Health Services [Mental Health and Mental Retardation] or a local mental health or intellectual and developmental disability [mental retardation] authority gains knowledge of an assisted living facility that is not operated or licensed by the department or [Texas Department of Mental Health and Mental Retardation,] the authority[, or the Texas Department of Human Services] and that has four or more residents who are unrelated to the proprietor of the facility, the [Texas] Department of State Health Services [Mental Health and Mental Retardation] or the authority shall report the name, address, and telephone number of the facility to the department [Texas Department of Human Services].

SECTION 3.0724. Section 247.0631, Health and Safety Code, is amended to read as follows:

Sec. 247.0631. ACCESS. An employee of the [Texas] Department of State Health Services [~~Mental Health and Mental Retardation~~] or an employee of a local mental health or intellectual and developmental disability [~~and mental retardation~~] authority may enter an assisted living facility as necessary to provide services to a resident of the facility.

SECTION 3.0725. Section 247.066(e), Health and Safety Code, is amended to read as follows:

(e) To facilitate obtaining the written statements required under Subsections (b-1) and (c)(1)-(3), the department shall develop standard forms that must be used under Subsections (b-1) or (c)(1)-(3), as appropriate. The executive commissioner by rule [department] shall develop criteria under which the department will determine, based on a resident's specific situation, whether it will grant or deny a request for a waiver under Subsection (b-1) or (c)(4).

SECTION 3.0726. Section 247.094(a), Health and Safety Code, is amended to read as follows:

(a) The arbitrator may enter any order that may be entered by the department, executive commissioner [board], commissioner, or court under this chapter in relation to a dispute described by Section 247.081.

SECTION 3.0727. Section 248.002, Health and Safety Code, is amended by amending Subdivisions (1) and (2) and adding Subdivision (2-a) to read as follows:

(1) "Commissioner" means the commissioner of state
health services ["Board" means the Texas Board of Health].
(2) "Department" means [Texas] Department of State

(2) "Department" means the [Texas] Department of State Health Services.
(2-a) "Executive commissioner" means the executive

(2-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0728. Section 248.003, Health and Safety Code, is

SECTION 3.0728. Section 248.003, health and safety code, is amended to read as follows:

SEC. 248.005. EXEMPTIONS. This chapter does not apply to:

- (1) a home and community support services agency required to be licensed under Chapter 142;
- (2) a person required to be licensed under Chapter 241 (Texas Hospital Licensing Law);
- (3) an institution required to be licensed under Chapter 242;
- (4) an ambulatory surgical center required to be licensed under Chapter 243 (Texas Ambulatory Surgical Center Licensing Act);
- (5) a birthing center required to be licensed under Chapter 244 (Texas Birthing Center Licensing Act);
- (6) a facility required to be licensed under Chapter 245 (Texas Abortion Facility Reporting and Licensing Act);
- (7) a general residential operation [child care institution], foster group home, foster [family] home, and child-placing agency, for children in foster care or other residential care who are under the conservatorship of the Department of Family and Protective [and Regulatory] Services; or
- (8) a person providing medical or nursing care or services under a license or permit issued under other state law.

SECTION 3.0729. Sections 248.022(a) and (b), Health and Safety Code, are amended to read as follows:

(a) An applicant for a license must submit an application to the department on a form prescribed by the department and in accordance with department [board] rules.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule [board].

SECTION 3.0730. Section 248.023, Health and Safety Code, is amended to read as follows:

Sec. 248.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The department shall issue a license to an applicant if on inspection and investigation it finds that the applicant meets the requirements of this chapter and department [~~the~~] rules [~~adopted by the board~~].

(b) A license shall be renewed at the times and in accordance with department [the] rules [established by the board].

SECTION 3.0731. Sections 248.024(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner by rule [board] shall establish a license application fee and a license renewal fee in amounts as prescribed by Section 12.0111 [the amount of \$25 for each facility bed or \$200, whichever is greater, but the fees may not exceed \$1,000].

(b) The executive commissioner by rule [board] may establish other reasonable and necessary fees in amounts that are adequate, with the license application and license renewal fees, to collect sufficient revenue to meet the expenses necessary to administer this chapter. The fees may include construction plan review and inspection fees.

(d) All fees received by the department shall be deposited to the credit of the General Revenue Fund [and may be appropriated only to the department to administer this chapter].

SECTION 3.0732. Section 248.026, Health and Safety Code, is amended to read as follows:

Sec. 248.026. DUTIES OF EXECUTIVE COMMISSIONER [BOARD]. (a) The executive commissioner [board] shall adopt rules necessary to implement this chapter. The rules must establish minimum standards for special care facilities relating to:

(1) the issuance, renewal, denial, suspension, and revocation of the license required by this chapter;

(2) the qualifications, duties, and supervision of professional and nonprofessional personnel and volunteers;

- (3) residents' rights;
- (4) medical and nursing care and services provided by a license holder.

a license holder;

(5) the organizational structure, lines of authority, delegation of responsibility, and operation of a special care facility;

- (6) records of care and services kept by the license holder, including the disposal or destruction of those records;
- (7) safety, fire prevention, and sanitary provisions;
- (8) transfer of residents in a medically appropriate manner from or to a special care facility;
- (9) construction plan approval and inspection; and
- (10) any aspects of a special care facility as necessary to protect the public or residents of the facility.

(b) Subsection (a) does not authorize the executive commissioner [board] to establish the qualifications of licensed health care providers or permit the executive commissioner [board] to authorize persons to provide health care services who are not authorized to provide those services under other state law.

SECTION 3.0733. Section 248.027(a), Health and Safety Code, is amended to read as follows:

(a) If there are no local regulations in effect or enforced in the area in which a special care facility is located, the facility's construction must conform to the minimum standards established by the executive commissioner [board].

SECTION 3.0734. Sections 248.029(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner [board] by rule shall adopt standards for the designation of a special care facility licensed under this chapter as a residential AIDS hospice. Those standards shall be consistent with other standards adopted under this chapter and consistent with the purposes for which special care facilities are created.

(b) In adopting the standards, the executive commissioner [board] shall consider rules adopted for the designation of a hospice under Chapter 142 and shall establish specific standards requiring:

requiring:

(1) the provision of exclusively palliative care by a facility;

(2) the provision of bereavement services;
(3) the provision of support services to the family of
a client;

(4) the participation of a registered nurse in the development of an initial plan of care for a client and periodic review of the plan of care by an interdisciplinary team of the facility; and

(5) clinical and medical review of patient care services by a physician who acts as a medical consultant.

SECTION 3.0735. Section 248.052, Health and Safety Code, is amended to read as follows:

Sec. 248.052. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend any license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder to the department for a hearing, the department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office [~~, the department~~] shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received by the department to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

SECTION 3.0736. Section 248.053, Health and Safety Code, is amended to read as follows:

Sec. 248.053. INJUNCTION. (a) The department may request that the attorney general petition a district court to restrain a license holder or other person from continuing to violate this chapter or any rule adopted by the executive commissioner [board] under this chapter. Venue for a suit for injunctive relief is in Travis County.

(b) On application for injunctive relief and a finding that a license holder or other person has violated this chapter or

342-1 ~~department [board]~~ rules, the district court shall grant the
 342-2 injunctive relief that the facts warrant.

342-3 SECTION 3.0737. Section 248.054, Health and Safety Code, is
 342-4 amended to read as follows:

342-5 Sec. 248.054. CIVIL PENALTY. A license holder or person who
 342-6 violates this chapter or a rule adopted by the executive
 342-7 commissioner [board] under this chapter is liable for a civil
 342-8 penalty, to be imposed by a district court, of not more than \$1,000
 342-9 for each day of violation. All penalties collected under this
 342-10 section shall be deposited to the credit of the General Revenue
 342-11 Fund.

342-12 SECTION 3.0738. Section 248.101(a), Health and Safety Code,
 342-13 is amended to read as follows:

342-14 (a) The department [~~of health~~] may impose an administrative
 342-15 penalty on a person licensed under this chapter who violates this
 342-16 chapter or a rule or order adopted under this chapter.

342-17 SECTION 3.0739. Section 248.104(b), Health and Safety Code,
 342-18 is amended to read as follows:

342-19 (b) If the person accepts the determination and recommended
 342-20 penalty or if the person fails to respond to the notice, the
 342-21 department [~~commissioner of public health~~] by order shall [~~approve~~
 342-22 ~~the determination and~~] impose the recommended penalty.

342-23 SECTION 3.0740. Section 248.105, Health and Safety Code, is
 342-24 amended to read as follows:

342-25 Sec. 248.105. HEARING. (a) If the person requests a
 342-26 hearing, the ~~department [commissioner of public health]~~ shall refer
 342-27 the matter to the State Office of Administrative Hearings, which
 342-28 shall promptly set a hearing date. The department shall [~~and~~] give
 342-29 written notice of the time and place of the hearing to the person.
 342-30 An administrative law judge of the State Office of Administrative
 342-31 Hearings shall conduct the hearing.

342-32 (b) The administrative law judge shall make findings of fact
 342-33 and conclusions of law and promptly issue to the ~~department~~
 342-34 [~~commissioner of public health~~] a written proposal for a decision
 342-35 about the occurrence of the violation and the amount of a proposed
 342-36 penalty.

342-37 SECTION 3.0741. Section 248.106, Health and Safety Code, is
 342-38 amended to read as follows:

342-39 Sec. 248.106. DECISION BY DEPARTMENT [~~COMMISSIONER~~]. (a)
 342-40 Based on the findings of fact, conclusions of law, and proposal for
 342-41 a decision, the ~~department [commissioner of public health]~~ by order
 342-42 may:

342-43 (1) find that a violation occurred and impose a
 342-44 penalty; or

342-45 (2) find that a violation did not occur.

342-46 (b) The notice of the ~~department's [commissioner's]~~ order
 342-47 under Subsection (a) that is sent to the person in accordance with
 342-48 Chapter 2001, Government Code, must include a statement of the
 342-49 right of the person to judicial review of the order.

342-50 SECTION 3.0742. Section 248.107, Health and Safety Code, is
 342-51 amended to read as follows:

342-52 Sec. 248.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
 342-53 Within 30 days after the date the order of the ~~department~~
 342-54 [~~commissioner of public health~~] under Section 248.106 that imposes
 342-55 an administrative penalty becomes final, the person shall:

342-56 (1) pay the penalty; or

342-57 (2) file a petition for judicial review of the
 342-58 ~~department's [commissioner's]~~ order contesting the occurrence of
 342-59 the violation, the amount of the penalty, or both.

342-60 SECTION 3.0743. Section 248.108, Health and Safety Code, is
 342-61 amended to read as follows:

342-62 Sec. 248.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within
 342-63 the 30-day period prescribed by Section 248.107, a person who files
 342-64 a petition for judicial review may:

342-65 (1) stay enforcement of the penalty by:

342-66 (A) paying the penalty to the court for placement
 342-67 in an escrow account; or

342-68 (B) giving the court a supersedeas bond approved
 342-69 by the court that:

(i) is for the amount of the penalty; and
(ii) is effective until all judicial review of the department's [commissioner's] order is final; or
(2) request the court to stay enforcement of the penalty by:

- (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
- (B) sending a copy of the affidavit to the department [commissioner of public health] by certified mail.

(b) If the department [commissioner of public health] receives a copy of an affidavit under Subsection (a)(2), the department [commissioner] may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

SECTION 3.0744. Section 248A.052(a), Health and Safety Code, is amended to read as follows:

(a) An applicant for a prescribed pediatric extended care center license shall submit to the department in accordance with department [executive commissioner] rules:

(1) a sworn application on the form prescribed by the department;

(2) a letter of credit as prescribed by the department to demonstrate the applicant's financial viability; and

(3) the required fees.

SECTION 3.0745. Section 248A.053(b), Health and Safety Code, is amended to read as follows:

(b) A person applying to renew a center license shall:

(1) submit a renewal application to the department on the form prescribed by the department at least 60 days but not more than 120 days before expiration of the license;

(2) submit the renewal fee in the amount required by [the] department rule; and

(3) comply with any other requirements specified by department [executive commissioner] rule.

SECTION 3.0746. Section 248A.101(b), Health and Safety Code, is amended to read as follows:

(b) To protect the health and safety of the public and ensure the health, safety, and comfort of the minors served by a center, the rules must establish minimum center standards, including:

(1) standards relating to the issuance, renewal, denial, suspension, probation, and revocation of a license to operate a center;

- (2) standards relating to the provision of family-centered basic services that include individualized medical, developmental, and family training services;
- (3) based on the size of the building and the number of minors served, building construction and renovation standards, including standards for plumbing, electrical, glass, manufactured buildings, accessibility for persons with physical disabilities [the physically disabled], and fire protection;

(4) based on the size of the building and the number of minors served, building maintenance conditions relating to plumbing, heating, lighting, ventilation, adequate space, fire protection, and other conditions;

(5) standards relating to the minimum number of and qualifications required for personnel who provide personal care or basic services to the minors served;

(6) standards relating to the sanitary conditions within a center and its surroundings, including water supply, sewage disposal, food handling, and general hygiene;

(7) standards relating to the programs offered by the center to promote and maintain the health and development of the minors served and to meet the training needs of the minors' parents

344-1 or legal guardians;

344-2 (8) standards relating to physician-prescribed
344-3 supportive services;

344-4 (9) standards relating to transportation services;
344-5 and

344-6 (10) standards relating to maintenance of patient
344-7 medical records and program records in accordance with other law
344-8 and with accepted professional standards and practices.

344-9 SECTION 3.0747. Sections [248A.103\(a\)](#) and [\(b\)](#), Health and
344-10 Safety Code, are amended to read as follows:

344-11 (a) The executive commissioner by rule shall set fees
344-12 imposed by this chapter in amounts reasonable and necessary to
344-13 cover the cost of administering this chapter.

344-14 (b) A fee collected under this chapter shall be deposited in
344-15 the state treasury to the credit of the general revenue fund [~~and~~
344-16 ~~shall be appropriated to the department to administer and enforce~~
344-17 ~~this chapter~~].

344-18 SECTION 3.0748. Section [248A.152\(b\)](#), Health and Safety
344-19 Code, is amended to read as follows:

344-20 (b) A center may not provide services other than services
344-21 regulated under this chapter and department [~~executive~~
344-22 ~~commissioner~~] rule.

344-23 SECTION 3.0749. Section [248A.251](#), Health and Safety Code,
344-24 is amended to read as follows:

344-25 Sec. 248A.251. IMPOSITION OF PENALTY. The department
344-26 [~~commissioner~~] may impose an administrative penalty on a person
344-27 licensed under this chapter who violates this chapter or a rule or
344-28 standard adopted or order issued under this chapter.

344-29 SECTION 3.0750. Section [248A.254\(b\)](#), Health and Safety
344-30 Code, is amended to read as follows:

344-31 (b) If the person accepts the determination and recommended
344-32 penalty or if the person fails to respond to the notice, the
344-33 department [~~commissioner~~] by order shall approve the determination
344-34 and impose the recommended penalty.

344-35 SECTION 3.0751. Section [248A.255](#), Health and Safety Code,
344-36 is amended to read as follows:

344-37 Sec. 248A.255. HEARING. (a) If the person requests a
344-38 hearing, the department [~~commissioner~~] shall refer the matter to
344-39 the State Office of Administrative Hearings, which shall promptly
344-40 set a hearing date and give written notice of the time and place of
344-41 the hearing to the person. An administrative law judge of the State
344-42 Office of Administrative Hearings shall conduct the hearing.

344-43 (b) The administrative law judge shall make findings of fact
344-44 and conclusions of law and promptly issue to the department
344-45 [~~commissioner~~] a proposal for a decision about the occurrence of
344-46 the violation and the amount of a proposed penalty.

344-47 SECTION 3.0752. Section [248A.256](#), Health and Safety Code,
344-48 is amended to read as follows:

344-49 Sec. 248A.256. DECISION BY DEPARTMENT [~~COMMISSIONER~~]. (a)
344-50 Based on the findings of fact, conclusions of law, and proposal for
344-51 a decision, the department [~~commissioner~~] by order may:

344-52 (1) find that a violation occurred and impose a
344-53 penalty; or

344-54 (2) find that a violation did not occur.

344-55 (b) The notice of the department's [~~commissioner's~~] order
344-56 under Subsection (a) that is sent to the person in accordance with
344-57 Chapter 2001, Government Code, must include a statement of the
344-58 right of the person to judicial review of the order.

344-59 SECTION 3.0753. Section [248A.257](#), Health and Safety Code,
344-60 is amended to read as follows:

344-61 Sec. 248A.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
344-62 Not later than the 30th day after the date the order of the
344-63 department [~~commissioner~~] imposing an administrative penalty under
344-64 Section [248A.256](#) becomes final, the person shall:

344-65 (1) pay the penalty; or

344-66 (2) file a petition for judicial review of the
344-67 department's [~~commissioner's~~] order contesting the occurrence of
344-68 the violation, the amount of the penalty, or both.

344-69 SECTION 3.0754. Section [248A.258](#), Health and Safety Code,

345-1 is amended to read as follows:

345-2 Sec. 248A.258. STAY OF ENFORCEMENT OF PENALTY. (a) Within
 345-3 the period prescribed by Section 248A.257, a person who files a
 345-4 petition for judicial review may:

345-5 (1) stay enforcement of the penalty by:

345-6 (A) paying the penalty to the court for placement
 345-7 in an escrow account in the court registry; or

345-8 (B) giving the court a supersedeas bond approved
 345-9 by the court that:

345-10 (i) is for the amount of the penalty; and

345-11 (ii) is effective until all judicial review

345-12 of the department's [commissioner's] order is final; or

345-13 (2) request the court to stay enforcement of the
 345-14 penalty by:

345-15 (A) filing with the court a sworn affidavit of
 345-16 the person stating that the person is financially unable to pay the
 345-17 penalty and is financially unable to give the supersedeas bond; and

345-18 (B) sending a copy of the affidavit to the
 345-19 department [commissioner] by certified mail.

345-20 (b) If the department [commissioner] receives a copy of an
 345-21 affidavit under Subsection (a)(2), the department [commissioner]
 345-22 may file with the court, not later than the fifth day after the date
 345-23 the copy is received, a contest to the affidavit. The court shall
 345-24 hold a hearing on the facts alleged in the affidavit as soon as
 345-25 practicable and shall stay the enforcement of the penalty on
 345-26 finding that the alleged facts are true. The person who files an
 345-27 affidavit has the burden of proving that the person is financially
 345-28 unable to pay the penalty and to give a supersedeas bond.

345-29 SECTION 3.0755. Section 250.001(3), Health and Safety Code,
 345-30 as amended by Chapters 605 (S.B. 944) and 1168 (S.B. 492), Acts of
 345-31 the 83rd Legislature, Regular Session, 2013, is reenacted and
 345-32 amended to read as follows:

345-33 (3) "Facility" means:

345-34 (A) a nursing facility [home], custodial care
 345-35 home, or other institution licensed by the Department of Aging and
 345-36 Disability Services under Chapter 242;

345-37 (B) an assisted living facility licensed by the
 345-38 Department of Aging and Disability Services under Chapter 247;

345-39 (C) a home and community support services agency
 345-40 licensed under Chapter 142;

345-41 (D) an adult day care facility licensed by the
 345-42 Department of Aging and Disability Services under Chapter 103,
 345-43 Human Resources Code;

345-44 (E) an ICF-IID [a facility for persons with
 345-45 mental retardation] licensed under Chapter 252;

345-46 (F) an adult foster care provider that contracts
 345-47 with the Department of Aging and Disability Services;

345-48 (G) a facility that provides mental health
 345-49 services and that is operated by or contracts with the Department of
 345-50 State Health Services;

345-51 (H) a local mental health [or mental retardation]
 345-52 authority designated under Section 533.035 or a local intellectual
 345-53 and developmental disability authority designated under Section
533.035;

345-55 (I) a person exempt from licensing under Section
142.003(a)(19);

345-57 (J) a special care facility licensed by the
 345-58 Department of State Health Services under Chapter 248; [or]

345-59 (K) a mental health service unit of a hospital
 345-60 licensed under Chapter 241; or

345-61 (L) [or] a prescribed pediatric extended care
 345-62 center licensed by the Department of Aging and Disability Services
 345-63 under Chapter 248A.

345-64 SECTION 3.0756. Section 250.002(d), Health and Safety Code,
 345-65 is amended to read as follows:

345-66 (d) The executive commissioner of the Health and Human
 345-67 Services Commission [A regulatory agency] may adopt rules relating
 345-68 to the processing of information requested or obtained under this
 345-69 chapter.

346-1 SECTION 3.0757. Sections 250.006(a) and (b), Health and
 346-2 Safety Code, are amended to read as follows:

346-3 (a) A person for whom the facility or the individual
 346-4 employer is entitled to obtain criminal history record information
 346-5 may not be employed in a facility or by an individual employer if
 346-6 the person has been convicted of an offense listed in this
 346-7 subsection:

346-8 (1) an offense under Chapter 19, Penal Code (criminal
 346-9 homicide);

346-10 (2) an offense under Chapter 20, Penal Code
 346-11 (kidnapping, [and] unlawful restraint, and smuggling of persons);

346-12 (3) an offense under Section 21.02, Penal Code
 346-13 (continuous sexual abuse of young child or children), or Section
 346-14 21.11, Penal Code (indecency with a child);

346-15 (4) an offense under Section 22.011, Penal Code
 346-16 (sexual assault);

346-17 (5) an offense under Section 22.02, Penal Code
 346-18 (aggravated assault);

346-19 (6) an offense under Section 22.04, Penal Code (injury
 346-20 to a child, elderly individual, or disabled individual);

346-21 (7) an offense under Section 22.041, Penal Code
 346-22 (abandoning or endangering child);

346-23 (8) an offense under Section 22.08, Penal Code (aiding
 346-24 suicide);

346-25 (9) an offense under Section 25.031, Penal Code
 346-26 (agreement to abduct from custody);

346-27 (10) an offense under Section 25.08, Penal Code (sale
 346-28 or purchase of [a] child);

346-29 (11) an offense under Section 28.02, Penal Code
 346-30 (arson);

346-31 (12) an offense under Section 29.02, Penal Code
 346-32 (robbery);

346-33 (13) an offense under Section 29.03, Penal Code
 346-34 (aggravated robbery);

346-35 (14) an offense under Section 21.08, Penal Code
 346-36 (indecent exposure);

346-37 (15) an offense under Section 21.12, Penal Code
 346-38 (improper relationship between educator and student);

346-39 (16) an offense under Section 21.15, Penal Code
 346-40 (improper photography or visual recording);

346-41 (17) an offense under Section 22.05, Penal Code
 346-42 (deadly conduct);

346-43 (18) an offense under Section 22.021, Penal Code
 346-44 (aggravated sexual assault);

346-45 (19) an offense under Section 22.07, Penal Code
 346-46 (terroristic threat);

346-47 (20) an offense under Section 32.53, Penal Code
 346-48 (exploitation of [a] child, elderly individual, or disabled
 346-49 individual);

346-50 (21) an offense under Section 33.021, Penal Code
 346-51 (online solicitation of a minor);

346-52 (22) an offense under Section 34.02, Penal Code (money
 346-53 laundering);

346-54 (23) an offense under Section 35A.02, Penal Code
 346-55 (Medicaid fraud);

346-56 (24) an offense under Section 36.06, Penal Code
 346-57 (obstruction or retaliation);

346-58 (25) an offense under Section 42.09, Penal Code
 346-59 (cruelty to livestock animals), or under Section 42.092, Penal Code
 346-60 (cruelty to nonlivestock animals); or

346-61 (26) a conviction under the laws of another state,
 346-62 federal law, or the Uniform Code of Military Justice for an offense
 346-63 containing elements that are substantially similar to the elements
 346-64 of an offense listed by this subsection.

346-65 (b) A person may not be employed in a position the duties of
 346-66 which involve direct contact with a consumer in a facility or may
 346-67 not be employed by an individual employer before the fifth
 346-68 anniversary of the date the person is convicted of:

346-69 (1) an offense under Section 22.01, Penal Code

347-1 (assault), that is punishable as a Class A misdemeanor or as a
 347-2 felony;
 347-3 (2) an offense under Section 30.02, Penal Code
 347-4 (burglary);
 347-5 (3) an offense under Chapter 31, Penal Code (theft),
 347-6 that is punishable as a felony;
 347-7 (4) an offense under Section 32.45, Penal Code
 347-8 (misapplication of fiduciary property or property of [a] financial
 347-9 institution), that is punishable as a Class A misdemeanor or a
 347-10 felony;
 347-11 (5) an offense under Section 32.46, Penal Code
 347-12 (securing execution of [a] document by deception), that is
 347-13 punishable as a Class A misdemeanor or a felony;
 347-14 (6) an offense under Section 37.12, Penal Code (false
 347-15 identification as peace officer; misrepresentation of property);
 347-16 or
 347-17 (7) an offense under Section 42.01(a)(7), (8), or (9),
 347-18 Penal Code (disorderly conduct).

347-19 SECTION 3.0758. Section 251.001, Health and Safety Code, is
 347-20 amended by amending Subdivisions (2), (3), and (8) and adding
 347-21 Subdivision (7-a) to read as follows:

347-22 (2) "Commissioner" means the commissioner of state
 347-23 [public] health services.

347-24 (3) "Department" means the [~~Texas~~] Department of State
 347-25 Health Services.

347-26 (7-a) "Executive commissioner" means the executive
 347-27 commissioner of the Health and Human Services Commission.

347-28 (8) "Medical review board" means a medical review
 347-29 board that:

347-30 (A) is appointed by a renal disease network
 347-31 organization which includes this state; and

347-32 (B) has a contract with the Centers for Medicare
 347-33 and Medicaid Services [~~Health Care Financing Administration of the~~
 347-34 ~~United States Department of Health and Human Services~~] under
 347-35 Section 1881, Title XVIII, Social Security Act (42 U.S.C. Section
 347-36 1395rr).

347-37 SECTION 3.0759. Sections 251.002(a) and (b), Health and
 347-38 Safety Code, are amended to read as follows:

347-39 (a) The executive commissioner by rule [~~board~~] shall set
 347-40 fees imposed by this chapter in amounts reasonable and necessary to
 347-41 defray the cost of administering this chapter and as prescribed by
 347-42 Section 12.0111.

347-43 (b) In setting fees under this section, the executive
 347-44 commissioner [~~board~~] shall consider setting a range of license and
 347-45 renewal fees based on the number of dialysis stations at each end
 347-46 stage renal disease facility and the patient census.

347-47 SECTION 3.0760. Section 251.003, Health and Safety Code, is
 347-48 amended to read as follows:

347-49 Sec. 251.003. ADOPTION OF RULES. The executive
 347-50 commissioner [~~board~~] shall adopt rules to implement this chapter,
 347-51 including requirements for the issuance, renewal, denial,
 347-52 suspension, and revocation of a license to operate an end stage
 347-53 renal disease facility.

347-54 SECTION 3.0761. Sections 251.013(a), (f), and (g), Health
 347-55 and Safety Code, are amended to read as follows:

347-56 (a) An applicant for a license under this chapter must
 347-57 submit an application to the department on a form prescribed by the
 347-58 department [~~board~~].

347-59 (f) The license is renewable every two years [~~annually~~]
 347-60 after submission of:

347-61 (1) the renewal application and fee; and
 347-62 (2) a [~~an annual~~] report on a form prescribed by the
 347-63 department [~~board~~].

347-64 (g) The [~~annual~~] report required under Subsection (f) must
 347-65 include information related to the quality of care at the end stage
 347-66 renal disease facility. The report must be in the form and
 347-67 documented by evidence as required by department [~~board~~] rule.

347-68 SECTION 3.0762. Section 251.015(a), Health and Safety Code,
 347-69 is amended to read as follows:

(a) A medical review board shall advise the executive
commissioner and the department [board] on minimum standards and
rules to be adopted by the executive commissioner under this
chapter.

SECTION 3.0763. Section 251.032, Health and Safety Code, is amended to read as follows:

Sec. 251.032. MINIMUM REQUIREMENTS; TRAINING. The department rules adopted [by the board] under Section 251.003 shall establish:

(1) minimum standards for the curricula and instructors used to train individuals to act as dialysis technicians;

(2) minimum standards for the determination of the competency of individuals who have been trained as dialysis technicians;

(3) minimum requirements for documentation that an individual has been trained and determined to be competent as a dialysis technician and the acceptance of that documentation by another end stage renal disease facility that may later employ the individual; and

(4) the acts and practices that are allowed or prohibited for dialysis technicians.

SECTION 3.0764. Section 251.052(b), Health and Safety Code, is amended to read as follows:

(b) In this section, "unauthorized person" does not include:

(1) the department;
(2) the Health and Human Services Commission,
including the office of the inspector general;
(3) the office of the attorney general; or
(4) ~~(3)~~ any other person authorized by law to make
an inspection or to accompany an inspector.

an inspection or to accompany an inspector.

SECTION 3.0765. Section [251.0621](#), Health and Safety Code, is amended to read as follows:

is amended to read as follows:

Sec. 251.0621. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder, the department shall refer the matter to the State Office of Administrative Hearings, and an administrative law judge of that office [the department] shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

SECTION 3.0766. Section 251.067(c), Health and Safety Code, is amended to read as follows:

(c) If the person notified of the violation accepts the determination of the department, the department [~~commissioner or the commissioner's designee~~] shall [~~issue an~~] order [~~approving the determination and ordering that~~] the person to pay the recommended penalty.

SECTION 3.0767. Section 251.068, Health and Safety Code, is amended to read as follows:

Sec. 251.068. HEARING; ORDER. (a) If the person notified fails to respond in a timely manner to the notice under Section 251.067(b) or if the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office shall conduct the hearing.

(a-1) The department [commissioner or the commissioner's designee] shall[+

[(1) ~~set a hearing;~~
[(2)] give written notice of the hearing to the person[, and]

349-1 [43) designate a hearings examiner to conduct the
 349-2 hearing].

349-3 (b) The administrative law judge [hearings examiner] shall
 349-4 make findings of fact and conclusions of law and shall promptly
 349-5 issue to the department [commissioner] a written proposal for
 349-6 decision as to the occurrence of the violation and a recommendation
 349-7 as to the amount of the proposed penalty if a penalty is determined
 349-8 to be warranted.

349-9 (c) Based on the findings of fact and conclusions of law and
 349-10 the recommendations of the administrative law judge [hearings
 349-11 examiner], the department [commissioner] by order may find that a
 349-12 violation has occurred and may assess a penalty, or may find that no
 349-13 violation has occurred.

349-14 SECTION 3.0768. Sections 251.069(a), (c), and (f), Health
 349-15 and Safety Code, are amended to read as follows:

349-16 (a) The department [commissioner or the commissioner's
 349-17 designee] shall give notice of the department's [commissioner's]
 349-18 order under Section 251.068(c) to the person notified. The notice
 349-19 must include:

349-20 (1) separate statements of the findings of fact and
 349-21 conclusions of law;

349-22 (2) the amount of any penalty assessed; and

349-23 (3) a statement of the right of the person to judicial
 349-24 review of the department's [commissioner's] order.

349-25 (c) Within the 30-day period, a person who acts under
 349-26 Subsection (b)(3) may:

349-27 (1) stay enforcement of the penalty by:

349-28 (A) paying the amount of the penalty to the court
 349-29 for placement in an escrow account; or

349-30 (B) giving to the court a supersedeas bond that
 349-31 is approved by the court for the amount of the penalty and that is
 349-32 effective until all judicial review of the department's [board's]
 349-33 order is final; or

349-34 (2) request the court to stay enforcement of the
 349-35 penalty by:

349-36 (A) filing with the court a sworn affidavit of
 349-37 the person stating that the person is financially unable to pay the
 349-38 amount of the penalty and is financially unable to give the
 349-39 supersedeas bond; and

349-40 (B) giving a copy of the affidavit to the
 349-41 department by certified mail.

349-42 (f) Judicial review of the department's order [~~of the~~
 349-43 board]:

349-44 (1) is instituted by filing a petition as provided by
 349-45 Subchapter G, Chapter 2001, Government Code; and

349-46 (2) is under the substantial evidence rule.

349-47 SECTION 3.0769. Section 251.071(a), Health and Safety Code,
 349-48 is amended to read as follows:

349-49 (a) The department may assess reasonable expenses and costs
 349-50 against a person in an administrative hearing if, as a result of the
 349-51 hearing, the person's license is denied, suspended, or revoked or
 349-52 if administrative penalties are assessed against the person. The
 349-53 person shall pay expenses and costs assessed under this subsection
 349-54 not later than the 30th day after the date a department [~~of a board~~]
 349-55 order requiring the payment of expenses and costs is final. The
 349-56 department may refer the matter to the attorney general for
 349-57 collection of the expenses and costs.

349-58 SECTION 3.0770. The heading to Chapter 252, Health and
 349-59 Safety Code, is amended to read as follows:

349-60 CHAPTER 252. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN
 349-61 INTELLECTUAL DISABILITY [~~THE MENTALLY RETARDED~~]

349-62 SECTION 3.0771. Section 252.001, Health and Safety Code, is
 349-63 amended to read as follows:

349-64 Sec. 252.001. PURPOSE. The purpose of this chapter is to
 349-65 promote the public health, safety, and welfare by providing for the
 349-66 development, establishment, and enforcement of standards for the
 349-67 provision of services to individuals residing in intermediate care
 349-68 facilities for individuals with an intellectual disability [~~the~~
 349-69 mentally retarded] and the establishment, construction,

350-1 maintenance, and operation of facilities providing this service
 350-2 that, in light of advancing knowledge, will promote quality in the
 350-3 delivery of services and treatment of residents.

350-4 SECTION 3.0772. Section 252.002, Health and Safety Code, is
 350-5 amended by amending Subdivisions (1), (2), (4), and (7) and adding
 350-6 Subdivisions (1-a) and (3-a) to read as follows:

350-7 (1) "Commission" means the Health and Human Services
 350-8 Commission [~~Board~~ means the Texas Board of Human Services].

350-9 (1-a) "Commissioner" means the commissioner of aging
 350-10 and disability services.

350-11 (2) "Department" means the [Texas] Department of Aging
 350-12 and Disability [Human] Services.

350-13 (3-a) "Executive commissioner" means the executive
 350-14 commissioner of the Health and Human Services Commission.

350-15 (4) "Facility" means a home or an establishment that:
 350-16 (A) furnishes food, shelter, and treatment or
 350-17 services to four or more individuals [~~persons~~] unrelated to the
 350-18 owner;

350-19 (B) is primarily for the diagnosis, treatment, or
 350-20 rehabilitation of individuals [~~persons~~] with an intellectual
 350-21 disability [~~mental retardation~~] or related conditions; and

350-22 (C) provides in a protected setting continuous
 350-23 evaluation, planning, 24-hour supervision, coordination, and
 350-24 integration of health or rehabilitative services to help each
 350-25 resident function at the resident's greatest ability.

350-26 (7) "Resident" means an individual, including a
 350-27 client, with an intellectual disability [~~mental retardation~~] or a
 350-28 related condition who is residing in a facility licensed under this
 350-29 chapter.

350-30 SECTION 3.0773. Section 252.003, Health and Safety Code, is
 350-31 amended to read as follows:

350-32 Sec. 252.003. EXEMPTIONS. Except as otherwise provided by
 350-33 this chapter, this chapter does not apply to:

350-34 (1) an establishment that:

350-35 (A) [~~(1)~~] provides training, habilitation,
 350-36 rehabilitation, or education to individuals with an intellectual
 350-37 disability [~~mental retardation~~] or [~~a~~] related conditions
 350-38 [~~condition~~];

350-39 (B) [~~(2)~~] is operated under the jurisdiction of a
 350-40 state or federal agency, including the department, commission,
 350-41 Department of Assistive and Rehabilitative Services, [~~Department~~
 350-42 ~~of Aging and Disability Services,~~] Department of State Health
 350-43 Services, [~~Health and Human Services Commission,~~] Texas Department
 350-44 of Criminal Justice, and United States Department of Veterans
 350-45 Affairs; and

350-46 (C) [~~(3)~~] is certified through inspection or
 350-47 evaluation as meeting the standards established by the state or
 350-48 federal agency; or [~~and~~]

350-49 (2) an establishment that [~~(4)~~] is conducted by or for
 350-50 the adherents of a well-recognized church or religious denomination
 350-51 for the purpose of providing facilities for the care or treatment of
 350-52 individuals who are ill and [~~the sick~~] who depend exclusively on
 350-53 prayer or spiritual means for healing, without the use of any drug
 350-54 or material remedy, if the establishment complies with safety,
 350-55 sanitary, and quarantine laws and rules.

350-56 SECTION 3.0774. Section 252.007, Health and Safety Code, is
 350-57 amended to read as follows:

350-58 Sec. 252.007. PAPERWORK REDUCTION RULES. (a) The
 350-59 executive commissioner [~~department~~ and any designee of the
 350-60 department] shall [~~+~~]

350-61 [~~(1)~~] adopt rules to reduce the amount of paperwork a
 350-62 facility must complete and retain.

350-63 (a-1) The department shall [~~,~~ and]

350-64 [~~(2)~~] attempt to reduce the amount of paperwork to the
 350-65 minimum amount required by state and federal law unless the
 350-66 reduction would jeopardize resident safety.

350-67 (b) The department [~~, any designee of the department,~~] and
 350-68 each facility shall work together to review rules and propose
 350-69 changes in paperwork requirements so that additional time is

351-1 available for direct resident care.

351-2 SECTION 3.0775. Section 252.008, Health and Safety Code, is
351-3 amended to read as follows:

351-4 Sec. 252.008. RULES GENERALLY. [(a)] The executive
351-5 commissioner [board] shall adopt rules related to the
351-6 administration and implementation of this chapter.

351-7 [(b) The department and the Texas Department of Mental
351-8 Health and Mental Retardation shall cooperate in developing
351-9 proposed rules under this section. Before the board adopts a rule
351-10 applicable to a facility, the board shall present the proposed rule
351-11 to the commissioner of mental health and mental retardation for
351-12 review of the effects of the proposed rule. Not later than the 31st
351-13 day after the date the proposed rule is received, the commissioner
351-14 of mental health and mental retardation shall provide the board a
351-15 written statement of the effects of the proposed rule. The board
351-16 shall consider the statement in adopting a rule under this
351-17 section.]

351-18 SECTION 3.0776. Section 252.009(a), Health and Safety Code,
351-19 is amended to read as follows:

351-20 (a) Whenever possible, the department shall:

351-21 (1) use the services of and consult with state and
351-22 local agencies in carrying out the department's functions under
351-23 this chapter; and

351-24 (2) use the facilities of the department [or a
351-25 designee of the department], particularly in establishing and
351-26 maintaining standards relating to the humane treatment of
351-27 residents.

351-28 SECTION 3.0777. Section 252.0311(c), Health and Safety
351-29 Code, is amended to read as follows:

351-30 (c) The executive commissioner [of the Health and Human
351-31 Services Commission] may adopt rules that specify the ownership
351-32 interests and other relationships that qualify a person as a
351-33 controlling person.

351-34 SECTION 3.0778. Sections 252.033(e), (f), and (h), Health
351-35 and Safety Code, are amended to read as follows:

351-36 (e) The renewal report required under Subsection (d)(2)
351-37 must be filed in accordance with rules adopted by the executive
351-38 commissioner [department] that specify the form of the report, the
351-39 date it must be submitted, and the information it must contain.

351-40 (f) The department may not issue a license for new beds or an
351-41 expansion of an existing facility under this chapter unless the
351-42 addition of new beds or the expansion is included in the plan
351-43 approved by the commission [Health and Human Services Commission]
351-44 in accordance with Section 533A.062 [533.062].

351-45 (h) The executive commissioner [department] by rule shall
351-46 define specific, appropriate, and objective criteria on which the
351-47 department [it] may deny an initial license application or license
351-48 renewal or revoke a license.

351-49 SECTION 3.0779. Sections 252.034(a) and (d), Health and
351-50 Safety Code, are amended to read as follows:

351-51 (a) The executive commissioner [board] by rule may adopt a
351-52 fee for a license issued under this chapter. The fee may not exceed
351-53 \$150 plus \$5 for each unit of capacity or bed space for which the
351-54 license is sought.

351-55 (d) The executive commissioner by rule [board] may adopt an
351-56 additional fee for the approval of an increase in bed space.

351-57 SECTION 3.0780. Section 252.036, Health and Safety Code, is
351-58 amended to read as follows:

351-59 Sec. 252.036. MINIMUM STANDARDS. (a) The executive
351-60 commissioner [board] may adopt~~[, publish, and enforce]~~ minimum
351-61 standards relating to:

351-62 (1) the construction or remodeling of a facility,
351-63 including plumbing, heating, lighting, ventilation, and other
351-64 housing conditions, to ensure the residents' health, safety,
351-65 comfort, and protection from fire hazard;

351-66 (2) sanitary and related conditions in a facility and
351-67 its surroundings, including water supply, sewage disposal, food
351-68 handling, and general hygiene in order to ensure the residents'
351-69 health, safety, and comfort;

(3) equipment essential to the residents' health and welfare;

(4) the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of other policies and procedures necessary to ensure resident safety;

(5) behavior management, including use of seclusion and physical restraints;

(6) policies and procedures for the control of communicable diseases in employees and residents;

(7) the use and administration of medication in conformity with applicable law and rules for pharmacy services;

(8) specialized nutrition support such as delivery of enteral feedings and parenteral nutrients;

(9) requirements for in-service education of each employee who has any contact with residents;

(10) the regulation of the number and qualification of all personnel, including management and professional support personnel, responsible for any part of the care given to residents; and

(11) the quality of life and the provision of active treatment to residents.

(b) The department shall enforce the adopted minimum standards.

SECTION 3.0781. Section 252.037, Health and Safety Code, is amended to read as follows:

Sec. 252.037. REASONABLE TIME TO COMPLY. The executive
commissioner [board] by rule shall give a facility that is in
operation when a rule or standard is adopted under this chapter a
reasonable time to comply with the rule or standard.

SECTION 3.0782. Sections 252.0375(a) and (d), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner [department] by rule shall adopt a procedure under which a person proposing to construct or modify a facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the executive commissioner [department] shall set reasonable deadlines by which the department must complete review of submitted plans.

(d) A fee collected under this section shall be deposited in the general revenue fund [and may be appropriated only to the department to conduct reviews under this section].

SECTION 3.0783. Sections 252.038(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The executive commissioner [board] by rule shall adopt the fire safety standards applicable to the facility. The fire safety standards must be the same as the fire safety standards established by an edition of the Life Safety Code of the National Fire Protection Association. If required by federal law or regulation, the edition selected may be different for facilities or portions of facilities operated or approved for construction at different times.

(d) The rules adopted under this section do not prevent a facility licensed under this chapter from voluntarily conforming to fire safety standards that are compatible with, equal to, or more stringent than those adopted by the executive commissioner [board].

SECTION 3.0784. Sections 252.040(a) and (h), Health and Safety Code, are amended to read as follows:

(a) The department or the department's designee may make any inspection, survey, or investigation that it considers necessary and may enter the premises of a facility at reasonable times to make an inspection, survey, or investigation in accordance with department [board] rules.

(h) The executive commissioner [department] shall establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, service recipients, and the relatives of service recipients as the department considers proper.

SECTION 3.0785. Section 252.041(d), Health and Safety Code,

353-1 is amended to read as follows:

353-2 (d) As considered appropriate and necessary by the
 353-3 department, the department may invite at least one person as a
 353-4 citizen advocate to participate in inspections. The invited
 353-5 advocate must be an individual who has an interest in or who is
 353-6 employed by or affiliated with an organization or entity that
 353-7 represents, advocates for, or serves individuals with an
 353-8 intellectual disability [mental retardation] or a related
 353-9 condition.

353-10 SECTION 3.0786. Section 252.061(b), Health and Safety Code,
 353-11 is amended to read as follows:

353-12 (b) The executive commissioner [board] by rule shall
 353-13 provide for the placement of residents during the facility's
 353-14 suspension or closing to ensure their health and safety.

353-15 SECTION 3.0787. Sections 252.065(c), (d), (e), and (g),
 353-16 Health and Safety Code, are amended to read as follows:

353-17 (c) The executive commissioner [department] by rule shall
 353-18 specify each violation for which an administrative penalty may be
 353-19 assessed. In determining which violations warrant penalties, the
 353-20 executive commissioner [department] shall consider:

353-21 (1) the seriousness of the violation, including the
 353-22 nature, circumstances, extent, and gravity of the violation and the
 353-23 hazard of the violation to the health or safety of clients; and

353-24 (2) whether the affected facility had identified the
 353-25 violation as a part of its internal quality assurance process and
 353-26 had made appropriate progress on correction.

353-27 (d) The executive commissioner [department] by rule shall
 353-28 establish a specific and detailed schedule of appropriate and
 353-29 graduated penalties for each violation based on:

353-30 (1) the seriousness of the violation, including the
 353-31 nature, circumstances, extent, and gravity of the violation and the
 353-32 hazard of the violation to the health or safety of clients;

353-33 (2) the history of previous violations;

353-34 (3) whether the affected facility had identified the
 353-35 violation as a part of its internal quality assurance process and
 353-36 had made appropriate progress on correction;

353-37 (4) the amount necessary to deter future violations;

353-38 (5) efforts made to correct the violation;

353-39 (6) the size of the facility; and

353-40 (7) any other matters that justice may require.

353-41 (e) The executive commissioner [department] by rule shall
 353-42 provide the facility with a reasonable period of time, not less than
 353-43 45 days, following the first day of a violation to correct the
 353-44 violation before the department may assess [assessing] an
 353-45 administrative penalty if a plan of correction has been
 353-46 implemented. This subsection does not apply to a violation
 353-47 described by Subsections (a)(2)-(8) or to a violation that the
 353-48 department determines:

353-49 (1) has resulted in serious harm to or the death of a
 353-50 resident;

353-51 (2) constitutes a serious threat to the health or
 353-52 safety of a resident; or

353-53 (3) substantially limits the institution's capacity to
 353-54 provide care.

353-55 (g) The executive commissioner [department] shall establish
 353-56 a system to ensure standard and consistent application of penalties
 353-57 regardless of the facility location.

353-58 SECTION 3.0788. Section 252.066(c), Health and Safety Code,
 353-59 is amended to read as follows:

353-60 (c) If the person notified under this section of the
 353-61 violation accepts the determination of the department or if the
 353-62 person fails to respond in a timely manner to the notice, the
 353-63 department [commissioner of human services or the commissioner's
 353-64 designee] shall issue an order approving the determination and
 353-65 ordering that the person pay the proposed penalty.

353-66 SECTION 3.0789. Section 252.067, Health and Safety Code, is
 353-67 amended to read as follows:

353-68 Sec. 252.067. HEARING; ORDER. (a) If the person notified
 353-69 under Section 252.066 requests a hearing, an administrative law

354-1 judge [~~the department~~] shall [~~+~~
 354-2 [+] set a hearing and ~~the department shall~~ [~~+~~
 354-3 [+] give written notice of the hearing to the
 354-4 person[; and
 354-5 [+] designate a hearings examiner to conduct the
 354-6 hearing].

354-7 (b) The administrative law judge [~~hearings examiner~~] shall
 354-8 make findings of fact and conclusions of law and shall promptly
 354-9 issue to the department [~~commissioner of human services or the~~
 354-10 ~~commissioner's designee~~] a proposal for decision as to the
 354-11 occurrence of the violation and a recommendation as to the amount of
 354-12 the proposed penalty if a penalty is determined to be warranted.

354-13 (c) Based on the findings of fact and conclusions of law and
 354-14 the recommendations of the administrative law judge [~~hearings~~
 354-15 ~~examiner~~], the department [~~commissioner of human services or the~~
 354-16 ~~commissioner's designee~~] by order may find that a violation has
 354-17 occurred and may assess a penalty or may find that no violation has
 354-18 occurred.

354-19 SECTION 3.0790. Section 252.071, Health and Safety Code, as
 354-20 amended by Chapters 619 (S.B. 1376) and 1284 (S.B. 1839), Acts of
 354-21 the 77th Legislature, Regular Session, 2001, is reenacted and
 354-22 amended to read as follows:

354-23 Sec. 252.071. AMELIORATION OF VIOLATION. (a) In lieu of
 354-24 demanding payment of an administrative penalty authorized by this
 354-25 subchapter, the department may allow a person subject to the
 354-26 penalty to use, under the supervision of the department, all or part
 354-27 of the amount of the penalty to ameliorate the violation or to
 354-28 improve services, other than administrative services, in the
 354-29 facility affected by the violation.

354-30 (b) The department shall offer amelioration to a person for
 354-31 a charged violation if the department determines that the violation
 354-32 does not constitute immediate jeopardy to the health and safety of a
 354-33 facility resident.

354-34 (c) The department may not offer amelioration to a person if
 354-35 the department determines that the charged violation constitutes
 354-36 immediate jeopardy to the health and safety of a facility resident.

354-37 (d) The department shall offer amelioration to a person
 354-38 under this section not later than the 10th day after the date the
 354-39 person receives from the department a final notification of
 354-40 assessment of administrative penalty that is sent to the person
 354-41 after an informal dispute resolution process but before an
 354-42 administrative hearing under Section 252.067.

354-43 (e) A person to whom amelioration has been offered must file
 354-44 a plan for amelioration not later than the 45th day after the date
 354-45 the person receives the offer of amelioration from the department.
 354-46 In submitting the plan, the person must agree to waive the person's
 354-47 right to an administrative hearing under Section 252.067 if the
 354-48 department approves the plan.

354-49 (f) At a minimum, a plan for amelioration must:
 354-50 (1) propose changes to the management or operation of
 354-51 the facility that will improve services to or quality of care of
 354-52 residents of the facility;

354-53 (2) identify, through measurable outcomes, the ways in
 354-54 which and the extent to which the proposed changes will improve
 354-55 services to or quality of care of residents of the facility;

354-56 (3) establish clear goals to be achieved through the
 354-57 proposed changes;

354-58 (4) establish a timeline for implementing the proposed
 354-59 changes; and

354-60 (5) identify specific actions necessary to implement
 354-61 the proposed changes.

354-62 (g) The department may require that an amelioration plan
 354-63 propose changes that would result in conditions that exceed the
 354-64 requirements of this chapter or the rules adopted under this
 354-65 chapter.

354-66 (h) The department shall approve or deny an amelioration
 354-67 plan not later than the 45th day after the date the department
 354-68 receives the plan. On approval of a person's plan, the commission
 354-69 or the State Office of Administrative Hearings, as appropriate,

355-1 [department] shall deny a pending request for a hearing submitted
 355-2 by the person under Section 252.066(b).

355-3 (i) The department may not offer amelioration to a person:

355-4 (1) more than three times in a two-year period; or

355-5 (2) more than one time in a two-year period for the
 355-6 same or similar violation.

355-7 (j) In this section, "immediate jeopardy to health and
 355-8 safety" means a situation in which immediate corrective action is
 355-9 necessary because the facility's noncompliance with one or more
 355-10 requirements has caused, or is likely to cause, serious injury,
 355-11 harm, impairment, or death to a resident receiving care in the
 355-12 facility.

355-13 SECTION 3.0791. Section 252.093(d), Health and Safety Code,
 355-14 is amended to read as follows:

355-15 (d) If possible, the court shall appoint as trustee an
 355-16 individual whose background includes intellectual disability
 355-17 [~~mental retardation~~] service administration.

355-18 SECTION 3.0792. Section 252.095(b), Health and Safety Code,
 355-19 is amended to read as follows:

355-20 (b) The fee collected under this section shall be in the
 355-21 amount prescribed by Section 242.097(c) [~~242.097(b)~~] and shall be
 355-22 deposited to the credit of the nursing and convalescent home trust
 355-23 fund established under Section 242.096.

355-24 SECTION 3.0793. Sections 252.096(b) and (d), Health and
 355-25 Safety Code, are amended to read as follows:

355-26 (b) Interest on unreimbursed amounts begins to accrue on the
 355-27 date on which the money is disbursed to the facility. The rate of
 355-28 interest is the rate determined under Section 304.003, Finance Code
 355-29 [~~Section 2, Article 1.05, Title 79, Revised Statutes (Article~~
 355-30 ~~5069-1.05, Vernon's Texas Civil Statutes)~~], to be applicable to
 355-31 judgments rendered during the month in which the money is disbursed
 355-32 to the facility.

355-33 (d) The amount that remains unreimbursed on the first
 355-34 anniversary of the date on which the money is received is delinquent
 355-35 and the commission [~~Texas Department of Mental Health and Mental~~
 355-36 ~~Retardation~~] may determine that the facility is ineligible for a
 355-37 Medicaid provider contract.

355-38 SECTION 3.0794. Section 252.151, Health and Safety Code, is
 355-39 amended to read as follows:

355-40 Sec. 252.151. ADMINISTRATION OF MEDICATION. The executive
 355-41 commissioner [~~department~~] shall adopt rules relating to the
 355-42 administration of medication in facilities.

355-43 SECTION 3.0795. Section 252.152(b), Health and Safety Code,
 355-44 is amended to read as follows:

355-45 (b) The executive commissioner [~~department~~] shall specify
 355-46 the details of the examination.

355-47 SECTION 3.0796. Section 252.182, Health and Safety Code, is
 355-48 amended to read as follows:

355-49 Sec. 252.182. RESPITE CARE. (a) A facility licensed under
 355-50 this chapter may provide respite care for an individual who has a
 355-51 diagnosis of an intellectual disability [~~mental retardation~~] or a
 355-52 related condition without regard to whether the individual is
 355-53 eligible to receive intermediate care services under federal law.

355-54 (b) The executive commissioner [~~board~~] may adopt rules for
 355-55 the regulation of respite care provided by a facility licensed
 355-56 under this chapter.

355-57 SECTION 3.0797. Section 252.185, Health and Safety Code, is
 355-58 amended to read as follows:

355-59 Sec. 252.185. INSPECTIONS. The department, at the time of
 355-60 an ordinary licensing inspection or at other times determined
 355-61 necessary by the department, shall inspect a facility's records of
 355-62 respite care services, physical accommodations available for
 355-63 respite care, and the plan of care records to ensure that the
 355-64 respite care services comply with the licensing standards of this
 355-65 chapter and with any rules the executive commissioner [~~board~~] may
 355-66 adopt to regulate respite care services.

355-67 SECTION 3.0798. Sections 252.202(a) and (b), Health and
 355-68 Safety Code, are amended to read as follows:

355-69 (a) A quality assurance fee is imposed on each facility for

356-1 which a license fee must be paid under Section 252.034, on each
 356-2 facility owned by a community mental health and intellectual
 356-3 disability [mental retardation] center, as described by Subchapter
 356-4 A, Chapter 534, and on each facility owned by the department [Texas
 356-5 Department of Mental Health and Mental Retardation]. The fee:

356-6 (1) is an amount established under Subsection (b)
 356-7 multiplied by the number of patient days as determined in
 356-8 accordance with Section 252.203;

356-9 (2) is payable monthly; and

356-10 (3) is in addition to other fees imposed under this
 356-11 chapter.

356-12 (b) The commission [Health and Human Services Commission]
 356-13 or the department at the direction of the commission shall set the
 356-14 quality assurance fee for each day in the amount necessary to
 356-15 produce annual revenues equal to an amount that is not more than six
 356-16 percent of the facility's total annual gross receipts in this
 356-17 state. The fee is subject to a prospective adjustment as necessary.

356-18 SECTION 3.0799. Section 252.204, Health and Safety Code, is
 356-19 amended to read as follows:

356-20 Sec. 252.204. REPORTING AND COLLECTION. (a) The
 356-21 commission [Health and Human Services Commission] or the department
 356-22 at the direction of the commission shall collect the quality
 356-23 assurance fee.

356-24 (b) Each facility shall:

356-25 (1) not later than the 20th day after the last day of a
 356-26 month file a report with the commission [Health and Human Services
 356-27 Commission] or the department, as appropriate, stating the total
 356-28 patient days for the month; and

356-29 (2) not later than the 30th day after the last day of
 356-30 the month pay the quality assurance fee.

356-31 SECTION 3.0800. Sections 252.205(a) and (b), Health and
 356-32 Safety Code, are amended to read as follows:

356-33 (a) The executive commissioner [Health and Human Services
 356-34 Commission] shall adopt rules for the administration of this
 356-35 subchapter, including rules related to the imposition and
 356-36 collection of the quality assurance fee.

356-37 (b) The executive commissioner [Health and Human Services
 356-38 Commission] may not adopt rules granting any exceptions from the
 356-39 quality assurance fee.

356-40 SECTION 3.0801. Section 252.206, Health and Safety Code, is
 356-41 amended to read as follows:

356-42 Sec. 252.206. QUALITY ASSURANCE FUND. (a) The quality
 356-43 assurance fund is an account in the general revenue fund [a fund
 356-44 outside the state treasury held by the Texas Treasury Safekeeping
 356-45 Trust Company]. Notwithstanding any other law, the comptroller
 356-46 shall deposit fees collected under this subchapter to the credit of
 356-47 the fund.

356-48 (b) The quality assurance fund is composed of [+]
 356-49 [+] fees deposited to the credit of the fund under
 356-50 this subchapter [+, and]

356-51 [+] the earnings of the fund].

356-52 (c) Money deposited to the quality assurance fund [remains
 356-53 the property of the fund and] may be appropriated [used] only for
 356-54 the purposes of this subchapter.

356-55 SECTION 3.0802. Sections 252.207(a) and (c), Health and
 356-56 Safety Code, are amended to read as follows:

356-57 (a) Subject to legislative appropriation and state and
 356-58 federal law, the commission [Health and Human Services Commission]
 356-59 may use money in the quality assurance fund, together with any
 356-60 federal money available to match that money:

356-61 (1) to offset expenses incurred to administer the
 356-62 quality assurance fee under this chapter;

356-63 (2) to increase reimbursement rates paid under the
 356-64 Medicaid program to facilities or waiver programs for individuals
 356-65 [persons] with an intellectual disability [mental retardation]
 356-66 operated in accordance with 42 U.S.C. Section 1396n(c) and its
 356-67 subsequent amendments; or

356-68 (3) for any other health and human services purpose
 356-69 approved by the governor and Legislative Budget Board.

(c) If money in the quality assurance fund is used to increase a reimbursement rate in the Medicaid program, the commission [~~Health and Human Services Commission~~] shall ensure that the reimbursement methodology used to set that rate describes how the money in the fund will be used to increase the rate and provides incentives to increase direct care staffing and direct care wages and benefits.

SECTION 3.0803. Section 252.208, Health and Safety Code, is amended to read as follows:

Sec. 252.208. INVALIDITY; FEDERAL FUNDS. If any portion of this subchapter is held invalid by a final order of a court that is not subject to appeal, or if the commission [~~Health and Human Services Commission~~] determines that the imposition of the fee and the expenditure as prescribed by this subchapter of amounts collected will not entitle the state to receive additional federal funds under the Medicaid program, the commission shall stop collection of the quality assurance fee and shall return, not later than the 30th day after the date collection is stopped, any money collected, but not spent, under this subchapter to the facilities that paid the fees in proportion to the total amount paid by those facilities.

SECTION 3.0804. Section 253.002(b), Health and Safety Code, is amended to read as follows:

(b) If the department [Department of Aging and Disability Services] receives a report that an employee of a facility licensed under Chapter 252 or of an individual employer committed reportable conduct, the department shall forward that report to the Department of Family and Protective Services for investigation.

SECTION 3.0805. Section 253.003(c), Health and Safety Code, is amended to read as follows:

(c) If the employee notified of the violation accepts the determination of the department or fails to timely respond to the notice, the department [commissioner or the commissioner's designee] shall issue an order [approving the determination and ordering] that the reportable conduct be recorded in the registry under Section 253.007.

SECTION 3.0806. Section 253.004, Health and Safety Code, is amended to read as follows:

Sec. 253.004. HEARING; ORDER. (a) If the employee requests a hearing, an administrative law judge of the State Office of Administrative Hearings shall conduct a hearing and the department shall [[±]

employee[, and]
[(1) set a hearing;
[(2) give written notice of the hearing to the
[(3) designate a hearings examiner to conduct the
hearing]

(a-1) The administrative law judge [department] must complete the hearing and the hearing record not later than the 120th day after the date the department receives a request for a hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the department

[redacted] [redacted] [redacted]
[commissioner or the commissioner's designee] a proposal for
decision as to the occurrence of the reportable conduct.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the department [~~commissioner or the commissioner's designee~~] by order may find that the reportable conduct has occurred. If the department [~~commissioner or the commissioner's designee~~] finds that the reportable conduct has occurred, the department [~~commissioner or the commissioner's designee~~] shall issue an order on that [approving the] determination.

SECTION 3.0807. Section 253.0055, Health and Safety Code, is amended to read as follows:

Sec. 253.0055. REMOVAL OF NURSE AIDE FINDING. If a finding of reportable conduct is the basis for an entry in the nurse aide registry maintained under Chapter 250 and the entry is subsequently removed from the nurse aide registry, the department [commissioner or the commissioner's designee] shall immediately remove the record.

358-1 of reportable conduct from the employee misconduct registry
 358-2 maintained under Section 253.007.

358-3 SECTION 3.0808. Section 253.009(a), Health and Safety Code,
 358-4 is amended to read as follows:

358-5 (a) Each facility or individual employer as defined in this
 358-6 chapter and each agency as defined in Section 48.401, Human
 358-7 Resources Code, shall notify its employees in a manner prescribed
 358-8 by the department [Department of Aging and Disability Services]:

358-9 (1) about the employee misconduct registry; and

358-10 (2) that an employee may not be employed if the
 358-11 employee is listed in the registry.

358-12 SECTION 3.0809. Section 254.001(5), Health and Safety Code,
 358-13 is amended to read as follows:

358-14 (5) "Freestanding emergency medical care facility"
 358-15 means a facility, structurally separate and distinct from a
 358-16 hospital, that receives an individual and provides emergency care,
 358-17 as defined by Subdivision [Subsection] (2).

358-18 SECTION 3.0810. Sections 254.051(b) and (e), Health and
 358-19 Safety Code, are amended to read as follows:

358-20 (b) Except as provided by Section 254.052, a facility or
 358-21 person may not hold itself out to the public as a freestanding
 358-22 emergency medical care facility or use any similar term, as defined
 358-23 by department rule, that would give the impression that the
 358-24 facility or person is providing emergency care unless the facility
 358-25 or person holds a license issued under this chapter. [The use of
 358-26 the term "emergency" or a similar term is also subject to Section
254.152.]

358-27 (e) A license may be issued only for the establishment or
 358-28 operation of [The executive commissioner by rule shall establish a
 358-29 classification for] a facility that is in continuous operation 24
 358-30 hours per day and 7 days per week [and a classification for a
 358-31 facility that is in operation 7 days per week and at least 12 hours
 358-32 per day].

358-33 SECTION 3.0811. Section 254.053(b), Health and Safety Code,
 358-34 is amended to read as follows:

358-35 (b) Each application must be accompanied by a nonrefundable
 358-36 license fee in an amount set by the executive commissioner by rule.

358-37 SECTION 3.0812. Section 254.102, Health and Safety Code, is
 358-38 amended to read as follows:

358-39 Sec. 254.102. FEES. The executive commissioner by rule
 358-40 shall set fees imposed by this chapter in amounts reasonable and
 358-41 necessary to defray the cost of administering this chapter.

358-42 SECTION 3.0813. Section 254.151(c), Health and Safety Code,
 358-43 is amended to read as follows:

358-44 (c) The minimum standards under this section shall apply to
 358-45 all facilities licensed under this chapter [operating 24 hours a
 358-46 day and 7 days per week and facilities operating less than 24 hours
 358-47 a day and 7 days per week].

358-48 SECTION 3.0814. Section 254.202(c), Health and Safety Code,
 358-49 is amended to read as follows:

358-50 (c) On written request of the license holder to the
 358-51 department for a hearing, the department shall refer the matter to
 358-52 the State Office of Administrative Hearings. An administrative law
 358-53 judge of that office [, the department] shall conduct a hearing not
 358-54 earlier than the 10th day or later than the 30th day after the date
 358-55 the hearing request is received by the department to determine if
 358-56 the emergency suspension is to be continued, modified, or
 358-57 rescinded.

358-58 SECTION 3.0815. Sections 254.205(h), (i), (j), and (k),
 358-59 Health and Safety Code, are amended to read as follows:

358-60 (h) If the person accepts the determination and recommended
 358-61 penalty or if the person fails to respond to the notice, the
 358-62 department [commissioner of state health services] by order shall
 358-63 [approve the determination and] impose the recommended penalty.

358-64 (i) If the person requests a hearing, the department
 358-65 [commissioner of state health services] shall refer the matter to
 358-66 the State Office of Administrative Hearings, which shall promptly
 358-67 set a hearing date. The department shall [and] give written notice
 358-68 of the time and place of the hearing to the person. An

359-1 administrative law judge of that office [~~the State Office of~~
 359-2 ~~Administrative Hearings~~] shall conduct the hearing.

359-3 (j) The administrative law judge shall make findings of fact
 359-4 and conclusions of law and promptly issue to the department
 359-5 [~~commissioner of state health services~~] a written proposal for [a]
 359-6 decision about the occurrence of the violation and the amount of a
 359-7 proposed penalty.

359-8 (k) Based on the findings of fact, conclusions of law, and
 359-9 proposal for [a] decision, the department [~~commissioner of state~~
 359-10 ~~health services~~] by order may:

359-11 (1) find that a violation occurred and impose a
 359-12 penalty; or

359-13 (2) find that a violation did not occur.

359-14 SECTION 3.0816. Sections 254.206(a), (b), (c), and (g),
 359-15 Health and Safety Code, are amended to read as follows:

359-16 (a) Within 30 days after the date an order of the department
 359-17 [~~commissioner of state health services~~] under Section 254.205(k)
 359-18 that imposes an administrative penalty becomes final, the person
 359-19 shall:

359-20 (1) pay the penalty; or

359-21 (2) file a petition for judicial review of the
 359-22 department's [~~commissioner's~~] order contesting the occurrence of
 359-23 the violation, the amount of the penalty, or both.

359-24 (b) Within the 30-day period prescribed by Subsection (a), a
 359-25 person who files a petition for judicial review may:

359-26 (1) stay enforcement of the penalty by:

359-27 (A) paying the penalty to the court for placement
 359-28 in an escrow account; or

359-29 (B) giving the court a supersedeas bond approved
 359-30 by the court that:

359-31 (i) is for the amount of the penalty; and

359-32 (ii) is effective until all judicial review

359-33 of the department's [~~commissioner's~~] order is final; or

359-34 (2) request the court to stay enforcement of the
 359-35 penalty by:

359-36 (A) filing with the court a sworn affidavit of
 359-37 the person stating that the person is financially unable to pay the
 359-38 penalty and is financially unable to give the supersedeas bond; and

359-39 (B) sending a copy of the affidavit to the
 359-40 department [~~executive commissioner~~] by certified mail.

359-41 (c) If the department [~~commissioner of state health~~
 359-42 ~~services~~] receives a copy of an affidavit under Subsection (b)(2),
 359-43 the department [~~commissioner~~] may file with the court, within five
 359-44 days after the date the copy is received, a contest to the
 359-45 affidavit. The court shall hold a hearing on the facts alleged in
 359-46 the affidavit as soon as practicable and shall stay the enforcement
 359-47 of the penalty on finding that the alleged facts are true. The
 359-48 person who files an affidavit has the burden of proving that the
 359-49 person is financially unable to pay the penalty or to give a
 359-50 supersedeas bond.

359-51 (g) If the person paid the penalty and if the amount of the
 359-52 penalty is reduced or the penalty is not upheld by the court, the
 359-53 court shall order, when the court's judgment becomes final, that
 359-54 the appropriate amount plus accrued interest be remitted to the
 359-55 person within 30 days after the date that the judgment [~~judgement~~]
 359-56 of the court becomes final. The interest accrues at the rate
 359-57 charged on loans to depository institutions by the New York Federal
 359-58 Reserve Bank. The interest shall be paid for the period beginning
 359-59 on the date the penalty is paid and ending on the date the penalty is
 359-60 remitted.

359-61 SECTION 3.0817. Section 255.001(2), Health and Safety Code,
 359-62 is amended to read as follows:

359-63 (2) "Long-term care facility" means a nursing
 359-64 institution, an assisted living facility, or an ICF-IID
 359-65 [~~intermediate care facility for the mentally retarded~~] licensed
 359-66 under Chapter 242, 247, or 252, or certified under Chapter 32, Human
 359-67 Resources Code.

359-68 SECTION 3.0818. Section 259.006(a), Health and Safety Code,
 359-69 is amended to read as follows:

(a) The executive commissioner of the Health and Human Services Commission [department] may adopt rules to administer and enforce this chapter.

SECTION 3.0819. Section 260A.007(d), Health and Safety Code, is amended to read as follows:

(d) The executive commissioner [department] shall adopt rules governing the conduct of investigations, including procedures to ensure that the complainant and the resident, the resident's next of kin, and any person designated to receive information concerning the resident receive periodic information regarding the investigation.

SECTION 3.0820. Subchapter A, Chapter 263, Health and Safety Code, is amended by adding Section 263.0001 to read as follows:

Sec. 263.0001. DEFINITION. In this chapter, "executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0821. Section 263.001(a), Health and Safety Code, is amended to read as follows:

(a) Two or more adjacent counties may act together to carry out the purposes of this chapter and construct one or more hospitals for their joint use as provided by this chapter for a single county.

(1) each of the counties has fewer than 15,000

inhabitants; and
 (2) the executive commissioner [Texas Board of Health] approves.

Commissioner [Texas Board of Health]:
SECTION 3.0823. Section 263.023(b), Health and Safety Code, is amended to read as follows:

(b) The commissioners court shall provide for the construction of the hospital within six months after the date the number of inhabitants of the municipality exceeds 10,000 except that the executive commissioner [Texas Board of Health] may, for good cause, extend this period.

SECTION 3.0824. Section 263.027, Health and Safety Code, is

Sec. 263.027. APPROVAL OF CONSTRUCTION OR REPAIR [BY BOARD]

~~OF HEALTH]. If requested by the commissioners court of a county, the executive commissioner [Texas Board of Health] must approve plans for the construction, alteration, or repair of a hospital or facility under this chapter before the construction, alteration, or repair may begin.~~

SECTION 3.0825. Section 263.101(c), Health and Safety Code, is amended to read as follows:

(c) A hospital established or maintained under this chapter is subject to inspection by an authorized representative of:

Services; (1) the Department [Texas Board] of State Health
(2) the commissioners court; or
(3) a state board of charities, if such a board is

SECTION 3.0826. The heading to Section [263.102](#), Health and

Safety Code, is amended to read as follows:

Sec. 263.102. [TEXAS BOARD OF HEALTH] RULES AND

PUBLICATIONS.

SECTION 3.0827. Section 263.102(a), Health and Safety Code, is amended to read as follows:

(a) The board of managers shall print, or purchase from the

Department [~~Texas Board~~] of State Health Services at the actual cost of printing:

(1) rules adopted by the executive commissioner [~~Texas Board of Health~~] for the care of persons having a communicable disease and for the prevention and spread of communicable disease:

361-1 and

361-2 (2) bulletins and other publications prepared by the
 361-3 department [~~Texas Department of Health~~] providing information
 361-4 about the cause, nature, treatment, and prevention of disease.

361-5 SECTION 3.0828. Section 281.001, Health and Safety Code, is
 361-6 amended by adding Subdivision (3) to read as follows:

361-7 (3) "Executive commissioner" means the executive
 361-8 commissioner of the Health and Human Services Commission.

361-9 SECTION 3.0829. Section 281.0515, Health and Safety Code,
 361-10 is amended to read as follows:

361-11 Sec. 281.0515. PROCEDURES FOR HEALTH MAINTENANCE
 361-12 ORGANIZATION. A district may establish a health maintenance
 361-13 organization in accordance with Chapter 843, Insurance Code, [~~the~~
 361-14 ~~Texas Health Maintenance Organization Act (Chapter 20A, Vernon's~~
 361-15 ~~Texas Insurance Code)~~] to provide or arrange for health care
 361-16 services for the residents of the district.

361-17 SECTION 3.0830. Section 281.053(a), Health and Safety Code,
 361-18 is amended to read as follows:

361-19 (a) The district may be inspected by a representative of the
 361-20 commissioners court or [~~T~~] the Department [~~Texas Board~~] of State
 361-21 Health Services [~~or the Texas Department of Human Services~~].

361-22 SECTION 3.0831. Section 281.073(b), Health and Safety Code,
 361-23 is amended to read as follows:

361-24 (b) The period that medical records are retained shall be in
 361-25 accordance with rules relating to the retention of medical records
 361-26 adopted by the executive commissioner [~~Texas Department of Health~~]
 361-27 and with other applicable federal and state laws and rules.

361-28 SECTION 3.0832. Section 281.092(a), Health and Safety Code,
 361-29 is amended to read as follows:

361-30 (a) As soon as practicable after the close of the fiscal
 361-31 year, the administrator shall make a report to the board,
 361-32 commissioners court, executive commissioner [~~Texas Board of~~
 361-33 ~~Health~~], and comptroller.

361-34 SECTION 3.0833. Section 283.049(a), Health and Safety Code,
 361-35 is amended to read as follows:

361-36 (a) The district facilities may be inspected by a
 361-37 representative of the Department [~~Texas Board~~] of State Health
 361-38 Services or any other state agency or board authorized to supervise
 361-39 a hospital.

361-40 SECTION 3.0834. Section 283.082(a), Health and Safety Code,
 361-41 is amended to read as follows:

361-42 (a) As soon as practicable after the close of the fiscal
 361-43 year, the administrator shall make a report to the commissioners
 361-44 court, executive commissioner of the [~~Texas Board of~~] Health and
 361-45 Human Services Commission, and comptroller.

361-46 SECTION 3.0835. Section 311.001(a), Health and Safety Code,
 361-47 is amended to read as follows:

361-48 (a) A hospital may not, as a condition to beginning a
 361-49 hospital internship or residency, require a United States citizen
 361-50 who resides in this state and who holds a diploma from a medical
 361-51 school outside the United States that is listed in the AVICENNA
 361-52 [~~World~~] Directory for Medicine [~~of Medical Schools~~] published by
 361-53 the University of Copenhagen, in collaboration with the World
 361-54 Health Organization and the World Federation for Medical Education,
 361-55 to:

361-56 (1) take an examination other than an examination
 361-57 required by the Texas Medical [~~State~~] Board [~~of Medical Examiners~~]
 361-58 to be taken by a graduate of a medical school in the United States
 361-59 before allowing that graduate to begin an internship or residency;

361-60 (2) complete a period of internship or graduate
 361-61 clinical training; or

361-62 (3) be certified by the Educational Commission
 361-63 [~~Council~~] for Foreign Medical Graduates.

361-64 SECTION 3.0836. Section 311.002(g), Health and Safety Code,
 361-65 is amended to read as follows:

361-66 (g) The [~~Texas~~] Department of State Health Services or other
 361-67 appropriate licensing agency may enforce this section by assessing
 361-68 an administrative penalty, obtaining an injunction, or providing
 361-69 any other appropriate remedy, including suspending, revoking, or

362-1 refusing to renew a hospital's license.

362-2 SECTION 3.0837. Sections 311.003(c) and (d), Health and
362-3 Safety Code, are amended to read as follows:

362-4 (c) The [Texas] Department of State Health Services shall
362-5 administer the state funds for reimbursement under this section,
362-6 and may spend not more than \$100,000 each fiscal year from earned
362-7 federal funds or private donations to implement this section.

362-8 (d) The executive commissioner of the Health and Human
362-9 Services Commission [Texas Board of Health] shall adopt rules that
362-10 establish qualifications for reimbursement and provide procedures
362-11 for applying for reimbursement.

362-12 SECTION 3.0838. Section 311.004(a), Health and Safety Code,
362-13 is amended by adding Subdivision (1-a) to read as follows:

362-14 (1-a) "Executive commissioner" means the executive
362-15 commissioner of the Health and Human Services Commission.

362-16 SECTION 3.0839. Sections 311.004(c) and (f), Health and
362-17 Safety Code, are amended to read as follows:

362-18 (c) Unless the department authorizes an exemption for the
362-19 reason stated in Subsection (d), the [The] department shall require
362-20 each hospital to implement and enforce the statewide standardized
362-21 patient risk identification system under which a patient with a
362-22 specific medical risk may be readily identified through the use of
362-23 the system to communicate to hospital personnel the existence of
362-24 that risk [developed under Subsection (b) unless the department
362-25 authorizes an exemption for the reason stated in Subsection (d)].

362-26 (f) The executive commissioner [of the Health and Human
362-27 Services Commission] may adopt rules to implement this section.

362-28 SECTION 3.0840. Section 311.031, Health and Safety Code, is
362-29 amended by amending Subdivision (4) and adding Subdivision (6-a) to
362-30 read as follows:

362-31 (4) "Department" means the [Texas] Department of State
362-32 Health Services.

362-33 (6-a) "Executive commissioner" means the executive
362-34 commissioner of the Health and Human Services Commission.

362-35 SECTION 3.0841. Section 311.032(b), Health and Safety Code,
362-36 is amended to read as follows:

362-37 (b) The executive commissioner [board] shall adopt
362-38 necessary rules consistent with this subchapter to govern the
362-39 reporting and collection of data.

362-40 SECTION 3.0842. Sections 311.033(a) and (c), Health and
362-41 Safety Code, are amended to read as follows:

362-42 (a) A hospital shall submit to the department financial and
362-43 utilization data for that hospital, including data relating to the
362-44 hospital's:

362-45 (1) total gross revenue, including:

- 362-46 (A) Medicare gross revenue;
- 362-47 (B) Medicaid gross revenue;
- 362-48 (C) other revenue from state programs;
- 362-49 (D) revenue from local government programs;
- 362-50 (E) local tax support;
- 362-51 (F) charitable contributions;
- 362-52 (G) other third party payments;
- 362-53 (H) gross inpatient revenue; and
- 362-54 (I) gross outpatient revenue;

362-55 (2) total deductions from gross revenue, including:

- 362-56 (A) contractual allowance; and
- 362-57 (B) any other deductions;

362-58 (3) charity care;

362-59 (4) bad debt expense;

362-60 (5) total admissions, including:

- 362-61 (A) Medicare admissions;
- 362-62 (B) Medicaid admissions;
- 362-63 (C) admissions under a local government program;
- 362-64 (D) charity care admissions; and
- 362-65 (E) any other type of admission;

362-66 (6) total discharges;

362-67 (7) total patient days;

362-68 (8) average length of stay;

362-69 (9) total outpatient visits;

(10) total assets;
(11) total liabilities;
(12) estimates of unreimbursed costs of subsidized health services reported separately in the following categories:

- (A) emergency care and trauma care;
- (B) neonatal intensive care;
- (C) free-standing community clinics;
- (D) collaborative efforts with local government

or private agencies in preventive medicine, such as immunization programs; and

(E) other services that satisfy the definition of "subsidized health services" contained in Section 311.031(15) [311.031(13)];

(13) donations;
(14) total cost of reimbursed and unreimbursed research;

(15) total cost of reimbursed and unreimbursed education separated into the following categories:

technicians, and other medical professionals and health care providers;

(B) scholarships and funding to medical schools.

- (B) scholarships and funding to medical schools, colleges, and universities for health professions education;
- (C) education of patients concerning diseases and home care in response to community needs;

(D) community health education through informational programs, publications, and outreach activities in response to community needs; and

(c) The data must be submitted in the form prescribed by the

(c) The data must be submitted in the form prescribed by the department and at the time established by [the] department rule.

Sec. 311.0335. MENTAL HEALTH AND CHEMICAL DEPENDENCY DATA.

(a) A hospital that provides mental health or chemical dependency services shall submit to the department financial and utilization data relating to the mental health and chemical dependency services provided by the hospital, including data for inpatient and outpatient services relating to:

(1) patient demographics, including race, ethnicity, age, gender, and county of residence;

(2) admissions;
(3) discharges, including length of inpatient treatment;

(4) specific diagnoses and procedures according to criteria prescribed by the Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition, Revised, or a later version prescribed by [the] department rule;

(5) total charges and the components of the charges;

(6)

(6) payor sources; and
(7) use of mechanical restraints.
(b) The data must be submitted in the form prescribed by the

department and at the time established by [the] department rule.

SECTION 3.0844. Section 311.035(c), Health and Safety Code, is amended to read as follows:

(c) The department shall enter into an interagency agreement with the [Texas Department of Mental Health and Mental

agreement with the [Texas Department of Mental Health and Mental Retardation, Texas Commission on Alcohol and Drug Abuse, and] Texas Department of Insurance relating to the mental health and chemical dependency data collected under Section 311.0335. The agreement shall address the collection, analysis, and sharing of the data by the agencies.

SECTION 3.0845. Section 311.042, Health and Safety Code, is amended by adding Subdivision (3-a) and amending Subdivisions (7), (11), (13), and (14) to read as follows:

(3-a) "Department" means the Department of State

(3-a) "Department" means the Department of State
Health Services.

(7) "Government-sponsored program unreimbursed costs"

(7) "Government-sponsored program unreimbursed costs"

means the unreimbursed cost to the hospital of providing health care services to the beneficiaries of Medicare, the TRICARE program of the United States Department of Defense [civilian Health and Medical Program of the Uniformed Services], and other federal, state, or local government health care programs.

(11) "Research-related costs" means those amounts defined as research-related costs in Section 311.031(14) [311.031(12)].

(13) "Subsidized health services" means those amounts defined as subsidized health services in Section 311.031(15) [311.031(13)].

(14) "Unreimbursed costs" means costs as defined in Section 311.031(16) [311.031(14)].

SECTION 3.0846. Section 311.045(a), Health and Safety Code, is amended to read as follows:

(a) A nonprofit hospital or hospital system shall annually satisfy the requirements of this subchapter and of Sections 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1), Tax Code, to provide community benefits which include charity care and government-sponsored indigent health care by complying with one or more of the standards set forth in Subsection (b). The hospital or hospital system shall file a statement with the Center for [Bureau of State] Health Statistics [Data and Policy Analysis] at the department and the chief appraiser of the local appraisal district no later than the 120th day after the hospital's or hospital system's fiscal year ends, stating which of the standards in Subsection (b) have been satisfied, provided, however, that the first report shall be filed no later than the 120th day after the end of the hospital's or hospital system's fiscal year ending during 1994. For hospitals in a hospital system, the corporate parent may elect to satisfy the charity care requirements of this subchapter for each of the hospitals within the system on a consolidated basis.

SECTION 3.0847. Sections 311.0456(a) and (e), Health and Safety Code, are amended to read as follows:

(a) In this section, "nonprofit" [+] [(1) "Department" means the Department of State Health Services.]

[(2) "Nonprofit"] hospital has the meaning assigned by Section 311.042(9)(A).

(e) For the purposes of Subsection (b), a corporation certified by the Texas [State Board of] Medical Board [Examiners] as a nonprofit organization under Section 162.001, Occupations Code, whose sole member is a qualifying hospital or hospital system is considered a nonprofit hospital or hospital system.

SECTION 3.0848. Section 311.046(b), Health and Safety Code, is amended to read as follows:

(b) A nonprofit hospital shall file the annual report of the community benefits plan with the Center for [Bureau of State] Health Statistics [Data and Policy Analysis] at the department. The report shall be filed no later than April 30 of each year. In addition to the annual report, a completed worksheet as required by Subsection (a)(5) shall be filed no later than 10 working days after the date the hospital files its Medicare cost report.

SECTION 3.0849. Section 312.002, Health and Safety Code, is amended by amending Subdivision (3) and adding Subdivision (3-a) to read as follows:

(3) "Coordinating entity" means a nonprofit corporation under the Texas Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code, [Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes)] that is a health organization approved and certified by the Texas Medical [State] Board [of Medical Examiners] under Chapter 162, Occupations Code.

(3-a) "Department" means the Department of State Health Services.

SECTION 3.0850. Section 312.005, Health and Safety Code, is amended to read as follows:

Sec. 312.005. APPROVAL OF CONTRACTS. (a) To be effective, a contract under Section 312.004 must be submitted to the

365-1 department [board].

365-2 (b) ~~[The commissioner shall review the contract on behalf of the board.]~~ The department ~~[commissioner]~~ shall approve the contract if the ~~[commissioner finds the]~~ contract furthers the purposes of this chapter.

365-6 (c) The department ~~[commissioner]~~ may disapprove a contract only after notice to all parties and a hearing.

365-8 (d) The department ~~[commissioner]~~ may not modify a contract.

365-10 (e) The contract takes effect:

365-11 (1) when it is approved by the department ~~[commissioner]~~; or

365-13 (2) on the 31st day after the date on which the contract is filed with the department ~~[board]~~ by a medical and dental unit, supported medical or dental school, or coordinating entity that is a party to the contract, if the department ~~[commissioner]~~ does not approve or disapprove the contract within 30 days after the date on which the contract is filed.

365-19 SECTION 3.0851. Section 314.001, Health and Safety Code, is amended by amending Subdivision (3) and adding Subdivision (3-a) to read as follows:

365-22 (3) "Department" means the ~~Texas~~ Department of State Health Services.

365-24 (3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

365-26 SECTION 3.0852. Section 314.002(c), Health and Safety Code, is amended to read as follows:

365-28 (c) The department shall review the application in accordance with the standards set forth in Subsections (e) and (f) and shall, if requested, hold a public hearing in accordance with rules adopted by the executive commissioner ~~[department]~~. The department shall grant or deny the application within 120 days of the date of filing of the application and that decision must be in writing and set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the attorney general, and any intervenor within 10 days of its issuance.

365-37 SECTION 3.0853. Section 314.008, Health and Safety Code, is amended to read as follows:

365-39 Sec. 314.008. EXCLUSIONS; AUTHORITY TO ADOPT RULES [+ EFFECTIVE DATE]. (a) This chapter ~~[Act]~~ specifically excludes ground and/or air ambulance services.

365-42 (b) The executive commissioner ~~[department]~~ shall have the authority to adopt rules to implement the requirements of this chapter. ~~[Such rules shall be adopted by March 1, 1994, at which time hospitals may file an application with the department for a certification of public advantage.]~~

365-47 SECTION 3.0854. Section 321.001, Health and Safety Code, is amended by adding Subdivision (1-a) to read as follows:

365-49 (1-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

365-51 SECTION 3.0855. Sections 321.002(a) and (b), Health and Safety Code, are amended to read as follows:

365-53 (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 ~~[each]~~ adopt a "patient's bill of rights" that includes the applicable rights included in this chapter, Subtitle C of Title 7, Chapters 241, 462, 464, and 466, and any other provisions the executive commissioner ~~[agencies consider]~~ necessary to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services in an inpatient facility. In addition, the executive commissioner ~~[each agency]~~ shall adopt rules that:

365-64 (1) provide standards to prevent the admission of a minor to a facility for treatment of a condition that is not generally recognized as responsive to treatment in an inpatient treatment setting; and

365-68 (2) prescribe the procedure for presenting the applicable bill of rights and obtaining each necessary signature

366-1 if:

366-2 (A) the patient cannot comprehend the
 366-3 information because of illness, age, or other factors; or
 366-4 (B) an emergency exists that precludes immediate
 366-5 presentation of the information.

366-6 (b) The executive commissioner [Board of Protective and
 366-7 Regulatory Services] by rule shall adopt a "children's bill of
 366-8 rights" for a minor receiving treatment in a child-care facility
 366-9 for an emotional, mental health, or chemical dependency problem.

366-10 SECTION 3.0856. Section 322.001(1), Health and Safety Code,
 366-11 is amended to read as follows:

366-12 (1) "Facility" means:

366-13 (A) a general residential operation [child-care
 366-14 institution], as defined by Section 42.002, Human Resources Code,
 366-15 including a state-operated facility, [that is a residential
 366-16 treatment center or a child-care institution] serving children with
 366-17 an intellectual disability [mental retardation];

366-18 (B) an ICF-IID [intermediate care facility]
 366-19 licensed by the Department of Aging and Disability Services under
 366-20 Chapter 252 or operated by that department and exempt under Section
 366-21 252.003 from the licensing requirements of that chapter;

366-22 (C) a mental hospital or mental health facility,
 366-23 as defined by Section 571.003;

366-24 (D) an institution, as defined by Section
 366-25 242.002;

366-26 (E) an assisted living facility, as defined by
 366-27 Section 247.002; or

366-28 (F) a treatment facility, as defined by Section
 366-29 464.001.

366-30 SECTION 3.0857. Section 323.002(b), Health and Safety Code,
 366-31 is amended to read as follows:

366-32 (b) The executive commissioner of the Health and Human
 366-33 Services Commission [department] shall adopt procedures for
 366-34 submission, approval, and modification of a plan required under
 366-35 this section.

366-36 SECTION 3.0858. Section 341.001, Health and Safety Code, is
 366-37 amended by amending Subdivision (2) and adding Subdivision (3-a) to
 366-38 read as follows:

366-39 (2) "Department" means the [Texas] Department of State
 366-40 Health Services.

366-41 (3-a) "Executive commissioner" means the executive
 366-42 commissioner of the Health and Human Services Commission.

366-43 SECTION 3.0859. Section 341.002, Health and Safety Code, is
 366-44 amended to read as follows:

366-45 Sec. 341.002. RULES FOR SANITATION AND HEALTH PROTECTION.
 366-46 The executive commissioner [board] may:

366-47 (1) adopt rules consistent with the purposes of this
 366-48 chapter; and

366-49 (2) establish standards and procedures for the
 366-50 management and control of sanitation and for health protection
 366-51 measures.

366-52 SECTION 3.0860. Sections 341.014(c) and (e), Health and
 366-53 Safety Code, are amended to read as follows:

366-54 (c) A privy may not be constructed within 75 feet of a
 366-55 drinking water well or of a human habitation, other than a
 366-56 habitation to which the privy is appurtenant, without approval by
 366-57 the local health authority or the department [board]. A privy may
 366-58 not be constructed or maintained over an abandoned well or over a
 366-59 stream.

366-60 (e) Material and human excreta removed from a privy vault or
 366-61 from any other place shall be handled in a manner that does not
 366-62 create a public health nuisance. The material and human excreta may
 366-63 not be deposited within 300 feet of a highway unless buried or
 366-64 treated in accordance with the instructions of the local health
 366-65 authority or the department [board].

366-66 SECTION 3.0861. Section 341.017(a), Health and Safety Code,
 366-67 is amended to read as follows:

366-68 (a) The executive commissioner [board] shall adopt
 366-69 reasonable rules to require railroads to provide adequate

367-1 sanitation facilities for railroad maintenance-of-way employees.

367-2 SECTION 3.0862. Section 341.018(c), Health and Safety Code,
367-3 is amended to read as follows:

367-4 (c) The department [board] shall promote rodent control
367-5 programs in rat-infested areas and in localities in which typhus
367-6 fever has appeared.

367-7 SECTION 3.0863. Sections 341.064(b) and (1), Health and
367-8 Safety Code, are amended to read as follows:

367-9 (b) The bacterial content of the water in a public swimming
367-10 pool may not exceed the safe limits prescribed by department [~~the~~
367-11 ~~board's~~] standards. A minimum free residual chlorine of 2.0 parts
367-12 for each one million units of water in a public spa and a minimum
367-13 free residual chlorine of 1.0 part for each one million units of
367-14 water in other public swimming pools, or any other method of
367-15 disinfectant approved by the department, must be maintained in a
367-16 public swimming pool in use.

367-17 (1) In adopting rules governing lifesaving equipment to be
367-18 maintained by a public swimming pool, the executive commissioner
367-19 [~~board~~] may not require a separate throwing line longer than
367-20 two-thirds the maximum width of the pool.

367-21 SECTION 3.0864. Section 341.0645(b), Health and Safety
367-22 Code, is amended to read as follows:

367-23 (b) The executive commissioner [~~of the Health and Human~~
367-24 ~~Services Commission~~] shall adopt by rule pool safety standards
367-25 necessary to prevent drowning. The standards must be at least as
367-26 stringent as those imposed under the federal Virginia Graeme Baker
367-27 Pool and Spa Safety Act (15 U.S.C. Section 8001 et seq.).

367-28 SECTION 3.0865. Sections 341.068(b) and (d), Health and
367-29 Safety Code, are amended to read as follows:

367-30 (b) The executive commissioner [board] shall adopt rules to
367-31 implement Subsection (a), including a rule that in providing
367-32 sufficient restrooms a ratio of not less than 2:1 women's-to-men's
367-33 restrooms or other minimum standards established in consultation
367-34 with the Texas State Board of Plumbing Examiners shall be
367-35 maintained if the use of the restrooms is designated by gender. The
367-36 rules shall apply to facilities where the public congregates and on
367-37 which construction is started on or after January 1, 1994, or on
367-38 which structural alterations, repairs, or improvements exceeding
367-39 50 percent of the entire facility are undertaken on or after January
367-40 1, 1994.

367-41 (d) The executive commissioner [board] may adopt rules
367-42 consistent with Subsection (c)(1) to define "facilities where the
367-43 public congregates."

367-44 SECTION 3.0866. Section 341.0695, Health and Safety Code,
367-45 is amended by amending Subsection (f) and adding Subsection (i-1)
367-46 to read as follows:

367-47 (f) The executive commissioner [~~department~~] may by rule
367-48 adopt methods other than chlorination for the purpose of
367-49 disinfecting interactive water features and fountains.

367-50 (i-1) The executive commissioner by rule shall prescribe
367-51 the amount of the fee the department may collect under Subsection
367-52 (i).

367-53 SECTION 3.0867. Sections 341.082(b) and (c), Health and
367-54 Safety Code, are amended to read as follows:

367-55 (b) The environmental health officer must be a registered
367-56 professional engineer. The officer must file a copy of the
367-57 officer's oath and appointment with the department [board].

367-58 (c) The environmental health officer shall assist the
367-59 department [board] in enforcing this chapter and is subject to:

367-60 (1) the authority of the department [board]; and
367-61 (2) removal from office in the same manner as a
367-62 municipal health authority.

367-63 SECTION 3.0868. Section 345.001, Health and Safety Code, is
367-64 amended by amending Subdivisions (2) and (2-a) and adding
367-65 Subdivisions (2-b) and (2-c) to read as follows:

367-66 (2) "Commissioner" means the commissioner of state
367-67 health services.

367-68 (2-a) "Department" means the [Texas] Department of
367-69 State Health Services.

(2-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(2-c) [(2-a)] "Floor model" means new bedding placed in a retail sales area for display purposes.

SECTION 3.0869. Section 345.0055(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner [department] may adopt rules relating to material used in new or renovated bedding, including rules:

- (1) requiring the use of burn resistant material; and
- (2) prohibiting or restricting the use of secondhand or recycled material.

SECTION 3.0870. Section 345.007, Health and Safety Code, is amended to read as follows:

Sec. 345.007. ADVISORY COMMISSION. The executive commissioner [Texas Board of Health] may appoint an advisory commission composed of representatives of consumers and the bedding industry to assist the executive commissioner and the department [board] in implementing this chapter.

SECTION 3.0871. Section 345.022(f), Health and Safety Code, is amended to read as follows:

(f) The executive commissioner [department] may adopt rules that:

(1) require that the label state conformity with burn resistant material requirements or identify any chemical treatment applied to the bedding; and

(2) exempt from the requirements of this section a custom upholstery business that does not repair or renovate bedding for resale.

SECTION 3.0872. Section 345.024(c), Health and Safety Code, is amended to read as follows:

(c) A person may not use in the manufacture, repair, or renovation of bedding a material that has not been cleaned and germicidally treated by a process or treatment approved by the department if the material:

(1) has been used by a person with a communicable disease; or
(2) is filthy, oily, or stained, or harbors

SECTION 3.0873. Section 345.027, Health and Safety Code, is amended to read as follows:

amended to read as follows:

Sec. 345.027. COLOR OF LABEL AND LETTERING. The executive ~~commissioner [department]~~ may adopt rules governing the color of label required under this subchapter and the color of the lettering on the label.

SECTION 3.0874. Section 345.041(c), Health and Safety Code, is amended to read as follows:

(c) The executive commissioner [Texas Board of Health] by rule may exempt from the permit requirement of this section a custom upholstery business that does not repair or renovate bedding for resale.

SECTION 3.0875. Sections 345.043(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner by rule [Texas Board of Health] shall set the fees for an initial permit issued under this chapter and for renewal of a permit issued under this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

(c) A permit expires two years [~~one year~~] after the date of issuance.

SECTION 3.0876. Section 345.0435(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner [of the Health and Human Services Commission] shall adopt rules necessary to implement this subchapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a permit issued under this subchapter.

SECTION 3.0877. Section 345.045(b), Health and Safety Code, is amended to read as follows:

(b) The executive commissioner [of the Health and Human Services Commission,] by rule[~~r~~] may establish additional requirements regulating the sanitary condition of a permit holder's place of business. The holder of a germicidal treatment permit who germicidally treats not more than 10 items at the permit holder's place of business each week is exempt from any additional requirements regulating the sanitary condition of a permit holder's place of business adopted under this subsection.

SECTION 3.0878. Section 345.082, Health and Safety Code, is amended to read as follows:

Sec. 345.082. RULEMAKING AUTHORITY. The executive
commissioner [department] may adopt rules to implement and enforce
this chapter.

SECTION 3.0879. Section 345.102(c), Health and Safety Code, is amended to read as follows:

(c) If the person notified of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the department [commissioner of public health or the commissioner's designee] shall [issue an] order [approving the determination and ordering that] the person to pay the proposed penalty.

SECTION 3.0880. Section 345.103, Health and Safety Code, is amended to read as follows:

Sec. 345.103. HEARING; ORDER. (a) If the person notified requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings. The department shall[+]

[(1) set a hearing;
[(2) give written notice of the hearing to the
person[, and
[(3) designate a hearings examiner to conduct the
hearing].

(b) An administrative law judge of the State of Office of Administrative Hearings [The hearings examiner] shall make findings of fact and conclusions of law and shall promptly issue to the department [commissioner of public health or the commissioner's designee] a written proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the administrative law judge [~~hearings examiner~~], the department [~~commissioner of public health or the commissioner's designee~~] by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

SECTION 3.0881. Section 345.106(a), Health and Safety Code, is amended to read as follows:

(a) At the request of the department [~~commissioner of public health~~], the attorney general may petition the district court for a temporary restraining order to restrain a continuing violation of this chapter or a threat of a continuing violation of this chapter if the department [~~commissioner of public health~~] finds that:

(1) a person has violated, is violating, or is threatening to violate this chapter; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

SECTION 3.0882. Section 345.107(a), Health and Safety Code, is amended to read as follows:

(a) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the

hearing, the person's permit is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date on which the order issued by the department [commissioner of public health or the commissioner's designee] requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

SECTION 3.0883. Section 345.131(1), Health and Safety Code, is amended to read as follows:

(1) "Authorized agent" means an employee of the department who is designated by the commissioner [of public health] to enforce the provisions of this chapter.

SECTION 3.0884. Section 345.132, Health and Safety Code, is amended to read as follows:

Sec. 345.132. DETAINED OR EMBARGOED BEDDING. (a) The department [commissioner of public health or an authorized agent] may detain or embargo bedding under this section if the department [commissioner or the authorized agent] finds or has probable cause to believe that the article violates this chapter or a rule or standard adopted under this chapter.

(b) The department [commissioner of public health or an authorized agent] shall affix to detained or embargoed bedding a tag or other appropriate marking that gives notice that:

- (1) the bedding violates or is suspected of violating 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 warn all persons not to use the bedding, remove the bedding from the premises, or dispose of the bedding by sale or otherwise until permission for use, removal, or disposal is given by the department [commissioner of public health, the authorized agent] or a court.

(d) A person may not use detained or embargoed bedding, remove detained or embargoed bedding from the premises, or dispose of detained or embargoed bedding by sale or otherwise without permission of the department [~~commissioner of public health, the authorized agent,~~] or a court.

(e) The department [commissioner of public health or an authorized agent] shall remove the tag or other marking from detained or embargoed bedding if the department [commissioner or an authorized agent] finds that the bedding does not violate this chapter or a rule or standard adopted under this chapter.

SECTION 3.0885. Sections 345.133(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) If the claimant of the detained or embargoed bedding or the claimant's agent fails or refuses to transfer the bedding to a secure place after the tag or other appropriate marking has been affixed as provided by Section 345.132, the department [commissioner of public health or an authorized agent] may order the transfer of the bedding to one or more secure storage areas to 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 claimant of the bedding or the claimant's agent does not carry out the transfer order in a timely manner.

(d) The commissioner [of public health] may request the attorney general to bring an action in the district court in Travis County to recover the costs of the transfer. In a judgment in favor of the state, the court may award costs, attorney's fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

SECTION 3.0886. Sections 345.135(a), (b), (c), (e), (g), and (h), Health and Safety Code, are amended to read as follows:

(a) In conjunction with the detention or embargo of bedding under this subchapter, the commissioner [of public health] may order bedding to be recalled from commerce.

(b) The commissioner's [commissioner of public health's] recall order may require the bedding to be removed to one or more secure areas approved by the commissioner or an authorized agent.

(c) The recall order must be in writing and signed by the commissioner [of public health].

(e) The recall order is effective until the order:
(1) expires on its own terms;

(1) expires on its own terms;
(2) is withdrawn by the commissioner [of public health]; or

(3) is reversed by a court in an order denying condemnation under Section 345.134.

(g) If the claimant or the claimant's agent fails or refuses to carry out the recall order in a timely manner, the commissioner

371-1 [of public health] may provide for the recall of the bedding. The
 371-2 costs of the recall shall be assessed against the claimant of the
 371-3 bedding or the claimant's agent.

371-4 (h) The commissioner [of public health] may request the
 371-5 attorney general to bring an action in the district court of Travis
 371-6 County to recover the costs of the recall. In a judgment in favor of
 371-7 the state, the court may award costs, attorney's fees, court costs,
 371-8 and interest from the time the expense was incurred through the date
 371-9 the department is reimbursed.

371-10 SECTION 3.0887. Section 345.137, Health and Safety Code, is
 371-11 amended to read as follows:

371-12 Sec. 345.137. CORRECTION BY PROPER LABELING OR PROCESSING.

371-13 (a) A court may order the delivery of detained or embargoed bedding
 371-14 that violates this chapter or a rule or standard adopted under this
 371-15 chapter to the claimant of the bedding for labeling or processing
 371-16 under the supervision of an agent of the commissioner [of public
 371-17 health] or an authorized agent if:

371-18 (1) the decree has been entered in the suit relating to
 371-19 the detained or embargoed bedding;

371-20 (2) the claimant has paid the costs, fees, and
 371-21 expenses of the suit;

371-22 (3) the violation can be corrected by proper labeling
 371-23 or processing; and

371-24 (4) a good and sufficient bond, conditioned on the
 371-25 correction of the violation by proper labeling or processing, has
 371-26 been executed.

371-27 (b) The claimant shall pay the costs of the supervision of
 371-28 the labeling or processing by the agent of the commissioner [of
 371-29 public health] or an authorized agent.

371-30 (c) The court shall order that the bedding be returned to
 371-31 the claimant and the bond discharged on the representation to the
 371-32 court by the commissioner [of public health] or an authorized agent
 371-33 that the article no longer violates this chapter or a rule or
 371-34 standard adopted under this chapter and that the expenses of the
 371-35 supervision are paid.

371-36 SECTION 3.0888. Section 361.003(5), Health and Safety Code,
 371-37 is amended to read as follows:

371-38 (5) "Commission" means the Texas [Natural Resource
 371-39 Conservation] Commission on Environmental Quality.

371-40 SECTION 3.0889. Sections 361.018(a) and (b), Health and
 371-41 Safety Code, are amended to read as follows:

371-42 (a) The commission has the powers under this chapter
 371-43 necessary or convenient to carry out its responsibilities
 371-44 concerning the regulation of the management of hazardous waste
 371-45 components of radioactive waste under the jurisdiction of the
 371-46 [Texas] Department of State Health Services.

371-47 (b) The commission shall consult with the [Texas]
 371-48 Department of State Health Services concerning regulation and
 371-49 management under this section, except for activities solely under
 371-50 the commission's jurisdiction.

371-51 SECTION 3.0890. Section 361.039, Health and Safety Code, is
 371-52 amended to read as follows:

371-53 Sec. 361.039. CONSTRUCTION OF OTHER LAWS. Except as
 371-54 specifically provided by this chapter, this chapter does not
 371-55 diminish or limit the authority of the commission, the [Texas]
 371-56 Department of State Health Services, or a local government in
 371-57 performing the powers, functions, and duties vested in those
 371-58 governmental entities by other law.

371-59 SECTION 3.0891. The heading to Subchapter B, Chapter 361,
 371-60 Health and Safety Code, is amended to read as follows:

371-61 SUBCHAPTER B. POWERS AND DUTIES OF [TEXAS NATURAL RESOURCE
 371-62 CONSERVATION] COMMISSION

371-63 SECTION 3.0892. Section 361.560(3), Health and Safety Code,
 371-64 is amended to read as follows:

371-65 (3) "Medical waste" includes animal waste, bulk blood
 371-66 and blood products, microbiological waste, pathological waste,
 371-67 sharps, and special waste from health care-related facilities as
 371-68 those terms are defined in 25 TAC Section 1.132 ([Tex. Dept. of
 371-69 Health,] Definition, Treatment, and Disposition of Special Waste

372-1 from Health Care-Related Facilities). The term does not include
 372-2 medical waste produced on farmland and ranchland as defined in
 372-3 former Section 252.001(6), Agriculture Code. The term does not
 372-4 include artificial, nonhuman materials removed from a patient and
 372-5 requested by the patient, including but not limited to orthopedic
 372-6 devices and breast implants.

372-7 SECTION 3.0893. Section 382.002(b), Health and Safety Code,
 372-8 is amended to read as follows:

372-9 (b) It is intended that this chapter be vigorously enforced
 372-10 and that violations of this chapter or any rule or order of the
 372-11 Texas [Natural Resource Conservation] Commission on Environmental
 372-12 Quality result in expeditious initiation of enforcement actions as
 372-13 provided by this chapter.

372-14 SECTION 3.0894. Section 382.003(4), Health and Safety Code,
 372-15 is amended to read as follows:

372-16 (4) "Commission" means the Texas [Natural Resource
 372-17 Conservation] Commission on Environmental Quality.

372-18 SECTION 3.0895. Section 382.019(c), Health and Safety Code,
 372-19 is amended to read as follows:

372-20 (c) The commission or any other state agency may not adopt a
 372-21 rule requiring the use of Stage II vapor recovery systems that
 372-22 control motor vehicle refueling emissions at a gasoline dispensing
 372-23 facility in this state until the United States Environmental
 372-24 Protection Agency determines that the use of the system is required
 372-25 for compliance with the federal Clean Air Act (42 U.S.C. 7401 et
 372-26 seq.), except the commission may adopt rules requiring such vapor
 372-27 recovery systems installed in nonattainment areas if it can be
 372-28 demonstrated to be necessary for the attainment of federal ozone
 372-29 ambient air quality standards or, following appropriate health
 372-30 studies and in consultation with the [Texas] Department of State
 372-31 Health Services, it is determined to be necessary for the
 372-32 protection of public health.

372-33 SECTION 3.0896. Section 385.001(2), Health and Safety Code,
 372-34 is amended to read as follows:

372-35 (2) "Executive commissioner" [Board] means the
 372-36 executive commissioner of the Health and Human Services Commission
 372-37 [Texas Board of Health].

372-38 SECTION 3.0897. The heading to Section 385.002, Health and
 372-39 Safety Code, is amended to read as follows:

372-40 Sec. 385.002. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
 372-41 [BOARD].

372-42 SECTION 3.0898. Sections 385.002(a), (b), and (d), Health
 372-43 and Safety Code, are amended to read as follows:

372-44 (a) The executive commissioner [board] by rule shall
 372-45 establish voluntary guidelines for indoor air quality in government
 372-46 buildings, including guidelines for ventilation and indoor air
 372-47 pollution control systems. The executive commissioner [board] may
 372-48 adopt other rules necessary to implement this chapter.

372-49 (b) In establishing the guidelines, the executive
 372-50 commissioner [board] shall consider:

372-51 (1) the potential chronic effects of air contaminants
 372-52 on human health;

372-53 (2) the potential effects of insufficient ventilation
 372-54 of the indoor environment on human health;

372-55 (3) the potential costs of health care for the
 372-56 short-term and long-term effects on human health that may result
 372-57 from exposure to indoor air contaminants; and

372-58 (4) the potential costs of compliance with a proposed
 372-59 guideline.

372-60 (d) The executive commissioner's [board's] guidelines may
 372-61 differ for different pollution sources or different areas of the
 372-62 state and may differ for buildings that are regularly occupied or
 372-63 visited by children.

372-64 SECTION 3.0899. Section 401.003, Health and Safety Code, is
 372-65 amended by amending Subdivision (6) and adding Subdivision (9-a) to
 372-66 read as follows:

372-67 (6) "Department" means the Department of State Health
 372-68 Services or other department designated by the executive
 372-69 commissioner [of the Health and Human Services Commission].

(9-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0900. Section 401.004(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Subsection (b), "low-level radioactive waste" means radioactive material that:

(1) is discarded or unwanted and is not exempt by department [board] rule adopted under Section 401.106;

(2) is waste, as that term is defined by 10 C.F.R. Section 61.2; and

(3) is subject to:
(A) concentration limits established under 10

C.F.R. Section 61.55, or compatible rules established by the executive commissioner [department] or commission, as applicable; and

(B) disposal criteria established under title 10, Code of Federal Regulations, or established by the department or commission, as applicable.

SECTION 3.0901. Section 401.015(a), Health and Safety Code, is amended to read as follows:

(1) one representative from industry who is trained in

(1) one representative from industry who is trained in nuclear physics, science, or nuclear engineering;

- (2) one representative from labor;
- (3) one representative from agriculture;
- (4) one representative from the insurance industry.

(4) one representative from the insurance industry;
(5) one individual who is engaged in the use and application of nuclear physics in medicine and is certified by the

application of nuclear physics in medicine and is certified by the American Board of Radiology or licensed by the Texas Board of Licensure for Professional Medical Physicists.

Licensure for Professional Medical Physicists;
 (6) one hospital administrator;
 (7) one individual licensed by the Texas Medical

[State] Board [of Medical Examiners] who specializes in nuclear medicine.

medicine; (8) one individual licensed by the Texas Medical Board [of Medical Examiners] who specializes in pathology;

(9) one individual licensed by the Texas Medical Board [of Medical Examiners] who specializes in pathology;

[state] Board [of Medical Examiners] who specializes in radiology;
(10) one representative from the nuclear utility industry.

industry; (11) one representative from the radioactive waste industry;

(12) one representative from the petroleum industry;
(13) one health physicist certified by the American

(14) one individual licensed by the State Board of Health.

(14) one individual licensed by the State Board of Dental Examiners;

(15) one representative from the uranium mining industry; and
(16) three representatives of the public.

(16) three representatives of the public.

SECTION 3.0902. Section 401.0152, Health and Safety Code, is amended to read as follows:

is amended to read as follows:

Sec. 401.0152. INFORMATION ABOUT STANDARDS OF CONDUCT. The department [commissioner or the commissioner's designee] shall

department [commissioner or the commissioner's designee] shall provide to members of the advisory board, as often as necessary, information regarding the requirements for office under this

information regarding the requirements for office under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of

responsibilities under applicable laws relating to standards of conduct for state officers.

SECTION 3.0903. Section [401.019](#), Health and Safety Code, as amended by Chapters 553 (H.B. 212) and 554 (H.B. 213), Acts of the 75th Legislature, Regular Session, 1997, is reenacted and amended

/5th Legislature, Regular Session, 1997, is reenacted and amended to read as follows:

Sec. 401.019. ADVISORY BOARD DUTIES. The advisory board shall:

374-1 to the department, the commission, the Railroad Commission of
 374-2 Texas, and other state agencies that may be required on matters
 374-3 relating to development, use, and regulation of sources of
 374-4 radiation [~~to the department, the Texas Natural Resource~~
 374-5 ~~Conservation Commission, the Railroad Commission of Texas, and~~
 374-6 ~~other state agencies~~]; and

374-7 (3) review proposed rules and guidelines of any state
 374-8 agency [~~of the department, the Texas Natural Resource Conservation~~
 374-9 ~~Commission, the Railroad Commission of Texas, and other state~~
 374-10 ~~agencies~~] relating to regulation of sources of radiation and
 374-11 recommend changes in proposed or existing rules and guidelines
 374-12 relating to those matters.

374-13 SECTION 3.0904. Section 401.051, Health and Safety Code, is
 374-14 amended to read as follows:

374-15 Sec. 401.051. ADOPTION OF RULES AND GUIDELINES. The
 374-16 executive commissioner [board] and commission each within the [its]
 374-17 jurisdiction of that officer or agency may adopt rules and
 374-18 guidelines relating to control of sources of radiation.

374-19 SECTION 3.0905. Sections 401.052(a), (b), (c), and (e),
 374-20 Health and Safety Code, are amended to read as follows:

374-21 (a) The executive commissioner [board] shall adopt rules
 374-22 that provide for transportation and routing of radioactive material
 374-23 and waste in this state.

374-24 (b) Rules adopted under this section for low-level
 374-25 radioactive waste must:

374-26 (1) to the extent practicable, be compatible with
 374-27 United States Department of Transportation and federal commission
 374-28 [~~United States Nuclear Regulatory Commission~~] regulations relating
 374-29 to the transportation of low-level radioactive waste;

374-30 (2) require each shipper and carrier [transporter] of
 374-31 low-level radioactive waste to adopt an emergency plan approved by
 374-32 the department for responding to transportation accidents;

374-33 (3) require the notification and reporting of
 374-34 accidents to the department and to local emergency planning
 374-35 committees in the county where the accident occurs;

374-36 (4) require each shipper to adopt a quality control
 374-37 program approved by the department to verify that shipping
 374-38 containers are suitable for shipment to a licensed disposal
 374-39 facility;

374-40 (5) assess a fee on shippers for shipments to a Texas
 374-41 low-level radioactive waste disposal facility of low-level
 374-42 radioactive waste originating in Texas or out-of-state; and

374-43 (6) require a carrier [transporter] to carry liability
 374-44 insurance in an amount the executive commissioner [board]
 374-45 determines is sufficient to cover damages likely to be caused by a
 374-46 shipping accident in accordance with regulations imposed by the
 374-47 United States Department of Transportation and the federal
 374-48 commission [~~United States Nuclear Regulatory Commission~~].

374-49 (c) In adopting rules under this section, the executive
 374-50 commissioner [board] shall consult with the advisory board and the
 374-51 commission.

374-52 (e) Money expended from the perpetual care account to
 374-53 respond to accidents involving low-level radioactive waste must be
 374-54 reimbursed to the perpetual care account by the responsible shipper
 374-55 or carrier [transporter] according to rules adopted by the
 374-56 executive commissioner [board].

374-57 SECTION 3.0906. Section 401.057(b), Health and Safety Code,
 374-58 is amended to read as follows:

374-59 (b) The executive commissioner [board] or commission by
 374-60 rule may provide exemptions to the records requirements under
 374-61 Subsections (a)(1) and (3).

374-62 SECTION 3.0907. Section 401.064, Health and Safety Code, is
 374-63 amended to read as follows:

374-64 Sec. 401.064. INSPECTION OF X-RAY EQUIPMENT. (a) The
 374-65 executive commissioner [board] shall adopt rules relating to the
 374-66 frequency of department inspections of electronic products.

374-67 (b) In adopting the rules, the executive commissioner
 374-68 [board] shall consider the threat to human health and safety that
 374-69 the electronic products may present.

(c) The executive commissioner [board] shall adopt an inspection interval of five years for routine inspections of electronic products that present a minimal threat to human health and safety.

(d) The executive commissioner [board] by rule shall require a person who inspects medical, podiatric medical, dental, veterinary, or chiropractic electronic products to have special training in the design and uses of the products.

(e) The department shall conduct inspections of medical, podiatric medical, dental, veterinary, and chiropractic electronic products in a manner designed to cause as little disruption of a medical, podiatric medical, dental, veterinary, or chiropractic practice as is practicable.

(f) In adopting rules under this section relating to the inspection of medical, podiatric medical, dental, veterinary, and chiropractic electronic products, the executive commissioner [board] shall solicit and follow the recommendations of the State Board of Dental Examiners for the inspections of dental electronic products, the Texas State Board of Podiatric Medical Examiners for the inspection of podiatric medical electronic products, the Texas Medical [State] Board [of Medical Examiners] for the inspection of medical electronic products, the [Texas] State Board of Veterinary Medical Examiners for the inspection of medical electronic products used in the practice of veterinary medicine, and the Texas [State] Board of Chiropractic Examiners for the inspection of chiropractic electronic products, unless in conflict with federal statutes or federal rules.

SECTION 3.0908. Section 401.069, Health and Safety Code, is amended to read as follows:

Sec. 401.069. MEMORANDUM OF UNDERSTANDING. The executive
commissioner [board] or commission must adopt as a rule any
memorandum of understanding between the department or commission,
as appropriate, and another state agency.

SECTION 3.0909. Section 401.103, Health and Safety Code, is amended to read as follows:

Sec. 401.103. RULES AND GUIDELINES FOR LICENSING AND
REGISTRATION. (a) The executive commissioner [board] shall adopt
rules and guidelines that provide for licensing and registration
for the transportation of sources of radiation.

(b) The executive commissioner [board] and commission each within the [its] jurisdiction of that officer or agency shall adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation.

(c) In adopting rules and guidelines, the executive
commissioner [board] and commission shall consider the compatibility of those rules and guidelines with federal regulatory programs.

SECTION 3.0910. Sections 401.104(a), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) Except as provided by subsections (b) and (e), the executive commissioner [board] by rule shall provide for the general or specific licensing of:

(1) radioactive material; or
(2) devices or equipment using

(2) devices or equipment using radioactive material.
The executive commissioner [board] or commission sha

(c) The executive commissioner [board] or commission shall provide in [its] rules of the appropriate agency for the issuance, amendment, suspension, and revocation of licenses.

(d) The executive commissioner [board] or commission, within the [its] jurisdiction of that officer or agency, may require the registration or licensing of other sources of radiation.

(c) The executive commissioner [board] or commission may not require a license for a person that is a party to an order issued under Section 361.188 or 361.272 for sites subject to Subchapter F, Chapter 361, or an agreement entered into under Section 361.606. This subsection does not exempt the person from complying with technical standards that a holder of a license otherwise required by this chapter for the particular activity is required to meet. The exemption granted by this subsection applies only to the

376-1 assessment and remediation of the contamination at the site.

376-2 SECTION 3.0911. Section 401.105, Health and Safety Code, is
376-3 amended to read as follows:

376-4 Sec. 401.105. RECOGNITION OF OTHER LICENSES. The executive
376-5 commissioner [board] or commission, each within the [its]
376-6 jurisdiction of that officer or agency, by rule may recognize other
376-7 federal or state licenses the executive commissioner [board] or
376-8 commission, as appropriate, considers desirable, subject to
376-9 registration requirements the executive commissioner [board] or
376-10 commission, as appropriate, may prescribe.

376-11 SECTION 3.0912. Sections 401.106(a) and (b), Health and
376-12 Safety Code, are amended to read as follows:

376-13 (a) The executive commissioner [board] or commission by
376-14 rule may exempt a source of radiation or a kind of use or user from
376-15 the licensing or registration requirements provided by this chapter
376-16 and under the agency's jurisdiction if the executive commissioner
376-17 [board] or commission finds that the exemption of that source of
376-18 radiation or kind of use or user will not constitute a significant
376-19 risk to the public health and safety and the environment.

376-20 (b) The department or commission, as applicable, may exempt
376-21 a source of radiation or a kind of use or user from the application
376-22 of a rule adopted by the executive commissioner [department] or
376-23 commission under this chapter if the department or commission,
376-24 respectively, determines that the exemption:

376-25 (1) is not prohibited by law; and
376-26 (2) will not result in a significant risk to public
376-27 health and safety and the environment.

376-28 SECTION 3.0913. Section 401.107(a), Health and Safety Code,
376-29 is amended to read as follows:

376-30 (a) An application for a specific license issued by the
376-31 department [board] or commission must be in writing and must state
376-32 the information that the executive commissioner [board] or
376-33 commission, as appropriate, by rule determines to be necessary to
376-34 decide the technical, insurance, and financial qualifications or
376-35 any other of the applicant's qualifications the issuing agency
376-36 considers reasonable or necessary to protect the occupational and
376-37 public health and safety and the environment.

376-38 SECTION 3.0914. Section 401.108(b), Health and Safety Code,
376-39 is amended to read as follows:

376-40 (b) A license holder shall submit to the department or
376-41 commission, as appropriate, at intervals required by department
376-42 [board] or commission rules or the license, proof that the license
376-43 holder has updated, as appropriate, the security posted under
376-44 Subsection (a).

376-45 SECTION 3.0915. Section 401.109(a), Health and Safety Code,
376-46 is amended to read as follows:

376-47 (a) The executive commissioner [department] or commission
376-48 may require a holder of a license issued by the applicable agency to
376-49 provide security acceptable to the applicable agency to assure
376-50 performance of the license holder's obligations under this
376-51 chapter. The department shall deposit security provided to the
376-52 department under this section to the credit of the perpetual care
376-53 account. The executive commissioner [department] by rule shall
376-54 provide that any evidence of security must be made payable to the
376-55 credit of the perpetual care account. The commission shall deposit
376-56 security provided to the commission under this section to the
376-57 credit of the environmental radiation and perpetual care
376-58 account. The commission shall provide that security must be made
376-59 payable to the credit of the environmental radiation and perpetual
376-60 care account.

376-61 SECTION 3.0916. Section 401.116(d), Health and Safety Code,
376-62 is amended to read as follows:

376-63 (d) The agency shall give notice and provide for [hold] a
376-64 hearing to be conducted to consider the license amendment if a
376-65 person affected files a written complaint with the agency before
376-66 the 31st day after the date on which notice is published under
376-67 Subsection (b). The agency shall give notice of the hearing as
376-68 provided by Section 401.114.

376-69 SECTION 3.0917. Section 401.118(a), Health and Safety Code,

377-1 is amended to read as follows:

377-2 (a) The department [board] or commission shall prescribe
377-3 the form and the terms for each license it issues.

377-4 SECTION 3.0918. Section 401.224, Health and Safety Code, is
377-5 amended to read as follows:

377-6 Sec. 401.224. PACKAGING OF RADIOACTIVE WASTE. The
377-7 executive commissioner [department] shall adopt rules relating to
377-8 the packaging of radioactive waste.

377-9 SECTION 3.0919. Sections 401.301(b) and (d), Health and
377-10 Safety Code, are amended to read as follows:

377-11 (b) The commission and the executive commissioner [board]
377-12 each by rule shall set the fee in an amount that may not exceed the
377-13 actual expenses annually incurred to:

377-14 (1) process applications for licenses or
377-15 registrations;

377-16 (2) amend or renew licenses or registrations;

377-17 (3) make inspections of license holders and
377-18 registrants; and

377-19 (4) enforce this chapter and rules, orders, licenses,
377-20 and registrations under this chapter.

377-21 (d) The commission and executive commissioner [department]
377-22 shall require that each person who holds a specific license issued
377-23 by the commission or department [agency] pay to the applicable
377-24 agency an additional five percent of the appropriate fee set under
377-25 Subsection (b). Fees collected by the department under this
377-26 subsection shall be deposited to the credit of the perpetual care
377-27 account. Fees collected by the commission under this subsection
377-28 shall be deposited to the environmental radiation and perpetual
377-29 care account. The fees are not refundable. The holder of a
377-30 specific license authorizing the extraction, processing, or
377-31 concentration of uranium or thorium from ore is not required to pay
377-32 the additional fee described by this subsection before the
377-33 beginning of operations under the license.

377-34 SECTION 3.0920. Section 401.302(a), Health and Safety Code,
377-35 is amended to read as follows:

377-36 (a) The executive commissioner [department], in
377-37 coordination with the commission, by rule may set [and collect] an
377-38 annual fee to be collected by the department from the operator of
377-39 each nuclear reactor or other fixed nuclear facility in the state
377-40 that uses special nuclear material.

377-41 SECTION 3.0921. Section 401.303(a), Health and Safety Code,
377-42 is amended to read as follows:

377-43 (a) The executive commissioner [department] or commission
377-44 may require the holder of a license issued by the agency to pay
377-45 annually to the issuing agency an amount determined by the issuing
377-46 agency if continuing or perpetual maintenance, surveillance, or
377-47 other care is required after termination of a licensed activity.

377-48 SECTION 3.0922. Section 401.342(a), Health and Safety Code,
377-49 is amended to read as follows:

377-50 (a) The attorney general, at the request of the department
377-51 regarding an activity under its jurisdiction, shall institute an
377-52 action in a district court in Travis County or in any county in
377-53 which a violation occurs or is about to occur if in the department's
377-54 judgment a person has engaged in or is about to engage in an act or
377-55 practice that violates or will violate this chapter, [or] a rule
377-56 adopted by the executive commissioner under this chapter, or a
377-57 license, registration, or order [adopted or] issued by the
377-58 department under this chapter. The attorney general may determine
377-59 the court in which suit will be instituted.

377-60 SECTION 3.0923. Section 401.343(a), Health and Safety Code,
377-61 is amended to read as follows:

377-62 (a) The department or commission shall seek reimbursement,
377-63 either by an order of the department or commission or a suit filed
377-64 by the attorney general at the request of the department or
377-65 commission, of security from the perpetual care account used by the
377-66 department or commission to pay for actions, including corrective
377-67 measures, to remedy spills or contamination by radioactive
377-68 substances resulting from a violation of this chapter relating to
377-69 an activity under the jurisdiction of the department or commission,

378-1 [or] a violation of a rule adopted under this chapter, or a
 378-2 violation of a license, registration, or order [adopted or] issued
 378-3 by the department or commission under this chapter.

378-4 SECTION 3.0924. Section 401.384(a), Health and Safety Code,
 378-5 is amended to read as follows:

378-6 (a) The department may assess an administrative penalty as
 378-7 provided by this section and Sections 401.385-401.390 against a
 378-8 person who causes, suffers, allows, or permits a violation of a
 378-9 provision of this chapter relating to an activity under the
 378-10 department's jurisdiction, a rule adopted by the executive
 378-11 commissioner under this chapter, an [or] order issued [adopted] by
 378-12 the department under this chapter, or a condition of a license or
 378-13 registration issued by the department under this chapter.

378-14 SECTION 3.0925. Section 401.387, Health and Safety Code, is
 378-15 amended to read as follows:

378-16 Sec. 401.387. CONSENT TO PENALTY. (a) If the person
 378-17 charged with the violation consents to the penalty recommended by
 378-18 the department or does not respond to the notice on time, the
 378-19 department [commissioner or the commissioner's designee] by order
 378-20 shall assess that penalty or order a hearing to be held on the
 378-21 findings and recommendations in the report.

378-22 (b) If the department [commissioner or the commissioner's
 378-23 designee] assesses the recommended penalty, the department shall
 378-24 give written notice to the person charged of the decision and that
 378-25 person must pay the penalty.

378-26 SECTION 3.0926. Section 401.388, Health and Safety Code, is
 378-27 amended to read as follows:

378-28 Sec. 401.388. HEARING AND DECISION. (a) If the person
 378-29 charged requests a hearing, the department [commissioner] shall
 378-30 refer the matter to the State Office of Administrative Hearings
 378-31 [order a hearing] and shall give notice of a [that] hearing to be
 378-32 held by that office.

378-33 (b) The hearing shall be held by an administrative law judge
 378-34 of the State Office of Administrative Hearings [a hearing examiner
 378-35 designated by the commissioner].

378-36 (c) The administrative law judge [hearing examiner] shall
 378-37 make findings of fact and promptly issue to the department
 378-38 [commissioner] a written proposal for decision as to the occurrence
 378-39 of the violation and a recommendation of the amount of the proposed
 378-40 penalty if a penalty is warranted.

378-41 (d) Based on the findings of fact and the recommendations of
 378-42 the administrative law judge [hearing examiner], the department
 378-43 [commissioner] by order may find that a violation has occurred and
 378-44 assess an administrative penalty or may find that no violation
 378-45 occurred.

378-46 (e) All proceedings under Subsections (a)-(d) are subject
 378-47 to Chapter 2001, Government Code.

378-48 (f) The department [commissioner] shall give notice to the
 378-49 person charged of the department's [commissioner's] decision, and
 378-50 if the department [commissioner] finds that a violation has
 378-51 occurred and an administrative penalty has been assessed, the
 378-52 department [commissioner] shall give to the person charged written
 378-53 notice of:

378-54 (1) the department's [commissioner's] findings;
 378-55 (2) the amount of the penalty; and
 378-56 (3) the person's right to judicial review of the
 378-57 department's [commissioner's] order.

378-58 SECTION 3.0927. Section 401.389, Health and Safety Code, is
 378-59 amended to read as follows:

378-60 Sec. 401.389. DISPOSITION OF PENALTY; JUDICIAL REVIEW.
 378-61 (a) Not later than the 30th day after the date on which the
 378-62 department's [commissioner's] order is final, the person charged
 378-63 with the penalty shall pay the full amount of the penalty or file a
 378-64 petition for judicial review.

378-65 (b) If the person seeks judicial review of the violation,
 378-66 the amount of the penalty, or both, the person, within the time
 378-67 provided by Subsection (a), shall:

378-68 (1) stay enforcement of the penalty by:
 378-69 (A) paying [send the amount of] the penalty to

379-1 the court [~~commissioner~~] for placement in an escrow account; or
 379-2 (B) posting [~~(2) post~~] with the court
 379-3 [~~commissioner~~] a supersedeas bond in a form approved by the court
 379-4 [~~commissioner~~] for the amount of the penalty; or
 379-5 (2) request that the department stay enforcement of
 379-6 the penalty by:

379-7 (A) filing with the court a sworn affidavit of
 379-8 the person stating that the person is financially unable to pay the
 379-9 penalty and is financially unable to give the supersedeas bond; and
 379-10 (B) sending a copy of the affidavit to the
 379-11 department.

379-12 (b-1) If the department receives a copy of an affidavit
 379-13 under Subsection (b)(2), the department may file with the court,
 379-14 within five days after the date the copy is received, a contest to
 379-15 the affidavit. The court shall hold a hearing on the facts alleged
 379-16 in the affidavit as soon as practicable and shall stay the
 379-17 enforcement of the penalty on finding that the alleged facts are
 379-18 true. The person who files an affidavit has the burden of proving
 379-19 that the person is financially unable to pay the penalty or to give
 379-20 a supersedeas bond [~~, the bond to be effective until judicial review
 379-21 of the order or decision is final~~].

379-22 (c) The department [~~commissioner~~] may request enforcement
 379-23 by the attorney general if the person charged fails to comply with
 379-24 this section.

379-25 (d) Judicial review of the order or decision of the
 379-26 department [~~commissioner~~] assessing the penalty shall be under
 379-27 Subchapter G, Chapter 2001, Government Code.

379-28 SECTION 3.0928. Section 401.390, Health and Safety Code, is
 379-29 amended to read as follows:

379-30 Sec. 401.390. REMITTING PENALTY PAYMENTS; RELEASING BONDS.

379-31 (a) On the date the court's judgment that an administrative penalty
 379-32 against a person should be [~~If a penalty is~~] reduced or not assessed
 379-33 becomes final, the court [~~commissioner~~] shall order that:

379-34 (1) [~~Remit to the person charged~~] the appropriate
 379-35 amount of any penalty payment plus accrued interest be remitted to
 379-36 the person not later than the 30th day after that date; or
 379-37 (2) [~~Execute a release of~~] the bond be released, if a
 379-38 supersedeas bond has been posted.

379-39 (b) Accrued interest on amounts remitted by the department
 379-40 [~~commissioner~~] shall be paid:

379-41 (1) at a rate equal to the rate charged on loans to
 379-42 depository institutions by the New York Federal Reserve Bank; and
 379-43 (2) for the period beginning on the date the penalty is
 379-44 paid to the department [~~commissioner~~] under Section 401.389(a) and
 379-45 ending on the date the penalty is remitted.

379-46 SECTION 3.0929. Section 401.412(c), Health and Safety Code,
 379-47 is amended to read as follows:

379-48 (c) The commission may adopt any rules and guidelines
 379-49 reasonably necessary to exercise its authority under this section.
 379-50 In adopting rules and guidelines, the commission shall consider the
 379-51 compatibility of those rules and guidelines with federal regulatory
 379-52 programs and the rules and guidelines of the executive commissioner
 379-53 [~~board~~].

379-54 SECTION 3.0930. Section 401.414, Health and Safety Code, is
 379-55 amended to read as follows:

379-56 Sec. 401.414. MEMORANDA OF UNDERSTANDING. The Texas
 379-57 Commission on Environmental Quality, the executive commissioner
 379-58 for the Health and Human Services Commission, and the Railroad
 379-59 Commission of Texas by rule shall adopt memoranda of understanding
 379-60 defining their respective duties under this chapter.

379-61 SECTION 3.0931. Section 401.415(e), Health and Safety Code,
 379-62 is amended to read as follows:

379-63 (e) To ensure that the State of Texas retains its Agreement
 379-64 Status with the federal commission [U.S. Nuclear Regulatory
 379-65 Commission], and to ensure that radioactive materials are managed
 379-66 consistently to protect the public health and safety and the
 379-67 environment, the Railroad Commission of Texas shall issue rules on
 379-68 the management of oil and gas NORM waste and in so doing shall
 379-69 consult with the commission [Texas Natural Resource Conservation

380-1 ~~Commission~~ and the department [~~Department of Health~~] regarding
 380-2 protection of the public health and the environment. The rules of
 380-3 the railroad commission shall provide protection for public health,
 380-4 safety, and the environment equivalent to the protection provided
 380-5 by rules applicable to disposal of other NORM wastes having similar
 380-6 properties, quantities, and distribution, although the approved
 380-7 methods and sites for disposing of oil and gas NORM wastes may be
 380-8 different from those approved for other NORM wastes.

380-9 SECTION 3.0932. Section 401.421(3), Health and Safety Code,
 380-10 is amended to read as follows:

- 380-11 (3) "Mammography system" includes the following:
 380-12 (A) an x-ray unit used as a source of radiation in
 380-13 producing images of breast tissue;
 380-14 (B) an imaging system used for the formation of a
 380-15 latent image of breast tissue;
 380-16 (C) an imaging processing device for changing a
 380-17 latent image of breast tissue to a visual image that can be used for
 380-18 diagnostic purposes;
 380-19 (D) a viewing device used for the visual
 380-20 evaluation of an image of breast tissue if the image is produced in
 380-21 interpreting visual data captured on an image receptor;
 380-22 (E) a medical radiological technologist who
 380-23 performs a mammography; and
 380-24 (F) a physician who engages in, and who meets the
 380-25 requirements provided [~~adopted~~] by department [~~board~~] rule
 380-26 relating to, the reading, evaluation, and interpretation of
 380-27 mammograms.

380-28 SECTION 3.0933. The heading to Section 401.423, Health and
 380-29 Safety Code, is amended to read as follows:

380-30 Sec. 401.423. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
 380-31 AND DEPARTMENT [~~BOARD~~].

380-32 SECTION 3.0934. Section 401.423, Health and Safety Code, is
 380-33 amended by amending Subsection (a) and adding Subsection (a-1) to
 380-34 read as follows:

- 380-35 (a) The department [~~board~~] shall:
 380-36 (1) prescribe application forms for original and
 380-37 renewal certifications; and
 380-38 (2) [~~adopt rules for the administration of this~~
 380-39 ~~subchapter, and~~
 380-40 [~~(3)~~] take other action necessary to enforce this
 380-41 subchapter.

380-42 (a-1) The executive commissioner shall adopt rules for the
 380-43 administration of this subchapter.

380-44 SECTION 3.0935. Sections 401.424(b), (c), and (d), Health
 380-45 and Safety Code, are amended to read as follows:

380-46 (b) To protect the public health, the executive
 380-47 commissioner [~~board~~] by rule may adopt more stringent or additional
 380-48 requirements for:

- 380-49 (1) the certification of mammography systems; and
 380-50 (2) the retention of original mammograms.
- 380-51 (c) To protect the public health, the executive
 380-52 commissioner [~~board~~] by rule shall adopt qualifications for a
 380-53 physician who reads, evaluates, and interprets a mammogram that are
 380-54 no less stringent than the standards of the American College of
 380-55 Radiology.

380-56 (d) The department [~~board~~] shall make available to the
 380-57 public copies of the criteria of the American College of Radiology
 380-58 mammography accreditation program or the modified criteria
 380-59 provided [~~adopted~~] by department [~~board~~] rule.

380-60 SECTION 3.0936. Section 401.426(a), Health and Safety Code,
 380-61 is amended to read as follows:

380-62 (a) A person who owns, leases, or uses or the agent of a
 380-63 person who owns, leases, or uses a mammography system must file a
 380-64 written application for certification under Section 401.424 on a
 380-65 form prescribed by the department [~~board~~].

380-66 SECTION 3.0937. Section 401.427, Health and Safety Code, is
 380-67 amended to read as follows:

380-68 Sec. 401.427. CERTIFICATION RENEWAL; FEES. (a) A
 380-69 certification is valid for three years.

(b) The executive commissioner [board] by rule may adopt a system under which certifications under this subchapter expire on various dates during the year.

(c) The executive commissioner by rule [board] shall set and the department shall collect an annual fee for certification holders in an amount reasonable and necessary to administer this subchapter. A certification holder who fails to pay the annual fee before the date set by the executive commissioner [board] shall pay the annual fee and a late fee set by the executive commissioner [board]. The department [board] may revoke the certification of a certification holder who does not pay the annual fee and late fee before the required date.

(d) A certification holder may renew the certification by filing an application for renewal and paying the annual fee before the date the certification expires. If a certification holder fails to renew the certification by the required date, the certification holder may renew the certification on payment of the annual fee and a late fee set by the executive commissioner [board]. If the certification is not renewed before the 181st day after the date on which the certification expired, the certification holder must apply for an original certification under this subchapter.

(e) A mammography system may not be used after the expiration date of the certification unless the holder of the expired certification has made a timely and sufficient application for renewal of the certification as provided under Section 2001.054, Government Code, and a final determination of the application by the department [board] has not been made.

SECTION 3.0938. Section 401.428(b), Health and Safety Code, is amended to read as follows:

(b) The executive commissioner [board] shall adopt rules establishing the grounds for denial, suspension, revocation, or reinstatement of a certification and establishing procedures for disciplinary actions.

SECTION 3.0939. Sections 401.430(b) and (h), Health and Safety Code, are amended to read as follows:

(b) The executive commissioner [board] by rule shall establish the routine inspection frequency for mammography systems that receive certification under this subchapter.

(h) To protect the public health, the executive commissioner [board] may adopt rules concerning the grounds for posting a failure notice and the placement and size of the failure notice, and for patient notification under Subsections (f) and (g), as appropriate.

SECTION 3.0940. Subtitle A, Title 6, Health and Safety Code, is amended by adding Chapter 430 to read as follows:

CHAPTER 430. GENERAL PROVISIONS

Sec. 430.001. DEFINITIONS. In this subtitle:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0941. Section 431.002(8), Health and Safety Code, is reenacted to read as follows:

(8) "Consumer commodity," except as otherwise provided by this subdivision, means any food, drug, device, or cosmetic, as those terms are defined by this chapter or by the federal Act, and any other article, product, or commodity of any kind or class that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or for use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of the consumption or use. The term does not include:

(A) a meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(B) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and

Rodenticide Act (7 U.S.C. 136), or The Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.);

(C) a drug subject to the provisions of Section 431.113(c)(1) or Section 503(b)(1) of the federal Act;

(D) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 205(e)); or

(E) a commodity subject to the provisions of Chapter 61, Agriculture Code, relating to the inspection, labeling, and sale of agricultural and vegetable seed.

SECTION 3.0942. Section 431.002(17), Health and Safety Code, is amended to read as follows:

(17) "Food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

(A) a pesticide chemical in or on a raw agricultural commodity;

(B) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;

(C) a color additive;

(D) any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, Pub. L. No. 85-929, 52 Stat. 1041 (codified as amended in various sections of 21 U.S.C.), pursuant to the federal Act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of 1906 [~~1907~~] (21 U.S.C. 601 et seq. [~~603~~])); or

(E) a new animal drug.

SECTION 3.0943. Section 431.021, Health and Safety Code, is amended to read as follows:

Sec. 431.021. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(a) the introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded;

- (b) the adulteration or misbranding of any food, drug, device, or cosmetic in commerce;
- (c) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer commodity, if such commodity is contained in a package, or if there is affixed to that commodity a label that does not conform to the provisions of this chapter and of rules adopted under the authority of this chapter; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(1) are engaged in the packaging or labeling of such commodities; or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(e) the introduction or delivery for introduction into commerce of any article in violation of Section 431.084, 431.114, or 431.115;

(f) the dissemination of any false advertisement;

(g) the refusal to permit entry or inspection, or to permit

383-1 the taking of a sample or to permit access to or copying of any
383-2 record as authorized by Sections 431.042-431.044; or the failure to
383-3 establish or maintain any record or make any report required under
383-4 Section 512(j), (l), or (m) of the federal Act, or the refusal to
383-5 permit access to or verification or copying of any such required
383-6 record;

383-7 (h) the manufacture within this state of any food, drug,
383-8 device, or cosmetic that is adulterated or misbranded;

383-9 (i) the giving of a guaranty or undertaking referred to in
383-10 Section 431.059, which guaranty or undertaking is false, except by
383-11 a person who relied on a guaranty or undertaking to the same effect
383-12 signed by, and containing the name and address of the person
383-13 residing in this state from whom the person received in good faith
383-14 the food, drug, device, or cosmetic; or the giving of a guaranty or
383-15 undertaking referred to in Section 431.059, which guaranty or
383-16 undertaking is false;

383-17 (j) the use, removal, or disposal of a detained or embargoed
383-18 article in violation of Section 431.048;

383-19 (k) the alteration, mutilation, destruction, obliteration,
383-20 or removal of the whole or any part of the labeling of, or the doing
383-21 of any other act with respect to a food, drug, device, or cosmetic,
383-22 if such act is done while such article is held for sale after
383-23 shipment in commerce and results in such article being adulterated
383-24 or misbranded;

383-25 (l)(1) forging, counterfeiting, simulating, or falsely
383-26 representing, or without proper authority using any mark, stamp,
383-27 tag, label, or other identification device authorized or required
383-28 by rules adopted under this chapter or the regulations promulgated
383-29 under the provisions of the federal Act;

383-30 (2) making, selling, disposing of, or keeping in
383-31 possession, control, or custody, or concealing any punch, die,
383-32 plate, stone, or other thing designed to print, imprint, or
383-33 reproduce the trademark, trade name, or other identifying mark,
383-34 imprint, or device of another or any likeness of any of the
383-35 foregoing on any drug or container or labeling thereof so as to
383-36 render such drug a counterfeit drug;

383-37 (3) the doing of any act that causes a drug to be a
383-38 counterfeit drug, or the sale or dispensing, or the holding for sale
383-39 or dispensing, of a counterfeit drug;

383-40 (m) the using by any person to the person's own advantage,
383-41 or revealing, other than to the department [~~commissioner, an~~
383-42 ~~authorized agent~~], to a health authority, or to the courts when
383-43 relevant in any judicial proceeding under this chapter, of any
383-44 information acquired under the authority of this chapter concerning
383-45 any method or process that as a trade secret is entitled to
383-46 protection;

383-47 (n) the using, on the labeling of any drug or device or in
383-48 any advertising relating to such drug or device, of any
383-49 representation or suggestion that approval of an application with
383-50 respect to such drug or device is in effect under Section 431.114 or
383-51 Section 505, 515, or 520(g) of the federal Act, as the case may be,
383-52 or that such drug or device complies with the provisions of such
383-53 sections;

383-54 (o) the using, in labeling, advertising or other sales
383-55 promotion of any reference to any report or analysis furnished in
383-56 compliance with Sections 431.042-431.044 or Section 704 of the
383-57 federal Act;

383-58 (p) in the case of a prescription drug distributed or
383-59 offered for sale in this state, the failure of the manufacturer,
383-60 packer, or distributor of the drug to maintain for transmittal, or
383-61 to transmit, to any practitioner licensed by applicable law to
383-62 administer such drug who makes written request for information as
383-63 to such drug, true and correct copies of all printed matter that is
383-64 required to be included in any package in which that drug is
383-65 distributed or sold, or such other printed matter as is approved
383-66 under the federal Act. Nothing in this subsection shall be
383-67 construed to exempt any person from any labeling requirement
383-68 imposed by or under other provisions of this chapter;

383-69 (q)(1) placing or causing to be placed on any drug or device

384-1 or container of any drug or device, with intent to defraud, the
384-2 trade name or other identifying mark, or imprint of another or any
384-3 likeness of any of the foregoing;

384-4 (2) selling, dispensing, disposing of or causing to be
384-5 sold, dispensed, or disposed of, or concealing or keeping in
384-6 possession, control, or custody, with intent to sell, dispense, or
384-7 dispose of, any drug, device, or any container of any drug or
384-8 device, with knowledge that the trade name or other identifying
384-9 mark or imprint of another or any likeness of any of the foregoing
384-10 has been placed thereon in a manner prohibited by Subdivision (1)
384-11 [~~of this subsection~~]; or

384-12 (3) making, selling, disposing of, causing to be made,
384-13 sold, or disposed of, keeping in possession, control, or custody,
384-14 or concealing with intent to defraud any punch, die, plate, stone,
384-15 or other thing designed to print, imprint, or reproduce the
384-16 trademark, trade name, or other identifying mark, imprint, or
384-17 device of another or any likeness of any of the foregoing on any
384-18 drug or container or labeling of any drug or container so as to
384-19 render such drug a counterfeit drug;

384-20 (r) dispensing or causing to be dispensed a different drug
384-21 in place of the drug ordered or prescribed without the express
384-22 permission in each case of the person ordering or prescribing;

384-23 (s) the failure to register in accordance with Section 510
384-24 of the federal Act, the failure to provide any information required
384-25 by Section 510(j) or (k) of the federal Act, or the failure to
384-26 provide a notice required by Section 510(j)(2) of the federal Act;

384-27 (t)(1) the failure or refusal to:

384-28 (A) comply with any requirement prescribed under
384-29 Section 518 or 520(g) of the federal Act; or

384-30 (B) furnish any notification or other material or
384-31 information required by or under Section 519 or 520(g) of the
384-32 federal Act;

384-33 (2) with respect to any device, the submission of any
384-34 report that is required by or under this chapter that is false or
384-35 misleading in any material respect;

384-36 (u) the movement of a device in violation of an order under
384-37 Section 304(g) of the federal Act or the removal or alteration of
384-38 any mark or label required by the order to identify the device as
384-39 detained;

384-40 (v) the failure to provide the notice required by Section
384-41 412(b) or 412(c), the failure to make the reports required by
384-42 Section 412(d)(1)(B), or the failure to meet the requirements
384-43 prescribed under Section 412(d)(2) of the federal Act;

384-44 (w) except as provided under Subchapter M of this chapter
384-45 and Section 562.1085, Occupations Code, the acceptance by a person
384-46 of an unused prescription or drug, in whole or in part, for the
384-47 purpose of resale, after the prescription or drug has been
384-48 originally dispensed, or sold;

384-49 (x) engaging in the wholesale distribution of drugs or
384-50 operating as a distributor or manufacturer of devices in this state
384-51 without obtaining a license issued by the department under
384-52 Subchapter I, L, or N, as applicable;

384-53 (y) engaging in the manufacture of food in this state or
384-54 operating as a warehouse operator in this state without having a
384-55 license as required by Section 431.222 or operating as a food
384-56 wholesaler in this state without having a license under Section
384-57 431.222 or being registered under Section 431.2211, as appropriate;

384-58 (z) unless approved by the United States Food and Drug
384-59 Administration pursuant to the federal Act, the sale, delivery,
384-60 holding, or offering for sale of a self-testing kit designed to
384-61 indicate whether a person has a human immunodeficiency virus
384-62 infection, acquired immune deficiency syndrome, or a related
384-63 disorder or condition;

384-64 (aa) making a false statement or false representation in an
384-65 application for a license or in a statement, report, or other
384-66 instrument to be filed with or requested by the department under
384-67 this chapter;

384-68 (bb) failing to comply with a requirement or request to
384-69 provide information or failing to submit an application, statement,

385-1 report, or other instrument required by the department;

385-2 (cc) performing, causing the performance of, or aiding and
385-3 abetting the performance of an act described by Subsection
385-4 [Subdivision] (x);

385-5 (dd) purchasing or otherwise receiving a prescription drug
385-6 from a pharmacy in violation of Section 431.411(a);

385-7 (ee) selling, distributing, or transferring a prescription
385-8 drug to a person who is not authorized under state or federal law to
385-9 receive the prescription drug in violation of Section 431.411(b);

385-10 (ff) failing to deliver prescription drugs to specified
385-11 premises as required by Section 431.411(c);

385-12 (gg) failing to maintain or provide pedigrees as required by
385-13 Section 431.412 or 431.413;

385-14 (hh) failing to obtain, pass, or authenticate a pedigree as
385-15 required by Section 431.412 or 431.413;

385-16 (ii) the introduction or delivery for introduction into
385-17 commerce of a drug or prescription device at a flea market;

385-18 (jj) the receipt of a prescription drug that is adulterated,
385-19 misbranded, stolen, obtained by fraud or deceit, counterfeit, or
385-20 suspected of being counterfeit, and the delivery or proffered
385-21 delivery of such a drug for payment or otherwise; or

385-22 (kk) the alteration, mutilation, destruction,
385-23 obliteration, or removal of all or any part of the labeling of a
385-24 prescription drug or the commission of any other act with respect to
385-25 a prescription drug that results in the prescription drug being
385-26 misbranded.

385-27 SECTION 3.0944. Section 431.022(c), Health and Safety Code,
385-28 is amended to read as follows:

385-29 (c) A product containing ephedrine that is not described in
385-30 Subsection (a)(3) must be labeled in accordance with department
385-31 rules [adopted by the Texas Department of Health] to indicate that
385-32 sale to persons 17 years of age or younger is prohibited.

385-33 SECTION 3.0945. Sections 431.042(a), (f), (g), and (h),
385-34 Health and Safety Code, are amended to read as follows:

385-35 (a) To enforce this chapter, the department [commissioner,
385-36 an authorized agent,] or a health authority may, on presenting
385-37 appropriate credentials to the owner, operator, or agent in charge:

385-38 (1) enter at reasonable times an establishment,
385-39 including a factory or warehouse, in which a food, drug, device, or
385-40 cosmetic is manufactured, processed, packed, or held for
385-41 introduction into commerce or held after the introduction;

385-42 (2) enter a vehicle being used to transport or hold the
385-43 food, drug, device, or cosmetic in commerce; or

385-44 (3) inspect at reasonable times, within reasonable
385-45 limits, and in a reasonable manner, the establishment or vehicle
385-46 and all equipment, finished and unfinished materials, containers,
385-47 and labeling of any item and obtain samples necessary for the
385-48 enforcement of this chapter.

385-49 (f) The executive commissioner [board] may exempt a class of
385-50 persons from inspection under this section if the executive
385-51 commissioner [board] finds that inspection as applied to the class
385-52 is not necessary for the protection of the public health.

385-53 (g) The department [An authorized agent] or a health
385-54 authority who makes an inspection under this section to enforce the
385-55 provisions of this chapter applicable to infant formula shall be
385-56 permitted, at all reasonable times, to have access to and to copy
385-57 and verify records:

385-58 (1) in order to determine whether the infant formula
385-59 manufactured or held in the inspected facility meets the
385-60 requirements of this chapter; or

385-61 (2) that are required by this chapter.

385-62 (h) If the department [An authorized agent] or a health
385-63 authority while inspecting [who makes an inspection of] an
385-64 establishment, including a factory or warehouse, [and] obtains a
385-65 sample, the department or health authority [during or on completion
385-66 of the inspection and] before leaving the establishment[r] shall
385-67 give to the owner, operator, or the owner's or operator's agent a
385-68 receipt describing the sample.

385-69 SECTION 3.0946. Section 431.043, Health and Safety Code, is

386-1 amended to read as follows:

386-2 Sec. 431.043. ACCESS TO RECORDS. A person who is required
 386-3 to maintain records under this chapter or Section 519 or 520(g) of
 386-4 the federal Act or a person who is in charge or custody of those
 386-5 records shall, at the request of the department [an authorized
agent] or a health authority, permit the department [authorized
agent] or health authority at all reasonable times access to and to
 386-7 copy and verify the records.

386-8 SECTION 3.0947. Section 431.044(a), Health and Safety Code,
 386-9 is amended to read as follows:

386-10 (a) To enforce this chapter, a carrier engaged in commerce
 386-11 or other person receiving a food, drug, device, or cosmetic in
 386-12 commerce or holding a food, drug, device, or cosmetic received in
 386-13 commerce shall, at the request of the department [an authorized
agent] or a health authority, permit the department [authorized
agent] or health authority at all reasonable times to have access to
 386-14 and to copy all records showing:

386-15 (1) the movement in commerce of the food, drug,
 386-16 device, or cosmetic;

386-17 (2) the holding of the food, drug, device, or cosmetic
 386-18 after movement in commerce; and

386-19 (3) the quantity, shipper, and consignee of the food,
 386-20 drug, device, or cosmetic.

386-21 SECTION 3.0948. Section 431.045(c), Health and Safety Code,
 386-22 is amended to read as follows:

386-23 (c) If an emergency order is issued without a hearing, the
 386-24 department shall propose [determine] a time and place for a hearing
 386-25 and refer the matter to the State Office of Administrative
 386-26 Hearings. An administrative law judge of that office shall set the
 386-27 time and place for the hearing at which the emergency order is
 386-28 affirmed, modified, or set aside. The hearing shall be held under
 386-29 the contested case provisions of Chapter 2001, Government Code, and
 386-30 the department's [board's] formal hearing rules.

386-31 SECTION 3.0949. Sections 431.047(a), (b), and (d), Health
 386-32 and Safety Code, are amended to read as follows:

386-33 (a) The department [commissioner, an authorized agent] or
 386-34 a health authority may petition the district court for a temporary
 386-35 restraining order to restrain a continuing violation of Subchapter
 386-36 B or a threat of a continuing violation of Subchapter B if the
 386-37 department [commissioner, authorized agent] or health authority
 386-38 finds that:

386-39 (1) a person has violated, is violating, or is
 386-40 threatening to violate Subchapter B; and

386-41 (2) the violation or threatened violation creates an
 386-42 immediate threat to the health and safety of the public.

386-43 (b) A district court, on petition of the department
 386-44 [commissioner, an authorized agent] or a health authority, and on
 386-45 a finding by the court that a person is violating or threatening to
 386-46 violate Subchapter B shall grant any injunctive relief warranted by
 386-47 the facts.

386-48 (d) The department [commissioner] and the attorney general
 386-49 may each recover reasonable expenses incurred in obtaining
 386-50 injunctive relief under this section, including investigative
 386-51 costs, court costs, reasonable attorney fees, witness fees, and
 386-52 deposition expenses. The expenses recovered by the department may
 386-53 be used by [commissioner are hereby appropriated to] the department
 386-54 for the administration and enforcement of this chapter. The
 386-55 expenses recovered by the attorney general may be used by [are
 386-56 hereby appropriated to] the attorney general.

386-57 SECTION 3.0950. Section 431.048, Health and Safety Code, is
 386-58 amended to read as follows:

386-59 Sec. 431.048. DETAINED OR EMBARGOED ARTICLE. (a) The
 386-60 department [commissioner or an authorized agent] shall affix to an
 386-61 article that is a food, drug, device, cosmetic, or consumer
 386-62 commodity a tag or other appropriate marking that gives notice that
 386-63 the article is, or is suspected of being, adulterated or misbranded
 386-64 and that the article has been detained or embargoed if the
 386-65 department [commissioner or the authorized agent] finds or has
 386-66 probable cause to believe that the article:

- (1) is adulterated;
- (2) is misbranded so that the article is dangerous or fraudulent under this chapter; or
- (3) violates Section [431.084](#), [431.114](#), or [431.115](#).

(b) The tag or marking on a detained or embargoed article must warn all persons not to use the article, remove the article from the premises, or dispose of the article by sale or otherwise until permission for use, removal, or disposal is given by the department [commissioner, the authorized agent,] or a court.

(c) A person may not use a detained or embargoed article, remove a detained or embargoed article from the premises, or dispose of a detained or embargoed article by sale or otherwise without permission of the department [commissioner, the authorized agent] or a court. The department [commissioner or the authorized agent] may permit perishable goods to be moved to a place suitable for proper storage.

(d) The department [commissioner or an authorized agent] shall remove the tag or other marking from an embargoed or detained article if the department [commissioner or an authorized agent] finds that the article is not adulterated or misbranded.

(e) The department [~~commissioner or an authorized agent~~] may not detain or embargo an article, including an article that is distressed merchandise, that is in the possession of a person licensed under Chapter 432 and that is being held for the purpose of reconditioning in accordance with Chapter 432, unless the department [~~commissioner or an authorized agent~~] finds or has probable cause to believe that the article cannot be adequately reconditioned in accordance with that chapter and applicable rules.

SECTION 3.0951. Sections 431.049(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) If the claimant of the detained or embargoed articles or the claimant's agent fails or refuses to transfer the articles to a secure place after the tag or other appropriate marking has been affixed as provided by Section [431.048](#), the department [commissioner or an authorized agent] may order the transfer of the articles to one or more secure storage areas to prevent their unauthorized use, removal, or disposal.

(b) The ~~department [commissioner or an authorized agent]~~ may provide for the transfer of the article if the claimant of the article or the claimant's agent does not carry out the transfer order in a timely manner. The costs of the transfer shall be assessed against the claimant of the article or the claimant's agent.

(d) The department [~~commissioner~~] may request the attorney general to bring an action in the district court in Travis County to recover the costs of the transfer. In a judgment in favor of the state, the court may award costs, attorney fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

SECTION 3.0952. Section 431.0495(b), Health and Safety Code, is amended to read as follows:

(b) The commissioner's recall order may require the articles to be removed to one or more secure areas approved by the department [commissioner or an authorized agent].

SECTION 3.0953. Sections 431.052(a) and (c), Health and Safety Code, are amended to read as follows:

(a) A court may order the delivery of a sampled article or a detained or embargoed article that is adulterated or misbranded to the claimant of the article for labeling or processing under the supervision of [an agent of] the department [commissioner or an authorized agent] if:

(1) the decree has been entered in the suit;
(2) the costs, fees, and expenses of the suit have been paid;

(3) the adulteration or misbranding can be corrected by proper labeling or processing; and

(4) a good and sufficient bond, conditioned on the correction of the adulteration or misbranding by proper labeling or processing, has been executed.

(c) The court shall order that the article be returned to the claimant and the bond discharged on the representation to the court by the department [commissioner or an authorized agent] that the article no longer violates this chapter and that the expenses of the supervision are paid.

SECTION 3.0954. Section 431.053(a), Health and Safety Code, is amended to read as follows:

(a) The department [~~commissioner or an authorized agent~~] shall immediately condemn or render by any means unsalable as human food an article that is a nuisance under Subsection (b) and that the department [~~commissioner or authorized agent~~] finds in any room, building, or other structure or in a vehicle.

SECTION 3.0955. Sections 431.054(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The department [commissioner] may assess an administrative penalty against a person who violates Subchapter B or an order adopted or registration issued under this chapter.

(b) In determining the amount of the penalty, the department [commissioner] shall consider:

- (1) the person's previous violations;
 - (2) the seriousness of the violation;
 - (3) any hazard to the health and safety of the public;
 - (4) the person's demonstrated good faith; and
 - (5) such other matters as justice may require.

SECTION 3.0956. Sections 431.055(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) If a hearing is held, an administrative law judge of the State Office of Administrative Hearings [the commissioner] shall make findings of fact and shall issue to the department a written proposal for decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the department [~~commissioner~~] may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the department [commissioner] shall issue an order requiring that the person pay the penalty.

SECTION 3.0957. Section 431.056, Health and Safety Code, is amended to read as follows:

Sec. 431.056. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the department [~~commissioner~~] shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

- (1) pay the penalty in full; or
(2) file a petition for [if the person seeks] judicial review of the department's order contesting the amount of the penalty, the fact of the violation, or both.

(b-1) If the person seeks judicial review within the period prescribed by Subsection (b), the person may:

- (1) stay enforcement of the penalty by:

(A) paying [send] the amount of the penalty to the court [commissioner] for placement in an escrow account; or

(B) posting [post] with the court [commissioner] a supersedeas bond for the amount of the penalty; or

(2) request that the department stay enforcement of the penalty.

(b-2) If the department receives a copy of an affidavit under Subsection (b-1)(2), the department may file with the court,

389-1 within five days after the date the copy is received, a contest to
 389-2 the affidavit. The court shall hold a hearing on the facts alleged
 389-3 in the affidavit as soon as practicable and shall stay the
 389-4 enforcement of the penalty on finding that the alleged facts are
 389-5 true. The person who files an affidavit has the burden of proving
 389-6 that the person is financially unable to pay the penalty or to give
 389-7 a supersedeas bond.

389-8 (c) A bond posted under this section must be in a form
 389-9 approved by the court [commissioner] and be effective until all
 389-10 judicial review of the order or decision is final.

389-11 (d) A person who does not send money to, [~~the commissioner~~
 389-12 or] post the bond with, or file the affidavit with the court within
 389-13 the period prescribed by Subsection (b) waives all rights to
 389-14 contest the violation or the amount of the penalty.

389-15 SECTION 3.0958. Section 431.057, Health and Safety Code, is
 389-16 amended to read as follows:

389-17 Sec. 431.057. REFUND OF ADMINISTRATIVE PENALTY. On [Not
 389-18 later than the 30th day after] the date the court's judgment [of a
 389-19 judicial determination] that an administrative penalty against a
 389-20 person should be reduced or not assessed becomes final, the court
 389-21 [commissioner] shall order that:

389-22 (1) [~~remit to the person~~] the appropriate amount of
 389-23 any penalty payment plus accrued interest be remitted to the person
 389-24 not later than the 30th day after that date; or

389-25 (2) [~~execute a release of~~] the bond be released, if the
 389-26 person has posted a bond.

389-27 SECTION 3.0959. Section 431.058, Health and Safety Code, is
 389-28 amended to read as follows:

389-29 Sec. 431.058. RECOVERY OF ADMINISTRATIVE PENALTY BY
 389-30 ATTORNEY GENERAL. The attorney general at the request of the
 389-31 department [commissioner] may bring a civil action to recover an
 389-32 administrative penalty under this subchapter.

389-33 SECTION 3.0960. Section 431.0585(a), Health and Safety
 389-34 Code, is amended to read as follows:

389-35 (a) At the request of the department [commissioner], the
 389-36 attorney general or a district, county, or city attorney shall
 389-37 institute an action in district court to collect a civil penalty
 389-38 from a person who has violated Section 431.021.

389-39 SECTION 3.0961. Sections 431.059(a), (b), and (c), Health
 389-40 and Safety Code, are amended to read as follows:

389-41 (a) A person commits an offense if the person violates any
 389-42 of the provisions of Section 431.021 relating to unlawful or
 389-43 prohibited acts. A first offense under this subsection is a Class
 389-44 A misdemeanor unless it is shown on the trial of an offense under
 389-45 this subsection that the defendant was previously convicted of an
 389-46 offense under this subsection, in which event the offense is a state
 389-47 jail felony. In a criminal proceeding under this section, it is
 389-48 not necessary to prove intent, knowledge, recklessness, or criminal
 389-49 negligence of the defendant beyond the degree of culpability, if
 389-50 any, stated in [Subsection (a-2) or] Section 431.021[~~, as
 389-51 applicable,~~] to establish criminal responsibility for the
 389-52 violation.

389-53 (b) A person is not subject to the penalties of Subsection
 389-54 (a):

389-55 (1) for having received an article in commerce and
 389-56 having delivered or offered delivery of the article, if the
 389-57 delivery or offer was made in good faith, unless the person refuses
 389-58 to furnish, on request of the department [commissioner, an
 389-59 authorized agent] or a health authority, the name and address of
 389-60 the person from whom the article was received and copies of any
 389-61 documents relating to the receipt of the article;

389-62 (2) for having violated Section 431.021(a) or (e) if
 389-63 the person establishes a guaranty or undertaking signed by, and
 389-64 containing the name and address of, the person residing in this
 389-65 state from whom the person received in good faith the article, to
 389-66 the effect that:

389-67 (A) in the case of an alleged violation of
 389-68 Section 431.021(a), the article is not adulterated or misbranded
 389-69 within the meaning of this chapter; and

(B) in the case of an alleged violation of Section 431.021(e), the article is not an article that may not, under the provisions of Section 404 or 405 of the federal Act or Section 431.084 or 431.114, be introduced into commerce;

(3) for having violated Section 431.021, if the violation exists because the article is adulterated by reason of containing a color additive not from a batch certified in accordance with regulations promulgated under the federal Act, if the person establishes a guaranty or undertaking signed by, and containing the name and address of, the manufacturer of the color additive, to the effect that the color additive was from a batch certified in accordance with the applicable regulations promulgated under the federal Act;

(4) for having violated Section 431.021(b), (c), or (k) by failure to comply with Section 431.112(i) with respect to an article received in commerce to which neither Section 503(a) nor Section 503(b)(1) of the federal Act applies if the delivery or offered delivery was made in good faith and the labeling at the time of the delivery or offer contained the same directions for use and warning statements as were contained in the labeling at the same time of the receipt of the article; or

(5) for having violated Section 431.021(1)(2) if the person acted in good faith and had no reason to believe that use of the punch, die, plate, stone, or other thing would result in a drug being a counterfeit drug, or for having violated Section 431.021(1)(3) if the person doing the act or causing it to be done acted in good faith and had no reason to believe that the drug was a counterfeit drug.

(c) A publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, is not liable under this section for the dissemination of the false advertisement, unless the person has refused, on the request of the department, [commissioner] to furnish the department [commissioner] the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in this state who caused the person to disseminate the advertisement.

SECTION 3.0962. Section 431.060, Health and Safety Code, is amended to read as follows:

Sec. 431.060. INITIATION OF PROCEEDINGS. (a) The attorney general, or a district, county, or municipal attorney to whom the department [commissioner, an authorized agent,] or a health authority reports a violation of this chapter, shall initiate and prosecute appropriate proceedings without delay.

(b) The department [commissioner, the commissioner's authorized agent] or [the] attorney general may, as authorized by Section 307 of the federal Act, bring in the name of this state a suit for civil penalties or to restrain a violation of Section 401 or Section 403(b) through (i), (k), (q), or (r) of the federal Act if the food that is the subject of the proceedings is located in this state.

(c) The department [commissioner, the commissioner's authorized agent] or [the] attorney general may not bring a proceeding under Subsection (b):

(1) before the 31st day after the date on which the state has given notice to the secretary of its intent to bring a suit;

(2) before the 91st day after the date on which the state has given notice to the secretary of its intent to bring a suit if the secretary has, not later than the 30th day after receiving notice from the state, commenced an informal or formal enforcement action pertaining to the food that would be the subject of the suit brought by the state; or

(3) if the secretary is diligently prosecuting a suit in court pertaining to that food, has settled a suit pertaining to that food, or has settled the informal or formal enforcement action pertaining to that food.

SECTION 3.0963. Section 431.061, Health and Safety Code, is

391-1 amended to read as follows:

391-2 Sec. 431.061. MINOR VIOLATION. This chapter does not
 391-3 require the department [~~commissioner, an authorized agent,~~] or a
 391-4 health authority to report for prosecution or the institution of
 391-5 proceedings under this chapter a minor violation of this chapter if
 391-6 the department [~~commissioner, authorized agent,~~] or health
 391-7 authority believes that the public interest is adequately served by
 391-8 a suitable written notice or warning.

391-9 SECTION 3.0964. Section 431.081, Health and Safety Code, is
 391-10 amended to read as follows:

391-11 Sec. 431.081. ADULTERATED FOOD. A food shall be deemed to
 391-12 be adulterated:

391-13 (a) if:

391-14 (1) it bears or contains any poisonous or deleterious
 391-15 substance which may render it injurious to health; but in case the
 391-16 substance is not an added substance the food shall not be considered
 391-17 adulterated under this subdivision if the quantity of the substance
 391-18 in the food does not ordinarily render it injurious to health; [ex]

391-19 (2) it:

391-20 (A) bears or contains any added poisonous or
 391-21 added deleterious substance, other than one that is a pesticide
 391-22 chemical in or on a raw agricultural commodity, a food additive, a
 391-23 color additive, or a new animal drug which is unsafe within the
 391-24 meaning of Section 431.161; [ex]

391-25 (B) is a raw agricultural commodity and it bears
 391-26 or contains a pesticide chemical which is unsafe within the meaning
 391-27 of Section 431.161(a); [ex]

391-28 (C) is, or it bears or contains, any food
 391-29 additive which is unsafe within the meaning of Section 431.161(a);
 391-30 provided, that where a pesticide chemical has been used in or on a
 391-31 raw agricultural commodity in conformity with an exemption granted
 391-32 or a tolerance prescribed under Section 431.161(a), and such raw
 391-33 agricultural commodity has been subjected to processing such as
 391-34 canning, cooking, freezing, dehydrating, or milling, the residue of
 391-35 such pesticide chemical remaining in or on such processed food
 391-36 shall, notwithstanding the provisions of Section 431.161 and
 391-37 Section 409 of the federal Act, not be deemed unsafe if such residue
 391-38 in or on the raw agricultural commodity has been removed to the
 391-39 extent possible in good manufacturing practice, and the
 391-40 concentration of such residue in the processed food, when ready to
 391-41 eat, is not greater than the tolerance prescribed for the raw
 391-42 agricultural commodity; or

391-43 (D) is, or it bears or contains, a new animal
 391-44 drug, or a conversion product of a new animal drug, that is unsafe
 391-45 under Section 512 of the federal Act; [ex]

391-46 (3) it consists in whole or in part of a diseased,
 391-47 contaminated, filthy, putrid, or decomposed substance, or if it is
 391-48 otherwise unfit for foods; [ex]

391-49 (4) it has been produced, prepared, packed or held
 391-50 under unsanitary conditions whereby it may have become contaminated
 391-51 with filth, or whereby it may have been rendered diseased,
 391-52 unwholesome, or injurious to health; [ex]

391-53 (5) it is, in whole or in part, the product of a
 391-54 diseased animal, an animal which has died otherwise than by
 391-55 slaughter, or an animal that has been fed upon the uncooked offal
 391-56 from a slaughterhouse; [ex]

391-57 (6) its container is composed, in whole or in part, of
 391-58 any poisonous or deleterious substance which may render the
 391-59 contents injurious to health; or

391-60 (7) it has been intentionally subjected to radiation,
 391-61 unless the use of the radiation was in conformity with a regulation
 391-62 or exemption in effect in accordance with Section 409 of the federal
 391-63 Act;

391-64 (b) if:

391-65 (1) any valuable constituent has been in whole or in
 391-66 part omitted or abstracted therefrom; [ex]

391-67 (2) any substance has been substituted wholly or in
 391-68 part therefor; [ex]

391-69 (3) damage or inferiority has been concealed in any

392-1 manner; [~~or~~]

392-2 (4) any substance has been added thereto or mixed or
 392-3 packed therewith so as to increase its bulk or weight, or reduce its
 392-4 quality or strength or make it appear better or of greater value
 392-5 than it is; [~~or~~]

392-6 (5) it contains saccharin, dulcin, glucin, or other
 392-7 sugar substitutes except in dietary foods, and when so used shall be
 392-8 declared; or

392-9 (6) it be fresh meat and it contains any chemical
 392-10 substance containing sulphites, sulphur dioxide, or any other
 392-11 chemical preservative which is not approved by the United States
 392-12 Department of Agriculture, the Animal and Plant Health Inspection
 392-13 Service (A.P.H.I.S.) or by department rules [of the board];

392-14 (c) if it is, or it bears or contains, a color additive that
 392-15 is unsafe under Section 431.161(a); or

392-16 (d) if it is confectionery and:

392-17 (1) has any nonnutritive object partially or
 392-18 completely imbedded in it; provided, that this subdivision does
 392-19 not apply if, in accordance with department rules [of the board],
 392-20 the object is of practical, functional value to the confectionery
 392-21 product and would not render the product injurious or hazardous to
 392-22 health;

392-23 (2) bears or contains any alcohol, other than alcohol
 392-24 not in excess of five percent by volume. Any confectionery that
 392-25 bears or contains any alcohol in excess of one-half of one percent
 392-26 by volume derived solely from the use of flavoring extracts and less
 392-27 than five percent by volume:

392-28 (A) may not be sold to persons under the legal age
 392-29 necessary to consume an alcoholic beverage in this state;

392-30 (B) must be labeled with a conspicuous, readily
 392-31 legible statement that reads, "Sale of this product to a person
 392-32 under the legal age necessary to consume an alcoholic beverage is
 392-33 prohibited";

392-34 (C) may not be sold in a form containing liquid
 392-35 alcohol such that it is capable of use for beverage purposes as that
 392-36 term is used in the Alcoholic Beverage Code;

392-37 (D) may not be sold through a vending machine;

392-38 (E) must be labeled with a conspicuous, readily
 392-39 legible statement that the product contains not more than five
 392-40 percent alcohol by volume; and

392-41 (F) may not be sold in a business establishment
 392-42 which derives less than 50 percent of its gross sales from the sale
 392-43 of confectioneries; or

392-44 (3) bears or contains any nonnutritive substance;
 392-45 provided, that this subdivision does not apply to a nonnutritive
 392-46 substance that is in or on the confectionery by reason of its use
 392-47 for a practical, functional purpose in the manufacture, packaging,
 392-48 or storage of the confectionery if the use of the substance does not
 392-49 promote deception of the consumer or otherwise result in
 392-50 adulteration or misbranding in violation of this chapter; and
 392-51 provided further, that the executive commissioner [board] may, for
 392-52 the purpose of avoiding or resolving uncertainty as to the
 392-53 application of this subdivision, adopt rules allowing or
 392-54 prohibiting the use of particular nonnutritive substances.

392-55 SECTION 3.0965. Section 431.082, Health and Safety Code, is
 392-56 amended to read as follows:

392-57 Sec. 431.082. MISBRANDED FOOD. A food shall be deemed to be
 392-58 misbranded:

392-59 (a) if its labeling is false or misleading in any
 392-60 particular or fails to conform with the requirements of Section
 392-61 431.181;

392-62 (b) if, in the case of a food to which Section 411 of
 392-63 the federal Act applies, its advertising is false or misleading in a
 392-64 material respect or its labeling is in violation of Section
 392-65 411(b)(2) of the federal Act;

392-66 (c) if it is offered for sale under the name of another
 392-67 food;

392-68 (d) if it is an imitation of another food, unless its
 392-69 label bears, in prominent type of uniform size, the word

393-1 "imitation" and immediately thereafter the name of the food
 393-2 imitated;

393-3 (e) if its container is so made, formed, or filled as
 393-4 to be misleading;

393-5 (f) if in package form unless it bears a label
 393-6 containing:

393-7 (1) the name and place of business of the
 393-8 manufacturer, packer, or distributor; and
 393-9 (2) an accurate statement, in a uniform location
 393-10 on the principal display panel of the label, of the quantity of the
 393-11 contents in terms of weight, measure, or numerical count;
 393-12 provided, that under this subsection reasonable variations shall be
 393-13 permitted, and exemptions as to small packages shall be
 393-14 established, by department rules [~~adopted by the board~~];

393-15 (g) if any word, statement, or other information
 393-16 required by or under the authority of this chapter to appear on the
 393-17 label or labeling is not prominently placed thereon with such
 393-18 conspicuousness (as compared with other words, statements,
 393-19 designs, or devices in the labeling) and in such terms as to render
 393-20 it likely to be read and understood by the ordinary individual under
 393-21 customary conditions of purchase and use;

393-22 (h) if it purports to be or is represented as a food
 393-23 for which a definition and standard of identity has been prescribed
 393-24 by federal regulations or department rules [~~of the board~~] as
 393-25 provided by Section 431.245, unless:

393-26 (1) it conforms to such definition and standard;
 393-27 and
 393-28 (2) its label bears the name of the food
 393-29 specified in the definition and standard, and, in so far as may be
 393-30 required by those regulations or rules, the common names of
 393-31 ingredients, other than spices, flavoring, and coloring, present in
 393-32 such food;

393-33 (i) if it purports to be or is represented as:
 393-34 (1) a food for which a standard of quality has
 393-35 been prescribed by federal regulations or department rules [~~of the~~
 393-36 ~~board~~] as provided by Section 431.245, and its quality falls below
 393-37 such standard unless its label bears, in such manner and form as
 393-38 those regulations or rules specify, a statement that it falls below
 393-39 such standard; or
 393-40 (2) a food for which a standard or standards of
 393-41 fill of container have been prescribed by federal regulations or
 393-42 department rules [~~of the board~~] as provided by Section 431.245, and
 393-43 it falls below the standard of fill of container applicable
 393-44 thereto, unless its label bears, in such manner and form as those
 393-45 regulations or rules specify, a statement that it falls below such
 393-46 standard;

393-47 (j) unless its label bears:
 393-48 (1) the common or usual name of the food, if any;
 393-49 and
 393-50 (2) in case it is fabricated from two or more
 393-51 ingredients, the common or usual name of each such ingredient, and
 393-52 if the food purports to be a beverage containing vegetable or fruit
 393-53 juice, a statement with appropriate prominence on the information
 393-54 panel of the total percentage of the fruit or vegetable juice
 393-55 contained in the food; except that spices, flavorings, and colors
 393-56 not required to be certified under Section 721(c) [~~706(c)~~] of the
 393-57 federal Act, other than those sold as such, may be designated as
 393-58 spices, flavorings, and colors, without naming each; provided
 393-59 that, to the extent that compliance with the requirements of this
 393-60 subdivision is impractical or results in deception or unfair
 393-61 competition, exemptions shall be established by department rules
 393-62 [~~of the board~~];
 393-63 (k) if it purports to be or is represented for special
 393-64 dietary uses, unless its label bears such information concerning
 393-65 its vitamin, mineral, and other dietary properties as the executive
 393-66 commissioner [~~board~~] determines to be, and by rule prescribed, as
 393-67 necessary in order to fully inform purchasers as to its value for
 393-68 such uses;

393-69 (l) if it bears or contains any artificial flavoring,

394-1 artificial coloring, or chemical preservative, unless it bears
 394-2 labeling stating that fact; provided that, to the extent that
 394-3 compliance with the requirements of this subsection is
 394-4 impracticable, exemptions shall be established by department rules
 394-5 [~~of the board~~]. The provisions of this subsection and Subsections
 394-6 (h) and (j) with respect to artificial coloring do not apply in the
 394-7 case of butter, cheese, and ice cream;

394-8 (m) if it is a raw agricultural commodity that is the
 394-9 produce of the soil and bears or contains a pesticide chemical
 394-10 applied after harvest, unless the shipping container of the
 394-11 commodity bears labeling that declares the presence of the chemical
 394-12 in or on the commodity and the common or usual name and the function
 394-13 of the chemical, except that the declaration is not required while
 394-14 the commodity, after removal from the shipping container, is being
 394-15 held or displayed for sale at retail out of the container in
 394-16 accordance with the custom of the trade;

394-17 (n) if it is a product intended as an ingredient of
 394-18 another food and if used according to the directions of the purveyor
 394-19 will result in the final food product being adulterated or
 394-20 misbranded;

394-21 (o) if it is a color additive, unless its packaging and
 394-22 labeling are in conformity with the packaging and labeling
 394-23 requirements applicable to the color additive as may be contained
 394-24 in regulations issued under Section 721 [~~706~~] of the federal Act;

394-25 (p) if its packaging or labeling is in violation of an
 394-26 applicable regulation issued under Section 3 or 4 of the federal
 394-27 [~~Federal~~] Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472
 394-28 or 1473 [~~1491 et seq.~~]);

394-29 (q)(1) [~~(q)~~] if it contains saccharin, unless its label
 394-30 and labeling and retail display comply with the requirements of
 394-31 Sections 403(o) and 403(p) of the federal Act;

394-32 [~~(r)~~] if it contains saccharin and is offered for sale,
 394-33 but not for immediate consumption, at a retail establishment,
 394-34 unless the retail establishment displays prominently, where the
 394-35 food is held for sale, notice that is provided by the manufacturer
 394-36 of the food under Section 403(o)(2) of the federal Act for consumers
 394-37 concerning the information required by Section 403(p) of the
 394-38 federal Act to be on food labels and labeling;

394-39 [~~(s)(1)~~] if it is a food intended for human
 394-40 consumption and is offered for sale, unless its label or labeling
 394-41 bears nutrition information that provides:

394-42 (A)(i) the serving size that is an amount
 394-43 customarily consumed and that is expressed in a common household
 394-44 measure that is appropriate to the food; or

394-45 (ii) if the use of the food is not
 394-46 typically expressed in a serving size, the common household unit of
 394-47 measure that expresses the serving size of the food;

394-48 (B) the number of servings or other units of
 394-49 measure per container;

394-50 (C) the total number of calories in each
 394-51 serving size or other unit of measure that are:

394-52 (i) derived from any source; and

394-53 (ii) derived from fat;

394-54 (D) the amount of total fat, saturated fat,
 394-55 cholesterol, sodium, total carbohydrates, complex carbohydrates,
 394-56 sugar, dietary fiber, and total protein contained in each serving
 394-57 size or other unit of measure; and

394-58 (E) any vitamin, mineral, or other nutrient
 394-59 required to be placed on the label and labeling of food under the
 394-60 federal Act; or

394-61 (2)(A) if it is a food distributed at retail in
 394-62 bulk display cases, or a food received in bulk containers, unless it
 394-63 has nutrition labeling prescribed by the secretary; and

394-64 (B) if the secretary determines it is
 394-65 necessary, nutrition labeling will be mandatory for raw fruits,
 394-66 vegetables, and fish, including freshwater or marine finfish,
 394-67 crustaceans, mollusks including shellfish, amphibians, and other
 394-68 forms of aquatic animal life, except that:

394-69 (3)(A) Subdivisions (1) and (2) do not apply to

395-1 food:

395-2 (i) that is served in restaurants or
 395-3 other establishments in which food is served for immediate human
 395-4 consumption or that is sold for sale or use in those establishments;

395-5 (ii) that is processed and prepared
 395-6 primarily in a retail establishment, that is ready for human
 395-7 consumption, that is of the type described in Subparagraph (i),
 395-8 that is offered for sale to consumers but not for immediate human
 395-9 consumption in the establishment, and that is not offered for sale
 395-10 outside the establishment;

395-11 (iii) that is an infant formula
 395-12 subject to Section 412 of the federal Act;

395-13 (iv) that is a medical food as defined
 395-14 in Section 5(b) of the Orphan Drug Act (21 U.S.C. Section 360ee(b));
 395-15 or

395-16 (v) that is described in Section 405,
 395-17 clause (2), of the federal Act;

395-18 (B) Subdivision (1) does not apply to the
 395-19 label of a food if the secretary determines by regulation that
 395-20 compliance with that subdivision is impracticable because the
 395-21 package of the food is too small to comply with the requirements of
 395-22 that subdivision and if the label of that food does not contain any
 395-23 nutrition information;

395-24 (C) if the secretary determines that a food
 395-25 contains insignificant amounts of all the nutrients required by
 395-26 Subdivision (1) to be listed in the label or labeling of food, the
 395-27 requirements of Subdivision (1) do not apply to the food if the
 395-28 label, labeling, or advertising of the food does not make any claim
 395-29 with respect to the nutritional value of the food, provided that if
 395-30 the secretary determines that a food contains insignificant amounts
 395-31 of more than half the nutrients required by Subdivision (1) to be in
 395-32 the label or labeling of the food, the amounts of those nutrients
 395-33 shall be stated in a simplified form prescribed by the secretary;

395-34 (D) if a person offers food for sale and has
 395-35 annual gross sales made or business done in sales to consumers that
 395-36 is not more than \$500,000 or has annual gross sales made or business
 395-37 done in sales of food to consumers that is not more than \$50,000,
 395-38 the requirements of this subsection do not apply to food sold by
 395-39 that person to consumers unless the label or labeling of food
 395-40 offered by that person provides nutrition information or makes a
 395-41 nutrition claim;

395-42 (E) if foods are subject to Section 411 of
 395-43 the federal Act, the foods shall comply with Subdivisions (1) and
 395-44 (2) in a manner prescribed by the rules; and

395-45 (F) if food is sold by a food distributor,
 395-46 Subdivisions (1) and (2) do not apply if the food distributor
 395-47 principally sells food to restaurants or other establishments in
 395-48 which food is served for immediate human consumption and the food
 395-49 distributor does not manufacture, process, or repack the food it
 395-50 sells;

395-51 (r) [+] if it is a food intended for human
 395-52 consumption and is offered for sale, and a claim is made on the
 395-53 label, labeling, or retail display relating to the nutrient content
 395-54 or a nutritional quality of the food to a specific disease or
 395-55 condition of the human body, except as permitted by Section 403(r)
 395-56 of the federal Act; or

395-57 (s) [+] if it is a food intended for human
 395-58 consumption and its label, labeling, and retail display do not
 395-59 comply with the requirements of Section 403(r) of the federal Act
 395-60 pertaining to nutrient content and health claims.

395-61 SECTION 3.0966. Section 431.083, Health and Safety Code, is
 395-62 amended to read as follows:

395-63 Sec. 431.083. FOOD LABELING EXEMPTIONS. (a) Except as
 395-64 provided by Subsection (c), the executive commissioner [board]
 395-65 shall adopt rules exempting from any labeling requirement of this
 395-66 chapter:

395-67 (1) small open containers of fresh fruits and fresh
 395-68 vegetables; and

395-69 (2) food that is in accordance with the practice of the

396-1 trade, to be processed, labeled, or repacked in substantial
 396-2 quantities at establishments other than those where originally
 396-3 processed or packed, on conditions that the food is not adulterated
 396-4 or misbranded under the provisions of this chapter when removed
 396-5 from the processing, labeling, or repacking establishment.

396-6 (b) Food labeling exemptions adopted under the federal Act
 396-7 apply to food in this state except as modified or rejected by
 396-8 department rules [adopted by the board].

396-9 (c) The executive commissioner [board] may not adopt rules
 396-10 under Subsection (a) to exempt foods from the labeling requirements
 396-11 of Sections 403(q) and (r) of the federal Act.

396-12 SECTION 3.0967. Section **431.084**, Health and Safety Code, is
 396-13 amended to read as follows:

396-14 Sec. 431.084. EMERGENCY PERMITS FOR FOODS CONTAMINATED WITH
 396-15 MICROORGANISMS. (a) The department [commissioner] shall provide
 396-16 for the issuance of temporary permits to a manufacturer, processor,
 396-17 or packer of a class of food in any locality that provides
 396-18 conditions for the manufacture, processing, or packing for the
 396-19 class of food as necessary to protect the public health only if the
 396-20 department [commissioner] finds after investigation that:

396-21 (1) the distribution in this state of a class of food
 396-22 may, because the food is contaminated with microorganisms during
 396-23 the manufacture, processing, or packing of the food in any
 396-24 locality, be injurious to health; and

396-25 (2) the injurious nature of the food cannot be
 396-26 adequately determined after the food has entered commerce.

396-27 (b) The executive commissioner [board] by rule shall
 396-28 establish standards and procedures for the enforcement of this
 396-29 section.

396-30 (c) During the period for which permits are issued for a
 396-31 class of food determined by the department [commissioner] to be
 396-32 injurious under Subsection (a), a person may not introduce or
 396-33 deliver for introduction into commerce the food unless the person
 396-34 is a manufacturer, processor, or packer who has a permit issued by
 396-35 the department [commissioner] as authorized by rules adopted under
 396-36 this section.

396-37 (d) The department [commissioner] may immediately suspend a
 396-38 permit issued under this section if a condition of the permit is
 396-39 violated. An immediate suspension is effective on notice to the
 396-40 permit holder.

396-41 (e) A holder of a permit that has been suspended may at any
 396-42 time apply for the reinstatement of the permit. Immediately after a
 396-43 hearing and an inspection of the permit holder's establishment, the
 396-44 department [commissioner] shall reinstate the permit if adequate
 396-45 measures have been taken to comply with and maintain the conditions
 396-46 of the permit as originally issued or as amended.

396-47 (f) A permit holder shall provide access to the permit
 396-48 holder's factory or establishment to the department [an authorized
 396-49 agent] to allow the department [agent] to determine whether the
 396-50 permit holder complies with the conditions of the permit. Denial of
 396-51 access is grounds for suspension of the permit until the permit
 396-52 holder freely provides the access.

396-53 SECTION 3.0968. Section **431.111**, Health and Safety Code, is
 396-54 amended to read as follows:

396-55 Sec. 431.111. ADULTERATED DRUG OR DEVICE. A drug or device
 396-56 shall be deemed to be adulterated:

396-57 (a)(1) if it consists in whole or in part of any filthy,
 396-58 putrid, or decomposed substance; or

396-59 (2)(A) if it has been prepared, packed, or held under
 396-60 insanitary conditions whereby it may have been contaminated with
 396-61 filth, or whereby it may have been rendered injurious to health; or

396-62 (B) if it is a drug and the methods used in, or
 396-63 the facilities or controls used for, its manufacture, processing,
 396-64 packing, or holding do not conform to or are not operated or
 396-65 administered in conformity with current good manufacturing
 396-66 practice to assure that such drug meets the requirements of this
 396-67 chapter as to safety and has the identity and strength, and meets
 396-68 the quality and purity characteristics, which it purports or is
 396-69 represented to possess; or

(3) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(4) if it:

(A) bears or contains, for purposes of coloring only, a color additive that is unsafe under Section 431.161(a); or

(B) is a color additive, the intended use of

which in or on drugs or devices is for purposes of coloring only, and is unsafe under Section 431.161(a); or

(5) if it is a new animal drug that is unsafe under Section 512 of the federal Act;

(b) if it purports to be or is represented as a drug, the name of which is recognized in an official compendium and its

name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standards set forth in such compendium. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under the authority of the federal Act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection [paragraph] because it differs from the standards of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standards is plainly stated on its label. Whenever a drug is recognized in The [the] United States Pharmacopeia and The Pharmacopeia National Formulary (USP-NF), it shall be subject to the requirements of the USP-NF [United States Pharmacopeia National Formulary];

(c) if it is not subject to Subsection [~~the provision of Paragraph~~] (b) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess;

(d) if it is a drug and any substance has been:

(1) mixed or packed therewith so as to reduce its quality or strength; or

(2) substituted wholly or in part therefor;

(e) if it is, or purports to be or is represented as, a device that is subject to a performance standard established under Section 514 of the federal Act, unless the device is in all respects in conformity with the standard;

(f)(1) if it is a class III device:
(A)(i) that is maximal

(A)(i) that is required by a regulation adopted under Section 515(b) of the federal Act to have an approval under that section of an application for premarket approval and that is not exempt from Section 515 as provided by Section 520(g) of the federal Act; and

(ii)(I) for which an application for premarket approval or a notice of completion of a product development protocol was not filed with the United States Food and Drug Administration by the 90th day after the date of adoption of the regulation; or

(II) for which that application was filed and approval was denied or withdrawn, for which that notice was filed and was declared incomplete, or for which approval of the device under the protocol was withdrawn;

(B) that was classified under Section 513(f) of the federal Act into class III, which under Section 515(a) of the federal Act is required to have in effect an approved application for premarket approval, that is not exempt from Section 515 as provided by Section 520(g) of the federal Act, and that does not have the application in effect; or

(C) that was classified under Section 520(1) of the federal Act into class III, which under that section is required to have in effect an approved application under Section 515 of the federal Act, and that does not have the application in effect, except that:

(2)(A) in the case of a device classified under Section 513(f) of the federal Act into class III and intended solely for investigational use. Subdivision (1)(B) does not apply to the

device during the period ending on the 90th day after the date of adoption of the regulations prescribing the procedures and conditions required by Section 520(g)(2) of the federal Act; and

(B) in the case of a device subject to a regulation adopted under Section 515(b) of the federal Act, Subdivision (1) does not apply to the device during the period ending on whichever of the following dates occurs later:

(i) the last day of the 30-day calendar month beginning after the month in which the classification of the device into class III became effective under Section 513 of the federal Act; or

(ii) the 90th day after the date of adoption of the regulation;

(g) if it is a banned device;

(h) if it is a device and the methods used in, or the facilities or controls used for its manufacture, packing, storage, or installations are not in conformity with applicable requirements under Section 520(f)(1) of the federal Act or an applicable condition as prescribed by an order under Section 520(f)(2) of the federal Act; or

(i) if it is a device for which an exemption has been granted under Section 520(g) of the federal Act for investigational use and the person who was granted the exemption or any investigator who uses the device under the exemption fails to comply with a requirement prescribed by or under that section.

SECTION 3.0969. Sections 431.113(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner shall [~~board is directed to~~] adopt rules exempting from any labeling or packaging requirement of this chapter drugs and devices that are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packaged on condition that such drugs and devices are not adulterated or misbranded under the provisions of this chapter on removal from such processing, labeling, or repacking establishment.

(b) Drugs and device labeling or packaging exemptions adopted under the federal Act shall apply to drugs and devices in this state except insofar as modified or rejected by department rules [~~of the board~~].

SECTION 3.0970. Section 431.114, Health and Safety Code, is amended to read as follows:

Sec. 431.114. NEW DRUGS. (a) A person shall not sell, deliver, offer for sale, hold for sale or give away any new drug unless:

(1) an application with respect thereto has been approved and the approval has not been withdrawn under Section 505 of the federal Act; and

(2) a copy of the letter of approval or approvability issued by the United States [~~Federal~~] Food and Drug Administration is on file with the department [~~commissioner~~] if the product is manufactured in this state.

(b) A person shall not use in or on human beings or animals a new drug or new animal drug limited to investigational use unless the person has filed with the United States [~~Federal~~] Food and Drug Administration a completed and signed investigational new drug (IND) application [~~"Notice of claimed investigational exemption for a new drug" form~~] in accordance with 21 C.F.R. 312.20-312.38 [312.1 (1980)] and the exemption has not been terminated. The drug shall be plainly labeled in compliance with Section 505(i) of the federal Act.

(c) This section shall not apply:

(1) to any drug that is not a new drug as defined in the federal Act;

(2) to any drug that is licensed under the Public Health Service [~~Services~~] Act [~~of July 1, 1944~~] (42 U.S.C. 201 et seq.); or

(3) to any drug approved by the department [~~commissioner~~] by the authority of any prior law.

399-1 SECTION 3.0971. Section 431.115(c), Health and Safety Code,
 399-2 is amended to read as follows:

399-3 (c) This section does not apply to any drug:

399-4 (1) licensed under the virus-serum-toxin law of March
 399-5 4, 1913 (21 U.S.C. 151-159);
 399-6 (2) approved by the United States Department of
 399-7 Agriculture; or
 399-8 (3) approved by the department [~~commissioner~~] by the
 399-9 authority of any prior law.

399-10 SECTION 3.0972. Section 431.116(f), Health and Safety Code,
 399-11 is amended to read as follows:

399-12 (f) Notwithstanding any other state law, pricing
 399-13 information disclosed by manufacturers or labelers under this
 399-14 section may be provided by the department only to the Medicaid
 399-15 vendor drug [~~purchase~~] program for its sole use. The Medicaid
 399-16 vendor drug [~~purchase~~] program may use the information only as
 399-17 necessary to administer its drug programs, including Medicaid drug
 399-18 programs.

399-19 SECTION 3.0973. Section 431.117, Health and Safety Code, is
 399-20 amended to read as follows:

399-21 Sec. 431.117. PRIORITY FOR HEALTH CARE PROVIDERS IN
 399-22 DISTRIBUTION OF INFLUENZA VACCINE. The executive commissioner [~~of~~
 399-23 ~~the Health and Human Services Commission~~] shall study the wholesale
 399-24 distribution of influenza vaccine in this state to determine the
 399-25 feasibility of implementing a system that requires giving a
 399-26 priority in filling orders for influenza vaccine to physicians and
 399-27 other licensed health care providers authorized to administer
 399-28 influenza vaccine over retail establishments. The executive
 399-29 commissioner may implement such a system if it is determined to be
 399-30 feasible.

399-31 SECTION 3.0974. Section 431.142, Health and Safety Code, is
 399-32 amended to read as follows:

399-33 Sec. 431.142. MISBRANDED COSMETIC. (1) A cosmetic shall be
 399-34 deemed to be misbranded:

399-35 (a) if:

399-36 (1) its labeling is false or misleading in any
 399-37 particular; and
 399-38 (2) its labeling or packaging fails to conform
 399-39 with the requirements of Section 431.181;

399-40 (b) if in package form unless it bears a label
 399-41 containing (1) the name and place of business of the manufacturer,
 399-42 packer, or distributor; and (2) an accurate statement of the
 399-43 quantity of the contents in terms of weight, measure or numerical
 399-44 count, which statement shall be separately and accurately stated in
 399-45 a uniform location on the principal display panel of the label;
 399-46 provided, that under Subdivision (2) reasonable variations shall be
 399-47 permitted, and exemptions as to small packages shall be established
 399-48 by regulations prescribed by department rules [~~adopted by the~~
 399-49 ~~board~~];

399-50 (c) if any word, statement, or other information
 399-51 required by or under authority of this chapter to appear on the
 399-52 label or labeling is not prominently placed thereon with such
 399-53 conspicuously (as compared with other words, statements,
 399-54 designs, or devices, in the labeling) and in such terms as to render
 399-55 it likely to be read and understood by the ordinary individual under
 399-56 customary conditions of purchase and use;

399-57 (d) if its container is so made, formed, or filled as
 399-58 to be misleading;

399-59 (e) if it is a color additive, unless its packaging and
 399-60 labeling are in conformity with the packaging and labeling
 399-61 requirements, applicable to the color additive, prescribed under
 399-62 Section 721 [~~706~~] of the federal Act. This subsection shall not
 399-63 apply to packages of color additives which, with respect to their
 399-64 use for cosmetics, are marketed and intended for use only in or on
 399-65 hair dyes, as defined by Section 431.141(a); or

399-66 (f) if its packaging or labeling is in violation of an
 399-67 applicable regulation issued pursuant to Section 3 or 4 of the
 399-68 federal [~~Federal~~] Poison Prevention Packaging Act of 1970 (15
 399-69 U.S.C. 1472 or 1473).

(2) The executive commissioner [board] shall adopt rules exempting from any labeling requirement of this chapter cosmetics that are in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, on condition that the cosmetics are not adulterated or misbranded under the provisions of this chapter on removal from the processing, labeling, or repacking establishment. Cosmetic labeling exemptions adopted under the federal Act shall apply to cosmetics in this state except insofar as modified or rejected by department rules [adopted by the board].

SECTION 3.0975. Sections 431.161(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The executive commissioner [board], whenever public health or other considerations in the state so require or on the petition of an interested party, may adopt rules prescribing tolerances for any added, poisonous, or deleterious substances, food additives, pesticide chemicals in or on raw agricultural commodities, or color additives, including zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities. The rules [rule] may prescribe the conditions under which a food additive or a color additive may be safely used and may prescribe exemptions if the food additive or color additive is to be used solely for investigational or experimental purposes. Rules adopted under this section limiting the quantity of poisonous or deleterious substances in food must provide equal or stricter standards than those adopted by the federal Food and Drug Administration or its successor. A person petitioning for the adoption of a rule shall establish by data submitted to the executive commissioner [board] that a necessity exists for the rule and that its effect will not be detrimental to the public health. If the data furnished by the petitioner are not sufficient to allow the executive commissioner [board] to determine whether the rules should be adopted, the executive commissioner [board] may require additional data to be submitted. The petitioner's failure to comply with the request is sufficient grounds to deny the request. In adopting rules relating to those substances, the executive commissioner [board] shall consider, among other relevant factors, the following information furnished by the petitioner, if any:

(1) the name and all pertinent information concerning the substance, including, if available, its chemical identity and composition, a statement of the conditions of the proposed use, directions, recommendations, and suggestions, specimens of proposed labeling, all relevant data bearing on the physical or other technical effect, and the quantity required to produce that effect;

(2) the probable composition of any substance formed in or on a food, drug, or cosmetic resulting from the use of that substance;

(3) the probable consumption of that substance in the diet of man and animals, taking into account any chemically or pharmacologically related substance in the diet;

(4) safety factors that, in the opinion of experts qualified by scientific training and experience to evaluate the safety of those substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(5) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(A) that substance in or on an article;

(B) any substance formed in or on an article

because of the use of that substance; and

(c) the pure substance and all intermediates and

(6) facts supporting a contention that the proposed

(6) facts supporting a contention
use of that substance will serve a useful purpose

(c) The executive [Notwithstanding Sections 11.013 and 12.001, the] commissioner may adopt emergency rules under Chapter

401-1 2001, Government Code, to establish tolerance levels of poisonous
 401-2 or deleterious substances in food.

401-3 SECTION 3.0976. Section 431.181(d), Health and Safety Code,
 401-4 is amended to read as follows:

401-5 (d) Whenever the executive commissioner [board] determines
 401-6 that rules containing prohibitions or requirements other than those
 401-7 prescribed by Subsection (a) are necessary to prevent the deception
 401-8 of consumers or to facilitate value comparisons as to any consumer
 401-9 commodity, the executive commissioner [board] shall adopt with
 401-10 respect to that commodity rules effective to:

401-11 (1) establish and define standards for the
 401-12 characterization of the size of a package enclosing any consumer
 401-13 commodity, which may be used to supplement the label statement of
 401-14 net quantity of contents of packages containing such commodity, but
 401-15 this subdivision [paragraph] shall not be construed as authorizing
 401-16 any limitation on the size, shape, weight, dimensions, or number of
 401-17 packages that may be used to enclose any commodity;

401-18 (2) regulate the placement on any package containing
 401-19 any commodity, or on any label affixed to the commodity, of any
 401-20 printed matter stating or representing by implication that such
 401-21 commodity is offered for retail sale at a price lower than the
 401-22 ordinary and customary retail sale price or that a retail sale price
 401-23 advantage is accorded to purchasers thereof by reason of the size of
 401-24 that package or the quantity of its contents;

401-25 (3) require that the label on each package of a
 401-26 consumer commodity (other than one which is a food within the
 401-27 meaning of Section 431.002 [431.002(15)]) bear:

401-28 (A) the common or usual name of the consumer
 401-29 commodity, if any; and

401-30 (B) in case the consumer commodity consists of
 401-31 two or more ingredients, the common or usual name of each ingredient
 401-32 listed in order of decreasing predominance, but nothing in this
 401-33 paragraph shall be deemed to require that any trade secret be
 401-34 divulged; or

401-35 (4) prevent the nonfunctional slack-fill of packages
 401-36 containing consumer commodities. For the purpose of this
 401-37 subdivision, a package shall be deemed to be nonfunctionally
 401-38 slack-filled if it is filled of substantially less than its
 401-39 capacity for reasons other than:

401-40 (A) protection of the contents of the package; or
 401-41 (B) the requirements of the machine used for
 401-42 enclosing the contents in the package.

401-43 SECTION 3.0977. Section 431.183(c), Health and Safety Code,
 401-44 is amended to read as follows:

401-45 (c) The executive commissioner [board] by rule shall
 401-46 authorize the advertisement of a drug having a curative or
 401-47 therapeutic effect for a disease listed under Subsection (a) if the
 401-48 executive commissioner [board] determines that an advance in
 401-49 medical science has made any type of self-medication safe for the
 401-50 disease. The executive commissioner [board] may impose conditions
 401-51 and restrictions on the advertisement of the drug necessary in the
 401-52 interest of public health.

401-53 SECTION 3.0978. Section 431.2031(c), Health and Safety
 401-54 Code, is amended to read as follows:

401-55 (c) The department may issue a license to a person who
 401-56 engages in the wholesale distribution of drugs outside this state
 401-57 to engage in the wholesale distribution of drugs in this state, if
 401-58 after an examination of the reports of the person's compliance
 401-59 history and current compliance record, the department determines
 401-60 that the person is in compliance with this subchapter and
 401-61 department [the board's] rules.

401-62 SECTION 3.0979. Section 431.204(b), Health and Safety Code,
 401-63 is amended to read as follows:

401-64 (b) The executive commissioner [of the Health and Human
 401-65 Services Commission] by rule shall set the fees in amounts that
 401-66 allow the department to recover the biennial expenditures of state
 401-67 funds by the department in:

401-68 (1) reviewing and acting on a license;
 401-69 (2) amending and renewing a license;

(3) inspecting a licensed facility; and
(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

SECTION 3.0980. Sections 431.207(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The department [commissioner of state health services] may refuse an application for a license or may suspend or revoke a license if the applicant or licensee:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has not complied with this chapter or the rules implementing this chapter;

(6) has violated Section 431.021(1)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

- (7) has violated Chapter 481 or 483;
- (8) has violated the rules of the public safety director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain; or

(9) fails to complete a license application or submits an application that contains false, misleading, or incorrect information or contains information that cannot be verified by the department.

(b) The executive commissioner [of the Health and Human Services Commission] by rule shall establish minimum standards required for the issuance or renewal of a license under this subchapter.

SECTION 3.0981. Section 431.208(b), Health and Safety Code, is amended to read as follows:

(b) The executive commissioner [department] shall adopt rules to implement this section.

SECTION 3.0982. Sections 431.2211(b) and (e), Health and Safety Code, are amended to read as follows:

(b) An exemption from the licensing requirements prescribed by this subchapter does not exempt the person from other provisions prescribed by this subchapter or from rules adopted by the executive commissioner [board] to administer and enforce those provisions.

(e) A food wholesaler that is not required to obtain a license for a place of business under Subsection (d) shall register that place of business with the department. The executive commissioner [department] shall adopt rules for the registration of food wholesalers under this section.

SECTION 3.0983. Section 431.222(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Section [431.2211](#), a food manufacturer, food wholesaler, or warehouse operator in this state must apply for and obtain from the department every two years [each year] a license for each place of business that the food manufacturer, food wholesaler, or warehouse operator operates in this state. The food manufacturer, food wholesaler, or warehouse operator must pay a licensing fee for each establishment.

SECTION 3.0984. Section 431.223(b), Health and Safety Code,

403-1 is amended to read as follows:

403-2 (b) The license application must be signed, verified, and
 403-3 filed on a form furnished by the department according to department
 403-4 [~~the~~] rules [~~adopted by the board~~].

403-5 SECTION 3.0985. Sections 431.224(a), (b), (c), and (e),
 403-6 Health and Safety Code, are amended to read as follows:

403-7 (a) The department [~~board~~] shall collect fees for:

403-8 (1) a license that is filed or renewed;

403-9 (2) a license that is amended, including a
 403-10 notification of a change in the location of a licensed place of
 403-11 business required under Section 431.2251; and

403-12 (3) an inspection performed to enforce this subchapter
 403-13 and rules adopted under this subchapter.

403-14 (b) The department [~~board~~] may charge [annual] fees every
 403-15 two years.

403-16 (c) The executive commissioner [~~board~~] by rule shall set the
 403-17 fees in amounts that allow the department to recover the biennial
 403-18 [~~at least 50 percent of the annual~~] expenditures of state funds by
 403-19 the department in:

403-20 (1) reviewing and acting on a license;

403-21 (2) amending and renewing a license;

403-22 (3) inspecting a licensed facility; and

403-23 (4) implementing and enforcing this subchapter,
 403-24 including a rule or order adopted or a license issued under this
 403-25 subchapter.

403-26 (e) All license fees received by the department under this
 403-27 subchapter shall be deposited in the state treasury to the credit of
 403-28 the food and drug registration account [~~license fee fund~~].

403-29 SECTION 3.0986. Sections 431.2245(a) and (c), Health and
 403-30 Safety Code, are amended to read as follows:

403-31 (a) The department [~~commissioner~~] shall establish a system
 403-32 for processing licensing fees under this chapter, including vended
 403-33 water facility licensing fees.

403-34 (c) The comptroller shall cooperate with the department
 403-35 [~~commissioner~~] in developing the fee processing system.

403-36 SECTION 3.0987. Section 431.225, Health and Safety Code, is
 403-37 amended to read as follows:

403-38 Sec. 431.225. EXPIRATION DATE. (a) The executive
 403-39 commissioner [~~board~~] by rule may provide that licenses expire on
 403-40 different dates [~~during the year~~].

403-41 (b) If [~~For the year in which~~] the license expiration date
 403-42 is changed, license fees [~~payable on or before September 1~~] shall be
 403-43 prorated so that each license holder pays only that portion of the
 403-44 license fee allocable to the number of months during which the
 403-45 license is valid. On renewal of the license on the new expiration
 403-46 date, the total license renewal fee is payable.

403-47 SECTION 3.0988. Section 431.2251, Health and Safety Code,
 403-48 is amended to read as follows:

403-49 Sec. 431.2251. CHANGE IN LOCATION OF PLACE OF BUSINESS. Not
 403-50 later than the 31st day before the date of the change, the license
 403-51 holder shall notify in writing the department [~~commissioner or the~~
 403-52 ~~commissioner's designee~~] of the license holder's intent to change
 403-53 the location of a licensed place of business. The notice shall
 403-54 include the address of the new location and the name and residence
 403-55 address of the individual in charge of the place of business. Not
 403-56 later than the 10th day after the completion of the change of
 403-57 location, the license holder shall forward to the department
 403-58 [~~commissioner or the commissioner's designee~~] the name and
 403-59 residence address of the individual in charge of the new place of
 403-60 business. Notice is considered adequate if the license holder
 403-61 provides the intent and verification notices to the department
 403-62 [~~commissioner or the commissioner's designee~~] by certified mail,
 403-63 return receipt requested, mailed to the central office of the
 403-64 department.

403-65 SECTION 3.0989. Section 431.226, Health and Safety Code, is
 403-66 amended to read as follows:

403-67 Sec. 431.226. REFUSAL TO GRANT LICENSE; SUSPENSION OR
 403-68 REVOCATION OF LICENSE. (a) The department [~~commissioner~~] may
 403-69 refuse an application for a license or may suspend or revoke a

404-1 license.

404-2 (b) The executive commissioner [board] by rule shall
404-3 establish minimum standards for granting and maintaining a license.
404-4 In adopting rules under this section, the executive commissioner
404-5 [board] shall:

404-6 (1) ensure that the minimum standards prioritize safe
404-7 handling of fruits and vegetables based on known safety risks,
404-8 including any history of outbreaks of food-borne communicable
404-9 diseases; and

404-10 (2) consider acceptable produce safety standards
404-11 developed by a federal agency, state agency, or university.

404-12 (c) The refusal or the suspension or revocation of a license
404-13 by the department [commissioner] and the appeal from that action
404-14 are governed by the procedures for a contested case hearing under
404-15 Chapter 2001, Government Code.

404-16 SECTION 3.0990. Section 431.227(d), Health and Safety Code,
404-17 is amended to read as follows:

404-18 (d) The executive commissioner [~~of the Health and Human~~
404-19 ~~Services Commission~~] shall adopt rules to implement this section.

404-20 SECTION 3.0991. Sections 431.241(a), (b), (c), (d), (e),
404-21 and (g), Health and Safety Code, are amended to read as follows:

404-22 (a) The executive commissioner [board] may adopt rules for
404-23 the efficient enforcement of this chapter.

404-24 (b) The executive commissioner [board] may conform [~~its~~]
404-25 rules adopted under this chapter, if practicable, with regulations
404-26 adopted under the federal Act.

404-27 (c) The enumeration of specific federal laws and
404-28 regulations in Sections 431.244 and 431.245 does not limit the
404-29 general authority granted to the executive commissioner [board] in
404-30 Subsection (b) to conform [~~its~~] rules adopted under this chapter to
404-31 those adopted under the federal Act.

404-32 (d) The executive commissioner [board] may adopt the
404-33 federal regulations issued by the secretary pursuant to the
404-34 Prescription Drug Marketing Act of 1987 (21 U.S.C. Sections 331,
404-35 333, 353, and 381), as necessary or desirable so that the state
404-36 wholesale drug distributor licensing program in Subchapter N [~~I of~~
404-37 ~~this chapter~~] may achieve compliance with that Act.

404-38 (e) The executive commissioner [board] and the ~~Texas~~
404-39 ~~Department of Human Services~~ shall not establish a drug formulary
404-40 that restricts by any prior or retroactive approval process a
404-41 physician's ability to treat a patient with a prescription drug
404-42 that has been approved and designated as safe and effective by the
404-43 United States Food and Drug Administration, in compliance with
404-44 federal law and subject to review by the executive commissioner
404-45 [~~Texas Department of Human Services, Vendor Drug Advisory~~
404-46 ~~Subcommittee~~].

404-47 (g) The department may assess a fee for the issuance of a
404-48 certificate of free sale and another certification issued under
404-49 this chapter. The executive commissioner [board] by rule shall set
404-50 each fee in an amount sufficient to recover the cost to the
404-51 department of issuing the particular certificate.

404-52 SECTION 3.0992. Section 431.244, Health and Safety Code, is
404-53 amended to read as follows:

404-54 Sec. 431.244. FEDERAL REGULATIONS ADOPTED AS STATE RULES.

404-55 (a) A regulation adopted by the secretary under the federal Act
404-56 concerning pesticide chemicals, food additives, color additives,
404-57 special dietary use, processed low acid food, acidified food,
404-58 infant formula, bottled water, or vended bottled water is a rule for
404-59 the purposes of this chapter, unless the executive commissioner
404-60 [board] modifies or rejects the rule.

404-61 (b) A regulation adopted under the Fair Packaging and
404-62 Labeling Act (15 U.S.C. 1451 et seq.) is a rule for the purposes of
404-63 this chapter, unless the executive commissioner [board] modifies or
404-64 rejects the rule. The executive commissioner [board] may not adopt
404-65 a rule that conflicts with the labeling requirements for the net
404-66 quantity of contents required under Section 4 of the Fair Packaging
404-67 and Labeling Act (15 U.S.C. 1453) and the regulations adopted under
404-68 that Act.

404-69 (c) A regulation adopted by the secretary under Sections

405-1 403(b) through (i) of the federal Act is a rule for the purposes of
 405-2 this chapter unless the executive commissioner [board] modifies or
 405-3 rejects the rule. The executive commissioner [board] may not adopt
 405-4 a rule that conflicts with the limitations provided by Sections
 405-5 403(q) and (r) of the federal Act.

405-6 (d) A federal regulation that this section provides as a
 405-7 rule for the purposes of this chapter is effective:

405-8 (1) on the date that the regulation becomes effective
 405-9 as a federal regulation; and

405-10 (2) whether or not the executive commissioner or
 405-11 department has fulfilled the rulemaking provisions of Chapter 2001,
 405-12 Government Code.

405-13 (e) If the executive commissioner [board] modifies or
 405-14 rejects a federal regulation, the executive commissioner [board]
 405-15 shall comply with the rulemaking provisions of Chapter 2001,
 405-16 Government Code.

405-17 (f) For any federal regulation adopted as a state rule under
 405-18 this chapter, including a regulation considered to be a rule for
 405-19 purposes of this chapter under Subsection (a), (b), or (c), the
 405-20 department [Department of State Health Services] shall provide on
 405-21 its Internet website:

405-22 (1) a link to the text of the federal regulation;
 405-23 (2) a clear explanation of the substance of and
 405-24 purpose for the regulation; and

405-25 (3) information on providing comments in response to
 405-26 any proposed or pending federal regulation, including an address to
 405-27 which and the manner in which comments may be submitted.

405-28 SECTION 3.0993. Sections 431.245(a), (b), (d), and (e),
 405-29 Health and Safety Code, are amended to read as follows:

405-30 (a) A definition or standard of identity, quality, or fill
 405-31 of container of the federal Act is a definition or standard of
 405-32 identity, quality, or fill of container in this chapter, except as
 405-33 modified by department [board] rules.

405-34 (b) The executive commissioner [board] by rule may
 405-35 establish definitions and standards of identity, quality, and fill
 405-36 of container for a food if:

405-37 (1) a federal regulation does not apply to the food;
 405-38 and

405-39 (2) the executive commissioner [board] determines
 405-40 that adopting the rules will promote honest and fair dealing in the
 405-41 interest of consumers.

405-42 (d) The department [commissioner] may issue additional
 405-43 permits if the department [commissioner] determines that:

405-44 (1) it is necessary for the completion of an otherwise
 405-45 adequate investigation; and

405-46 (2) the interests of consumers are safeguarded.

405-47 (e) A permit issued under Subsection (d) is subject to the
 405-48 terms and conditions of department [board] rules.

405-49 SECTION 3.0994. Section 431.246, Health and Safety Code, is
 405-50 amended to read as follows:

405-51 Sec. 431.246. REMOVAL OF ADULTERATED ITEM FROM STORES. The
 405-52 executive commissioner [board] shall adopt rules that provide a
 405-53 system for removing adulterated items from the shelves of a grocery
 405-54 store or other retail establishment selling those items.

405-55 SECTION 3.0995. Section 431.248(b), Health and Safety Code, is
 405-56 amended to read as follows:

405-57 (b) The executive commissioner [department] and the
 405-58 Department of Agriculture shall adopt the memorandum of
 405-59 understanding as a rule.

405-60 SECTION 3.0996. Section 431.249, Health and Safety Code, is
 405-61 amended to read as follows:

405-62 Sec. 431.249. DISSEMINATION OF INFORMATION. (a) The
 405-63 department [commissioner] may publish reports summarizing the
 405-64 judgments, decrees, and court orders rendered under this chapter,
 405-65 including the nature and disposition of the charge.

405-66 (b) The department [commissioner] may disseminate
 405-67 information regarding a food, drug, device, or cosmetic in a
 405-68 situation that the department [commissioner] determines to involve
 405-69 imminent danger to health or gross deception of consumers.

406-1 (c) This section does not prohibit the department
 406-2 [~~commissioner~~] from collecting, reporting, and illustrating the
 406-3 results of an investigation by the department [~~commissioner~~].

406-4 SECTION 3.0997. Section 431.272(a), Health and Safety Code,
 406-5 is amended to read as follows:

406-6 (a) Except as provided by Section 431.273, a person may not
 406-7 operate as a distributor or manufacturer of devices in this state
 406-8 unless the person has a license from the department [~~commissioner~~]
 406-9 for each place of business.

406-10 SECTION 3.0998. Section 431.273(b), Health and Safety Code,
 406-11 is amended to read as follows:

406-12 (b) An exemption from the licensing requirements under this
 406-13 section does not constitute an exemption from the other provisions
 406-14 of this chapter or the rules adopted by the executive commissioner
 406-15 [~~board~~] to administer and enforce this chapter.

406-16 SECTION 3.0999. Sections 431.274(a) and (b), Health and
 406-17 Safety Code, are amended to read as follows:

406-18 (a) A person applying for a license under this subchapter
 406-19 shall provide, at a minimum, the following information on a license
 406-20 application form furnished by the department [~~commissioner~~]:

406-21 (1) the name under which the business is conducted;
 406-22 (2) the address of each place of business that is
 406-23 licensed;

406-24 (3) the name and residence address of:
 406-25 (A) the proprietor, if the business is a
 406-26 proprietorship;

406-27 (B) all partners, if the business is a
 406-28 partnership; or
 406-29 (C) all principals, if the business is an
 406-30 association;

406-31 (4) the date and place of incorporation if the
 406-32 business is a corporation;

406-33 (5) the names and residence addresses of the
 406-34 individuals in an administrative capacity showing:
 406-35 (A) the managing proprietor, if the business is a
 406-36 proprietorship;

406-37 (B) the managing partner, if the business is a
 406-38 partnership;

406-39 (C) the officers and directors, if the business
 406-40 is a corporation; or
 406-41 (D) the persons in a managerial capacity, if the
 406-42 business is an association; and

406-43 (6) the residence address of an individual in charge
 406-44 of each place of business.

406-45 (b) The license application must be signed, verified, and
 406-46 completed in a manner described in department [~~the~~] rules [~~adopted~~
 406-47 by the ~~board~~].

406-48 SECTION 3.1000. Sections 431.276(b) and (c), Health and
 406-49 Safety Code, are amended to read as follows:

406-50 (b) The department [~~board~~] may charge [~~annual~~] fees every
 406-51 two years.

406-52 (c) The executive commissioner [~~board~~] by rule shall set the
 406-53 fees in amounts that allow the department to recover the biennial
 406-54 [~~at least 50 percent of the annual~~] expenditures of state funds by
 406-55 the department in:

406-56 (1) reviewing and acting on a license or renewal
 406-57 license;

406-58 (2) amending a license;
 406-59 (3) inspecting a licensed facility; and
 406-60 (4) implementing and enforcing this subchapter,
 406-61 including a rule or order adopted or a license issued under this
 406-62 subchapter.

406-63 SECTION 3.1001. Section 431.278, Health and Safety Code, is
 406-64 amended to read as follows:

406-65 Sec. 431.278. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a)
 406-66 Not fewer than 30 days in advance of the change, the licensee shall
 406-67 notify the department [~~commissioner~~ or ~~the commissioner's~~
 406-68 ~~designee~~] in writing of the licensee's intent to change the
 406-69 location of a licensed place of business. The notice shall include

407-1 the address of the new location and the name and residence address
 407-2 of the individual in charge of the business at the new location.

407-3 (b) Not later than the 10th day after the date of completion
 407-4 of the change of location, the licensee shall notify the department
 407-5 [~~commissioner or the commissioner's designee~~] in writing to verify
 407-6 the change of location, the address of the new location, and the
 407-7 name and residence address of the individual in charge of the
 407-8 business at the new address.

407-9 (c) Notice is adequate if the licensee provides the intent
 407-10 and verification notices to the department [~~commissioner or the~~
 407-11 ~~commissioner's designee~~] by certified mail, return receipt
 407-12 requested, mailed to the central office of the department.

407-13 SECTION 3.1002. Section 431.279, Health and Safety Code, is
 407-14 amended to read as follows:

407-15 Sec. 431.279. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION
 407-16 OF LICENSE. (a) The department [~~commissioner~~] may refuse an
 407-17 application or may suspend or revoke a license if the applicant or
 407-18 licensee:

407-19 (1) has been convicted of a felony or misdemeanor that
 407-20 involves moral turpitude;

407-21 (2) is an association, partnership, or corporation and
 407-22 the managing officer has been convicted of a felony or misdemeanor
 407-23 that involves moral turpitude;

407-24 (3) has been convicted in a state or federal court of
 407-25 the illegal use, sale, or transportation of intoxicating liquors,
 407-26 narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their
 407-27 compounds or derivatives, or any other dangerous or habit-forming
 407-28 drugs;

407-29 (4) is an association, partnership, or corporation and
 407-30 the managing officer has been convicted in a state or federal court
 407-31 of the illegal use, sale, or transportation of intoxicating
 407-32 liquors, narcotic drugs, barbiturates, amphetamines,
 407-33 desoxyephedrine, their compounds or derivatives, or any other
 407-34 dangerous or habit-forming drugs; or

407-35 (5) has not complied with this chapter or the [~~board's~~]
 407-36 rules implementing this chapter.

407-37 (b) The department [~~commissioner~~] may refuse an application
 407-38 for a license or may suspend or revoke a license if the department
 407-39 [~~commissioner~~] determines from evidence presented during a hearing
 407-40 that the applicant or licensee:

407-41 (1) has violated Section 431.021(1)(3), relating to
 407-42 the counterfeiting of a drug or the sale or holding for sale of a
 407-43 counterfeit drug;

407-44 (2) has violated Chapter 481 (Texas Controlled
 407-45 Substances Act) or 483 (Dangerous Drugs); or

407-46 (3) has violated the rules of the public safety
 407-47 director of the Department of Public Safety, including being
 407-48 responsible for a significant discrepancy in the records that state
 407-49 law requires the applicant or licensee to maintain.

407-50 (c) The refusal to license an applicant or the suspension or
 407-51 revocation of a license by the department [~~commissioner~~] and the
 407-52 appeal from that action are governed by the department's [~~board's~~]
 407-53 formal hearing procedures and the procedures for a contested case
 407-54 hearing under Chapter 2001, Government Code.

407-55 SECTION 3.1003. Section 431.322(c), Health and Safety Code,
 407-56 is amended to read as follows:

407-57 (c) The charitable drug donor shall use appropriate
 407-58 safeguards established by department rule [~~the board~~] to ensure
 407-59 that the drugs are not compromised or illegally diverted while
 407-60 being stored or transported to the charitable medical clinic.

407-61 SECTION 3.1004. Section 431.323(e), Health and Safety Code,
 407-62 is amended to read as follows:

407-63 (e) The donated drugs may be accepted and dispensed or
 407-64 administered by the charitable medical clinic only in accordance
 407-65 with department rules [~~adopted by the department~~].

407-66 SECTION 3.1005. Section 431.324, Health and Safety Code, is
 407-67 amended to read as follows:

407-68 Sec. 431.324. RULES. The executive commissioner
 407-69 [~~department~~] shall adopt rules to implement this subchapter that

408-1 are designed to protect the public health and safety.

408-2 SECTION 3.1006. Section 431.4031(c), Health and Safety
408-3 Code, is amended to read as follows:

408-4 (c) The executive commissioner [of the Health and Human
408-5 Services Commission] by rule may exempt specific purchases of
408-6 prescription drugs by state agencies and political subdivisions of
408-7 this state if the executive commissioner determines that the
408-8 requirements of this subchapter would result in a substantial cost
408-9 to the state or a political subdivision of the state.

408-10 SECTION 3.1007. Section 431.404(d), Health and Safety Code,
408-11 is amended to read as follows:

408-12 (d) An applicant or license holder shall submit to the
408-13 department any change in or correction to the information required
408-14 under this section in the form and manner prescribed by [the]
408-15 department rule.

408-16 SECTION 3.1008. Section 431.409(b), Health and Safety Code,
408-17 is amended to read as follows:

408-18 (b) The executive commissioner [of the Health and Human
408-19 Services Commission] by rule shall set the fees in amounts that are
408-20 reasonable and necessary and allow the department to recover the
408-21 biennial expenditures of state funds by the department in:

- 408-22 (1) reviewing and acting on a license;
408-23 (2) amending and renewing a license;
408-24 (3) inspecting a licensed facility; and
408-25 (4) implementing and enforcing this subchapter,

408-26 including a rule or order adopted or a license issued under this
408-27 subchapter.

408-28 SECTION 3.1009. Section 431.411(a), Health and Safety Code,
408-29 is amended to read as follows:

408-30 (a) A wholesale distributor shall receive prescription drug
408-31 returns or exchanges from a pharmacy or pharmacy warehouse in
408-32 accordance with the terms and conditions of the agreement between
408-33 the wholesale distributor and the pharmacy or pharmacy warehouse.
408-34 An expired, damaged, recalled, or otherwise nonsalable
408-35 prescription drug that is returned to the wholesale distributor may
408-36 be distributed by the wholesale distributor only to either the
408-37 original manufacturer or a third-party returns processor. The
408-38 returns or exchanges, salable or otherwise, received by the
408-39 wholesale distributor as provided by this subsection, including any
408-40 redistribution of returns or exchanges by the wholesale
408-41 distributor, are not subject to the pedigree requirement under
408-42 Section 431.412 if the returns or exchanges are exempt from
408-43 pedigree under:

- 408-44 (1) Section 4 [503], Prescription Drug Marketing Act
408-45 of 1987 (21 U.S.C. Section 353(c)(3)(B));
408-46 (2) the regulations adopted by the secretary to
408-47 administer and enforce that Act; or
408-48 (3) the interpretations of that Act set out in the
408-49 compliance policy guide of the United States Food and Drug
408-50 Administration.

408-51 SECTION 3.1010. Section 431.413(d), Health and Safety Code,
408-52 is amended to read as follows:

408-53 (d) The executive commissioner [of the Health and Human
408-54 Services Commission] shall adopt rules to implement this section.

408-55 SECTION 3.1011. Sections 431.414(a), (a-1), and (b), Health
408-56 and Safety Code, are amended to read as follows:

408-57 (a) The department [commissioner of state health services]
408-58 may refuse an application for a license or may suspend or revoke a
408-59 license if the applicant or license holder:

408-60 (1) has been convicted of a felony or misdemeanor that
408-61 involves moral turpitude;

408-62 (2) is an association, partnership, or corporation and
408-63 the managing officer has been convicted of a felony or misdemeanor
408-64 that involves moral turpitude;

408-65 (3) has been convicted in a state or federal court of
408-66 the illegal use, sale, or transportation of intoxicating liquors,
408-67 narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their
408-68 compounds or derivatives, or any other dangerous or habit-forming
408-69 drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has not complied with this subchapter or the rules implementing this subchapter;

(6) has violated Section 431.021(1)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(7) has violated Chapter 481 or 483; or

(8) has violated the rules of the public safety director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or license holder to maintain.

(a-1) The department [commissioner of state health services] may suspend or revoke a license if the license holder no longer meets the qualifications for obtaining a license under Section 431.405.

(b) The executive commissioner [of the Health and Human Services Commission] by rule shall establish minimum standards required for the issuance or renewal of a license under this subchapter.

SECTION 3.1012. Sections 431.415(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The department [commissioner of state health services] shall issue an order requiring a person, including a manufacturer, distributor, or retailer of a prescription drug, to immediately cease distribution of the drug if the department [commissioner] determines there is a reasonable probability that:

(1) a wholesale distributor has:

(A) violated this subchapter;

(B) falsified a pedigree; or

(C) sold, distributed, transferred, repackaged, handled, or held a counterfeit drug intended for human use that could cause serious consequences or death; and

(2) other procedures would result in unreasonable delay.

(c) If, after providing an opportunity for a hearing, the department [commissioner of state health services] determines that inadequate grounds exist to support the actions required by the order, the commissioner shall vacate the order.

SECTION 3.1013. Sections 432.003(6) and (7), Health and Safety Code, are amended to read as follows:

(6) "Distressed merchandise" means any food, drug, device, or cosmetic that is adulterated or misbranded for purposes of Section 431.081 (Adulterated Food), 431.082 (Misbranded Food), 431.111 (Adulterated Drug or Device), 431.112 (Misbranded Drug or Device), 431.141 (Adulterated Cosmetic), or 431.142 (Misbranded Cosmetic), as interpreted by department [board] rule and judicial decision. The term includes a food, drug, device, or cosmetic that:

(A) has lost its label or is otherwise unidentified; (B) has been subjected to prolonged or improper

(B) has been subjected to prolonged or improper storage;
(C) has been subjected for any reason to abnormal environmental conditions, including temperature extremes, humidity, smoke, water, fumes, pressure or radiation;

humidity, smoke, water, fumes, pressure, or radiation;
(D) has been subjected to conditions that result in either its strength, purity, or quality falling below that which it purports or is represented to possess; or
(E) may have been rendered unsafe or unsuitable

(E) may have been rendered unsafe or unsuitable for human consumption or use for any reason other than those specified by this subdivision.

"Drug" means an article or substance, other than a

410-1 States Pharmacopeia and The National Formulary (USP-NF) or
 410-2 [Pharmacopoeia,] the Homoeopathic [official Homeopathic]
 410-3 Pharmacopoeia of the United States (HPUS), [~~the official National~~
 410-4 ~~Formulary~~] or a supplement to [any of] those publications;

410-5 (B) designed or intended for use in the diagnosis, cure, mitigation,
 410-6 treatment, or prevention of disease in humans or other animals;

410-7 (C) intended to affect the structure or any function of the body of a human or other animal, excluding food; or

410-8 (D) intended for use as a component of an article or substance specified by this subdivision.

410-9 SECTION 3.1014. Sections 432.007(a), (b), and (e), Health and Safety Code, are amended to read as follows:

410-10 (a) The department shall issue a license to an applicant who complies with Section 432.006 and who meets the minimum qualifications established by department rule [~~the board~~].

410-11 (b) A license issued under this chapter expires two years [~~one year~~] after the date of issuance.

410-12 (e) A salvage operator or salvage broker shall display the license in accordance with department [~~board~~] rules.

410-13 SECTION 3.1015. Section 432.008(b), Health and Safety Code, is amended to read as follows:

410-14 (b) After an inspection to determine the license holder's compliance with department [~~the~~] rules [~~adopted by the board~~], the department shall renew the license of a license holder who submits a renewal application and pays the renewal fee.

410-15 SECTION 3.1016. Sections 432.009(a) and (b), Health and Safety Code, are amended to read as follows:

410-16 (a) The executive commissioner by rule [~~board~~] shall adopt, and the department shall [charge, and] collect, fees for each license application or renewal application submitted under this chapter and for inspections performed to enforce this chapter and the department rules adopted under this chapter. [~~The board may charge the fees annually.~~]

410-17 (b) The executive commissioner [~~board~~] by rule shall set the fees in amounts that are reasonable and necessary and allow [~~sufficient for~~] the department to recover the biennial [~~not less than half of the actual annual~~] expenditures of state funds by the department to:

410-18 (1) review and act on licenses;
 410-19 (2) amend and renew licenses;
 410-20 (3) inspect establishments operated by license holders; and
 410-21 (4) implement and enforce this chapter and rules and orders adopted and licenses issued under this chapter.

410-22 SECTION 3.1017. Section 432.010, Health and Safety Code, is amended to read as follows:

410-23 Sec. 432.010. DEPOSIT OF FEES [~~FUND~~]. A fee collected by the department under this chapter shall be deposited in the state treasury to the credit of the general revenue [~~food, drug, device, and cosmetic salvage~~] fund. [~~The fund may be used only to implement this chapter.~~]

410-24 SECTION 3.1018. Section 432.011(a), Health and Safety Code, is amended to read as follows:

410-25 (a) The executive commissioner [~~board~~] shall adopt rules prescribing minimum standards or related requirements for:

410-26 (1) the operation of salvage establishments and salvage warehouses; and

410-27 (2) qualifications for licenses issued under this chapter.

410-28 SECTION 3.1019. Sections 432.013(b) and (c), Health and Safety Code, are amended to read as follows:

410-29 (b) When there is an imminent threat to the health or safety of the public, the department may suspend a license without notice in accordance with rules adopted by the executive commissioner [~~board~~] for the emergency suspension of licenses.

410-30 (c) The department's hearing rules and the applicable provisions of Chapter 2001, Government Code, govern a hearing [~~before the department~~] for the denial, suspension, emergency

411-1 suspension, or revocation of a license and any appeal from that
411-2 hearing.

411-3 SECTION 3.1020. Sections 432.021(a) and (b), Health and
411-4 Safety Code, are amended to read as follows:

411-5 (a) The department [~~commissioner~~] may assess an
411-6 administrative penalty against a person who violates a rule adopted
411-7 under Section 432.011 or an order adopted or license issued under
411-8 this chapter.

411-9 (b) In determining the amount of the penalty, the department
411-10 [~~commissioner~~] shall consider:

- 411-11 (1) the person's previous violations;
- 411-12 (2) the seriousness of the violation;
- 411-13 (3) any hazard to the health and safety of the public;
- 411-14 (4) the person's demonstrated good faith; and
- 411-15 (5) other matters as justice may require.

411-16 SECTION 3.1021. Sections 432.022(b), (c), and (d), Health
411-17 and Safety Code, are amended to read as follows:

411-18 (b) If a hearing is held, an administrative law judge of the
411-19 State Office of Administrative Hearings [~~the commissioner~~] shall
411-20 make findings of fact and shall issue a written proposal for
411-21 decision regarding the occurrence of the violation and the amount
411-22 of the penalty.

411-23 (c) If the person charged with the violation does not
411-24 request a hearing, the department [~~commissioner~~] may assess a
411-25 penalty after determining that a violation has occurred and the
411-26 amount of the penalty.

411-27 (d) After making a determination under this section that a
411-28 penalty is to be assessed, the department [~~commissioner~~] shall
411-29 issue an order requiring that the person pay the penalty.

411-30 SECTION 3.1022. Section 432.023, Health and Safety Code, is
411-31 amended to read as follows:

411-32 Sec. 432.023. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
411-33 later than the 30th day after the date of issuance of an order
411-34 finding that a violation has occurred, the department
411-35 [~~commissioner~~] shall inform the person against whom the order is
411-36 issued of the amount of the penalty.

411-37 (b) Not later than the 30th day after the date on which a
411-38 decision or order charging a person with a penalty is final, the
411-39 person shall:

411-40 (1) pay the penalty in full; or
411-41 (2) file a petition for [~~if the person seeks~~] judicial
411-42 review of the department's order contesting the amount of the
411-43 penalty, the fact of the violation, or both.

411-44 (b-1) Within the period prescribed by Subsection (b), a
411-45 person who files a petition for judicial review may:

411-46 (1) stay enforcement of the penalty by:
411-47 (A) paying [~~send the amount of~~] the penalty to
411-48 the court [~~commissioner~~] for placement in an escrow account; or
411-49 (B) posting [~~post~~] with the court [~~commissioner~~]
411-50 a supersedeas bond for the amount of the penalty; or

411-51 (2) request that the department stay enforcement of
411-52 the penalty by:
411-53 (A) filing with the court a sworn affidavit of
411-54 the person stating that the person is financially unable to pay the
411-55 penalty and is financially unable to give the supersedeas bond; and
411-56 (B) sending a copy of the affidavit to the
411-57 department.

411-58 (b-2) If the department receives a copy of an affidavit
411-59 under Subsection (b-1)(2), the department may file with the court,
411-60 within five days after the date the copy is received, a contest to
411-61 the affidavit. The court shall hold a hearing on the facts alleged
411-62 in the affidavit as soon as practicable and shall stay the
411-63 enforcement of the penalty on finding that the alleged facts are
411-64 true. The person who files an affidavit has the burden of proving
411-65 that the person is financially unable to pay the penalty or to give
411-66 a supersedeas bond.

411-67 (c) A bond posted under this section must be in a form
411-68 approved by the court [~~commissioner~~] and be effective until all
411-69 judicial review of the order or decision is final.

(d) A person who does not send money to, [the commissioner or] post the bond with, or file the affidavit with the court within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

SECTION 3.1023. Section 432.024, Health and Safety Code, is amended to read as follows:

Sec. 432.024. REFUND OF ADMINISTRATIVE PENALTY. On [Not later than the 30th day after] the date the court's judgment [of a judicial determination] that an administrative penalty against a person should be reduced or not assessed becomes final, the court [commissioner] shall order that:

(1) [remit to the person] the appropriate amount of any penalty payment plus accrued interest be remitted to the person not later than the 30th day after that date; or

(2) [execute a release of] the bond be released, if the person has posted a bond.

SECTION 3.1024. Section 433.002(b), Health and Safety Code, is amended to read as follows:

(b) Regulation by the department [commissioner] and cooperation by this state and the United States as provided by this chapter are appropriate to protect the health and welfare of consumers and otherwise accomplish the purposes of this chapter.

SECTION 3.1025. Sections 433.003(2), (5), (13), (14), (15), (16), (17), (18), and (21), Health and Safety Code, are amended to read as follows:

(2) "Capable of use as human food" means:

(A) not naturally inedible by humans; or

(B) not denatured or otherwise identified as required by department rule [~~of the commissioner~~] to deter its use as human food.

(5) "Exotic animal" means a member of a species of game not indigenous to this state, including an axis deer, nilgai [~~nilga~~] antelope, red sheep, or other cloven-hooved ruminant animal.

(13) "Meat food product" means a product that is capable of use as human food and that is made in whole or part from meat or other portion of the carcass of livestock, except a product that:

(A) contains meat or other portions of the carcass only in a relatively small proportion or that historically has not been considered by consumers as a product of the meat food

industry; and

(B) is exempted from the definition of meat food product by department rule [~~the commissioner~~] under conditions assuring [~~that the commissioner prescribes to assure~~] that the meat or other portions of the carcass contained in the product are unadulterated and that the product is not represented as a meat food product.

(14) "Official certificate" means a certificate prescribed by department rule [~~of the commissioner~~] for issuance by an inspector or other person performing official functions under this chapter.

(15) "Official marking device" means a device prescribed or authorized by department rule [~~the commissioner~~] for use in applying an official mark.

(16) "Official establishment" means an establishment designated by the department [commissioner] at which inspection of the slaughter of livestock or the preparation of livestock products is maintained under this chapter.

(17) "Official inspection legend" means a symbol prescribed by department rule [~~of the commissioner~~] showing that an article was inspected and passed as provided by this chapter.

(18) "Official mark" means the official inspection legend or other symbol prescribed by department rule [~~of the commissioner~~] to identify the status of an article or animal under this chapter.

(21) "Poultry product" means a poultry carcass, part of a poultry carcass, or a product any part of which is made from a poultry carcass or part of a poultry carcass, except a product that:

413-1 (A) contains poultry ingredients only in a
 413-2 relatively small proportion or that historically has not been
 413-3 considered by consumers as a product of the poultry food industry;
 413-4 and

413-5 (B) is exempted from the definition of poultry
 413-6 product by department rule [~~the commissioner~~] under conditions
 413-7 assuring [~~that the commissioner prescribes to assure~~] that the
 413-8 poultry ingredients in the product are unadulterated and that the
 413-9 product is not represented as a poultry product.

413-10 SECTION 3.1026. Section 433.004, Health and Safety Code, is
 413-11 amended to read as follows:

413-12 Sec. 433.004. ADULTERATION. A carcass, part of a carcass,
 413-13 meat, or a meat food product is adulterated if:

413-14 (1) it bears or contains a poisonous or deleterious
 413-15 substance that may render it injurious to health unless:

413-16 (A) the substance is not an added substance; and
 413-17 (B) the quantity of the substance in or on the
 413-18 article does not ordinarily render it injurious to health;

413-19 (2) it bears or contains, because of administration of
 413-20 a substance to a live animal or otherwise, an added poisonous or
 413-21 deleterious substance that the department has reason to believe
 413-22 [~~commissioner believes~~] makes the article unfit for human food,
 413-23 other than a:

413-24 (A) pesticide chemical in or on a raw
 413-25 agricultural commodity;

413-26 (B) food additive; or
 413-27 (C) color additive;

413-28 (3) any part of it is a raw agricultural commodity that
 413-29 bears or contains a pesticide chemical that is unsafe under Section
 413-30 408, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 346a);

413-31 (4) it bears or contains a food additive that is unsafe
 413-32 under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C.
 413-33 Section 348) or a color additive that is unsafe for purposes of
 413-34 Section 721 [~~706~~] of that Act (21 U.S.C. Section 379e [~~376~~]);

413-35 (5) it is not adulterated under Subdivision (3) or
 413-36 (4), but use of the pesticide chemical, food additive, or color
 413-37 additive that the article bears or contains is prohibited by
 413-38 department rule [~~of the commissioner~~] in establishments at which
 413-39 inspection is maintained under Subchapter B;

413-40 (6) any part of it consists of a filthy, putrid, or
 413-41 decomposed substance or is for another reason unsound, unhealthy,
 413-42 unwholesome, or otherwise unfit for human food;

413-43 (7) it is prepared, packed, or held under unsanitary
 413-44 conditions that may have caused it to become contaminated with
 413-45 filth or rendered injurious to health;

413-46 (8) any part of it is the product of an animal,
 413-47 including an exotic animal, that has died in a manner other than
 413-48 slaughter;

413-49 (9) any part of its container is composed of a
 413-50 poisonous or deleterious substance that may render the contents
 413-51 injurious to health;

413-52 (10) it is intentionally subjected to radiation,
 413-53 unless the use of the radiation is in conformity with a regulation
 413-54 or exemption under Section 409, Federal Food, Drug, and Cosmetic
 413-55 Act (21 U.S.C. Section 348);

413-56 (11) any part of a valuable constituent is omitted or
 413-57 abstracted from it, or a substance is substituted for all or part of
 413-58 it;

413-59 (12) damage or inferiority is concealed;

413-60 (13) a substance has been added to or mixed or packed
 413-61 with it in a manner that:

413-62 (A) increases its bulk or weight;
 413-63 (B) reduces its quality or strength; or
 413-64 (C) makes it appear better or of greater value

413-65 than it is; or

413-66 (14) it is margarine containing animal fat and any
 413-67 part of the raw material used in it consists of a filthy, putrid, or
 413-68 decomposed substance.

413-69 SECTION 3.1027. Section 433.005, Health and Safety Code, is

414-1 amended to read as follows:

414-2 Sec. 433.005. MISBRANDING. (a) A livestock or poultry

414-3 product is misbranded if:

414-4 (1) any part of its labeling is false or misleading;

414-5 (2) it is offered for sale under the name of another

414-6 food;

414-7 (3) it is an imitation of another food, unless its
414-8 label bears, in prominent type of uniform size, the word
414-9 "imitation" immediately followed by the name of the food imitated;

414-10 (4) its container is made, formed, or filled so as to
414-11 be misleading;

414-12 (5) except as provided by Subsection (b), it does not
414-13 bear a label showing:

414-14 (A) the manufacturer's, packer's, or
414-15 distributor's name and place of business; and

414-16 (B) an accurate statement of the quantity of the
414-17 product by weight, measure, or numerical count;

414-18 (6) a word, statement, or other information required
414-19 by or under the authority of this chapter to appear on the label or
414-20 labeling is not prominently placed on the label or labeling in
414-21 sufficient terms and with sufficient conspicuously, compared
414-22 with other words, statements, designs, or devices in the label or
414-23 labeling, to make it likely to be read and understood by the
414-24 ordinary individual under customary conditions of purchase and use;

414-25 (7) it purports to be or is represented as a food for
414-26 which a definition and standard of identity or composition has been
414-27 prescribed by department rule [~~of the commissioner~~] under Section
414-28 433.043 unless:

414-29 (A) it conforms to the definition and standard;
414-30 or

414-31 (B) its label bears:
414-32 (i) the name of the food specified in the
414-33 definition and standard; and

414-34 (ii) to the extent required by department
414-35 rule [~~of the commissioner~~], the common names of optional
414-36 ingredients present in the food, other than spices, flavoring, and
414-37 coloring;

414-38 (8) it purports to be or is represented as a food for
414-39 which a standard of fill of container has been prescribed by
414-40 department rule [~~of the commissioner~~] under Section 433.043 and the
414-41 food does not meet the standard of fill of container, unless its
414-42 label bears, in the manner and form prescribed by department rule
414-43 [~~of the commissioner~~], a statement that it does not meet the
414-44 standard;

414-45 (9) except as provided by Subsection (c), it does not
414-46 purport to be or is not represented as a food for which a standard of
414-47 identity or composition has been prescribed by department rule [~~of the
414-48 commissioner~~] unless its label bears:

414-49 (A) any common or usual name of the food; and
414-50 (B) if it is fabricated from two or more
414-51 ingredients, the common or usual name of each ingredient;

414-52 (10) it purports to be or is represented for special
414-53 dietary uses and its label does not bear the information concerning
414-54 its vitamin, mineral, and other dietary properties that the
414-55 department [~~commissioner~~], after the executive commissioner or
414-56 department consults [~~consultation~~] with the United States
414-57 Secretary of Agriculture, has determined, and the executive
414-58 commissioner has prescribed by rule, to be necessary to fully
414-59 inform purchasers of its value for those uses;

414-60 (11) it bears or contains artificial flavoring,
414-61 artificial coloring, or a chemical preservative unless it bears
414-62 labeling stating that fact, except as otherwise prescribed by
414-63 department rule [~~of the commissioner~~] for situations in which
414-64 compliance with this subdivision is impracticable; or

414-65 (12) it does not bear on itself or its container, as
414-66 prescribed by department rule [~~of the commissioner~~]:

414-67 (A) the inspection legend and establishment
414-68 number of the establishment in which the product was prepared; and

414-69 (B) notwithstanding any other provision of this

415-1 section, other information required [the commissioner] by
415-2 department rule [requires] to assure that the product will not have
415-3 false or misleading labeling and that the public will be informed of
415-4 the manner of handling required to keep the product in wholesome
415-5 condition.

415-6 (b) The executive commissioner may adopt rules:

415-7 (1) exempting from Subsection (a)(5) livestock
415-8 products not in containers; and

415-9 (2) providing reasonable variations from Subsection
415-10 (a)(5)(B) and exempting from that subsection small packages of
415-11 livestock products or poultry products.

415-12 (c) For products subject to Subsection (a)(9), the
415-13 department [commissioner] may authorize the designation of spices,
415-14 flavorings, and colorings without naming them. The executive
415-15 commissioner may adopt rules establishing exemptions from
415-16 Subsection (a)(9)(B) to the extent that compliance with that
415-17 subsection is impracticable or would result in deception or unfair
415-18 competition.

415-19 SECTION 3.1028. Section 433.008, Health and Safety Code, is
415-20 amended to read as follows:

415-21 Sec. 433.008. RULES. (a) The executive commissioner shall
415-22 adopt rules necessary for the efficient execution of this chapter.

415-23 (b) The executive commissioner shall adopt and use federal
415-24 rules, regulations, and procedures for meat and poultry inspection,
415-25 as applicable.

415-26 (c) The executive commissioner [department] may adopt rules
415-27 requiring a processing establishment that processes livestock
415-28 under Section 433.006(a)(2) to obtain a grant of custom exemption
415-29 for that activity.

415-30 SECTION 3.1029. Section 433.009, Health and Safety Code, is
415-31 amended to read as follows:

415-32 Sec. 433.009. FEES. The department [Texas Department of
415-33 Health] may collect fees for overtime and special services rendered
415-34 to establishments, and may collect a fee for services required to be
415-35 performed under this chapter relating to the inspection of animals,
415-36 birds, or products that are not regulated under the Federal Meat
415-37 Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal
415-38 Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.).
415-39 The executive commissioner [Texas Board of Health] by rule shall
415-40 set the inspection fee in an amount sufficient to recover the
415-41 department's costs of providing those services.

415-42 SECTION 3.1030. Section 433.021, Health and Safety Code, is
415-43 amended to read as follows:

415-44 Sec. 433.021. INSPECTION BEFORE SLAUGHTER. (a) To prevent
415-45 the use in intrastate commerce of adulterated meat and meat food
415-46 products, the department [commissioner, through livestock
415-47 inspectors,] shall examine and inspect each livestock animal before
415-48 it is allowed to enter a processing establishment in this state in
415-49 which slaughtering and preparation of meat and meat food products
415-50 of livestock are conducted solely for intrastate commerce.

415-51 (b) Any livestock animal found on inspection to show
415-52 symptoms of disease shall be set apart and slaughtered separately
415-53 from other livestock. The carcass of the animal shall be carefully
415-54 examined and inspected as provided by department rule [of the
415-55 commissioner].

415-56 SECTION 3.1031. Sections 433.022(a), (d), and (e), Health
415-57 and Safety Code, are amended to read as follows:

415-58 (a) To prevent the use in intrastate commerce of adulterated
415-59 meat and meat food products, the department [commissioner, through
415-60 livestock inspectors,] shall inspect each livestock carcass or part
415-61 of a carcass capable of use as human food that is to be prepared at a
415-62 processing establishment in this state in which those articles are
415-63 prepared solely for intrastate commerce. If a carcass or part of a
415-64 carcass is brought into the processing establishment, the
415-65 inspection shall be made before a carcass or part of a carcass is
415-66 allowed to enter a department in which it is to be treated and
415-67 prepared for meat food products. The department [commissioner]
415-68 shall also inspect products that have left a processing
415-69 establishment and are returned to a processing establishment in

416-1 which inspection is maintained.

416-2 (d) The processing establishment, in the presence of an
416-3 inspector, shall destroy for food purposes each condemned carcass
416-4 or part of a carcass. If the establishment fails to destroy a
416-5 condemned carcass or part of a carcass, the department
416-6 [commissioner] may remove the inspectors from the establishment.

416-7 (e) The executive commissioner may adopt rules that limit
416-8 the entry of carcasses, parts of carcasses, meat, or meat food
416-9 products into an establishment in which inspection under this
416-10 chapter is maintained[, under conditions the commissioner
416-11 prescribes] to assure that entry of the article into the
416-12 establishment is consistent with the purposes of this chapter.

416-13 SECTION 3.1032. Section 433.023(a), Health and Safety Code,
416-14 is amended to read as follows:

416-15 (a) The department [commissioner] may investigate a disease
416-16 finding by a livestock inspector if the department [commissioner]
416-17 determines that the investigation is in the best interest of public
416-18 health.

416-19 SECTION 3.1033. Section 433.024, Health and Safety Code, is
416-20 amended to read as follows:

416-21 Sec. 433.024. INSPECTION OF PROCESSING AND SLAUGHTERING
416-22 ESTABLISHMENTS. (a) The department [commissioner, through
416-23 sanitation experts and other competent inspectors,] shall inspect
416-24 each processing establishment in which livestock is slaughtered and
416-25 meat and meat food products of the livestock are prepared solely for
416-26 intrastate commerce as necessary to obtain information about the
416-27 establishment's sanitary conditions.

416-28 (b) The department [commissioner, through sanitation
416-29 experts and other competent inspectors,] shall inspect each
416-30 slaughtering establishment whose primary business is the selling of
416-31 livestock to be slaughtered by the purchaser on premises owned or
416-32 operated by the seller. This subsection does not nullify the
416-33 provisions in Section 433.006 [of the Health and Safety Code]
416-34 relating to personal use exemption.

416-35 (c) The executive commissioner shall adopt rules governing
416-36 sanitation maintenance in processing and slaughtering
416-37 establishments as defined by this section.

416-38 (d) If sanitary conditions of a processing establishment
416-39 render meat or meat food products adulterated, the department
416-40 [commissioner] shall prohibit the meat or meat food products from
416-41 being labeled, marked, stamped, or tagged as "Texas inspected and
416-42 passed."

416-43 SECTION 3.1034. Sections 433.0245(b) and (d), Health and
416-44 Safety Code, are amended to read as follows:

416-45 (b) A low-volume livestock processing establishment that is
416-46 exempt from federal inspection shall register with the department
416-47 [Texas Department of Health] in accordance with rules adopted by
416-48 the executive commissioner for registration.

416-49 (d) If contaminated livestock can be reasonably traced to a
416-50 low-volume livestock processing establishment that is exempt from
416-51 federal inspection, the department [commissioner] may request the
416-52 attorney general or the district or county attorney in the
416-53 jurisdiction where the facility is located to institute a civil
416-54 suit to enjoin the operation of the establishment until the
416-55 department [commissioner] determines that the establishment has
416-56 been sanitized and is operating safely.

416-57 SECTION 3.1035. Sections 433.025(a) and (c), Health and
416-58 Safety Code, are amended to read as follows:

416-59 (a) To prevent the use in intrastate commerce of adulterated
416-60 meat food products, the department [commissioner, through
416-61 inspectors,] shall examine and inspect all meat food products
416-62 prepared in a processing establishment solely for intrastate
416-63 commerce. To make the examination and inspection, an inspector
416-64 shall be given access at all times to each part of the
416-65 establishment, regardless of whether the establishment is being
416-66 operated.

416-67 (c) The establishment shall, in the manner provided for
416-68 condemned livestock or carcasses, destroy for food purposes each
416-69 condemned meat food product. If the establishment does not destroy

417-1 a condemned meat food product, the department [~~commissioner~~] may
 417-2 remove inspectors from the establishment.

417-3 SECTION 3.1036. Section 433.026, Health and Safety Code, is
 417-4 amended to read as follows:

417-5 Sec. 433.026. NIGHT INSPECTION; HOURS OF OPERATION. (a)
 417-6 The department [~~commissioner~~] shall provide for inspection at night
 417-7 of livestock slaughtered at night and food products prepared at
 417-8 night for the purposes of intrastate commerce.

417-9 (b) If the department [~~commissioner~~] determines that a
 417-10 person's operating hours are capricious or unnecessarily
 417-11 difficult, the department [~~commissioner~~] may set the person's time
 417-12 and duration of operation.

417-13 SECTION 3.1037. Sections 433.027(a), (b), (c), and (d),
 417-14 Health and Safety Code, are amended to read as follows:

417-15 (a) The department [~~commissioner~~] shall hire [appoint the]
 417-16 inspectors of livestock that is subject to inspection under this
 417-17 chapter, and of carcasses, parts of carcasses, meat, meat food
 417-18 products, and sanitary conditions of establishments in which meat
 417-19 and meat food products are prepared. An inspector is an employee of
 417-20 the department [~~Texas Department of Health~~] and is under
 417-21 supervision of the chief officer in charge of inspection.

417-22 (b) The department [~~commissioner~~] shall designate at least
 417-23 one state inspector for each state representative district.

417-24 (c) The chief officer in charge of inspection is [~~a person~~
 417-25 ~~designated by the commissioner as~~] responsible for animal health as
 417-26 it relates to public health. The chief officer in charge of
 417-27 inspection must be licensed to practice veterinary medicine in this
 417-28 state or must be eligible for such a license when employed and must
 417-29 obtain the license not later than two years after the date of
 417-30 employment. [~~The chief officer in charge of inspection is directly~~
 417-31 ~~responsible to the commissioner.~~]

417-32 (d) An inspector shall perform the duties provided by this
 417-33 chapter and department rules [~~of the commissioner~~]. An inspection
 417-34 or examination must be performed as provided by department rules
 417-35 [~~of the commissioner~~].

417-36 SECTION 3.1038. Sections 433.028(a) and (b), Health and
 417-37 Safety Code, are amended to read as follows:

417-38 (a) The department [~~commissioner~~] may withdraw or refuse to
 417-39 provide inspection service under this subchapter from an
 417-40 establishment for the period the department [~~commissioner~~]
 417-41 determines necessary to carry out the purposes of this chapter if
 417-42 the department [~~commissioner~~] determines after opportunity for
 417-43 hearing that the applicant for or recipient of the service is unfit
 417-44 to engage in a business requiring inspection under this subchapter
 417-45 because the applicant or recipient, or a person responsibly
 417-46 connected with the applicant or recipient, has been convicted in a
 417-47 federal or state court of a felony or more than one violation of
 417-48 another law based on:

417-49 (1) acquiring, handling, or distributing unwholesome,
 417-50 mislabeled, or deceptively packaged food; or

417-51 (2) fraud in connection with a transaction in food.

417-52 (b) The department's [~~commissioner's~~] determination and
 417-53 order under this section is final unless, not later than the 30th
 417-54 day after the effective date of the order, the affected applicant or
 417-55 recipient files an application for judicial review in the
 417-56 appropriate court as provided by Section 433.082. Judicial review
 417-57 of the order is on the record from which the determination and order
 417-58 was made.

417-59 SECTION 3.1039. Section 433.029, Health and Safety Code, is
 417-60 amended to read as follows:

417-61 Sec. 433.029. ARTICLES NOT INTENDED FOR HUMAN CONSUMPTION.

417-62 (a) Under this subchapter, the department [~~commissioner~~] may not
 417-63 inspect an establishment for the slaughter of livestock or the
 417-64 preparation of carcasses, parts of carcasses, or products of
 417-65 livestock if the articles are not intended for use as human food.
 417-66 Before offered for sale or transportation in intrastate commerce,
 417-67 those articles, unless naturally inedible by humans, shall be
 417-68 denatured or identified as provided by department rule [~~of the~~
 417-69 ~~commissioner~~] to deter their use for human food.

418-1 (b) A person may not buy, sell, transport, offer for sale or
 418-2 transportation, or receive for transportation in intrastate
 418-3 commerce a carcass, part of a carcass, meat, or a meat food product
 418-4 that is not intended for use as human food unless the article is
 418-5 naturally inedible by humans, denatured, or identified as required
 418-6 by department rule [of the commissioner].

418-7 SECTION 3.1040. Sections 433.030(a), (c), and (d), Health
 418-8 and Safety Code, are amended to read as follows:

418-9 (a) The department [A representative of the commissioner]
 418-10 may detain a carcass, part of a carcass, meat, a meat food product
 418-11 of livestock, a product exempted from the definition of meat food
 418-12 product, or a dead, dying, disabled, or diseased livestock animal
 418-13 if the department [representative] finds the article on premises
 418-14 where it is held for purposes of intrastate commerce, or during or
 418-15 after distribution in intrastate commerce, and there is reason to
 418-16 believe that the article:

418-17 (1) is adulterated or misbranded and is capable of use
 418-18 as human food; or

418-19 (2) has not been inspected as required by, or has been
 418-20 or is intended to be distributed in violation of:

418-21 (A) this subchapter;
 418-22 (B) the Federal Meat Inspection Act (21 U.S.C.
 418-23 Section 601 et seq.);

418-24 (C) the Federal Poultry Products Inspection Act
 418-25 (21 U.S.C. Section 451 et seq.); or

418-26 (D) the Federal Food, Drug, and Cosmetic Act (21
 418-27 U.S.C. Section 301 et seq.).

418-28 (c) A person may not move a detained article from the place
 418-29 where it is detained until the article is released by the department
 418-30 [commissioner's representative].

418-31 (d) The department [commissioner's representative] may
 418-32 require that each official mark be removed from the article before
 418-33 it is released, unless the department [commissioner] determines
 418-34 that the article is eligible to bear the official mark.

418-35 SECTION 3.1041. Section 433.031(c), Health and Safety Code,
 418-36 is amended to read as follows:

418-37 (c) After entry of the decree, a condemned article shall be
 418-38 destroyed or sold as the court directs. If the article is sold, the
 418-39 proceeds, minus court costs, court fees, and storage and other
 418-40 proper expenses, shall be deposited in the state treasury. An
 418-41 article may not be sold in violation of this chapter, the Federal
 418-42 Meat Inspection Act (21 U.S.C. Section 601 et seq.), the Federal
 418-43 Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.), or
 418-44 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et
 418-45 seq.). On execution and delivery of a good and sufficient bond
 418-46 conditioned that the article will not be disposed of in violation of
 418-47 this chapter or federal law, the court may direct the article to be
 418-48 delivered to its owner by the department [commissioner's
 418-49 representative] subject to supervision as necessary to ensure
 418-50 compliance with applicable laws.

418-51 SECTION 3.1042. Section 433.032(a), Health and Safety Code,
 418-52 is amended to read as follows:

418-53 (a) The executive commissioner may adopt rules prescribing
 418-54 conditions under which carcasses, parts of carcasses, meat, and
 418-55 meat food products of livestock must be stored and handled by a
 418-56 person in the business of buying, selling, freezing, storing, or
 418-57 transporting those articles in or for intrastate commerce if the
 418-58 executive commissioner considers the rules necessary to prevent
 418-59 adulterated or misbranded articles from being delivered to a
 418-60 consumer.

418-61 SECTION 3.1043. Section 433.033, Health and Safety Code, is
 418-62 amended to read as follows:

418-63 Sec. 433.033. EQUINE PRODUCTS. A person may not sell,
 418-64 transport, offer for sale or transportation, or receive for
 418-65 transportation, in intrastate commerce, a carcass, part of a
 418-66 carcass, meat, or a meat food product of a horse, mule, or other
 418-67 equine unless the article is plainly and conspicuously marked or
 418-68 labeled or otherwise identified, as required by department rule [or
 418-69 the commissioner], to show the kind of animal from which the article

419-1 was derived. The department [~~commissioner~~] may require an
 419-2 establishment at which inspection is maintained under this chapter
 419-3 to prepare those articles in an establishment separate from one in
 419-4 which livestock other than equines is slaughtered or carcasses,
 419-5 parts of carcasses, meat, or meat food products of livestock other
 419-6 than equines are prepared.

419-7 SECTION 3.1044. Sections 433.034(b) and (c), Health and
 419-8 Safety Code, are amended to read as follows:

419-9 (b) On notice by the department [~~commissioner's~~
 419-10 ~~representative~~], a person required to keep records shall at all
 419-11 reasonable times give the department [~~commissioner's~~
 419-12 ~~representative~~] and any representative of the United States
 419-13 Secretary of Agriculture accompanying the department staff
 419-14 [~~commissioner's representative~~]:

419-15 (1) access to the person's place of business; and
 419-16 (2) an opportunity to:
 419-17 (A) examine the facilities, inventory, and
 419-18 records;
 419-19 (B) copy the records required by this section;
 419-20 and
 419-21 (C) take a reasonable sample of the inventory, on
 419-22 payment of the fair market value of the sample.

419-23 (c) The person shall maintain a record required by this
 419-24 section for the period prescribed [~~the commissioner~~] by department
 419-25 rule [~~prescribes~~].

419-26 SECTION 3.1045. Sections 433.035(a), (b), and (d), Health
 419-27 and Safety Code, are amended to read as follows:

419-28 (a) The department [~~commissioner~~] has the same rights of
 419-29 examination, inspection, condemnation, and detention of live
 419-30 exotic animals and carcasses, parts of carcasses, meat, and meat
 419-31 food products of exotic animals slaughtered and prepared for
 419-32 shipment in interstate commerce as the department [~~commissioner~~]
 419-33 has with respect to exotic animals slaughtered and prepared for
 419-34 shipment in intrastate commerce.

419-35 (b) The department [~~commissioner~~] has the same rights of
 419-36 inspection of establishments handling exotic animals slaughtered
 419-37 and prepared for shipment in interstate commerce as the department
 419-38 [~~commissioner~~] has with respect to establishments handling exotic
 419-39 animals slaughtered and prepared for intrastate commerce.

419-40 (d) A rulemaking power of the executive commissioner
 419-41 relating to animals in intrastate commerce applies to exotic
 419-42 animals in interstate commerce.

419-43 SECTION 3.1046. Section 433.041(b), Health and Safety Code,
 419-44 is amended to read as follows:

419-45 (b) When an inspected carcass, part of a carcass, meat, or a
 419-46 meat food product is found to be unadulterated and leaves the
 419-47 establishment, it must bear legible information on itself or its
 419-48 container, as required by department rule, [~~the commissioner~~
 419-49 ~~requires, that is necessary~~] to prevent it from being misbranded.

419-50 SECTION 3.1047. Section 433.042, Health and Safety Code, is
 419-51 amended to read as follows:

419-52 Sec. 433.042. SALE OF MISLABLED ARTICLES PROHIBITED. A
 419-53 person may not sell an article subject to this chapter or offer the
 419-54 article for sale, in intrastate commerce, under a false or
 419-55 misleading name or other marking or in a container of a misleading
 419-56 form or size. An established trade name, other marking and
 419-57 labeling, or a container that is not false or misleading and that is
 419-58 approved by the department [~~commissioner~~] is permitted.

419-59 SECTION 3.1048. Section 433.043, Health and Safety Code, is
 419-60 amended to read as follows:

419-61 Sec. 433.043. STANDARDS OF LABELING, COMPOSITION, AND FILL.
 419-62 (a) If the executive commissioner determines that standards are
 419-63 necessary to protect the public, the executive commissioner may
 419-64 adopt rules prescribing [~~prescribe~~]:

419-65 (1) the style and type size that must be used for
 419-66 material required to be incorporated in labeling to avoid false or
 419-67 misleading labeling of an article subject to this subchapter or
 419-68 Subchapter B; and

419-69 (2) subject to Subsection (b), a definition or

420-1 standard of identity or composition or a standard of fill of
 420-2 container for an article subject to this subchapter.

420-3 (b) A standard prescribed under Subsection (a)(2) must be
 420-4 consistent with standards established under the Federal Meat
 420-5 Inspection Act (21 U.S.C. Section 601 et seq.), the Federal Poultry
 420-6 Products Inspection Act (21 U.S.C. Section 451 et seq.), and the
 420-7 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et
 420-8 seq.). To avoid inconsistency, the department [~~commissioner~~] shall
 420-9 consult with the United States Secretary of Agriculture before
 420-10 [prescribing] the standard is prescribed.

420-11 SECTION 3.1049. Section 433.044, Health and Safety Code, is
 420-12 amended to read as follows:

420-13 Sec. 433.044. ORDER TO CEASE FALSE OR MISLEADING PRACTICE.
 420-14 (a) If the department [~~commissioner~~] has reason to believe that a
 420-15 marking or labeling or the size or form of a container in use or
 420-16 proposed for use in relation to an article subject to this
 420-17 subchapter is false or misleading, the department [~~commissioner~~] may
 420-18 prohibit the use until the marking, labeling, or container is
 420-19 modified in the manner the department [~~commissioner~~] prescribes to
 420-20 prevent it from being false or misleading.

420-21 (b) The person using or proposing to use the marking,
 420-22 labeling, or container may request a hearing [~~by the commissioner~~].
 420-23 The department [~~commissioner~~] may prohibit the use pending a final
 420-24 determination by the department [~~commissioner~~].

420-25 (c) A hearing and any appeal under this section are governed
 420-26 by the department's rules for a contested case hearing and Chapter
 420-27 2001, Government Code.

420-28 SECTION 3.1050. Section 433.045, Health and Safety Code, is
 420-29 amended to read as follows:

420-30 Sec. 433.045. PROTECTION OF OFFICIAL DEVICE, MARK, AND
 420-31 CERTIFICATE. A person may not:

420-32 (1) cast, print, lithograph, or make in any other
 420-33 manner, except as authorized by the department in accordance with
 420-34 department rules [~~commissioner~~]:

420-35 (A) a device containing or label bearing an
 420-36 official mark or a simulation of an official mark; or

420-37 (B) a form of official certificate or simulation
 420-38 of an official certificate;

420-39 (2) forge an official device, mark, or certificate;

420-40 (3) without the department's [~~commissioner's~~] authorization, use, alter, detach, deface, or destroy an official
 420-41 device, mark, or certificate or use a simulation of an official
 420-42 device, mark, or certificate;

420-43 (4) detach, deface, destroy, or fail to use an
 420-44 official device, mark, or certificate, in violation of a department
 420-45 rule [~~of the commissioner~~];

420-46 (5) knowingly possess, without promptly notifying the
 420-47 department [~~commissioner or the commissioner's representative~~]:

420-48 (A) an official device;

420-49 (B) a counterfeit, simulated, forged, or
 420-50 improperly altered official certificate; or

420-51 (C) a device, label, animal carcass, or part or
 420-52 product of an animal carcass, bearing a counterfeit, simulated,
 420-53 forged, or improperly altered official mark;

420-54 (6) knowingly make a false statement in a shipper's
 420-55 certificate or other certificate provided for by department rule
 420-56 [~~of the commissioner~~]; or

420-57 (7) knowingly represent that an article has been
 420-58 inspected and passed, when it has not, or is exempted, when it is
 420-59 not.

420-60 SECTION 3.1051. Section 433.053, Health and Safety Code, is
 420-61 amended to read as follows:

420-62 Sec. 433.053. SALE, RECEIPT, OR TRANSPORTATION OF POULTRY.
 420-63 A person may not sell, transport, offer for sale or transportation,
 420-64 or receive for transportation, in intrastate commerce or from an
 420-65 official establishment, slaughtered poultry from which blood,
 420-66 feathers, feet, head, or viscera have not been removed as provided
 420-67 by department rule [~~of the commissioner~~], except as authorized by
 420-68 department rule [~~of the commissioner~~].

421-1 SECTION 3.1052. Sections 433.054(a) and (c), Health and
 421-2 Safety Code, are amended to read as follows:

421-3 (a) If registration is required by department rule [~~of the~~
 421-4 ~~commissioner~~], a person may not engage in any of the following
 421-5 businesses, in or for intrastate commerce, unless the person has
 421-6 registered with the department [~~commissioner~~]:

- 421-7 (1) meat brokering or rendering;
 421-8 (2) manufacturing animal food;
 421-9 (3) wholesaling or warehousing for the public

421-10 livestock or any part of a carcass of livestock, regardless of
 421-11 whether it is intended for human food; or

421-12 (4) buying, selling, or transporting dead, dying,
 421-13 disabled, or diseased livestock or part of a carcass of livestock.

421-14 (c) A person may not engage in the business of selling,
 421-15 buying, or transporting in intrastate commerce dead, dying,
 421-16 disabled, or diseased livestock or part of the carcass of livestock
 421-17 that died otherwise than by slaughter unless the transaction or
 421-18 transportation complies with department rules adopted [~~by the~~
 421-19 ~~commissioner~~] to assure that the animals or unwholesome parts or
 421-20 products of the animals are not used for human food.

421-21 SECTION 3.1053. Section 433.071, Health and Safety Code, is
 421-22 amended to read as follows:

421-23 Sec. 433.071. RESPONSIBLE AGENCY. (a) The department
 421-24 [~~Texas Department of Health~~] is the state agency responsible for
 421-25 cooperating with the United States Secretary of Agriculture under
 421-26 Section 301, Federal Meat Inspection Act (21 U.S.C. Section 661),
 421-27 and Section 5, Federal Poultry Products Inspection Act (21 U.S.C.
 421-28 Section 454).

421-29 (b) The department shall cooperate with the secretary of
 421-30 agriculture in developing and administering the meat and poultry
 421-31 inspection program of this state under this chapter in a manner that
 421-32 will achieve the purposes of this chapter and federal law and that
 421-33 will ensure that the requirements will be at least equal to those
 421-34 imposed under Titles I and IV, Federal Meat Inspection Act (21
 421-35 U.S.C. Sections 601 et seq. and 671 et seq.), and Sections 1-4,
 421-36 6-10, and 12-22, Federal Poultry Products Inspection Act (21 U.S.C.
 421-37 Sections 451-453, 455-459, and 461-467d [~~461-467b~~]), not later than
 421-38 the dates prescribed by federal law.

421-39 SECTION 3.1054. Section 433.073, Health and Safety Code, is
 421-40 amended to read as follows:

421-41 Sec. 433.073. TECHNICAL AND LABORATORY ASSISTANCE AND
 421-42 TRAINING PROGRAM. The department [~~commissioner~~] may accept from
 421-43 the United States Secretary of Agriculture:

421-44 (1) advisory assistance in planning and otherwise
 421-45 developing the state program;
 421-46 (2) technical and laboratory assistance;
 421-47 (3) training, including necessary curricular and
 421-48 instructional materials and equipment; and
 421-49 (4) financial and other aid for administration of the
 421-50 program.

421-51 SECTION 3.1055. Section 433.074, Health and Safety Code, is
 421-52 amended to read as follows:

421-53 Sec. 433.074. FINANCING. The department [~~commissioner~~] may
 421-54 spend state funds appropriated for administration of this chapter
 421-55 to pay 50 percent of the estimated total cost of cooperation with
 421-56 the federal government under this subchapter, and all of the costs
 421-57 of performing services in relation to the inspection of animals or
 421-58 products not regulated under the Federal Meat Inspection Act (21
 421-59 U.S.C. Section 601 et seq.) or the Federal Poultry Products
 421-60 Inspection Act (21 U.S.C. Section 451 et seq.).

421-61 SECTION 3.1056. Sections 433.081(d) and (e), Health and
 421-62 Safety Code, are amended to read as follows:

421-63 (d) A person does not commit an offense under this section
 421-64 by receiving for transportation an article in violation of this
 421-65 chapter if the receipt is in good faith and if the person furnishes,
 421-66 on request of [~~a representative of~~] the department [~~commissioner~~]:

421-67 (1) the name and address of the person from whom the
 421-68 article is received; and

421-69 (2) any document pertaining to the delivery of the

422-1 article.

422-2 (e) This chapter does not require the department
 422-3 [~~commissioner~~] to report for prosecution, or for institution of
 422-4 complaint or injunction proceedings, a minor violation of this
 422-5 chapter if the department [~~commissioner~~] believes that the public
 422-6 interest will be adequately served by a suitable written warning
 422-7 notice.

422-8 SECTION 3.1057. Section 433.083, Health and Safety Code, is
 422-9 amended to read as follows:

422-10 Sec. 433.083. INVESTIGATION BY DEPARTMENT [~~COMMISSIONER~~].
 422-11 The department [~~commissioner~~] may investigate and gather and
 422-12 compile information concerning the organization, business,
 422-13 conduct, practices, and management of a person engaged in
 422-14 intrastate commerce and the person's relation to other persons.

422-15 SECTION 3.1058. Section 433.084, Health and Safety Code, is
 422-16 amended to read as follows:

422-17 Sec. 433.084. EVIDENCE AND TESTIMONY. (a) For the purposes
 422-18 of this chapter, the department [~~commissioner~~] at all reasonable
 422-19 times shall be given access to documentary evidence of a person
 422-20 being investigated or proceeded against to examine or copy the
 422-21 evidence. The department [~~commissioner~~] by subpoena may require
 422-22 the attendance and testimony of a witness and the production of
 422-23 documentary evidence relating to a matter under investigation, at a
 422-24 designated place of hearing in a county in which the witness
 422-25 resides, is employed, or has a place of business.

422-26 (b) The commissioner or the commissioner's designee may
 422-27 sign subpoenas, administer oaths and affirmations, examine
 422-28 witnesses, and receive evidence. On disobedience of a subpoena,
 422-29 the department [~~commissioner~~] may request the district court to
 422-30 require attendance and testimony of a witness and the production of
 422-31 documentary evidence, and the district court having jurisdiction
 422-32 over the inquiry may order the compliance. Failure to obey the
 422-33 court's order is punishable as contempt.

422-34 SECTION 3.1059. Section 433.085, Health and Safety Code, is
 422-35 amended to read as follows:

422-36 Sec. 433.085. REPORT TO DEPARTMENT [~~COMMISSIONER~~]. The
 422-37 department [~~commissioner~~], by general or special order, may require
 422-38 a person engaged in intrastate commerce to file with the department
 422-39 [~~commissioner~~] an annual report, special report, or both, or
 422-40 answers in writing to specific questions furnishing the department
 422-41 [~~commissioner~~] information that the department [~~commissioner~~]
 422-42 requires concerning the person's organization, business, conduct,
 422-43 practices, management, and relation to other persons filing written
 422-44 answers and reports. The department [~~commissioner~~] may prescribe
 422-45 the form of the report or answers, require the report or answers to
 422-46 be given under oath, and prescribe a reasonable deadline for filing
 422-47 the report or answers, subject to the granting of additional time by
 422-48 the department [~~commissioner~~].

422-49 SECTION 3.1060. Section 433.086, Health and Safety Code, is
 422-50 amended to read as follows:

422-51 Sec. 433.086. MANDAMUS TO COMPEL COMPLIANCE. On
 422-52 application of the attorney general at the request of the
 422-53 department [~~commissioner~~], the district court may issue a writ of
 422-54 mandamus ordering a person to comply with this chapter or an order
 422-55 [~~of the commissioner~~] under this chapter.

422-56 SECTION 3.1061. Section 433.087(a), Health and Safety Code,
 422-57 is amended to read as follows:

422-58 (a) The department [~~commissioner~~] may order testimony to be
 422-59 taken before a person designated by the department [~~commissioner~~]
 422-60 and having power to administer oaths at any stage of a proceeding or
 422-61 investigation under this chapter. A person may be compelled to
 422-62 appear and depose or produce documentary evidence at a deposition
 422-63 in the same manner as a witness may be compelled to appear and
 422-64 testify and produce documentary evidence before the department
 422-65 [~~commissioner~~] under this chapter.

422-66 SECTION 3.1062. Section 433.088, Health and Safety Code, is
 422-67 amended to read as follows:

422-68 Sec. 433.088. COMPENSATION OF WITNESS OR REPORTER. A
 422-69 witness summoned before the department [~~commissioner~~] is entitled

423-1 to the same fees and mileage paid a witness in a state court. A
 423-2 witness whose deposition is taken and the person taking the
 423-3 deposition are each entitled to the same fees paid for similar
 423-4 services in a state court.

423-5 SECTION 3.1063. Section 433.089(a), Health and Safety Code,
 423-6 is amended to read as follows:

423-7 (a) A person is not excused from attending and testifying or
 423-8 producing documentary evidence before the department
 423-9 [~~commissioner~~] or in obedience to the department's [~~commissioner's~~]
 423-10 subpoena, whether signed by the commissioner or the commissioner's
 423-11 designee [~~delegate~~], or in a cause or proceeding based on or growing
 423-12 out of an alleged violation of this chapter, on the ground that the
 423-13 required testimony or evidence may tend to incriminate the person
 423-14 or subject the person to penalty or forfeiture.

423-15 SECTION 3.1064. Section 433.090(a), Health and Safety Code,
 423-16 is amended to read as follows:

423-17 (a) A person commits an offense if the person neglects or
 423-18 refuses to attend and testify or answer a lawful inquiry or to
 423-19 produce documentary evidence, if the person has the power to do so,
 423-20 in obedience to a subpoena or lawful requirement of the department
 423-21 [~~commissioner~~].

423-22 SECTION 3.1065. Section 433.091(a), Health and Safety Code,
 423-23 is amended to read as follows:

423-24 (a) A person commits an offense if the person intentionally:

423-25 (1) makes or causes to be made a false entry in an
 423-26 account, record, or memorandum kept by a person subject to this
 423-27 chapter;

423-28 (2) neglects or fails to make or cause to be made full
 423-29 entries in an account, record, or memorandum kept by a person
 423-30 subject to this chapter of all facts and transactions pertaining to
 423-31 the person's business;

423-32 (3) removes from the jurisdiction of this state or
 423-33 mutilates, alters, or otherwise falsifies documentary evidence of a
 423-34 person subject to this chapter; or

423-35 (4) refuses to submit to the department [~~commissioner~~
 423-36 or to the ~~commissioner's authorized agent~~], for inspection and
 423-37 copying, documentary evidence in the person's possession or control
 423-38 of a person subject to this chapter.

423-39 SECTION 3.1066. Section 433.092(a), Health and Safety Code,
 423-40 is amended to read as follows:

423-41 (a) If a person required by this chapter to file an annual or
 423-42 special report does not file the report before the deadline for
 423-43 filing set by the department [~~commissioner~~] and the failure
 423-44 continues for 30 days after notice of the default, the person
 423-45 forfeits to the state \$100 for each day the failure continues.

423-46 SECTION 3.1067. Section 433.093(a), Health and Safety Code,
 423-47 is amended to read as follows:

423-48 (a) A state officer or employee commits an offense if the
 423-49 officer or employee, without the approval of the commissioner,
 423-50 makes public information obtained by the department [~~commissioner~~
 423-51 without the approval of the ~~commissioner~~].

423-52 SECTION 3.1068. Sections 433.094(a) and (b), Health and
 423-53 Safety Code, are amended to read as follows:

423-54 (a) The department [~~commissioner~~] may assess an
 423-55 administrative penalty against a person who violates this chapter,
 423-56 a rule adopted [~~by the board~~] under the authority of this chapter,
 423-57 or an order or license issued under this chapter.

423-58 (b) In determining the amount of the penalty, the department
 423-59 [~~commissioner~~] shall consider:

- 423-60 (1) the person's previous violations;
- 423-61 (2) the seriousness of the violation;
- 423-62 (3) any hazard to the health and safety of the public;
- 423-63 (4) the person's demonstrated good faith; and
- 423-64 (5) such other matters as justice may require.

423-65 SECTION 3.1069. Sections 433.095(b), (c), and (d), Health
 423-66 and Safety Code, are amended to read as follows:

423-67 (b) If a hearing is held, the administrative law judge
 423-68 [~~commissioner~~] shall make findings of fact and shall issue to the
 423-69 department a written proposal for decision regarding the occurrence

424-1 of the violation and the amount of the penalty that may be
424-2 warranted.

424-3 (c) If the person charged with the violation does not
424-4 request a hearing, the department [commissioner] may assess a
424-5 penalty after determining that a violation has occurred and the
424-6 amount of the penalty that may be warranted.

424-7 (d) After making a determination under this section that a
424-8 penalty is to be assessed against a person, the department
424-9 [commissioner] shall issue an order requiring that the person pay
424-10 the penalty.

424-11 SECTION 3.1070. Section 433.096, Health and Safety Code, is
424-12 amended to read as follows:

424-13 Sec. 433.096. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
424-14 later than the 30th day after the date an order finding that a
424-15 violation has occurred is issued, the department [commissioner]
424-16 shall inform the person against whom the order is issued of the
424-17 amount of the penalty for the violation.

424-18 (b) Not later than the 30th day after the date on which a
424-19 decision or order charging a person with a penalty is final, the
424-20 person shall:

424-21 (1) pay the penalty in full; or
424-22 (2) file a petition for [if the person seeks] judicial
424-23 review of the department's order contesting the amount of the
424-24 penalty, the fact of the violation, or both.

424-25 (b-1) Within the period prescribed by Subsection (b), a
424-26 person who files a petition for judicial review may:

424-27 (1) stay the enforcement of the penalty by:
424-28 (A) paying [send the amount of] the penalty to
424-29 the court [commissioner] for placement in an escrow account; or
424-30 (B) posting [post] with the court [commissioner]
424-31 a supersedeas bond for the amount of the penalty; or
424-32 (2) request that the department stay enforcement of
424-33 the penalty by:

424-34 (A) filing with the court a sworn affidavit of
424-35 the person stating that the person is financially unable to pay the
424-36 penalty and is financially unable to give the supersedeas bond; and
424-37 (B) sending a copy of the affidavit to the
424-38 department.

424-39 (b-2) If the department receives a copy of an affidavit
424-40 under Subsection (b-1)(2), the department may file with the court,
424-41 within five days after the date the copy is received, a contest to
424-42 the affidavit. The court shall hold a hearing on the facts alleged
424-43 in the affidavit as soon as practicable and shall stay the
424-44 enforcement of the penalty on finding that the alleged facts are
424-45 true. The person who files an affidavit has the burden of proving
424-46 that the person is financially unable to pay the penalty or to give
424-47 a supersedeas bond.

424-48 (c) A bond posted under this section must be in a form
424-49 approved by the court [commissioner] and be effective until all
424-50 judicial review of the order or decision is final.

424-51 (d) A person who does not send money to, [the commissioner
424-52 ~~or~~] post the bond with, or file the affidavit with the court within
424-53 the period prescribed by Subsection (b) waives all rights to
424-54 contest the violation or the amount of the penalty.

424-55 SECTION 3.1071. Section 433.097, Health and Safety Code, is
424-56 amended to read as follows:

424-57 Sec. 433.097. REFUND OF ADMINISTRATIVE PENALTY. On [Not
424-58 later than the 30th day after] the date the court's judgment [of a
424-59 judicial determination] that an administrative penalty against a
424-60 person should be reduced or not assessed becomes final, the court
424-61 [commissioner] shall order that:

424-62 (1) [remit to the person] the appropriate amount of
424-63 any penalty payment plus accrued interest be remitted to the person
424-64 not later than the 30th day after that date; or

424-65 (2) [execute a release of] the bond be released if the
424-66 person has posted a bond.

424-67 SECTION 3.1072. Section 433.098, Health and Safety Code, is
424-68 amended to read as follows:

424-69 Sec. 433.098. RECOVERY OF ADMINISTRATIVE PENALTY BY

425-1 ATTORNEY GENERAL. The attorney general at the request of the
 425-2 department [commissioner] may bring a civil action to recover an
 425-3 administrative penalty under this subchapter.

425-4 SECTION 3.1073. Sections [433.099](#)(a) and (c), Health and
 425-5 Safety Code, are amended to read as follows:

425-6 (a) If it appears that a person has violated or is violating
 425-7 this chapter or a rule adopted under this chapter, the department
 425-8 [commissioner] may request the attorney general or the district
 425-9 attorney or county attorney in the jurisdiction where the violation
 425-10 is alleged to have occurred, is occurring, or may occur to institute
 425-11 a civil suit for:

425-12 (1) an order enjoining the violation; or

425-13 (2) a permanent or temporary injunction, a temporary
 425-14 restraining order, or other appropriate remedy, if the department
 425-15 [commissioner] shows that the person has engaged in or is engaging
 425-16 in a violation.

425-17 (c) The department [commissioner] or the attorney general
 425-18 may recover reasonable expenses incurred in obtaining injunctive
 425-19 relief under this section, including investigation and court costs,
 425-20 reasonable attorney's fees, witness fees, and other expenses. The
 425-21 expenses recovered by the department [commissioner] under this
 425-22 section may be used for the administration and enforcement of this
 425-23 chapter. The expenses recovered by the attorney general may be used
 425-24 by the attorney general for any purpose.

425-25 SECTION 3.1074. Section [433.100](#), Health and Safety Code, is
 425-26 amended to read as follows:

425-27 Sec. 433.100. EMERGENCY WITHDRAWAL OF MARK OR SUSPENSION OF
 425-28 INSPECTION SERVICES. (a) The department [commissioner or the
 425-29 commissioner's designee] may immediately withhold the mark of
 425-30 inspection or suspend or withdraw inspection services if:

425-31 (1) the department [commissioner or the commissioner's
 425-32 designee] determines that a violation of this chapter presents an
 425-33 imminent threat to public health and safety; or

425-34 (2) a person affiliated with the processing
 425-35 establishment impedes an inspection under this chapter.

425-36 (b) An affected person is entitled to a review of an action
 425-37 of the department [commissioner or the commissioner's designee]
 425-38 under Subsection (a) in the same manner that a refusal or withdrawal
 425-39 of inspection services may be reviewed under Section [433.028](#).

425-40 SECTION 3.1075. Sections [435.001](#)(1) and (2), Health and
 425-41 Safety Code, are amended to read as follows:

425-42 (1) ["Board" means the Texas Board of Health.]

425-43 [2] "Department" means the Texas Department of
 425-44 State Health Services.

425-45 (2) "Executive commissioner" means the executive
 425-46 commissioner of the Health and Human Services Commission.

425-47 SECTION 3.1076. Section [435.002](#), Health and Safety Code, is
 425-48 amended to read as follows:

425-49 Sec. 435.002. GRADING OF MILK AND MILK PRODUCTS. [a] The
 425-50 executive commissioner [board] may [supervise and] regulate the
 425-51 grading and labeling of milk and milk products. The department
 425-52 shall supervise the grading and labeling of milk and milk products
 425-53 according to the standards, specifications, and requirements
 425-54 adopted by the executive commissioner [it adopts] for each grade
 425-55 and in conformity with this subchapter.

425-56 SECTION 3.1077. Section [435.003](#)(a), Health and Safety Code,
 425-57 is amended to read as follows:

425-58 (a) The executive commissioner [board] by rule may:

425-59 (1) define what constitutes Grade "A" raw milk, Grade
 425-60 "A" raw milk products, Grade "A" pasteurized milk, Grade "A"
 425-61 pasteurized milk products, milk for manufacturing purposes, and
 425-62 dairy products; and

425-63 (2) provide specifications for the production and
 425-64 handling of milk and milk products listed in Subdivision (1)
 425-65 according to the safety and food value of the milk or milk products
 425-66 and the sanitary conditions under which they are produced and
 425-67 handled.

425-68 SECTION 3.1078. The heading to Section [435.004](#), Health and
 425-69 Safety Code, is amended to read as follows:

426-1 Sec. 435.004. INSPECTION OF MILK AND MILK PRODUCTS BY
 426-2 DEPARTMENT [BOARD].

426-3 SECTION 3.1079. Section 435.004(a), Health and Safety Code,
 426-4 is amended to read as follows:

426-5 (a) The department [board or its representative] shall
 426-6 sample, test, or inspect Grade "A" pasteurized milk and milk
 426-7 products, Grade "A" raw milk and milk products for pasteurization,
 426-8 milk for manufacturing purposes, and dairy products that are
 426-9 offered for sale.

426-10 SECTION 3.1080. Section 435.005(a), Health and Safety Code,
 426-11 is amended to read as follows:

426-12 (a) The department [board] may contract with a county or
 426-13 municipality to act as the agent of the department [board] to
 426-14 inspect milk and milk products and to perform other regulatory
 426-15 functions necessary to enforce this subchapter.

426-16 SECTION 3.1081. Section 435.006, Health and Safety Code, is
 426-17 amended to read as follows:

426-18 Sec. 435.006. PERMIT TO SELL MILK. (a) A person who offers
 426-19 milk or milk products for sale or to be sold in this state must hold
 426-20 a permit issued by the department [board]. The person must apply to
 426-21 the department [board or the board's representative] for a permit.

426-22 (b) After receiving the application, the department [board]
 426-23 or the board's representative may determine and award the grade of
 426-24 milk or milk products offered for sale by each applicant according
 426-25 to the specifications for grades established under this chapter.

426-26 (c) The department [board] shall maintain a list of the
 426-27 names of all applicants to whom the department [board] has awarded
 426-28 permission to use a Grade "A" label and remove from the list the
 426-29 name of a person whose permit is revoked.

426-30 (d) The department [board] may not issue a permit to a
 426-31 person for a producer dairy located in an area infected with or at a
 426-32 high risk for bovine tuberculosis, as determined epidemiologically
 426-33 and defined by rule of the Texas Animal Health Commission.

426-34 SECTION 3.1082. Section 435.007(b), Health and Safety Code,
 426-35 is amended to read as follows:

426-36 (b) A person may not represent, publish, label, or advertise
 426-37 milk or milk products as being Grade "A" unless the milk or milk
 426-38 products are:

426-39 (1) produced or processed by a person having a permit
 426-40 to use a Grade "A" label as provided by this subchapter; and

426-41 (2) produced, treated, and handled in accordance with
 426-42 the specifications and requirements adopted by the executive
 426-43 commissioner [board] for Grade "A" milk and milk products.

426-44 SECTION 3.1083. Section 435.009(c), Health and Safety Code,
 426-45 is amended to read as follows:

426-46 (c) The executive commissioner [board] shall adopt rules
 426-47 for the department to assess and collect the fees imposed by
 426-48 Subsections (b)(5) and (6) monthly, quarterly, semiannually, or
 426-49 annually according to amounts due by the plant. Monthly fees shall
 426-50 be assessed and collected in accordance with department [board]
 426-51 rules.

426-52 SECTION 3.1084. Section 435.010, Health and Safety Code, is
 426-53 amended to read as follows:

426-54 Sec. 435.010. RECORDS. The executive commissioner [board]
 426-55 by rule shall establish minimum standards for recordkeeping by
 426-56 persons required to pay a fee under this subchapter. Those persons
 426-57 shall make the records available to the department on request.

426-58 SECTION 3.1085. Section 435.011(a), Health and Safety Code,
 426-59 is amended to read as follows:

426-60 (a) The executive commissioner [board] shall establish a
 426-61 procedure by which a person aggrieved by the application of a
 426-62 department [board] rule may receive a hearing under Chapter 2001,
 426-63 Government Code.

426-64 SECTION 3.1086. Sections 435.012(b) and (c), Health and
 426-65 Safety Code, are amended to read as follows:

426-66 (b) The department [board and its representative] may
 426-67 revoke and regrade permits if on inspection the department [board]
 426-68 or its representative finds that the use of the grade label does
 426-69 not conform to the specifications or requirements adopted by the

427-1 executive commissioner [board] under this chapter.

427-2 (c) The executive commissioner [board] by rule shall:

427-3 (1) provide for the denial, suspension, or revocation
427-4 of a permit; and

427-5 (2) establish reasonable minimum standards for
427-6 granting and maintaining a permit issued under this chapter.

427-7 SECTION 3.1087. Sections 436.002(2), (22), (24), and (27),
427-8 Health and Safety Code, are amended to read as follows:

427-9 (2) "Approved source" means a source of molluscan
427-10 shellfish acceptable to the department [director].

427-11 (22) "National Shellfish Sanitation Program" means
427-12 the cooperative program by the states, the United States Food and
427-13 Drug Administration, and the shellfish industry that classifies
427-14 molluscan shellfish growing areas and certifies interstate
427-15 molluscan shellfish shippers according to the National Shellfish
427-16 Sanitation Program Guide for the Control of Molluscan Shellfish
427-17 [Manual of Operations] or its successor program and documents.

427-18 (24) "Pasteurization plant" means a place where
427-19 crabmeat is heat-treated in compliance with department rules
427-20 [adopted by the board], without complete sterilization, to improve
427-21 the keeping qualities of the meat.

427-22 (27) "Prohibited area" means an area where the
427-23 department [director] finds, according to a sanitary, chemical, or
427-24 bacteriological survey, that the area contains aquatic life that is
427-25 unfit for human consumption. A prohibited area for molluscan
427-26 shellfish means a molluscan shellfish growing area determined to be
427-27 unacceptable for transplanting, gathering for depuration, or
427-28 harvesting of molluscan shellfish. The only molluscan shellfish
427-29 removal permitted from a prohibited area is for the purpose of
427-30 depletion.

427-31 SECTION 3.1088. Section 436.003, Health and Safety Code, is
427-32 amended to read as follows:

427-33 Sec. 436.003. HEALTH AUTHORITY POWER TO DELEGATE [POWERS
427-34 AND DUTIES]. [(a) The board by rule may delegate a power or duty
427-35 imposed on the director in this chapter, including the power or duty
427-36 to issue emergency rules or orders or to render a final
427-37 administrative decision.

427-38 [(b)] A health authority may delegate any power or duty
427-39 imposed on the health authority in this chapter to an employee of
427-40 the local health department, the local health unit, or the public
427-41 health district in which the health authority serves, unless
427-42 otherwise restricted by law.

427-43 SECTION 3.1089. Section 436.011, Health and Safety Code, is
427-44 amended to read as follows:

427-45 Sec. 436.011. PROHIBITED ACTS. The following acts and the
427-46 causing of the following acts within this state are unlawful and
427-47 prohibited:

427-48 (1) taking, selling, offering for sale, or holding for
427-49 sale molluscan shellfish from a closed area;

427-50 (2) taking, selling, offering for sale, or holding for
427-51 sale molluscan shellfish from a restricted or conditionally
427-52 restricted area without complying with a department rule [adopted
427-53 by the board] to ensure that the molluscan shellfish have been
427-54 purified, unless:

427-55 (A) permission is first obtained from the Parks
427-56 and Wildlife Department and the transplanting is supervised by that
427-57 department; and

427-58 (B) the Parks and Wildlife Department furnishes a
427-59 copy of the transplant permit to the department [director] before
427-60 transplanting activities begin;

427-61 (3) possessing a species of aquatic life taken from a
427-62 prohibited area while the area was prohibited for that species;

427-63 (4) operating as a molluscan shellfish processor
427-64 without a shellfish certificate for each plant or place of
427-65 business;

427-66 (5) operating as a crabmeat processor without a
427-67 crabmeat processing license for each plant;

427-68 (6) selling, offering for sale, or holding for sale
427-69 molluscan shellfish or crabmeat that has not been picked, handled,

428-1 packaged, or pasteurized in accordance with department [~~the~~] rules
 428-2 [~~adopted by the board~~];

428-3 (7) selling, offering for sale, or holding for sale
 428-4 molluscan shellfish or crabmeat from facilities for the handling
 428-5 and packaging of molluscan shellfish or crabmeat that do not comply
 428-6 with department [~~the~~] rules [~~adopted by the board~~];

428-7 (8) selling, offering for sale, or holding for sale
 428-8 molluscan shellfish or crabmeat that is not labeled in accordance
 428-9 with department [~~the~~] rules [~~adopted by the board~~];

428-10 (9) selling, offering for sale, or holding for sale
 428-11 molluscan shellfish that is not in a container bearing a valid
 428-12 certificate number from a state or nation whose molluscan shellfish
 428-13 certification program conforms to the current National Shellfish
 428-14 Sanitation Program Guide for the Control of Molluscan Shellfish
 428-15 [Manual of Operations for Sanitary Control of the Shellfish
 428-16 Industry] issued by the Food and Drug Administration or its
 428-17 successor, except selling molluscan shellfish removed from a
 428-18 container bearing a valid certificate number for on-premises
 428-19 consumption; in the event the Texas Molluscan Shellfish Program is
 428-20 found to be out of conformity with the current guide [Manual of
 428-21 Operations], selling, offering for sale, or holding for sale
 428-22 molluscan shellfish in a container bearing a valid Texas
 428-23 certificate number shall not be considered a violation of this
 428-24 chapter provided all other requirements of this chapter are
 428-25 complied with and the shellfish have come from an approved source;

428-26 (10) processing, transporting, storing for sale,
 428-27 possessing with intent to sell, offering for sale, or selling
 428-28 molluscan shellfish or crabmeat for human consumption that is
 428-29 adulterated or misbranded;

428-30 (11) removing or disposing of a detained or embargoed
 428-31 article in violation of Section 436.028;

428-32 (12) altering, mutilating, destroying, obliterating,
 428-33 or removing all or part of the labeling of a container;

428-34 (13) adulterating or misbranding molluscan shellfish
 428-35 or crabmeat in commerce;

428-36 (14) refusing to permit entry or inspection, to permit
 428-37 the taking of a sample, or to permit access to or copying by the
 428-38 department as [~~an authorized agent of a record~~] required by this
 428-39 chapter;

428-40 (15) failing to establish or maintain a record or
 428-41 report required by this chapter or by a department rule [~~adopted by~~
 428-42 ~~the board~~]; or

428-43 (16) violating a department rule [~~adopted by the~~
 428-44 ~~board~~] or [~~an emergency rule or~~] order [~~adopted by the director~~].

428-45 SECTION 3.1090. Section 436.022, Health and Safety Code, is
 428-46 amended to read as follows:

428-47 Sec. 436.022. INSPECTION. (a) The department [~~director~~,
 428-48 ~~an authorized agent~~,] or a health authority may, on presenting
 428-49 appropriate credentials to the owner, operator, or agent in charge:

428-50 (1) enter at reasonable times, including when
 428-51 processing is conducted, an establishment or location in which
 428-52 molluscan shellfish or crabmeat is processed, packed, pasteurized,
 428-53 or held for introduction into commerce or held after introduction
 428-54 into commerce;

428-55 (2) enter a vehicle being used to transport or hold the
 428-56 molluscan shellfish or crabmeat in commerce; or

428-57 (3) inspect the establishment, location, or vehicle,
 428-58 including equipment, records, files, papers, materials,
 428-59 containers, labels, or other items, and obtain samples necessary
 428-60 for enforcement of this chapter.

428-61 (b) The inspection of an establishment or location is to
 428-62 determine whether the molluscan shellfish or crabmeat:

428-63 (1) is adulterated or misbranded;

428-64 (2) may not be processed, introduced into commerce,
 428-65 sold, or offered for sale under this chapter or department [~~the~~]
 428-66 rules [~~adopted by the board~~]; or

428-67 (3) is otherwise in violation of this chapter.

428-68 (c) The department [~~director~~, ~~an authorized agent~~,] or a
 428-69 health authority may not inspect:

(1) financial data;
(2) sales data, other than shipment data;
(3) pricing data;
(4) personnel data, other than personnel data relating to the qualifications of technical and professional personnel; or
(5) research data.

SECTION 3.1091. Section 436.023, Health and Safety Code, is amended to read as follows:

Sec. 436.023. ACCESS TO RECORDS. A person who is required to maintain records under this chapter or a department rule [~~adopted by the board~~] or a person who is in charge or custody of those records on request shall permit the department [~~director, authorized agent,~~] or health authority at all reasonable times to have access to and to copy the records.

SECTION 3.1092. Section 436.024(a), Health and Safety Code, is amended to read as follows:

(a) A commercial carrier or other person receiving or holding molluscan shellfish or crabmeat in commerce on request shall permit the department [~~director, authorized agent,~~] or health authority at all reasonable times to have access to and to copy all records showing:

(1) the movement in commerce of the molluscan shellfish or crabmeat;

(2) the holding after movement in commerce of the molluscan shellfish or crabmeat; or
(3) the quantity, shipper, and consignee of the molluscan shellfish or crabmeat.

SECTION 3.1093. Section 436.025, Health and Safety Code, is amended to read as follows:

Sec. 436.025. EMERGENCY ORDER. (a) The department [director] may issue an emergency order that mandates or prohibits the taking, processing, or sale of molluscan shellfish or crabmeat in the department's jurisdiction if:

(1) the processing or sale of the molluscan shellfish

(1) the processing or sale of the molluscan shellfish or crabmeat creates or poses an immediate threat to human life or health; and

(2) other procedures available to the department to remedy or prevent the threat will result in unreasonable delay.

(b) The department [director] may issue the emergency order without notice and hearing if the department [director] or a person designated by the department [director] determines that issuing the emergency order without notice and hearing is necessary under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine the earliest time and place for a hearing at which the emergency order shall be affirmed, modified, or set aside. The hearing shall be held under department [board] rules.

(d) This section prevails over Section [Sections 11.013 and] 12.001.

SECTION 3.1094. Section 436.026(a), Health and Safety Code, is amended to read as follows:

(a) The department [director, an authorized agent,] or a health authority may petition the district court for a temporary restraining order to restrain a continuing violation or a threat of a continuing violation of Section 436.011 if the department [director, authorized agent,] or health authority believes that:

(1) a person has violated, is violating, or is threatening to violate a provision of Section 436.011; and
(2) the violation or threatened violation creates an

immediate threat to the health and safety of the public.

SECTION 3.1095. Section [436.027\(a\)](#), Health and Safety Code,

is amended to read as follows:

(a) At the request of the department [director], the attorney general or a district, county, or municipal attorney shall institute an action in district or county court to collect a civil penalty from a person who has violated Section 436.011.

SECTION 3.1096. Section 436.028, Health and Safety Code, is amended to read as follows:

430-1 Sec. 436.028. DETAINED OR EMBARGOED ARTICLE. (a) The
 430-2 department [director or an authorized agent] may detain or embargo
 430-3 molluscan shellfish or crabmeat if the department [director or
 430-4 authorized agent] believes or has probable cause to believe that
 430-5 the molluscan shellfish or crabmeat:

430-6 (1) is adulterated; or

430-7 (2) is misbranded so that the molluscan shellfish or
 430-8 crabmeat is dangerous or fraudulent under this chapter.

430-9 (b) The department [director or an authorized agent] shall

430-10 affix to any molluscan shellfish or crabmeat a tag or other
 430-11 appropriate marking that gives notice that the molluscan shellfish
 430-12 or crabmeat is, or is suspected of being, adulterated or misbranded
 430-13 and that the molluscan shellfish or crabmeat has been detained or
 430-14 embargoed.

430-15 (c) The tag or marking on a detained or embargoed article
 430-16 must prohibit the removal or disposal of the article unless
 430-17 permission is given by the department [director, the authorized
 430-18 agent,] or a court.

430-19 (d) A person may not remove a detained or embargoed article
 430-20 from the premises or dispose of it without permission of the
 430-21 department [director, the authorized agent,] or a court. The
 430-22 department [director or the authorized agent] may permit perishable
 430-23 goods to be moved to a place suitable for proper storage.

430-24 (e) The department [director or an authorized agent] shall
 430-25 remove the tag or other marking from a detained or embargoed article
 430-26 if the department [director or an authorized agent] believes that
 430-27 the article is not adulterated or misbranded.

430-28 (f) The claimant of a detained or embargoed article may move
 430-29 the article to a secure storage area with the permission of the
 430-30 department [director or an authorized agent].

430-31 SECTION 3.1097. Section 436.029, Health and Safety Code, is
 430-32 amended to read as follows:

430-33 Sec. 436.029. REMOVAL ORDER FOR DETAINED OR EMBARGOED
 430-34 ARTICLE. (a) The department [director or authorized agent] may
 430-35 order the claimant or the claimant's agent to move a detained or
 430-36 embargoed article to a secure place to prevent the unauthorized
 430-37 disposal or removal of the article.

430-38 (b) If the claimant fails to carry out the order, the
 430-39 department [director or the authorized agent] may move the article.

430-40 (c) If the department [director or the authorized agent]
 430-41 moves the article, the department [director] shall assess the cost
 430-42 of removal against the claimant.

430-43 (d) The department [director] may request the attorney
 430-44 general to bring an action in the district court in Travis County to
 430-45 recover the costs of removal. In a judgment in favor of the state,
 430-46 the court may award costs, attorney fees, and interest from the date
 430-47 the expense was incurred until the date the department is
 430-48 reimbursed.

430-49 SECTION 3.1098. Section 436.030, Health and Safety Code, is
 430-50 amended to read as follows:

430-51 Sec. 436.030. RECALL FROM COMMERCE. (a) The department
 430-52 [director] may order a recall of molluscan shellfish or crabmeat
 430-53 with:

430-54 (1) the detention or embargo of molluscan shellfish or
 430-55 crabmeat;
 430-56 (2) the issuance of an emergency order under Section
 430-57 436.025; or
 430-58 (3) both.

430-59 (b) The [director's] recall order may require that the
 430-60 molluscan shellfish or crabmeat be removed to one or more secure
 430-61 areas approved by the department [director or authorized agent].

430-62 (c) The recall order must be in writing and be signed by the
 430-63 commissioner [director] and may be issued:

430-64 (1) before or in conjunction with a tag or other
 430-65 marking as provided by Section 436.028;

430-66 (2) with an emergency order authorized by Section
 430-67 436.025; or
 430-68 (3) both.

430-69 (d) The recall order is effective until it expires by its

431-1 own terms, is withdrawn by the department [director], is reversed
 431-2 by a court in an order denying condemnation, or is set aside at a
 431-3 hearing authorized by Section 436.025.

431-4 (e) The claimant shall pay the costs of the removal and
 431-5 storage of a recalled product. If the claimant or the claimant's
 431-6 agent fails to carry out the recall order, the department
 431-7 [director] may recall the product. The department [director] shall
 431-8 assess the costs of the recall against the claimant.

431-9 (f) The department [director] may request the attorney
 431-10 general to bring an action in a district court in Travis County to
 431-11 recover the costs of recall. In a judgment in favor of the state,
 431-12 the court may award costs, attorney fees, and interest from the date
 431-13 the expense was incurred until the date the department is
 431-14 reimbursed.

431-15 SECTION 3.1099. Section 436.032(b), Health and Safety Code,
 431-16 is amended to read as follows:

431-17 (b) After entry of the court's order, the department [~~an~~
 431-18 ~~authorized agent~~] shall supervise the destruction of the article.

431-19 SECTION 3.1100. Sections 436.033(a) and (c), Health and
 431-20 Safety Code, are amended to read as follows:

431-21 (a) A court may order the delivery of sampled, detained, or
 431-22 embargoed molluscan shellfish or crabmeat that is misbranded to the
 431-23 claimant for relabeling under the supervision of the department
 431-24 [director or an authorized agent] if:

431-25 (1) the court costs and other expenses have been paid;
 431-26 (2) proper labeling can correct the misbranding; and
 431-27 (3) the claimant executes a bond, conditioned on the
 431-28 correction of the misbranding by proper labeling.

431-29 (c) The court shall order the return of the molluscan
 431-30 shellfish or crabmeat to the claimant if the department [director]
 431-31 [~~or an authorized agent~~] represents to the court that the molluscan
 431-32 shellfish or crabmeat no longer violates this chapter and that the
 431-33 expenses of supervision are paid.

431-34 SECTION 3.1101. Sections 436.034(a) and (b), Health and
 431-35 Safety Code, are amended to read as follows:

431-36 (a) The department [director] may assess an administrative
 431-37 penalty against a person who violates Section 436.011 or an order
 431-38 issued under this chapter.

431-39 (b) In determining the amount of the penalty, the department
 431-40 [director] shall consider:

431-41 (1) the person's previous violations;
 431-42 (2) the seriousness of the violation;
 431-43 (3) the hazard to the health and safety of the public;
 431-44 (4) the person's demonstrated good faith; and
 431-45 (5) other matters as justice may require.

431-46 SECTION 3.1102. Section 436.035, Health and Safety Code, is
 431-47 amended to read as follows:

431-48 Sec. 436.035. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

431-49 (a) The department [director] may assess an administrative penalty
 431-50 only after a person charged with a violation is given an opportunity
 431-51 for a hearing.

431-52 (b) If a hearing is to be held, the department shall refer
 431-53 the matter to the State Office of Administrative Hearings, and an
 431-54 administrative law judge of that office [director] shall make
 431-55 findings of fact and shall issue a written proposal for decision
 431-56 regarding the violation and the amount of the penalty.

431-57 (c) If the person charged with the violation does not
 431-58 request a hearing, the department [director] may assess a penalty
 431-59 after determining that a violation has occurred and the amount of
 431-60 the penalty.

431-61 (d) The department [director] shall issue an order
 431-62 requiring a person to pay a penalty assessed under this section.

431-63 [(e) The director may consolidate a hearing held under this
 431-64 section with another proceeding.]

431-65 SECTION 3.1103. Section 436.036, Health and Safety Code, is
 431-66 amended to read as follows:

431-67 Sec. 436.036. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
 431-68 later than the 30th day after the date an order is issued under
 431-69 Section 436.035(d), the department [director] shall notify the

432-1 person against whom the penalty is assessed of the order and the
 432-2 amount of the penalty.

432-3 (b) Not later than the 30th day after the date notice of the
 432-4 order is given to the person, the person shall:

432-5 (1) pay the penalty in full; or

432-6 (2) file a petition for [seek] judicial review of the
 432-7 department's order contesting the amount of the penalty, the
 432-8 findings of the department [director], or both.

432-9 (c) If the person seeks judicial review within the period
 432-10 prescribed by Subsection (b), the person may [shall]:

432-11 (1) stay enforcement of the penalty by:

432-12 (A) paying [send the amount of] the penalty to
 432-13 the court [director] for placement in an escrow account; or

432-14 (B) posting [(2) post] with the court [director]
 432-15 a supersedeas bond for the amount of the penalty; or

432-16 (2) request that the department stay enforcement of
 432-17 the penalty by:

432-18 (A) filing with the court a sworn affidavit of
 432-19 the person stating that the person is financially unable to pay the
 432-20 penalty and is financially unable to give the supersedeas bond; and

432-21 (B) sending a copy of the affidavit to the
 432-22 department.

432-23 (c-1) If the department receives a copy of an affidavit
 432-24 under Subsection (c)(2), the department may file with the court,
 432-25 within five days after the date the copy is received, a contest to
 432-26 the affidavit. The court shall hold a hearing on the facts alleged
 432-27 in the affidavit as soon as practicable and shall stay the
 432-28 enforcement of the penalty on finding that the alleged facts are
 432-29 true. The person who files an affidavit has the burden of proving
 432-30 that the person is financially unable to pay the penalty or to give
 432-31 a supersedeas bond.

432-32 (d) A bond posted under this section must be in a form
 432-33 approved by the court [director] and must be effective until
 432-34 judicial review of the order or decision is final.

432-35 (e) A person who does not send the money to, [the director
 432-36 or] post the bond with, or file the affidavit with the court within
 432-37 the period described by Subsection (b) waives all rights to contest
 432-38 the violation or the amount of the penalty.

432-39 (f) The attorney general, at the request of the department
 432-40 [director], may bring a civil action to recover an administrative
 432-41 penalty assessed under this subchapter.

432-42 SECTION 3.1104. Section 436.037, Health and Safety Code, is
 432-43 amended to read as follows:

432-44 Sec. 436.037. REFUND OF ADMINISTRATIVE PENALTY. On [Not
 432-45 later than the 30th day after] the date the court's judgment [of a
 432-46 judicial determination] that an administrative penalty against a
 432-47 person should be reduced or not assessed becomes final, the court
 432-48 [director] shall order that:

432-49 (1) [remit to the person] the appropriate amount of
 432-50 any penalty payment plus accrued interest be remitted to the person
 432-51 not later than the 30th day after that date; or

432-52 (2) [execute a release of] the bond be released, if the
 432-53 person has posted a bond.

432-54 SECTION 3.1105. Sections 436.038(f) and (g), Health and
 432-55 Safety Code, are amended to read as follows:

432-56 (f) A person is not subject to the penalties of Subsection
 432-57 (e) if the person received molluscan shellfish or crabmeat in
 432-58 commerce and delivered or offered to deliver the molluscan
 432-59 shellfish or crabmeat in good faith, unless the person refuses to
 432-60 furnish on request of the department [director, an authorized
 432-61 agent,] or a health authority the name and address of the person
 432-62 from whom the product was received and copies of any documents
 432-63 relating to the receipt of the product.

432-64 (g) A publisher, radiobroadcast licensee, or agency or
 432-65 medium for the publication or broadcast of an advertisement, except
 432-66 the harvester, processor, distributor, or seller of molluscan
 432-67 shellfish or crabmeat to which a false advertisement relates, is
 432-68 not liable under this section for the publication or broadcast of
 432-69 the false advertisement unless the person has refused to furnish,

433-1 on the request of the department [~~director~~], the name and address of
 433-2 the harvester, processor, distributor, seller, or advertising
 433-3 agency residing in this state who caused the person to publish or
 433-4 broadcast the advertisement.

433-5 SECTION 3.1106. Section 436.039, Health and Safety Code, is
 433-6 amended to read as follows:

433-7 Sec. 436.039. INITIATION OF PROCEEDINGS. The attorney
 433-8 general or a district, county, or municipal attorney to whom the
 433-9 department [~~director, an authorized agent~~] or a health authority
 433-10 reports a violation of this chapter shall prosecute without delay.

433-11 SECTION 3.1107. Section 436.040, Health and Safety Code, is
 433-12 amended to read as follows:

433-13 Sec. 436.040. MINOR VIOLATION. This chapter does not
 433-14 require the department [~~director, an authorized agent~~] or a health
 433-15 authority to report for prosecution a minor violation of this
 433-16 chapter if the department [~~director, authorized agent~~] or health
 433-17 authority believes that the public interest is adequately served by
 433-18 a written warning.

433-19 SECTION 3.1108. Section 436.061, Health and Safety Code, is
 433-20 amended to read as follows:

433-21 Sec. 436.061. ADULTERATED AQUATIC LIFE. (a) A species of
 433-22 aquatic life is adulterated if it has been taken from an area
 433-23 declared prohibited for that species by the department [~~director~~].

433-24 (b) Molluscan shellfish or crabmeat is adulterated if:

433-25 (1) it bears or contains a poisonous or deleterious
 433-26 substance that may render it injurious to health unless the
 433-27 substance is a naturally occurring substance and the quantity of
 433-28 the substance in the molluscan shellfish or crabmeat does not
 433-29 ordinarily render the substance injurious to health;

433-30 (2) it consists in whole or in part of a diseased,
 433-31 contaminated, filthy, or putrid substance or if it is otherwise
 433-32 unfit for human consumption;

433-33 (3) it has been produced, prepared, packed, or held
 433-34 under unsanitary conditions whereby it may have become contaminated
 433-35 with filth or may have been rendered diseased, unwholesome, or
 433-36 injurious to health;

433-37 (4) it is in whole or in part the product of diseased
 433-38 aquatic life or has died otherwise than by taking;

433-39 (5) its container is made in whole or in part of a
 433-40 poisonous or deleterious substance that may render the contents
 433-41 injurious to health;

433-42 (6) it has been intentionally exposed to radiation,
 433-43 unless the use of the radiation complied with a regulation or an
 433-44 exemption under Section 409, Federal Food, Drug, and Cosmetic Act
 433-45 (21 U.S.C. Section 348);

433-46 (7) a substance has been substituted in whole or in
 433-47 part for it;

433-48 (8) damage to or inferiority of the product has been
 433-49 concealed;

433-50 (9) a substance has been added, mixed, or packed to
 433-51 increase its bulk or weight, to reduce its quality or strength, or
 433-52 to make it appear better or of greater value than it is;

433-53 (10) it contains a chemical substance containing
 433-54 sulphites, sulphur dioxide, or any other chemical preservative that
 433-55 is not approved by the Animal and Plant Health Inspection Service or
 433-56 by department rules [~~of the board~~];

433-57 (11) the molluscan shellfish have been taken from a
 433-58 closed area;

433-59 (12) the molluscan shellfish have been taken from a
 433-60 restricted or conditionally restricted area and have not been
 433-61 purified under department [~~the~~] rules [~~adopted by the board~~];

433-62 (13) the molluscan shellfish have been processed by a
 433-63 person without a shellfish certificate;

433-64 (14) the molluscan shellfish have not been handled and
 433-65 packaged in accordance with department [~~the~~] rules [~~adopted by the~~
 433-66 ~~board~~];

433-67 (15) the crabmeat has been processed by a person
 433-68 without a crabmeat processing license; or

433-69 (16) the crabmeat was not picked, packed, or

434-1 pasteurized in accordance with department [~~the~~] rules [~~adopted by~~
 434-2 ~~the board~~].

434-3 SECTION 3.1109. Section 436.071, Health and Safety Code, is
 434-4 amended to read as follows:

434-5 Sec. 436.071. MISBRANDED MOLLUSCAN SHELLFISH AND CRABMEAT.
 434-6 Molluscan shellfish or crabmeat is misbranded if:

434-7 (1) its labeling is false, misleading, or fails to
 434-8 conform with the requirements of Section 436.081;

434-9 (2) it is offered for sale under the name of another
 434-10 food;

434-11 (3) its container is made, formed, or filled so as to
 434-12 be misleading;

434-13 (4) a word, statement, or other information required
 434-14 by this chapter or a rule adopted under this chapter to appear on a
 434-15 label is not prominently and conspicuously placed on the label and
 434-16 is not likely to be read and understood by the ordinary individual
 434-17 under customary conditions of purchase and use; or

434-18 (5) it does not have a label containing:

434-19 (A) the name, address, and certification or
 434-20 license number of the processor;

434-21 (B) an accurate statement in a uniform location
 434-22 on the principal display panel of the quantity of the contents in
 434-23 terms of weight, measure, or numerical count; and

434-24 (C) a date as provided by department rules
 434-25 [~~adopted by the board~~].

434-26 SECTION 3.1110. Section 436.091, Health and Safety Code, is
 434-27 amended to read as follows:

434-28 Sec. 436.091. DECLARATION OF PROHIBITED AREAS. (a) The
 434-29 department [~~director~~] by order shall declare a body of public water
 434-30 to be a prohibited area if:

434-31 (1) the department [~~director~~] finds, according to a
 434-32 sanitary, chemical, or bacteriological survey, that the area
 434-33 contains aquatic life that is unfit for human consumption; or

434-34 (2) aquatic life from a prohibited area may have been
 434-35 transferred to that body of public water.

434-36 (b) The department [~~director~~] shall modify or revoke an
 434-37 order according to the results of a sanitary, chemical, or
 434-38 bacteriological survey conducted by the department. The department
 434-39 [~~director~~] shall file the order in the department's office and
 434-40 shall furnish without charge a copy of the order describing
 434-41 prohibited areas on request.

434-42 (c) The department [~~director~~] shall conspicuously outline
 434-43 prohibited areas on maps and shall furnish the maps without charge
 434-44 on request. The failure of a person to obtain that information does
 434-45 not relieve that person from liability under this chapter.

434-46 SECTION 3.1111. Section 436.101, Health and Safety Code, is
 434-47 amended to read as follows:

434-48 Sec. 436.101. CLASSIFICATION OF GROWING AREAS. (a) The
 434-49 department [~~director~~] by order shall designate an area that is
 434-50 coastal water according to the rules of the Parks and Wildlife
 434-51 Commission as an approved area, a conditionally approved area, a
 434-52 restricted area, a conditionally restricted area, or a prohibited
 434-53 area, according to the classification categories in the current
 434-54 National Shellfish Sanitation Program Guide for the Control of
 434-55 Molluscan Shellfish [~~Manual of Operations~~] or its successor.
 434-56 Coastal water is a prohibited area for the taking of molluscan
 434-57 shellfish unless designated otherwise by the department
 434-58 [~~director~~].

434-59 (b) The department [~~director~~] shall prohibit the taking of
 434-60 molluscan shellfish for a specified period from water to which
 434-61 molluscan shellfish may have been transferred from a restricted or
 434-62 conditionally restricted area.

434-63 (c) The department [~~director~~] by order shall designate
 434-64 growing areas as closed areas or open areas. The department
 434-65 [~~director~~] shall modify or revoke an order according to the results
 434-66 of sanitary and bacteriological surveys conducted by the
 434-67 department. The department [~~director~~] shall file the order in the
 434-68 department's office and shall furnish without charge a copy of the
 434-69 order describing the open or closed area on request.

435-1 (d) The department [~~director~~] shall conspicuously outline
 435-2 the classifications of areas for the taking of molluscan shellfish
 435-3 on maps and shall furnish the maps without charge on request. The
 435-4 failure of a person to obtain that information does not relieve that
 435-5 person from liability under this chapter.

435-6 SECTION 3.1112. Section 436.102, Health and Safety Code, is
 435-7 amended to read as follows:

435-8 Sec. 436.102. DEPURATION. (a) The department [~~director~~]
 435-9 may allow depuration by artificial means of molluscan shellfish
 435-10 taken from a restricted or conditionally restricted area, subject
 435-11 to department [~~the~~] rules [~~adopted by the board~~] and under the
 435-12 supervision the department [~~director~~] considers necessary to
 435-13 protect public health.

435-14 (b) A molluscan shellfish plant operator may employ an
 435-15 off-duty peace officer to monitor the gathering of shellfish for
 435-16 depuration from a restricted or conditionally restricted area as
 435-17 provided by the rules adopted [~~by the board~~] under Subsection (a).
 435-18 In this subsection, "peace officer" includes those persons listed
 435-19 in Article 2.12, Code of Criminal Procedure.

435-20 SECTION 3.1113. Section 436.107(b), Health and Safety Code,
 435-21 is amended to read as follows:

435-22 (b) The council is composed of:

435-23 (1) two members appointed by the executive
 435-24 commissioner [~~board~~] as nominated by the Texas Oyster Growers and
 435-25 Dealers Association or a successor organization;

435-26 (2) one member appointed by the executive commissioner
 435-27 [~~board~~] as nominated by the Coastal Oyster Leaseholder's
 435-28 Association;

435-29 (3) two members appointed by the executive
 435-30 commissioner [~~board~~] from a list of oyster dealers who have held a
 435-31 shellfish certificate in this state for not less than six months of
 435-32 each of the three years preceding the nomination and who are
 435-33 certified at the time of appointment;

435-34 (4) one representative appointed by the chairman of
 435-35 the Interstate Shellfish Sanitation Conference; and

435-36 (5) three consumer members, including one person
 435-37 professionally licensed or with work experience in the field of
 435-38 environmental survey, environmental sanitation, environmental
 435-39 engineering, or a similar field related to environmental or
 435-40 pollution conditions and their effect on molluscan shellfish
 435-41 harvest areas, appointed by the speaker of the house of
 435-42 representatives.

435-43 SECTION 3.1114. Section 436.108(a), Health and Safety Code,
 435-44 is amended to read as follows:

435-45 (a) The Texas Oyster Council shall:

435-46 (1) advise the department [~~board~~] on the criteria used
 435-47 by the department [~~director~~] under Section 436.101 to designate
 435-48 growing areas as open or closed areas;

435-49 (2) advise the department [~~board~~] on the development
 435-50 of standards and procedures relating to the licensing of molluscan
 435-51 shellfish processors under this chapter;

435-52 (3) advise the department [~~board~~] on the content of
 435-53 the rules adopted by the executive commissioner to implement the
 435-54 provisions of this chapter relating to molluscan shellfish;

435-55 (4) perform any other functions requested by the
 435-56 department [~~board~~] in implementing and administering the
 435-57 provisions of this chapter relating to molluscan shellfish; and

435-58 (5) review information brought before the council
 435-59 relating to molluscan shellfish.

435-60 SECTION 3.1115. Section 436.112, Health and Safety Code, is
 435-61 amended to read as follows:

435-62 Sec. 436.112. RULEMAKING AUTHORITY. The executive
 435-63 commissioner [~~board~~] may adopt rules for the enforcement of this
 435-64 chapter. The executive commissioner [~~board~~] shall adopt rules
 435-65 establishing specifications for molluscan shellfish processing and
 435-66 crabmeat processing, and the department shall furnish without
 435-67 charge printed copies of the rules on request.

435-68 SECTION 3.1116. Sections 436.113(a), (b), (c), (d), and
 435-69 (e), Health and Safety Code, are amended to read as follows:

436-1 (a) A person may not operate as a molluscan shellfish or
 436-2 crabmeat processor unless the person submits an application for a
 436-3 certificate or a license to the department according to department
 436-4 rules [~~adopted by the board~~] and receives a certificate or license
 436-5 for each plant or place of business.

436-6 (b) When an application has been properly filed with the
 436-7 department, the department [~~director or an authorized agent~~] shall
 436-8 inspect the property identified in the application, including
 436-9 buildings and equipment, and the operating procedures under which
 436-10 the product is processed.

436-11 (c) The department [~~director~~] shall issue a certificate or
 436-12 license to a person who operates a plant or place of business that
 436-13 conforms to the requirements of this chapter and department rules
 436-14 [~~adopted by the board~~].

436-15 (d) A certificate is nontransferrable and expires at 11:59
 436-16 p.m. on August 31 of the second [~~each~~] year of issuance.

436-17 (e) A license is nontransferrable and expires at 11:59 p.m.
 436-18 on the last day of February of the second [~~each~~] year of issuance.

436-19 SECTION 3.1117. Section 436.114(b), Health and Safety Code,
 436-20 is amended to read as follows:

436-21 (b) The executive commissioner [~~board~~] by rule shall
 436-22 establish minimum standards for a certificate or license and
 436-23 criteria for the refusal to issue a certificate or license and the
 436-24 suspension or revocation of a certificate or license.

436-25 SECTION 3.1118. Section 436.115(a), Health and Safety Code,
 436-26 is amended to read as follows:

436-27 (a) A hearing under this chapter is governed by the
 436-28 procedures for a contested case hearing under Chapter 2001,
 436-29 Government Code, and the department's [~~board's~~] formal hearing
 436-30 rules.

436-31 SECTION 3.1119. Section 437.001(4), Health and Safety Code,
 436-32 is amended to read as follows:

436-33 (4) "Food," "food service establishment," "retail
 436-34 food store," "mobile food unit," roadside food vendor, [~~"roadside~~
 436-35 ~~food vendor~~], and "temporary food service establishment" have the
 436-36 meanings assigned to those terms by rules adopted [~~by the board~~]
 436-37 under this chapter.

436-38 SECTION 3.1120. Section 437.0055(b), Health and Safety
 436-39 Code, is amended to read as follows:

436-40 (b) A person required to obtain a permit under Subsection
 436-41 (a) must apply every two years [~~annually~~] for the permit and must
 436-42 pay any fees required by the department.

436-43 SECTION 3.1121. Section 437.0056, Health and Safety Code,
 436-44 is amended to read as follows:

436-45 Sec. 437.0056. RULEMAKING AUTHORITY. The executive
 436-46 commissioner [~~board~~] may adopt rules for the efficient enforcement
 436-47 of this chapter by the department in an area not regulated under
 436-48 this chapter by a county or public health district. The executive
 436-49 commissioner [~~board~~] by rule shall establish minimum standards for
 436-50 granting and maintaining a permit in an area not regulated under
 436-51 this chapter by a county or public health district. The
 436-52 commissioner may refuse an application for a permit or suspend or
 436-53 revoke a permit in an area not regulated under this chapter by a
 436-54 county or public health district.

436-55 SECTION 3.1122. Section 437.0057(e), Health and Safety
 436-56 Code, is amended to read as follows:

436-57 (e) A county, a public health district, or the department
 436-58 may require a food service establishment to:

436-59 (1) post a sign in a place conspicuous to employees, in
 436-60 a form adopted by the executive commissioner [~~of the Health and~~
 436-61 ~~Human Services Commission~~], describing a food service employee's
 436-62 responsibilities to report certain health conditions to the permit
 436-63 holder under rules adopted by the executive commissioner; or

436-64 (2) require that each food service employee sign a
 436-65 written agreement in a form adopted by the executive commissioner
 436-66 to report those health conditions.

436-67 SECTION 3.1123. Sections 437.0076(b) and (d), Health and
 436-68 Safety Code, are amended to read as follows:

436-69 (b) The executive commissioner [~~board~~] may require each

437-1 fixed or mobile location retail establishment in which food is
 437-2 prepared on-site for sale to the public that is required to be
 437-3 operated under a permit under Section 437.0055 to employ a food
 437-4 manager certified under Subchapter G, Chapter 438.

437-5 (d) The executive commissioner [board] by rule may exempt
 437-6 establishments other than the establishments described by
 437-7 Subsection (c) from the requirement imposed under this section if
 437-8 the executive commissioner [board] determines that the application
 437-9 of the requirement to those establishments is not necessary to
 437-10 protect public health and safety.

437-11 SECTION 3.1124. Section 437.0123(a), Health and Safety
 437-12 Code, is amended to read as follows:

437-13 (a) A county that has a population of at least 2.8 million or
 437-14 a public health district at least part of which is in a county that
 437-15 has a population of at least 2.8 million may require the payment of
 437-16 a fee for issuing or renewing a permit or for performing an
 437-17 inspection to enforce this chapter or a rule adopted under this
 437-18 chapter. A county with a population of at least 2.8 million may
 437-19 require a trained food manager to be on duty during each day of
 437-20 operation of a food service establishment. The training required
 437-21 of food managers can be no more extensive than the training offered
 437-22 by an education or training program accredited [that specified] under
 437-23 Subchapter D, Chapter 438. A food service establishment that
 437-24 handles only prepackaged food and does not prepare or package food
 437-25 may not be required to have a certified food manager under this
 437-26 section.

437-27 SECTION 3.1125. Sections 437.0125(b), (c), and (e), Health
 437-28 and Safety Code, are amended to read as follows:

437-29 (b) The department may charge [annual] fees every two years.

437-30 (c) The executive commissioner [board] by rule shall set the
 437-31 fees for issuing and renewing permits in amounts as prescribed by
 437-32 Section 12.0111 and other fees in amounts that allow the department
 437-33 to recover at least 50 percent of the [annual] expenditures by the
 437-34 department for:

437-35 (1) reviewing and acting on a permit;

437-36 (2) amending [and renewing] a permit;

437-37 (3) inspecting a facility as provided by this chapter
 437-38 and rules adopted under this chapter; and

437-39 (4) implementing and enforcing this chapter,
 437-40 including a department rule or an order adopted or a license issued
 437-41 by the department.

437-42 (e) All permit fees collected by the department under this
 437-43 chapter shall be deposited in the state treasury to the credit of
 437-44 the food and drug retail fee account [fund].

437-45 SECTION 3.1126. Section 437.013(a), Health and Safety Code,
 437-46 is amended to read as follows:

437-47 (a) A county or public health district shall file an audited
 437-48 statement with the department [Texas Department of Health] on or
 437-49 before January 15 of each year.

437-50 SECTION 3.1127. Section 437.017, Health and Safety Code, is
 437-51 amended to read as follows:

437-52 Sec. 437.017. CONFLICT WITH ALCOHOLIC BEVERAGE CODE. The
 437-53 Alcoholic Beverage Code and rules adopted by the Texas Alcoholic
 437-54 Beverage Commission control to the extent of a conflict between
 437-55 this chapter or an order adopted under this chapter.

437-56 SECTION 3.1128. Sections 437.018(a), (d), (e), (f), (g),
 437-57 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
 437-58 amended to read as follows:

437-59 (a) The department [commissioner] may impose an
 437-60 administrative penalty against a person who holds a permit or who is
 437-61 regulated under this chapter and who violates this chapter or a rule
 437-62 or order adopted under this chapter.

437-63 (d) If the department [commissioner] determines that a
 437-64 violation has occurred, the department [commissioner] shall issue
 437-65 an order that states the facts on which the determination is based,
 437-66 including an assessment of the penalty.

437-67 (e) Within 14 days after the date the order is issued, the
 437-68 department [commissioner] shall give written notice of the order to
 437-69 the person. The notice may be given by certified mail. The notice

438-1 must include a brief summary of the alleged violation and a
 438-2 statement of the amount of the recommended penalty and must inform
 438-3 the person that the person has a right to a hearing on the
 438-4 occurrence of the violation, the amount of the penalty, or both the
 438-5 occurrence of the violation and the amount of the penalty.

438-6 (f) Within 20 days after the date the person receives the
 438-7 notice, the person in writing may accept the determination and
 438-8 recommended penalty of the department [commissioner] or may make a
 438-9 written request for a hearing on the occurrence of the violation,
 438-10 the amount of the penalty, or both the occurrence of the violation
 438-11 and the amount of the penalty.

438-12 (g) If the person accepts the determination and recommended
 438-13 penalty [~~of the commissioner~~], the department [commissioner] by
 438-14 order shall [~~approve the determination and~~] impose the recommended
 438-15 penalty.

438-16 (h) If the person requests a hearing or fails to respond
 438-17 timely to the notice, the department [commissioner] shall refer the
 438-18 matter to the State Office of Administrative Hearings and an
 438-19 administrative law judge of that office shall hold the hearing. The
 438-20 department shall [~~set a hearing and~~] give written notice of the
 438-21 hearing to the person. The [An] administrative law judge shall make
 438-22 findings of fact and conclusions of law and promptly issue to the
 438-23 department [commissioner] a written proposal for a decision about
 438-24 the occurrence of the violation and the amount of a proposed
 438-25 penalty. Based on the findings of fact, conclusions of law, and
 438-26 proposal for a decision, the department [commissioner] by order may
 438-27 find that a violation has occurred and impose a penalty or may find
 438-28 that no violation occurred.

438-29 (i) The notice of the department's [commissioner's] order
 438-30 given to the person under Chapter 2001, Government Code, must
 438-31 include a statement of the right of the person to judicial review of
 438-32 the order.

438-33 (j) Within 30 days after the date the department's [board's]
 438-34 order is final as provided by Subchapter F, Chapter 2001,
 438-35 Government Code, the person shall:

438-36 (1) pay the amount of the penalty;

438-37 (2) pay the amount of the penalty and file a petition
 438-38 for judicial review contesting the occurrence of the violation, the
 438-39 amount of the penalty, or both the occurrence of the violation and
 438-40 the amount of the penalty; or

438-41 (3) without paying the amount of the penalty, file a
 438-42 petition for judicial review contesting the occurrence of the
 438-43 violation, the amount of the penalty, or both the occurrence of the
 438-44 violation and the amount of the penalty.

438-45 (k) Within the 30-day period, a person who acts under
 438-46 Subsection (j)(3) of this section may:

438-47 (1) stay enforcement of the penalty by:

438-48 (A) paying the amount of the penalty to the court
 438-49 for placement in an escrow account; or

438-50 (B) giving to the court a supersedeas bond that
 438-51 is approved by the court for the amount of the penalty and that is
 438-52 effective until all judicial review of the department's [board's]
 438-53 order is final; or

438-54 (2) request the court to stay enforcement of the
 438-55 penalty by:

438-56 (A) filing with the court a sworn affidavit of
 438-57 the person stating that the person is financially unable to pay the
 438-58 amount of the penalty and is financially unable to give the
 438-59 supersedeas bond; and

438-60 (B) giving a copy of the affidavit to the
 438-61 department [commissioner] by certified mail.

438-62 (1) The department [commissioner] on receipt of a copy of an
 438-63 affidavit under Subsection (k)(2) [~~of this section~~] may file with
 438-64 the court, within five days after the date the copy is received, a
 438-65 contest to the affidavit. The court shall hold a hearing on the
 438-66 facts alleged in the affidavit as soon as practicable and shall stay
 438-67 the enforcement of the penalty on finding that the alleged facts are
 438-68 true. The person who files an affidavit has the burden of proving
 438-69 that the person is financially unable to pay the amount of the

439-1 penalty and to give a supersedeas bond.

439-2 (m) If the person does not pay the amount of the penalty and
439-3 the enforcement of the penalty is not stayed, the department
439-4 [~~commissioner~~] may refer the matter to the attorney general for
439-5 collection of the amount of the penalty.

439-6 (n) Judicial review of the order of the department
439-7 [~~commissioner~~]:

439-8 (1) is instituted by filing a petition as provided by
439-9 Subchapter G, Chapter 2001, Government Code; and

439-10 (2) is under the substantial evidence rule.

439-11 SECTION 3.1129. Section 437.019(b), Health and Safety Code,
439-12 is amended to read as follows:

439-13 (b) Except as provided by Subsection (c), a bed and
439-14 breakfast establishment that has more than seven rooms for rent, or
439-15 that provides food service other than breakfast to its overnight
439-16 guests, is a food service establishment for purposes of this
439-17 chapter but may not be required to meet all criteria applicable to a
439-18 larger food service establishment such as a restaurant. The
439-19 executive commissioner [~~board~~], commissioners court, governing
439-20 body, or administrative board, as applicable, shall adopt minimum
439-21 standards for a bed and breakfast establishment covered by this
439-22 subsection.

439-23 SECTION 3.1130. Section 438.004(a), Health and Safety Code,
439-24 is amended to read as follows:

439-25 (a) The executive commissioner [~~Texas Board of Health~~] by
439-26 rule may establish requirements stricter than the requirements
439-27 prescribed by Section 438.003 for the display and sale of
439-28 unpackaged foods if the transmission of a disease infestation or
439-29 contamination is directly related to a method of displaying and
439-30 selling unpackaged food authorized by this subchapter.

439-31 SECTION 3.1131. Section 438.014(a), Health and Safety Code,
439-32 is amended to read as follows:

439-33 (a) After cleaning dishes, receptacles, utensils,
439-34 food-grinding machines, and implements as required by Section
439-35 438.012 or 438.013, the items shall be:

439-36 (1) placed in a wire cage and immersed in a still bath
439-37 of clear water for at least:

439-38 (A) three minutes in water heated to a minimum
439-39 temperature of 170 degrees Fahrenheit; or

439-40 (B) two minutes in water heated to a minimum
439-41 temperature of 180 degrees Fahrenheit;

439-42 (2) immersed for at least two minutes in a lukewarm
439-43 chlorine bath made up at a strength of 100 parts per milliliter or
439-44 more of hypochlorites and not reduced to less than 50 parts per
439-45 milliliter available chlorine, or a concentration of equal
439-46 bacteriacidal strength if chloramines are used; or

439-47 (3) sterilized by any other chemical method approved
439-48 by the department [~~Texas Board of Health~~].

439-49 SECTION 3.1132. Section 438.033(a), Health and Safety Code,
439-50 is amended to read as follows:

439-51 (a) On the request of an employer, the department [~~Texas~~
439-52 ~~Board of Health~~] or the department's [~~board's~~] representative, or
439-53 the local health authority or the local health authority's
439-54 representative, a person employed or seeking employment in an
439-55 activity regulated under Section 438.032:

439-56 (1) shall be examined by a licensed physician; and

439-57 (2) must receive a certificate signed by the physician
439-58 stating that the examination has been performed and that to the best
439-59 of the physician's knowledge the person examined did not have on the
439-60 date of the examination a transmissible condition of a communicable
439-61 disease or a local infection commonly transmitted through the
439-62 handling of food.

439-63 SECTION 3.1133. The heading to Section 438.042, Health and
439-64 Safety Code, is amended to read as follows:

439-65 Sec. 438.042. DUTIES OF EXECUTIVE COMMISSIONER [~~BOARD~~].

439-66 SECTION 3.1134. Section 438.042(a), Health and Safety Code,
439-67 is amended to read as follows:

439-68 (a) The executive commissioner [~~Texas Board of Health~~]
439-69 shall adopt standards and procedures for the accreditation of

440-1 education and training programs for persons employed in the food
 440-2 service industry.

440-3 SECTION 3.1135. Section [438.042](#)(b), Health and Safety Code,
 440-4 as added by Chapter 539 (S.B. 873), Acts of the 72nd Legislature,
 440-5 Regular Session, 1991, is amended to read as follows:

440-6 (b) The executive commissioner [~~Texas Board of Health~~]
 440-7 shall adopt standards and procedures for the accreditation of
 440-8 education and training programs for recertification of persons
 440-9 employed in the food service industry who have previously completed
 440-10 a program accredited in accordance with this subchapter or have
 440-11 been certified by a local health jurisdiction and have completed
 440-12 training and testing requirements substantially similar to those
 440-13 required by this subchapter for program accreditation. The
 440-14 requirements for accreditation in Section [438.043](#) need not be met
 440-15 by an education or training program for recertification.

440-16 SECTION 3.1136. Section [438.0431](#)(b), Health and Safety
 440-17 Code, is amended to read as follows:

440-18 (b) The executive commissioner [~~of the Health and Human~~
 440-19 ~~Services Commission~~] shall by rule define the basic food safety
 440-20 training or education required to be included in a course
 440-21 curriculum. The course length may not exceed two hours.

440-22 SECTION 3.1137. Section [438.047](#), Health and Safety Code, is
 440-23 amended to read as follows:

440-24 Sec. 438.047. FEES. The department in accordance with
 440-25 department rules shall charge an application fee and an audit fee
 440-26 sufficient to cover the entire cost of accreditation, audit, and
 440-27 maintenance of the registry.

440-28 SECTION 3.1138. Section [438.102](#), Health and Safety Code, is
 440-29 amended to read as follows:

440-30 Sec. 438.102. CERTIFICATION PROGRAM. (a) The executive
 440-31 commissioner [~~board~~] shall establish a certification program for
 440-32 food managers in accordance with this subchapter.

440-33 (b) The executive commissioner [~~board~~] by rule shall
 440-34 prescribe the requirements for issuance and renewal of a food
 440-35 manager certificate under this subchapter.

440-36 SECTION 3.1139. Section [438.104](#), Health and Safety Code, is
 440-37 amended to read as follows:

440-38 Sec. 438.104. APPROVAL OF EXAMINATIONS; SELECTION OF
 440-39 EXAMINATION SITES. (a) The executive commissioner [~~board~~] shall
 440-40 adopt criteria to approve examinations.

440-41 (b) In administering this subchapter, the department
 440-42 [~~board~~] shall consider the impact of the traveling distance and
 440-43 time required for a food manager to obtain certification. The
 440-44 department [~~board~~] shall give particular consideration to
 440-45 mitigating the impact of this subchapter on food managers in rural
 440-46 areas. The department [~~board~~] shall use the Internet to implement
 440-47 the certification and may develop a system to permit administration
 440-48 of the examination using the Internet.

440-49 SECTION 3.1140. Section [438.106](#), Health and Safety Code, is
 440-50 amended to read as follows:

440-51 Sec. 438.106. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
 440-52 [~~BOARD~~]; FEES. (a) The executive commissioner [~~board~~] by rule may
 440-53 adopt a fee for issuance or renewal of a food manager certificate
 440-54 under this subchapter in amounts reasonable and necessary to
 440-55 administer this subchapter, but not to exceed \$35.

440-56 (b) The executive commissioner [~~board~~] by rule may adopt a
 440-57 fee, in an amount not to exceed \$10, for an examination administered
 440-58 by the department under this subchapter.

440-59 (c) The executive commissioner [~~board~~] may adopt rules for
 440-60 the denial, suspension, and revocation of a food manager
 440-61 certificate issued under this subchapter.

440-62 (d) The executive commissioner [~~board~~] by rule may
 440-63 prescribe standards for:

440-64 (1) examination sites;
 440-65 (2) expenses of administration of examinations under
 440-66 this subchapter; and

440-67 (3) site audits for administration of this subchapter.

440-68 SECTION 3.1141. Section [439.002](#), Health and Safety Code, is
 440-69 amended to read as follows:

441-1 Sec. 439.002. MANUFACTURE AND SALE. Unless prohibited by
 441-2 federal law, laetrile [Laetrile] may be manufactured in this state
 441-3 in accordance with Chapter 431 (Texas Food, Drug, and Cosmetic Act)
 441-4 and may be sold in this state for distribution by licensed
 441-5 physicians.

441-6 SECTION 3.1142. Sections 439.003(a) and (b), Health and
 441-7 Safety Code, are amended to read as follows:

441-8 (a) Unless prohibited by federal law, a [A] licensed
 441-9 physician may prescribe or administer laetrile in the treatment of
 441-10 cancer.

441-11 (b) A physician acting in accordance with federal and state
 441-12 law is not subject to disciplinary action by the Texas [State Board
 441-13 of] Medical Board [Examiners] for prescribing or administering
 441-14 laetrile to a patient under the physician's care who has requested
 441-15 the substance unless that board makes a formal finding that the
 441-16 substance is harmful.

441-17 SECTION 3.1143. Sections 439.005(b) and (c), Health and
 441-18 Safety Code, are amended to read as follows:

441-19 (b) The Texas [State Board of] Medical Board [Examiners] may
 441-20 suspend, cancel, or revoke the license of any physician who:

441-21 (1) fails to keep complete and accurate records of
 441-22 purchases and disposals of laetrile;

441-23 (2) prescribes or dispenses laetrile to a person known
 441-24 to be a habitual user of narcotic or dangerous drugs or to a person
 441-25 who the physician should have known was a habitual user of narcotic
 441-26 or dangerous drugs;

441-27 (3) uses any advertising that tends to mislead or
 441-28 deceive the public; or

441-29 (4) is unable to practice medicine with reasonable
 441-30 skill and safety to patients because of any mental or physical
 441-31 condition, including age, illness, or drunkenness, or because of
 441-32 excessive use of drugs, narcotics, chemicals, or any other type of
 441-33 material.

441-34 (c) Subsection (b)(2) does not apply to a person being
 441-35 treated by the physician for narcotic use after the physician
 441-36 notifies the Texas [State Board of] Medical Board [Examiners] in
 441-37 writing of the name and address of the patient being treated.

441-38 SECTION 3.1144. Sections 439.015(b) and (c), Health and
 441-39 Safety Code, are amended to read as follows:

441-40 (b) The Texas [State Board of] Medical Board [Examiners] may
 441-41 suspend, cancel, or revoke the license of any physician who:

441-42 (1) fails to keep complete and accurate records of
 441-43 purchases and disposals of DMSO in a formulation not approved for
 441-44 human use; or

441-45 (2) prescribes or administers DMSO in a manner that
 441-46 has been proven, in a formal hearing held by the board, to be
 441-47 harmful to the patient.

441-48 (c) The Texas [State Board of] Medical Board [Examiners] may
 441-49 temporarily suspend the license of a physician who prescribes or
 441-50 administers DMSO in a manner that, in the board's opinion, creates
 441-51 an immediate danger to the public. The board must conduct a hearing
 441-52 on the temporary suspension as soon as practicable after the
 441-53 suspension.

441-54 SECTION 3.1145. Section 439.021(d), Health and Safety Code,
 441-55 is amended to read as follows:

441-56 (d) The consulting pharmacist shall account to the
 441-57 department [Texas Department of Health] for all drugs selected for
 441-58 shipment under this subchapter.

441-59 SECTION 3.1146. Section 439.022, Health and Safety Code, is
 441-60 amended to read as follows:

441-61 Sec. 439.022. ADMINISTRATION. (a) The executive
 441-62 commissioner [Texas Board of Health] shall adopt rules consistent
 441-63 with federal and state law to implement this subchapter, including
 441-64 rules relating to:

441-65 (1) the packaging and inventory of drugs for shipment;

441-66 (2) the manner of shipment of the drugs from original
 441-67 shipment under this subchapter until the final destination; and

441-68 (3) safeguards to ensure the proper handling of and
 441-69 accounting for all drugs shipped.

(b) The executive commissioner [Texas Board of Health] by rule shall determine, in consultation with the United States Department of State and other appropriate federal agencies, the foreign countries to receive the drugs.

(c) The salvaging of drugs under this subchapter is not subject to Chapter 431 (Texas Food, Drug, and Cosmetic Act).

SECTION 3.1147. Section 439.023(a), Health and Safety Code, is amended to read as follows:

(a) The department [Texas Department of Health] may contract with other entities, including local governments and civic organizations, to implement this subchapter.

SECTION 3.1148. Section 440.003(9), Health and Safety Code, is amended to read as follows:

(9) "Health authority" means the department, the municipal or[~~or~~] county[~~, or state~~] health officer or the officer's representative, or any other agency having jurisdiction or control over the matters embraced within the specifications and requirements of this chapter.

SECTION 3.1149. Section 440.005, Health and Safety Code, is amended to read as follows:

Sec. 440.005. HEARINGS. [(a)] A hearing conducted [by the board] in the administration of this chapter is governed by Chapter 2001, Government Code.

[(b) Based on the record of a hearing conducted under this chapter, the department shall make a finding and shall sustain, change, or rescind an official notice or order considered in the hearing.]

SECTION 3.1150. Section 440.006, Health and Safety Code, is amended to read as follows:

Sec. 440.006. POWERS [AND DUTIES] OF EXECUTIVE COMMISSIONER
[BOARD]. The executive commissioner [board] may:

(1) adopt rules prescribing standards or related requirements for the operation of establishments for the manufacture of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products, including standards or requirements for the:

(A) health, cleanliness, education, and training of personnel who are employed in the establishments;

(B) protection of raw materials, manufactured merchandise, and merchandise held for sale;

- (C) design, construction, installation, and cleanliness of equipment and utensils;
- (D) sanitary facilities and controls of the establishment.

including vehicles;

(F) production processes and controls; and

(G) institution and content of a system of

(G) institution and content of a system of records to be maintained by the establishment; and
(2) adopt rules prescribing procedures for the

(A) requirement of a valid license to operate an establishment:

(B) issuance, suspension, revocation, and reinstatement of licenses:

(C) administrative hearings held under this
chapter [before the board or its designee];

(D) institution of certain court proceedings by
the department [board] or its designee;
(E) inspection of establishments and securing of

(F) access to the establishments and to the samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products;

(G) compliance by manufacturers outside the

jurisdiction of the state; and

(H) review of plans for future construction.

443-1 and Safety Code, are amended to read as follows:

443-2 (a) A person desiring to operate an establishment for the
 443-3 manufacture of a frozen dessert, imitation frozen dessert, product
 443-4 sold in semblance of a frozen dessert, or a mix for one of those
 443-5 products may apply to the department for a license. A license shall
 443-6 be granted under the department's procedural rules [~~adopted by the~~
 443-7 ~~board~~] and shall be issued only for the purpose and use as stated on
 443-8 the application for a license.

443-9 (c) A license may not be issued to a person who does not
 443-10 comply with the standards prescribed by department rule [~~the board~~]
 443-11 under this chapter.

443-12 (d) A license issued under this chapter must be renewed
 443-13 every two years [~~on or before September 1 of each year~~] in
 443-14 accordance with department rules [~~adopted by the board~~].

443-15 SECTION 3.1152. Sections 440.013(a), (b), and (c), Health
 443-16 and Safety Code, are amended to read as follows:

443-17 (a) A [\$200] nonrefundable fee for each establishment in an
 443-18 amount set by the executive commissioner by rule as prescribed by
 443-19 Section 12.0111 must accompany each application for a license.

443-20 (b) The department also shall assess the following fees in
 443-21 the amounts set by the executive commissioner by rule as prescribed
 443-22 by Section 12.0111:

443-23 (1) a fee for a frozen dessert manufacturer located in
 443-24 this state in an [~~the~~] amount [~~of one cent~~] per 100 pounds of
 443-25 manufactured or processed frozen dessert manufactured or processed
 443-26 and distributed in this state by that manufacturer;

443-27 (2) a fee for a frozen dessert manufacturer not
 443-28 located in this state in an [~~the~~] amount [~~of one cent~~] per 100
 443-29 pounds of frozen desserts manufactured or processed by the
 443-30 manufacturer in another state and imported for sale in this state;
 443-31 and

443-32 (3) a fee for the actual cost of analyzing samples of
 443-33 frozen desserts for a frozen dessert manufacturer not located in
 443-34 this state.

443-35 (c) The executive commissioner [~~board~~] shall adopt rules to
 443-36 collect fees imposed under this section monthly[, quarterly,
 443-37 semiannually, or annually] based on amounts due by the frozen
 443-38 dessert manufacturer.

443-39 SECTION 3.1153. Section 440.014, Health and Safety Code, is
 443-40 amended to read as follows:

443-41 Sec. 440.014. RECORDKEEPING [~~RECORD KEEPING~~]. The
 443-42 executive commissioner [~~board~~] shall adopt rules establishing
 443-43 minimum standards for recordkeeping [~~record keeping~~] by persons
 443-44 required to pay fees under this chapter and the records shall be
 443-45 made available to the department on request.

443-46 SECTION 3.1154. Section 440.017, Health and Safety Code, is
 443-47 amended to read as follows:

443-48 Sec. 440.017. REFUSAL TO GRANT LICENSE; SUSPENSION OR
 443-49 REVOCATION OF LICENSE. In accordance with rules adopted under
 443-50 Section 440.006, the department [~~commissioner~~] may refuse an
 443-51 application for a license under this chapter or may suspend or
 443-52 revoke a license issued under this chapter.

443-53 SECTION 3.1155. Section 440.031(a), Health and Safety Code,
 443-54 is amended to read as follows:

443-55 (a) Under rules adopted by the executive commissioner
 443-56 [~~board~~], the department's authorized representatives have free
 443-57 access at all reasonable hours to any establishment for the
 443-58 manufacture of a frozen dessert, imitation frozen dessert, product
 443-59 sold in semblance of a frozen dessert, or a mix for one of those
 443-60 products or to any vehicle being used to transport in commerce a
 443-61 frozen dessert, imitation frozen dessert, product sold in semblance
 443-62 of a frozen dessert, or a mix for one of those products for the
 443-63 purpose of:

443-64 (1) inspecting the establishment or vehicle to
 443-65 determine compliance with the standards or related requirements
 443-66 prescribed [~~by the board~~] under this chapter; or

443-67 (2) securing samples of frozen desserts, imitation
 443-68 frozen desserts, products sold in semblance of frozen desserts, or
 443-69 a mix for one of those products for the purpose of making or causing

444-1 to be made an examination of the samples to determine compliance
 444-2 with the standards or related requirements prescribed [by the
 444-3 board] under this chapter.

444-4 SECTION 3.1156. Section 440.032(a), Health and Safety Code,
 444-5 is amended to read as follows:

444-6 (a) A person commits an offense if the person knowingly or
 444-7 intentionally violates Section 440.011 or a rule adopted [by the
 444-8 board] under this chapter.

444-9 SECTION 3.1157. Section 441.003, Health and Safety Code, is
 444-10 amended to read as follows:

444-11 Sec. 441.003. RULES. The executive commissioner
 444-12 [~~department~~] may adopt rules that are necessary to implement this
 444-13 chapter that promote the public health and safety. The rules may
 444-14 include rules relating to certificate suspension, revocation, or
 444-15 other disciplinary action and relating to certificate renewal.

444-16 SECTION 3.1158. Subtitle B, Title 6, Health and Safety
 444-17 Code, is amended to conform to Chapter 461, Health and Safety Code,
 444-18 as it existed on August 31, 2009, and to Section 1.19(a)(3), Chapter
 444-19 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session,
 444-20 2003, by adding Chapter 461A to read as follows:

444-21 CHAPTER 461A. DEPARTMENT OF STATE HEALTH SERVICES: CHEMICAL
 444-22 DEPENDENCY SERVICES AND RELATED PROGRAMS

444-23 SUBCHAPTER A. GENERAL PROVISIONS

444-24 Sec. 461A.001. POLICY. Chemical dependency is a
 444-25 preventable and treatable illness and public health problem
 444-26 affecting the general welfare and the economy of this state. The
 444-27 legislature recognizes the need for proper and sufficient
 444-28 facilities, programs, and procedures for prevention, intervention,
 444-29 treatment, and rehabilitation. It is the policy of this state that
 444-30 a person with a chemical dependency shall be offered a continuum of
 444-31 services that will enable the person to lead a normal life as a
 444-32 productive member of society.

444-33 Sec. 461A.002. DEFINITIONS. In this chapter:

444-34 (1) "Chemical dependency" means:

444-35 (A) abuse of alcohol or a controlled substance;

444-36 (B) psychological or physical dependence on
 444-37 alcohol or a controlled substance; or

444-38 (C) addiction to alcohol or a controlled
 444-39 substance.

444-40 (2) "Commission" means the Health and Human Services
 444-41 Commission.

444-42 (3) "Commissioner" means the commissioner of state
 444-43 health services.

444-44 (4) "Controlled substance" means a:

444-45 (A) toxic inhalant; or

444-46 (B) substance designated as a controlled
 444-47 substance by Chapter 481.

444-48 (5) "Department" means the Department of State Health
 444-49 Services.

444-50 (6) "Executive commissioner" means the executive
 444-51 commissioner of the Health and Human Services Commission.

444-52 (7) "Intervention" means the interruption of the onset
 444-53 or progression of chemical dependency in the early stages.

444-54 (8) "Prevention" means the reduction of a person's
 444-55 risk of abusing alcohol or a controlled substance or becoming
 444-56 chemically dependent.

444-57 (9) "Rehabilitation" means the reestablishment of the
 444-58 social and vocational life of a person after treatment.

444-59 (10) "Toxic inhalant" means a gaseous substance that
 444-60 is inhaled by a person to produce a desired physical or
 444-61 psychological effect and that may cause personal injury or illness
 444-62 to the person.

444-63 (11) "Treatment" means the initiation and promotion,
 444-64 in a planned, structured, and organized manner, of a person's
 444-65 chemical-free status or the maintenance of a person free of illegal
 444-66 drugs.

444-67 (12) "Treatment facility" means a public or private
 444-68 hospital, a detoxification facility, a primary care facility, an
 444-69 intensive care facility, a long-term care facility, an outpatient

care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed and approved by the department under Chapter 464, or a facility licensed or operated under Title 7 that provides treatment services. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office.

Sec. 461A.003. IMPLEMENTATION BY DEPARTMENT. The department shall implement this chapter for the purpose of preventing broken homes and the loss of lives.

Sec. 461A.004. COOPERATION WITH DEPARTMENT. (a) Each department, agency, officer, and employee of the state, when requested by the department, shall cooperate with the department in appropriate activities to implement this chapter.

(b) This section does not give the department control over existing facilities, institutions, or agencies or require the facilities, institutions, or agencies to serve the department in a manner that is inconsistent with the functions, the authority, or the laws and rules governing the activities of the facilities, institutions, or agencies.

(c) This section does not authorize the department to use a private institution or agency without its consent or to pay a private institution or agency for services that a public institution or agency is willing and able to provide.

Sec. 461A.005. CONFLICT WITH OTHER LAW. To the extent a power or duty given to the department or commissioner by this chapter conflicts with Section [531.0055](#), Government Code, Section [531.0055](#) controls.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT, COMMISSIONER, AND EXECUTIVE COMMISSIONER

Sec. 461A.051. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER. The executive commissioner shall:

(1) adopt rules governing the functions of the department in relation to chemical dependency services and related programs, including rules that prescribe the policies and procedures followed by the department in administering chemical dependency services and related programs; and

(2) by rule and based on criteria proposed by the department, establish minimum criteria that peer assistance programs must meet to be governed by and entitled to the benefits of a law that authorizes licensing and disciplinary authorities to establish or approve peer assistance programs for impaired professionals.

Sec. 461A.052. POWERS AND DUTIES OF DEPARTMENT. (a) The department shall:

(1) provide for research and study of the problems of chemical dependency in this state and seek to focus public attention on those problems through public information and education programs;

(2) plan, develop, coordinate, evaluate, and implement constructive methods and programs for the prevention, intervention, treatment, and rehabilitation of chemical dependency in cooperation with federal and state agencies, local governments, organizations, and persons, and provide technical assistance, funds, and consultation services for statewide and community-based services;

(3) cooperate with and enlist the assistance of:
 (A) other state, federal, and local agencies;
 (B) hospitals and clinics;

(C) public health, welfare, and criminal justice system authorities;

(D) educational and medical agencies and organizations; and

(E) other related public and private groups and persons;

(4) expand chemical dependency services for children

when funds are available because of the long-term benefits of those services to this state and its citizens;

(5) sponsor, promote, and conduct educational programs on the prevention and treatment of chemical dependency, and maintain a public information clearinghouse to purchase and provide books, literature, audiovisuals, and other educational material for the programs;

(6) sponsor, promote, and conduct training programs for persons delivering prevention, intervention, treatment, and rehabilitation services and for persons in the criminal justice system or otherwise in a position to identify the service needs of persons with a chemical dependency and their families;

(7) require programs rendering services to persons with a chemical dependency to safeguard those persons' legal rights of citizenship and maintain the confidentiality of client records as required by state and federal law;

(8) maximize the use of available funds for direct services rather than administrative services;

(9) consistently monitor the expenditure of funds and the provision of services by all grant and contract recipients to assure that the services are effective and properly staffed and meet the standards adopted under this chapter;

(10) make the monitoring reports prepared under Subdivision (9) a matter of public record;

(11) license treatment facilities under Chapter 464;

(12) use funds appropriated to the department for purposes of providing chemical dependency services and related programs to carry out those purposes and maximize the overall state allotment of federal funds;

(13) plan, develop, coordinate, evaluate, and implement constructive methods and programs to provide healthy alternatives for youth at risk of selling controlled substances;

(14) submit to the federal government reports and strategies necessary to comply with Section 1926 of the federal Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, Pub. L. No. 102-321 (42 U.S.C. Section 300x-26), and coordinate the reports and strategies with appropriate state governmental entities; and

(15) regulate, coordinate, and provide training for alcohol awareness courses required under Section 106.115, Alcoholic Beverage Code, and may charge a fee for an activity performed by the department under this subdivision.

(b) The department may establish regional alcohol advisory committees consistent with the regions established under Section 531.024, Government Code.

(c) The department may appoint advisory committees to assist the department in performing its duties under this chapter. A member of an advisory committee appointed under this subsection may receive reimbursement for travel expenses as provided by Section 2110.004, Government Code.

(d) The department shall comply with federal and state laws related to program and facility accessibility.

(e) The commissioner shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the department's programs and services under this chapter.

(f) Subsection (a)(15) does not apply to a 12-step or similar self-help alcohol dependency recovery program:

(1) that does not offer or purport to offer an alcohol dependency treatment program;

(2) that does not charge program participants; and

(3) in which program participants may maintain anonymity.

Sec. 461A.053. EMERGENCY TREATMENT RESOURCES. The commissioner may develop emergency treatment resources for persons who appear to be:

(1) chemically dependent;

(2) under the influence of alcohol or a controlled substance and in need of medical attention; or

(3) undergoing withdrawal or experiencing medical complications related to a chemical dependency.

Sec. 461A.054. REFERRAL SERVICES FOR PERSONS FROM CRIMINAL JUSTICE SYSTEM. (a) The commissioner may establish programs for the referral, treatment, or rehabilitation of persons from the criminal justice system within the terms of bail, probation, conditional discharge, parole, or other conditional release.

(b) A referral may not be inconsistent with medical or clinical judgment or conflict with this chapter or Chapter 462 or applicable federal regulations.

Sec. 461A.055. REPORTING OF CHILDREN INVOLVED IN SUBSTANCE ABUSE OR FROM FAMILY INVOLVED IN SUBSTANCE ABUSE. (a) The department in the context of mental health services, the commission, the Department of Aging and Disability Services, and the Texas Juvenile Justice Department shall:

(1) attempt to determine whether a child under the agency's jurisdiction is involved in substance abuse or is from a substance-abusing family;

child; and (2) record its determination in the case record of the
purposes. (3) record the information for statistical reporting

(b) The agencies shall revise their assessment forms, as needed, to include a determination under this section.

(c) The department shall coordinate the efforts of the agencies described by Subsection (a) in complying with this section.

Sec. 461A.056. STATEWIDE SERVICE DELIVERY PLAN. (a) The department shall develop and adopt a statewide service delivery plan. The department shall update the plan not later than February 1 of each even-numbered year. The plan must include:

(1) a statement of the department's mission, goals, and objectives regarding chemical dependency prevention, intervention, and treatment;

(2) a statement of how chemical dependency services and chemical dependency case management services should be

and chemical dependency case management services should be organized, managed, and delivered;

(3) a comprehensive assessment of:

(A) chemical dependency services available in this state at the time the plan is prepared; and

(B) future chemical dependency services needs;

(4) a service funding process that ensures equity in the availability of chemical dependency services across this state and within each service region established under Section [531.024](#), Government Code;

(5) a provider selection and monitoring process that emphasizes quality in the provision of services;

(7) a mechanism for the department to obtain and consider local public participation in identifying and assessing

consider local public participation in identifying and assessing regional needs for chemical dependency services;

(8) a process for coordinating and assisting administration and delivery of services among federal, state, and local public and private chemical dependency programs that provide similar services; and

(9) a process for coordinating the department's activities with those of other state health and human services agencies and criminal justice agencies to avoid duplications and inconsistencies in the efforts of the agencies in chemical dependency prevention, intervention, treatment, rehabilitation, research, education, and training.

(b) The department shall gather information needed for the development of the plan through systematic methods designed to include local, regional, and statewide perspectives.

(c) In developing the plan, the department shall analyze the costs of implementation of proposed features of the plan by both the department and service providers. The department shall use the analysis to maximize the efficiency of service delivery under the

448-1 final plan.

448-2 (d) The plan must provide a priority for obtaining treatment
448-3 services for individuals in need of treatment who are parents of a
448-4 child in foster care.

448-5 Sec. 461A.057. STATE AGENCY SERVICES STANDARDS. (a) The
448-6 executive commissioner by rule shall develop model program
448-7 standards for substance abuse services for use by each state agency
448-8 that provides or pays for substance abuse services. The department
448-9 shall provide the model standards to each agency that provides
448-10 substance abuse services as identified by the commission.

448-11 (b) Model standards developed under Subsection (a) must be
448-12 designed to improve the consistency of substance abuse services
448-13 provided by or through a state agency.

448-14 (c) Biennially the department shall review the model
448-15 standards developed under Subsection (a) and determine whether each
448-16 standard contributes effectively to the consistency of service
448-17 delivery by state agencies.

SUBCHAPTER C. SERVICES AND PROGRAMS

448-19 Sec. 461A.101. LOCAL BEHAVIORAL HEALTH AUTHORITIES. The
448-20 department may designate and provide services through local
448-21 behavioral health authorities as provided by Section 533.0356 and
448-22 rules adopted by the executive commissioner.

448-23 Sec. 461A.102. EDUCATION AND RESEARCH PROGRAMS CONCERNING
448-24 CONTROLLED SUBSTANCES. (a) In this section, "controlled
448-25 substances" means those substances designated as controlled
448-26 substances by Chapter 481.

448-27 (b) The department, in cooperation with other appropriate
448-28 state agencies, shall carry out educational programs designed to
448-29 prevent or deter misuse and abuse of controlled substances. In
448-30 connection with those programs the department may:

448-31 (1) promote better recognition of the problems of
448-32 misuse and abuse of controlled substances within the regulated
448-33 industry and among interested groups and organizations;

448-34 (2) assist the regulated industry and interested
448-35 groups and organizations in contributing to the reduction of misuse
448-36 and abuse of controlled substances;

448-37 (3) consult with interested groups and organizations
448-38 to aid those groups in solving administrative and organizational
448-39 problems;

448-40 (4) evaluate procedures, projects, techniques, and
448-41 controls conducted or proposed as part of educational programs on
448-42 misuse and abuse of controlled substances;

448-43 (5) disseminate the results of research on misuse and
448-44 abuse of controlled substances to promote a better public
448-45 understanding of problems that exist and ways to combat those
448-46 problems; and

448-47 (6) assist in educating and training state and local
448-48 law enforcement officials in their efforts to control misuse and
448-49 abuse of controlled substances.

448-50 (c) The department shall encourage research on misuse and
448-51 abuse of controlled substances. In connection with research, and
448-52 in furtherance of the enforcement of Chapter 481, the commissioner
448-53 may:

448-54 (1) establish methods to assess accurately the effects
448-55 of controlled substances and identify and characterize those with
448-56 potential for abuse;

448-57 (2) make studies and undertake programs of research
448-58 to:

448-59 (A) develop new or improved approaches,
448-60 techniques, systems, equipment, and devices to strengthen the
448-61 enforcement of Chapter 481;

448-62 (B) determine patterns and social effects of
448-63 misuse and abuse of controlled substances; and

448-64 (C) improve methods for preventing, predicting,
448-65 understanding, and dealing with the misuse and abuse of controlled
448-66 substances; and

448-67 (3) contract with public agencies, institutions of
448-68 higher education, and private organizations or individuals to
448-69 conduct research, demonstrations, or special projects that

449-1 directly pertain to the misuse and abuse of controlled substances.

449-2 Sec. 461A.103. OUTREACH PROGRAMS FOR INTRAVENOUS DRUG
449-3 USERS. (a) In this section, "HIV" means human immunodeficiency
449-4 virus.

449-5 (b) The department may fund community outreach programs
449-6 that have direct contact with intravenous drug users.

449-7 (c) An outreach program funded by the department must:

449-8 (1) provide education on HIV infection based on the
449-9 model education program developed by the department;

449-10 (2) encourage behavior changes to reduce the
449-11 possibility of HIV transmission;

449-12 (3) promote other HIV risk reduction activities; and
449-13 (4) encourage behavior consistent with state criminal
449-14 laws.

449-15 Sec. 461A.104. MINIMUM PROGRAM REQUIREMENTS. (a) In this
449-16 section, "coping skills training" means instruction in the elements
449-17 and practice of and reasons for the skills of communication, stress
449-18 management, problem solving, daily living, and decision making.

449-19 (b) A chemical dependency intensive intervention,
449-20 outpatient, residential treatment, or rehabilitation program that
449-21 is provided by the department or that is funded wholly or partly by
449-22 funds allocated through the department must include:

449-23 (1) coping skills training;

449-24 (2) education regarding the manifestations and
449-25 dynamics of dysfunctional relationships within the family; and
449-26 (3) support group opportunities for children and
449-27 adults.

449-28 (c) This section does not apply to:

449-29 (1) a detoxification program or that part of a program
449-30 that provides detoxification; or
449-31 (2) a program provided by the Texas Juvenile Justice
449-32 Department.

449-33 Sec. 461A.105. RELAPSE RATE REPORTING. (a) A treatment
449-34 program provided or funded by the department shall report to the
449-35 department on the effectiveness of the chemical dependency
449-36 treatment program.

449-37 (b) The report must show to the extent possible, without
449-38 violating the confidentiality of information received by the
449-39 program, the rate of relapse of persons who have received treatment
449-40 services.

449-41 (c) The executive commissioner by rule may provide for the
449-42 content of a report and the procedure for reporting under this
449-43 section. Reports must be uniform in classifications of persons
449-44 receiving treatment according to the severity of addiction,
449-45 substance abused, age of person treated, and modality of treatment.
449-46 A report may not reveal the name of an individual subject to
449-47 treatment or of a family member or acquaintance of an individual
449-48 treated and may not describe circumstances from which any of those
449-49 individuals may be identified.

449-50 Sec. 461A.106. COMPULSIVE GAMBLING PROGRAM. (a) The
449-51 department shall establish a program for:

449-52 (1) public education, research, and training
449-53 regarding problem or compulsive gambling; and
449-54 (2) the treatment and prevention of problem or
449-55 compulsive gambling.

449-56 (b) The department's program under Subsection (a) must
449-57 include:

449-58 (1) establishing and maintaining a list of Internet
449-59 sites and toll-free "800" telephone numbers of nonprofit entities
449-60 that provide crisis counseling and referral services to families
449-61 experiencing difficulty as a result of problem or compulsive
449-62 gambling;

449-63 (2) promoting public awareness regarding the
449-64 recognition and prevention of problem or compulsive gambling;

449-65 (3) facilitating, through in-service training and
449-66 other means, the availability of effective assistance programs for
449-67 problem or compulsive gamblers; and

449-68 (4) conducting studies to identify adults and
449-69 juveniles in this state who are, or who are at risk of becoming,

450-1 problem or compulsive gamblers.

450-2 SUBCHAPTER D. SERVICE CONTRACTS

450-3 Sec. 461A.151. CLIENT SERVICE CONTRACT STANDARDS. (a) In
450-4 each contract for the purchase of chemical dependency
450-5 program-related client services, the department shall include:

450-6 (1) clearly defined contract goals, outputs, and
450-7 measurable outcomes that relate directly to program objectives;

450-8 (2) clearly defined sanctions or penalties for failure
450-9 to comply with or perform contract terms or conditions; and

450-10 (3) clearly specified accounting, reporting, and
450-11 auditing requirements applicable to money received under the
450-12 contract.

450-13 (b) Contract goals must include a standard developed by the
450-14 department that is based on a percentage of program clients who
450-15 maintain long-term recovery for an extended period as defined by
450-16 the department.

450-17 Sec. 461A.152. CONTRACT MONITORING. The department shall
450-18 establish a formal program to monitor program-related client
450-19 services contracts made by the department. The department must:

450-20 (1) monitor compliance with financial and performance
450-21 requirements using a risk assessment methodology; and

450-22 (2) obtain and evaluate program cost information to
450-23 ensure that each cost, including an administrative cost, is
450-24 reasonable and necessary to achieve program objectives.

450-25 Sec. 461A.153. TECHNICAL ASSISTANCE PROGRAM. The
450-26 department shall adopt technical assistance policies and
450-27 procedures for a technical assistance program that:

450-28 (1) is clearly separate from the department's contract
450-29 monitoring activities;

450-30 (2) has a single office for technical assistance
450-31 requests; and

450-32 (3) includes explicit response time frames.

450-33 SUBCHAPTER E. FUNDING

450-34 Sec. 461A.201. FINANCES. (a) The department may accept
450-35 gifts and grants for the purposes of providing chemical dependency
450-36 services and related programs.

450-37 (b) The department is the state agency that receives and
450-38 administers federal funds for alcohol and drug abuse, including
450-39 applying for, administering, and disbursing funds under the federal
450-40 Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C.
450-41 Section 1101 et seq.). The executive commissioner prescribes all
450-42 necessary department policies relating to alcohol and drug abuse.

450-43 (c) An organization or other entity is not eligible for a
450-44 grant of state funds from the department under this chapter unless
450-45 the organization or entity provides matching funds in either cash
450-46 or in-kind contributions equal to at least five percent of the total
450-47 grant of state funds from the department. The department may waive
450-48 that requirement if the department determines that the requirement
450-49 may jeopardize the provision of needed services.

450-50 (d) In allocating grant funds, the department shall
450-51 consider the state facility hospitalization rate of substance
450-52 abusers who are from the service area of the entity requesting the
450-53 grant. An organization or other entity is not eligible for a grant
450-54 of state funds for a treatment or rehabilitation program unless the
450-55 program will, at a minimum, reduce state facility hospitalization
450-56 of substance abusers by a percentage established by the department.

450-57 (e) As a condition to receiving contract or grant funds
450-58 under this chapter, a public or private organization or entity must
450-59 provide to the department information relating to:

450-60 (1) the number of persons with a chemical dependency
450-61 the organization or entity served, if any, during the preceding
450-62 year, the municipalities and counties of residence of those
450-63 persons, and the number of persons served from each municipality
450-64 and county; and

450-65 (2) the number of persons with a chemical dependency
450-66 the organization or entity expects to serve during the term of the
450-67 requested grant or contract, the expected municipalities and
450-68 counties of residence for those persons, and the expected number of
450-69 persons served from each municipality and county.

451-1
 451-2 Sec. 461A.202. SERVICES FUNDING. (a) The executive
 451-3 commissioner by rule shall adopt a system of funding the provision
 451-4 of chemical dependency services that includes competitive and
 noncompetitive procedures to:

- 451-5 (1) maximize the range of treatment services available
 451-6 in each service region;
- 451-7 (2) provide reasonable access in each region to
 451-8 available services; and
- 451-9 (3) include local public participation in making
 451-10 regional funding decisions and formal funding recommendations.

451-11 (b) The system must require that the department award each
 451-12 proposed chemical dependency services contract to the applicant
 451-13 that the department determines has made the bid that provides the
 451-14 best value.

451-15 (c) In determining the best value bid for a contract under
 451-16 this section, the department shall consider:

- 451-17 (1) the quality of the proposed service;
- 451-18 (2) cost;
- 451-19 (3) the applicant's ability to:
 - 451-20 (A) perform the contract;
 - 451-21 (B) provide the required services; and
 - 451-22 (C) provide continuity of service;
- 451-23 (4) whether the applicant can perform the contract or
 451-24 provide the services within the period required, without delay or
 451-25 interference;
- 451-26 (5) the applicant's history of:
 - 451-27 (A) contract performance; and
 - 451-28 (B) compliance with the laws relating to the
 451-29 applicant's business operations and the affected services;
- 451-30 (6) whether the applicant's financial resources are
 451-31 sufficient to perform the contract and to provide the services;
- 451-32 (7) whether necessary or desirable support and
 451-33 ancillary services are available to the applicant;
- 451-34 (8) the degree of community support for the applicant;
- 451-35 (9) the quality of the facilities and equipment
 451-36 available to or proposed by the applicant;
- 451-37 (10) the ability of the applicant to meet all
 451-38 applicable written department policies, principles, and rules;
- 451-39 (11) state investment in the applicant; and
- 451-40 (12) other factors the department determines
 451-41 relevant.

451-42 (d) Rules adopted under this section must set out the
 451-43 department's provider selection processes, including:

- 451-44 (1) service purchase methods;
- 451-45 (2) eligibility criteria;
- 451-46 (3) provider selection criteria; and
- 451-47 (4) selection determination procedures.

451-48 Sec. 461A.203. FUNDING POLICY MANUAL. (a) The department
 451-49 shall publish a funding policy manual that explains:

451-50 (1) the department's funding priorities and provider
 451-51 selection criteria; and

451-52 (2) the methods the department used to develop funding
 451-53 policies.

451-54 (b) The department shall update the manual annually.

451-55 Sec. 461A.204. UNIT RATE REIMBURSEMENT. (a) In this
 451-56 section, "unit rate reimbursement" means reimbursement for a
 451-57 service paid at a specified rate for a unit of the service provided
 451-58 to a client multiplied by the number of units provided.

451-59 (b) The department shall study the procurement of and
 451-60 payment for chemical dependency treatment services on a unit rate
 451-61 reimbursement basis.

451-62 (c) If the department determines, after consideration of
 451-63 the study, that procurement of and payment for chemical dependency
 451-64 treatment services on a unit rate reimbursement basis in
 451-65 appropriate areas of the state would result in obtaining the
 451-66 highest quality treatment services at the best price and the lowest
 451-67 administrative cost to the department, the department shall adopt a
 451-68 unit rate reimbursement system for those services. The system
 451-69 must:

(4) provide opportunities for representatives from the public and private sectors to comment on the committee's activities and make recommendations related to the strategy.

(c) The Drug Demand Reduction Advisory Committee shall identify lead or contributing agencies or offices that shall implement the strategy described in Subsection (b). The committee shall coordinate the implementation of the strategy by those agencies or offices.

Sec. 461A.254. ADDITIONAL ADVISORY COMMITTEES. The Drug Demand Reduction Advisory Committee may establish additional advisory committees composed of representatives from governmental entities and the private sector to assist the committee in carrying out its duties.

Sec. 461A.255. REPORT. Not later than January 15 of each odd-numbered year, the Drug Demand Reduction Advisory Committee shall present to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

- (1) the committee's progress in developing and coordinating the strategy described in Section 461A.253(b);
- (2) the status and funding of state programs relating to reducing drug demand; and
- (3) recommendations for legislation to address issues involved in reducing drug demand.

SECTION 3.1159. The heading to Chapter 462, Health and Safety Code, is amended to read as follows:

CHAPTER 462. TREATMENT OF [CHEMICALLY DEPENDENT] PERSONS WITH
CHEMICAL DEPENDENCIES

SECTION 3.1160. Section 462.001, Health and Safety Code, is amended by amending Subdivisions (1) and (10) and adding Subdivisions (5-a) and (5-b) to read as follows:

(1) "Applicant" means a person who files an application for emergency detention, protective custody, or commitment of a [chemically dependent] person with a chemical dependency.

(5-a) "Department" means the Department of State
Health Services.

(5-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(10) "Treatment facility" means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed [and approved] by the department under Chapter 464 [commission], a facility licensed by the department under Title 7 [Texas Department of Mental Health and Mental Retardation], or a facility operated by the department under Title 7 that [Texas Department of Mental Health and Mental Retardation which] has been designated by the department [commission] to provide chemical dependency treatment. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office.

SECTION 3.1161. Section 462.005(f), Health and Safety Code, is amended to read as follows:

(f) The state or the county may not pay any costs for a patient committed to a private hospital unless no public facilities are available and unless authorized by the department [~~commission~~] or the commissioners court of the county, as appropriate.

SECTION 3.1162. Section 462.009(e), Health and Safety Code, is amended to read as follows:

(e) Consent given by a patient or by a person authorized by law to consent to treatment on the patient's behalf for the administration of a medication, therapy, or treatment is valid only if:

(1) for consent to therapy or treatment:

(A) the consent is given voluntarily and without

coercive or undue influence; and

(B) before administration of the therapy or treatment, the treating physician or the psychologist, social worker, professional counselor, or chemical dependency counselor explains to the patient and to the person giving consent, in simple, nontechnical language:

(i) the specific condition to be treated;

(ii) the beneficial effects on that
in the therapy or treatment;

(iii) the probable health and mental well-being of the child.

nsenting to the therapy or treatment;
(iv) the side effects and risks associated
atment;

(v) the generally accepted alternatives to
it, if any, and whether an alternative might

nt, if any, a
patient and

(vi) the proposed course of the therapy or

treatment;

(2) for consent to the administration of medication:
(A) the consent is given voluntarily and with

(A) the consent is given voluntarily and without influence; and

(B) the treating physician provides each required by Subdivision (1)(B) to the patient and to consent in simple nontechnical language and

giving consent in simple, nontechnical language; and
(3) for consent to medication, therapy, or treatment,
and consent is evidenced in the patient's clinical record
form prescribed by the department [commission] for this
by a statement of the treating physician or the
t, social worker, professional counselor, or chemical
counselor who obtained the consent that documents that
given by the appropriate person and the circumstances
the consent was obtained.

SECTION 3.1163. Section 462.021, Health and Safety Code, is amended to read as follows:

Sec. 462.021. VOLUNTARY ADMISSION OF ADULT. A facility may admit an adult who requests admission for emergency or nonemergency treatment or rehabilitation if:

(1) the facility is:

(A) a treatment facility licensed by the department [commission] to provide the necessary services;

(B) a facility licensed by the department under
Department of Mental Health and Mental Retardation;

Title / [Texas Department of Mental Health and Mental Retardation];
or
(S) Social Security number _____

(C) a facility operated by the department under
~~Texas Department of Mental Health and Mental~~

~~Retardation which] has been designated by the department [commission] to provide chemical dependency treatment; and~~
(2) the admission is appropriate under the facility's admission policies.

SECTION 3.1164. Section 462.022(a), Health and Safety Code, is amended to read as follows:

(a) A facility may admit a minor for treatment and rehabilitation if:

(1) the facility is:

department [commission] to provide the necessary services to minors;

(B) a facility licensed by the department under

Title 7 [Texas Department of Mental Health and Mental Retardation];
or

(C) a facility operated by the department under
Texas Department of Mental Health and Mental

Retardation which] has been designated by the [commission] to provide chemical dependency treatment; and Mental department

the admission is appropriate under the facility's

admission policies; and
 (3) the admission is requested by:
 (A) a parent, managing conservator, or guardian
of the minor; or

455-1 (B) the minor, without parental consent, if the
 455-2 minor is 16 years of age or older.

455-3 SECTION 3.1165. Section 462.0235(c), Health and Safety
 455-4 Code, is amended to read as follows:

455-5 (c) The certificate of medical examination placed in a
 455-6 minor's medical record under Subsection (b)(2)(B) must include:

455-7 (1) the name and address of the examining physician;

455-8 (2) the name and address of the examined minor;

455-9 (3) the date and place of the examination;

455-10 (4) a brief diagnosis of the examined minor's physical
 455-11 and mental condition;

455-12 (5) the period, if any, during which the examined
 455-13 minor has been under the care of the examining physician;

455-14 (6) an accurate description of the chemical dependency
 455-15 treatment, if any, administered to the examined minor by or under
 455-16 the direction of the examining physician; and

455-17 (7) the examining physician's opinion that:

455-18 (A) the examined minor is a person with a
 455-19 chemical dependency [chemically dependent];

455-20 (B) there is no reasonable alternative to the
 455-21 treatment the physician recommends for the examined minor; and

455-22 (C) as a result of the examined minor's chemical
 455-23 dependency, the minor, if released, is likely to cause serious harm
 455-24 to the minor or others or:

455-25 (i) would suffer severe and abnormal
 455-26 mental, emotional, or physical distress;

455-27 (ii) would experience a substantial mental
 455-28 or physical deterioration of the minor's ability to function
 455-29 independently that would be manifested by the minor's inability,
 455-30 for reasons other than indigence, to provide for the minor's basic
 455-31 needs, including food, clothing, health, and safety; and

455-32 (iii) would not be able to make a rational
 455-33 and informed decision as to whether to submit to treatment.

455-34 SECTION 3.1166. Sections 462.025(a), (c), and (e), Health
 455-35 and Safety Code, are amended to read as follows:

455-36 (a) The executive commissioner [~~commission~~] shall adopt
 455-37 rules governing the voluntary admission of a patient to a treatment
 455-38 facility, including rules governing the intake, screening, and
 455-39 assessment procedures of the admission process.

455-40 (c) The assessment provided for by the rules may be
 455-41 conducted only by a professional who meets the qualifications
 455-42 prescribed by department [~~commission~~] rules.

455-43 (e) In accordance with department [~~commission~~] rule, a
 455-44 treatment facility shall provide annually a minimum of two hours of
 455-45 inservice training regarding intake and screening for persons who
 455-46 will be conducting an intake or screening for the facility. A
 455-47 person may not conduct intake or screenings without having
 455-48 completed the initial and applicable annual inservice training.

455-49 SECTION 3.1167. Section 462.042(b), Health and Safety Code,
 455-50 is amended to read as follows:

455-51 (b) The application must state:

455-52 (1) that the applicant has reason to believe and does
 455-53 believe that the person who is the subject of the application is a
 455-54 [chemically dependent] person with a chemical dependency;

455-55 (2) that the applicant has reason to believe and does
 455-56 believe that the person evidences a substantial risk of serious
 455-57 harm to the person [himself] or others;

455-58 (3) a specific description of the risk of harm;

455-59 (4) that the applicant has reason to believe and does
 455-60 believe that the risk of harm is imminent unless the person is
 455-61 immediately restrained;

455-62 (5) that the applicant's beliefs are derived from
 455-63 specific recent behavior, overt acts, attempts, or threats;

455-64 (6) a detailed description of the specific behavior,
 455-65 acts, attempts, or threats; and

455-66 (7) the relationship, if any, of the applicant to the
 455-67 person.

455-68 SECTION 3.1168. Section 462.043(b), Health and Safety Code,
 455-69 is amended to read as follows:

(b) The judge or magistrate shall deny the application unless the judge or magistrate finds that there is reasonable cause to believe that:

(1) the person who is the subject of the application is a [chemically dependent] person with a chemical dependency;

(2) the person evidences a substantial risk of serious harm to the person [himself] or others;

(3) the risk of harm is imminent unless the person is immediately restrained; and

(4) the necessary restraint cannot be accomplished without emergency detention.

SECTION 3.1169. Section 462.062(e), Health and Safety Code, is amended to read as follows:

(e) The application must contain the following information

(c) The application must contain the following information according to the applicant's information and belief:

(1) the proposed patient's name and address, including the county in which the proposed patient resides, if known;

[chemically dependent] person with a chemical dependency who:
(A) is likely to cause serious harm to the person

[himself] or others; or
(B) will continue to suffer abnormal mental,

emotional, or physical distress, will continue to deteriorate in ability to function independently if not treated, and is unable to make a rational and informed choice as to whether to submit to treatment; and

(3) a statement that the proposed patient is not charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

SECTION 3.1170. Section 462.064(c), Health and Safety Code, is amended to read as follows:

(c) A certificate must be dated and signed by the examining physician. The certificate must include:

- (1) the name and address of the examining physician;
- (2) the name and address of the proposed patient;
- (3) the date and place of the examination;
- (4) the period, if any, during which the proposed

(4) the period, if any, during which the proposed patient has been under the care of the examining physician;

(6) the examining physician's opinions whether the proposed patient is a [chemically dependent] person with a chemical

proposed patient is a [chemically dependent] person with a chemical dependency and:

(A) is likely to cause serious harm to the person

(A) is likely to cause serious harm to the person himself;

(B) is likely to cause serious harm to others; or

(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 function independently if not treated and is unable to make a rational and informed choice as to whether or not to submit to treatment.

SECTION 3.1171. Section 462.065(e), Health and Safety Code, is amended to read as follows:

(e) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines that:

(1) [that] a physician has stated the physician's [his] opinion and the detailed basis for the physician's [his] opinion that the proposed patient is a [chemically dependent] person with a chemical dependency; and

(2) the proposed patient presents a substantial risk of serious harm to the person [himself] or others if not immediately restrained pending the hearing.

SECTION 3.1172. Section 462.066(g), Health and Safety Code, is amended to read as follows:

(g) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 20[19]____, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that the proposed patient [s/he] presents a substantial risk of serious harm to self or others.

The proposed patient and the proposed patient's attorney _____ have been given written notice that the proposed (attorney) patient was placed under an order of protective custody and the reasons for such order on _____. (date of notice)

I have examined the certificate of medical examination for chemical dependency and _____. Based on (other evidence considered) this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to self (yes ___ or no ___) or others (yes ___ or no ___) such that the proposed patient [s/he] cannot be at liberty pending final hearing because

(reasons for finding; type of risk found)

SECTION 3.1173. Section 462.068(a), Health and Safety Code, is amended to read as follows:

(a) The court shall enter an order denying an application for court-ordered treatment if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a [chemically dependent] person with a chemical dependency and meets the criteria for court-ordered treatment.

SECTION 3.1174. Section 462.069(a), Health and Safety Code, is amended to read as follows:

(a) The court shall commit the proposed patient to a treatment facility approved by the department [commission] to accept court commitments for not more than 90 days if:

(1) the proposed patient admits the allegations of the application; or

(2) at the hearing on the merits, the court or jury finds that the material allegations in the application have been proved by clear and convincing evidence.

SECTION 3.1175. Section 462.0731(b), Health and Safety Code, is amended to read as follows:

(b) The department [commission] shall arrange and furnish alternative settings for outpatient care, treatment, and supervision in the patient's county of residence. The services must be provided as close as possible to the patient's residence.

SECTION 3.1176. Sections 462.075(e) and (f), Health and Safety Code, are amended to read as follows:

(e) The court shall enter an order denying an application for court-ordered treatment if the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a [chemically dependent] person with a chemical dependency and meets the criteria for court-ordered treatment. If the court denies the application, the court shall order the discharge of a proposed patient who is not at liberty.

(f) The court shall commit the proposed patient to a treatment facility approved by the department [commission] to accept commitments for not more than 90 days if:

(1) the proposed patient admits the allegations of the application; or

(2) at the hearing on the merits, the court or jury finds that the material allegations in the application have been proved by clear and convincing evidence.

SECTION 3.1177. Section 462.079(a), Health and Safety Code, is amended to read as follows:

(a) A furlough may be revoked only after an administrative hearing held in accordance with department [commission] rules. The hearing must be held within 72 hours after the patient is returned to the facility.

458-1 SECTION 3.1178. Sections 462.081(a), (b), and (d), Health
 458-2 and Safety Code, are amended to read as follows:

458-3 (a) The judge of a court with jurisdiction of misdemeanor
 458-4 cases may remand the defendant to a treatment facility approved by
 458-5 the department [commission] to accept court commitments for care
 458-6 and treatment for not more than 90 days, instead of incarceration or
 458-7 fine, if:

458-8 (1) the court or a jury has found the defendant guilty
 458-9 of an offense classified as a Class A or B misdemeanor;

458-10 (2) the court finds that the offense resulted from or
 458-11 was related to the defendant's chemical dependency;

458-12 (3) a treatment facility approved by the department
 458-13 [commission] is available to treat the defendant; and

458-14 (4) the treatment facility agrees in writing to admit
 458-15 the defendant under this section.

458-16 (b) A defendant who, in the opinion of the court, is a person
 458-17 with mental illness [mentally ill] is not eligible for sentencing
 458-18 under this section.

458-19 (d) A juvenile court may remand a child to a treatment
 458-20 facility for care and treatment for not more than 90 days after the
 458-21 date on which the child is remanded if:

458-22 (1) the court finds that the child has engaged in
 458-23 delinquent conduct or conduct indicating a need for supervision and
 458-24 that the conduct resulted from or was related to the child's
 458-25 chemical dependency;

458-26 (2) a treatment facility approved by the department
 458-27 [commission] to accept court commitments is available to treat the
 458-28 child; and

458-29 (3) the facility agrees in writing to receive the
 458-30 child under this section.

458-31 SECTION 3.1179. The heading to Chapter 464, Health and
 458-32 Safety Code, is amended to read as follows:

458-33 CHAPTER 464. FACILITIES TREATING [ALCOHOLICS AND DRUG DEPENDENT]
 458-34 PERSONS WITH A CHEMICAL DEPENDENCY

458-35 SECTION 3.1180. Section 464.001, Health and Safety Code, is
 458-36 amended by adding Subdivisions (3-a) and (3-b) to read as follows:

458-37 (3-a) "Department" means the Department of State
 458-38 Health Services.

458-39 (3-b) "Executive commissioner" means the executive
 458-40 commissioner of the Health and Human Services Commission.

458-41 SECTION 3.1181. Section 464.003, Health and Safety Code, is
 458-42 amended to read as follows:

458-43 Sec. 464.003. EXEMPTIONS. This subchapter does not apply
 458-44 to:

458-45 (1) a facility maintained or operated by the federal
 458-46 government;

458-47 (2) a facility directly operated by the state;

458-48 (3) a facility licensed by the department under
 458-49 Chapter 241, 243, 248, 466, or 577 [Texas Department of Health];

458-50 (4) an educational program for intoxicated drivers;

458-51 (5) the individual office of a private, licensed
 458-52 health care practitioner who personally renders private individual
 458-53 or group services within the scope of the practitioner's license
 458-54 and in the practitioner's office;

458-55 (6) an individual who personally provides counseling
 458-56 or support services to a [chemically dependent] person with a
 458-57 chemical dependency but does not offer or purport to offer a
 458-58 chemical dependency treatment program; or

458-59 (7) a 12-step or similar self-help chemical dependency
 458-60 recovery program:

458-61 (A) that does not offer or purport to offer a
 458-62 chemical dependency treatment program;

458-63 (B) that does not charge program participants;
 458-64 and

458-65 (C) in which program participants may maintain
 458-66 anonymity.

458-67 SECTION 3.1182. Sections 464.004(a), (b), and (e), Health
 458-68 and Safety Code, are amended to read as follows:

458-69 (a) To receive a license to operate a treatment facility to

459-1 treat [~~chemically dependent~~] persons with a chemical dependency, a
459-2 person must:

459-3 (1) file a written application on a form prescribed by
459-4 the department [~~commission~~];

459-5 (2) cooperate with the review of the facility; and

459-6 (3) comply with the licensing standards.

459-7 (b) The department [~~commission~~] shall issue a license to an
459-8 applicant:

459-9 (1) whose application meets the content requirements
459-10 prescribed by [~~or~~] the department and by department rules
459-11 [~~commission~~]; [~~and~~]

459-12 (2) who receives approval of the facility after the
459-13 department's [~~commission's~~] review; and

459-14 (3) who timely complies with the licensing standards.

459-15 (e) A license may be issued without prior notice and an
459-16 opportunity for a hearing. A person other than the applicant or the
459-17 department [~~and commission~~] may not contest the issuance of a
459-18 license.

459-19 SECTION 3.1183. Section **464.005**, Health and Safety Code, is
459-20 amended to read as follows:

459-21 Sec. 464.005. LICENSE RENEWAL. (a) The department
459-22 [~~commission~~] shall provide renewal application forms and
459-23 information relating to renewal procedures to each license holder.

459-24 (b) The department [~~Department of State Health Services~~]
459-25 may require an inspection before renewing a license, unless the
459-26 applicant submits an accreditation review from the Commission on
459-27 Accreditation of Rehabilitation Facilities, The [~~the~~] Joint
459-28 Commission, or another national accreditation organization
459-29 recognized by the department in accordance with Section **464.0055**.

459-30 (c) The executive commissioner [~~commission~~] may establish
459-31 deadlines for receiving and acting on renewal applications.

459-32 (d) A license may be renewed without prior notice and an
459-33 opportunity for a hearing. A person other than the applicant or the
459-34 department [~~and commission~~] may not contest the renewal of a
459-35 license.

459-36 SECTION 3.1184. Sections **464.0055(a)** and (b), Health and
459-37 Safety Code, are amended to read as follows:

459-38 (a) In this section, "accreditation[+]
459-39 [~~(1) "Accreditation~~] commission" means the Commission
459-40 on Accreditation of Rehabilitation Facilities, The [~~the~~] Joint
459-41 Commission, or another national accreditation organization
459-42 recognized by the department [~~Department of State Health Services~~].
459-43 [~~(2) "Department"~~ means the Department of State Health
459-44 Services.]

459-45 (b) The department shall accept an accreditation review
459-46 from an accreditation commission for a treatment facility instead
459-47 of an inspection by the department for renewal of a license under
459-48 Section **464.005**, but only if:

459-49 (1) the treatment facility is accredited by that
459-50 accreditation commission [~~the Commission on Accreditation of~~
459-51 ~~Rehabilitation Facilities, the Joint Commission, or another~~
459-52 ~~national accreditation organization recognized by the department~~];

459-53 (2) the accreditation commission maintains and
459-54 updates an inspection or review program that, for each treatment
459-55 facility, meets the department's applicable minimum standards;

459-56 (3) the accreditation commission conducts a regular
459-57 on-site inspection or review of the treatment facility according to
459-58 the accreditation commission's guidelines; and

459-59 (4) the treatment facility submits to the department a
459-60 copy of its most recent accreditation review from the accreditation
459-61 commission in addition to the application, fee, and any report or
459-62 other document required for renewal of a license.

459-63 SECTION 3.1185. Section **464.006**, Health and Safety Code, is
459-64 amended to read as follows:

459-65 Sec. 464.006. INSPECTIONS. The department [~~commission~~] or
459-66 its representative may without notice enter the premises of a
459-67 treatment facility at reasonable times, including any time
459-68 treatment services are provided, to conduct an inspection or
459-69 investigation the department [~~commission~~] considers necessary.

460-1 SECTION 3.1186. Section 464.007, Health and Safety Code, is
460-2 amended to read as follows:

460-3 Sec. 464.007. APPLICATION AND INSPECTION FEES. (a) The
460-4 department [~~commission~~] shall collect [~~charge~~] nonrefundable
460-5 application and review fees for a license or renewal license. The
460-6 department [~~commission~~] may collect [~~charge~~] a fee for approving a
460-7 facility to treat court committed clients.

460-8 (b) If the General Appropriations Act does not specify the
460-9 amount of the fee, the executive commissioner by rule [~~commission~~]
460-10 shall establish reasonable fees to administer this subchapter in
460-11 amounts necessary for the fees to cover at least 50 percent of the
460-12 costs of the licensing program.

460-13 (c) The department [~~commission~~] may not maintain
460-14 unnecessary fund balances under this chapter.

460-15 SECTION 3.1187. Section 464.008, Health and Safety Code, is
460-16 amended to read as follows:

460-17 Sec. 464.008. APPLICABILITY OF OTHER LAW TO APPLICATION AND
460-18 INSPECTION FEES [ALCOHOL AND DRUG ABUSE TREATMENT LICENSURE FUND].
460-19 All application and inspection fees collected by the department
460-20 [~~commission~~] under this subchapter are subject to Subchapter F,
460-21 Chapter 404, Government Code.

460-22 SECTION 3.1188. Section 464.009, Health and Safety Code, is
460-23 amended to read as follows:

460-24 Sec. 464.009. RULES AND STANDARDS. (a) The department
460-25 [~~commission~~] shall license treatment facilities in a manner
460-26 consistent with state and federal law and rules, including
460-27 department [~~commission~~] licensing standards.

460-28 (b) The executive commissioner [~~commission~~] shall adopt
460-29 rules for:

460-30 (1) a treatment facility's organization and structure,
460-31 policies and procedures, and minimum staffing requirements;
460-32 (2) the services to be provided by a facility,
460-33 including:

460-34 (A) the categories of services the facility may
460-35 provide;

460-36 (B) the client living environment the facility
460-37 requires; and

460-38 (C) the requirement that a facility provide
460-39 discharge planning and client follow-up contact;

460-40 (3) client rights and standards for medication,
460-41 nutrition, and emergency situations;

460-42 (4) the client records kept by a facility;

460-43 (5) the general physical plant requirements for a
460-44 facility, including environmental considerations, fire protection,
460-45 safety, and other conditions to ensure the health and comfort of the
460-46 clients;

460-47 (6) standards necessary to protect the client,
460-48 including standards required or authorized by federal or other
460-49 state law; and

460-50 (7) the approval of a facility to treat adult or minor
460-51 clients who are referred by the criminal justice system or by a
460-52 court order for involuntary civil or criminal commitment or
460-53 detention.

460-54 (c) The executive commissioner [~~commission~~] shall adopt
460-55 rules to protect the rights of individuals receiving services from
460-56 a treatment facility and to maintain the confidentiality of client
460-57 records as required by state and federal law.

460-58 (d) The executive commissioner [~~commission~~] by rule may not
460-59 restrict competitive bidding or advertising by a facility regulated
460-60 by the department under this chapter [~~commission~~] except to
460-61 prohibit false, misleading, or deceptive practices by the facility.
460-62 However, those rules may not:

460-63 (1) restrict the facility's use of any medium for
460-64 advertising;

460-65 (2) restrict in an advertisement the personal
460-66 appearance of a person representing the facility or the use of that
460-67 person's voice;

460-68 (3) regulate the size or duration of an advertisement
460-69 by the facility; or

(4) restrict the facility's advertisement under a trade name.

SECTION 3.1189. Section 464.010, Health and Safety Code, is amended to read as follows:

Sec. 464.010. REPORTS OF ABUSE OR NEGLECT. (a) A person, including treatment facility personnel, who believes that a client's physical or mental health or welfare has been, is, or will be adversely affected by abuse or neglect caused by any person shall report the facts underlying that belief to the department [commission]. This requirement is in addition to the requirements prescribed by Chapter 261, Family Code, and Chapter 48, Human Resources Code.

(b) The executive commissioner [commission] shall prescribe procedures for the investigation of reports under Subsection (a) and for coordination with law enforcement agencies or other agencies.

(c) An individual who in good faith reports to the department [commission] under this section is immune from civil or criminal liability based on the report. That immunity extends to participation in a judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect.

(d) The department [commission] may request the attorney general's office to file a petition for temporary care and protection of a client of a residential treatment facility if it appears that immediate removal of the client is necessary to prevent further abuse.

(e) All records made by the department [commission] during its investigation of alleged abuse or neglect are confidential and may not be released except that the release may be made:

- (1) on court order;
 - (2) on written request and consent of the person under investigation or that person's authorized attorney; or
 - (3) as provided by Section [464.011](#).

SECTION 3.1190. Section 464.011, Health and Safety Code, is amended to read as follows:

Sec. 464.011. DISCLOSURE OF DEPARTMENT [COMMISSION] RECORDS. Unless prohibited or limited by federal or other state law, the department [commission] may make its licensing and investigatory records that identify a client available to a state or federal agency or law enforcement authority on request and for official purposes.

SECTION 3.1191. Sections 464.012(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A treatment facility licensed under this chapter shall provide to employees of the facility education regarding methods of transmitting and preventing human immunodeficiency virus infection based on the model education program developed by the department [Texas Department of Health] and shall make the education available to facility clients.

(b) Employees of the facility who counsel clients shall provide counseling in accordance with the model protocol for counseling related to HIV infection developed by the department [Texas Department of Health].

SECTION 3.1192. Section 464.014, Health and Safety Code, is amended to read as follows:

Sec. 464.014. DENIAL, REVOCATION, SUSPENSION, OR
NONRENEWAL OF LICENSE. (a) The department [~~commission~~] shall
deny, revoke, suspend, or refuse to renew a license, place on
probation a person whose license has been suspended, or reprimand a
license holder if the applicant or license holder or the owner,
director, administrator, or a clinical staff member of the
facility:

- neglect; or

 - (1) has a documented history of client abuse or
 - (2) violates this subchapter or a department rule [~~or the commission~~].

(b) If a license suspension is probated, the department [commission] may establish the conditions for completion or

462-1 violation of the probation.

462-2 (c) The denial, revocation, suspension, probation, or
462-3 nonrenewal takes effect on the 30th day after the date on which the
462-4 notice was mailed unless:

462-5 (1) the department [~~commission~~] secures an injunction
462-6 under Section **464.015**; or

462-7 (2) an administrative appeal is requested.

462-8 (d) The department [~~commission~~] may restrict attendance at
462-9 an appeals hearing to the parties and their agents. A license
462-10 holder whose license is suspended or revoked may not admit new
462-11 clients until the license is reissued.

462-12 SECTION 3.1193. Sections **464.0145**(a) and (c), Health and
462-13 Safety Code, are amended to read as follows:

462-14 (a) If the department [~~commission~~] proposes to suspend,
462-15 revoke, or refuse to renew a person's license, the person is
462-16 entitled to a hearing conducted by the State Office of
462-17 Administrative Hearings.

462-18 (c) Rules of practice adopted by the executive commissioner
462-19 [~~commission~~] under Section **2001.004**, Government Code, applicable
462-20 to the proceedings for a disciplinary action may not conflict with
462-21 rules adopted by the State Office of Administrative Hearings.

462-22 SECTION 3.1194. Sections **464.015**(a), (c), (d), and (e),
462-23 Health and Safety Code, are amended to read as follows:

462-24 (a) The department [~~commission~~] may petition a district
462-25 court to restrain a person or facility that violates the rules,
462-26 standards, or licensing requirements provided under this
462-27 subchapter in a manner that causes immediate threat to the health
462-28 and safety of individual clients.

462-29 (c) A district court, on petition of the department
462-30 [~~commission~~], the attorney general, or a district or county
462-31 attorney, and on a finding by the court that a person or facility is
462-32 violating or has violated this subchapter or a standard adopted
462-33 under this subchapter, shall grant any prohibitory or mandatory
462-34 injunctive relief warranted by the facts, including a temporary
462-35 restraining order, temporary injunction, or permanent injunction.

462-36 (d) The court granting injunctive relief shall order the
462-37 person or facility to reimburse the department [~~commission~~] and the
462-38 party bringing the suit for all costs of investigation and
462-39 litigation, including reasonable attorney's fees, reasonable
462-40 investigative expenses, court costs, witness fees, deposition
462-41 expenses, and civil administrative costs.

462-42 (e) At the request of the department [~~commission~~], the
462-43 attorney general or the appropriate district or county attorney
462-44 shall institute and conduct a suit authorized by Subsection (a) in
462-45 the name of this state.

462-46 SECTION 3.1195. Section **464.016**(c), Health and Safety Code,
462-47 is amended to read as follows:

462-48 (c) A person commits an offense if the person has reasonable
462-49 grounds to suspect that abuse or neglect of a client may have
462-50 occurred and does not report the suspected or possible abuse or
462-51 neglect to the department as required by Section **464.010**.

462-52 SECTION 3.1196. Sections **464.017**(b), (c), (f), and (g),
462-53 Health and Safety Code, are amended to read as follows:

462-54 (b) The department [~~commission~~] may:

462-55 (1) combine a suit to assess and recover civil
462-56 penalties with a suit for injunctive relief brought under Section
462-57 **464.015**; or

462-58 (2) file a suit to assess and recover civil penalties
462-59 independently of a suit for injunctive relief.

462-60 (c) At the request of the department [~~commission~~], the
462-61 attorney general or the appropriate district or county attorney
462-62 shall institute and conduct the suit authorized by Subsection (b)
462-63 in the name of this state. The department [~~commission~~] and the
462-64 party bringing the suit may recover reasonable expenses incurred in
462-65 obtaining civil penalties, including investigation costs, court
462-66 costs, reasonable attorney fees, witness fees, and deposition
462-67 expenses.

462-68 (f) Penalties collected under this section by the attorney
462-69 general shall be deposited to the credit of the general revenue fund

463-1 [alcohol and drug abuse treatment licensure fund account].
 463-2 Penalties collected under this section by a district or county
 463-3 attorney shall be deposited to the credit of the general fund of the
 463-4 county in which the suit was heard.

463-5 (g) The department [commission] and the party bringing the
 463-6 suit may recover reasonable expenses incurred in obtaining civil
 463-7 penalties, including investigation costs, court costs, reasonable
 463-8 attorney fees, witness fees, and deposition expenses.

463-9 SECTION 3.1197. Section 464.018, Health and Safety Code, is
 463-10 amended to read as follows:

463-11 Sec. 464.018. NOTICE OF SUIT. Not later than the seventh
 463-12 day before the date on which the attorney general intends to bring
 463-13 suit on the attorney general's [his] own initiative under Section
 463-14 464.015 or 464.017, the attorney general shall provide to the
 463-15 department [commission] notice of the suit. The attorney general
 463-16 is not required to provide notice of a suit if the attorney general
 463-17 determines that waiting to bring suit until the notice is provided
 463-18 will create an immediate threat to the health and safety of a
 463-19 client. This section does not create a requirement that the
 463-20 attorney general obtain the permission of or a referral from the
 463-21 department [commission] before filing suit.

463-22 SECTION 3.1198. Sections 464.019(a), (d), (e), (f), (g),
 463-23 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
 463-24 amended to read as follows:

463-25 (a) The department [commission] may impose an
 463-26 administrative penalty against a person licensed or regulated under
 463-27 this chapter who violates this chapter or a rule or order adopted
 463-28 under this chapter.

463-29 (d) If the department [executive director] determines that
 463-30 a violation has occurred, the department [director] may issue [to
 463-31 the commission] a report that states the facts on which the
 463-32 determination is based and the department's [director's]
 463-33 recommendation on the imposition of a penalty, including a
 463-34 recommendation on the amount of the penalty.

463-35 (e) Within 14 days after the date the report is issued, the
 463-36 department [executive director] shall give written notice of the
 463-37 report to the person. The notice may be given by certified mail.
 463-38 The notice must include a brief summary of the alleged violation and
 463-39 a statement of the amount of the recommended penalty and must inform
 463-40 the person that the person has a right to a hearing on the
 463-41 occurrence of the violation, the amount of the penalty, or both the
 463-42 occurrence of the violation and the amount of the penalty.

463-43 (f) Within 20 days after the date the person receives the
 463-44 notice, the person in writing may accept the determination and
 463-45 recommended penalty of the department [commissioner] or may make a
 463-46 written request for a hearing on the occurrence of the violation,
 463-47 the amount of the penalty, or both the occurrence of the violation
 463-48 and the amount of the penalty.

463-49 (g) If the person accepts the determination and recommended
 463-50 penalty of the department [commissioner], the department [board] by
 463-51 order shall [approve the determination and] impose the recommended
 463-52 penalty.

463-53 (h) If the person requests a hearing or fails to respond
 463-54 timely to the notice, an administrative law judge [the
 463-55 commissioner] shall set a hearing and the department shall give
 463-56 notice of the hearing to the person. The administrative law judge
 463-57 shall make findings of fact and conclusions of law and promptly
 463-58 issue to the department [board] a proposal for a decision about the
 463-59 occurrence of the violation and the amount of a proposed penalty.
 463-60 Based on the findings of fact, conclusions of law, and proposal for
 463-61 a decision, the department [board] by order may find that a
 463-62 violation has occurred and impose a penalty or may find that no
 463-63 violation occurred.

463-64 (i) The notice of the department's [board's] order given to
 463-65 the person under Chapter 2001, Government Code, must include a
 463-66 statement of the right of the person to judicial review of the
 463-67 order.

463-68 (j) Within 30 days after the date the department's [board's]
 463-69 order is final as provided by Subchapter F, Chapter 2001,

464-1 Government Code, the person shall:

464-2 (1) pay the amount of the penalty;

464-3 (2) pay the amount of the penalty and file a petition
464-4 for judicial review contesting the occurrence of the violation, the
464-5 amount of the penalty, or both the occurrence of the violation and
464-6 the amount of the penalty; or

464-7 (3) without paying the amount of the penalty, file a
464-8 petition for judicial review contesting the occurrence of the
464-9 violation, the amount of the penalty, or both the occurrence of the
464-10 violation and the amount of the penalty.

464-11 (k) Within the 30-day period, a person who acts under
464-12 Subsection (j)(3) may:

464-13 (1) stay enforcement of the penalty by:

464-14 (A) paying the amount of the penalty to the court
464-15 for placement in an escrow account; or

464-16 (B) giving to the court a supersedeas bond that
464-17 is approved by the court for the amount of the penalty and that is
464-18 effective until all judicial review of the department's [board's]
464-19 order is final; or

464-20 (2) request the court to stay enforcement of the
464-21 penalty by:

464-22 (A) filing with the court a sworn affidavit of
464-23 the person stating that the person is financially unable to pay the
464-24 amount of the penalty and is financially unable to give the
464-25 supersedeas bond; and

464-26 (B) giving a copy of the affidavit to the
464-27 department [commissioner] by certified mail.

464-28 (l) The department [commissioner] on receipt of a copy of an
464-29 affidavit under Subsection (k)(2) may file with the court within
464-30 five days after the date the copy is received a contest to the
464-31 affidavit. The court shall hold a hearing on the facts alleged in
464-32 the affidavit as soon as practicable and shall stay the enforcement
464-33 of the penalty on finding that the alleged facts are true. The
464-34 person who files an affidavit has the burden of proving that the
464-35 person is financially unable to pay the amount of the penalty and to
464-36 give a supersedeas bond.

464-37 (m) If the person does not pay the amount of the penalty and
464-38 the enforcement of the penalty is not stayed, the department
464-39 [commissioner] may refer the matter to the attorney general for
464-40 collection of the amount of the penalty.

464-41 (n) Judicial review of the order of the department [board]:

464-42 (1) is instituted by filing a petition as provided by
464-43 Subchapter G, Chapter 2001, Government Code; and

464-44 (2) is under the substantial evidence rule.

464-45 SECTION 3.1199. Section 464.020(c), Health and Safety Code,
464-46 is amended to read as follows:

464-47 (c) The department [commission] may not issue a license that
464-48 authorizes a disciplinary alternative education program to provide
464-49 detoxification or residential services.

464-50 SECTION 3.1200. Section 464.031(2), Health and Safety Code,
464-51 is amended to read as follows:

464-52 (2) "Department" means the Department of State Health
464-53 Services ["Commission" means the Texas Commission on Alcohol and
464-54 Drug Abuse].

464-55 SECTION 3.1201. Sections 464.033(a) and (b), Health and
464-56 Safety Code, are amended to read as follows:

464-57 (a) To be eligible to contract with a county, an alcoholism
464-58 program or center providing prevention or intervention services
464-59 must submit an application to the regional alcoholism advisory
464-60 committee established by the department [commission] to serve the
464-61 area in which the program or center is located or in which the
464-62 program or center will provide services.

464-63 (b) To be eligible to contract with a county, an alcoholism
464-64 program or center providing treatment or rehabilitation services
464-65 must:

464-66 (1) submit an application as provided by Subsection
464-67 (a); and

464-68 (2) be licensed by the department [commission].

464-69 SECTION 3.1202. Section 464.034(a), Health and Safety Code,

465-1 is amended to read as follows:

465-2 (a) A regional alcoholism advisory committee shall:

465-3 (1) review each application received; and

465-4 (2) rank the applications using guidelines for
465-5 reviewing funding applications established by the department in
465-6 accordance with department rules [commission for reviewing funding
465-7 applications].

465-8 SECTION 3.1203. Section 464.051, Health and Safety Code, is
465-9 amended by amending Subdivision (2) and adding Subdivision (2-a) to
465-10 read as follows:

465-11 (2) "Department" [~~Commission~~] has the meaning
465-12 assigned by Section 464.001.

465-13 (2-a) "Executive commissioner" has the meaning
465-14 assigned by Section 464.001.

465-15 SECTION 3.1204. Section 464.052(b), Health and Safety Code,
465-16 is amended to read as follows:

465-17 (b) The ~~department~~ [~~commission~~] may not prohibit the use, by
465-18 a program exempted under this subchapter, of the term "counseling,"
465-19 "treatment," or "rehabilitation."

465-20 SECTION 3.1205. Section 464.053, Health and Safety Code, is
465-21 amended to read as follows:

465-22 Sec. 464.053. EXEMPT PROGRAM REGISTRATION. The ~~executive~~
465-23 ~~commissioner~~ [~~commission~~] by rule shall establish a simple
465-24 procedure for a faith-based chemical dependency treatment program
465-25 to register the program's exemption under Section 464.052.

465-26 SECTION 3.1206. Section 464.055, Health and Safety Code, is
465-27 amended to read as follows:

465-28 Sec. 464.055. REPRESENTATIONS IN PROGRAM ADVERTISING OR
465-29 LITERATURE. A program exempted under this subchapter shall
465-30 conspicuously include in any advertisement or literature that
465-31 promotes or describes the program or the program's chemical
465-32 dependency treatment services the following statement:

465-33 "The treatment and recovery services at (name of program) are
465-34 exclusively religious in nature and are not subject to licensure or
465-35 regulation by the ~~Department of State Health Services~~ [~~Texas~~
465-36 ~~Commission on Alcohol and Drug Abuse~~]. This program offers only
465-37 nonmedical treatment and recovery methods such as prayer, moral
465-38 guidance, spiritual counseling, and scriptural study."

465-39 SECTION 3.1207. Section 464.056(a), Health and Safety Code,
465-40 is amended to read as follows:

465-41 (a) A program exempted under this subchapter may not admit a
465-42 person unless the person signs the following statement on
465-43 admission:

465-44 "DECLARATION:

465-45 "I understand that:

465-46 (1) the treatment and recovery services at (name of
465-47 program) are exclusively religious in nature and are not subject to
465-48 licensure or regulation by the ~~Department of State Health Services~~
465-49 [~~Texas Commission on Alcohol and Drug Abuse~~]; and

465-50 (2) (name of program) offers only nonmedical treatment
465-51 and recovery methods, such as prayer, moral guidance, spiritual
465-52 counseling, and scriptural study."

465-53 signed _____ date _____

465-54 SECTION 3.1208. Section 464.057, Health and Safety Code, is
465-55 amended to read as follows:

465-56 Sec. 464.057. REVOCATION OF EXEMPTION. The ~~department~~
465-57 [~~commission~~] may revoke the exemption after notice and hearing if:

465-58 (1) the organization conducting the program fails to
465-59 timely inform the ~~department~~ [~~commission~~] of any material change in
465-60 the program's registration information;

465-61 (2) any program advertisement or literature fails to
465-62 include the statements required by Section 464.055; or

465-63 (3) the organization violates this subchapter or a
465-64 ~~department~~ [~~commission~~] rule adopted under this subchapter.

465-65 SECTION 3.1209. Section 464.059, Health and Safety Code, is
465-66 amended to read as follows:

465-67 Sec. 464.059. RELIGION NOT ENDORSED. This subchapter is
465-68 not intended to aid religion. This subchapter is intended to aid
465-69 [chemically dependent] persons with a chemical dependency by

466-1 supporting programs that serve the valid public purpose of
 466-2 combating chemical dependency, regardless of whether the programs
 466-3 are religious, spiritual, or ecclesiastical in nature. The
 466-4 exemption of faith-based chemical dependency treatment programs
 466-5 from licensure and regulation is not an endorsement or sponsorship
 466-6 by the state of the religious character, expression, beliefs,
 466-7 doctrines, or practices of the treatment programs.

466-8 SECTION 3.1210. Sections **466.001**(a) and (c), Health and
 466-9 Safety Code, are amended to read as follows:

466-10 (a) It is the intent of the legislature that the department
 466-11 exercise its administrative powers and regulatory authority to
 466-12 ensure the proper use of approved narcotic drugs in the treatment of
 466-13 persons with a narcotic dependency [dependent persons].

466-14 (c) Short-term goals should have an emphasis of personal and
 466-15 public health, crime prevention, reintegration of persons with a
 466-16 narcotic addiction [addicted persons] into the public work force,
 466-17 and social and medical stabilization. Narcotic treatment programs
 466-18 are an important component of the state's effort to prevent the
 466-19 further proliferation of the AIDS virus. Total drug abstinence is
 466-20 recognized as a long-term goal of treatment, subject to medical
 466-21 determination of the medical appropriateness and prognosis of the
 466-22 person with a narcotic addiction [addicted person].

466-23 SECTION 3.1211. Section **466.002**, Health and Safety Code, is
 466-24 amended by amending Subdivisions (4) and (5) and adding Subdivision
 466-25 (5-a) to read as follows:

466-26 (4) "Commissioner" means the commissioner of state
 466-27 [public] health services.

466-28 (5) "Department" means the [Texas] Department of State
 466-29 Health Services.

466-30 (5-a) "Executive commissioner" means the executive
 466-31 commissioner of the Health and Human Services Commission.

466-32 SECTION 3.1212. Section **466.004**, Health and Safety Code, is
 466-33 amended to read as follows:

466-34 Sec. 466.004. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
 466-35 [BOARD] AND DEPARTMENT. (a) The executive commissioner [board]
 466-36 shall adopt and the department shall administer and enforce rules
 466-37 to ensure the proper use of approved narcotic drugs in the treatment
 466-38 of persons with a narcotic drug dependency [drug-dependent
 466-39 persons], including rules that:

466-40 (1) require an applicant or a permit holder to make
 466-41 annual, periodic, and special reports that the department
 466-42 determines are necessary;

466-43 (2) require an applicant or permit holder to keep
 466-44 records that the department determines are necessary;

466-45 (3) provide for investigations that the department
 466-46 determines are necessary; and

466-47 (4) provide for the coordination of the approval of
 466-48 narcotic drug treatment programs by the United States Food and Drug
 466-49 Administration and the United States Drug Enforcement
 466-50 Administration.

466-51 (b) The executive commissioner [board] shall adopt rules
 466-52 for the issuance of permits to operate narcotic drug treatment
 466-53 programs including rules:

466-54 (1) governing the submission and review of
 466-55 applications;

466-56 (2) establishing the criteria for the issuance and
 466-57 renewal of permits; and

466-58 (3) establishing the criteria for the suspension and
 466-59 revocation of permits.

466-60 SECTION 3.1213. Section **466.022**, Health and Safety Code, is
 466-61 amended to read as follows:

466-62 Sec. 466.022. LIMITATION ON PRESCRIPTION, ORDER, OR
 466-63 ADMINISTRATION OF NARCOTIC DRUG. A physician may not prescribe,
 466-64 order, or administer a narcotic drug for the purpose of treating
 466-65 drug dependency unless the physician prescribes, orders, or
 466-66 administers an approved narcotic drug for the maintenance or
 466-67 detoxification of persons with a drug dependency [drug-dependent
 466-68 persons] as part of a program permitted by the department.

466-69 SECTION 3.1214. Sections **466.023**(a), (b), (e), and (f),

467-1 Health and Safety Code, are amended to read as follows:

467-2 (a) The department shall issue a permit to an applicant who
467-3 qualifies under rules and standards adopted by the executive
467-4 commissioner [board].

467-5 (b) A permit issued under this section is valid until
467-6 suspended or revoked by the department or surrendered by the permit
467-7 holder in accordance with department [board] rules.

467-8 (e) The executive commissioner [board] by rule shall
467-9 establish and the department shall collect a nonrefundable
467-10 application fee to defray the cost to the department of processing
467-11 each application for a permit. The application fee must be
467-12 submitted with the application. An application may not be
467-13 considered unless the application is accompanied by the application
467-14 fee.

467-15 (f) The executive commissioner [board] shall adopt rules
467-16 that set permit fees in amounts sufficient for the department to
467-17 recover not less than half of the actual annual expenditures of
467-18 state funds by the department to:

- 467-19 (1) amend permits;
- 467-20 (2) inspect facilities operated by permit holders; and
- 467-21 (3) implement and enforce this chapter.

467-22 SECTION 3.1215. Section 466.024(b), Health and Safety Code,
467-23 is amended to read as follows:

467-24 (b) The department may issue a permit to a person other than
467-25 a physician only if the person provides health care services under
467-26 the supervision of one or more physicians licensed by the Texas
467-27 Medical [State] Board [of Medical Examiners].

467-28 SECTION 3.1216. Sections 466.025(a) and (c), Health and
467-29 Safety Code, are amended to read as follows:

467-30 (a) The department [An authorized agent] may enter the
467-31 facility of a person who is an applicant for a permit or who is a
467-32 permit holder during any hours in which the facility is in operation
467-33 for the purpose of inspecting the facility to determine:

467-34 (1) if the person meets the standards set in
467-35 department [the] rules [of the board] for the issuance of a permit;
467-36 or

467-37 (2) if a person who holds a permit is in compliance
467-38 with this chapter, the standards set in department [the] rules [of
467-39 the board] for the operation of a facility, any special provisions
467-40 contained in the permit, or an order of the commissioner or the
467-41 department.

467-42 (c) The department [authorized agent] shall provide the
467-43 applicant or permit holder with a copy of the inspection report. An
467-44 inspection report shall be made a part of the applicant's
467-45 submission file or the permit holder's compliance record.

467-46 SECTION 3.1217. Section 466.026, Health and Safety Code, is
467-47 amended to read as follows:

467-48 Sec. 466.026. MULTIPLE ENROLLMENT PREVENTION. The
467-49 department shall work with representatives from permitted narcotic
467-50 treatment programs in this state to develop recommendations for a
467-51 plan to prevent the simultaneous multiple enrollment of persons in
467-52 narcotic treatment programs. The executive commissioner [board]
467-53 may adopt rules to implement these recommendations.

467-54 SECTION 3.1218. Sections 466.027(b) and (c), Health and
467-55 Safety Code, are amended to read as follows:

467-56 (b) The executive commissioner [board] may adopt rules that
467-57 establish the criteria for the denial, suspension, or revocation of
467-58 a permit.

467-59 (c) Hearings, appeals from, and judicial review of final
467-60 administrative decisions under this section shall be conducted
467-61 according to the contested case provisions of Chapter 2001,
467-62 Government Code, and the department's [board's] formal hearing
467-63 rules.

467-64 SECTION 3.1219. Sections 466.041(a), (b), and (c), Health
467-65 and Safety Code, are amended to read as follows:

467-66 (a) The department [commissioner or the commissioner's
467-67 designee] may issue an emergency order, either mandatory or
467-68 prohibitory in nature, in relation to the operation of a permitted
467-69 facility or the treatment of patients by the facility staff, in the

468-1 department's jurisdiction. The order may be issued if the
 468-2 ~~department [commissioner or the commissioner's designee]~~
 468-3 determines that the treatment of patients by the staff of the permit
 468-4 holder creates or poses an immediate and serious threat to human
 468-5 life or health and other procedures available to the department to
 468-6 remedy or prevent the occurrence of the situation will result in an
 468-7 unreasonable delay.

468-8 (b) The ~~department [commissioner or the commissioner's~~
 468-9 ~~designee]~~ may issue the emergency order, including an emergency
 468-10 order suspending or revoking a permit issued by the department,
 468-11 without notice and hearing, if the ~~department [commissioner or the~~
 468-12 ~~commissioner's designee]~~ determines that action to be practicable
 468-13 under the circumstances.

468-14 (c) If an emergency order is issued without a hearing, the
 468-15 department shall determine a time and place for a hearing at which
 468-16 the emergency order is affirmed, modified, or set aside. The
 468-17 hearing shall be held under the contested case provisions of
 468-18 Chapter 2001, Government Code, and the ~~department's [board's]~~
 468-19 formal hearing rules.

468-20 SECTION 3.1220. Sections 466.042(a) and (b), Health and
 468-21 Safety Code, are amended to read as follows:

468-22 (a) The ~~department [commissioner, the commissioner's~~
 468-23 ~~designee, or an authorized agent]~~ may request the attorney general
 468-24 or a district, county, or municipal attorney to petition the
 468-25 district court for a temporary restraining order to restrain:

468-26 (1) a continuing violation of this chapter, a rule
 468-27 adopted under this chapter, or an order or permit issued under this
 468-28 chapter; or

468-29 (2) a threat of a continuing violation of this
 468-30 chapter, a rule, or an order or permit.

468-31 (b) To request a temporary restraining order, the
 468-32 ~~department [commissioner, commissioner's designee, or an~~
 468-33 ~~authorized agent]~~ must find that a person has violated, is
 468-34 violating, or is threatening to violate this chapter, a rule
 468-35 adopted under this chapter, or an order or permit issued under this
 468-36 chapter and:

468-37 (1) the violation or threatened violation creates an
 468-38 immediate threat to the health and safety of the public; or

468-39 (2) there is reasonable cause to believe that the
 468-40 permit holder or the staff of the permit holder is party to the
 468-41 diversion of a narcotic drug or drugs in violation of Chapter 481
 468-42 (Texas Controlled Substances Act).

468-43 SECTION 3.1221. Section 466.043, Health and Safety Code, is
 468-44 amended to read as follows:

468-45 Sec. 466.043. ADMINISTRATIVE PENALTY. If a person violates
 468-46 this chapter, a rule adopted under this chapter, or an order or
 468-47 permit issued under this chapter, the ~~department [commissioner]~~ may
 468-48 assess an administrative penalty against the person as provided by
 468-49 Chapter 431 (Texas Food, Drug, and Cosmetic Act).

468-50 SECTION 3.1222. Section 466.045(a), Health and Safety Code,
 468-51 is amended to read as follows:

468-52 (a) If it appears that a person has violated this chapter, a
 468-53 rule adopted under this chapter, or an order or permit issued under
 468-54 this chapter, the ~~department [commissioner]~~ may request the
 468-55 attorney general or the district, county, or municipal attorney of
 468-56 the municipality or county in which the violation occurred to
 468-57 institute a civil suit for the assessment and recovery of a civil
 468-58 penalty.

468-59 SECTION 3.1223. Section 467.001, Health and Safety Code, is
 468-60 amended by amending Subdivisions (1) and (5) and adding Subdivision
 468-61 (2-a) to read as follows:

468-62 (1) "Approved peer assistance program" means a program
 468-63 that is designed to help an impaired professional and that is:

468-64 (A) established by a licensing or disciplinary
 468-65 authority; or

468-66 (B) approved by a licensing or disciplinary
 468-67 authority as meeting the criteria established by the ~~executive~~
 468-68 ~~commissioner [department]~~ and any additional criteria established
 468-69 by that licensing or disciplinary authority.

(2-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Professional" means an individual who:

(A) may incorporate under The Texas Pr

as described by Section 1.008(m), Business

Organizations Code [Act (Article 1528e, Vernon's Texas Civil Statutes)]; or

(B) is licensed, registered, certified, or

otherwise authorized by the state to practice as a licensed vocational nurse, social worker, chemical dependency counselor, occupational therapist, speech-language pathologist, audiologist, licensed dietitian, or dental or dental hygiene school faculty member.

SECTION 3.1224. Section 467.003, Health and Safety Code, is amended to read as follows:

Sec. 467.003. PROGRAMS. (a) A professional association or licensing or disciplinary authority may establish a peer assistance program to identify and assist impaired professionals in accordance with the minimum criteria established by the executive commissioner [department] and any additional criteria established by the appropriate licensing or disciplinary authority.

(b) A peer assistance program established by a professional association is not governed by or entitled to the benefits of this chapter unless the association submits evidence to the appropriate licensing or disciplinary authority showing that the association's program meets the minimum criteria established by the executive commissioner [department] and any additional criteria established by that authority.

(c) If a licensing or disciplinary authority receives evidence showing that a peer assistance program established by a professional association meets the minimum criteria established by the executive commissioner [department] and any additional criteria established by that authority, the authority shall approve the program.

(d) A licensing or disciplinary authority may revoke its approval of a program established by a professional association under this chapter if the authority determines that:

(1) the program does not comply with the criteria established by the executive commissioner [department] or by that authority; and

(2) the professional association does not bring the program into compliance within a reasonable time, as determined by that authority.

SECTION 3.1225. The heading to Section 467.0041, Health and Safety Code, is amended to read as follows:

Sec. 467.0041. FUNDING FOR [TEXAS] STATE BOARD OF DENTAL EXAMINERS.

SECTION 3.1226. Sections 467.0041(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(c) The board may collect a fee of not more than \$50 each

(c) The board may collect a fee of not more than \$50 each month from a participant in an approved peer assistance program. [Fees collected under this subsection shall be remitted to the comptroller for deposit to the credit of the dental registration account.]

(d) Subject to the General Appropriations Act, the board may

(d) Subject to the General Appropriations Act, the board may use the fees and surcharges collected under this section and fines collected in the enforcement of Subtitle D, Title 3, Occupations Code [Chapter 9, Title 71, Revised Statutes, and that are deposited in the dental registration account], to fund an approved program and to pay the administrative costs incurred by the board that are related to the program.

SECTION 3.1227. Section 481.002, Health and Safety Code, is amended by amending Subdivision (3) and adding Subdivision (55) to read as follows:

(3) "Commissioner" means the commissioner of state [public] health services or the commissioner's designee.

(55) "Executive commissioner" means the executive

470-1 commissioner of the Health and Human Services Commission.

470-2 SECTION 3.1228. Sections 481.034(a), (b), and (e), Health
470-3 and Safety Code, are amended to read as follows:

470-4 (a) The commissioner shall annually establish the schedules
470-5 of controlled substances. These annual schedules shall include the
470-6 complete list of all controlled substances from the previous
470-7 schedules and modifications in the federal schedules of controlled
470-8 substances as required by Subsection (g). Any further additions to
470-9 and deletions from these schedules, any rescheduling of substances
470-10 and any other modifications made by the commissioner to these
470-11 schedules of controlled substances shall be made:

470-12 (1) in accordance with Section 481.035;

470-13 (2) in a manner consistent with this subchapter; and

470-14 (3) with approval of the executive commissioner [~~Texas~~
470-15 ~~Board of Health~~].

470-16 (b) Except for alterations in schedules required by
470-17 Subsection (g), the commissioner may not make an alteration in a
470-18 schedule unless the commissioner holds a public hearing on the
470-19 matter in Austin and obtains approval from the executive
470-20 commissioner [~~Texas Board of Health~~].

470-21 (e) After considering the factors listed in Subsection (d),
470-22 the commissioner shall make findings with respect to those factors.
470-23 If [and adopt a rule controlling the substance if] the commissioner
470-24 finds the substance has a potential for abuse, the executive
470-25 commissioner shall adopt a rule controlling the substance.

470-26 SECTION 3.1229. Section 481.062(a), Health and Safety Code,
470-27 is amended to read as follows:

470-28 (a) The following persons are not required to register and
470-29 may possess a controlled substance under this chapter:

470-30 (1) an agent or employee of a registered manufacturer,
470-31 distributor, analyzer, or dispenser of the controlled substance
470-32 acting in the usual course of business or employment;

470-33 (2) a common or contract carrier, a warehouseman, or
470-34 an employee of a carrier or warehouseman whose possession of the
470-35 controlled substance is in the usual course of business or
470-36 employment;

470-37 (3) an ultimate user or a person in possession of the
470-38 controlled substance under a lawful order of a practitioner or in
470-39 lawful possession of the controlled substance if it is listed in
470-40 Schedule V;

470-41 (4) an officer or employee of this state, another
470-42 state, a political subdivision of this state or another state, or
470-43 the United States who is lawfully engaged in the enforcement of a
470-44 law relating to a controlled substance or drug or to a customs law
470-45 and authorized to possess the controlled substance in the discharge
470-46 of the person's official duties; or

470-47 (5) if the substance is tetrahydrocannabinol or one of
470-48 its derivatives:

470-49 (A) a [~~Texas~~] Department of State Health Services
470-50 official, a medical school researcher, or a research program
470-51 participant possessing the substance as authorized under
470-52 Subchapter G; or

470-53 (B) a practitioner or an ultimate user possessing
470-54 the substance as a participant in a federally approved therapeutic
470-55 research program that the commissioner has reviewed and found, in
470-56 writing, to contain a medically responsible research protocol.

470-57 SECTION 3.1230. Section 481.068(b), Health and Safety Code,
470-58 is amended to read as follows:

470-59 (b) Except as provided by Sections 481.074 and 481.075, a
470-60 practitioner engaged in authorized medical practice or research may
470-61 not be required to furnish the name or identity of a patient or
470-62 research subject to the department, the Department of State Health
470-63 Services [~~director of the Texas Commission on Alcohol and Drug~~
470-64 ~~Abuse~~], or any other agency, public official, or law enforcement
470-65 officer. A practitioner may not be compelled in a state or local
470-66 civil, criminal, administrative, legislative, or other proceeding
470-67 to furnish the name or identity of an individual that the
470-68 practitioner is obligated to keep confidential.

470-69 SECTION 3.1231. Section 481.073(a), Health and Safety Code,

471-1 is amended to read as follows:

471-2 (a) Only a practitioner defined by Section 481.002(39)(A)
 471-3 and an agent designated in writing by the practitioner in
 471-4 accordance with rules adopted by the department may communicate a
 471-5 prescription by telephone. A pharmacy that receives a
 471-6 telephonically communicated prescription shall promptly write the
 471-7 prescription and file and retain the prescription in the manner
 471-8 required by this subchapter. A practitioner who designates an
 471-9 agent to communicate prescriptions shall maintain the written
 471-10 designation of the agent in the practitioner's usual place of
 471-11 business and shall make the designation available for inspection by
 471-12 investigators for the Texas Medical [State] Board [~~of Medical~~
 471-13 ~~Examiners~~], the State Board of Dental Examiners, the State Board of
 471-14 Veterinary Medical Examiners, and the department. A practitioner
 471-15 who designates a different agent shall designate that agent in
 471-16 writing and maintain the designation in the same manner in which the
 471-17 practitioner initially designated an agent under this section.

471-18 SECTION 3.1232. Sections 481.201(a) and (b), Health and
 471-19 Safety Code, are amended to read as follows:

471-20 (a) The executive commissioner [~~Texas Board of Health~~] may
 471-21 establish a controlled substance therapeutic research program for
 471-22 the supervised use of tetrahydrocannabinols for medical and
 471-23 research purposes to be conducted in accordance with this chapter.

471-24 (b) If the executive commissioner [~~Texas Board of Health~~]
 471-25 establishes the program, the executive commissioner [~~board~~] shall
 471-26 create a research program review board. The review board members
 471-27 are appointed by the executive commissioner [~~Texas Board of Health~~]
 471-28 and serve at the will of the executive commissioner [~~board~~].

471-29 SECTION 3.1233. Sections 481.202(b) and (d), Health and
 471-30 Safety Code, are amended to read as follows:

471-31 (b) The review board, after approval of the executive
 471-32 commissioner [~~Texas Board of Health~~], may seek authorization to
 471-33 expand the research program to include diseases not covered by this
 471-34 subchapter.

471-35 (d) The executive commissioner [~~Texas Board of Health~~] may
 471-36 terminate the distribution of tetrahydrocannabinols and their
 471-37 derivatives to a research program as the executive commissioner
 471-38 [~~is~~] determines necessary.

471-39 SECTION 3.1234. Section 481.203(a), Health and Safety Code,
 471-40 is amended to read as follows:

471-41 (a) A person may not be considered for participation as a
 471-42 recipient of tetrahydrocannabinols and their derivatives through a
 471-43 research program unless the person is recommended to a person in
 471-44 charge of an approved research program and the review board by a
 471-45 physician who is licensed by the Texas Medical [State] Board [~~of~~
 471-46 ~~Medical Examiners~~] and is attending the person.

471-47 SECTION 3.1235. Section 481.204, Health and Safety Code, is
 471-48 amended to read as follows:

471-49 Sec. 481.204. ACQUISITION AND DISTRIBUTION OF CONTROLLED
 471-50 SUBSTANCES. (a) The executive commissioner [~~Texas Board of~~
 471-51 ~~Health~~] shall acquire the tetrahydrocannabinols and their
 471-52 derivatives for use in the research program by contracting with the
 471-53 National Institute on Drug Abuse to receive tetrahydrocannabinols
 471-54 and their derivatives that are safe for human consumption according
 471-55 to the regulations adopted by the institute, the United States Food
 471-56 and Drug Administration, and the Federal Drug Enforcement
 471-57 Administration.

471-58 (b) The executive commissioner [~~Texas Board of Health~~]
 471-59 shall supervise the distribution of the tetrahydrocannabinols and
 471-60 their derivatives to program participants. The
 471-61 tetrahydrocannabinols and derivatives of tetrahydrocannabinols may
 471-62 be distributed only by the person in charge of the research program
 471-63 to physicians caring for program participant patients, under rules
 471-64 adopted by the executive commissioner [~~Texas Board of Health~~] in
 471-65 such a manner as to prevent unauthorized diversion of the
 471-66 substances and in compliance with all requirements of the Federal
 471-67 Drug Enforcement Administration. The physician is responsible for
 471-68 dispensing the substances to patients.

471-69 SECTION 3.1236. Section 481.205, Health and Safety Code, is

472-1 amended to read as follows:

472-2 Sec. 481.205. RULES; REPORTS. (a) The executive
 472-3 commissioner [~~Texas Board of Health~~] shall adopt rules necessary
 472-4 for implementing the research program.

472-5 (b) If the executive commissioner [~~Texas Board of Health~~]
 472-6 establishes a program under this subchapter, the commissioner shall
 472-7 publish a report not later than January 1 of each odd-numbered year
 472-8 on the medical effectiveness of the use of tetrahydrocannabinols
 472-9 and their derivatives and any other medical findings of the
 472-10 research program.

472-11 SECTION 3.1237. Section 483.003, Health and Safety Code, is
 472-12 amended to read as follows:

472-13 Sec. 483.003. DEPARTMENT [~~BOARD~~] OF STATE HEALTH SERVICES
 472-14 HEARINGS REGARDING CERTAIN DANGEROUS DRUGS. (a) The Department
 472-15 [~~Texas Board~~] of State Health Services may hold public hearings in
 472-16 accordance with Chapter 2001, Government Code, to determine whether
 472-17 there is compelling evidence that a dangerous drug has been abused,
 472-18 either by being prescribed for nontherapeutic purposes or by the
 472-19 ultimate user.

472-20 (b) On [making that] finding that a dangerous drug has been
 472-21 abused, the Department [~~Texas Board~~] of State Health Services may
 472-22 limit the availability of the abused drug by permitting its
 472-23 dispensing only on the prescription of a practitioner described by
 472-24 Section 483.001(12)(A), (B), or (D).

472-25 SECTION 3.1238. Section 483.004, Health and Safety Code, is
 472-26 amended to read as follows:

472-27 Sec. 483.004. COMMISSIONER OF STATE HEALTH SERVICES
 472-28 EMERGENCY AUTHORITY RELATING TO DANGEROUS DRUGS. If the
 472-29 commissioner of state health services has compelling evidence that
 472-30 an immediate danger to the public health exists as a result of the
 472-31 prescription of a dangerous drug by practitioners described by
 472-32 Section 483.001(12)(C), the commissioner may use the
 472-33 commissioner's existing emergency authority to limit the
 472-34 availability of the drug by permitting its prescription only by
 472-35 practitioners described by Section 483.001(12)(A), (B), or (D).

472-36 SECTION 3.1239. Section 483.024, Health and Safety Code, is
 472-37 amended to read as follows:

472-38 Sec. 483.024. RECORDS OF ACQUISITION OR DISPOSAL. The
 472-39 following persons shall maintain a record of each acquisition and
 472-40 each disposal of a dangerous drug for two years after the date of
 472-41 the acquisition or disposal:

472-42 (1) a pharmacy;

472-43 (2) a practitioner;

472-44 (3) a person who obtains a dangerous drug for lawful
 472-45 research, teaching, or testing purposes, but not for resale;

472-46 (4) a hospital that obtains a dangerous drug for
 472-47 lawful administration by a practitioner; and

472-48 (5) a manufacturer or wholesaler licensed by
 472-49 [~~registered with~~] the Department [commissioner] of State Health
 472-50 Services [~~health~~] under Chapter 431 (Texas Food, Drug, and Cosmetic
 472-51 Act).

472-52 SECTION 3.1240. Section 483.041(c), Health and Safety Code,
 472-53 is amended to read as follows:

472-54 (c) Subsection (a) does not apply to the possession of a
 472-55 dangerous drug in the usual course of business or practice or in the
 472-56 performance of official duties by the following persons or an agent
 472-57 or employee of the person:

472-58 (1) a pharmacy licensed by the board;

472-59 (2) a practitioner;

472-60 (3) a person who obtains a dangerous drug for lawful
 472-61 research, teaching, or testing, but not for resale;

472-62 (4) a hospital that obtains a dangerous drug for
 472-63 lawful administration by a practitioner;

472-64 (5) an officer or employee of the federal, state, or
 472-65 local government;

472-66 (6) a manufacturer or wholesaler licensed by the
 472-67 Department of State Health Services under Chapter 431 (Texas Food,
 472-68 Drug, and Cosmetic Act);

472-69 (7) a carrier or warehouseman;

(8) a home and community support services agency licensed under and acting in accordance with Chapter 142;

(9) a licensed midwife who obtains oxygen for administration to a mother or newborn or who obtains a dangerous drug for the administration of prophylaxis to a newborn for the prevention of ophthalmia neonatorum in accordance with Section 203.353, Occupations Code;

(10) a salvage broker or salvage operator licensed under Chapter 432; or

(11) a certified laser hair removal professional under Subchapter M, Chapter 401, who possesses and uses a laser or pulsed light device approved by and registered with the Department of State Health Services [department] and in compliance with department rules for the sole purpose of cosmetic nonablative hair removal.

SECTION 3.1241. Section 485.001, Health and Safety Code, is amended by amending Subdivisions (4) and (7) and adding Subdivision (7-a) to read as follows:

(4) "Commissioner" means the commissioner of state health services.

(7) "Department" means the [Texas] Department of State
Health Services.

(7-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1242. Section 485.002, Health and Safety Code, is amended to read as follows:

Sec. 485.002. RULES. The executive commissioner [board] may adopt rules necessary to comply with any labeling requirements concerning precautions against inhalation of an abusable volatile chemical established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, or under regulations adopted under that Act.

SECTION 3.1243. Sections 485.012(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The executive commissioner [board] shall adopt rules as necessary to administer this chapter, including application procedures and procedures by which the department shall give each permit holder reasonable notice of permit expiration and renewal requirements.

(d) A permit issued or renewed under this chapter is valid for two years [~~one year~~] from the date of issuance or renewal.

Sec. 485.013 FEE. The executive commissioner [board] by

Sec. 485.015. FEE. The executive commissioner [board] by rule may establish fees in amounts as prescribed by Section 12.0111 [not to exceed \$25 for the issuance of a permit under this chapter].

SECTION 3. 1245. Section 485.104(b), Health and Safety Code,

SECTION 3.1243. Section 483.104(b), Health and Safety Code, is amended to read as follows:

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department [commissioner] by order shall [approve the determination and] impose the recommended penalty.

Sec. 485.105 HEARING (a) If the person requests a

Sec. 483.105. HEARING. (a) If the person requests a hearing, the department [commissioner] shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. The department shall [and] give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department [commissioner] a written proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

SECTION 3.1247. Section 485.106, Health and Safety Code, is amended to read as follows:

Sec. 485.106. DECISION BY DEPARTMENT [COMMISSIONER]. (a) Based on the findings of fact, conclusions of law, and proposal for

474-1 a decision, the department [~~commissioner~~] by order may:

474-2 (1) find that a violation occurred and impose a
474-3 penalty; or

474-4 (2) find that a violation did not occur.

474-5 (b) The notice of the department's [~~commissioner's~~] order
474-6 under Subsection (a) that is sent to the person in accordance with
474-7 Chapter 2001, Government Code, must include a statement of the
474-8 right of the person to judicial review of the order.

474-9 SECTION 3.1248. Section 485.107, Health and Safety Code, is
474-10 amended to read as follows:

474-11 Sec. 485.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
474-12 Within 30 days after the date the order of the department
474-13 [~~commissioner~~] under Section 485.106 that imposes an
474-14 administrative penalty becomes final, the person shall:

474-15 (1) pay the penalty; or

474-16 (2) file a petition for judicial review of the
474-17 department's [~~commissioner's~~] order contesting the occurrence of
474-18 the violation, the amount of the penalty, or both.

474-19 SECTION 3.1249. Section 485.108, Health and Safety Code, is
474-20 amended to read as follows:

474-21 Sec. 485.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within
474-22 the 30-day period prescribed by Section 485.107, a person who files
474-23 a petition for judicial review may:

474-24 (1) stay enforcement of the penalty by:

474-25 (A) paying the penalty to the court for placement
474-26 in an escrow account; or

474-27 (B) giving the court a supersedeas bond approved
474-28 by the court that:

474-29 (i) is for the amount of the penalty; and

474-30 (ii) is effective until all judicial review
474-31 of the department's [~~commissioner's~~] order is final; or

474-32 (2) request the court to stay enforcement of the
474-33 penalty by:

474-34 (A) filing with the court a sworn affidavit of
474-35 the person stating that the person is financially unable to pay the
474-36 penalty and is financially unable to give the supersedeas bond; and

474-37 (B) sending a copy of the affidavit to the
474-38 department [~~commissioner~~] by certified mail.

474-39 (b) If the department [~~commissioner~~] receives a copy of an
474-40 affidavit under Subsection (a)(2), the department [~~commissioner~~]
474-41 may file with the court, within five days after the date the copy is
474-42 received, a contest to the affidavit. The court shall hold a
474-43 hearing on the facts alleged in the affidavit as soon as practicable
474-44 and shall stay the enforcement of the penalty on finding that the
474-45 alleged facts are true. The person who files an affidavit has the
474-46 burden of proving that the person is financially unable to pay the
474-47 penalty or to give a supersedeas bond.

474-48 SECTION 3.1250. Section 486.001(a), Health and Safety Code,
474-49 is amended by adding Subdivision (4-a) to read as follows:

474-50 (4-a) "Executive commissioner" means the executive
474-51 commissioner of the Health and Human Services Commission.

474-52 SECTION 3.1251. Section 486.003, Health and Safety Code, is
474-53 amended to read as follows:

474-54 Sec. 486.003. RULES. The executive commissioner [~~council~~]
474-55 shall adopt rules necessary to implement and enforce this chapter.

474-56 SECTION 3.1252. Section 486.004(b), Health and Safety Code,
474-57 is amended to read as follows:

474-58 (b) The executive commissioner by rule shall set the fees in
474-59 amounts that allow the department to recover the biennial
474-60 expenditures of state funds by the department in:

474-61 (1) reviewing applications for the issuance of a
474-62 certificate of authority under this chapter;

474-63 (2) issuing certificates of authority under this
474-64 chapter;

474-65 (3) inspecting and auditing a business establishment
474-66 that is issued a certificate of authority under this chapter; and

474-67 (4) otherwise implementing and enforcing this
474-68 chapter.

474-69 SECTION 3.1253. Section 486.012(c), Health and Safety Code,

475-1 is amended to read as follows:

475-2 (c) The executive commissioner [department] by rule shall
 475-3 establish requirements for the issuance of a certificate of
 475-4 authority under this section. The rules must include a
 475-5 consideration [by the department] of whether the establishment:

475-6 (1) complies with the requirements of the Texas State
 475-7 Board of Pharmacy for the issuance of a license to operate a
 475-8 pharmacy;

475-9 (2) sells a wide variety of healthcare products; and

475-10 (3) employs sales techniques and other measures
 475-11 designed to deter the theft of products containing ephedrine,
 475-12 pseudoephedrine, or norpseudoephedrine and other items used in the
 475-13 manufacture of methamphetamine.

475-14 SECTION 3.1254. Section [486.0142\(a\)](#), Health and Safety
 475-15 Code, is amended to read as follows:

475-16 (a) On application by a business establishment that
 475-17 operates a pharmacy and engages in over-the-counter sales of
 475-18 products containing ephedrine, pseudoephedrine, or
 475-19 norpseudoephedrine as authorized by Section [486.011](#), the Texas
 475-20 State Board of Pharmacy may grant that business establishment a
 475-21 temporary exemption, not to exceed 180 days, from the requirement
 475-22 of using a real-time electronic logging system under this chapter.

475-23 SECTION 3.1255. Section [486.024\(b\)](#), Health and Safety Code,
 475-24 is amended to read as follows:

475-25 (b) If the person accepts the determination and recommended
 475-26 penalty or if the person fails to respond to the notice, the
 475-27 department [commissioner] by order shall impose the penalty
 475-28 [approve the determination].

475-29 SECTION 3.1256. Section [486.025](#), Health and Safety Code, is
 475-30 amended to read as follows:

475-31 Sec. 486.025. HEARING. (a) If the person requests a
 475-32 hearing, the department [commissioner] shall refer the matter to
 475-33 the State Office of Administrative Hearings, which shall promptly
 475-34 set a hearing date, and the department shall give written notice of
 475-35 the time and place of the hearing to the person. An administrative
 475-36 law judge of the State Office of Administrative Hearings shall
 475-37 conduct the hearing.

475-38 (b) The administrative law judge shall make findings of fact
 475-39 and conclusions of law and promptly issue to the department
 475-40 [commissioner] a written proposal for a decision about the
 475-41 occurrence of the violation and the amount of a proposed penalty.

475-42 SECTION 3.1257. Section [486.026](#), Health and Safety Code, is
 475-43 amended to read as follows:

475-44 Sec. 486.026. DECISION. (a) Based on the findings of fact,
 475-45 conclusions of law, and proposal for a decision, the department
 475-46 [commissioner] by order may:

475-47 (1) find that a violation occurred and impose a
 475-48 penalty; or

475-49 (2) find that a violation did not occur.

475-50 (b) The notice of the department's [commissioner's] order
 475-51 under Subsection (a) that is sent to the person in the manner
 475-52 provided by Chapter 2001, Government Code, must include a statement
 475-53 of the right of the person to judicial review of the order.

475-54 SECTION 3.1258. Section [486.028](#), Health and Safety Code, is
 475-55 amended to read as follows:

475-56 Sec. 486.028. STAY OF ENFORCEMENT OF PENALTY. (a) Within
 475-57 the period prescribed by Section [486.027](#), a person who files a
 475-58 petition for judicial review may:

475-59 (1) stay enforcement of the penalty by:

475-60 (A) paying the amount of the penalty to the court
 475-61 for placement in an escrow account; or

475-62 (B) giving the court a supersedeas bond approved
 475-63 by the court that:

475-64 (i) is for the amount of the penalty; and

475-65 (ii) is effective until all judicial review
 475-66 of the order is final; or

475-67 (2) request the court to stay enforcement of the
 475-68 penalty by:

475-69 (A) filing with the court an affidavit of the

(b) Following receipt of a copy of an affidavit under Subsection (a)(2), the department [commissioner] may file with the court, before the sixth day after the date of receipt, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

SECTION 3.1259. Section 501.001, Health and Safety Code, is amended by amending Subdivisions (3) and (4) and adding Subdivision (4-a) to read as follows:

(3) "Commissioner" means the commissioner of state
[public] health services.

(4) "Department" means the [Texas] Department of State Health Services.
(4-a) "Executive commissioner" means the executive

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1260. Sections 501.002(d) and (k), Health and Safety Code, are amended to read as follows:

(d) A substance or article is extremely flammable, flammable, or combustible if it is defined as extremely flammable, flammable, or combustible by rule adopted by [eff] the executive commissioner [board]. The executive commissioner [board] shall define the terms as they are defined by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and by federal regulations adopted under that Act. The terms each have the meaning assigned by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) and by federal regulations adopted under that Act, as of September 1, 2001.

(k) The following are not hazardous substances:

(1) a pesticide subject to Chapter 76

(1) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 [135] et seq.);
(2) a food, drug, or cosmetic subject to the Federal

(2) a food, drug, or cosmetic subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) or Chapter 431 (Texas Food, Drug, and Cosmetic Act);

- (3) a beverage complying with or subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.);
- (4) a substance intended for use as fuel that is stored in a container and used in the heating, cooking, or refrigeration

system of a private residence; and
(5) source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954 (42 U.S.C. Chapter 23) and regulations issued under that Act by the United States Nuclear Regulatory Commission [~~Atomic Energy Commission~~].

SECTION 3.1261. Section 501.003, Health and Safety Code, is amended to read as follows:

Sec. 501.003. DESIGNATION OF RADIOACTIVE SUBSTANCE AS HAZARDOUS. The executive commissioner [board] by rule shall designate a radioactive substance to be a hazardous substance if, with respect to the substance as used in a particular class of article or as packaged, the executive commissioner [board] finds that the substance is sufficiently hazardous as to require labeling as a hazardous substance under this chapter in order to protect the public health.

SECTION 3.1262. Sections 501.021(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner [board] by rule shall establish the methods for determining the flammability of solids, fabrics, children's clothing, household furnishings, and the contents of self-pressurized containers that the executive commissioner [board] finds are generally applicable to those materials or containers.

(b) The executive commissioner [board] by rule shall establish flammability standards for articles described by Subsection (a). The standards must conform to standards prescribed by federal regulations adopted under the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), as amended, the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.), as amended. Until the executive commissioner [board] adopts standards, the flammability standards for articles described by Subsection (a) are the standards prescribed by federal regulations adopted under the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) as of September 1, 2001.

SECTION 3.1263. Sections 501.022(a), (b), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner [board] by rule shall designate as a banned hazardous substance any article, including clothing intended for the use of children, that is not properly packaged or that does not comply with applicable flammability standards established by the executive commissioner [board]. The executive commissioner's [board's] determination that articles of clothing of a specified range of sizes are intended for the use of a child 14 years of age or younger is conclusive.

(b) The executive commissioner [board] by rule shall designate as a banned hazardous substance any toy or other article, other than clothing, intended for the use of children that is a hazardous substance or bears or contains a hazardous substance in a manner accessible by a child to whom the toy or other article is entrusted.

(c) The executive commissioner [board] by rule shall designate as a banned hazardous substance any hazardous substance intended or packaged in a form suitable for use in a household that, notwithstanding cautionary labeling required by this chapter, is potentially so dangerous or hazardous when present or used in a household that the protection of the public health and safety may be adequately served only by keeping the substance out of commerce.

(d) The executive commissioner [board] by rule shall designate as a banned hazardous substance any article subject to this chapter that cannot be labeled adequately to protect the public health and safety or that presents an imminent danger to the public health and safety.

(e) This section does not apply to a toy or article such as a chemical set that because of its functional purpose requires the inclusion of a hazardous substance or necessarily presents an electrical, mechanical, or thermal hazard if the toy or article:

(1) bears labeling that in the judgment of the department [board] gives adequate directions and warnings for safe use; and

(2) is intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed

those directions and warnings.

SECTION 3.1264. Section 501.0231, Health and Safety Code,

is amended to read as follows:

Sec. 501.0231. LABELING OF CERTAIN TOYS AND GAMES. (a) Toys or games intended for use by children, including the parts of those toys or games, shall be labeled in the manner required by department rule [of the board]. The [board's] rules adopted under this subsection shall be consistent with federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended. Until the executive commissioner [board] adopts rules under this subsection, the toys, games, and parts shall be labeled in the manner required by federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1, 2001.

(b) Latex balloons, small balls, marbles, and any toy or game that contains such a balloon, ball, or marble shall be labeled

478-1 in the manner required by department rule [~~of the board~~]. The
 478-2 ~~[board's]~~ rules adopted under this subsection shall be consistent
 478-3 with federal guidelines and regulations adopted under the Federal
 478-4 Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as
 478-5 amended. Until the executive commissioner [~~board~~] adopts rules
 478-6 under this subsection, latex balloons, small balls, marbles, and
 478-7 any toy or game that contains such a balloon, ball, or marble shall
 478-8 be labeled in the manner required by federal guidelines and
 478-9 regulations adopted under the Federal Hazardous Substances Act (15
 478-10 U.S.C. Section 1261 et seq.) as of September 1, 2001.

478-11 SECTION 3.1265. Section 501.0232(b), Health and Safety
 478-12 Code, is amended to read as follows:

478-13 (b) Art materials shall be labeled in the manner required by
 478-14 department rule [~~of the board~~]. The ~~[board's]~~ rules adopted under
 478-15 this subsection shall be consistent with the Federal Hazardous
 478-16 Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and
 478-17 federal regulations adopted under that Act. Until the executive
 478-18 commissioner [~~board~~] adopts rules under this subsection, art
 478-19 materials shall be labeled in the manner required by the Federal
 478-20 Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and
 478-21 federal regulations adopted under that Act, as of September 1,
 478-22 2001.

478-23 SECTION 3.1266. Section 501.0233, Health and Safety Code,
 478-24 is amended to read as follows:

478-25 Sec. 501.0233. PACKAGING OF HAZARDOUS SUBSTANCES.
 478-26 Hazardous substances shall be packaged in the manner required by
 478-27 special packaging rules adopted by the executive commissioner
 478-28 [~~board~~]. The ~~[board's]~~ rules adopted under this section shall be
 478-29 consistent with federal special packaging regulations adopted
 478-30 under the federal Poison Prevention Packaging Act of 1970 (15
 478-31 U.S.C. Section 1471 et seq.), as amended. Until the executive
 478-32 commissioner [~~board~~] adopts rules under this section, hazardous
 478-33 substances shall be packaged in the manner required by federal
 478-34 special packaging regulations adopted under the federal Poison
 478-35 Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.),
 478-36 as of September 1, 2001.

478-37 SECTION 3.1267. Sections 501.024(b) and (d), Health and
 478-38 Safety Code, are amended to read as follows:

478-39 (b) The executive commissioner [~~board~~] by rule shall detail
 478-40 the registration requirements and prescribe the contents of the
 478-41 registration statement.

478-42 (d) The initial registration statement and each annual
 478-43 registration statement must be accompanied by a fee prescribed by
 478-44 the executive commissioner by rule [~~board~~].

478-45 SECTION 3.1268. Section 501.025, Health and Safety Code, is
 478-46 amended to read as follows:

478-47 Sec. 501.025. RULES. The executive commissioner [~~board~~]
 478-48 may adopt reasonable rules necessary for the efficient
 478-49 administration and enforcement of this chapter. The rules must
 478-50 conform with regulations adopted under the Federal Hazardous
 478-51 Substances Act (15 U.S.C. Section 1261 et seq.), as amended, the
 478-52 federal Consumer Product Safety Act (15 U.S.C. Section 2051 et
 478-53 seq.), as amended, the federal Flammable Fabrics Act (15 U.S.C.
 478-54 Section 1191 et seq.), as amended, and the federal Poison
 478-55 Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.),
 478-56 as amended, as applicable.

478-57 SECTION 3.1269. Section 501.026, Health and Safety Code, is
 478-58 amended to read as follows:

478-59 Sec. 501.026. FEES. The executive commissioner [~~board~~] by
 478-60 rule shall set reasonable registration fees in an amount as
 478-61 prescribed by Section 12.0111 [~~designed to recover not more than~~
 478-62 ~~the costs to the department of administering, monitoring compliance~~
 478-63 ~~with, enforcing, and conducting tests under this chapter~~].

478-64 SECTION 3.1270. Section 501.104(b), Health and Safety Code,
 478-65 is amended to read as follows:

478-66 (b) If the person accepts the determination and recommended
 478-67 penalty or if the person fails to respond to the notice, the
 478-68 department [commissioner of public health] by order shall [approve
 478-69 the determination and] impose the recommended penalty.

479-1 SECTION 3.1271. Section 501.105, Health and Safety Code, is
 479-2 amended to read as follows:

479-3 Sec. 501.105. HEARING. (a) If the person requests a
 479-4 hearing, the department [commissioner of public health] shall refer
 479-5 the matter to the State Office of Administrative Hearings, which
 479-6 shall promptly set a hearing date. The department shall [and] give
 479-7 written notice of the time and place of the hearing to the person.
 479-8 An administrative law judge of the State Office of Administrative
 479-9 Hearings shall conduct the hearing.

479-10 (b) The administrative law judge shall make findings of fact
 479-11 and conclusions of law and promptly issue to the department
 479-12 [commissioner of public health] a written proposal for a decision
 479-13 about the occurrence of the violation and the amount of a proposed
 479-14 penalty.

479-15 SECTION 3.1272. Section 501.106, Health and Safety Code, is
 479-16 amended to read as follows:

479-17 Sec. 501.106. DECISION BY DEPARTMENT [COMMISSIONER]. (a)
 479-18 Based on the findings of fact, conclusions of law, and proposal for
 479-19 a decision, the department [commissioner of public health] by order
 479-20 may:

479-21 (1) find that a violation occurred and impose a
 479-22 penalty; or

479-23 (2) find that a violation did not occur.

479-24 (b) The notice of the department's [commissioner's] order
 479-25 under Subsection (a) that is sent to the person in accordance with
 479-26 Chapter 2001, Government Code, must include a statement of the
 479-27 right of the person to judicial review of the order.

479-28 SECTION 3.1273. Section 501.107, Health and Safety Code, is
 479-29 amended to read as follows:

479-30 Sec. 501.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
 479-31 Within 30 days after the date an order of the department
 479-32 [commissioner of public health] under Section 501.106 that imposes
 479-33 an administrative penalty becomes final, the person shall:

479-34 (1) pay the penalty; or

479-35 (2) file a petition for judicial review of the
 479-36 department's [commissioner's] order contesting the occurrence of
 479-37 the violation, the amount of the penalty, or both.

479-38 SECTION 3.1274. Section 501.108, Health and Safety Code, is
 479-39 amended to read as follows:

479-40 Sec. 501.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within
 479-41 the 30-day period prescribed by Section 501.107, a person who files
 479-42 a petition for judicial review may:

479-43 (1) stay enforcement of the penalty by:

479-44 (A) paying the penalty to the court for placement
 479-45 in an escrow account; or

479-46 (B) giving the court a supersedeas bond approved
 479-47 by the court that:

479-48 (i) is for the amount of the penalty; and
 479-49 (ii) is effective until all judicial review

479-50 of the department's [commissioner's] order is final; or

479-51 (2) request the court to stay enforcement of the
 479-52 penalty by:

479-53 (A) filing with the court a sworn affidavit of
 479-54 the person stating that the person is financially unable to pay the
 479-55 penalty and is financially unable to give the supersedeas bond; and

479-56 (B) giving a copy of the affidavit to the
 479-57 department [commissioner of public health] by certified mail.

479-58 (b) If the department [commissioner of public health]
 479-59 receives a copy of an affidavit under Subsection (a)(2), the
 479-60 department [commissioner] may file with the court, within five days
 479-61 after the date the copy is received, a contest to the affidavit.
 479-62 The court shall hold a hearing on the facts alleged in the affidavit
 479-63 as soon as practicable and shall stay the enforcement of the penalty
 479-64 on finding that the alleged facts are true. The person who files an
 479-65 affidavit has the burden of proving that the person is financially
 479-66 unable to pay the penalty or to give a supersedeas bond.

479-67 SECTION 3.1275. Section 502.003, Health and Safety Code, is
 479-68 amended by amending Subdivisions (3), (4), (6), (9), (11), (13),
 479-69 (15), (18), and (20) and adding Subdivision (11-a) to read as

480-1 follows:

480-2 (3) "Chemical manufacturer" means an employer in North
 480-3 American Industry Classification System (NAICS) [Standard
 480-4 Industrial Classification (SIC)] Codes 31-33 [20-39] with a
 480-5 workplace where chemicals are produced for use or distribution.

480-6 (4) "Chemical name" means:

480-7 (A) the scientific designation of a chemical in accordance with the nomenclature system developed by the
 480-8 International Union of Pure and Applied Chemistry (IUPAC) or the
 480-9 Chemical Abstracts Service (CAS) rules of nomenclature; or
 480-10 (B) a name that clearly identifies the chemical
 480-11 for the purpose of conducting a hazard classification [evaluation].

480-12 (6) "Department" means the [Texas] Department of State
 480-13 Health Services.

480-14 (9) "Distributor" means a business in North American
 480-15 Industry Classification System (NAICS) Code 424 or 425 [Standard
 480-16 Industrial Classification Major Industry Group 516 or 517] that
 480-17 supplies hazardous chemicals to an employer who must comply with
 480-18 this chapter [Act].

480-19 (11) "Employer" means a person engaged in private
 480-20 business who is regulated by the federal Occupational Safety and
 480-21 Health Act of 1970 (29 U.S.C. Section 651 et seq.) [(Pub. L. No.
 480-22 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub.
 480-23 L. No. 91-173)], or the Federal Mine Safety and Health [Amendments]
 480-24 Act of 1977 (30 U.S.C. Section 801 et seq.) [(Pub. L. No. 95-164)]
 480-25 on September 1, 1993 [~~the effective date of this Act~~], or the state
 480-26 or a political subdivision of the state, including a state, county,
 480-27 or municipal agency, a public school, a college or university, a
 480-28 river authority or publicly owned utility, a volunteer emergency
 480-29 service organization, and other similar employers. The term does
 480-30 not include any person to whom the federal Occupational Safety and
 480-31 Health Act of 1970 (29 U.S.C. Section 651 et seq.) [(Pub. L. No.
 480-32 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub.
 480-33 L. No. 91-173)], or the Federal Mine Safety and Health [Amendments]
 480-34 Act of 1977 (30 U.S.C. Section 801 et seq.) [(Pub. L. No. 95-164)]
 480-35 is applicable if that employer is covered by the OSHA standard or
 480-36 the other two federal laws.

480-37 (11-a) "Executive commissioner" means the executive
 480-38 commissioner of the Health and Human Services Commission.

480-39 (13) "Hazardous chemical" or "chemical" means an
 480-40 element, compound, or mixture of elements or compounds that is a
 480-41 physical hazard or health hazard as defined by the OSHA standard in
 480-42 29 CFR Section 1910.1200(c), or a hazardous substance as classified
 480-43 under [defined by] the OSHA standard in 29 CFR Section
 480-44 1910.1200(d)(3), or by OSHA's written interpretations. A hazard
 480-45 determination may be made by employers who choose not to rely on the
 480-46 evaluations made by their suppliers if there are relevant
 480-47 qualitative or quantitative differences. A hazard determination
 480-48 shall involve the best professional judgment.

480-49 (15) "Identity" means a chemical or common name, or
 480-50 alphabetical or numerical identification, that is indicated on the
 480-51 [material] safety data sheet (SDS) [(MSDS)] for the chemical. The
 480-52 identity used must permit cross-references to be made among the
 480-53 workplace chemical list, the label, and the SDS [MSDS].

480-54 (18) "MSHA standard" means the Hazard Communication
 480-55 Standard issued by the Mine [Mining] Safety and Health
 480-56 Administration.

480-57 (20) "Physical hazard" means a chemical that is
 480-58 classified as posing one of the following hazardous effects:
 480-59 explosive; flammable (gases, aerosols, liquids, or solids);
 480-60 oxidizer (liquid, solid, or gas); self-reactive; pyrophoric
 480-61 (liquid or solid); self-heating; organic peroxide; corrosive to
 480-62 metal; gas under pressure; or in contact with water emits flammable
 480-63 gas [for which there is scientifically valid evidence that it is a
 480-64 combustible liquid, a compressed gas, explosive, flammable, an
 480-65 organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or
 480-66 water-reactive in terms defined in the OSHA standard].

480-67 SECTION 3.1276. Section 502.003(17), Health and Safety
 480-68 Code, is redesignated as Section 502.003(20-a), Health and Safety

481-1 Code, and amended to read as follows:

481-2 (20-a) "Safety [~~(17)~~] "Material Safety" Data Sheet"
 481-3 ("SDS") [~~("MSDS")~~] means written or printed material concerning a
 481-4 hazardous chemical [a document containing chemical hazard and safe
 481-5 handling information] that is prepared in accordance with the
 481-6 requirements of the OSHA standard for that material [document].

481-7 SECTION 3.1277. Section 502.004(f), Health and Safety Code,
 481-8 is amended to read as follows:

481-9 (f) This chapter does not apply to:

481-10 (1) any hazardous waste, as that term is defined by the
 481-11 federal Solid Waste Disposal Act[~~, as amended by the Resource
 481-12 Conservation and Recovery Act of 1976, as amended~~] (42 U.S.C.
 481-13 Section 6901 et seq.), when subject to regulations issued under
 481-14 that Act by the Environmental Protection Agency;

481-15 (2) a chemical in a laboratory under the direct
 481-16 supervision or guidance of a technically qualified individual if:

481-17 (A) labels on incoming containers of chemicals
 481-18 are not removed or defaced;

481-19 (B) the employer complies with Sections 502.006
 481-20 and 502.009 with respect to laboratory employees; and

481-21 (C) the laboratory is not used primarily to
 481-22 produce hazardous chemicals in bulk for commercial purposes;

481-23 (3) tobacco or tobacco products;

481-24 (4) wood or wood products;

481-25 (5) articles;

481-26 (6) food, drugs, cosmetics, or alcoholic beverages in
 481-27 a retail food sale establishment that are packaged for sale to
 481-28 consumers;

481-29 (7) food, drugs, or cosmetics intended for personal
 481-30 consumption by an employee while in the workplace;

481-31 (8) any consumer product or hazardous substance, as
 481-32 those terms are defined in the Consumer Product Safety Act (15
 481-33 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act
 481-34 (15 U.S.C. Section 1261 et seq.), respectively, if the employer can
 481-35 demonstrate it is used in the workplace in the same manner as normal
 481-36 consumer use and if the use results in a duration and frequency of
 481-37 exposure that is not greater than exposures experienced by
 481-38 consumers;

481-39 (9) any drug, as that term is defined in the Federal
 481-40 Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.); and

481-41 (10) radioactive waste.

481-42 SECTION 3.1278. Sections 502.005(a) and (d), Health and
 481-43 Safety Code, are amended to read as follows:

481-44 (a) For the purpose of worker right-to-know, an employer
 481-45 shall compile and maintain a workplace chemical list that contains
 481-46 the following information for each hazardous chemical normally
 481-47 present in the workplace or temporary workplace in excess of 55
 481-48 gallons or 500 pounds or in excess of an amount that the executive
 481-49 commissioner [board] determines by rule for certain highly toxic or
 481-50 dangerous hazardous chemicals:

481-51 (1) the identity used on the SDS [MSDS] and container
 481-52 label; and

481-53 (2) the work area in which the hazardous chemical is
 481-54 normally present.

481-55 (d) An employer shall maintain a workplace chemical list for
 481-56 at least 30 years. The employer shall send complete records to the
 481-57 department [director] if the employer ceases to operate.

481-58 SECTION 3.1279. Section 502.006, Health and Safety Code, is
 481-59 amended to read as follows:

481-60 Sec. 502.006. [MATERIAL] SAFETY DATA SHEET. (a) A chemical
 481-61 manufacturer or distributor shall provide appropriate [material]
 481-62 safety data sheets to employers who acquire hazardous chemicals in
 481-63 this state with each initial shipment and with the first shipment
 481-64 after an SDS [MSDS] is updated. The SDSS [MSDSS] must conform to
 481-65 the most current requirements of the OSHA standard.

481-66 (b) An employer shall maintain a legible copy of a current
 481-67 SDS [MSDS] for each hazardous chemical purchased. If the employer
 481-68 does not have a current SDS [MSDS] for a hazardous chemical when the
 481-69 chemical is received at the workplace, the employer shall request

482-1 an SDS [MSDS] in writing from the manufacturer or distributor in a
 482-2 timely manner or shall otherwise obtain a current SDS [MSDS]. The
 482-3 manufacturer or distributor shall respond with an appropriate SDS
 482-4 [MSDS] in a timely manner.

482-5 (c) Safety [Material safety] data sheets shall be readily
 482-6 available, on request, for review by employees or designated
 482-7 representatives at each workplace.

482-8 (d) A copy of an SDS [MSDS] maintained by an employer under
 482-9 this section shall be provided to the department [director] on
 482-10 request.

482-11 SECTION 3.1280. Section 502.007(a), Health and Safety Code,
 482-12 is amended to read as follows:

482-13 (a) A label on an existing container of a hazardous chemical
 482-14 may not be removed or defaced unless it is illegible, inaccurate, or
 482-15 does not conform to the OSHA standard or other applicable labeling
 482-16 requirement. Primary containers must be relabeled with at least
 482-17 the identity appearing on the SDS [MSDS], the pertinent physical
 482-18 and health hazards, including the organs that would be affected,
 482-19 and the manufacturer's name and address. Except as provided by
 482-20 Subsection (b), secondary containers must be relabeled with at
 482-21 least the identity appearing on the SDS [MSDS] and appropriate
 482-22 hazard warnings.

482-23 SECTION 3.1281. Section 502.008, Health and Safety Code, is
 482-24 amended to read as follows:

482-25 Sec. 502.008. OUTREACH PROGRAM. (a) The department
 482-26 [director] shall develop an outreach program that:

482-27 (1) consists of an education and training program in
 482-28 the form of instructional materials to assist employers in
 482-29 fulfilling the requirements of Section 502.009; and

482-30 (2) includes the development and distribution of a
 482-31 supply of informational leaflets concerning employer's duties,
 482-32 employee rights, the outreach program, and the effects of hazardous
 482-33 chemicals.

482-34 (b) The department [director] may contract with a public
 482-35 institution of higher education or other public or private
 482-36 organization to develop and implement the outreach program.

482-37 (c) The department [director] shall develop and provide to
 482-38 each employer a suitable form of notice providing employees with
 482-39 information relating to employee rights under this chapter.

482-40 (d) The department [director] shall publicize the
 482-41 availability of information to answer inquiries from employees,
 482-42 employers, or the public in this state concerning the effects of
 482-43 hazardous chemicals.

482-44 (e) In cooperation with the department [director], an
 482-45 employer may provide an outreach program in the community.

482-46 SECTION 3.1282. Sections 502.009(c) and (i), Health and
 482-47 Safety Code, are amended to read as follows:

482-48 (c) An education and training program must include, as
 482-49 appropriate:

482-50 (1) information on interpreting labels and SDSs
 482-51 [MSDSs] and the relationship between those two methods of hazard
 482-52 communication;

482-53 (2) the location by work area, acute and chronic
 482-54 effects, and safe handling of hazardous chemicals known to be
 482-55 present in the employees' work area and to which the employees may
 482-56 be exposed;

482-57 (3) the proper use of protective equipment and first
 482-58 aid treatment to be used with respect to the hazardous chemicals to
 482-59 which the employees may be exposed; and

482-60 (4) general safety instructions on the handling,
 482-61 cleanup procedures, and disposal of hazardous chemicals.

482-62 (i) As part of an outreach program created in accordance
 482-63 with Section 502.008, the department [director] shall develop an
 482-64 education and training assistance program to assist employers who
 482-65 are unable to develop the programs because of size or other
 482-66 practical considerations. The program shall be made available to
 482-67 those employers on request.

482-68 SECTION 3.1283. Sections 502.011(a), (b), and (c), Health
 482-69 and Safety Code, are amended to read as follows:

(a) The department [director] or the department's [director's] representative shall investigate in a timely manner a complaint received in writing from an employee or an employee's designated representative relating to an alleged violation of this chapter by an employer.

(b) A complaint received from a person relating to an alleged violation shall be referred to the federal Occupational Safety and Health Administration (OSHA) or to the federal Mine Safety and Health Administration (MSHA) if the complaint is related to an applicable OSHA or MSHA requirement and the applicable OSHA or MSHA standard is in effect. The department [director] or the department's [director's] representative shall investigate the complaint if:

(1) the applicable OSHA or MSHA standard is not in effect; or

(2) the complaint is based on a requirement of this chapter.

(c) On presentation of appropriate credentials, a department [an officer or] representative [of the director] may enter a workplace at reasonable times to inspect and investigate complaints.

SECTION 3.1284. Sections 502.014(a), (b), (k), and (l), Health and Safety Code, are amended to read as follows:

(a) The department [director] may assess an administrative penalty against an employer who violates this chapter, department [board] rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the department [director] may issue a notice of violation to the employer. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of the chapter, and state the amount of the penalty, if any, to be assessed by the department [director].

(k) The department [director] may not assess an administrative penalty for any violation that has been corrected within 15 days after the date of receipt of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the employer of the department's response to the informal conference provided for in Subsection (g) [(e)], whichever is later.

(1) In determining the amount of the penalty, the department
~~director~~ shall consider:

(1) the employer's previous violations;
(2) the seriousness of the violation;
(3) any hazard to the health and safety of the employee;
(4) the employer's demonstrated good faith;

- (4) the employer's demonstrated good faith;
- (5) the duration of the violation; and
- (6) other matters as justice may require.

(b) If a hearing is to be held, the department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office [director] shall make findings of fact and shall issue to the department a written proposal for decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the employer charged with the violation does not request a hearing in a timely manner, the department [director] may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against an employer, the department [director] shall issue an order requiring that the employer pay the penalty.

SECTION 3.1286. Sections 502.0142(a), (b), (c), (e), (f), and (g), Health and Safety Code, are amended to read as follows:

(a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the department

484-1 [director] shall inform the employer against whom the order is
 484-2 issued of the amount of the penalty for the violation.

484-3 (b) Within 30 days after the date the department's
 484-4 [director's] order is final as provided by Subchapter F, Chapter
 484-5 2001, Government Code, the employer shall:

484-6 (1) pay the amount of the penalty;

484-7 (2) pay the amount of the penalty and file a petition
 484-8 for judicial review contesting the occurrence of the violation, the
 484-9 amount of the penalty, or both the occurrence of the violation and
 484-10 the amount of the penalty; or

484-11 (3) without paying the amount of the penalty, file a
 484-12 petition for judicial review contesting the occurrence of the
 484-13 violation, the amount of the penalty, or both the occurrence of the
 484-14 violation and the amount of the penalty.

484-15 (c) Within the 30-day period, an employer who acts under
 484-16 Subsection (b)(3) may:

484-17 (1) stay enforcement of the penalty by:

484-18 (A) paying the amount of the penalty to the court
 484-19 for placement in an escrow account; or

484-20 (B) giving to the court a supersedeas bond that
 484-21 is approved by the court for the amount of the penalty and that is
 484-22 effective until all judicial review of the department's
 484-23 [director's] order is final; or

484-24 (2) request the court to stay enforcement of the
 484-25 penalty by:

484-26 (A) filing with the court a sworn affidavit of
 484-27 the employer stating that the employer is financially unable to pay
 484-28 the amount of the penalty and is financially unable to give the
 484-29 supersedeas bond; and

484-30 (B) giving a copy of the affidavit to the
 484-31 department [director] by certified mail.

484-32 (e) If the department [director] receives a copy of an
 484-33 affidavit under Subsection (c)(2), the department [director] may
 484-34 file with the court, within five days after the date the copy is
 484-35 received, a contest to the affidavit. The court shall hold a
 484-36 hearing on the facts alleged in the affidavit as soon as practicable
 484-37 and shall stay the enforcement of the penalty on finding that the
 484-38 alleged facts are true. The employer who files an affidavit has the
 484-39 burden of proving that the employer is financially unable to pay the
 484-40 amount of the penalty and to give a supersedeas bond.

484-41 (f) If the employer does not pay the amount of the penalty
 484-42 and the enforcement of the penalty is not stayed, the department
 484-43 [director] may refer the matter to the attorney general for
 484-44 collection of the amount of the penalty.

484-45 (g) Judicial review of the order of the department
 484-46 [director]:

484-47 (1) is instituted by filing a petition as provided by
 484-48 Subchapter G, Chapter 2001, Government Code; and

484-49 (2) is under the substantial evidence rule.

484-50 SECTION 3.1287. Section 502.015(a), Health and Safety Code,
 484-51 is amended to read as follows:

484-52 (a) If it appears that an employer has violated, is
 484-53 violating, or is threatening to violate this chapter or any rule
 484-54 adopted or order issued under this chapter, the department
 484-55 [director] may request the attorney general or the district,
 484-56 county, or city attorney of the municipality or county in which the
 484-57 violation has occurred, is occurring, or may occur to institute a
 484-58 civil suit for:

484-59 (1) injunctive relief to restrain the employer from
 484-60 continuing the violation or threat of violation;

484-61 (2) the assessment and recovery of a civil penalty for
 484-62 a violation; or

484-63 (3) both the injunctive relief and the civil penalty.

484-64 SECTION 3.1288. Section 502.017(a), Health and Safety Code,
 484-65 is amended to read as follows:

484-66 (a) An employer shall post and maintain adequate notice, at
 484-67 locations where notices are normally posted, informing employees of
 484-68 their rights under this chapter. If the department [director] does
 484-69 not prepare the notice under Section 502.008, the employer shall

485-1 prepare the notice.

485-2 SECTION 3.1289. Section 502.018, Health and Safety Code, is
485-3 amended to read as follows:

485-4 Sec. 502.018. STANDARD FOR PHYSICIAN TREATMENT. For the
485-5 purposes of this chapter, the requirements in the OSHA standard for
485-6 physicians treating employees (29 CFR Section 1910.1200(i)
485-7 [~~1910.1200(1)~~]) apply to physicians treating persons.

485-8 SECTION 3.1290. Section 502.019, Health and Safety Code, is
485-9 amended to read as follows:

485-10 Sec. 502.019. RULES. The executive commissioner [board]
485-11 may adopt rules and administrative procedures reasonably necessary
485-12 to carry out the purposes of this chapter.

485-13 SECTION 3.1291. Section 503.001(3), Health and Safety Code,
485-14 is amended to read as follows:

485-15 (3) "Department" means the [Texas] Department of State
485-16 Health Services.

485-17 SECTION 3.1292. Section 503.002(a), Health and Safety Code,
485-18 is amended to read as follows:

485-19 (a) The Toxic Substances Coordinating Committee is composed
485-20 of one representative from the:

485-21 (1) department;
485-22 (2) Department of Agriculture;
485-23 (3) Texas [~~Natural Resource Conservation~~] Commission
485-24 on Environmental Quality;
485-25 (4) Parks and Wildlife Department;
485-26 (5) Department of Public Safety of the State of Texas;

485-27 and

485-28 (6) Railroad Commission of Texas.

485-29 SECTION 3.1293. Section 505.002(b), Health and Safety Code,
485-30 is amended to read as follows:

485-31 (b) It is the intent and purpose of this chapter to ensure
485-32 that accessibility to information regarding hazardous chemicals is
485-33 provided to:

485-34 (1) fire departments responsible for dealing with
485-35 chemical hazards during an emergency;
485-36 (2) local emergency planning committees and other
485-37 emergency planning organizations; and
485-38 (3) the department [director] to make the information
485-39 available to the public through specific procedures.

485-40 SECTION 3.1294. Section 505.003(b), Health and Safety Code,
485-41 is amended to read as follows:

485-42 (b) In this chapter, a reference to North American Industry
485-43 [~~Standard Industrial~~] Classification System (NAICS) [(SIC)], to
485-44 nomenclature systems developed by the International Union of Pure
485-45 and Applied Chemistry (IUPAC) or the Chemical Abstracts Service
485-46 (CAS), or to other information, including information such as
485-47 classification codes, performance standards, systematic names,
485-48 standards, and systems described in publications sponsored by
485-49 private technical or trade organizations, means a reference to the
485-50 most current version of the publication.

485-51 SECTION 3.1295. Section 505.004, Health and Safety Code, is
485-52 amended by adding Subdivisions (3-a) and (8-a) and amending
485-53 Subdivisions (5), (10), (13), (15), (20), (22), and (24) to read as
485-54 follows:

485-55 (3-a) "Commissioner" means the commissioner of state
485-56 health services.

485-57 (5) "Department" means the [Texas] Department of State
485-58 Health Services.

485-59 (8-a) "Executive commissioner" means the executive
485-60 commissioner of the Health and Human Services Commission.

485-61 (10) "Facility" means all buildings, equipment,
485-62 structures, and other stationary items that are located on a single
485-63 site or on contiguous or adjacent sites, that are owned or operated
485-64 by the same person, or by any person who controls, is controlled by,
485-65 or is under common control with that person, and that is in North
485-66 American Industry Classification System (NAICS) [~~Standard~~
485-67 ~~Industrial~~] Codes 31-33 [(SIC) 20-39].

485-68 (13) "Hazardous chemical" has the meaning given that
485-69 term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the United States Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the [material] safety data sheet (SDS) [~~MSDS~~] for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the SDS [~~MSDS~~].

(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].

(22) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as established [defined] by the EPA pursuant to EPCRA, Section 302.

(24) "Workplace chemical list" means a list of hazardous chemicals developed under 29 CFR Section 1910.1200(e)(1)(i) [1910.1200(e)(i)].

SECTION 3.1296. Subdivision (18), Section 505.004, Health and Safety Code, is redesignated as Subdivision (20-a), Section 505.004, Health and Safety Code, and amended to read as follows:

(20-a) "Safety [~~(18)"Material safety] data sheet" or "SDS" [~~MSDS~~] means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.~~

SECTION 3.1297. Sections 505.005(a) and (d), Health and Safety Code, are amended to read as follows:

(a) Facility operators whose facilities are in NAICS [SIC] Codes 31-33 [20-39] shall comply with this chapter.

(d) The department [director] shall develop an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

(a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier

operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by department [board] rule for certain highly toxic or extremely hazardous substances.

(c) Each tier two form shall be filed annually with the appropriate fee according to the procedures specified by department [board] rules. The facility operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(f) A facility operator shall file a [material] safety data sheet with the department on the department's request.

487-1 SECTION 3.1299. Sections 505.008(b) and (c), Health and
 487-2 Safety Code, are amended to read as follows:

487-3 (b) A facility operator, on request, shall give the fire
 487-4 chief or the local emergency planning committee such additional
 487-5 information on types and amounts of hazardous chemicals present at
 487-6 a facility as the requestor may need for emergency planning
 487-7 purposes. A facility operator, on request, shall give the
 487-8 commissioner [director], the fire chief, or the local emergency
 487-9 planning committee a copy of the SDS [MSDS] for any chemical on the
 487-10 tier two form furnished under Section 505.006 or for any chemical
 487-11 present at the facility.

487-12 (c) The executive commissioner [board] by rule may require
 487-13 certain categories of facility operators under certain
 487-14 circumstances to implement the National Fire Protection
 487-15 Association 704 identification system if an equivalent system is
 487-16 not in use.

487-17 SECTION 3.1300. Section 505.009, Health and Safety Code, is
 487-18 amended to read as follows:

487-19 Sec. 505.009. COMPLAINTS AND INVESTIGATIONS. On
 487-20 presentation of appropriate credentials, a department [an officer
 487-21 ~~or~~] representative [~~of the director~~] may enter a facility at
 487-22 reasonable times to inspect and investigate complaints.

487-23 SECTION 3.1301. Sections 505.010(a), (b), (k), (l), and
 487-24 (m), Health and Safety Code, are amended to read as follows:

487-25 (a) The department [director] may assess an administrative
 487-26 penalty against an operator who violates this chapter, [board]
 487-27 rules adopted under this chapter, or an order issued under this
 487-28 chapter.

487-29 (b) If the department finds one or more violations of this
 487-30 chapter, the department [director] may issue a notice of violation
 487-31 to the operator. The notice of violation shall specifically
 487-32 describe the violation, refer to the applicable section or
 487-33 subsection of this chapter, and state the amount of the penalty, if
 487-34 any, to be assessed by the department [director].

487-35 (k) Except as provided in Subsection (1), the department
 487-36 [~~director~~] may not assess an administrative penalty for any
 487-37 violation that has been corrected within 15 days of the date of the
 487-38 notice of violation, the date of receipt of the department's
 487-39 response by the employer, or 10 days after the date of receipt by
 487-40 the operator of the department's response to the informal
 487-41 conference provided for in Subsection (d), whichever is later.

487-42 (l) If a violation involves a failure to make a good faith
 487-43 effort to comply with this chapter, the department [director] may
 487-44 assess the administrative penalty at any time.

487-45 (m) In determining the amount of the penalty, the department
 487-46 [~~director~~] shall consider:

- 487-47 (1) the operator's previous violations;
- 487-48 (2) the seriousness of the violation;
- 487-49 (3) any hazard to the health and safety of the public;
- 487-50 (4) the employer's demonstrated good faith;
- 487-51 (5) the duration of the violation; and
- 487-52 (6) other matters as justice may require.

487-53 SECTION 3.1302. Sections 505.011(b), (c), and (d), Health
 487-54 and Safety Code, are amended to read as follows:

487-55 (b) If a hearing is held, the department shall refer the
 487-56 matter to the State Office of Administrative Hearings. An
 487-57 administrative law judge of that office [~~director~~] shall make
 487-58 findings of fact and shall issue a written proposal for decision
 487-59 regarding the occurrence of the violation and the amount of the
 487-60 penalty that may be warranted.

487-61 (c) If the facility operator charged with the violation does
 487-62 not request a hearing, the department [director] may assess a
 487-63 penalty after determining that a violation has occurred and the
 487-64 amount of the penalty that may be warranted.

487-65 (d) After [making] a determination under this section is
 487-66 made that a penalty is to be assessed against a facility operator,
 487-67 the department [director] shall issue an order requiring that the
 487-68 facility operator pay the penalty.

487-69 SECTION 3.1303. Sections 505.012(a), (b), (c), (d), (e),

488-1 and (f), Health and Safety Code, are amended to read as follows:

488-2 (a) Not later than the 30th day after the date an order
 488-3 finding that a violation has occurred is issued, the department
 488-4 [~~director~~] shall inform the facility operator against whom the
 488-5 order is issued of the amount of the penalty for the violation.

488-6 (b) Except as provided by in Section 505.011(e), within 30
 488-7 days after the date the department's [~~director's~~] order is final as
 488-8 provided by Subchapter F, Chapter 2001, Government Code, the
 488-9 facility operator shall:

488-10 (1) pay the amount of the penalty;

488-11 (2) pay the amount of the penalty and file a petition
 488-12 for judicial review contesting the occurrence of the violation, the
 488-13 amount of the penalty, or both the occurrence of the violation and
 488-14 the amount of the penalty; or

488-15 (3) without paying the amount of the penalty, file a
 488-16 petition for judicial review contesting the occurrence of the
 488-17 violation, the amount of the penalty, or both the occurrence of the
 488-18 violation and the amount of the penalty.

488-19 (c) Within the 30-day period, a facility operator who acts
 488-20 under Subsection (b)(3) may:

488-21 (1) stay enforcement of the penalty by:

488-22 (A) paying the amount of the penalty to the court
 488-23 for placement in an escrow account; or

488-24 (B) giving to the court a supersedeas bond that
 488-25 is approved by the court for the amount of the penalty and that is
 488-26 effective until all judicial review of the department's
 488-27 [~~director's~~] order is final; or

488-28 (2) request the court to stay enforcement of the
 488-29 penalty by:

488-30 (A) filing with the court a sworn affidavit of
 488-31 the facility operator stating that the facility operator is
 488-32 financially unable to pay the amount of the penalty and is
 488-33 financially unable to give the supersedeas bond; and

488-34 (B) giving a copy of the affidavit to the
 488-35 department [~~director~~] by certified mail.

488-36 (d) If the department [~~director~~] receives a copy of an
 488-37 affidavit under Subsection (c)(2), the department [~~director~~] may
 488-38 file with the court, within five days after the date the copy is
 488-39 received, a contest to the affidavit. The court shall hold a
 488-40 hearing on the facts alleged in the affidavit as soon as practicable
 488-41 and shall stay the enforcement of the penalty on finding that the
 488-42 alleged facts are true. The facility operator who files an
 488-43 affidavit has the burden of proving that the facility operator is
 488-44 financially unable to pay the amount of the penalty and to give a
 488-45 supersedeas bond.

488-46 (e) If the facility operator does not pay the amount of the
 488-47 penalty and the enforcement of the penalty is not stayed, the
 488-48 department [~~director~~] may refer the matter to the attorney general
 488-49 for collection of the amount of the penalty.

488-50 (f) Judicial review of the order of the department
 488-51 [~~director~~]:

488-52 (1) is instituted by filing a petition as provided by
 488-53 Subchapter G, Chapter 2001, Government Code; and

488-54 (2) is under the substantial evidence rule.

488-55 SECTION 3.1304. Sections 505.016(a), (b), and (c), Health
 488-56 and Safety Code, are amended to read as follows:

488-57 (a) The executive commissioner [~~board~~] may adopt rules and
 488-58 administrative procedures reasonably necessary to carry out the
 488-59 purposes of this chapter.

488-60 (b) The executive commissioner by rule [~~board~~] may
 488-61 authorize the collection of annual fees from facility operators for
 488-62 the filing of tier two forms required by this chapter. Except as
 488-63 provided by Subsection (d), fees may be used only to fund activities
 488-64 under this chapter. The fee for facilities may not exceed:

488-65 (1) \$100 for each required submission having no more
 488-66 than 25 hazardous chemicals or hazardous chemical categories;

488-67 (2) \$200 for each required submission having no more
 488-68 than 50 hazardous chemicals or hazardous chemical categories;

488-69 (3) \$300 for each required submission having no more

489-1 than 75 hazardous chemicals or hazardous chemical categories;
 489-2 (4) \$400 for each required submission having no more
 489-3 than 100 hazardous chemicals or hazardous chemical categories; or
 489-4 (5) \$500 for each required submission having more than
 489-5 100 hazardous chemicals or chemical categories.

489-6 (c) To minimize the fees, the executive commissioner
 489-7 [board] by rule shall provide for consolidated filings of multiple
 489-8 tier two forms for facility operators covered by Subsection (b) if
 489-9 each of the tier two forms contains fewer than 25 items.

489-10 SECTION 3.1305. Section 506.002(b), Health and Safety Code,
 489-11 is amended to read as follows:

489-12 (b) It is the intent and purpose of this chapter to ensure
 489-13 that accessibility to information regarding hazardous chemical is
 489-14 provided to:

489-15 (1) fire departments responsible for dealing with
 489-16 chemical hazards during an emergency;

489-17 (2) local emergency planning committees and other
 489-18 emergency planning organizations; and

489-19 (3) the department [~~director~~] to make the information
 489-20 available to the public through specific procedures.

489-21 SECTION 3.1306. Section 506.004, Health and Safety Code, is
 489-22 amended by adding Subdivisions (3-a) and (8-a) and amending
 489-23 Subdivisions (5), (13), (15), (20), and (23) to read as follows:

489-24 (3-a) "Commissioner" means the commissioner of state
 489-25 health services.

489-26 (5) "Department" means the [~~Texas~~] Department of State
 489-27 Health Services.

489-28 (8-a) "Executive commissioner" means the executive
 489-29 commissioner of the Health and Human Services Commission.

489-30 (13) "Hazardous chemical" has the meaning given that
 489-31 term by 29 CFR 1910.1200(c), except that the term does not include:

489-32 (A) any food, food additive, color additive,
 489-33 drug, or cosmetic regulated by the United States Food and Drug
 489-34 Administration;

489-35 (B) any substance present as a solid in any
 489-36 manufactured item to the extent exposure to the substance does not
 489-37 occur under normal conditions of use;

489-38 (C) any substance to the extent that it is used
 489-39 for personal, family, or household purposes, or is present in the
 489-40 same form and concentration as a product packaged for distribution
 489-41 and use by the public;

489-42 (D) any substance to the extent it is used in a
 489-43 research laboratory or a hospital or other medical facility under
 489-44 the direct supervision of a technically qualified individual; and

489-45 (E) any substance to the extent it is used in
 489-46 routine agricultural operations or is a fertilizer held for sale by
 489-47 a retailer to the ultimate consumer.

489-48 (15) "Identity" means any chemical or common name, or
 489-49 alphabetical or numerical identification, that is indicated on the
 489-50 [~~material~~] safety data sheet (SDS) [~~(MSDS)~~] for the chemical. The
 489-51 identity used must permit cross-references to be made among the
 489-52 facility chemical list, the label, and the SDS [~~MSDS~~].

489-53 (20) "Physical hazard" means a chemical that is
 489-54 classified as posing one of the following hazardous effects:
 489-55 explosive; flammable (gases, aerosols, liquids, or solids);
 489-56 oxidizer (liquid, solid, or gas); self-reactive; pyrophoric
 489-57 (liquid or solid); self-heating; organic peroxide; corrosive to
 489-58 metal; gas under pressure; or in contact with water emits flammable
 489-59 gas [~~for which there is scientifically valid evidence that it is a~~
 489-60 ~~combustible liquid, a compressed gas, explosive, flammable, an~~
 489-61 ~~organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or~~
 489-62 ~~water reactive in terms defined in the OSHA standard~~].

489-63 (23) "Threshold planning quantity" means the minimum
 489-64 quantity of an extremely hazardous substance for which a facility
 489-65 owner or operator must participate in emergency planning, as
 489-66 established [~~defined~~] by the EPA pursuant to EPCRA, Section 302.

489-67 SECTION 3.1307. Section 506.004(18), Health and Safety
 489-68 Code, is redesignated as Section 506.004(21-a), Health and Safety
 489-69 Code, and amended to read as follows:

490-1 (21-a) "Safety [~~18~~] "Material safety" data sheet" or
 490-2 "SDS" [~~MSDS~~] means a document containing chemical hazard and safe
 490-3 handling information that is prepared in accordance with the
 490-4 requirements of the OSHA standard for that document.

490-5 SECTION 3.1308. Section 506.005(d), Health and Safety Code,
 490-6 is amended to read as follows:

490-7 (d) The department [~~director~~] shall develop an outreach
 490-8 program concerning the public's ability to obtain information under
 490-9 this chapter similar to the outreach program under Section 502.008.

490-10 SECTION 3.1309. Sections 506.006(a), (c), and (e), Health
 490-11 and Safety Code, are amended to read as follows:

490-12 (a) For the purpose of community right-to-know, a facility
 490-13 operator covered by this chapter shall compile and maintain a tier
 490-14 two form that contains information on hazardous chemicals present
 490-15 in the facility in quantities that meet or exceed thresholds
 490-16 determined by the EPA in 40 CFR Part 370, or at any other reporting
 490-17 thresholds as determined by department [~~board~~] rule for certain
 490-18 highly toxic or extremely hazardous substances.

490-19 (c) Each tier two form shall be filed annually with the
 490-20 appropriate fee according to the procedures specified by department
 490-21 [~~board~~] rules. The facility operator shall furnish a copy of each
 490-22 tier two form to the fire chief of the fire department having
 490-23 jurisdiction over the facility and to the appropriate local
 490-24 emergency planning committee.

490-25 (e) A facility operator shall file a [~~material~~] safety data
 490-26 sheet with the department on the department's request.

490-27 SECTION 3.1310. Sections 506.008(b) and (c), Health and
 490-28 Safety Code, are amended to read as follows:

490-29 (b) A facility operator, on request, shall give the fire
 490-30 chief or the local emergency planning committee such additional
 490-31 information on types and amounts of hazardous chemicals present at
 490-32 a facility as the requestor may need for emergency planning
 490-33 purposes. A facility operator, on request, shall give the
 490-34 commissioner [~~director~~], the fire chief, or the local emergency
 490-35 planning committee a copy of the SDS [~~MSDS~~] for any chemical on the
 490-36 tier two form furnished under Section 506.006 or for any chemical
 490-37 present at the facility.

490-38 (c) The executive commissioner [~~board~~] by rule may require
 490-39 certain categories of facility operators under certain
 490-40 circumstances to implement the National Fire Protection
 490-41 Association 704 identification system if an equivalent system is
 490-42 not in use.

490-43 SECTION 3.1311. Section 506.009, Health and Safety Code, is
 490-44 amended to read as follows:

490-45 Sec. 506.009. COMPLAINTS AND INVESTIGATIONS. On
 490-46 presentation of appropriate credentials, a department [~~an officer~~
 490-47 or] representative [~~of the director~~] may enter a facility at
 490-48 reasonable times to inspect and investigate complaints.

490-49 SECTION 3.1312. Sections 506.010(a), (b), (k), and (l),
 490-50 Health and Safety Code, are amended to read as follows:

490-51 (a) The department [~~director~~] may assess an administrative
 490-52 penalty against an operator who violates this chapter, [~~board~~]
 490-53 rules adopted under this chapter, or an order issued under this
 490-54 chapter.

490-55 (b) If the department finds one or more violations of this
 490-56 chapter, the department [~~director~~] may issue a notice of violation
 490-57 to the operator. The notice of violation shall specifically
 490-58 describe the violation, refer to the applicable section or
 490-59 subsection of this chapter, and state the amount of the penalty, if
 490-60 any, to be assessed by the department [~~director~~].

490-61 (k) The department [~~director~~] may not assess an
 490-62 administrative penalty for any violation that has been corrected
 490-63 within 15 days of the date of receipt of the notice of violation,
 490-64 the date of receipt of the department's response by the employer, or
 490-65 10 days after the date of receipt by the operator of the
 490-66 department's response to the informal conference provided for in
 490-67 Subsection (d), whichever is later.

490-68 (l) In determining the amount of the penalty, the department
 490-69 [~~director~~] shall consider:

- (1) the operator's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the employer's demonstrated good faith;
- (5) the duration of the violation; and
- (6) other matters as justice may require.

SECTION 3.1313. Sections 506.011(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) If a hearing is held, the department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office [director] shall make findings of fact and shall issue a written proposal for decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the facility operator charged with the violation does not request a hearing, the department [~~director~~] may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After [making] a determination is made under this section that a penalty is to be assessed against a facility operator, the department [director] shall issue an order requiring that the facility operator pay the penalty.

SECTION 3.1314. Section 506.012, Health and Safety Code, is amended to read as follows:

Sec. 506.012. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the department [~~director~~] shall inform the facility operator against whom the order is issued of the amount of the penalty for the violation.

(b) Except as provided in Section 506.011(e), not later than the 30th day after the date on which a decision or order charging a facility operator with a penalty is final, the facility operator shall pay the penalty in full, unless the facility operator seeks judicial review of the amount of the penalty, the fact of the violation, or both. The executive commissioner [board] may by rule provide for appeals by the state and political subdivisions of the state.

SECTION 3.1315. Section 506.013, Health and Safety Code, is amended to read as follows:

Sec. 506.013. REFUND OF ADMINISTRATIVE PENALTY. Not later than the 30th day after the date of a judicial determination that an administrative penalty against a facility operator should be reduced or not assessed, the department [~~director~~] shall remit to the facility operator the appropriate amount of any penalty payment already paid plus accrued interest.

SECTION 3.1316. Section 506.014, Health and Safety Code, is amended to read as follows:

Sec. 506.014. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the department [director] may bring a civil action to recover an administrative penalty under this chapter.

SECTION 3.1317. Sections 506.017(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner [board] may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The executive commissioner by rule [board] may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. The fee may not exceed:

(1) \$50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or
(2) \$100 for each required submission having more than 75 hazardous chemicals or chemical categories.

(c) To minimize the fees, the executive commissioner [board] by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

SECTION 3.1318. Section 507.002(b), Health and Safety Code,

492-1 is amended to read as follows:

492-2 (b) It is the intent and purpose of this chapter to ensure
 492-3 that accessibility to information regarding hazardous chemicals is
 492-4 provided to:

492-5 (1) fire departments responsible for dealing with
 492-6 chemical hazards during an emergency;

492-7 (2) local emergency planning committees and other
 492-8 emergency planning organizations; and

492-9 (3) the department [~~director~~] to make the information
 492-10 available to the public through specific procedures.

492-11 SECTION 3.1319. Section 507.004, Health and Safety Code, is
 492-12 amended by adding Subdivisions (3-a) and (8-a) and amending
 492-13 Subdivisions (5), (13), (15), (20), and (22) to read as follows:

492-14 (3-a) "Commissioner" means the commissioner of state
 492-15 health services.

492-16 (5) "Department" means the [~~Texas~~] Department of State
 492-17 Health Services.

492-18 (8-a) "Executive commissioner" means the executive
 492-19 commissioner of the Health and Human Services Commission.

492-20 (13) "Hazardous chemical" has the meaning given that
 492-21 term by 29 CFR 1910.1200(c), except that the term does not include:

492-22 (A) any food, food additive, color additive,
 492-23 drug, or cosmetic regulated by the United States Food and Drug
 492-24 Administration;

492-25 (B) any substance present as a solid in any
 492-26 manufactured item to the extent exposure to the substance does not
 492-27 occur under normal conditions of use;

492-28 (C) any substance to the extent that it is used
 492-29 for personal, family, or household purposes, or is present in the
 492-30 same form and concentration as a product packaged for distribution
 492-31 and use by the general public;

492-32 (D) any substance to the extent it is used in a
 492-33 research laboratory or a hospital or other medical facility under
 492-34 the direct supervision of a technically qualified individual; and

492-35 (E) any substance to the extent it is used in
 492-36 routine agricultural operations or is a fertilizer held for sale by
 492-37 a retailer to the ultimate consumer.

492-38 (15) "Identity" means a chemical or common name, or
 492-39 alphabetical or numerical identification, that is indicated on the
 492-40 [~~material~~] safety data sheet (SDS) [~~(MSDS)~~] for the chemical. The
 492-41 identity used must permit cross-references to be made among the
 492-42 facility chemical list, the label, and the SDS [~~MSDS~~].

492-43 (20) "Physical hazard" means a chemical that is
 492-44 classified as posing one of the following hazardous effects:
 492-45 explosive; flammable (gases, aerosols, liquids, or solids);
 492-46 oxidizer (liquid, solid, or gas); self-reactive; pyrophoric
 492-47 (liquid or solid); self-heating; organic peroxide; corrosive to
 492-48 metal; gas under pressure; or in contact with water emits flammable
 492-49 gas [~~for which there is scientifically valid evidence that it is a~~
 492-50 ~~combustible liquid, a compressed gas, explosive, flammable, an~~
 492-51 ~~organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or~~
 492-52 ~~water reactive in terms defined in the OSHA standard~~].

492-53 (22) "Threshold planning quantity" means the minimum
 492-54 quantity of an extremely hazardous substance for which a facility
 492-55 owner or operator must participate in emergency planning, as
 492-56 established [~~defined~~] by the EPA pursuant to EPCRA, Section 302.

492-57 SECTION 3.1320. Subdivision (18), Section 507.004, Health
 492-58 and Safety Code, is redesignated as Subdivision (20-a), Section
 492-59 507.004, Health and Safety Code, and amended to read as follows:

492-60 (20-a) "Safety [~~(18)~~ "Material safety"] data sheet" or
 492-61 "SDS" [~~"MSDS"~~] means a document containing chemical hazard and safe
 492-62 handling information that is prepared in accordance with the
 492-63 requirements of the OSHA standard for that document.

492-64 SECTION 3.1321. Section 507.005(d), Health and Safety Code,
 492-65 is amended to read as follows:

492-66 (d) The department [~~director~~] shall develop an outreach
 492-67 program concerning the public's ability to obtain information under
 492-68 this chapter similar to the outreach program under Section 502.008.

492-69 SECTION 3.1322. Sections 507.006(a), (c), and (f), Health

493-1 and Safety Code, are amended to read as follows:
 493-2 (a) For the purpose of community right-to-know, a facility
 493-3 operator covered by this chapter shall compile and maintain a tier
 493-4 two form that contains information on hazardous chemicals present
 493-5 in the facility in quantities that meet or exceed thresholds
 493-6 determined by the EPA in 40 CFR Part 370, or at any other reporting
 493-7 thresholds as determined by department [board] rule for certain
 493-8 highly toxic or extremely hazardous substances.

493-9 (c) Each tier two form shall be filed annually with the
 493-10 appropriate fee according to the procedures specified by department
 493-11 [board] rules. The facility operator shall furnish a copy of each
 493-12 tier two form to the fire chief of the fire department having
 493-13 jurisdiction over the facility and to the appropriate local
 493-14 emergency planning committee.

493-15 (f) A facility operator shall file a [material] safety data
 493-16 sheet with the department on the department's request.

493-17 SECTION 3.1323. Sections 507.007(b) and (c), Health and
 493-18 Safety Code, are amended to read as follows:

493-19 (b) A facility operator, on request, shall give the fire
 493-20 chief or the local emergency planning committee such additional
 493-21 information on types and amounts of hazardous chemicals present at
 493-22 a facility as the requestor may need for emergency planning
 493-23 purposes. A facility operator, on request, shall give the
 493-24 commissioner [director], the fire chief, or the local emergency
 493-25 planning committee a copy of the SDS [MSDS] for any chemical on the
 493-26 tier two form furnished under Section 507.006 or for any chemical
 493-27 present at the facility.

493-28 (c) The executive commissioner [board] by rule may require
 493-29 certain categories of facility operators under certain
 493-30 circumstances to implement the National Fire Protection
 493-31 Association 704 identification system if an equivalent system is
 493-32 not in use.

493-33 SECTION 3.1324. Section 507.008, Health and Safety Code, is
 493-34 amended to read as follows:

493-35 Sec. 507.008. COMPLAINTS AND INVESTIGATIONS. On
 493-36 presentation of appropriate credentials, a department [an officer
 493-37 or] representative [of the director] may enter a facility at
 493-38 reasonable times to inspect and investigate complaints.

493-39 SECTION 3.1325. Sections 507.009(a), (b), (k), (l), and
 493-40 (m), Health and Safety Code, are amended to read as follows:

493-41 (a) The department [director] may assess an administrative
 493-42 penalty against a facility operator who violates this chapter,
 493-43 [board] rules adopted under this chapter, or an order issued under
 493-44 this chapter.

493-45 (b) If the department finds one or more violations of this
 493-46 chapter, the department [director] may issue a notice of violation
 493-47 to the operator. The notice of violation shall specifically
 493-48 describe the violation, refer to the applicable section or
 493-49 subsection of this chapter, and state the amount of the penalty, if
 493-50 any, to be assessed by the department [director].

493-51 (k) Except as provided in Subsection (l), the department
 493-52 [director] may not assess an administrative penalty for any
 493-53 violation that has been corrected within 15 days of the date of
 493-54 receipt of the notice of violation, the date of receipt of the
 493-55 department's response by the employer, or 10 days after the date of
 493-56 receipt by the operator of the department's response to the
 493-57 informal conference provided for in Subsection (d), whichever is
 493-58 later.

493-59 (l) If a violation involves a failure to make a good-faith
 493-60 effort to comply with this chapter, the department [director] may
 493-61 assess the administrative penalty at any time.

493-62 (m) In determining the amount of the penalty, the department
 493-63 [director] shall consider:

- (1) the operator's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the operator's demonstrated good faith;
- (5) the duration of the violation; and
- (6) other matters as justice may require.

494-1 SECTION 3.1326. Sections 507.010(b), (c), and (d), Health
 494-2 and Safety Code, are amended to read as follows:

494-3 (b) If a hearing is held, the department shall refer the
 494-4 matter to the State Office of Administrative Hearings. An
 494-5 administrative law judge of that office [director] shall make
 494-6 findings of fact and shall issue a written proposal for decision
 494-7 regarding the occurrence of the violation and the amount of the
 494-8 penalty that may be warranted.

494-9 (c) If the facility operator charged with the violation does
 494-10 not request a hearing, the department [director] may assess a
 494-11 penalty after determining that a violation has occurred and the
 494-12 amount of the penalty that may be warranted.

494-13 (d) After [making] a determination is made under this
 494-14 section that a penalty is to be assessed against a facility
 494-15 operator, the department [director] shall issue an order requiring
 494-16 that the facility operator pay the penalty.

494-17 SECTION 3.1327. Sections 507.011(a), (b), (c), (d), (e),
 494-18 and (f), Health and Safety Code, are amended to read as follows:

494-19 (a) Not later than the 30th day after the date an order
 494-20 finding that a violation has occurred is issued, the department
 494-21 [director] shall inform the facility operator against whom the
 494-22 order is issued of the amount of the penalty for the violation.

494-23 (b) Except as provided by Section 507.010(e), within 30 days
 494-24 after the date the department's [director's] order is final as
 494-25 provided by Subchapter F, Chapter 2001, Government Code, the
 494-26 facility operator shall:

494-27 (1) pay the amount of the penalty;

494-28 (2) pay the amount of the penalty and file a petition
 494-29 for judicial review contesting the occurrence of the violation, the
 494-30 amount of the penalty, or both the occurrence of the violation and
 494-31 the amount of the penalty; or

494-32 (3) without paying the amount of the penalty, file a
 494-33 petition for judicial review contesting the occurrence of the
 494-34 violation, the amount of the penalty, or both the occurrence of the
 494-35 violation and the amount of the penalty.

494-36 (c) Within the 30-day period, a facility operator who acts
 494-37 under Subsection (b)(3) may:

494-38 (1) stay enforcement of the penalty by:

494-39 (A) paying the amount of the penalty to the court
 494-40 for placement in an escrow account; or

494-41 (B) giving to the court a supersedeas bond that
 494-42 is approved by the court for the amount of the penalty and that is
 494-43 effective until all judicial review of the department's
 494-44 [director's] order is final; or

494-45 (2) request the court to stay enforcement of the
 494-46 penalty by:

494-47 (A) filing with the court a sworn affidavit of
 494-48 the facility operator stating that the facility operator is
 494-49 financially unable to pay the amount of the penalty and is
 494-50 financially unable to give the supersedeas bond; and

494-51 (B) giving a copy of the affidavit to the
 494-52 department [executive director] by certified mail.

494-53 (d) If the department [director] receives a copy of an
 494-54 affidavit under Subsection (c)(2), the department [director] may
 494-55 file with the court, within five days after the date the copy is
 494-56 received, a contest to the affidavit. The court shall hold a
 494-57 hearing on the facts alleged in the affidavit as soon as practicable
 494-58 and shall stay the enforcement of the penalty on finding that the
 494-59 alleged facts are true. The facility operator who files an
 494-60 affidavit has the burden of proving that the facility operator is
 494-61 financially unable to pay the amount of the penalty and to give a
 494-62 supersedeas bond.

494-63 (e) If the facility operator does not pay the amount of the
 494-64 penalty and the enforcement of the penalty is not stayed, the
 494-65 department [director] may refer the matter to the attorney general
 494-66 for collection of the amount of the penalty.

494-67 (f) Judicial review of the order of the department
 494-68 [director]:

494-69 (1) is instituted by filing a petition as provided by

495-1 Subchapter G, Chapter 2001, Government Code; and
 495-2 (2) is under the substantial evidence rule.

495-3 SECTION 3.1328. Sections 507.013(a), (b), and (c), Health
 495-4 and Safety Code, are amended to read as follows:

495-5 (a) The executive commissioner [board] may adopt rules and
 495-6 administrative procedures reasonably necessary to carry out the
 495-7 purposes of this chapter.

495-8 (b) The executive commissioner by rule [board] may
 495-9 authorize the collection of annual fees from facility operators for
 495-10 the filing of tier two forms required by this chapter. Except as
 495-11 provided by Subsection (d), fees may be used only to fund activities
 495-12 under this chapter. The fee may not exceed:

495-13 (1) \$50 for each required submission having no more
 495-14 than 75 hazardous chemicals or hazardous chemical categories; or

495-15 (2) \$100 for each required submission having more than
 495-16 75 hazardous chemicals or chemical categories.

495-17 (c) To minimize the fees, the executive commissioner
 495-18 [board] by rule shall provide for consolidated filings of multiple
 495-19 tier two forms for facility operators covered by Subsection (b) if
 495-20 each of the tier two forms contains fewer than 25 items.

495-21 SECTION 3.1329. Section 508.003, Health and Safety Code, is
 495-22 amended to read as follows:

495-23 Sec. 508.003. AREA QUARANTINE. (a) If the commissioner of
 495-24 state [public] health services or one or more health authorities
 495-25 determine that the introduction of an environmental or toxic agent
 495-26 into the environment has occurred, the commissioner or authorities
 495-27 may impose an area quarantine in the manner and subject to the
 495-28 procedures provided for an area quarantine imposed under Section
 495-29 81.085. The commissioner of state [public] health services or a
 495-30 health authority may, with respect to an area quarantine imposed
 495-31 under this chapter, exercise any power for a response to the
 495-32 introduction of an environmental or toxic agent into the
 495-33 environment under this section that is authorized by Section 81.085
 495-34 for a response to an outbreak of a communicable disease. The area
 495-35 quarantine must be accomplished by the least restrictive means
 495-36 necessary to protect public health considering the availability of
 495-37 resources.

495-38 (b) A quarantine imposed by a health authority under this
 495-39 section expires at the earlier of:

495-40 (1) the 24th hour after the time the quarantine is
 495-41 imposed; or

495-42 (2) the time that appropriate action to terminate the
 495-43 quarantine or impose superseding requirements is taken under
 495-44 Chapter 418, Government Code, or is taken by the commissioner of
 495-45 state [public] health services under this section.

495-46 SECTION 3.1330. Section 508.004, Health and Safety Code, is
 495-47 amended to read as follows:

495-48 Sec. 508.004. CRIMINAL PENALTY. A person commits an
 495-49 offense if the person knowingly fails or refuses to obey an order or
 495-50 instruction of the commissioner of state [public] health services
 495-51 or a health authority issued under this chapter and published
 495-52 during an area quarantine under this section. An offense under this
 495-53 subsection is a felony of the third degree.

495-54 SECTION 3.1331. The heading to Title 7, Health and Safety
 495-55 Code, is amended to read as follows:

495-56 TITLE 7. MENTAL HEALTH AND INTELLECTUAL DISABILITY [MENTAL
 495-57 RETARDATION]

495-58 SECTION 3.1332. The heading to Subtitle A, Title 7, Health
 495-59 and Safety Code, is amended to read as follows:

495-60 SUBTITLE A. SERVICES FOR PERSONS WITH MENTAL ILLNESS OR AN
 495-61 INTELLECTUAL DISABILITY

495-62 [TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION]

495-63 SECTION 3.1333. Chapter 531, Health and Safety Code, is
 495-64 amended to read as follows:

495-65 CHAPTER 531. PROVISIONS GENERALLY APPLICABLE TO MENTAL HEALTH AND
 495-66 INTELLECTUAL DISABILITY SERVICES [THE TEXAS DEPARTMENT OF MENTAL
 495-67 HEALTH AND MENTAL RETARDATION]

495-68 Sec. 531.001. PURPOSE; POLICY. (a) It is the purpose of
 495-69 this subtitle to provide for the effective administration and

496-1 coordination of mental health and intellectual disability [~~mental~~
496-2 ~~retardation~~] services at the state and local levels.

496-3 (b) Recognizing that a variety of alternatives for serving
496-4 persons with mental illness or an intellectual disability [~~the~~
496-5 ~~mentally disabled~~] exists, it is the purpose of this subtitle to
496-6 ensure that a continuum of services is provided. The continuum of
496-7 services includes:

496-8 (1) mental health facilities operated by the [Texas]
496-9 Department of State Health Services [Mental Health and Mental
496-10 Retardation] and community services for persons with mental illness
496-11 provided by the department and other entities through contracts
496-12 with the department; or

496-13 (2) state supported living centers operated by the
496-14 Department of Aging and Disability Services and community services
496-15 for persons with an intellectual disability provided by the
496-16 department and other entities through contracts with the
496-17 department.

496-18 (c) It is the goal of this state to provide a comprehensive
496-19 range of services for persons with mental illness or an
496-20 intellectual disability [~~mental retardation~~] who need publicly
496-21 supported care, treatment, or habilitation. In providing those
496-22 services, efforts will be made to coordinate services and programs
496-23 with services and programs provided by other governmental entities
496-24 to minimize duplication and to share with other governmental
496-25 entities in financing those services and programs.

496-26 (d) It is the policy of this state that, when appropriate
496-27 and feasible, persons with mental illness or an intellectual
496-28 disability [~~mental retardation~~] shall be afforded treatment in
496-29 their own communities.

496-30 (e) It is the public policy of this state that mental health
496-31 and intellectual disability [~~mental retardation~~] services be the
496-32 responsibility of local agencies and organizations to the greatest
496-33 extent possible. The Department of State Health Services
496-34 [~~department~~] shall assist the local agencies and organizations by
496-35 coordinating the implementation of a statewide system of mental
496-36 health services. The Department of Aging and Disability Services
496-37 shall assist the local agencies and organizations by coordinating
496-38 the implementation of a statewide system of intellectual disability
496-39 services. Each [~~The~~] department shall ensure that mental health
496-40 and intellectual disability [~~mental retardation~~] services, as
496-41 applicable, are provided. Each [~~The~~] department shall provide
496-42 technical assistance for and regulation of the programs that
496-43 receive funding through contracts with that [~~the~~] department.

496-44 (f) It is the public policy of this state to offer services
496-45 first to those persons who are most in need. Therefore, funds
496-46 appropriated by the legislature for mental health and intellectual
496-47 disability [~~mental retardation~~] services may be spent only to
496-48 provide services to the priority populations identified in the
496-49 applicable department's long-range plan.

496-50 (g) It is the goal of this state to establish at least one
496-51 special officer for mental health assignment in each county. To
496-52 achieve this goal, the Department of State Health Services
496-53 [~~department~~] shall assist a local law enforcement agency that
496-54 desires to have an officer certified under Section 1701.404,
496-55 Occupations Code.

496-56 (h) It is the policy of this state that the Department of
496-57 State Health Services [~~board~~] serves as the state's mental health
496-58 authority and the Department of Aging and Disability Services
496-59 serves as the state's intellectual disability [~~mental retardation~~]
496-60 authority. The executive commissioner [~~and~~] is responsible for the
496-61 planning, policy development, and resource development and
496-62 allocation for and oversight of mental health and intellectual
496-63 disability [~~mental retardation~~] services in this state. It is the
496-64 policy of this state that, when appropriate and feasible, the
496-65 executive commissioner [~~board~~] may delegate the executive
496-66 commissioner's [~~board's~~] authority to a single entity in each
496-67 region of the state that may function as the local mental health or
496-68 intellectual and developmental disability [~~mental retardation~~]
496-69 authority for one or more service areas in the region.

497-1 Sec. 531.002. DEFINITIONS. In this subtitle:

497-2 (1) "Board" means the Texas Board of Mental Health
497-3 and Mental Retardation.

497-4 (2) "Business entity" means a sole proprietorship,
497-5 partnership, firm, corporation, holding company, joint-stock
497-6 company, receivership, trust, or any other entity recognized by
497-7 law.

497-8 (2) (3) "Chemical dependency" means:

497-9 (A) abuse of alcohol or a controlled substance;
497-10 (B) psychological or physical dependence on
497-11 alcohol or a controlled substance; or
497-12 (C) addiction to alcohol or a controlled
497-13 substance [has the meaning assigned by Section 461.002].

497-14 (3) "Commission" means the Health and Human Services
497-15 Commission.

497-16 (4) "Commissioner" means:

497-17 (A) the commissioner of state health services in
497-18 relation to mental health services; and
497-19 (B) the commissioner of aging and disability
497-20 services in relation to intellectual disability services [mental
497-21 health and mental retardation].

497-22 (5) "Community center" means a center established
497-23 under Subchapter A, Chapter 534.

497-24 (6) "Department" means:

497-25 (A) the [Texas] Department of State Health
497-26 Services in relation to mental health services; and
497-27 (B) the Department of Aging and Disability
497-28 Services in relation to intellectual disability services [Mental
497-29 Health and Mental Retardation].

497-30 (7) "Effective administration" includes continuous
497-31 planning and evaluation within the system that result in more
497-32 efficient fulfillment of the purposes and policies of this
497-33 subtitle.

497-34 (8) "Executive commissioner" means the executive
497-35 commissioner of the Health and Human Services Commission.

497-36 (9) "ICF-IID" [(8) "ICF-MR"] means the medical
497-37 assistance program serving individuals with an intellectual or
497-38 developmental disability [persons with mental retardation] who
497-39 receive care in intermediate care facilities.

497-40 (10) "Intellectual disability services"
497-41 [~~13~~] "Mental retardation services" includes all services
497-42 concerned with research, prevention, and detection of intellectual
497-43 disabilities [mental retardation], and all services related to the
497-44 education, training, habilitation, care, treatment, and
497-45 supervision[~~, and control~~] of persons with an intellectual
497-46 disability [mental retardation], but does not include the education
497-47 of school-age persons that the public educational system is
497-48 authorized to provide.

497-49 (11) (9) "Local agency" means:

497-50 (A) a municipality, county, hospital district,
497-51 rehabilitation district, school district, state-supported
497-52 institution of higher education, or state-supported medical
497-53 school; or

497-54 (B) any organizational combination of two or more
497-55 of those entities.

497-56 (12) (11) "Local intellectual and developmental
497-57 disability [mental retardation] authority" means an entity to which
497-58 the executive commissioner [board] delegates the executive
497-59 commissioner's [its] authority and responsibility within a
497-60 specified region for planning, policy development, coordination,
497-61 including coordination with criminal justice entities, and
497-62 resource development and allocation and for supervising and
497-63 ensuring the provision of intellectual disability [mental
497-64 retardation] services to persons with intellectual and
497-65 developmental disabilities [mental retardation] in the most
497-66 appropriate and available setting to meet individual needs in one
497-67 or more local service areas.

497-68 (13) (10) "Local mental health authority" means an
497-69 entity to which the executive commissioner [board] delegates the

498-1 executive commissioner's [its] authority and responsibility within
 498-2 a specified region for planning, policy development, coordination,
 498-3 including coordination with criminal justice entities, and
 498-4 resource development and allocation and for supervising and
 498-5 ensuring the provision of mental health services to persons with
 498-6 mental illness in the most appropriate and available setting to
 498-7 meet individual needs in one or more local service areas.

498-8 (14) [~~12~~] "Mental health services" includes all
 498-9 services concerned with research, prevention, and detection of
 498-10 mental disorders and disabilities, and all services necessary to
 498-11 treat, care for~~, control~~, supervise, and rehabilitate persons who
 498-12 have a mental disorder or disability, including persons whose
 498-13 mental disorders or disabilities result from a substance abuse
 498-14 disorder [alcoholism or drug addiction].

498-15 (15) [~~13-a~~] "Person with a developmental
 498-16 disability" means an individual with a severe, chronic disability
 498-17 attributable to a mental or physical impairment or a combination of
 498-18 mental and physical impairments that:

498-19 (A) manifests before the person reaches 22 years
 498-20 of age;

498-21 (B) is likely to continue indefinitely;

498-22 (C) reflects the individual's need for a
 498-23 combination and sequence of special, interdisciplinary, or generic
 498-24 services, individualized supports, or other forms of assistance
 498-25 that are of a lifelong or extended duration and are individually
 498-26 planned and coordinated; and

498-27 (D) results in substantial functional
 498-28 limitations in three or more of the following categories of major
 498-29 life activity:

- 498-30 (i) self-care;
- 498-31 (ii) receptive and expressive language;
- 498-32 (iii) learning;
- 498-33 (iv) mobility;
- 498-34 (v) self-direction;
- 498-35 (vi) capacity for independent living; and
- 498-36 (vii) economic self-sufficiency.

498-37 (16) [~~14~~] "Person with an intellectual disability"
 498-38 [~~mental retardation~~] means a person, other than a person with a
 498-39 mental disorder, whose mental deficit requires the person to have
 498-40 special training, education, supervision, treatment, or care~~, or~~
 498-41 control in the person's home or community or in a state supported
 498-42 living center [school].

498-43 (17) [~~15~~] "Priority population" means those groups
 498-44 of persons with mental illness or an intellectual disability
 498-45 [~~mental retardation~~] identified by the applicable department as
 498-46 being most in need of mental health or intellectual disability
 498-47 [~~mental retardation~~] services.

498-48 (18) [~~16~~] "Region" means the area within the
 498-49 boundaries of the local agencies participating in the operation of
 498-50 community centers established under Subchapter A, Chapter 534.

498-51 (19) [~~17~~] "State supported living center" means a
 498-52 state-supported and structured residential facility operated by
 498-53 the Department of Aging and Disability Services to provide to
 498-54 clients with an intellectual disability [~~mental retardation~~] a
 498-55 variety of services, including medical treatment, specialized
 498-56 therapy, and training in the acquisition of personal, social, and
 498-57 vocational skills.

498-58 Sec. 531.0021. REFERENCE TO STATE SCHOOL, [OR]
 498-59 SUPERINTENDENT, OR LOCAL MENTAL RETARDATION AUTHORITY. (a) A
 498-60 reference in law to a "state school" means a state supported living
 498-61 center.

498-62 (b) A reference in law to a "superintendent," to the extent
 498-63 the term is intended to refer to the person in charge of a state
 498-64 supported living center, means the director of a state supported
 498-65 living center.

498-66 (c) A reference in law to a "local mental retardation
 498-67 authority" means a local intellectual and developmental disability
 498-68 authority.

498-69 SECTION 3.1334. Subtitle A, Title 7, Health and Safety

499-1 Code, is amended by amending Chapter 532 and adding Chapter 532A to
 499-2 read as follows:

499-3 CHAPTER 532. GENERAL PROVISIONS RELATING TO DEPARTMENT OF STATE
 499-4 HEALTH SERVICES [ORGANIZATION OF TEXAS DEPARTMENT OF MENTAL HEALTH
499-5 AND MENTAL RETARDATION]

499-6 Sec. 532.001. DEFINITIONS; MENTAL HEALTH COMPONENTS
 499-7 [COMPOSITION] OF DEPARTMENT. (a) In this chapter:

499-8 (1) "Commissioner" means the commissioner of state
 499-9 health services.

499-10 (2) "Department" means the Department of State Health
 499-11 Services [The Texas Department of Mental Health and Mental
 499-12 Retardation is composed of:

499-13 (1) the Texas Board of Mental Health and Mental
 499-14 Retardation;

499-15 (2) the commissioner of mental health and mental
 499-16 retardation; and

499-17 (3) a staff under the direction of the commissioner].

499-18 (b) The department includes [Department of Aging and
 499-19 Disability Services and the Department of State Health Services
 499-20 also include] community services operated by the department [those
 499-21 departments] and the following facilities[, as appropriate]:

499-22 (1) the central office of the [each] department;

499-23 (2) the Austin State Hospital;

499-24 (3) the Big Spring State Hospital;

499-25 (4) the Kerrville State Hospital;

499-26 (5) the Rusk State Hospital;

499-27 (6) the San Antonio State Hospital;

499-28 (7) the Terrell State Hospital;

499-29 (8) the North Texas State Hospital;

499-30 (9) [the Abilene State Supported Living Center,

499-31 [the Austin State Supported Living Center,

499-32 [the Brenham State Supported Living Center,

499-33 [the Corpus Christi State Supported Living

499-34 Center,

499-35 [(13) the Denton State Supported Living Center,

499-36 [(14) the Lubbock State Supported Living Center,

499-37 [(15) the Lufkin State Supported Living Center,

499-38 [(16) the Mexia State Supported Living Center,

499-39 [(17) the Richmond State Supported Living Center,

499-40 [(18) the San Angelo State Supported Living Center,

499-41 [(19) the San Antonio State Supported Living Center,

499-42 [(20) the El Paso State Supported Living Center,

499-43 [(21) the Rio Grande State Center;

499-44 (10) [(22) the Waco Center for Youth; and

499-45 (11) [(23) the El Paso Psychiatric Center.

499-46 Sec. 532.002. [SUNSET PROVISION. The Texas Department of
 499-47 Mental Health and Mental Retardation was abolished by Section 1.26,
 499-48 Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular
 499-49 Session, 2003, and the powers and duties of that agency under this
 499-50 chapter were transferred to other agencies, which are subject to
 499-51 Chapter 325, Government Code (Texas Sunset Act). Unless the
 499-52 agencies to which those powers and duties are transferred are
 499-53 continued in existence as provided by that Act, this chapter
 499-54 expires September 1, 2015.

499-55 [Sec. 532.003. COMPOSITION OF BOARD. (a) The board is
 499-56 composed of nine members appointed by the governor with the advice
 499-57 and consent of the senate.]

499-58 [(b) The members must be representatives of the public who
 499-59 have demonstrated interest in mental health, mental retardation,
 499-60 developmental disabilities, or the health and human services
 499-61 system. At least one member must be a consumer of services for
 499-62 persons with mental illness or mental retardation or a family
 499-63 member of a consumer of those services.]

499-64 [(c) Appointments to the board shall be made without regard
 499-65 to the race, color, handicap, sex, religion, age, or national
 499-66 origin of the appointees.]

499-67 [Sec. 532.0035. BOARD TRAINING. (a) A person who is
 499-68 appointed to and qualifies for office as a member of the board may
 499-69 not vote, deliberate, or be counted as a member in attendance at a

500-1 meeting of the board until the person completes a training session
 500-2 that complies with this section.

500-3 [(b) The training program must provide the person with
 500-4 information regarding:

500-5 [(1) the legislation that created the department and
 500-6 board;

500-7 [(2) the programs operated by the department;
 500-8 [(3) the roles and functions of the department;

500-9 [(4) the rules of the department with an emphasis on
 500-10 the rules that relate to disciplinary and investigatory authority;

500-11 [(5) the current budget for the department;

500-12 [(6) the results of the most recent formal audit of the
 500-13 department;

500-14 [(7) the requirements of:
 500-15 [(A) the open meetings law, Chapter 551,

500-16 Government Code;

500-17 [(B) the public information law, Chapter 552,

500-18 Government Code;

500-19 [(C) the administrative procedure law, Chapter
 500-20 2001, Government Code; and

500-21 [(D) other laws relating to public officials,
 500-22 including conflict-of-interest laws; and

500-23 [(8) any applicable ethics policies adopted by the
 500-24 department or the Texas Ethics Commission.

500-25 [(c) A person appointed to the board is entitled to
 500-26 reimbursement, as provided by the General Appropriations Act, for
 500-27 the travel expenses incurred in attending the training program
 500-28 regardless of whether the attendance at the program occurs before
 500-29 or after the person qualifies for office.

500-30 [Sec. 532.004. RESTRICTIONS ON BOARD APPOINTMENT AND
 500-31 MEMBERSHIP AND ON DEPARTMENT EMPLOYMENT. (a) A person is not
 500-32 eligible for appointment as a board member if the person or the
 500-33 person's spouse:

500-34 [(1) owns or controls, directly or indirectly, more
 500-35 than a 10 percent interest in a business entity or other
 500-36 organization regulated by the department or receiving funds from
 500-37 the department; or

500-38 [(2) uses or receives a substantial amount of tangible
 500-39 goods, services, or funds from the department, other than:

500-40 [(A) compensation or reimbursement authorized by
 500-41 law for board membership, attendance, or expenses; or

500-42 [(B) as a parent or guardian of a client or
 500-43 patient receiving services from the department.

500-44 [(b) An officer, employee, or paid consultant of a trade
 500-45 association in the field of mental health or mental retardation may
 500-46 not be a member of the board or an employee of the department.

500-47 [(c) A person who is the spouse of an officer, employee, or
 500-48 paid consultant of a trade association in the field of mental health
 500-49 or mental retardation may not be a board member or a department
 500-50 employee grade 17 or over, including exempt employees, according to
 500-51 the position classification schedule under the General
 500-52 Appropriations Act.

500-53 [(d) A person may not serve as a member of the board or act
 500-54 as the general counsel to the department if the person is required
 500-55 to register as a lobbyist under Chapter 305, Government Code,
 500-56 because of the person's activities for compensation on behalf of a
 500-57 profession related to the operation of the department.

500-58 [(e) For purposes of this section, a trade association is a
 500-59 nonprofit, cooperative, voluntarily joined association of business
 500-60 or professional competitors designed to assist its members and its
 500-61 industry or profession in dealing with mutual business or
 500-62 professional problems and in promoting their common interest.

500-63 [Sec. 532.005. TERMS. Board members serve six-year terms.

500-64 [Sec. 532.006. CHAIRMAN. The governor shall designate a
 500-65 board member as chairman.

500-66 [Sec. 532.007. REMOVAL OF BOARD MEMBERS. (a) It is a
 500-67 ground for removal from the board if a member:

500-68 [(1) is not eligible for appointment to the board at
 500-69 the time of appointment as provided by Section 532.004(a);

[+2) does not maintain during service on the board the qualifications required by Section 532.001(a);
 [+3) violates a prohibition established by Section 532.004(b), (c), or (d);
 [+4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or
 [+5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

[b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

[c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

[Sec. 532.009. REIMBURSEMENT FOR EXPENSES, PER DIEM. A board member is entitled to receive:

[1) reimbursement for actual and necessary expenses incurred in discharging the member's duties; and

[2) the per diem compensation as provided by appropriation for each day the member actually performs official duties.

[Sec. 532.010. BOARD MEETINGS. (a) The board shall hold at least four regular meetings each year in the city of Austin on dates set by board rule. The board shall adopt rules that provide for holding special meetings.

[b) A board meeting, other than a meeting to deliberate the appointment of the commissioner, is open to the public.

[c) The board shall adopt policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

[Sec. 532.011. COMMISSIONER. (a) The commissioner of health and human services shall employ a commissioner in accordance with Section 531.0056, Government Code.

[b) To be qualified for employment as commissioner, a person must have:

[1) professional training and experience in the administration or management of comprehensive health care or human service operations; and

[2) proven administrative and management ability, preferably in the health care area.

[d) The commissioner:

[1) has the administrative and decisional powers granted under this subtitle; and

[2) shall administer the department and this subtitle and ensure the effective administration of the department and its programs and services.

[e) The commissioner shall:

[1) establish qualifications for department personnel that balance clinical and programmatic knowledge and management experience; and

[2) standardize qualifications for personnel positions throughout the department.

[f) The commissioner shall:

[1) establish an organizational structure within the department that will promote the effective administration of this subtitle; and

[2) establish the duties and functions of the department's staff.

[g) The commissioner is responsible for implementation of the board's planning, policy, resource development and allocation, and oversight related to mental health and mental retardation services.

[Sec. 532.012.] MEDICAL DIRECTOR. (a) The commissioner shall appoint a medical director.

(b) To be qualified for appointment as the medical director

under this section, a person must:

(1) be a physician licensed to practice in this state;

and

(2) have proven administrative experience and ability in comprehensive health care or human service operations.

(c) The medical director reports to the commissioner and is responsible for the following duties under this title:

(1) oversight of the quality and appropriateness of clinical services delivered in department mental health facilities or under contract to the department in relation to mental health services; and

(2) leadership in physician recruitment and retention and peer review.

Sec. 532.003 [532.014]. HEADS OF DEPARTMENTAL MENTAL HEALTH FACILITIES. (a) The commissioner shall appoint the head of each mental health facility the department administers.

(b) The head of a facility serves at the will of the commissioner.

[Sec. 532.015. RULES AND POLICIES.] (a) The board shall adopt rules and develop basic and general policies to guide the department in administering this subtitle. The rules and policies must be consistent with the purposes, policies, principles, and standards stated in this subtitle.

[(b)] The board shall adopt policies that clearly define the respective responsibilities of the board and the staff of the department.

[Sec. 532.016. PERSONNEL.] (a) The commissioner shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting.

[(b)] The commissioner shall develop a system of annual job performance evaluations. All merit pay for department employees must be based on the system established under this subsection.

[(c)] The department shall provide to its members and employees, as often as necessary, information regarding their qualifications under this subtitle and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

[(d)] The commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

[(1)] personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code;

[(2)] an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law; and

[(3)] procedures by which a determination can be made of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance and reasonable methods to appropriately address those areas of significant underutilization.

[(e)] The policy statement must:

[(1)] be updated annually;

[(2)] be reviewed by the Commission on Human Rights for compliance with Subsection (d)(1); and

[(3)] be filed with the governor's office.

[(f)] The governor shall deliver a biennial report to the legislature based on the information received under Subsection (e)(3). The report may be made separately or as a part of other biennial reports made to the legislature.

[Sec. 532.018. AUDITS.] (a) The financial transactions of the department are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

503-1 [~~(b) The director of the internal audit unit shall report~~
 503-2 ~~directly to the commissioner.~~

503-3 [~~(c) Each audit report shall be submitted directly to the~~
 503-4 ~~board.~~

503-5 [Sec. 532.019. PUBLIC INTEREST INFORMATION AND COMPLAINTS.
 503-6 (~~a) The department shall prepare information of public interest~~
 503-7 ~~describing the functions of the department and the procedures by~~
 503-8 ~~which complaints are filed with and resolved by the department. The~~
 503-9 ~~department shall make the information available to the public and~~
 503-10 ~~appropriate state agencies.~~

503-11 [~~(b) The board by rule shall establish methods by which~~
 503-12 ~~consumers and service recipients are notified of the name, mailing~~
 503-13 ~~address, and telephone number of the department for the purpose of~~
 503-14 ~~directing complaints to the department. The board may provide for~~
 503-15 ~~that notification:~~

503-16 [~~(1) on each registration form, application, or~~
 503-17 ~~written contract for services of an entity regulated under this~~
 503-18 ~~subtitle or of an entity the creation of which is authorized by this~~
 503-19 ~~subtitle,~~

503-20 [~~(2) on a sign that is prominently displayed in the~~
 503-21 ~~place of business of each entity regulated under this subtitle or of~~
 503-22 ~~each entity the creation of which is authorized by this subtitle; or~~

503-23 [~~(3) in a bill for service provided by an entity~~
 503-24 ~~regulated under this subtitle or by an entity the creation of which~~
 503-25 ~~is authorized by this subtitle.~~

503-26 [~~(c) If a written complaint is filed with the department~~
 503-27 ~~relating to an entity regulated by the department, the department,~~
 503-28 ~~at least quarterly and until final disposition of the complaint,~~
 503-29 ~~shall notify the complainant and the entity regulated by the~~
 503-30 ~~department of the status of the complaint unless notice would~~
 503-31 ~~jeopardize an undercover investigation.~~

503-32 [~~(d) The department shall keep an information file about~~
 503-33 ~~each complaint filed with the department relating to an entity~~
 503-34 ~~regulated by the department.]~~

503-35 Sec. 532.004 [~~532.020~~]. ADVISORY COMMITTEES. (a) The
 503-36 ~~executive commissioner [board] shall appoint [a medical advisory~~
 503-37 ~~committee and] any [other] advisory committees the executive~~
 503-38 ~~commissioner [board] considers necessary to assist in the effective~~
 503-39 ~~administration of the department's mental health [and mental~~
 503-40 ~~retardation] programs.~~

503-41 (b) The department may reimburse committee members for
 503-42 travel costs incurred in performing their duties as provided by
 503-43 Section 2110.004, Government Code [at the rates authorized for
 503-44 state officers and employees under the General Appropriations Act].

503-45 [Sec. 532.021. CITIZENS' PLANNING ADVISORY COMMITTEE. (a)

503-46 ~~The board shall appoint a citizens' planning advisory committee~~
 503-47 ~~that is composed of:~~

503-48 [~~(1) three persons who have demonstrated an interest~~
 503-49 ~~in and knowledge of the department system and the legal, political,~~
 503-50 ~~and economic environment in which the department operates;~~

503-51 [~~(2) three persons who have expertise in the~~
 503-52 ~~development and implementation of long-range plans; and~~

503-53 [~~(3) three members of the public.~~

503-54 [~~(b) In addition to the requirements of Subsection (a), at~~
 503-55 ~~least one member must be a consumer of services for persons with~~
 503-56 ~~mental illness or a family member of a consumer of those services,~~
 503-57 ~~and at least one member must be a consumer of services for persons~~
 503-58 ~~with mental retardation or a family member of a consumer of those~~
 503-59 ~~services.~~

503-60 [~~(c) The committee shall:~~

503-61 ~~[1) advise the department on all stages of the~~
 503-62 ~~development and implementation of the long-range plan required by~~
 503-63 ~~Section 533.032;~~

503-64 [~~(2) review the development, implementation, and any~~
 503-65 ~~necessary revisions of the long-range plan;~~

503-66 [~~(3) review the department's biennial budget request~~
 503-67 ~~and assess the degree to which the request allows for~~
 503-68 ~~implementation of the long-range plan; and~~

503-69 [~~(4) advise the board on:~~

504-1 [(A) the appropriateness of the long-range plan;
 504-2 [(B) any identified problems related to the
 504-3 implementation of the plan;
 504-4 [(C) any necessary revisions to the plan; and
 504-5 [(D) the adequacy of the department's budget
 504-6 request.]

504-7 [(d) The board shall review the committee's reports in
 504-8 conjunction with information provided by the department on the
 504-9 long-range plan or the biennial budget request.]

504-10 [(e) The board shall allow the committee opportunities to
 504-11 appear before the board as needed.]

504-12 [(f) Before a board meeting relating to the development,
 504-13 implementation, or revision of the department's long-range plan,
 504-14 the department shall, in a timely manner, provide the committee
 504-15 with any information that will be presented to the board.]

504-16 [(g) Before submitting the department's biennial budget
 504-17 request to the board for discussion or approval, the department
 504-18 shall, in a timely manner, provide the committee with a copy of the
 504-19 budget request.]

504-20 [(h) The department shall provide the committee with the
 504-21 staff support necessary to allow the committee to fulfill its
 504-22 duties.]

CHAPTER 532A. GENERAL PROVISIONS RELATING TO DEPARTMENT OF AGING AND DISABILITY SERVICES

504-25 Sec. 532A.001. DEFINITIONS; INTELLECTUAL DISABILITY
COMPONENTS OF DEPARTMENT. (a) In this chapter:

504-27 (1) "Commissioner" means the commissioner of aging and
 504-28 disability services.

504-29 (2) "Department" means the Department of Aging and
 504-30 Disability Services.

504-31 (b) The department includes community services operated by
 504-32 the department and the following facilities:

- 504-33 (1) the central office of the department;
- 504-34 (2) the Abilene State Supported Living Center;
- 504-35 (3) the Austin State Supported Living Center;
- 504-36 (4) the Brenham State Supported Living Center;
- 504-37 (5) the Corpus Christi State Supported Living Center;
- 504-38 (6) the Denton State Supported Living Center;
- 504-39 (7) the Lubbock State Supported Living Center;
- 504-40 (8) the Lufkin State Supported Living Center;
- 504-41 (9) the Mexia State Supported Living Center;
- 504-42 (10) the Richmond State Supported Living Center;
- 504-43 (11) the San Angelo State Supported Living Center;
- 504-44 (12) the San Antonio State Supported Living Center;

504-45 and

- 504-46 (13) the El Paso State Supported Living Center.

504-47 Sec. 532A.002. MEDICAL DIRECTOR. (a) The commissioner
 504-48 shall appoint a medical director.

504-49 (b) To be qualified for appointment as the medical director
 504-50 under this section, a person must:

504-51 (1) be a physician licensed to practice in this state;
 504-52 and

- 504-53 (2) have proven administrative experience and ability
 504-54 in comprehensive health care or human service operations.

504-55 (c) The medical director reports to the commissioner and is
 504-56 responsible for the following duties under this title:

504-57 (1) oversight of the quality and appropriateness of
 504-58 clinical services delivered in state supported living centers or
 504-59 under contract to the department in relation to intellectual
 504-60 disability services; and

504-61 (2) leadership in physician recruitment and retention
 504-62 and peer review.

504-63 Sec. 532A.003. HEADS OF STATE SUPPORTED LIVING CENTERS.
 504-64 (a) The commissioner shall appoint the head of each state supported
 504-65 living center the department administers.

504-66 (b) The head of a state supported living center serves at
 504-67 the will of the commissioner.

504-68 Sec. 532A.004. ADVISORY COMMITTEES. (a) The executive
 504-69 commissioner shall appoint any advisory committees the executive

505-1 commissioner considers necessary to assist in the effective
 505-2 administration of the department's intellectual disability
 505-3 programs.

505-4 (b) The department may reimburse committee members for
 505-5 travel costs incurred in performing their duties as provided by
 505-6 Section 2110.004, Government Code.

505-7 SECTION 3.1335. Subtitle A, Title 7, Health and Safety
 505-8 Code, is amended by amending Chapter 533 and adding Chapter 533A to
 505-9 read as follows:

505-10 CHAPTER 533. POWERS AND DUTIES OF DEPARTMENT OF STATE HEALTH
 505-11 SERVICES

505-12 SUBCHAPTER A. GENERAL POWERS AND DUTIES

505-13 Sec. 533.0001. DEFINITIONS. In this chapter:

505-14 (1) "Commissioner" means the commissioner of state
 505-15 health services.

505-16 (2) "Department" means the Department of State Health
 505-17 Services.

505-18 (3) "Department facility" means a facility listed in
 505-19 Section 532.001(b).

505-20 Sec. 533.0002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
 505-21 CONFLICT WITH OTHER LAW [POWERS AND DUTIES OF COMMISSIONER OF
 505-22 HEALTH AND HUMAN SERVICES. The commissioner of health and human
 505-23 services has the powers and duties relating to the board and
 505-24 commissioner as provided by Section 531.0055, Government Code]. To
 505-25 the extent a power or duty given to the [board or] commissioner by
 505-26 this title or another law conflicts with Section 531.0055,
 505-27 Government Code, Section 531.0055 controls.

505-28 Sec. 533.001. GIFTS AND GRANTS. (a) The department may
 505-29 negotiate with a federal agency to obtain grants to assist in
 505-30 expanding and improving mental health [and mental retardation]
 505-31 services in this state.

505-32 (b) The department may accept gifts and grants of money,
 505-33 personal property, and real property to expand and improve the
 505-34 mental health [and mental retardation] services available to the
 505-35 people of this state.

505-36 (c) The department may accept gifts and grants of money,
 505-37 personal property, and real property on behalf of a department
 505-38 facility to expand and improve the mental health [or mental
 505-39 retardation] services available at the facility.

505-40 (d) The department shall use a gift or grant made for a
 505-41 specific purpose in accordance with the purpose expressly
 505-42 prescribed by the donor. The department may decline the gift or
 505-43 grant if the department determines that it cannot be economically
 505-44 used for that purpose.

505-45 (e) The department shall keep a record of each gift or grant
 505-46 in the department's central office in the city of Austin.

505-47 [Sec. 533.002. COMPETITIVE REVIEW REQUIREMENT. The
 505-48 department shall establish procedures to:

505-49 [(1) promote more efficient use of public funds;
 505-50 [(2) ensure periodic review of department management
 505-51 and support activities in order to:

505-52 [(A) improve department operations;
 505-53 [(B) improve the determination of costs;
 505-54 [(C) increase department productivity; and
 505-55 [(D) remain competitive with the private sector;
 505-56 and

505-57 [(3) ensure that the state not provide a service that
 505-58 is available through the private sector unless the state can
 505-59 provide the service at a lower cost.]

505-60 Sec. 533.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL
 505-61 AUTHORITIES AND COMMUNITY CENTERS. (a) To develop or expand a
 505-62 volunteer mental health program in a local mental health [or mental
 505-63 retardation] authority or a community center, the department may
 505-64 allocate available funds appropriated for providing volunteer
 505-65 mental health services.

505-66 (b) The department shall develop formal policies that
 505-67 encourage the growth and development of volunteer mental health
 505-68 services in local mental health [or mental retardation] authorities
 505-69 and community centers.

506-1 Sec. 533.004. LIENS. (a) The department and each community
506-2 center has a lien to secure reimbursement for the cost of providing
506-3 support, maintenance, and treatment to a patient with mental
506-4 illness [~~or client with mental retardation~~] in an amount equal to
506-5 the amount of reimbursement sought.

506-6 (b) The amount of the reimbursement sought may not exceed:

506-7 (1) the amount the department is authorized to charge
506-8 under Section 552.017 [~~or under Subchapter D, Chapter 593,~~] if the
506-9 patient [~~or client~~] received the services in a department facility;
506-10 or

506-11 (2) the amount the community center is authorized to
506-12 charge under Section 534.017 if the patient [~~or client~~] received
506-13 the services in a community center.

506-14 (c) The lien attaches to:

506-15 (1) all nonexempt real and personal property owned or
506-16 later acquired by the patient [~~or client~~] or by a person legally
506-17 responsible for the patient's [~~or client's~~] support;

506-18 (2) a judgment of a court in this state or a decision
506-19 of a public agency in a proceeding brought by or on behalf of the
506-20 patient [~~or client~~] to recover damages for an injury for which the
506-21 patient [~~or client~~] was admitted to a department facility or
506-22 community center; and

506-23 (3) the proceeds of a settlement of a cause of action
506-24 or a claim by the patient [~~or client~~] for an injury for which the
506-25 patient [~~or client~~] was admitted to a department facility or
506-26 community center.

506-27 (d) To secure the lien, the department or community center
506-28 must file written notice of the lien with the county clerk of the
506-29 county in which:

506-30 (1) the patient [~~or client~~], or the person legally
506-31 responsible for the patient's [~~or client's~~] support, owns property;
506-32 or

506-33 (2) the patient [~~or client~~] received or is receiving
506-34 services.

506-35 (e) The notice must contain:

506-36 (1) the name and address of the patient [~~or client~~];
506-37 (2) the name and address of the person legally
506-38 responsible for the patient's [~~or client's~~] support, if applicable;
506-39 (3) the period during which the department facility or
506-40 community center provided services or a statement that services are
506-41 currently being provided; and

506-42 (4) the name and location of the department facility
506-43 or community center.

506-44 (f) Not later than the 31st day before the date on which the
506-45 department files the notice of the lien with the county clerk, the
506-46 department shall notify by certified mail the patient [~~or client~~]
506-47 and the person legally responsible for the patient's [~~or client's~~]
506-48 support. The notice must contain a copy of the charges, the
506-49 statutory procedures relating to filing a lien, and the procedures
506-50 to contest the charges. The executive commissioner [~~board~~] by rule
506-51 shall prescribe the procedures to contest the charges.

506-52 (g) The county clerk shall record on the written notice the
506-53 name of the patient [~~or client~~], the name and address of the
506-54 department facility or community center, and, if requested by the
506-55 person filing the lien, the name of the person legally responsible
506-56 for the patient's [~~or client's~~] support. The clerk shall index the
506-57 notice record in the name of the patient [~~or client~~] and, if
506-58 requested by the person filing the lien, in the name of the person
506-59 legally responsible for the patient's [~~or client's~~] support.

506-60 (h) The notice record must include an attachment that
506-61 contains an account of the charges made by the department facility
506-62 or community center and the amount due to the facility or center.
506-63 The superintendent or director of the facility or center must swear
506-64 to the validity of the account. The account is presumed to be
506-65 correct, and in a suit to cancel the debt and discharge the lien or
506-66 to foreclose on the lien, the account is sufficient evidence to
506-67 authorize a court to render a judgment for the facility or center.

506-68 (i) To discharge the lien, the superintendent or director of
506-69 the department facility or community center or a claims

representative of the facility or center must execute and file with the county clerk of the county in which the lien notice is filed a certificate stating that the debt covered by the lien has been paid, settled, or released and authorizing the clerk to discharge the lien. The county clerk shall record a memorandum of the certificate and the date on which it is filed. The filing of the certificate and recording of the memorandum discharge the lien.

Sec. 533.005. EASEMENTS. The department, in coordination with the executive commissioner, may grant a temporary or permanent easement or right-of-way on land held by the department that relates to services provided under this title. The department, in coordination with the executive commissioner, must grant an easement or right-of-way on terms and conditions the executive commissioner [department] considers to be in the state's best interest.

Sec. 533.006. REPORTING OF ALLEGATIONS AGAINST PHYSICIAN. (a) The department shall report to the Texas Medical [~~State~~] Board [~~of Medical Examiners~~] any allegation received by the department that a physician employed by or under contract with the department in relation to services provided under this title has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 164.051, Occupations Code. The report must be made in the manner provided by Section 154.051, Occupations Code.

(b) The department shall provide to the Texas Medical [~~State~~] Board [~~of Medical Examiners~~] a copy of any report or finding relating to an investigation of an allegation reported to that board.

Sec. 533.007. USE OF [ACCESS TO] CRIMINAL HISTORY RECORD INFORMATION [~~, CRIMINAL PENALTY FOR UNLAWFUL DISCLOSURE~~]. (a) Subject to the requirements of Chapter 250, the [The] department, in relation to services provided under this title, or a local mental health [~~or mental retardation~~] authority[~~-~~] or [~~a~~] community center, may deny employment or volunteer status to an applicant if:

(1) the department, authority, or community center determines that the applicant's criminal history record information indicates that the person is not qualified or suitable; or

(2) the applicant fails to provide a complete set of fingerprints if the department establishes that method of obtaining criminal history record information.

(b) The executive commissioner [board] shall adopt rules relating to the use of information obtained under this section, including rules that prohibit an adverse personnel action based on arrest warrant or wanted persons information received by the department.

Sec. 533.0075. EXCHANGE OF EMPLOYMENT RECORDS. The department, in relation to services provided under this title, or a local mental health [~~or mental retardation~~] authority[~~-~~] or [~~a~~] community center, may exchange with one another the employment records of an employee or former employee who applies for employment at the department, authority, or community center.

Sec. 533.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY [~~AND MENTAL RETARDATION~~]. (a) Each department facility and community center shall annually assess the feasibility of converting entry level support positions into employment opportunities for individuals with mental illness or an intellectual disability [~~and mental retardation~~] in the facility's or center's service area.

(b) In making the assessment, the department facility or community center shall consider the feasibility of using an array of job opportunities that may lead to competitive employment, including sheltered employment and supported employment.

(c) Each department facility and community center shall annually submit to the department a report showing that the facility or center has complied with Subsection (a).

(d) The department shall compile information from the reports and shall make the information available to each designated provider in a service area.

508-1 (e) Each department facility and community center shall
508-2 ensure that designated staff are trained to:

508-3 (1) assist clients through the Social Security
508-4 Administration disability determination process;

508-5 (2) provide clients and their families information
508-6 related to the Social Security Administration Work Incentive
508-7 Provisions; and

508-8 (3) assist clients in accessing and utilizing the
508-9 Social Security Administration Work Incentive Provisions to
508-10 finance training, services, and supports needed to obtain career
508-11 goals.

508-12 Sec. 533.009. EXCHANGE OF PATIENT [AND CLIENT] RECORDS.

508-13 (a) Department facilities, local mental health [~~or mental~~
508-14 ~~retardation~~] authorities, community centers, other designated
508-15 providers, and subcontractors [~~subcontractees~~] of mental health
508-16 [~~and mental retardation~~] services are component parts of one
508-17 service delivery system within which patient [~~or client~~] records
508-18 may be exchanged without the patient's [~~or client's~~] consent.

508-19 (b) The executive commissioner [~~board~~] shall adopt rules to
508-20 carry out the purposes of this section.

508-21 Sec. 533.0095. COLLECTION AND MAINTENANCE OF INFORMATION
508-22 REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The
508-23 executive commissioner [~~of the Health and Human Services~~
508-24 ~~Commission~~] by rule shall require the department to collect
508-25 information and maintain current records regarding a person found
508-26 not guilty of an offense by reason of insanity under Chapter 46C,
508-27 Code of Criminal Procedure, who is:

508-28 (1) ordered by a court to receive inpatient mental
508-29 health services under Chapter 574 or under Chapter 46C, Code of
508-30 Criminal Procedure; or

508-31 (2) [~~committed by a court for long-term placement in a~~
508-32 ~~residential care facility under Chapter 593 or under Chapter 46C,~~
508-33 ~~Code of Criminal Procedure, or~~

508-34 [3] ordered by a court to receive outpatient or
508-35 community-based treatment and supervision.

508-36 (b) Information maintained by the department under this
508-37 section must include the name and address of any facility to which
508-38 the person is committed, the length of the person's commitment to
508-39 the facility, and any post-release outcome.

508-40 (c) The department shall file annually with the presiding
508-41 officer of each house of the legislature a written report
508-42 containing the name of each person described by Subsection (a), the
508-43 name and address of any facility to which the person is committed,
508-44 the length of the person's commitment to the facility, and any
508-45 post-release outcome.

508-46 Sec. 533.010. INFORMATION RELATING TO [PATIENT'S]
508-47 CONDITION. (a) A person, including a hospital, [~~sanitarium~~,]
508-48 nursing facility [~~or rest home~~], medical society, or other
508-49 organization, may provide to the department or a medical
508-50 organization, hospital, or hospital committee any information,
508-51 including interviews, reports, statements, or memoranda relating
508-52 to a person's condition and treatment for use in a study to reduce
508-53 mental illness [~~disorders~~] and intellectual [~~mental~~] disabilities.

508-54 (b) The department or a medical organization, hospital, or
508-55 hospital committee receiving the information may use or publish the
508-56 information only to advance mental health and intellectual
508-57 disability [~~mental retardation~~] research and education in order to
508-58 reduce mental illness [~~disorders~~] and intellectual [~~mental~~]
508-59 disabilities. A summary of the study may be released for general
508-60 publication.

508-61 (c) The identity of a person whose condition or treatment is
508-62 studied is confidential and may not be revealed under any
508-63 circumstances. Information provided under this section and any
508-64 finding or conclusion resulting from the study is privileged
508-65 information.

508-66 (d) A person is not liable for damages or other relief if the
508-67 person:

508-68 (1) provides information under this section;
508-69 (2) releases or publishes the findings and conclusions

509-1 of the person or organization to advance mental health and
 509-2 intellectual disability [~~mental retardation~~] research and
 509-3 education; or
 509-4 (3) releases or publishes generally a summary of a
 509-5 study.

509-6 Sec. 533.012. COOPERATION OF STATE AGENCIES. [(a)] At the
 509-7 department's request and in coordination with the executive
 509-8 commissioner, all state departments, agencies, officers, and
 509-9 employees shall cooperate with the department in activities that
 509-10 are consistent with their functions and that relate to services
 509-11 provided under this title.

509-12 [Sec. 533.013. DUPLICATION OF REHABILITATION SERVICES. The
 509-13 department shall enter into an agreement with the Texas
 509-14 Rehabilitation Commission that defines the roles and
 509-15 responsibilities of the department and the commission regarding the
 509-16 agencies' shared client populations. The agreement must establish
 509-17 methods to prevent the duplication and fragmentation of employment
 509-18 services provided by the agencies.]

509-19 Sec. 533.014. RESPONSIBILITY OF LOCAL MENTAL HEALTH
 509-20 AUTHORITIES IN MAKING TREATMENT RECOMMENDATIONS. (a) The
 509-21 executive commissioner [~~board~~] shall adopt rules that:

509-22 (1) relate to the responsibility of the local mental
 509-23 health authorities to make recommendations relating to the most
 509-24 appropriate and available treatment alternatives for individuals
 509-25 in need of mental health services, including individuals who are in
 509-26 contact with the criminal justice system and individuals detained
 509-27 in local jails and juvenile detention facilities;

509-28 (2) govern commitments to a local mental health
 509-29 authority;

509-30 (3) govern transfers of patients that involve a local
 509-31 mental health authority; and

509-32 (4) provide for emergency admission to a department
 509-33 mental health facility if obtaining approval from the authority
 509-34 could result in a delay that might endanger the patient or others.

509-35 (b) The executive commissioner's [~~board's~~] first
 509-36 consideration in developing rules under this section must be to
 509-37 satisfy individual patient treatment needs in the most appropriate
 509-38 setting. The executive commissioner [~~board~~] shall also consider
 509-39 reducing patient inconvenience resulting from admissions and
 509-40 transfers between providers.

509-41 (c) The department shall notify each judge who has probate
 509-42 jurisdiction in the service area and any other person the local
 509-43 mental health authority considers necessary of the responsibility
 509-44 of the local mental health authority to make recommendations
 509-45 relating to the most appropriate and available treatment
 509-46 alternatives and the procedures required in the area.

509-47 Sec. 533.015. UNANNOUNCED INSPECTIONS. The department may
 509-48 make any inspection of a department facility or program under the
 509-49 department's jurisdiction under this title without announcing the
 509-50 inspection.

509-51 Sec. 533.016. CERTAIN PROCUREMENTS OF GOODS AND SERVICES BY
 509-52 SERVICE PROVIDERS. (a) This section does not apply to a "health
 509-53 and human services agency," as that term is defined by Section
531.001, Government Code.

509-55 (a-1) A state agency, local agency, or local mental health
 509-56 authority [~~, or local mental retardation authority~~] that expends
 509-57 public money to acquire goods or services in connection with
 509-58 providing or coordinating the provision of mental health [~~or mental~~
 509-59 ~~retardation~~] services may satisfy the requirements of any state law
 509-60 requiring procurements by competitive bidding or competitive
 509-61 sealed proposals by procuring goods or services with the public
 509-62 money in accordance with Section 533.017 or in accordance with:

509-63 (1) [Section 2155.144, Government Code, if the entity
 509-64 is a state agency subject to that law,

509-65 [2] Section 32.043 or 32.044, Human Resources Code,
 509-66 if the entity is a public hospital subject to those laws; or

509-67 (2) [3] this section, if the entity is not covered
 509-68 by Subdivision (1) [~~or~~ (2)].

509-69 (b) An agency or authority under Subsection (a-1)(2)

510-1 [+(a)(3)] may acquire goods or services by any procurement method
 510-2 that provides the best value to the agency or authority. The agency
 510-3 or authority shall document that the agency or authority considered
 510-4 all relevant factors under Subsection (c) in making the
 510-5 acquisition.

510-6 (c) Subject to Subsection (d), the agency or authority may
 510-7 consider all relevant factors in determining the best value,
 510-8 including:

510-9 (1) any installation costs;
 510-10 (2) the delivery terms;
 510-11 (3) the quality and reliability of the vendor's goods
 510-12 or services;

510-13 (4) the extent to which the goods or services meet the
 510-14 agency's or authority's needs;

510-15 (5) indicators of probable vendor performance under
 510-16 the contract such as past vendor performance, the vendor's
 510-17 financial resources and ability to perform, the vendor's experience
 510-18 and responsibility, and the vendor's ability to provide reliable
 510-19 maintenance agreements;

510-20 (6) the impact on the ability of the agency or
 510-21 authority to comply with laws and rules relating to historically
 510-22 underutilized businesses or relating to the procurement of goods
 510-23 and services from persons with disabilities;

510-24 (7) the total long-term cost to the agency or
 510-25 authority of acquiring the vendor's goods or services;

510-26 (8) the cost of any employee training associated with
 510-27 the acquisition;

510-28 (9) the effect of an acquisition on the agency's or
 510-29 authority's productivity;

510-30 (10) the acquisition price; and

510-31 (11) any other factor relevant to determining the best
 510-32 value for the agency or authority in the context of a particular
 510-33 acquisition.

510-34 (d) If a state agency to which this section applies acquires
 510-35 goods or services with a value that exceeds \$100,000, the state
 510-36 agency shall consult with and receive approval from the commission
 510-37 [~~Health and Human Services Commission~~] before considering factors
 510-38 other than price and meeting specifications.

510-39 (e) The state auditor or the executive commissioner
 510-40 [~~department~~] may audit the agency's or authority's acquisitions of
 510-41 goods and services under this section to the extent state money or
 510-42 federal money appropriated by the state is used to make the
 510-43 acquisitions.

510-44 (f) The agency or authority may adopt rules and procedures
 510-45 for the acquisition of goods and services under this section.

510-46 Sec. 533.017. PARTICIPATION IN [~~DEPARTMENT~~] PURCHASING
 510-47 CONTRACTS OR GROUP PURCHASING PROGRAM. (a) This section does not
 510-48 apply to a "health and human services agency," as that term is
 510-49 defined by Section 531.001, Government Code.

510-50 (b) The executive commissioner [~~department~~] may allow a
 510-51 state agency, local agency, or local mental health authority [~~,~~ or
 510-52 local mental retardation authority] that expends public money to
 510-53 purchase goods or services in connection with providing or
 510-54 coordinating the provision of mental health [~~or mental retardation~~]
 510-55 services to purchase goods or services with the public money by
 510-56 participating in:

510-57 (1) a contract the executive commissioner
 510-58 [~~department~~] has made to purchase goods or services; or

510-59 (2) a group purchasing program established or
 510-60 designated by the executive commissioner [~~department~~] that offers
 510-61 discounts to providers of mental health [~~or mental retardation~~]
 510-62 services.

510-63 SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF MENTAL 510-64 HEALTH SERVICES

510-65 Sec. 533.031. DEFINITIONS. In this subchapter:

510-66 (1) "Elderly resident" means a person 65 years of age
 510-67 or older residing in a department facility.

510-68 (2) "Extended care unit" means a residential unit in a
 510-69 department facility that contains patients with chronic mental

511-1 illness who require long-term care, maintenance, limited
 511-2 programming, and constant supervision.

511-3 (3) "Transitional living unit" means a residential
 511-4 unit that is designed for the primary purpose of facilitating the
 511-5 return of hard-to-place psychiatric patients with chronic mental
 511-6 illness from acute care units to the community through an array of
 511-7 services appropriate for those patients.

511-8 [4) "Commission" means the Health and Human Services
 511-9 Commission.]

511-10 [5) "Executive commissioner" means the executive
 511-11 commissioner of the Health and Human Services Commission.

511-12 [6) "ICF-MR and related waiver programs" includes
 511-13 ICF-MR Section 1915(c) waiver programs, home and community-based
 511-14 services, Texas home living waiver services, or another Medicaid
 511-15 program serving persons with mental retardation.

511-16 [7) "Section 1915(c) waiver program" means a
 511-17 federally funded Medicaid program of the state that is authorized
 511-18 under Section 1915(c) of the federal Social Security Act (42 U.S.C.
 511-19 Section 1396n(c)).

511-20 [8) "Qualified service provider" means an entity that
 511-21 meets requirements for service providers established by the
 511-22 executive commissioner.]

511-23 Sec. 533.032. LONG-RANGE PLANNING. (a) The department
 511-24 shall have a long-range plan relating to the provision of services
 511-25 under this title covering at least six years that includes at least
 511-26 the provisions required by Sections 531.022 and 531.023, Government
 511-27 Code, and Chapter 2056, Government Code. The plan must cover the
 511-28 provision of services in and policies for state-operated
 511-29 institutions and ensure that the medical needs of the most
 511-30 medically fragile persons with mental illness the department serves
 511-31 are met.

511-32 (b) In developing the plan, the department shall:

511-33 (1) solicit input from:

511-34 (A) local mental health authorities [for mental
 511-35 health and mental retardation];

511-36 (B) community representatives;

511-37 (C) consumers of mental health [and mental
 511-38 retardation] services, including consumers of campus-based and
 511-39 community-based services, and family members of consumers of those
 511-40 services; and

511-41 (D) other interested persons; and

511-42 (2) consider the report developed under Subsection
 511-43 (c).

511-44 (c) The department shall develop a report containing
 511-45 information and recommendations regarding the most efficient
 511-46 long-term use and management of the department's campus-based
 511-47 facilities. The report must:

511-48 (1) project future bed requirements for [state schools
 511-49 and] state hospitals;

511-50 (2) document the methodology used to develop the
 511-51 projection of future bed requirements;

511-52 (3) project maintenance costs for institutional
 511-53 facilities;

511-54 (4) recommend strategies to maximize the use of
 511-55 institutional facilities; and

511-56 (5) specify how each [state school and] state hospital
 511-57 will:

511-58 (A) serve and support the communities and
 511-59 consumers in its service area; and

511-60 (B) fulfill statewide needs for specialized
 511-61 services.

511-62 (d) In developing the report under Subsection (c), the
 511-63 department shall:

511-64 (1) conduct two public meetings, one meeting to be
 511-65 held at the beginning of the process and the second meeting to be
 511-66 held at the end of the process, to receive comments from interested
 511-67 parties; and

511-68 (2) consider:

511-69 (A) the medical needs of the most medically

512-1 fragile of its patients with mental illness [clients]; and
 512-2 (B) [the provision of services to clients with
 512-3 severe and profound mental retardation and to persons with mental
 512-4 retardation who are medically fragile or have behavioral problems;
 512-5 [(C) the program and service preference
 512-6 information collected under Section 533.038; and
 512-7 [(D)] input solicited from consumers of services
 512-8 of [state schools and] state hospitals.

512-9 (g) The department shall:

512-10 (1) attach the report required by Subsection (c) to
 512-11 the department's legislative appropriations request for each
 512-12 biennium;

512-13 (2) at the time the department presents its
 512-14 legislative appropriations request, present the report to the:

- 512-15 (A) governor;
- 512-16 (B) governor's budget office;
- 512-17 (C) lieutenant governor;
- 512-18 (D) speaker of the house of representatives;
- 512-19 (E) Legislative Budget Board; and
- 512-20 (F) commission [Health and Human Services

512-21 Commission]; and

512-22 (3) update the department's long-range plan biennially
 512-23 and include the report in the plan.

512-24 (h) The department shall, in coordination with the
 512-25 commission [Health and Human Services Commission], evaluate the
 512-26 current and long-term costs associated with serving inpatient
 512-27 psychiatric needs of persons living in counties now served by at
 512-28 least three state hospitals within 120 miles of one another. This
 512-29 evaluation shall take into consideration the condition of the
 512-30 physical plants and other long-term asset management issues
 512-31 associated with the operation of the hospitals, as well as other
 512-32 issues associated with quality psychiatric care. After such
 512-33 determination is made, the commission [Health and Human Services
 512-34 Commission] shall begin to take action to influence the utilization
 512-35 of these state hospitals in order to ensure efficient service
 512-36 delivery.

512-37 Sec. 533.0325. CONTINUUM OF SERVICES IN CAMPUS FACILITIES.
 512-38 The executive commissioner [board] by rule shall establish criteria
 512-39 regarding the uses of the department's campus-based facilities as
 512-40 part of a full continuum of services under this title.

512-41 Sec. 533.033. DETERMINATION OF REQUIRED RANGE OF MENTAL
 512-42 HEALTH SERVICES. (a) Consistent with the purposes and policies of
 512-43 this subtitle, the commissioner biennially shall determine:

512-44 (1) the types of mental health services that can be
 512-45 most economically and effectively provided at the community level
 512-46 for persons exhibiting various forms of mental disability; and

512-47 (2) the types of mental health services that can be
 512-48 most economically and effectively provided by department
 512-49 facilities.

512-50 (b) In the determination, the commissioner shall assess the
 512-51 limits, if any, that should be placed on the duration of mental
 512-52 health services provided at the community level or at a department
 512-53 facility.

512-54 (c) The department biennially shall review the types of
 512-55 services the department provides and shall determine if a community
 512-56 provider can provide services of a comparable quality at a lower
 512-57 cost than the department's costs.

512-58 (d) The commissioner's findings shall guide the department
 512-59 in planning and administering services for persons with mental
 512-60 illness.

512-61 Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED
 512-62 SERVICES. [(a)] The department may cooperate, negotiate, and
 512-63 contract with local agencies, hospitals, private organizations and
 512-64 foundations, community centers, physicians, and other persons to
 512-65 plan, develop, and provide community-based mental health [and
 512-66 mental retardation] services.

512-67 Sec. 533.0345. STATE AGENCY SERVICES STANDARDS. (a) The
 512-68 executive commissioner [department] by rule shall develop model
 512-69 program standards for mental health [and mental retardation]

513-1 services for use by each state agency that provides or pays for
 513-2 mental health [or mental retardation] services. The department
 513-3 shall provide the model standards to each agency that provides
 513-4 mental health [or mental retardation] services as identified by the
 513-5 commission [~~Health and Human Services Commission~~].

513-6 (b) Model standards developed under Subsection (a) must be
 513-7 designed to improve the consistency of mental health [and mental
 513-8 retardation] services provided by or through a state agency.

513-9 (c) Biennially the department shall review the model
 513-10 standards developed under Subsection (a) and determine whether each
 513-11 standard contributes effectively to the consistency of service
 513-12 delivery by state agencies.

513-13 [Sec. 533.0346. AUTHORITY TO TRANSFER SERVICES TO COMMUNITY
 513-14 CENTERS. (a) The department may transfer operations of and
 513-15 services provided at the Amarillo State Center, Beaumont State
 513-16 Center, and Laredo State Center to a community center established
 513-17 under Chapter 534, including a newly established center providing
 513-18 mental retardation services or mental health and mental retardation
 513-19 services.]

513-20 [(b) The transfer may occur only on the department's
 513-21 approval of a plan submitted in accordance with Section 534.001(d)
 513-22 or of an amendment to a previously approved plan. In developing the
 513-23 plan or plan amendment, the center or proposed center proposing to
 513-24 accept the state center operation and service responsibilities
 513-25 shall consider input from consumers of mental health and mental
 513-26 retardation services and family members of and advocates for those
 513-27 consumers, organizations that represent affected employees, and
 513-28 other providers of mental health and mental retardation services.]

513-29 [(c) The center or proposed center proposing to accept the
 513-30 state center operation and service responsibilities shall publish
 513-31 notice of the initial planning meeting regarding the content of the
 513-32 plan or plan amendment and of the meeting to review the content of
 513-33 the proposed plan or plan amendment before it is submitted under
 513-34 Section 534.001(d). The notices must include the time and location
 513-35 of the meeting. The notice of the meeting to review the content of
 513-36 the plan or amendment must include information regarding how to
 513-37 obtain a copy of the proposed plan or amendment. The notices must
 513-38 be published not fewer than 30 days and not more than 90 days before
 513-39 the date set for the meeting in a newspaper of general circulation
 513-40 in each county containing any part of the proposed service area. If
 513-41 a county in which notice is required to be published does not have a
 513-42 newspaper of general circulation, the notices shall be published in
 513-43 a newspaper of general circulation in the nearest county in which a
 513-44 newspaper of general circulation is published.]

513-45 [(d) At the time the operations and services are transferred
 513-46 to the community center, money supporting the cost of providing
 513-47 operations and services at a state center shall be transferred to
 513-48 the community center to ensure continuity of services.]

513-49 [(e) The Amarillo State Center is exempt from the
 513-50 requirements listed in Subsections (b) and (c).]

513-51 Sec. 533.035. LOCAL MENTAL HEALTH [AND MENTAL RETARDATION]
 513-52 AUTHORITIES. (a) The executive commissioner shall designate a
 513-53 local mental health authority [and a local mental retardation
 513-54 authority] in one or more local service areas. The executive
 513-55 commissioner may delegate to the local authority [authorities] the
 513-56 authority and responsibility of the executive commissioner, the
 513-57 commission, or a department of the commission related to planning,
 513-58 policy development, coordination, including coordination with
 513-59 criminal justice entities, resource allocation, and resource
 513-60 development for and oversight of mental health [and mental
 513-61 retardation] services in the most appropriate and available setting
 513-62 to meet individual needs in that service area. The executive
 513-63 commissioner may designate a single entity as both the local mental
 513-64 health authority under this chapter and the local intellectual and
 513-65 developmental disability [mental retardation] authority under
 513-66 Chapter 533A for a service area.]

513-67 (b) The department by contract or other method of
 513-68 allocation, including a case-rate or capitated arrangement, may
 513-69 disburse to a local mental health [and mental retardation]

514-1 authority department federal and department state funds to be spent
 514-2 in the local service area for:

514-3 (1) community mental health and intellectual
 514-4 disability [mental retardation] services; and

514-5 (2) chemical dependency services for persons who are
 514-6 dually diagnosed as having both chemical dependency and mental
 514-7 illness or an intellectual disability [mental retardation].

514-8 (c) A local mental health [and mental retardation]
 514-9 authority, with the approval of the department [Department of State
 514-10 Health Services or the Department of Aging and Disability Services,
 514-11 or both, as applicable], shall use the funds received under
 514-12 Subsection (b) to ensure mental health [and mental retardation] and
 514-13 chemical dependency services are provided in the local service
 514-14 area. The local authority shall consider public input, ultimate
 514-15 cost-benefit, and client care issues to ensure consumer choice and
 514-16 the best use of public money in:

514-17 (1) assembling a network of service providers;

514-18 (2) making recommendations relating to the most
 514-19 appropriate and available treatment alternatives for individuals
 514-20 in need of mental health [and mental retardation] services; and

514-21 (3) procuring services for a local service area,
 514-22 including a request for proposal or open-enrollment procurement
 514-23 method.

514-24 (d) A local mental health [and mental retardation]
 514-25 authority shall demonstrate to the department that the services
 514-26 that the authority provides directly or through subcontractors and
 514-27 that involve state funds comply with relevant state standards.

514-28 (e) Subject to Section 533.0358, in assembling a network of
 514-29 service providers, a local mental health authority may serve as a
 514-30 provider of services only as a provider of last resort and only if
 514-31 the local authority demonstrates to the department in the local
 514-32 authority's local network development plan that:

514-33 (1) the local authority has made every reasonable
 514-34 attempt to solicit the development of an available and appropriate
 514-35 provider base that is sufficient to meet the needs of consumers in
 514-36 its service area; and

514-37 (2) there is not a willing provider of the relevant
 514-38 services in the local authority's service area or in the county
 514-39 where the provision of the services is needed.

514-40 [(e-1) A local mental retardation authority may serve as a
 514-41 provider of ICF-MR and related waiver programs only if:

514-42 [(1) the local authority complies with the limitations
 514-43 prescribed by Section 533.0355(d); or

514-44 [(2) the ICF-MR and related waiver programs are
 514-45 necessary to ensure the availability of services and the local
 514-46 authority demonstrates to the commission that there is not a
 514-47 willing ICF-MR and related waiver program qualified service
 514-48 provider in the local authority's service area where the service is
 514-49 needed.]

514-50 Sec. 533.0351. LOCAL AUTHORITY NETWORK ADVISORY COMMITTEE.

514-51 (a) The executive commissioner shall establish a local authority
 514-52 network advisory committee to advise the executive commissioner and
 514-53 the department [Department of State Health Services] on technical
 514-54 and administrative issues that directly affect local mental health
 514-55 authority responsibilities.

514-56 (b) The committee is composed of equal numbers of
 514-57 representatives of local mental health authorities, community
 514-58 mental health service providers, private mental health service
 514-59 providers, local government officials, advocates for individuals
 514-60 with mental health needs, consumers of mental health services,
 514-61 family members of individuals with mental health needs, and other
 514-62 individuals with expertise in the field of mental health appointed
 514-63 by the executive commissioner. In addition, the executive
 514-64 commissioner may appoint facilitators to the committee as
 514-65 necessary. In appointing the members, the executive commissioner
 514-66 shall also ensure a balanced representation of:

514-67 (1) different regions of this state;

514-68 (2) rural and urban counties; and

514-69 (3) single-county and multicounty local mental health

515-1 authorities.

515-2 (c) Members appointed to the advisory committee must have
515-3 some knowledge of, familiarity with, or understanding of the
515-4 day-to-day operations of a local mental health authority.

515-5 (d) The advisory committee shall:

515-6 (1) review rules and proposed rules and participate in
515-7 any negotiated rulemaking process related to local mental health
515-8 authority operations;

515-9 (2) advise the executive commissioner and the
515-10 department [Department of State Health Services] regarding
515-11 evaluation and coordination of initiatives related to local mental
515-12 health authority operations;

515-13 (3) advise the executive commissioner and the
515-14 department [Department of State Health Services] in developing a
515-15 method of contracting with local mental health authorities that
515-16 will result in contracts that are flexible and responsive to:

515-17 (A) the needs and services of local communities;
515-18 and

515-19 (B) the department's performance expectations;

515-20 (4) coordinate with work groups whose actions may
515-21 affect local mental health authority operations;

515-22 (5) report to the executive commissioner and the
515-23 department [Department of State Health Services] on the committee's
515-24 activities and recommendations at least once each fiscal quarter;
515-25 and

515-26 (6) work with the executive commissioner or the
515-27 department [Department of State Health Services] as the executive
515-28 commissioner directs.

515-29 (e) For any written recommendation the committee makes to
515-30 the department [Department of State Health Services], the
515-31 department shall provide to the committee a written response
515-32 regarding any action taken on the recommendation or the reasons for
515-33 the department's inaction on the subject of the recommendation.

515-34 (f) The committee is subject to Chapter 2110, Government
515-35 Code, except that the committee is not subject to Section 2110.004
515-36 or 2110.008, Government Code. The committee is abolished on
515-37 September 1, 2017, unless the executive commissioner adopts a rule
515-38 continuing the committee in existence beyond that date.

515-39 (g) The department [Department of State Health Services]
515-40 may reimburse consumers of mental health services and family
515-41 members of individuals with mental health needs appointed to the
515-42 committee for travel costs incurred in performing their duties as
515-43 provided in the General Appropriations Act.

515-44 Sec. 533.0352. LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE
515-45 AREA. (a) Each local mental health [~~or mental retardation~~]
515-46 authority shall develop a local service area plan to maximize the
515-47 authority's services by using the best and most cost-effective
515-48 means of using federal, state, and local resources to meet the needs
515-49 of the local community according to the relative priority of those
515-50 needs. Each local mental health [~~or mental retardation~~] authority
515-51 shall undertake to maximize federal funding.

515-52 (b) A local service area plan must be consistent with the
515-53 purposes, goals, and policies stated in Section 531.001 and the
515-54 department's long-range plan developed under Section 533.032.

515-55 (c) The department and a local mental health [~~or mental~~
515-56 ~~retardation~~] authority shall use the local authority's local
515-57 service plan as the basis for contracts between the department and
515-58 the local authority and for establishing the local authority's
515-59 responsibility for achieving outcomes related to the needs and
515-60 characteristics of the authority's local service area.

515-61 (d) In developing the local service area plan, the local
515-62 mental health [~~or mental retardation~~] authority shall:

515-63 (1) solicit information regarding community needs
515-64 from:

515-65 (A) representatives of the local community;

515-66 (B) consumers of community-based mental health
515-67 [~~and mental retardation~~] services and members of the families of
515-68 those consumers; and

515-69 (C) [~~consumers of services of state schools for~~

516-1 persons with mental retardation, members of families of those
516-2 consumers, and members of state school volunteer services councils,
516-3 if a state school is located in the local service area of the local
516-4 authority; and

516-5 [D] other interested persons; and

516-6 (2) consider:

516-7 (A) criteria for assuring accountability for,
516-8 cost-effectiveness of, and relative value of service delivery
516-9 options;

516-10 (B) goals to minimize the need for state hospital
516-11 and community hospital care;

516-12 (C) [goals to ensure a client with mental
516-13 retardation is placed in the least restrictive environment
516-14 appropriate to the person's care;

516-15 [D] opportunities for innovation to ensure that
516-16 the local authority is communicating to all potential and incoming
516-17 consumers about the availability of services of state schools for
516-18 persons with mental retardation in the local service area of the
516-19 local authority;

516-20 [E] goals to divert consumers of services from
516-21 the criminal justice system;

516-22 (D) [F] goals to ensure that a child with
516-23 mental illness remains with the child's parent or guardian as
516-24 appropriate to the child's care; and

516-25 (E) [G] opportunities for innovation in
516-26 services and service delivery.

516-27 (e) The department and the local mental health [or mental
516-28 retardation] authority by contract shall enter into a performance
516-29 agreement that specifies required standard outcomes for the
516-30 programs administered by the local authority. Performance related
516-31 to the specified outcomes must be verifiable by the department. The
516-32 performance agreement must include measures related to the outputs,
516-33 costs, and units of service delivered. Information regarding the
516-34 outputs, costs, and units of service delivered shall be recorded in
516-35 the local authority's automated data systems, and reports regarding
516-36 the outputs, costs, and units of service delivered shall be
516-37 submitted to the department at least annually as provided by
516-38 department rule.

516-39 (f) The department and the local mental health [or mental
516-40 retardation] authority shall provide an opportunity for community
516-41 centers and advocacy groups to provide information or assistance in
516-42 developing the specified performance outcomes under Subsection
516-43 (e).

516-44 Sec. 533.03521. LOCAL NETWORK DEVELOPMENT PLAN CREATION AND
516-45 APPROVAL. (a) A local mental health authority shall develop a
516-46 local network development plan regarding the configuration and
516-47 development of the local mental health authority's provider
516-48 network. The plan must reflect local needs and priorities and
516-49 maximize consumer choice and access to qualified service providers.

516-50 (b) The local mental health authority shall submit the local
516-51 network development plan to the department [Department of State
516-52 Health Services] for approval.

516-53 (c) On receipt of a local network development plan under
516-54 this section, the department shall review the plan to ensure that
516-55 the plan:

516-56 (1) complies with the criteria established by Section
516-57 533.0358 if the local mental health authority is providing services
516-58 under that section; and

516-59 (2) indicates that the local mental health authority
516-60 is reasonably attempting to solicit the development of a provider
516-61 base that is:

516-62 (A) available and appropriate; and

516-63 (B) sufficient to meet the needs of consumers in
516-64 the local authority's local service area.

516-65 (d) If the department determines that the local network
516-66 development plan complies with Subsection (c), the department shall
516-67 approve the plan.

516-68 (e) At least biennially, the department shall review a local
516-69 mental health authority's local network development plan and

517-1 determine whether the plan complies with Subsection (c).

517-2 (f) As part of a local network development plan, a local
 517-3 mental health authority annually shall post on the local
 517-4 authority's website a list of persons with whom the local authority
 517-5 had a contract or agreement in effect during all or part of the
 517-6 previous year, or on the date the list is posted, related to the
 517-7 provision of mental health services.

517-8 Sec. 533.0354. DISEASE MANAGEMENT PRACTICES AND JAIL
 517-9 DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES. (a) A local
 517-10 mental health authority shall ensure the provision of assessment
 517-11 services, crisis services, and intensive and comprehensive
 517-12 services using disease management practices for adults with bipolar
 517-13 disorder, schizophrenia, or clinically severe depression and for
 517-14 children with serious emotional illnesses. The local mental health
 517-15 authority shall ensure that individuals are engaged with treatment
 517-16 services that are:

517-17 (1) ongoing and matched to the needs of the individual
 517-18 in type, duration, and intensity;

517-19 (2) focused on a process of recovery designed to allow
 517-20 the individual to progress through levels of service;

517-21 (3) guided by evidence-based protocols and a
 517-22 strength-based paradigm of service; and

517-23 (4) monitored by a system that holds the local
 517-24 authority accountable for specific outcomes, while allowing
 517-25 flexibility to maximize local resources.

517-26 (a-1) In addition to the services required under Subsection
 517-27 (a) and using money appropriated for that purpose or money received
 517-28 under the Texas Health Care Transformation and Quality Improvement
 517-29 Program waiver issued under Section 1115 of the federal Social
 517-30 Security Act (42 U.S.C. Section 1315), a local mental health
 517-31 authority may ensure, to the extent feasible, the provision of
 517-32 assessment services, crisis services, and intensive and
 517-33 comprehensive services using disease management practices for
 517-34 children with serious emotional, behavioral, or mental disturbance
 517-35 not described by Subsection (a) and adults with severe mental
 517-36 illness who are experiencing significant functional impairment due
 517-37 to a mental health disorder not described by Subsection (a) that is
 517-38 defined by the Diagnostic and Statistical Manual of Mental
 517-39 Disorders, 5th Edition (DSM-5), including:

517-40 (1) major depressive disorder, including single
 517-41 episode or recurrent major depressive disorder;

517-42 (2) post-traumatic stress disorder;

517-43 (3) schizoaffective disorder, including bipolar and
 517-44 depressive types;

517-45 (4) obsessive-compulsive disorder;

517-46 (5) anxiety disorder;

517-47 (6) attention deficit disorder;

517-48 (7) delusional disorder;

517-49 (8) bulimia nervosa, anorexia nervosa, or other eating
 517-50 disorders not otherwise specified; or

517-51 (9) any other diagnosed mental health disorder.

517-52 (a-2) The local mental health authority shall ensure that
 517-53 individuals described by Subsection (a-1) are engaged with
 517-54 treatment services in a clinically appropriate manner.

517-55 (b) The department shall require each local mental health
 517-56 authority to incorporate jail diversion strategies into the
 517-57 authority's disease management practices for managing adults with
 517-58 schizophrenia and bipolar disorder to reduce the involvement of
 517-59 those client populations with the criminal justice system.

517-60 (b-1) The department shall require each local mental health
 517-61 authority to incorporate jail diversion strategies into the
 517-62 authority's disease management practices to reduce the involvement
 517-63 of the criminal justice system in managing adults with the
 517-64 following disorders as defined by the Diagnostic and Statistical
 517-65 Manual of Mental Disorders, 5th Edition (DSM-5), who are not
 517-66 described by Subsection (b):

517-67 (1) post-traumatic stress disorder;

517-68 (2) schizoaffective disorder, including bipolar and
 517-69 depressive types;

(3) anxiety disorder; or
(4) delusional disorder.

[(c) The department shall enter into performance contracts between the department and each local mental health authority for the fiscal years ending August 31, 2004, and August 31, 2005, that specify measurable outcomes related to their success in using disease management practices to meet the needs of the target populations.

[~~(e)~~ The department may use the fiscal year ending August 31, 2004, as a transition period for implementing the requirements of Subsections (a)-(c).]

Sec. 533.0356. LOCAL BEHAVIORAL HEALTH AUTHORITIES. (a) [In this section, "commission" means the Texas Commission on Alcohol and Drug Abuse.]

[**(b)**] The department [~~and the commission jointly~~] may designate a local behavioral health authority in a local service area to provide mental health and chemical dependency services in that area. The department [~~board and the commission~~] may delegate to an authority designated under this section the authority and responsibility for planning, policy development, coordination, resource allocation, and resource development for and oversight of mental health and chemical dependency services in that service area. An authority designated under this section has:

(1) all the responsibilities and duties of a local mental health authority provided by Section 533.035 and by Subchapter B, Chapter 534; and

(2) the responsibility and duty to ensure that chemical dependency services are provided in the service area as described by the statewide service delivery plan adopted under Section 461A.056 [461.0124].

(c) In the planning and implementation of services, the authority shall give proportionate priority to mental health services and chemical dependency services that ensures that funds purchasing services are used in accordance with specific regulatory and statutory requirements that govern the respective funds.

(d) A local mental health authority may apply to the department [and commission] for designation as a local behavioral health authority.

(e) The department [and commission], by contract or by a case-rate or capitated arrangement or another method of allocation, may disburse money, including federal money, to a local behavioral health authority for services.

(f) A local behavioral health authority, with the approval of the department [~~or the commission~~] as provided by contract, shall use money received under Subsection (e) to ensure that mental health and chemical dependency services are provided in the local service area at the same level as the level of services previously provided through:

(1) the local mental health authority; and
(2) the department [commission].

(g) In determining whether to designate a local behavioral health authority for a service area and in determining the functions of the authority if designated, the department [and commission] shall solicit and consider written comments from any interested person including community representatives, persons who are consumers of the proposed services of the authority, and family members of those consumers.

(h) An authority designated under this section shall demonstrate to the department [and the commission] that services involving state funds that the authority oversees comply with relevant state standards.

(i) The executive commissioner [board and the commission jointly] may adopt rules to govern the operations of local behavioral health authorities. The department [and the commission jointly] may assign the local behavioral health authority the duty of providing a single point of entry for mental health and chemical dependency services.

Sec. 533.0357. BEST PRACTICES CLEARINGHOUSE FOR LOCAL MENTAL HEALTH AUTHORITIES. (a) In coordination with local mental

519-1 health authorities, the department shall establish an online
519-2 clearinghouse of information relating to best practices of local
519-3 mental health authorities regarding the provision of mental health
519-4 services, development of a local provider network, and achievement
519-5 of the best return on public investment in mental health services.

519-6 (b) The department shall solicit and collect from local
519-7 mental health authorities that meet established outcome and
519-8 performance measures, community centers, consumers and advocates
519-9 with expertise in mental health or in the provision of mental health
519-10 services, and other local entities concerned with mental health
519-11 issues examples of best practices related to:

519-12 (1) developing and implementing a local network
519-13 development plan;

519-14 (2) assembling and expanding a local provider network
519-15 to increase consumer choice;

519-16 (3) creating and enforcing performance standards for
519-17 providers;

519-18 (4) managing limited resources;

519-19 (5) maximizing available funding;

519-20 (6) producing the best client outcomes;

519-21 (7) ensuring consumers of mental health services have
519-22 control over decisions regarding their health;

519-23 (8) developing procurement processes to protect
519-24 public funds;

519-25 (9) achieving the best mental health consumer outcomes
519-26 possible; and

519-27 (10) implementing strategies that effectively
519-28 incorporate consumer and family involvement to develop and evaluate
519-29 the provider network.

519-30 (c) The department may contract for the services of one or
519-31 more contractors to develop, implement, and maintain a system of
519-32 collecting and evaluating the best practices of local mental health
519-33 authorities as provided by this section.

519-34 (d) The department shall encourage local mental health
519-35 authorities that successfully implement best practices in
519-36 accordance with this section to mentor local mental health
519-37 authorities that have service deficiencies.

519-38 (e) Before the executive commissioner may remove a local
519-39 mental health authority's designation under Section 533.035(a) as a
519-40 local mental health authority, the executive commissioner shall:

519-41 (1) assist the local mental health authority in
519-42 attaining training and mentorship in using the best practices
519-43 established in accordance with this section; and

519-44 (2) track and document the local mental health
519-45 authority's improvements in the provision of service or continued
519-46 service deficiencies.

519-47 (f) Subsection (e) does not apply to the removal of a local
519-48 mental health authority's designation initiated at the request of a
519-49 local government official who has responsibility for the provision
519-50 of mental health services.

519-51 (g) The department shall implement this section using only
519-52 existing resources.

519-53 (h) The department [Department of State Health Services]
519-54 shall ensure that a local mental health authority providing best
519-55 practices information to the department or mentoring another local
519-56 mental health authority complies with Section 533.03521(f).

519-57 Sec. 533.0358. LOCAL MENTAL HEALTH AUTHORITY'S PROVISION OF
519-58 SERVICES AS PROVIDER OF LAST RESORT. (a) A local mental health
519-59 authority may serve as a provider of services under Section
519-60 533.035(e) only if, through the local network development plan
519-61 process, the local authority determines that at least one of the
519-62 following applies:

519-63 (1) interested qualified service providers are not
519-64 available to provide services or no service provider meets the
519-65 local authority's procurement requirements;

519-66 (2) the local authority's network of providers does
519-67 not provide a minimum level of consumer choice by:

519-68 (A) presenting consumers with two or more
519-69 qualified service providers in the local authority's network for

520-1 service packages; and

520-2 (B) presenting consumers with two or more
520-3 qualified service providers in the local authority's network for
520-4 specific services within a service package;

520-5 (3) the local authority's provider network does not
520-6 provide consumers in the local service area with access to services
520-7 at least equal to the level of access provided as of a date the
520-8 executive commissioner specifies;

520-9 (4) the combined volume of services delivered by
520-10 qualified service providers in the local network does not meet all
520-11 of the local authority's service capacity for each service package
520-12 identified in the local network development plan;

520-13 (5) the performance of the services by the local
520-14 authority is necessary to preserve critical infrastructure and
520-15 ensure continuous provision of services; or

520-16 (6) existing contracts or other agreements restrict
520-17 the local authority from contracting with qualified service
520-18 providers for services in the local network development plan.

520-19 (b) If a local mental health authority continues to provide
520-20 services in accordance with this section, the local authority shall
520-21 identify in the local authority's local network development plan:

520-22 (1) the proportion of its local network services that
520-23 the local authority will provide; and

520-24 (2) the local authority's basis for its determination
520-25 that the local authority must continue to provide services.

520-26 Sec. 533.0359. RULEMAKING FOR LOCAL MENTAL HEALTH
520-27 AUTHORITIES. (a) In developing rules governing local mental
520-28 health authorities under Sections [533.035](#), [533.0351](#), [533.03521](#),
520-29 [533.0357](#), and [533.0358](#), the executive commissioner shall use
520-30 rulemaking procedures under Subchapter B, Chapter 2001, Government
520-31 Code.

520-32 (b) The executive commissioner by rule shall prohibit a
520-33 trustee or employee of a local mental health authority from
520-34 soliciting or accepting from another person a benefit, including a
520-35 security or stock, a gift, or another item of value, that is
520-36 intended to influence the person's conduct of authority business.

520-37 Sec. 533.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS.
520-38 (a) The department may provide mental health [~~and mental~~
520-39 ~~retardation~~] services through halfway houses, sheltered workshops,
520-40 community centers, and other mental health [~~and mental retardation~~]
520-41 services programs.

520-42 (b) The department may operate or contract for the provision
520-43 of part or all of the sheltered workshop services and may contract
520-44 for the sale of goods produced and services provided by a sheltered
520-45 workshop program. The goods and services may be sold for cash or on
520-46 credit.

520-47 (c) An operating fund may be established for each sheltered
520-48 workshop the department operates. Each operating fund must be in a
520-49 national or state bank that is a member of the Federal Deposit
520-50 Insurance Corporation.

520-51 (d) Money derived from gifts or grants received for
520-52 sheltered workshop purposes and the proceeds from the sale of
520-53 sheltered workshop goods and services shall be deposited to the
520-54 credit of the operating fund. The money in the fund may be spent
520-55 only in the operation of the sheltered workshop to:

520-56 (1) purchase supplies, materials, services, and
520-57 equipment;

520-58 (2) pay salaries of and wages to participants and
520-59 employees;

520-60 (3) construct, maintain, repair, and renovate
520-61 facilities and equipment; and

520-62 (4) establish and maintain a petty cash fund of not
520-63 more than \$100.

520-64 (e) Money in an operating fund that is used to pay salaries
520-65 of and wages to participants in the sheltered workshop program is
520-66 money the department holds in trust for the participants' benefit.

520-67 (f) This section does not affect the authority or
520-68 jurisdiction of a community center as prescribed by Chapter 534.

520-69 [Sec. 533.039. CLIENT SERVICES OMBUDSMAN.] (a) The

521-1 commissioner shall employ an ombudsman responsible for assisting a
521-2 person, or a parent or guardian of a person, who has been denied
521-3 service by the department, a department program or facility, or a
521-4 local mental health or mental retardation authority.

521-5 [(b) The ombudsman shall:

521-6 [(1) explain and provide information on department and
521-7 local mental health or mental retardation authority services,
521-8 facilities, and programs and the rules, procedures, and guidelines
521-9 applicable to the person denied services; and

521-10 [(2) assist the person in gaining access to an
521-11 appropriate program or in placing the person on an appropriate
521-12 waiting list.]

521-13 Sec. 533.040. SERVICES FOR CHILDREN AND YOUTH. (a) The
521-14 department shall ensure the development of programs and the
521-15 expansion of services at the community level for children with
521-16 mental illness, or with a dual diagnosis of mental illness and an
521-17 intellectual disability [mental retardation, or both], and for
521-18 their families. The department shall:

521-19 (1) prepare and review budgets for services for
521-20 children;

521-21 (2) develop departmental policies relating to
521-22 children's programs and service delivery; and

521-23 (3) increase interagency coordination activities to
521-24 enhance the provision of services for children.

521-25 (b) The department shall designate an employee authorized
521-26 in the department's schedule of exempt positions to be responsible
521-27 for planning and coordinating services and programs for children
521-28 and youth. The employee shall perform budget and policy review and
521-29 provide interagency coordination of services for children and
521-30 youth.

521-31 (c) The department shall designate an employee as a youth
521-32 suicide prevention officer. The officer shall serve as a liaison to
521-33 the Texas Education Agency and public schools on matters relating
521-34 to the prevention of and response to suicide or attempted suicide by
521-35 public school students.

521-36 (d) The department and the Department of Assistive and
521-37 Rehabilitative Services [Interagency Council on Early Childhood
521-38 Intervention] shall:

521-39 (1) jointly develop:

521-40 (A) a continuum of care for children younger than
521-41 seven years of age who have mental illness; and

521-42 (B) a plan to increase the expertise of the
521-43 department's service providers in mental health issues involving
521-44 children younger than seven years of age; and

521-45 (2) coordinate, if practicable, the departments'
521-46 [department and council] activities and services involving
521-47 children with mental illness and their families.

521-48 [Sec. 533.041. SERVICES FOR EMOTIONALLY DISTURBED CHILDREN
521-49 AND YOUTH. (a) At each department mental health facility, the
521-50 department shall make short-term evaluation and diagnostic
521-51 services available for emotionally disturbed children and youth who
521-52 are referred to the department by the Texas Department of Human
521-53 Services if evaluation and diagnostic services for the children and
521-54 youth are not immediately available through a local mental health
521-55 authority.]

521-56 [(b) The Texas Department of Human Services may pay for the
521-57 services according to fees jointly agreed to by both agencies. The
521-58 department may use payments received under the agreement to
521-59 contract for community-based residential placements for
521-60 emotionally disturbed children and youth.]

521-61 [(c) The department shall maintain computerized information
521-62 on emotionally disturbed children and youth that contains both
521-63 individual and aggregate information. The purpose of the
521-64 information is to allow the department to track services and
521-65 placements and to conduct research on the treatment of the children
521-66 and youth. The department may coordinate activities with the Texas
521-67 Department of Human Services in developing the information. The
521-68 department shall make the information available to the department's
521-69 mental health facilities and to community centers.]

522-1 Sec. 533.0415. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY
522-2 TRAINING. (a) The executive commissioner [department, the Texas
522-3 Department of Human Services], the Texas Juvenile Justice
522-4 Department [Youth Commission, the Texas Juvenile Probation
522-5 Commission], and the Texas Education Agency by rule shall adopt a
522-6 joint memorandum of understanding to develop interagency training
522-7 for the staffs of the department, the Texas Juvenile Justice
522-8 Department, the Department of Family and Protective Services, and
522-9 the Texas Education Agency who are [agencies] involved in the
522-10 functions of assessment, case planning, case management, and
522-11 in-home or direct delivery of services to children, youth, and
522-12 their families under this title. The memorandum must:

522-13 (1) outline the responsibility of each agency in
522-14 coordinating and developing a plan for interagency training on
522-15 individualized assessment and effective intervention and treatment
522-16 services for children and dysfunctional families; and

522-17 (2) provide for the establishment of an interagency
522-18 task force to:

522-19 (A) develop a training program to include
522-20 identified competencies, content, and hours for completion of the
522-21 training with at least 20 hours of training required each year until
522-22 the program is completed;

522-23 (B) design a plan for implementing the program,
522-24 including regional site selection, frequency of training, and
522-25 selection of experienced clinical public and private professionals
522-26 or consultants to lead the training; and

522-27 (C) monitor, evaluate, and revise the training
522-28 program, including the development of additional curricula based on
522-29 future training needs identified by staff and professionals.

522-30 (b) The task force consists of:

522-31 (1) one clinical professional and one training staff
522-32 member from each agency, appointed by that agency; and

522-33 (2) 10 private sector clinical professionals with
522-34 expertise in dealing with troubled children, youth, and
522-35 dysfunctional families, two of whom are appointed by each agency.

522-36 (c) The task force shall meet at the call of the department.

522-37 (d) The commission [department] shall act as the lead agency
522-38 in coordinating the development and implementation of the
522-39 memorandum.

522-40 (e) The executive commissioner and the agencies shall
522-41 review and by rule revise the memorandum not later than August each
522-42 year.

522-43 Sec. 533.042. EVALUATION OF ELDERLY RESIDENTS. (a) The
522-44 department shall evaluate each elderly resident at least annually
522-45 to determine if the resident can be appropriately served in a less
522-46 restrictive setting.

522-47 (b) The department shall consider the proximity to the
522-48 resident of family, friends, and advocates concerned with the
522-49 resident's well-being in determining whether the resident should be
522-50 moved from a department facility or to a different department
522-51 facility. The department shall recognize that a nursing facility
522-52 [home] may not be able to meet the special needs of an elderly
522-53 resident.

522-54 (c) In evaluating an elderly resident under this section and
522-55 to ensure appropriate placement, the department shall identify the
522-56 special needs of the resident, the types of services that will best
522-57 meet those needs, and the type of facility that will best provide
522-58 those services.

522-59 (d) The treating physician shall conduct the evaluation of
522-60 an elderly resident of a department [mental health] facility. [The
522-61 appropriate interdisciplinary team shall conduct the evaluation of
522-62 an elderly resident of a department mental retardation facility.]

522-63 (e) The department shall attempt to place an elderly
522-64 resident in a less restrictive setting if the department determines
522-65 that the resident can be appropriately served in that setting. The
522-66 department shall coordinate the attempt with the local mental
522-67 health [and mental retardation] authority.

522-68 (f) A local mental health [or mental retardation] authority
522-69 shall provide continuing care for an elderly resident placed in the

523-1 authority's service area under this section.

523-2 (g) The local mental health [or mental retardation]
523-3 authority shall have the right of access to all residents and
523-4 records of residents who request continuing care services.

523-5 Sec. 533.043. PROPOSALS FOR GERIATRIC, EXTENDED, AND
523-6 TRANSITIONAL CARE. (a) The department shall solicit proposals
523-7 from community providers to operate:

523-8 (1) community residential programs that will provide
523-9 at least the same services that an extended care unit provides for
523-10 the population the provider proposes to serve; or

523-11 (2) transitional living units that will provide at
523-12 least the same services that the department traditionally provides
523-13 in facility-based transitional care units.

523-14 (b) The department shall solicit proposals from community
523-15 providers to operate community residential programs for elderly
523-16 residents at least every two years.

523-17 (c) A proposal for extended care services may be designed to
523-18 serve all or part of an extended care unit's population.

523-19 (d) A proposal to operate transitional living units may
523-20 provide that the community provider operate the transitional living
523-21 unit in a community setting or on the grounds of a department
523-22 facility.

523-23 (e) The department shall require each provider to:

523-24 (1) offer adequate assurances of ability to:

523-25 (A) provide the required services;

523-26 (B) meet department standards; and

523-27 (C) safeguard the safety and well-being of each

523-28 resident; and

523-29 (2) sign a memorandum of agreement with the local
523-30 mental health [or mental retardation] authority[, as appropriate,]
523-31 outlining the responsibilities for continuity of care and
523-32 monitoring, if the provider is not the local authority.

523-33 (f) The department may fund a proposal through a contract if
523-34 the provider agrees to meet the requirements prescribed by
523-35 Subsection (e) and agrees to provide the services at a cost that is
523-36 equal to or less than the cost to the department to provide the
523-37 services.

523-38 (g) The appropriate local mental health [or mental
523-39 retardation] authority shall monitor the services provided to a
523-40 resident placed in a program funded under this section. The
523-41 department may monitor any service for which it contracts.

523-42 (h) The department is responsible for the care of a patient
523-43 in an extended care program funded under this section. The
523-44 department may terminate a contract for extended care services if
523-45 the program ends or does not provide the required services. The
523-46 department shall provide the services or find another program to
523-47 provide the services if the department terminates a contract.

523-48 [Sec. 533.044. MEMORANDUM OF UNDERSTANDING ON ASSESSMENT
523-49 TOOLS. (a) The department and Texas Department of Human Services
523-50 by rule shall adopt a joint memorandum of understanding that
523-51 requires the use of a uniform assessment tool to assess whether an
523-52 elderly person, a person with mental retardation, a person with a
523-53 developmental disability, or a person who is suspected of being a
523-54 person with mental retardation or a developmental disability and
523-55 who is receiving services in a facility regulated or operated by the
523-56 department or Texas Department of Human Services needs a guardian
523-57 of the person or estate, or both.]

523-58 [(b) The memorandum must prescribe:]

523-59 [(1) the facilities that must use the assessment; and]

523-60 [(2) the circumstances in which the facilities must
523-61 use the assessment.]

523-62 [(c) Each agency shall review and modify the memorandum as
523-63 necessary not later than the last month of each state fiscal year.]

523-64 [Sec. 533.045. USE OF CERTAIN DRUGS FOR CERTAIN PATIENTS.]

523-65 (a) The department may place on a clozapine treatment plan each
523-66 patient in a state hospital for whom the treatment is medically
523-67 feasible and appropriate. The department may place a patient on a
523-68 treatment plan using a drug other than clozapine if the drug
523-69 produces results that are similar to or better than clozapine in

524-1 ~~treating schizophrenics.~~

524-2 [b) If a patient in a state hospital responds to a
524-3 treatment plan required or authorized by Subsection (a) to the
524-4 extent that the patient can be discharged from the hospital, the
524-5 department may:

524-6 [1) assist the patient in applying for disability
524-7 benefits and for Medicaid if the patient is potentially eligible;

524-8 [2) place the patient in a community setting with
524-9 continuing drug treatments and with medical monitoring;

524-10 [3) provide or ensure that the patient is provided
524-11 supportive housing, rehabilitation services, and job placement, as
524-12 appropriate; and

524-13 [4) provide outpatient care at state hospitals or
524-14 require a local mental health authority to provide outpatient care,
524-15 as appropriate.

524-16 [c) The department may use facility beds vacated by
524-17 patients discharged through the use of a treatment plan allowed by
524-18 Subsection (a) for other appropriate uses.

524-19 [Sec. 533.046. FEDERAL FUNDING FOR MENTAL HEALTH SERVICES
524-20 FOR CHILDREN AND FAMILIES. (a) The department shall enter into an
524-21 interagency agreement with the Texas Department of Human Services
524-22 to:

524-23 [1) amend the eligibility requirements of the state's
524-24 emergency assistance plan under Title IV-A, Social Security Act (42
524-25 U.S.C. Section 601 et seq.), to include mental health emergencies;
524-26 and

524-27 [2) prescribe the procedures the agencies will use to
524-28 delegate to the department and to local mental health and mental
524-29 retardation authorities the administration of mental health
524-30 emergency assistance.

524-31 [b) The interagency agreement must provide that:

524-32 [1) the department certify to the Texas Department of
524-33 Human Services the nonfederal expenditures for which the state will
524-34 claim federal matching funds; and

524-35 [2) the Texas Department of Human Services retain
524-36 responsibility for making final eligibility decisions.

524-37 [c) The department shall allocate to local mental health
524-38 and mental retardation authorities 66 percent of the federal funds
524-39 received under this section.

524-40 [Sec. 533.047. MANAGED CARE ORGANIZATIONS: MEDICAID
524-41 PROGRAM. The department shall develop performance, operation,
524-42 quality of care, marketing, and financial standards for the
524-43 provision by managed care organizations of mental health and mental
524-44 retardation services to Medicaid clients.

524-45 [Sec. 533.048. GUARDIANSHIP ADVISORY COMMITTEE. (a) In
524-46 this section, "institution" means:

524-47 [1) an ICF-MR; or

524-48 [2) a state hospital, state school, or state center
524-49 maintained and managed by the department.

524-50 [b) The commissioner shall appoint a guardianship advisory
524-51 committee composed of nine members, five of whom must be parents of
524-52 residents of institutions.

524-53 [c) The commissioner shall designate a member of the
524-54 advisory committee to serve as presiding officer. The members of
524-55 the advisory committee shall elect any other necessary officers.

524-56 [d) The advisory committee shall meet at the call of the
524-57 presiding officer.

524-58 [e) A member of the advisory committee serves at the will
524-59 of the commissioner.

524-60 [f) A member of the advisory committee may not receive
524-61 compensation for serving on the advisory committee but is entitled
524-62 to reimbursement for travel expenses incurred by the member while
524-63 conducting the business of the advisory committee as provided by
524-64 the General Appropriations Act.

524-65 [g) The advisory committee shall develop a plan and make
524-66 specific recommendations to the department regarding methods to
524-67 facilitate the appointment of relatives of residents of
524-68 institutions as guardians of those residents to make decisions
524-69 regarding appropriate care settings for the residents.

525-1 [Sec. 533.049. PRIVATIZATION OF STATE SCHOOL. (a) After
525-2 August 31, 2004, and before September 1, 2005, the department may
525-3 contract with a private service provider to operate a state school
525-4 only if:

525-5 [1) the Health and Human Services Commission
525-6 determines that the private service provider will operate the state
525-7 school at a cost that is at least 25 percent less than the cost to
525-8 the department to operate the state school;

525-9 [2) the Health and Human Services Commission approves
525-10 the contract;

525-11 [3) the private service provider is required under
525-12 the contract to operate the school at a quality level at least equal
525-13 to the quality level achieved by the department when the department
525-14 operated the school, as measured by the school's most recent
525-15 applicable ICF-MR survey; and

525-16 [4) the state school, when operated under the
525-17 contract, treats a population with the same characteristics and
525-18 need levels as the population treated by the state school when
525-19 operated by the department.

525-20 [(c) If the department contracts with a private service
525-21 provider to operate a state school, the department, the Governor's
525-22 Office of Budget and Planning, and the Legislative Budget Board
525-23 shall identify sources of funding that must be transferred to the
525-24 department to fund the contract.

525-25 [(d) The department may renew a contract under this section.
525-26 The conditions listed in Subsections (a)(1)-(3) apply to the
525-27 renewal of the contract.]

525-28 [Sec. 533.050. PRIVATIZATION OF STATE MENTAL HOSPITAL. (a) After
525-29 August 31, 2004, and before September 1, 2005, the department
525-30 may contract with a private service provider to operate a state
525-31 mental hospital owned by the department only if:

525-32 [1) the Health and Human Services Commission
525-33 determines that the private service provider will operate the
525-34 hospital at a cost that is at least 25 percent less than the cost to
525-35 the department to operate the hospital;

525-36 [2) the Health and Human Services Commission approves
525-37 the contract;

525-38 [3) the hospital, when operated under the contract,
525-39 treats a population with the same characteristics and acuity levels
525-40 as the population treated at the hospital when operated by the
525-41 department; and

525-42 [4) the private service provider is required under
525-43 the contract to operate the hospital at a quality level at least
525-44 equal to the quality level achieved by the department when the
525-45 department operated the hospital, as measured by the hospital's
525-46 most recent applicable accreditation determination from the Joint
525-47 Commission on Accreditation of Healthcare Organizations (JCAHO).

525-48 [(c) If the department contracts with a private service
525-49 provider to operate a state mental hospital, the department, the
525-50 Governor's Office of Budget and Planning, and the Legislative
525-51 Budget Board shall identify sources of funding that must be
525-52 transferred to the department to fund the contract.

525-53 [(d) The department may renew a contract under this section.
525-54 The conditions listed in Subsections (a)(1)-(3) apply to the
525-55 renewal of the contract.]

525-56 Sec. 533.051. ALLOCATION OF OUTPATIENT MENTAL HEALTH
525-57 SERVICES AND BEDS IN STATE HOSPITALS. (a) To ensure the
525-58 appropriate and timely provision of mental health services to
525-59 patients who voluntarily receive those services or who are ordered
525-60 by a court to receive those services in civil or criminal
525-61 proceedings, the department, in conjunction with the commission,
525-62 shall plan for the proper and separate allocation of outpatient or
525-63 community-based mental health services provided by secure and
525-64 nonsecure outpatient facilities that provide residential care
525-65 alternatives and mental health services and for the proper and
525-66 separate allocation of beds in the state hospitals for the
525-67 following two groups of patients:

525-68 (1) patients who are voluntarily receiving outpatient
525-69 or community-based mental health services, voluntarily admitted to

526-1 a state hospital under Chapter 572, admitted to a state hospital for
526-2 emergency detention under Chapter 573, or ordered by a court under
526-3 Chapter 574 to receive inpatient mental health services at a state
526-4 hospital or outpatient mental health services from an outpatient
526-5 facility that provides residential care alternatives and mental
526-6 health services; and

526-7 (2) patients who are ordered to participate in an
526-8 outpatient treatment program to attain competency to stand trial
526-9 under Chapter 46B, Code of Criminal Procedure, or committed to a
526-10 state hospital or other facility to attain competency to stand
526-11 trial under Chapter 46B, Code of Criminal Procedure, or to receive
526-12 inpatient mental health services following an acquittal by reason
526-13 of insanity under Chapter 46C, Code of Criminal Procedure.

526-14 (b) The plan developed by the department under Subsection
526-15 (a) must include:

526-16 (1) a determination of the needs for outpatient mental
526-17 health services of the two groups of patients described by
526-18 Subsection (a);

526-19 (2) a determination of the minimum number of beds that
526-20 the state hospital system must maintain to adequately serve the two
526-21 groups of patients;

526-22 (3) a statewide plan for and the allocation of
526-23 sufficient funds for meeting the outpatient mental health service
526-24 needs of and for the maintenance of beds by the state hospitals for
526-25 the two groups of patients; and

526-26 (4) a process to address and develop, without adverse
526-27 impact to local service areas, the accessibility and availability
526-28 of sufficient outpatient mental health services provided to and
526-29 beds provided by the state hospitals to the two groups of patients
526-30 based on the success of contractual outcomes with mental health
526-31 service providers and facilities under Sections [533.034](#) and
526-32 [533.052](#).

526-33 (c) To assist in the development of the plan under
526-34 Subsection (a), the department shall establish and meet at least
526-35 monthly with an advisory panel composed of the following persons:

526-36 (1) one representative designated by the Texas
526-37 Department of Criminal Justice;

526-38 (2) one representative designated by the Texas
526-39 Association of Counties;

526-40 (3) two representatives designated by the Texas
526-41 Council of Community Centers, including one representative of an
526-42 urban local service area and one representative of a rural local
526-43 service area;

526-44 (4) two representatives designated by the County
526-45 Judges and Commissioners Association of Texas, including one
526-46 representative who is the presiding judge of a court with
526-47 jurisdiction over mental health matters;

526-48 (5) one representative designated by the Sheriffs'
526-49 Association of Texas;

526-50 (6) two representatives designated by the Texas
526-51 Municipal League, including one representative who is a municipal
526-52 law enforcement official;

526-53 (7) one representative designated by the Texas
526-54 Conference of Urban Counties;

526-55 (8) two representatives designated by the Texas
526-56 Hospital Association, including one representative who is a
526-57 physician;

526-58 (9) one representative designated by the Texas
526-59 Catalyst for Empowerment; and

526-60 (10) four representatives designated by the
526-61 department's ~~[Department of State Health Services']~~ Council for
526-62 Advising and Planning for the Prevention and Treatment of Mental
526-63 and Substance Use Disorders, including:

526-64 (A) the chair of the council;

526-65 (B) one representative of the council's members
526-66 who is a consumer of or advocate for mental health services;

526-67 (C) one representative of the council's members
526-68 who is a consumer of or advocate for substance abuse treatment; and

526-69 (D) one representative of the council's members

527-1 who is a family member of or advocate for persons with mental health
 527-2 and substance abuse disorders.

527-3 (d) In developing the plan under Subsection (a), the
 527-4 department and advisory panel shall consider:

527-5 (1) needs for outpatient mental health services of the
 527-6 two groups of patients described by Subsection (a);

527-7 (2) the frequency of use of beds and the historical
 527-8 patterns of use of beds in the state hospitals and other facilities
 527-9 by the two groups of patients;

527-10 (3) local needs and demands for outpatient mental
 527-11 health services by the two groups of patients;

527-12 (4) local needs and demands for beds in the state
 527-13 hospitals and other facilities for the two groups of patients;

527-14 (5) the availability of outpatient mental health
 527-15 service providers and inpatient mental health facilities that may
 527-16 be contracted with to provide outpatient mental health services and
 527-17 beds for the two groups of patients;

527-18 (6) the differences between the two groups of patients
 527-19 with regard to:

527-20 (A) admission to and discharge from a state
 527-21 hospital or outpatient facility;

527-22 (B) rapid stabilization and discharge to the
 527-23 community;

527-24 (C) length of stay in a state hospital or
 527-25 outpatient facility;

527-26 (D) disputes arising from the determination of a
 527-27 patient's length of stay in a state hospital by a health maintenance
 527-28 organization or a managed care organization;

527-29 (E) third-party billing; and

527-30 (F) legal challenges or requirements related to
 527-31 the examination and treatment of the patients; and

527-32 (7) public input provided to the department or
 527-33 advisory panel in a form and at a time and place that is effective
 527-34 and appropriate and in a manner that complies with any applicable
 527-35 laws, including administrative rules.

527-36 (e) The department shall update the plan biennially.

527-37 [(f) Not later than December 31, 2013, the department, in
 527-38 conjunction with the advisory panel, shall develop the initial
 527-39 version of the plan required by Subsection (a).]

527-40 [(g) Not later than August 31, 2014, the department shall:

527-41 [(1) identify standards and methodologies for the
 527-42 implementation of the plan required by Subsection (a); and

527-43 [(2) begin implementing the plan.]

527-44 [(h) Not later than December 1, 2014, the department shall
 527-45 submit a report to the legislature and governor that includes the
 527-46 initial version of the plan, the status of the plan's
 527-47 implementation, and the impact of the plan on the delivery of
 527-48 services.]

527-49 (i) While the plan required by Subsection (a) is being
 527-50 developed and implemented, the department may not, pursuant to any
 527-51 rule, contract, or directive, impose a sanction, penalty, or fine
 527-52 on a local mental health authority for the authority's
 527-53 noncompliance with any methodology or standard adopted or applied
 527-54 by the department relating to the allocation of beds by authorities
 527-55 for the two groups of patients described by Subsection (a).

527-56 Sec. 533.052. CONTRACTING WITH CERTAIN MENTAL HEALTH
 527-57 SERVICE PROVIDERS AND FACILITIES TO PROVIDE SERVICES AND BEDS FOR
 527-58 CERTAIN PERSONS. The department shall make every effort, through
 527-59 collaboration and contractual arrangements with local mental
 527-60 health authorities, to contract with and use a broad base of local
 527-61 community outpatient mental health service providers and inpatient
 527-62 mental health facilities, as appropriate, to make available a
 527-63 sufficient and appropriately located amount of outpatient mental
 527-64 health services and a sufficient and appropriately located number
 527-65 of beds in inpatient mental health facilities, as specified in the
 527-66 plan developed by the department under Section 533.051, to ensure
 527-67 the appropriate and timely provision of mental health services to
 527-68 the two groups of patients described by Section 533.051(a).

527-69 Sec. 533.053. INFORMING COURTS OF COMMITMENT OPTIONS. The

528-1 department shall develop and implement a procedure through which a
 528-2 court that has the authority to commit a person who is incompetent
 528-3 to stand trial or who has been acquitted by reason of insanity under
 528-4 Chapters 46B and 46C, Code of Criminal Procedure, is aware of all of
 528-5 the commitment options for the person, including jail diversion and
 528-6 community-based programs.

528-7 SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

528-8 Sec. 533.081. DEVELOPMENT OF FACILITY BUDGETS. The
 528-9 department, in budgeting for a facility, shall use uniform costs
 528-10 for specific types of services a facility provides unless a
 528-11 legitimate reason exists and is documented for the use of other
 528-12 costs.

528-13 Sec. 533.082. DETERMINATION OF SAVINGS IN FACILITIES. (a) The
 528-14 department shall determine the degree to which the costs of
 528-15 operating department facilities for persons with mental illness [~~or~~
 528-16 ~~mental retardation~~] in compliance with applicable standards are
 528-17 affected as populations in the facilities fluctuate.

528-18 (b) In making the determination, the department shall:

528-19 (1) assume that the current level of services and
 528-20 necessary state of repair of the facilities will be maintained; and
 528-21 (2) include sufficient funds to allow the department
 528-22 to comply with the requirements of litigation and applicable
 528-23 standards.

528-24 (c) The department shall allocate to community-based mental
 528-25 health programs any savings realized in operating department
 528-26 facilities for persons with mental illness.

528-27 [~~(d) The department shall allocate to community-based~~
 528-28 ~~mental retardation programs any savings realized in operating~~
 528-29 ~~department facilities for persons with mental retardation.~~]

528-30 Sec. 533.083. CRITERIA FOR EXPANSION, CLOSURE, OR
 528-31 CONSOLIDATION OF FACILITY. The department shall establish
 528-32 objective criteria for determining when a new facility may be
 528-33 needed and when a facility may be expanded, closed, or
 528-34 consolidated.

528-35 Sec. 533.084. MANAGEMENT OF SURPLUS REAL PROPERTY. (a) To
 528-36 the extent provided by this subtitle, the department, in
coordination with the executive commissioner, may lease, transfer,
 528-38 or otherwise dispose of any surplus real property related to the
 528-39 provision of services under this title, including any improvements
 528-40 under its management and control, or authorize the lease, transfer,
 528-41 or disposal of the property. Surplus property is property the
 528-42 executive commissioner [~~board~~] designates as having minimal value
 528-43 to the present service delivery system and projects to have minimal
 528-44 value to the service delivery system as described in the
 528-45 department's long-range plan.

528-46 (b) The proceeds from the lease, transfer, or disposal of
 528-47 surplus real property, including any improvements, shall be
 528-48 deposited to the credit of the department in the Texas capital trust
 528-49 fund established under Chapter 2201, Government Code. The proceeds
 528-50 [~~and any interest from the proceeds~~] may be appropriated only for
 528-51 improvements to the department's system of mental health
 528-52 facilities.

528-53 (c) A lease proposal shall be advertised at least once a
 528-54 week for four consecutive weeks in at least two newspapers. One
 528-55 newspaper must be a newspaper published in the municipality in
 528-56 which the property is located or the daily newspaper published
 528-57 nearest to the property's location. The other newspaper must have
 528-58 statewide circulation. Each lease is subject to the attorney
 528-59 general's approval as to substance and form. The executive
 528-60 commissioner [~~board~~] shall adopt forms, rules, and contracts that,
 528-61 in the executive commissioner's [~~board's~~] best judgment, will
 528-62 protect the state's interests. The executive commissioner [~~board~~]
 528-63 may reject any or all bids.

528-64 (d) This section does not authorize the executive
 528-65 commissioner or department to close or consolidate a facility used
 528-66 to provide mental health [~~or mental retardation~~] services without
 528-67 first obtaining legislative approval.

528-68 (e) Notwithstanding Subsection (c), the executive
 528-69 commissioner, in coordination with the department, may enter into a

written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section [32.107](#), Natural Resources Code.

Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES ACCOUNT.

(a) The mental health community services account is an account in the general revenue fund that may be appropriated only for the provision of mental health services by or under contract with the department.

(b) The department shall deposit to the credit of the mental health community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

~~[Interest earned on the mental health community services account shall be credited to the account. The account is exempt from the application of Section [403.095](#), Government Code.]~~

Sec. 533.085. FACILITIES FOR INMATE AND PAROLEE CARE. (a) With the written approval of the governor, the department may contract with the Texas Department of Criminal Justice to transfer facilities to the Texas Department of Criminal Justice [~~that department~~] or otherwise provide facilities for:

(1) inmates with mental illness [~~or mental retardation~~] in the custody of the Texas Department of Criminal Justice [~~that department~~]; or

(2) persons with mental illness [~~or mental retardation~~] paroled or released under the [that department's] supervision of the Texas Department of Criminal Justice.

(b) An agency must report to the governor the agency's reasons for proposing to enter into a contract under this section and request the governor's approval.

~~[Sec. 533.086. USE OF DEPARTMENT FACILITIES BY SUBSTANCE ABUSERS. (a) The department shall annually provide the Texas Commission on Alcohol and Drug Abuse with an analysis by county of the hospitalization rates of persons with substance abuse problems. The analysis must include information indicating which admissions were for persons with only substance abuse problems and which admissions were for persons with substance abuse problems but whose primary diagnoses were other types of mental health problems.~~

~~[(b) Not later than September 1 of each even-numbered year, the department and the Texas Commission on Alcohol and Drug Abuse shall jointly estimate the number of facility beds that should be maintained for persons with substance abuse problems who cannot be treated in the community.]~~

Sec. 533.087. LEASE OF REAL PROPERTY. (a) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title, including any improvements under the department's management and control, regardless of whether the property is surplus property. Except as provided by Subsection (c), the department, in coordination with the executive commissioner, may award a lease of real property only:

- (1) at the prevailing market rate; and
- (2) by competitive bid.

(b) The commission [~~department~~] shall advertise a proposal for lease at least once a week for four consecutive weeks in:

(1) a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location; and

- (2) a newspaper of statewide circulation.

(c) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

(1) the executive commissioner [~~board~~] determines that sufficient public benefit will be derived from the lease; and

- (2) the property is leased to:

(A) a federal or state agency;

- (B) a unit of local government;
 - (C) a not-for-profit organization; or
 - (D) an entity related to the department by a service contract.

(d) The executive commissioner [board] shall adopt leasing rules, forms, and contracts that will protect the state's interests.

(e) The executive commissioner [board] may reject any bid.

(f) This section does not authorize the executive
commissioner or department to close or consolidate a facility used
to provide mental health [~~or mental retardation~~] services without
legislative approval.

(g) Notwithstanding Subsections (a) and (b), the executive commissioner, in coordination with the department, may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section [32.107](#), Natural Resources Code.

SUBCHAPTER E. JAIL DIVERSION PROGRAM

Sec. 533.108. PRIORITIZATION OF FUNDING FOR DIVERSION OF PERSONS FROM INCARCERATION IN CERTAIN COUNTIES. (a) A local mental health [or mental retardation] authority may develop and may prioritize its available funding for:

(1) a system to divert members of the priority population, including those members with co-occurring substance abuse disorders, before their incarceration or other contact with the criminal justice system, to services appropriate to their needs, including:

services;

(A) screening and assessment services; and

(B) treatment services, including:

(i) assertive community treatment

services;

(ii) inpatient crisis respite services;

(iii) medication management services;

(iv) short-term residential services;

(v) shelter care services;

(vi) crisis respite residential services;

(vii) outpatient integrated mental health

services;

(viii) co-occurring substance abuse

treatment services;

(ix) psychiatric rehabilitation and

service coordination services;

(x) continuity of care services; and

(xi) services consistent with the Texas

(2) specialized training of local law enforcement and court personnel to identify and manage offenders or suspects who may be members of the priority population; and

(3) other model programs for offenders and suspects who may be members of the priority population, including crisis intervention training for law enforcement personnel.

(b) A local mental health [or mental retardation] authority developing a system, training, or a model program under Subsection (a) shall collaborate with other local resources, including local law enforcement and judicial systems and local personnel.

(c) A local mental health [~~or mental retardation~~] authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.

**CHAPTER 533A. POWERS AND DUTIES OF DEPARTMENT OF AGING AND
DISABILITY SERVICES**
SUBCHAPTER A. GENERAL POWERS AND DUTIES

SUBCHAPTER A. GENERAL POWERS AND DUTIES

2A.001 DEFINITIONS In this chapter:

Sec. 533A.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and

Disability Services.

(3) "Department facility" means a facility listed in Section 532A.001(b).

Sec. 533A.002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this title or another law conflicts with Section [531.0055](#), Government Code, Section [531.0055](#) controls.

Sec. 533A.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL AUTHORITIES AND COMMUNITY CENTERS. (a) To develop or expand a volunteer intellectual disability program in a local intellectual and developmental disability authority or a community center, the department may allocate available funds appropriated for providing volunteer intellectual disability services.

(b) The department shall develop formal policies that encourage the growth and development of volunteer intellectual disability services in local intellectual and developmental disability authorities and community centers.

Sec. 533A.004. LIENS. (a) In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.

(a-1) The department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a client with an intellectual disability in an amount equal to the amount of reimbursement sought.

(b) The amount of the reimbursement sought may not exceed:

(1) the amount the department is authorized to charge under Subchapter D, Chapter 593, if the client received the services in a department facility; or

(2) the amount the community center is authorized to charge under Section 534.017 if the client received the services in a community center.

(c) The lien attaches to:

(1) all nonexempt real and personal property owned or later acquired by the client or by a person legally responsible for the client's support;

(2) a judgment of a court in this state or a decision of a public agency in a proceeding brought by or on behalf of the client to recover damages for an injury for which the client was admitted to a department facility or community center; and

(3) the proceeds of a settlement of a cause of action or a claim by the client for an injury for which the client was admitted to a department facility or community center.

(d) To secure the lien, the department or community center must file written notice of the lien with the county clerk of the county in which:

(1) the client, or the person legally responsible

ient's support, owns property
(2) the defendant's wife

(c) The notice must contain:

(e) The notice must contain:

(1) the name and address of the client;
(2) the name and address of the person legally
responsible for the client's support, if applicable;
(3) the period during which the department facility or
community center provided services or a statement that services are

currently being provided; and
(4) the name and location of the department facility or community center.

(f) Not later than the 31st day before the date on which the department files the notice of the lien with the county clerk, the department shall notify by certified mail the client and the person legally responsible for the client's support. The notice must contain a copy of the charges, the statutory procedures relating to filing a lien, and the procedures to contest the charges. The executive commissioner by rule shall prescribe the procedures to contest the charges.

(g) The county clerk shall record on the written notice the name of the client, the name and address of the department facility or community center, and, if requested by the person filing the

532-1 lien, the name of the person legally responsible for the client's
 532-2 support. The clerk shall index the notice record in the name of the
 532-3 client and, if requested by the person filing the lien, in the name
 532-4 of the person legally responsible for the client's support.

532-5 (h) The notice record must include an attachment that
 532-6 contains an account of the charges made by the department facility
 532-7 or community center and the amount due to the facility or center.
 532-8 The director or superintendent of the facility or center must swear
 532-9 to the validity of the account. The account is presumed to be
 532-10 correct, and in a suit to cancel the debt and discharge the lien or
 532-11 to foreclose on the lien, the account is sufficient evidence to
 532-12 authorize a court to render a judgment for the facility or center.

532-13 (i) To discharge the lien, the director or superintendent of
 532-14 the department facility or community center or a claims
 532-15 representative of the facility or center must execute and file with
 532-16 the county clerk of the county in which the lien notice is filed a
 532-17 certificate stating that the debt covered by the lien has been paid,
 532-18 settled, or released and authorizing the clerk to discharge the
 532-19 lien. The county clerk shall record a memorandum of the certificate
 532-20 and the date on which it is filed. The filing of the certificate and
 532-21 recording of the memorandum discharge the lien.

532-22 Sec. 533A.005. EASEMENTS. The department, in coordination
 532-23 with the executive commissioner, may grant a temporary or permanent
 532-24 easement or right-of-way on land held by the department that
 532-25 relates to services provided under this title. The department, in
 532-26 coordination with the executive commissioner, must grant an
 532-27 easement or right-of-way on terms and conditions the executive
 532-28 commissioner considers to be in the state's best interest.

532-29 Sec. 533A.006. REPORTING OF ALLEGATIONS AGAINST PHYSICIAN.
 532-30 (a) The department shall report to the Texas Medical Board any
 532-31 allegation received by the department that a physician employed by
 532-32 or under contract with the department in relation to services
 532-33 provided under this title has committed an action that constitutes
 532-34 a ground for the denial or revocation of the physician's license
 532-35 under Section 164.051, Occupations Code. The report must be made in
 532-36 the manner provided by Section 154.051, Occupations Code.

532-37 (b) The department shall provide to the Texas Medical Board
 532-38 a copy of any report or finding relating to an investigation of an
 532-39 allegation reported to that board.

532-40 Sec. 533A.007. USE OF CRIMINAL HISTORY RECORD INFORMATION.
 532-41 (a) Subject to any applicable requirements of Chapter 250, the
 532-42 department, in relation to services provided under this title, or a
 532-43 local intellectual and developmental disability authority or
 532-44 community center, may deny employment or volunteer status to an
 532-45 applicant if:

532-46 (1) the department, authority, or community center
 532-47 determines that the applicant's criminal history record
 532-48 information indicates that the person is not qualified or suitable;
 532-49 or

532-50 (2) the applicant fails to provide a complete set of
 532-51 fingerprints if the department establishes that method of obtaining
 532-52 criminal history record information.

532-53 (b) The executive commissioner shall adopt rules relating
 532-54 to the use of information obtained under this section, including
 532-55 rules that prohibit an adverse personnel action based on arrest
 532-56 warrant or wanted persons information received by the department.

532-57 Sec. 533A.0075. EXCHANGE OF EMPLOYMENT RECORDS. The
 532-58 department, in relation to services provided under this title, or a
 532-59 local intellectual and developmental disability authority or
 532-60 community center, may exchange with one another the employment
 532-61 records of an employee or former employee who applies for
 532-62 employment at the department, authority, or community center.

532-63 Sec. 533A.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS
 532-64 WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY. (a) Each
 532-65 department facility and community center shall annually assess the
 532-66 feasibility of converting entry level support positions into
 532-67 employment opportunities for individuals with mental illness or an
 532-68 intellectual disability in the facility's or center's service area.

532-69 (b) In making the assessment, the department facility or

533-1 community center shall consider the feasibility of using an array
533-2 of job opportunities that may lead to competitive employment,
533-3 including sheltered employment and supported employment.

533-4 (c) Each department facility and community center shall
533-5 annually submit to the department a report showing that the
533-6 facility or center has complied with Subsection (a).

533-7 (d) The department shall compile information from the
533-8 reports and shall make the information available to each designated
533-9 provider in a service area.

533-10 (e) Each department facility and community center shall
533-11 ensure that designated staff are trained to:

533-12 (1) assist clients through the Social Security
533-13 Administration disability determination process;

533-14 (2) provide clients and their families information
533-15 related to the Social Security Administration Work Incentive
533-16 Provisions; and

533-17 (3) assist clients in accessing and utilizing the
533-18 Social Security Administration Work Incentive Provisions to
533-19 finance training, services, and supports needed to obtain career
533-20 goals.

533-21 Sec. 533A.009. EXCHANGE OF CLIENT RECORDS. (a) Department
533-22 facilities, local intellectual and developmental disability
533-23 authorities, community centers, other designated providers, and
533-24 subcontractors of intellectual disability services are component
533-25 parts of one service delivery system within which client records
533-26 may be exchanged without the client's consent.

533-27 (b) The executive commissioner shall adopt rules to carry
533-28 out the purposes of this section.

533-29 Sec. 533A.0095. COLLECTION AND MAINTENANCE OF INFORMATION
533-30 REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The
533-31 executive commissioner by rule shall require the department to
533-32 collect information and maintain current records regarding a person
533-33 found not guilty of an offense by reason of insanity under Chapter
533-34 46C, Code of Criminal Procedure, who is:

533-35 (1) committed by a court for long-term placement in a
533-36 residential care facility under Chapter 593 or under Chapter 46C,
533-37 Code of Criminal Procedure; or

533-38 (2) ordered by a court to receive outpatient or
533-39 community-based treatment and supervision.

533-40 (b) Information maintained by the department under this
533-41 section must include the name and address of any facility to which
533-42 the person is committed, the length of the person's commitment to
533-43 the facility, and any post-release outcome.

533-44 (c) The department shall file annually with the presiding
533-45 officer of each house of the legislature a written report
533-46 containing the name of each person described by Subsection (a), the
533-47 name and address of any facility to which the person is committed,
533-48 the length of the person's commitment to the facility, and any
533-49 post-release outcome.

533-50 Sec. 533A.010. INFORMATION RELATING TO CONDITION. (a) A
533-51 person, including a hospital, nursing facility, medical society, or
533-52 other organization, may provide to the department or a medical
533-53 organization, hospital, or hospital committee any information,
533-54 including interviews, reports, statements, or memoranda relating
533-55 to a person's condition and treatment for use in a study to reduce
533-56 mental illness and intellectual disabilities.

533-57 (b) The department or a medical organization, hospital, or
533-58 hospital committee receiving the information may use or publish the
533-59 information only to advance mental health and intellectual
533-60 disability research and education in order to reduce mental illness
533-61 and intellectual disabilities. A summary of the study may be
533-62 released for general publication.

533-63 (c) The identity of a person whose condition or treatment is
533-64 studied is confidential and may not be revealed under any
533-65 circumstances. Information provided under this section and any
533-66 finding or conclusion resulting from the study is privileged
533-67 information.

533-68 (d) A person is not liable for damages or other relief if the
533-69 person:

(1) provides information under this section;

(2) releases or publishes the findings and conclusions of the person or organization to advance mental health and intellectual disability research and education; or

(3) releases or publishes generally a summary of a study.

Sec. 533A.011 [533.011]. RETURN OF PERSON WITH AN INTELLECTUAL DISABILITY [MENTAL RETARDATION] TO STATE OF RESIDENCE. (a) In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.

(a-1) The department may return a nonresident person with an intellectual disability [mental retardation] who is committed to a department facility [for persons with mental retardation] in this state to the proper agency of the person's state of residence.

(b) The department may permit the return of a resident of this state who is committed to a facility for persons with an intellectual disability [mental retardation] in another state.

(c) The department may enter into reciprocal agreements with the proper agencies of other states to facilitate the return of persons committed to department facilities [~~for persons with mental retardation~~] in this state, or facilities for persons with an intellectual disability in another state, to the state of their residence.

(d) The director [~~superintendent~~] of a department facility [~~for persons with mental retardation~~] may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a person with an intellectual disability [~~mental retardation~~] returned to this state.

(e) The state returning a person with an intellectual disability [~~mental retardation~~] to another state shall bear the expenses of returning the person.

Sec. 533A.012. COOPERATION OF STATE AGENCIES. At the department's request and in coordination with the executive commissioner, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions and that relate to services provided under this title.

Sec. 533A.015. UNANNOUNCED INSPECTIONS. The department may make any inspection of a department facility or program under the department's jurisdiction under this title without announcing the inspection.

Sec. 533A.016. CERTAIN PROCUREMENTS OF GOODS AND SERVICES BY SERVICE PROVIDERS. (a) This section does not apply to a "health and human services agency," as that term is defined by Section 531.001, Government Code.

(a-1) A state agency, local agency, or local intellectual and developmental disability authority that expends public money to acquire goods or services in connection with providing or coordinating the provision of intellectual disability services may satisfy the requirements of any state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with the public money in accordance with Section 533A.017 or in accordance with:

(1) Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or
(2) this section, if the entity is not covered by Subdivision (1).

(b) An agency or authority under Subsection (a-1)(2) may acquire goods or services by any procurement method that provides the best value to the agency or authority. The agency or authority shall document that the agency or authority considered all relevant factors under Subsection (c) in making the acquisition.

(c) Subject to Subsection (d), the agency or authority may consider all relevant factors in determining the best value, including:

(1) any installation costs;
(2) the delivery terms;
(3) the quality and reliability of the vendor's goods or services;

(4) the extent to which the goods or services meet the agency's or authority's needs;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the agency or authority to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;

(7) the total long-term cost to the agency or authority of acquiring the vendor's goods or services;

(8) the cost of any employee training associated with the acquisition;

(9) the effect of an acquisition on the agency's or authority's productivity;

(10) the acquisition price; and
(11) any other factor relevant to determining the best value for the agency or authority in the context of a particular acquisition.

(d) If a state agency to which this section applies acquires goods or services with a value that exceeds \$100,000, the state agency shall consult with and receive approval from the commission before considering factors other than price and meeting specifications.

(e) The state auditor or the executive commissioner may audit the agency's or authority's acquisitions of goods and services under this section to the extent state money or federal money appropriated by the state is used to make the acquisitions.

(f) The agency or authority may adopt rules and procedures for the acquisition of goods and services under this section.

Sec. 533A.017. PARTICIPATION IN PURCHASING CONTRACTS OR GROUP PURCHASING PROGRAM. (a) This section does not apply to a "health and human services agency," as that term is defined by Section 531.001, Government Code.

(b) The executive commissioner may allow a state agency, local agency, or local intellectual and developmental disability authority that expends public money to purchase goods or services in connection with providing or coordinating the provision of intellectual disability services to purchase goods or services with the public money by participating in:

(1) a contract the executive commissioner has made to

(1) a contract the executive commissioner has made to purchase goods or services; or

(2) a group purchasing program established or designated by the executive commissioner that offers discounts to providers of intellectual disability services.

Sec. 533A.018 [533.018]. REVENUE FROM SPECIAL OLYMPICS TEXAS LICENSE PLATES [ACCOUNT]. [(a) The Texas Department of Mental Health and Mental Retardation Special Olympics Texas account is a separate account in the general revenue fund. The account is composed of money deposited to the credit of the account under Section 502.2922, Transportation Code. Money in the account may be used only for the purposes of this section.]

[(b) The department administers the account.] Annually, the department shall distribute the money deposited under Section 504.621, Transportation Code, to the credit of the account created in the trust fund created under Section 504.6012, Transportation Code, to Special Olympics Texas to be used only to pay for costs associated with training and with area and regional competitions of the Special Olympics Texas.

SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF INTELLECTUAL DISABILITY SERVICES

Sec. 533A.031. DEFINITIONS. In this subchapter:

(1) "Elderly resident" means a person 65 years of age or older residing in a department facility.

(2) "ICF-IID and related waiver programs" includes ICF-IID Section 1915(c) waiver programs, home and community-based services, Texas home living waiver services, or another Medicaid

536-1 program serving persons with an intellectual disability.

536-2 (3) "Qualified service provider" means an entity that
536-3 meets requirements for service providers established by the
536-4 executive commissioner.

536-5 (4) "Section 1915(c) waiver program" means a federally
536-6 funded Medicaid program of the state that is authorized under
536-7 Section 1915(c) of the federal Social Security Act (42 U.S.C.
536-8 Section 1396n(c)).

536-9 Sec. 533A.032. LONG-RANGE PLANNING. (a) The department
536-10 shall have a long-range plan relating to the provision of services
536-11 under this title covering at least six years that includes at least
536-12 the provisions required by Sections 531.022 and 531.023, Government
536-13 Code, and Chapter 2056, Government Code. The plan must cover the
536-14 provision of services in and policies for state-operated
536-15 institutions and ensure that the medical needs of the most
536-16 medically fragile persons with an intellectual disability the
536-17 department serves are met.

536-18 (b) In developing the plan, the department shall:

536-19 (1) solicit input from:

536-20 (A) local intellectual and developmental
536-21 disability authorities;

536-22 (B) community representatives;

536-23 (C) consumers of intellectual disability
536-24 services, including consumers of campus-based and community-based
536-25 services, and family members of consumers of those services; and

536-26 (D) other interested persons; and

536-27 (2) consider the report developed under Subsection
536-28 (c).

536-29 (c) The department shall develop a report containing
536-30 information and recommendations regarding the most efficient
536-31 long-term use and management of the department's campus-based
536-32 facilities. The report must:

536-33 (1) project future bed requirements for state
536-34 supported living centers;

536-35 (2) document the methodology used to develop the
536-36 projection of future bed requirements;

536-37 (3) project maintenance costs for institutional
536-38 facilities;

536-39 (4) recommend strategies to maximize the use of
536-40 institutional facilities; and

536-41 (5) specify how each state supported living center
536-42 will:

536-43 (A) serve and support the communities and
536-44 consumers in its service area; and

536-45 (B) fulfill statewide needs for specialized
536-46 services.

536-47 (d) In developing the report under Subsection (c), the
536-48 department shall:

536-49 (1) conduct two public meetings, one meeting to be
536-50 held at the beginning of the process and the second meeting to be
536-51 held at the end of the process, to receive comments from interested
536-52 parties; and

536-53 (2) consider:

536-54 (A) the medical needs of the most medically
536-55 fragile of its clients with an intellectual disability;

536-56 (B) the provision of services to clients with a
536-57 severe and profound intellectual disability and to persons with an
536-58 intellectual disability who are medically fragile or have
536-59 behavioral problems;

536-60 (C) the program and service preference
536-61 information collected under Section 533A.038; and

536-62 (D) input solicited from consumers of services of
536-63 state supported living centers.

536-64 (g) The department shall:

536-65 (1) attach the report required by Subsection (c) to
536-66 the department's legislative appropriations request for each
536-67 biennium;

536-68 (2) at the time the department presents its
536-69 legislative appropriations request, present the report to the:

- (A) governor;
 - (B) governor's budget office;
 - (C) lieutenant governor;
 - (D) speaker of the house of representatives;
 - (E) Legislative Budget Board; and
 - (F) commission; and

(3) update the department's long-range plan biennially
and include the report in the plan.

Sec. 533A.0325. CONTINUUM OF SERVICES IN DEPARTMENT FACILITIES. The executive commissioner by rule shall establish criteria regarding the uses of department facilities as part of a full continuum of services under this title.

Sec. 533A.0335 [533.0335]. COMPREHENSIVE ASSESSMENT AND RESOURCE ALLOCATION PROCESS. (a) In this section:

(1) "Advisory committee" means the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 534.053, Government Code.

(2) "Department" means the Department of Aging and Disability Services.

[(3)] "Functional need," "ICF-IID program," and "Medicaid waiver program" have the meanings assigned those terms by Section 534.001, Government Code.

(b) Subject to the availability of federal funding, the department shall develop and implement a comprehensive assessment instrument and a resource allocation process for individuals with intellectual and developmental disabilities as needed to ensure that each individual with an intellectual or developmental disability receives the type, intensity, and range of services that are both appropriate and available, based on the functional needs of that individual, if the individual receives services through one of the following:

(1) a Medicaid waiver program;

(2) the ICF-IID program; or

(3) an intermediate care facility operated by the providing services for individuals with intellectual and physical disabilities.

(b-1) In developing a comprehensive assessment instrument for purposes of Subsection (b), the department shall evaluate any assessment instrument in use by the department. In addition, the department may implement an evidence-based, nationally recognized, comprehensive assessment instrument that assesses the functional needs of an individual with an intellectual or [and] developmental disability [~~disabilities~~] as the comprehensive assessment instrument required by Subsection (b). This subsection expires September 1, 2015.

(c) The department, in consultation with the advisory committee, shall establish a prior authorization process for requests for supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program. The process must ensure that supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program are available only to individuals for whom a more independent setting is not appropriate or available.

(d) The department shall cooperate with the advisory committee to establish the prior authorization process required by Subsection (c). This subsection expires January 1, 2024.

Sec. 533A.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES. The department may cooperate, negotiate, and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians, and other persons to plan, develop, and provide community-based intellectual disability services.

Sec. 533A.0345. STATE AGENCY SERVICES STANDARDS. (a) The executive commissioner by rule shall develop model program standards for intellectual disability services for use by each state agency that provides or pays for intellectual disability services. The department shall provide the model standards to each agency that provides intellectual disability services as

538-1 identified by the commission.

538-2 (b) Model standards developed under Subsection (a) must be
538-3 designed to improve the consistency of intellectual disability
538-4 services provided by or through a state agency.

538-5 (c) Biennially the department shall review the model
538-6 standards developed under Subsection (a) and determine whether each
538-7 standard contributes effectively to the consistency of service
538-8 delivery by state agencies.

538-9 Sec. 533A.035. LOCAL INTELLECTUAL AND DEVELOPMENTAL
538-10 DISABILITY AUTHORITIES. (a) The executive commissioner shall
538-11 designate a local intellectual and developmental disability
538-12 authority in one or more local service areas. The executive
538-13 commissioner may delegate to the local authority the authority and
538-14 responsibility of the executive commissioner, the commission, or a
538-15 department of the commission related to planning, policy
538-16 development, coordination, including coordination with criminal
538-17 justice entities, resource allocation, and resource development
538-18 for and oversight of intellectual disability services in the most
538-19 appropriate and available setting to meet individual needs in that
538-20 service area. The executive commissioner may designate a single
538-21 entity as both the local mental health authority under Chapter 533
538-22 and the local intellectual and developmental disability authority
538-23 under this chapter for a service area.

538-24 (b) The department by contract or other method of
538-25 allocation, including a case-rate or capitated arrangement, may
538-26 disburse to a local intellectual and developmental disability
538-27 authority department federal and department state funds to be spent
538-28 in the local service area for community intellectual disability
538-29 services.

538-30 (c) A local intellectual and developmental disability
538-31 authority, with the approval of the department, shall use the funds
538-32 received under Subsection (b) to ensure intellectual disability
538-33 services are provided in the local service area. The local
538-34 authority shall consider public input, ultimate cost-benefit, and
538-35 client care issues to ensure consumer choice and the best use of
538-36 public money in:

538-37 (1) assembling a network of service providers;
538-38 (2) making recommendations relating to the most
538-39 appropriate and available treatment alternatives for individuals
538-40 in need of intellectual disability services; and

538-41 (3) procuring services for a local service area,
538-42 including a request for proposal or open-enrollment procurement
538-43 method.

538-44 (d) A local intellectual and developmental disability
538-45 authority shall demonstrate to the department that the services
538-46 that the authority provides directly or through subcontractors and
538-47 that involve state funds comply with relevant state standards.

538-48 (e) A local intellectual and developmental disability
538-49 authority may serve as a provider of ICF-IID and related waiver
538-50 programs only if:

538-51 (1) the local authority complies with the limitations
538-52 prescribed by Section 533A.0355(d); or

538-53 (2) the ICF-IID and related waiver programs are
538-54 necessary to ensure the availability of services and the local
538-55 authority demonstrates to the commission that there is not a
538-56 willing ICF-IID and related waiver program qualified service
538-57 provider in the local authority's service area where the service is
538-58 needed.

538-59 Sec. 533A.0352. LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE
538-60 AREA. (a) Each local intellectual and developmental disability
538-61 authority shall develop a local service area plan to maximize the
538-62 authority's services by using the best and most cost-effective
538-63 means of using federal, state, and local resources to meet the needs
538-64 of the local community according to the relative priority of those
538-65 needs. Each local intellectual and developmental disability
538-66 authority shall undertake to maximize federal funding.

538-67 (b) A local service area plan must be consistent with the
538-68 purposes, goals, and policies stated in Section 531.001 and the
538-69 department's long-range plan developed under Section 533A.032.

539-1 (c) The department and a local intellectual and
 539-2 developmental disability authority shall use the local authority's
 539-3 local service plan as the basis for contracts between the
 539-4 department and the local authority and for establishing the local
 539-5 authority's responsibility for achieving outcomes related to the
 539-6 needs and characteristics of the authority's local service area.

539-7 (d) In developing the local service area plan, the local
 539-8 intellectual and developmental disability authority shall:

539-9 (1) solicit information regarding community needs
 539-10 from:

539-11 (A) representatives of the local community;

539-12 (B) consumers of community-based intellectual

539-13 disability services and members of the families of those consumers;

539-14 (C) consumers of services of state supported

539-15 living centers, members of families of those consumers, and members
 539-16 of state supported living center volunteer services councils, if a
 539-17 state supported living center is located in the local service area
 539-18 of the local authority; and

539-19 (D) other interested persons; and

539-20 (2) consider:

539-21 (A) criteria for assuring accountability for,
 539-22 cost-effectiveness of, and relative value of service delivery
 539-23 options;

539-24 (B) goals to ensure a client with an intellectual
 539-25 disability is placed in the least restrictive environment
 539-26 appropriate to the person's care;

539-27 (C) opportunities for innovation to ensure that
 539-28 the local authority is communicating to all potential and incoming
 539-29 consumers about the availability of services of state supported
 539-30 living centers for persons with an intellectual disability in the
 539-31 local service area of the local authority;

539-32 (D) goals to divert consumers of services from
 539-33 the criminal justice system; and

539-34 (E) opportunities for innovation in services and
 539-35 service delivery.

539-36 (e) The department and the local intellectual and
 539-37 developmental disability authority by contract shall enter into a
 539-38 performance agreement that specifies required standard outcomes
 539-39 for the programs administered by the local authority. Performance
 539-40 related to the specified outcomes must be verifiable by the
 539-41 department. The performance agreement must include measures
 539-42 related to the outputs, costs, and units of service delivered.
 539-43 Information regarding the outputs, costs, and units of service
 539-44 delivered shall be recorded in the local authority's automated data
 539-45 systems, and reports regarding the outputs, costs, and units of
 539-46 service delivered shall be submitted to the department at least
 539-47 annually as provided by department rule.

539-48 (f) The department and the local intellectual and
 539-49 developmental disability authority shall provide an opportunity
 539-50 for community centers and advocacy groups to provide information or
 539-51 assistance in developing the specified performance outcomes under
 539-52 Subsection (e).

539-53 Sec. 533A.0355 [533.0355]. LOCAL INTELLECTUAL AND
 539-54 DEVELOPMENTAL DISABILITY [MENTAL RETARDATION] AUTHORITY
 539-55 RESPONSIBILITIES. (a) The executive commissioner shall adopt
 539-56 rules establishing the roles and responsibilities of local
 539-57 intellectual and developmental disability [mental retardation]
 539-58 authorities.

539-59 (b) In adopting rules under this section, the executive
 539-60 commissioner must include rules regarding the following local
 539-61 intellectual and developmental disability [mental retardation]
 539-62 authority responsibilities:

539-63 (1) access;

539-64 (2) intake;

539-65 (3) eligibility functions;

539-66 (4) enrollment, initial person-centered assessment,
 539-67 and service authorization;

539-68 (5) utilization management;

539-69 (6) safety net functions, including crisis management

540-1 services and assistance in accessing facility-based care;
 540-2 (7) service coordination functions;
 540-3 (8) provision and oversight of state general revenue
 540-4 services;
 540-5 (9) local planning functions, including stakeholder
 540-6 involvement, technical assistance and training, and provider
 540-7 complaint and resolution processes; and
 540-8 (10) processes to assure accountability in
 540-9 performance, compliance, and monitoring.

540-10 (c) In determining eligibility under Subsection (b)(3), a
 540-11 local intellectual and developmental disability [~~mental~~
 540-12 ~~retardation~~] authority must offer a state supported living center
 540-13 [~~school~~] as an option among the residential services and other
 540-14 community living options available to an individual who is eligible
 540-15 for those services and who meets the department's criteria for
 540-16 state supported living center [~~school~~] admission, regardless of
 540-17 whether other residential services are available to the individual.

540-18 (d) In establishing a local intellectual and developmental
 540-19 disability [~~mental retardation~~] authority's role as a qualified
 540-20 service provider of ICF-IID [~~ICF-MR~~] and related waiver programs
 540-21 under Section 533A.035(e) [~~533.035(e-1)~~], the executive
 540-22 commissioner shall require the local intellectual and
 540-23 developmental disability [~~mental retardation~~] authority to:

540-24 (1) base the local authority's provider capacity on
 540-25 the local authority's August 2004 enrollment levels for the waiver
 540-26 programs the local authority operates and, if the local authority's
 540-27 enrollment levels exceed those levels, to reduce the levels by
 540-28 attrition; and

540-29 (2) base any increase in the local authority's
 540-30 provider capacity on:

540-31 (A) the local authority's state-mandated
 540-32 conversion from an ICF-IID [~~ICF-MR~~] program to a Section 1915(c)
 540-33 waiver program allowing for a permanent increase in the local
 540-34 authority's provider capacity in accordance with the number of
 540-35 persons who choose the local authority as their provider;

540-36 (B) the local authority's voluntary conversion
 540-37 from an ICF-IID [~~ICF-MR~~] program to a Section 1915(c) waiver
 540-38 program allowing for a temporary increase in the local authority's
 540-39 provider capacity, to be reduced by attrition, in accordance with
 540-40 the number of persons who choose the local authority as their
 540-41 provider;

540-42 (C) the local authority's refinancing from
 540-43 services funded solely by state general revenue to a Medicaid
 540-44 program allowing for a temporary increase in the local authority's
 540-45 provider capacity, to be reduced by attrition, in accordance with
 540-46 the number of persons who choose the local authority as their
 540-47 provider; or

540-48 (D) other extenuating circumstances that:

540-49 (i) are monitored and approved by the
 540-50 department [~~Department of Aging and Disability Services~~];
 540-51 (ii) do not include increases that
 540-52 unnecessarily promote the local authority's provider role over its
 540-53 role as a local intellectual and developmental disability [~~mental~~
 540-54 ~~retardation~~] authority; and

540-55 (iii) may include increases necessary to
 540-56 accommodate a family-specific or consumer-specific circumstance
 540-57 and choice.

540-58 (e) Any increase based on extenuating circumstances under
 540-59 Subsection (d)(2)(D) is considered a temporary increase in the
 540-60 local intellectual and developmental disability [~~mental~~
 540-61 ~~retardation~~] authority's provider capacity, to be reduced by
 540-62 attrition.

540-63 (f) At least biennially, the department [~~Department of~~
 540-64 ~~Aging and Disability Services~~] shall review and determine the local
 540-65 intellectual and developmental disability [~~mental retardation~~]
 540-66 authority's status as a qualified service provider in accordance
 540-67 with criteria that includes the consideration of the local
 540-68 authority's ability to assure the availability of services in its
 540-69 area, including:

(1) program stability and viability;
(2) the number of other qualified service providers in
the area; and
(3) the geographical area in which the local authority
is located.

(g) The department [~~Department of Aging and Disability Services~~] shall ensure that local services delivered further the following goals:

(1) to provide individuals with the information, opportunities, and support to make informed decisions regarding the services for which the individual is eligible;

- (2) to respect the rights, needs, and preferences of an individual receiving services; and
- (3) to integrate individuals with intellectual

[mental retardation] and developmental disabilities into the community in accordance with relevant independence initiatives and permanency planning laws.

(h) The department [Department of Aging and Disability Services] shall ensure that local intellectual and developmental disability [mental retardation] authorities are informing and counseling individuals and their legally authorized representatives, if applicable, about all program and service options for which the individuals are eligible in accordance with Section 533A.038(d) [533.038(d)], including options such as the availability and types of ICF-IID [ICF-MR] placements for which an individual may be eligible while the individual is on a department interest list or other waiting list for other services.

Sec. 533A.03551 [533.03551]. FLEXIBLE, LOW-COST HOUSING OPTIONS. (a) To the extent permitted under federal law and regulations, the executive commissioner shall adopt or amend rules as necessary to allow for the development of additional housing supports for individuals with disabilities, including individuals with intellectual and developmental disabilities, in urban and rural areas, including:

(1) a selection of community-based housing options that comprise a continuum of integration, varying from most to least restrictive, that permits individuals to select the most integrated and least restrictive setting appropriate to the individual's needs and preferences;

- (2) provider-owned and non-provider-owned residential settings;
- (3) assistance with living more independently; and
- (4) rental properties with on-site supports.

(b) The department [Department of Aging and Disability Services], in cooperation with the Texas Department of Housing and Community Affairs, the Department of Agriculture, the Texas State Affordable Housing Corporation, and the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 534.053, Government Code, shall coordinate with federal, state, and local public housing entities as necessary to expand opportunities for accessible, affordable, and integrated housing to meet the complex needs of individuals with disabilities, including individuals with intellectual and developmental disabilities.

(c) The department [Department of Aging and Disability Services] shall develop a process to receive input from statewide stakeholders to ensure the most comprehensive review of opportunities and options for housing services described by this section.

Sec. 533A.03552 [533.03552]. BEHAVIORAL SUPPORTS FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES AT RISK OF INSTITUTIONALIZATION; INTERVENTION TEAMS. (a) [In this section, "department" means the Department of Aging and Disability Services.

[~~(b)~~] Subject to the availability of federal funding, the department shall develop and implement specialized training for providers, family members, caregivers, and first responders providing direct services and supports to individuals with intellectual and developmental disabilities and behavioral health

542-1 needs who are at risk of institutionalization.

542-2 (b) [←] Subject to the availability of federal funding,
 542-3 the department shall establish one or more behavioral health
 542-4 intervention teams to provide services and supports to individuals
 542-5 with intellectual and developmental disabilities and behavioral
 542-6 health needs who are at risk of institutionalization. An
 542-7 intervention team may include a:

- 542-8 (1) psychiatrist or psychologist;
- 542-9 (2) physician;
- 542-10 (3) registered nurse;
- 542-11 (4) pharmacist or representative of a pharmacy;
- 542-12 (5) behavior analyst;
- 542-13 (6) social worker;
- 542-14 (7) crisis coordinator;
- 542-15 (8) peer specialist; and
- 542-16 (9) family partner.

542-17 (c) [←] In providing services and supports, a behavioral
 542-18 health intervention team established by the department shall:

- 542-19 (1) use the team's best efforts to ensure that an
 individual remains in the community and avoids
 institutionalization;
- 542-20 (2) focus on stabilizing the individual and assessing
 the individual for intellectual, medical, psychiatric,
 psychological, and other needs;
- 542-21 (3) provide support to the individual's family members
 and other caregivers;
- 542-22 (4) provide intensive behavioral assessment and
 training to assist the individual in establishing positive
 behaviors and continuing to live in the community; and
- 542-23 (5) provide clinical and other referrals.

542-31 (d) [←] The department shall ensure that members of a
 542-32 behavioral health intervention team established under this section
 542-33 receive training on trauma-informed care, which is an approach to
 542-34 providing care to individuals with behavioral health needs based on
 542-35 awareness that a history of trauma or the presence of trauma
 542-36 symptoms may create the behavioral health needs of the individual.

Sec. 533A.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS.

542-38 (a) The department may provide intellectual disability services
 542-39 through halfway houses, sheltered workshops, community centers,
 542-40 and other intellectual disability services programs.

542-41 (b) The department may operate or contract for the provision
 542-42 of part or all of the sheltered workshop services and may contract
 542-43 for the sale of goods produced and services provided by a sheltered
 542-44 workshop program. The goods and services may be sold for cash or on
 542-45 credit.

542-46 (c) An operating fund may be established for each sheltered
 542-47 workshop the department operates. Each operating fund must be in a
 542-48 national or state bank that is a member of the Federal Deposit
 542-49 Insurance Corporation.

542-50 (d) Money derived from gifts or grants received for
 542-51 sheltered workshop purposes and the proceeds from the sale of
 542-52 sheltered workshop goods and services shall be deposited to the
 542-53 credit of the operating fund. The money in the fund may be spent
 542-54 only in the operation of the sheltered workshop to:

- 542-55 (1) purchase supplies, materials, services, and
 equipment;
- 542-56 (2) pay salaries of and wages to participants and
 employees;
- 542-57 (3) construct, maintain, repair, and renovate
 facilities and equipment; and
- 542-58 (4) establish and maintain a petty cash fund of not
 more than \$100.

542-63 (e) Money in an operating fund that is used to pay salaries
 542-64 of and wages to participants in the sheltered workshop program is
 542-65 money the department holds in trust for the participants' benefit.

542-66 (f) This section does not affect the authority or
 542-67 jurisdiction of a community center as prescribed by Chapter 534.

542-68 Sec. 533A.038 [533.038]. FACILITIES AND SERVICES FOR
 542-69 CLIENTS WITH AN INTELLECTUAL DISABILITY [MENTAL RETARDATION]. (a)

543-1 In this section, "department facility" includes the ICF-IID
 543-2 component of the Rio Grande State Center.

543-3 (a-1) The department may designate all or any part of a
 543-4 department facility as a special facility for the diagnosis,
 543-5 special training, education, supervision, treatment, or care[, or
 543-6 control] of clients with an intellectual disability [mental
 543-7 retardation].

543-8 (b) The department may specify the facility in which a
 543-9 client with an intellectual disability [mental retardation] under
 543-10 the department's jurisdiction is placed.

543-11 (c) The department may maintain day classes at a department
 543-12 facility for the convenience and benefit of clients with an
 543-13 intellectual disability [mental retardation] of the community in
 543-14 which the facility is located and who are not capable of enrollment
 543-15 in a public school system's regular or special classes.

543-16 (d) A person with an intellectual disability [mental
 543-17 retardation], or a person's legally authorized representative,
 543-18 seeking residential services shall receive a clear explanation of
 543-19 programs and services for which the person is determined to be
 543-20 eligible, including state supported living centers [schools],
 543-21 community ICF-IID [ICF-MR] programs, waiver services under Section
 543-22 1915(c) of the federal Social Security Act (42 U.S.C. Section
 543-23 1396n(c)), or other services. The preferred programs and services
 543-24 chosen by the person or the person's legally authorized
 543-25 representative shall be documented in the person's record. If the
 543-26 preferred programs or services are not available, the person or the
 543-27 person's legally authorized representative shall be given
 543-28 assistance in gaining access to alternative services and the
 543-29 selected waiting list.

543-30 (e) The department shall ensure that the information
 543-31 regarding program and service preferences collected under
 543-32 Subsection (d) is documented and maintained in a manner that
 543-33 permits the department to access and use the information for
 543-34 planning activities conducted under Section 533A.032 [533.032].

543-35 (f) The department may spend money appropriated for the
 543-36 state supported living center [school] system only in accordance
 543-37 with limitations imposed by the General Appropriations Act.

543-38 (g) In addition to the explanation required under
 543-39 Subsection (d), the department shall ensure that each person
 543-40 inquiring about residential services receives:

543-41 (1) a pamphlet or similar informational material
 543-42 explaining that any programs and services for which the person is
 543-43 determined to be eligible, including state supported living
 543-44 centers, community ICF-IID [ICF-MR] programs, waiver services
 543-45 under Section 1915(c) of the federal Social Security Act (42 U.S.C.
 543-46 Section 1396n(c)), or other services, may be an option available to
 543-47 an individual who is eligible for those services; and

543-48 (2) information relating to whether appropriate
 543-49 residential services are available in each program and service for
 543-50 which the person is determined to be eligible, including state
 543-51 supported living centers, community ICF-IID [ICF-MR] programs,
 543-52 waiver services under Section 1915(c) of the federal Social
 543-53 Security Act (42 U.S.C. Section 1396n(c)), or other services
 543-54 located nearest to the residence of the proposed resident.

543-55 Sec. 533A.040. SERVICES FOR CHILDREN AND YOUTH. The
 543-56 department shall ensure the development of programs and the
 543-57 expansion of services at the community level for children with an
 543-58 intellectual disability, or with a dual diagnosis of an
 543-59 intellectual disability and mental illness, and for their families.
 543-60 The department shall:

543-61 (1) prepare and review budgets for services for
 543-62 children;

543-63 (2) develop departmental policies relating to
 543-64 children's programs and service delivery; and

543-65 (3) increase interagency coordination activities to
 543-66 enhance the provision of services for children.

543-67 Sec. 533A.0415. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY
 543-68 TRAINING. (a) The executive commissioner, the Texas Juvenile
 543-69 Justice Department, and the Texas Education Agency by rule shall

544-1 adopt a joint memorandum of understanding to develop interagency
 544-2 training for the staffs of the department, the Texas Juvenile
 544-3 Justice Department, and the Texas Education Agency who are involved
 544-4 in the functions of assessment, case planning, case management, and
 544-5 in-home or direct delivery of services to children, youth, and
 544-6 their families under this title. The memorandum must:

544-7 (1) outline the responsibility of each agency in
 544-8 coordinating and developing a plan for interagency training on
 544-9 individualized assessment and effective intervention and treatment
 544-10 services for children and dysfunctional families; and

544-11 (2) provide for the establishment of an interagency
 544-12 task force to:

544-13 (A) develop a training program to include
 544-14 identified competencies, content, and hours for completion of the
 544-15 training with at least 20 hours of training required each year until
 544-16 the program is completed;

544-17 (B) design a plan for implementing the program,
 544-18 including regional site selection, frequency of training, and
 544-19 selection of experienced clinical public and private professionals
 544-20 or consultants to lead the training; and

544-21 (C) monitor, evaluate, and revise the training
 544-22 program, including the development of additional curricula based on
 544-23 future training needs identified by staff and professionals.

544-24 (b) The task force consists of:

544-25 (1) one clinical professional and one training staff
 544-26 member from each agency, appointed by that agency; and
 544-27 (2) 10 private sector clinical professionals with
 544-28 expertise in dealing with troubled children, youth, and
 544-29 dysfunctional families, two of whom are appointed by each agency.

544-30 (c) The task force shall meet at the call of the department.

544-31 (d) The commission shall act as the lead agency in
 544-32 coordinating the development and implementation of the memorandum.

544-33 (e) The executive commissioner and the agencies shall
 544-34 review and by rule revise the memorandum not later than August each
 544-35 year.

544-36 Sec. 533A.042. EVALUATION OF ELDERLY RESIDENTS. (a) The
 544-37 department shall evaluate each elderly resident at least annually
 544-38 to determine if the resident can be appropriately served in a less
 544-39 restrictive setting.

544-40 (b) The department shall consider the proximity to the
 544-41 resident of family, friends, and advocates concerned with the
 544-42 resident's well-being in determining whether the resident should be
 544-43 moved from a department facility or to a different department
 544-44 facility. The department shall recognize that a nursing facility
 544-45 may not be able to meet the special needs of an elderly resident.

544-46 (c) In evaluating an elderly resident under this section and
 544-47 to ensure appropriate placement, the department shall identify the
 544-48 special needs of the resident, the types of services that will best
 544-49 meet those needs, and the type of facility that will best provide
 544-50 those services.

544-51 (d) The appropriate interdisciplinary team shall conduct
 544-52 the evaluation of an elderly resident of a department facility.

544-53 (e) The department shall attempt to place an elderly
 544-54 resident in a less restrictive setting if the department determines
 544-55 that the resident can be appropriately served in that setting. The
 544-56 department shall coordinate the attempt with the local intellectual
 544-57 and developmental disability authority.

544-58 (f) A local intellectual and developmental disability
 544-59 authority shall provide continuing care for an elderly resident
 544-60 placed in the authority's service area under this section.

544-61 (g) The local intellectual and developmental disability
 544-62 authority shall have the right of access to all residents and
 544-63 records of residents who request continuing care services.

544-64 Sec. 533A.043. PROPOSALS FOR GERIATRIC CARE. (a) The
 544-65 department shall solicit proposals from community providers to
 544-66 operate community residential programs for elderly residents at
 544-67 least every two years.

544-68 (b) The department shall require each provider to:

544-69 (1) offer adequate assurances of ability to:

- (A) provide the required services;
- (B) meet department standards; and
- (C) safeguard the safety and well-being of each

(2) sign a memorandum of agreement with the local intellectual and developmental disability authority outlining the responsibilities for continuity of care and monitoring, if the provider is not the local authority.

(c) The department may fund a proposal through a contract if the provider agrees to meet the requirements prescribed by Subsection (b) and agrees to provide the services at a cost that is equal to or less than the cost to the department to provide the services.

(d) The appropriate local intellectual and developmental disability authority shall monitor the services provided to a resident placed in a program funded under this section. The department may monitor any service for which it contracts.

SUBCHAPTER C. POWERS AND DUTIES RELATING TO ICF-IID [~~ICF-MR~~] PROGRAM

Sec. 533A.062 [533.062]. PLAN ON LONG-TERM CARE FOR PERSONS WITH AN INTELLECTUAL DISABILITY [MENTAL RETARDATION]. (a) The department shall biennially develop a proposed plan on long-term care for persons with an intellectual disability [mental retardation].

(b) The proposed plan must specify the capacity of the HCS waiver program for persons with an intellectual disability [~~mental retardation~~] and the number and levels of new ICF-IID [~~ICF-MR~~] beds to be authorized in each region. In developing the proposed plan, the department shall consider:

and

- (1) the needs of the population to be served;
- (2) projected appropriation amounts for the biennium;

and
(3) the requirements of applicable federal law.

(c) Each proposed plan shall cover the subsequent fiscal biennium. The department shall conduct a public hearing on the proposed plan. Not later than July 1 of each even-numbered year, the department shall submit the plan to the commission [Health and Human Services Commission] for approval.

(d) The commission [Health and Human Services Commission] may modify the proposed plan as necessary before its final approval. [In determining the appropriate number of ICF-MR facilities for persons with a related condition, the department and the Health and Human Services Commission shall consult with the Texas Department of Human Services.]

(e) The commission [Health and Human Services Commission] shall submit the proposed plan as part of the consolidated health and human services budget recommendation required under Section 531.026, Government Code [13, Article 4413(502), Revised Statutes].

(f) After legislative action on the appropriation for long-term care services for persons with an intellectual disability [mental retardation], the commission [Health and Human Services Commission] shall adjust the plan to ensure that the number of ICF-IID [ICF-MR] beds licensed or approved as meeting license requirements and the capacity of the HCS waiver program are within appropriated funding amounts.

(g) After any necessary adjustments, the commission [~~Health and Human Services Commission~~] shall approve the final biennial plan and publish the plan in the Texas Register.

(h) The department may submit proposed amendments to the plan to the commission [Health and Human Services Commission].

(i) In this section, "HCS waiver program" means services under the state Medicaid home and community-based services waiver program for persons with an intellectual disability [~~mental retardation~~] adopted in accordance with 42 U.S.C. Section 1396n(c).

[Sec. 533.063. REVIEW OF ICF-MR RULES. (a) The department and the Texas Department of Human Services shall meet as necessary to discuss proposed changes in the rules or the interpretation of the rules that govern the ICF-MR program.]

546-1 [~~(b) The departments shall jointly adopt a written policy~~
 546-2 ~~interpretation letter that describes the proposed change and shall~~
 546-3 ~~make a copy of the letter available to providers.~~

546-4 [~~Sec. 533.065. ICF-MR APPLICATION CONSOLIDATION LIST.~~ (~~a~~)
 546-5 ~~The department shall maintain a consolidated list of applications~~
 546-6 ~~for certification for participation in the ICF-MR program.~~

546-7 [~~(b) The department shall list the applications in~~
 546-8 ~~descending order using the date on which the department received~~
 546-9 ~~the completed application.~~

546-10 [~~(c) The department shall approve applications in the order~~
 546-11 ~~in which the applications are listed.~~

546-12 [~~(d) The department shall notify the Texas Department of~~
 546-13 ~~Human Services of each application for a license or for compliance~~
 546-14 ~~with licensing standards the department approves.]~~

546-15 Sec. 533A.066 [~~533.066~~]. INFORMATION RELATING TO ICF-IID
 546-16 [~~ICF-MR~~] PROGRAM. (~~a~~) At least annually, the department [~~and the~~
 546-17 ~~Texas Department of Human Services~~] shall [~~jointly~~] sponsor a conference on the ICF-IID [~~ICF-MR~~] program to:

546-19 (1) assist providers in understanding survey rules;
 546-20 (2) review deficiencies commonly found in ICF-IID
 546-21 [~~ICF-MR~~] facilities; and

546-22 (3) inform providers of any recent changes in the
 546-23 rules or in the interpretation of the rules relating to the ICF-IID
 546-24 [~~ICF-MR~~] program.

546-25 (~~b~~) The department [~~departments~~] also may use any other
 546-26 method to provide necessary information to providers, including
 546-27 publications.

546-28 SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

546-29 Sec. 533A.081. DEVELOPMENT OF FACILITY BUDGETS. The
 546-30 department, in budgeting for a facility, shall use uniform costs
 546-31 for specific types of services a facility provides unless a
 546-32 legitimate reason exists and is documented for the use of other
 546-33 costs.

546-34 Sec. 533A.082. DETERMINATION OF SAVINGS IN FACILITIES. (~~a~~)
 546-35 The department shall determine the degree to which the costs of
 546-36 operating department facilities for persons with an intellectual
 546-37 disability in compliance with applicable standards are affected as
 546-38 populations in the facilities fluctuate.

546-39 (~~b~~) In making the determination, the department shall:
 546-40 (1) assume that the current level of services and
 546-41 necessary state of repair of the facilities will be maintained; and
 546-42 (2) include sufficient funds to allow the department
 546-43 to comply with the requirements of litigation and applicable
 546-44 standards.

546-45 (~~c~~) The department shall allocate to community-based
 546-46 intellectual disability programs any savings realized in operating
 546-47 department facilities for persons with an intellectual disability.

546-48 Sec. 533A.083. CRITERIA FOR EXPANSION, CLOSURE, OR
 546-49 CONSOLIDATION OF FACILITY. The department shall establish
 546-50 objective criteria for determining when a new facility may be
 546-51 needed and when a state supported living center may be expanded,
 546-52 closed, or consolidated.

546-53 Sec. 533A.084. MANAGEMENT OF SURPLUS REAL PROPERTY. (~~a~~) To
 546-54 the extent provided by this subtitle, the department, in
 546-55 coordination with the executive commissioner, may lease, transfer,
 546-56 or otherwise dispose of any surplus real property related to the
 546-57 provision of services under this title, including any improvements
 546-58 under its management and control, or authorize the lease, transfer,
 546-59 or disposal of the property. Surplus property is property the
 546-60 executive commissioner designates as having minimal value to the
 546-61 present service delivery system and projects to have minimal value
 546-62 to the service delivery system as described in the department's
 546-63 long-range plan.

546-64 (~~b~~) The proceeds from the lease, transfer, or disposal of
 546-65 surplus real property, including any improvements, shall be
 546-66 deposited to the credit of the department in the Texas capital trust
 546-67 fund established under Chapter 2201, Government Code. The proceeds
 546-68 may be appropriated only for improvements to the department's
 546-69 system of intellectual disability facilities.

547-1 (c) A lease proposal shall be advertised at least once a
 547-2 week for four consecutive weeks in at least two newspapers. One
 547-3 newspaper must be a newspaper published in the municipality in
 547-4 which the property is located or the daily newspaper published
 547-5 nearest to the property's location. The other newspaper must have
 547-6 statewide circulation. Each lease is subject to the attorney
 547-7 general's approval as to substance and form. The executive
 547-8 commissioner shall adopt forms, rules, and contracts that, in the
 547-9 executive commissioner's best judgment, will protect the state's
 547-10 interests. The executive commissioner may reject any or all bids.

547-11 (d) This section does not authorize the executive
 547-12 commissioner or department to close or consolidate a state
 547-13 supported living center without first obtaining legislative
 547-14 approval.

547-15 (e) Notwithstanding Subsection (c), the executive
 547-16 commissioner, in coordination with the department, may enter into a
 547-17 written agreement with the General Land Office to administer lease
 547-18 proposals. If the General Land Office administers a lease proposal
 547-19 under the agreement, notice that the property is offered for lease
 547-20 must be published in accordance with Section 32.107, Natural
 547-21 Resources Code.

547-22 Sec. 533A.0846 [533.0846]. INTELLECTUAL DISABILITY [MENTAL
 547-23 RETARDATION] COMMUNITY SERVICES ACCOUNT. (a) The intellectual
 547-24 disability [mental retardation] community services account is an
 547-25 account in the general revenue fund that may be appropriated only
 547-26 for the provision of intellectual disability [mental retardation]
 547-27 services by or under contract with the department.

547-28 (b) The department shall deposit to the credit of the
 547-29 intellectual disability [mental retardation] community services
 547-30 account any money donated to the state for inclusion in the account,
 547-31 including life insurance proceeds designated for deposit to the
 547-32 account.

547-33 [(c) Interest earned on the mental retardation community
 547-34 services account shall be credited to the account. The account is
 547-35 exempt from the application of Section 403.095, Government Code.]

547-36 Sec. 533A.085. FACILITIES FOR INMATE AND PAROLEE CARE. (a)
 547-37 With the written approval of the governor, the department may
 547-38 contract with the Texas Department of Criminal Justice to transfer
 547-39 facilities to the Texas Department of Criminal Justice or otherwise
 547-40 provide facilities for:

547-41 (1) inmates with an intellectual disability in the
 547-42 custody of the Texas Department of Criminal Justice; or
 547-43 (2) persons with an intellectual disability paroled or
 547-44 released under the supervision of the Texas Department of Criminal
 547-45 Justice.

547-46 (b) An agency must report to the governor the agency's
 547-47 reasons for proposing to enter into a contract under this section
 547-48 and request the governor's approval.

547-49 Sec. 533A.087. LEASE OF REAL PROPERTY. (a) The department,
 547-50 in coordination with the executive commissioner, may lease real
 547-51 property related to the provision of services under this title,
 547-52 including any improvements under the department's management and
 547-53 control, regardless of whether the property is surplus property.
 547-54 Except as provided by Subsection (c), the department, in
 547-55 coordination with the executive commissioner, may award a lease of
 547-56 real property only:

547-57 (1) at the prevailing market rate; and
 547-58 (2) by competitive bid.

547-59 (b) The commission shall advertise a proposal for lease at
 547-60 least once a week for four consecutive weeks in:

547-61 (1) a newspaper published in the municipality in which
 547-62 the property is located or the daily newspaper published nearest to
 547-63 the property's location; and
 547-64 (2) a newspaper of statewide circulation.

547-65 (c) The department, in coordination with the executive
 547-66 commissioner, may lease real property related to the provision of
 547-67 services under this title or an improvement for less than the
 547-68 prevailing market rate, without advertisement or without
 547-69 competitive bidding, if:

(1) the executive commissioner determines that sufficient public benefit will be derived from the lease; and

(2) the property is leased to:

(A) a federal or state agency;

(B) a unit of local government;

(C) a not-for-profit organization; or

(D) an entity related to the department by a service contract.

(d) The executive commissioner shall adopt leasing rules, forms, and contracts that will protect the state's interests.

(e) The executive commissioner may reject any bid.

(f) This section does not authorize the executive commissioner or department to close or consolidate a facility used to provide intellectual disability services without legislative approval.

(g) Notwithstanding Subsections (a) and (b), the executive commissioner, in coordination with the department, may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

SUBCHAPTER E. JAIL DIVERSION PROGRAM

Sec. 533A.108. PRIORITIZATION OF FUNDING FOR DIVERSION OF PERSONS FROM INCARCERATION IN CERTAIN COUNTIES. (a) A local intellectual and developmental disability authority may develop and may prioritize its available funding for:

(1) a system to divert members of the priority population, including those members with co-occurring substance abuse disorders, before their incarceration or other contact with the criminal justice system, to services appropriate to their needs, including:

(A) screening and assessment services; and

(B) treatment services, including:

(i) short-term residential services;

(ii) crisis respite residential services;

and

(iii) continuity of care services;

(2) specialized training of local law enforcement and court personnel to identify and manage offenders or suspects who may be members of the priority population; and

(3) other model programs for offenders and suspects members of the priority population, including crisis training for law enforcement personnel.

(b) A local intellectual and developmental disability authority developing a system, training, or a model program under Subsection (a) shall collaborate with other local resources, including local law enforcement and judicial systems and local personnel.

(c) A local intellectual and developmental disability authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.

SECTION 3.1336. Chapter 534, Health and Safety Code, is amended to read as follows:

CHAPTER 534. COMMUNITY SERVICES

SUBCHAPTER A. COMMUNITY CENTERS

201. DEFINITIONS

Sec. 534.0001. DEFINITIONS. In this subchapter:

(1) "Commissioner" means:

relation to: (A) the commissioner of state health services in
(i) a community mental health center; or

(i) a community mental health center; or
(ii) the mental health services component
of a community mental health and intellectual disability center;
and

and
(B) the commissioner of aging and disability services in relation to:
(i) a community intellectual disability

(ii) the intellectual disability services component of a community mental health and intellectual disability center.

(2) "Department" means:

relation to: (A) the Department of State Health Services in
(i) a community mental health center or

(i) a community mental health center; or
(ii) the mental health services compa-

(ii) the mental health services component
health and intellectual disability center;

(B) the Department of Aging and Disability Services in relation to:
(i) a community intellectual disability center; or

(ii) the intellectual disability services

(11) the intellectual disability services
to mental health and intellectual disability

component of a community mental health and intellectual disability center.

Sec. 534.001. ESTABLISHMENT. (a) A county, municipality,

ESTABLISHMENT. (a) A county, municipality, or school district, or an organizational

hospital district, or school district, or an organizational combination of two or more of those local agencies, may establish and operate a community center.

(b) In accordance with this subtitle, a community center may be:

(1) a community mental health center that provides mental health services

mental health services;

(2) a community intellectual disability [mental retardation] center that provides intellectual disability [mental

(3) a community mental health and intellectual

(3) a community mental health and intellectual disability [~~mental retardation~~] center that provides mental health and intellectual disability [~~mental retardation~~] services.

(c) A community center is:

(1) an agency of the state, a governmental unit, and a

(2) a local government, as defined by Section [791.003](#),

Government Code;

(3) a local government for the purposes of Chapter

Chapter 172, Local Government Code.

(d) A community center may be established only if:

(1) the proposed center submits a copy of the contract

(A) the Department of State Health Services for a

(A) the Department of State Health Services for a proposed center that will provide mental health services;

Services for a proposed center that will provide intellectual disability services; or

(C) both departments if the proposed center will provide mental health and intellectual disability services [department a copy of the contract between the participating local agencies, if applicable];

(2) each appropriate [the] department approves the proposed center's plan to develop and make available to the region's residents an effective mental health or intellectual disability [~~mental retardation~~] program, or both, through a community center that is appropriately structured to include the financial, physical, and personnel resources necessary to meet the region's needs; and

needs; and
(3) each [the] department from which the proposed center seeks approval determines that the center can appropriately, effectively and efficiently provide those services in the region.

(e) Except as provided by this section, a community center operating under this subchapter may operate only for the purposes and perform only the functions defined in the center's plan. The executive commissioner by rule shall specify the elements that must be included in a plan and shall prescribe the procedure for submitting, approving, and modifying a center's plan. In addition

550-1 to the services described in a center's plan, the center may provide
550-2 other health and human services and supports as provided by a
550-3 contract with or a grant received from a local, state, or federal
550-4 agency.

550-5 (f) Each function performed by a community center under this
550-6 title is a governmental function if the function is required or
550-7 affirmatively approved by any statute of this state or of the United
550-8 States or by a regulatory agency of this state or of the United
550-9 States duly acting under any constitutional or statutory authority
550-10 vesting the agency with such power. Notwithstanding any other law,
550-11 a community center is subject to Chapter 554, Government Code.

550-12 (g) An entity is, for the purpose of operating a psychiatric
550-13 center, a governmental unit and a unit of local government under
550-14 Chapter 101, Civil Practice and Remedies Code, and a local
550-15 government under Chapter 102, Civil Practice and Remedies Code, if
550-16 the entity:

550-17 (1) is not operated to make a profit;
550-18 (2) is created through an intergovernmental agreement
550-19 between a community mental health center and any other governmental
550-20 unit; and
550-21 (3) contracts with the community mental health center
550-22 and any other governmental unit that created it to operate a
550-23 psychiatric center.

550-24 Sec. 534.0015. PURPOSE AND POLICY. (a) A community center
550-25 created under this subchapter is intended to be a vital component in
550-26 a continuum of services for persons in this state with mental
550-27 illness or an intellectual disability [who are mentally ill or
550-28 mentally retarded].

550-29 (b) It is the policy of this state that community centers
550-30 strive to develop services for persons with mental illness or an
550-31 intellectual disability [who are mentally ill or mentally
550-32 retarded], and may provide requested services to persons with
550-33 developmental disabilities or with chemical dependencies, that are
550-34 effective alternatives to treatment in a large residential
550-35 facility.

550-36 Sec. 534.002. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY
550-37 ONE LOCAL AGENCY. The board of trustees of a community center
550-38 established by one local agency is composed of:

550-39 (1) the members of the local agency's governing body;
550-40 or

550-41 (2) not fewer than five or more than nine qualified
550-42 voters who reside in the region to be served by the center and who
550-43 are appointed by the local agency's governing body.

550-44 Sec. 534.003. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY
550-45 AT LEAST TWO LOCAL AGENCIES. (a) The board of trustees of a
550-46 community center established by an organizational combination of
550-47 local agencies is composed of not fewer than five or more than 13
550-48 members.

550-49 (b) The governing bodies of the local agencies shall appoint
550-50 the board members either from among the membership of the governing
550-51 bodies or from among the qualified voters who reside in the region
550-52 to be served by the center.

550-53 (c) When the center is established, the governing bodies
550-54 shall enter into a contract that stipulates the number of board
550-55 members and the group from which the members are chosen. They may
550-56 renegotiate or amend the contract as necessary to change the:

550-57 (1) method of choosing the members; or
550-58 (2) membership of the board of trustees to more
550-59 accurately reflect the ethnic and geographic diversity of the local
550-60 service area.

550-61 Sec. 534.004. PROCEDURES RELATING TO BOARD OF TRUSTEES
550-62 MEMBERSHIP. (a) The local agency or organizational combination of
550-63 local agencies that establishes a community center shall prescribe:

550-64 (1) the application procedure for a position on the
550-65 board of trustees;

550-66 (2) the procedure and criteria for making appointments
550-67 to the board of trustees;

550-68 (3) the procedure for posting notice of and filling a
550-69 vacancy on the board of trustees; and

(4) the grounds and procedure for removing a member of the board of trustees.

(b) The local agency or organizational combination of local agencies that appoints the board of trustees shall, in appointing the members, attempt to reflect the ethnic and geographic diversity of the local service area the community center serves. The local agency or organizational combination shall include on the board of trustees one or more persons otherwise qualified under this chapter who are consumers of the types of services the center provides or who are family members of consumers of the types of services the center provides.

Sec. 534.005. TERMS; VACANCIES. (a) Appointed members of the board of trustees who are not members of a local agency's governing body serve staggered two-year terms. In appointing the initial members, the appointing authority shall designate not less than one-third or more than one-half of the members to serve one-year terms and shall designate the remaining members to serve two-year terms.

(b) A vacancy on a board of trustees composed of qualified voters is filled by appointment for the remainder of the unexpired term.

Sec. 534.006. TRAINING. (a) The executive commissioner [board] by rule shall establish:

(1) an annual training program for members of a board of trustees administered by the professional staff of that community center, including the center's legal counsel; and

(2) an advisory committee to develop training guidelines that includes representatives of advocates for persons with mental illness or an intellectual disability [mental retardation] and representatives of boards of trustees.

(b) Before a member of a board of trustees may assume office, the member shall attend at least one training session administered by that center's professional staff to receive information relating to:

(1) the enabling legislation that created the community center;

- (2) the programs the community center operates;
- (3) the community center's budget for that program

year; (4) the results of the most recent formal audit of the community center;

community center;

(5) the requirements of Chapter 551, Government Code, and Chapter 552, Government Code;

(6) all other parts of Title 5, including

- (6) the requirements of conflict of interest laws and other laws relating to public officials; and
- (7) any ethics policies adopted by the community.

Sec. 534.0065. QUALIFICATIONS: CONFLICT OF INTEREST:

Sec. 334.0065. QUALIFICATIONS; CONFLICT OF INTEREST; REMOVAL. (a) As a local public official, a member of the board of trustees of a community center shall uphold the member's position

trustees of a community center shall uphold the member's position of public trust by meeting and maintaining the applicable qualifications for membership and by complying with the applicable requirements relating to conflicts of interest.

(b) A person is not eligible for appointment as a member of a board of trustees if the person or the person's spouse:

(1) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the community center by contract or other method; or

(2) uses or receives a substantial amount of tangible goods or funds from the community center, other than:

(A) compensation or reimbursement authorized by law for board of trustees membership, attendance, or expenses; or
(B) as a consumer or as a family member of a

(c) The primary residence of a member of the board of trustees must be in the local service area the member represents.

(d) A member of the board of trustees is subject to Chapter 171, Local Government Code.

(e) A member of the board of trustees may not:

(1) refer for services a client or patient to a
entity owned or controlled by a member of the board of
unless the business entity is the only business entity
es the needed services within the jurisdiction of the
center;

(2) use a community center facility in the conduct of a business entity owned or controlled by that member;

(3) solicit, accept, or agree to accept from another business entity a benefit in return for the member's

person or business entity a benefit in return for the member's decision, opinion, recommendation, vote, or other exercise of discretion as a local public official or for a violation of a duty imposed by law;

(4) receive any benefit for the referral of a client or a patient to the community center or to another business entity;

(5) appoint, vote for, or confirm the appointment of a paid office or position with the community center if the

person to a paid office or position with the community center if the person is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree; or

(6) solicit or receive a political contribution from a supplier to or contractor with the community center.

(f) Not later than the date on which a member of the board of trustees takes office by appointment or reappointment and not later than the anniversary of that date, each member shall annually execute and file with the community center an affidavit acknowledging that the member has read the requirements for qualification, conflict of interest, and removal prescribed by this chapter.

(g) In addition to any grounds for removal adopted under Section 534.004(a), it is a ground for removal of a member of a board of trustees if the member:

(1) violates Chapter 171, Local Government Code;

(2) is not eligible for appointment to the board of trustees at the time of appointment as provided by Subsections (b) and (c);

- (3) does not maintain during service on the board of trustees the qualifications required by Subsections (b) and (c);
- (4) violates a provision of Subsection (e);
- (5) violates a provision of Section 534.0115; or
- (6) does not execute the affidavit required by Subsection (f).

(h) If a board of trustees is composed of members of the governing body of a local agency or organizational combination of local agencies, this section applies only to the qualifications for and removal from membership on the board of trustees.

Sec. 534.007. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES; OFFENSE. (a) A former officer or employee of a community center who ceases service or employment with the center may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for salary group 17, Schedule A, or salary group 9, Schedule B, of the position classification salary schedule; or

(2) a former officer or employee who is employed by a state agency or another community center.

(c) Subsection (a) does not apply to a proceeding related to policy development that was concluded before the officer's or employee's service or employment ceased.

(d) A former officer or employee of a community center commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

(e) In this section:

(1) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(2) "Particular matter" means a specific investigation, application, request for a ruling or determination, proceeding related to the development of policy, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

Sec. 534.008. ADMINISTRATION BY BOARD. (a) The board of trustees is responsible for the effective administration of the community center.

(b) The board of trustees shall make policies that are consistent with the applicable [department's] rules and standards of each appropriate department.

Sec. 534.009. MEETINGS. (a) The board of trustees shall adopt rules for the holding of regular and special meetings.

(b) Board meetings are open to the public to the extent required by and in accordance with Chapter 551, Government Code.

(c) The board of trustees shall keep a record of its proceedings in accordance with Chapter 551, Government Code. The record is open for public inspection in accordance with that law.

(d) The board of trustees shall send to each appropriate [the] department and each local agency that appoints the members a copy of the approved minutes of board of trustees meetings by:

(1) mailing a copy appropriately addressed and with the necessary postage paid using the United States Postal Service [postal service]; or

(2) another method agreed to by the board of trustees and the local agency.

Sec. 534.010. EXECUTIVE DIRECTOR
shall appoint an executive

trustees shall appoint an executive director for the community center.

(b) The board of trustees shall:

- (1) adopt a written policy governing the powers that may be delegated to the executive director; and
- (2) annually report to each local agency that appoints the members the executive director's total compensation and benefits.

Sec. 534.011. PERSONNEL. (a) The executive director, in accordance with the policies of the board of trustees, shall employ and train personnel to administer the community center's programs and services. The community center may recruit those personnel and contract for recruiting and training purposes.

(b) The board of trustees shall provide employees of the community center with appropriate rights, privileges, and benefits.

(c) The board of trustees may provide workers' compensation benefits.

[(d) The board of trustees shall prescribe the number of employees and their salaries. The board of trustees may choose to set salaries and benefits in compliance with a market analysis or internal salary study. If an internal salary study is used, the board of trustees shall conduct the study in accordance with the guidelines established by the commissioner.

[(e) Instead of using a market analysis or internal salary study to establish salaries and benefits, the board of trustees may use the state position classification plan and the General Appropriations Act to determine the appropriate classification and relative compensation of officers and employees. The board of trustees may pay salaries in amounts less than those provided by the General Appropriations Act. For a position not on the classification plan, the board of trustees shall set the compensation according to guidelines adopted by the commissioner. The board of trustees may petition the department for approval to exclude a position from the position classification plan and to provide a stated salary for that position that exceeds the amount prescribed by the General Appropriations Act for the classified position.]

[(f) During a management audit of a community center, the

554-1 department is entitled to confirm the method the center used to
 554-2 determine salaries and benefits.]

554-3 Sec. 534.0115. NEPOTISM. (a) The board of trustees or
 554-4 executive director may not hire as a paid officer or employee of the
 554-5 community center a person who is related to a member of the board of
 554-6 trustees by affinity within the second degree or by consanguinity
 554-7 within the third degree.

554-8 (b) An officer or employee who is related to a member of the
 554-9 board of trustees in a prohibited manner may continue to be employed
 554-10 if the person began the employment not later than the 31st day
 554-11 before the date on which the member was appointed.

554-12 (c) The officer or employee or the member of the board of
 554-13 trustees shall resign if the officer or employee began the
 554-14 employment later than the 31st day before the date on which the
 554-15 member was appointed.

554-16 (d) If an officer or employee is permitted to remain in
 554-17 employment under Subsection (b), the related member of the board of
 554-18 trustees may not participate in the deliberation of or voting on an
 554-19 issue that is specifically applicable to the officer or employee
 554-20 unless the issue affects an entire class or category of employees.

554-21 Sec. 534.012. ADVISORY COMMITTEES. (a) The board of
 554-22 trustees may appoint committees, including medical committees, to
 554-23 advise the board of trustees on matters relating to mental health
 554-24 and intellectual disability [mental retardation] services.

554-25 (b) Each committee must be composed of at least three
 554-26 members.

554-27 (c) The appointment of a committee does not relieve the
 554-28 board of trustees of the final responsibility and accountability as
 554-29 provided by this subtitle.

554-30 Sec. 534.013. COOPERATION OF DEPARTMENTS [DEPARTMENT].
 554-31 Each appropriate [The] department shall provide assistance,
 554-32 advice, and consultation to local agencies, boards of trustees, and
 554-33 executive directors in the planning, development, and operation of
 554-34 a community center.

554-35 Sec. 534.014. BUDGET; REQUEST FOR FUNDS. (a) Each
 554-36 community center shall annually provide to each local agency that
 554-37 appoints members to the board of trustees a copy of the center's:

- 554-38 (1) approved fiscal year operating budget;
- 554-39 (2) most recent annual financial audit; and
- 554-40 (3) staff salaries by position.

554-41 (b) The board of trustees shall annually submit to each
 554-42 local agency that appoints the members a request for funds or
 554-43 in-kind assistance to support the center.

554-44 Sec. 534.015. PROVISION OF SERVICES. (a) The board of
 554-45 trustees may adopt rules to regulate the administration of mental
 554-46 health or intellectual disability [mental retardation] services by
 554-47 a community center. The rules must be consistent with the purposes,
 554-48 policies, principles, and standards prescribed by this subtitle.

554-49 (b) The board of trustees may contract with a local agency
 554-50 or a qualified person or organization to provide a portion of the
 554-51 mental health or intellectual disability [mental retardation]
 554-52 services.

554-53 (c) With the approval of each appropriate commissioner
 554-54 [commissioner's approval], the board of trustees may contract with
 554-55 the governing body of another county or municipality to provide
 554-56 mental health and intellectual disability [mental retardation]
 554-57 services to residents of that county or municipality.

554-58 (d) A community center may provide services to a person who
 554-59 voluntarily seeks assistance or who has been committed to that
 554-60 center.

554-61 Sec. 534.0155. FOR WHOM SERVICES MAY BE PROVIDED. (a) This
 554-62 subtitle does not prevent a community center from providing
 554-63 services to:

- 554-64 (1) a person with a chemical dependency;
- 554-65 (2) [to] a person with a developmental
 554-66 disability; [or]
- 554-67 (3) [+] a person younger than four years of age who is
 554-68 eligible for early childhood intervention services [with a mental
 554-69 disability, as defined by Section 535.001].

555-1 (b) A community center may provide those services by
555-2 contracting with a public or private agency in addition to the
555-3 appropriate department.

555-4 Sec. 534.016. SCREENING AND CONTINUING CARE SERVICES. (a)
555-5 A community center shall provide screening services for:

555-6 (1) a person who requests voluntary admission to a
555-7 Department of State Health Services [department] facility for
555-8 persons with mental illness; and

555-9 (2) [and for] a person for whom proceedings for
555-10 involuntary commitment to a Department of State Health Services or
555-11 Department of Aging and Disability Services [department] facility
555-12 for persons with mental illness or an intellectual disability have
555-13 been initiated.

555-14 (b) A community center shall provide continuing mental
555-15 health and physical care services for a person referred to the
555-16 center by a Department of State Health Services [department]
555-17 facility and for whom the facility superintendent has recommended a
555-18 continuing care plan.

555-19 (c) Services provided under this section must be consistent
555-20 with the applicable [department's] rules and standards of each
555-21 appropriate department.

555-22 (d) The appropriate commissioner may designate a facility
555-23 other than the community center to provide the screening or
555-24 continuing care services if:

555-25 (1) local conditions indicate that the other facility
555-26 can provide the services more economically and effectively; or

555-27 (2) the commissioner determines that local conditions
555-28 may impose an undue burden on the community center.

555-29 Sec. 534.017. FEES FOR SERVICES. (a) A community center
555-30 shall charge reasonable fees for services the center provides,
555-31 unless prohibited by other service contracts or law.

555-32 (b) The community center may not deny services to a person
555-33 because of inability to pay for the services.

555-34 (c) The community center has the same rights, privileges,
555-35 and powers for collecting fees for treating patients or [and]
555-36 clients that each appropriate [the] department has by law.

555-37 (d) The county or district attorney of the county in which
555-38 the community center is located shall represent the center in
555-39 collecting fees when the center's executive director requests the
555-40 assistance.

555-41 Sec. 534.0175. TRUST EXEMPTION. (a) If a patient or client
555-42 is the beneficiary of a trust that has an aggregate principal of
555-43 \$250,000 or less, the corpus or income of the trust is not
555-44 considered to be the property of the patient or client or the
555-45 patient's or client's estate and is not liable for the patient's or
555-46 client's support. If the aggregate principal of the trust exceeds
555-47 \$250,000, only the portion of the corpus of the trust that exceeds
555-48 that amount and the income attributable to that portion are
555-49 considered to be the property of the patient or client or the
555-50 patient's or client's estate and are liable for the patient's or
555-51 client's support.

555-52 (b) To qualify for the exemption provided by Subsection (a),
555-53 the trust and the trustee must comply with the requirements
555-54 prescribed by Sections [552.018](#) and [593.081](#).

555-55 Sec. 534.018. GIFTS AND GRANTS. A community center may
555-56 accept gifts and grants of money, personal property, and real
555-57 property to use in providing the center's programs and services.

555-58 Sec. 534.019. CONTRIBUTION BY LOCAL AGENCY. A
555-59 participating local agency may contribute land, buildings,
555-60 facilities, other real and personal property, personnel, and funds
555-61 to administer the community center's programs and services.

555-62 Sec. 534.020. ACQUISITION AND CONSTRUCTION OF PROPERTY AND
555-63 FACILITIES BY COMMUNITY CENTER. (a) A community center may
555-64 purchase or lease-purchase real and personal property and may
555-65 construct buildings and facilities.

555-66 (b) The board of trustees shall require that an appraiser
555-67 certified by the Texas Appraiser Licensing and Certification Board
555-68 conduct an independent appraisal of real estate the community
555-69 center intends to purchase. The board of trustees may waive this

556-1 requirement if the purchase price is less than the value listed for
 556-2 the property by the local appraisal district and the property has
 556-3 been appraised by the local appraisal district within the preceding
 556-4 two years. A community center may not purchase or lease-purchase
 556-5 property for an amount that is greater than the property's
 556-6 appraised value unless:

556-7 (1) the purchase or lease-purchase of that property at
 556-8 that price is necessary;

556-9 (2) the board of trustees documents in the official
 556-10 minutes the reasons why the purchase or lease-purchase is necessary
 556-11 at that price; and

556-12 (3) a majority of the board approves the transaction.

556-13 (c) The board of trustees shall establish in accordance with
 556-14 relevant [department] rules of each appropriate department
 556-15 competitive bidding procedures and practices for capital purchases
 556-16 and for purchases involving department funds or required local
 556-17 matching funds.

556-18 Sec. 534.021. APPROVAL AND NOTIFICATION REQUIREMENTS. (a)
 556-19 A community center must receive from each appropriate [~~the~~] department
 556-20 prior written approval to acquire real property,
 556-21 including a building, if the acquisition involves the use of
 556-22 [department] funds of that department or local funds required to
 556-23 match funds of that department [~~Funds~~]. In addition, for
 556-24 acquisition of nonresidential property, the community center must
 556-25 notify each local agency that appoints members to the board of
 556-26 trustees not later than the 31st day before it enters into a binding
 556-27 obligation to acquire the property.

556-28 (b) A community center must notify each appropriate [~~the~~] department
 556-29 and each local agency that appoints members to the board
 556-30 of trustees not later than the 31st day before it enters into a
 556-31 binding obligation to acquire real property, including a building,
 556-32 if the acquisition does not involve the use of [department] funds of
 556-33 that department or local funds required to match funds of that
 556-34 department [~~funds~~]. Each appropriate [~~The~~] commissioner, on
 556-35 request, may waive the 30-day requirement on a case-by-case basis.

556-36 (c) The executive commissioner [~~board~~] shall adopt rules
 556-37 relating to the approval and notification process.

556-38 Sec. 534.022. FINANCING OF PROPERTY AND IMPROVEMENTS. (a)
 556-39 To acquire or to refinance the acquisition of real and personal
 556-40 property, to construct improvements to property, or to finance all
 556-41 or part of a payment owed or to be owed on a credit agreement, a
 556-42 community center may contract in accordance with Subchapter A,
 556-43 Chapter 271, Local Government Code, or issue, execute, refinance,
 556-44 or refund bonds, notes, obligations, or contracts. The community
 556-45 center may secure the payment of the bonds, notes, obligations, or
 556-46 contracts with a security interest in or pledge of its revenues or
 556-47 by granting a mortgage on any of its properties.

556-48 (a-1) For purposes of Subsection (a), "revenues" includes
 556-49 the following, as those terms are defined by Section 9.102,
 556-50 Business & Commerce Code:

- 556-51 (1) an account;
- 556-52 (2) a chattel paper;
- 556-53 (3) a commercial tort claim;
- 556-54 (4) a deposit account;
- 556-55 (5) a document;
- 556-56 (6) a general intangible;
- 556-57 (7) a health care insurance receivable;
- 556-58 (8) an instrument;
- 556-59 (9) investment property;
- 556-60 (10) a letter-of-credit right; and
- 556-61 (11) proceeds.

556-62 (b) Except as provided by Subsection (f), the community
 556-63 center shall issue the bonds, notes, or obligations in accordance
 556-64 with Chapters 1201 and 1371, Government Code. The attorney general
 556-65 must approve before issuance:

556-66 (1) notes issued in the form of public securities, as
 556-67 that term is defined by Section 1201.002, Government Code;

556-68 (2) obligations, as that term is defined by Section
 556-69 1371.001, Government Code; and

(3) bonds.

(c) A limitation prescribed in Subchapter A, Chapter 271, Local Government Code, relating to real property and the construction of improvements to real property, does not apply to a community center.

(e) A county or municipality acting alone or two or more counties or municipalities acting jointly pursuant to interlocal contract may create a public facility corporation to act on behalf of one or more community centers pursuant to Chapter 303, Local Government Code. Such counties or municipalities may exercise the powers of a sponsor under that chapter, and any such corporation may exercise the powers of a corporation under that chapter (including but not limited to the power to issue bonds). The corporation may exercise its powers on behalf of community centers in such manner as may be prescribed by the articles and bylaws of the corporation, provided that in no event shall one community center ever be liable to pay the debts or obligation or be liable for the acts, actions, or undertakings of another community center.

(f) The board of trustees of a community center may authorize the issuance of an anticipation note in the same manner, using the same procedure, and with the same rights under which an eligible school district may authorize issuance under Chapter 1431, Government Code, except that anticipation notes issued for the purposes described by Section 1431.004(a)(2), Government Code, may not, in the fiscal year in which the attorney general approves the notes for a community center, exceed 50 percent of the revenue anticipated to be collected in that year.

Sec. 534.023. SALE OF REAL PROPERTY ACQUIRED SOLELY THROUGH PRIVATE GIFT OR GRANT. (a) Except as provided by Subsection (d), a community center may sell center real property, including a building, without the approval of each appropriate [the] department or any local agency that appoints members to the board of trustees, only if the real property was acquired solely through a gift or grant of money or real property from a private entity, including an individual.

(b) A community center that acquires real property by gift or grant shall, on the date the center acquires the gift or grant, notify the private entity providing the gift or grant that:

(1) the center may subsequently sell the real property; and

(c) Except as provided by Subsection (d), real property sold under Subsection (a) must be sold for the property's fair market

(d) Real property sold under Subsection (a) may be sold for less than fair market value only if the board of trustees adopts a resolution.

resolution stating:

(1) the public purpose that will be achieved by the sale; and

sale; and
 (2) the conditions and circumstances for the sale,
including conditions to accomplish and maintain the public purpose.
 (e) A community center must notify each appropriate [the]

(e) A community center must notify each appropriate [the] department and each local agency that appoints members to the board of trustees not later than the 31st day before the date the center enters into a binding obligation to sell real property under this section. Each appropriate [The] commissioner, on request, may waive the 30-day notice requirement on a case-by-case basis.

(f) The executive commissioner [board] shall adopt rules relating to the notification process.

(g) A community center may use proceeds received from a sale of real property under this section only for a purpose authorized by this subchapter or for a public purpose authorized for a community center by state or federal law.

Sec. 534.031. SURPLUS PERSONAL PROPERTY. The executive commissioner, in coordination with the appropriate department, may transfer, with or without reimbursement, ownership and possession of surplus personal property under that [~~the~~] department's control or jurisdiction to a community center for use in providing mental

558-1 health or intellectual disability [~~mental retardation~~] services,
 558-2 as appropriate.

558-3 Sec. 534.032. RESEARCH. A community center may engage in
 558-4 research and may contract for that purpose.

558-5 Sec. 534.033. LIMITATION ON DEPARTMENT CONTROL AND REVIEW.
 558-6 (a) It is the intent of the legislature that each [~~the~~] department
 558-7 limit its control over, and routine reviews of, community center
 558-8 programs to those programs that:

558-9 (1) use [~~department~~] funds from that department or use
 558-10 required local funds that are matched with [~~department~~] funds from
that department;

558-12 (2) provide core or required services;

558-13 (3) provide services to former clients or patients of
 558-14 a [~~department~~] facility of that department; or

558-15 (4) are affected by litigation in which that [~~the~~]
 558-16 department is a defendant.

558-17 (b) Each appropriate [~~the~~] department may review any
 558-18 community center program if the department has reason to suspect
 558-19 that a violation of a department rule has occurred or if the
 558-20 department receives an allegation of patient or client abuse.

558-21 (c) Each appropriate [~~the~~] department may determine whether
 558-22 a particular program uses [~~department~~] funds from that department
 558-23 or uses required local matching funds.

558-24 Sec. 534.035. REVIEW, AUDIT, AND APPEAL PROCEDURES. (a)
 558-25 The executive commissioner [~~department~~] by rule shall establish
 558-26 review, audit, and appeal procedures for community centers. The
 558-27 procedures must ensure that reviews and audits are conducted in
 558-28 sufficient quantity and type to provide reasonable assurance that a
 558-29 community center has adequate and appropriate fiscal controls.

558-30 (b) In a community center plan approved under Section
 558-31 534.001, the center must agree to comply with the review and audit
 558-32 procedures established under this section.

558-33 (c) If, by a date prescribed by each appropriate [~~the~~]
 558-34 commissioner, the community center fails to respond to a deficiency
 558-35 identified in a review or audit to the satisfaction of that [~~the~~]
 558-36 commissioner, that [~~the~~] department may sanction the center in
 558-37 accordance with department [~~board~~] rules.

558-38 Sec. 534.036. FINANCIAL AUDIT. (a) The executive
 558-39 commissioner [~~department~~] shall prescribe procedures for financial
 558-40 audits of community centers. The executive commissioner
 558-41 [~~department~~] shall develop the procedures with the assistance of
 558-42 the state agencies and departments that contract with community
 558-43 centers. The executive commissioner [~~department~~] shall coordinate
 558-44 with each of those state agencies and departments to incorporate
 558-45 each agency's financial and compliance requirements for a community
 558-46 center into a single audit that meets the requirements of Section
 558-47 534.068 or 534.121, as appropriate. Before prescribing or amending
 558-48 the procedures, the executive commissioner [~~department~~] shall set a
 558-49 deadline for those state agencies and departments to submit to the
 558-50 executive commissioner [~~department~~] proposals relating to the
 558-51 financial audit procedures. The procedures must be consistent with
 558-52 any requirements connected with federal funding received by the
 558-53 community center. [~~The department may not implement the procedures~~
 558-54 ~~without the approval of the Health and Human Services Commission.~~]

558-55 (b) Each state agency or department that contracts with a
 558-56 community center shall comply with the procedures developed under
 558-57 this section.

558-58 (c) The executive commissioner [~~department~~] shall develop
 558-59 protocols for a state agency or department to conduct additional
 558-60 financial audit activities of a community center. [~~A state agency~~
 558-61 ~~or department may not conduct additional financial audit activities~~
 558-62 ~~of a community center without the approval of the Health and Human~~
 558-63 ~~Services Commission.~~]

558-64 Sec. 534.037. PROGRAM AUDIT. (a) The executive
 558-65 commissioner [~~department~~] shall coordinate with each state agency
 558-66 or department that contracts with a community center to prescribe
 558-67 procedures based on risk assessment for coordinated program audits
 558-68 of the activities of a community center. [~~The department may not~~
 558-69 ~~implement the procedures without the approval of the Health and~~

559-1 ~~Human Services Commission.~~] The procedures must be consistent with
 559-2 any requirements connected with federal funding received by the
 559-3 community center.

559-4 (b) A program audit of a community center must be performed
 559-5 in accordance with procedures developed under this section.

559-6 (c) This section does not prohibit a state agency or
 559-7 department or an entity providing funding to a community center
 559-8 from investigating a complaint against or performing additional
 559-9 contract monitoring of a community center.

559-10 (d) A program audit under this section must evaluate:

559-11 (1) the extent to which the community center is
 559-12 achieving the desired results or benefits established by the
 559-13 legislature or by a state agency or department;

559-14 (2) the effectiveness of the community center's
 559-15 organizations, programs, activities, or functions; and

559-16 (3) whether the community center is in compliance with
 559-17 applicable laws.

559-18 Sec. 534.038. APPOINTMENT OF MANAGER OR MANAGEMENT TEAM.

559-19 (a) Each appropriate [~~The~~] commissioner may appoint a manager or
 559-20 management team to manage and operate a community center if the
 559-21 commissioner finds that the center or an officer or employee of the
 559-22 center:

559-23 (1) intentionally, recklessly, or negligently failed
 559-24 to discharge the center's duties under a contract with that [~~the~~]
 559-25 department;

559-26 (2) misused state or federal money;

559-27 (3) engaged in a fraudulent act, transaction,
 559-28 practice, or course of business;

559-29 (4) endangers or may endanger the life, health, or
 559-30 safety of a person served by the center;

559-31 (5) failed to keep fiscal records or maintain proper
 559-32 control over center assets as prescribed by Chapter 783, Government
 559-33 Code;

559-34 (6) failed to respond to a deficiency in a review or
 559-35 audit;

559-36 (7) substantially failed to operate within the
 559-37 functions and purposes defined in the center's plan; or

559-38 (8) otherwise substantially failed to comply with this

559-39 subchapter or rules of that department [~~rules~~].

559-40 (b) Each appropriate [~~The~~] department shall give written
 559-41 notification to the center and local agency or combination of
 559-42 agencies responsible for making appointments to the local board of
 559-43 trustees regarding:

559-44 (1) the appointment of the manager or management team;
 559-45 and

559-46 (2) the circumstances on which the appointment is
 559-47 based.

559-48 (c) Each appropriate [~~The~~] commissioner may require the
 559-49 center to pay costs incurred by the manager or management team.

559-50 (d) The center may appeal a a [~~the~~] commissioner's decision to
 559-51 appoint a manager or management team as prescribed by rules of that
 559-52 department [~~board rule~~]. The filing of a notice of appeal stays the
 559-53 appointment unless the commissioner based the appointment on a
 559-54 finding under Subsection (a)(2) or (4).

559-55 Sec. 534.039. POWERS AND DUTIES OF MANAGEMENT TEAM. (a) As
 559-56 each appropriate [~~the~~] commissioner determines for each
 559-57 appointment, a manager or management team appointed under Section
 559-58 534.038 may:

559-59 (1) evaluate, redesign, modify, administer,
 559-60 supervise, or monitor a procedure, operation, or the management of
 559-61 a community center;

559-62 (2) hire, supervise, discipline, reassign, or
 559-63 terminate the employment of a center employee;

559-64 (3) reallocate a resource and manage an asset of the
 559-65 center;

559-66 (4) provide technical assistance to an officer or
 559-67 employee of the center;

559-68 (5) require or provide staff development;

559-69 (6) require that a financial transaction,

560-1 expenditure, or contract for goods and services must be approved by
 560-2 the manager or management team;

560-3 (7) redesign, modify, or terminate a center program or
 560-4 service;

560-5 (8) direct the executive director, local board of
 560-6 trustees, chief financial officer, or a fiscal or program officer
 560-7 of the center to take an action;

560-8 (9) exercise a power or duty of an officer or employee
 560-9 of the center; or

560-10 (10) make a recommendation to the local agency or
 560-11 combination of agencies responsible for appointments to the local
 560-12 board of trustees regarding the removal of a center trustee.

560-13 (b) The manager or management team shall supervise the
 560-14 exercise of a power or duty by the local board of trustees.

560-15 (c) The manager or management team shall report monthly to
 560-16 each appropriate [the] commissioner and local board of trustees on
 560-17 actions taken.

560-18 (d) A manager or management team appointed under this
 560-19 section may not use an asset or money contributed by a county,
 560-20 municipality, or other local funding entity without the approval of
 560-21 the county, municipality, or entity.

560-22 Sec. 534.040. RESTORING MANAGEMENT TO CENTER. (a) Each
 560-23 month, each appropriate [the] commissioner shall evaluate the
 560-24 performance of a community center managed by a manager or team
 560-25 appointed under Section 534.038 to determine the feasibility of
 560-26 restoring the center's management and operation to a local board of
 560-27 trustees.

560-28 (b) The authority of the manager or management team
 560-29 continues until each appropriate [the] commissioner determines
 560-30 that the relevant factors listed under Section 534.038(a) no longer
 560-31 apply.

560-32 (c) Following a determination under Subsection (b), each
 560-33 appropriate [the] commissioner shall terminate the authority of the
 560-34 manager or management team and restore authority to manage and
 560-35 operate the center to the center's authorized officers and
 560-36 employees.

560-37 SUBCHAPTER B. COMMUNITY-BASED MENTAL HEALTH SERVICES

560-38 Sec. 534.051. DEFINITIONS. In this subchapter:

560-39 (1) "Commissioner" means the commissioner of state
 560-40 health services.

560-41 (2) "Department" means the Department of State Health
 560-42 Services.

560-43 Sec. 534.052. RULES AND STANDARDS. (a) The executive
 560-44 commissioner [board] shall adopt rules, including standards, the
 560-45 executive commissioner [board] considers necessary and appropriate
 560-46 to ensure the adequate provision of community-based mental health
 560-47 [~~and mental retardation~~] services through a local mental health [~~or~~
 560-48 ~~mental retardation~~] authority under this subchapter.

560-49 (b) The department shall send a copy of the rules to each
 560-50 local mental health [~~or mental retardation~~] authority or other
 560-51 provider receiving contract funds as a local mental health [~~or~~
 560-52 ~~mental retardation~~] authority or designated provider.

560-53 Sec. 534.053. REQUIRED COMMUNITY-BASED MENTAL HEALTH
 560-54 SERVICES. (a) The department shall ensure that, at a minimum, the
 560-55 following services are available in each service area:

560-56 (1) 24-hour emergency screening and rapid crisis
 560-57 stabilization services;

560-58 (2) community-based crisis residential services or
 560-59 hospitalization;

560-60 (3) community-based assessments, including the
 560-61 development of interdisciplinary treatment plans and diagnosis and
 560-62 evaluation services;

560-63 (4) [~~family support services, including respite care,~~
 560-64 [~~case management services,~~]

560-65 [~~6~~] medication-related services, including
 560-66 medication clinics, laboratory monitoring, medication education,
 560-67 mental health maintenance education, and the provision of
 560-68 medication; and

560-69 (5) [~~7~~] psychosocial rehabilitation programs,

561-1 including social support activities, independent living skills,
 561-2 and vocational training.

561-3 (b) The department shall arrange for appropriate
 561-4 community-based services[, ~~including the assignment of a case~~
 561-5 manager,] to be available in each service area for each person
 561-6 discharged from a department facility who is in need of care.

561-7 (c) To the extent that resources are available, the
 561-8 department shall:

561-9 (1) ensure that the services listed in this section
 561-10 are available for children, including adolescents, as well as
 561-11 adults, in each service area;

561-12 (2) emphasize early intervention services for
 561-13 children, including adolescents, who meet the department's
 561-14 definition of being at high risk of developing severe emotional
 561-15 disturbances or severe mental illnesses; and

561-16 (3) ensure that services listed in this section are
 561-17 available for defendants required to submit to mental health
 561-18 treatment under Article 17.032 or Section 5(a) or 11(d), Article
 561-19 42.12, Code of Criminal Procedure.

561-20 Sec. 534.0535. JOINT DISCHARGE PLANNING. (a) The
 561-21 executive commissioner [board] shall adopt, and the department
 561-22 shall enforce, rules that require continuity of services and
 561-23 planning for patient [~~or client~~] care between department facilities
 561-24 and local mental health [~~or mental retardation~~] authorities.

561-25 (b) At a minimum, the rules must require joint discharge
 561-26 planning between a department facility and a local mental health
 561-27 [~~or mental retardation~~] authority before a facility discharges a
 561-28 patient [~~or client~~] or places the patient [~~or client~~] on an extended
 561-29 furlough with an intent to discharge.

561-30 (c) The local mental health [~~or mental retardation~~]
 561-31 authority shall plan with the department facility and determine the
 561-32 appropriate community services for the patient [~~or client~~].

561-33 (d) The local mental health [~~or mental retardation~~]
 561-34 authority shall arrange for the provision of the services if
 561-35 department funds are to be used and may subcontract with or make a
 561-36 referral to a local agency or entity.

561-37 Sec. 534.054. DESIGNATION OF PROVIDER. (a) The department
 561-38 shall identify and contract with a local mental health [~~or mental~~
 561-39 ~~retardation~~] authority for each service area to ensure that
 561-40 services are provided to patient [~~and client~~] populations
 561-41 determined by the department. A local mental health [~~or mental~~
 561-42 ~~retardation~~] authority shall ensure that services to address the
 561-43 needs of priority populations are provided as required by the
 561-44 department and shall comply with the rules and standards adopted
 561-45 under Section 534.052.

561-46 (c) The department may contract with a local agency or a
 561-47 private provider or organization to act as a designated provider of
 561-48 a service if the department:

561-49 (1) cannot negotiate a contract with a local mental
 561-50 health [~~or mental retardation~~] authority to ensure that a specific
 561-51 required service for priority populations is available in that
 561-52 service area; or

561-53 (2) determines that a local mental health [~~or mental~~
 561-54 ~~retardation~~] authority does not have the capacity to ensure the
 561-55 availability of that service.

561-56 Sec. 534.055. CONTRACTS FOR CERTAIN COMMUNITY SERVICES.
 561-57 (a) [~~A mental health or mental retardation authority and a private~~
 561-58 ~~provider shall use a contract designed by the department as a model~~
 561-59 ~~contract for the provision of services at the community level for~~
 561-60 ~~persons with mental retardation or mental illness, including~~
 561-61 ~~residential services, if the contract involves the use of state~~
 561-62 ~~funds or funds for which the state has oversight responsibility.~~

561-63 (b) ~~The department shall design one or more model contracts~~
 561-64 ~~and shall retain copies of each model contract in the central office~~
 561-65 ~~of the department.~~

561-66 (c) A model contract must:
 561-67 (1) ~~require that the services provided by the private~~
 561-68 ~~provider be based on the patient's or client's individual treatment~~
 561-69 ~~plan,~~

562-1 [42) provide that a community-based residential
 562-2 facility that is a family home as defined in Chapter 123, Human
 562-3 Resources Code may house only a person with a disability as defined
 562-4 in Section 123.002, Human Resources Code;

562-5 [43) prohibit the use of the facility for purposes
 562-6 such as restitution centers, homes for substance abusers, or
 562-7 halfway houses; and

562-8 [44) outline a dispute resolution procedure.

562-9 [(d)] The executive commissioner [department] shall design
 562-10 a competitive procurement or similar system that a mental health
 562-11 [or mental retardation] authority shall use in awarding an initial
 562-12 contract for the provision of services at the community level for
 562-13 persons with mental illness, including residential services, if the
 562-14 contract involves the use of state money or money for which the
 562-15 state has oversight responsibility [under this section].

562-16 (b) [(e)] The system must require that each local mental
 562-17 health [or mental retardation] authority:

562-18 (1) ensure public participation in the authority's
 562-19 decisions regarding whether to provide or to contract for a
 562-20 service;

562-21 (2) make a reasonable effort to give notice of the
 562-22 intent to contract for services to each potential private provider
 562-23 in the local service area of the authority; and

562-24 (3) review each submitted proposal and award the
 562-25 contract to the applicant that the authority determines has made
 562-26 the lowest and best bid to provide the needed services.

562-27 (c) [(f)] Each local mental health [or mental retardation]
 562-28 authority, in determining the lowest and best bid, shall consider
 562-29 any relevant information included in the authority's request for
 562-30 bid proposals, including:

562-31 (1) price;

562-32 (2) the ability of the bidder to perform the contract
 562-33 and to provide the required services;

562-34 (3) whether the bidder can perform the contract or
 562-35 provide the services within the period required, without delay or
 562-36 interference;

562-37 (4) the bidder's history of compliance with the laws
 562-38 relating to the bidder's business operations and the affected
 562-39 services and whether the bidder is currently in compliance;

562-40 (5) whether the bidder's financial resources are
 562-41 sufficient to perform the contract and to provide the services;

562-42 (6) whether necessary or desirable support and
 562-43 ancillary services are available to the bidder;

562-44 (7) the character, responsibility, integrity,
 562-45 reputation, and experience of the bidder;

562-46 (8) the quality of the facilities and equipment
 562-47 available to or proposed by the bidder;

562-48 (9) the ability of the bidder to provide continuity of
 562-49 services; and

562-50 (10) the ability of the bidder to meet all applicable
 562-51 written departmental policies, principles, and regulations.

562-52 Sec. 534.056. COORDINATION OF ACTIVITIES. A local mental
 562-53 health [or mental retardation] authority shall coordinate its
 562-54 activities with the activities of other appropriate agencies that
 562-55 provide care and treatment for persons with drug or alcohol
 562-56 problems.

562-57 Sec. 534.058. STANDARDS OF CARE. (a) The executive
 562-58 commissioner [department] shall develop standards of care for the
 562-59 services provided by a local mental health [or mental retardation]
 562-60 authority and its subcontractors under this subchapter.

562-61 (b) The standards must be designed to ensure that the
 562-62 quality of the community-based mental health services is consistent
 562-63 with the quality of care available in department facilities.

562-64 (c) In conjunction with local mental health [or mental
 562-65 retardation] authorities, the executive commissioner [department]
 562-66 shall review the standards biennially to determine if each standard
 562-67 is necessary to ensure the quality of care.

562-68 Sec. 534.059. CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES.
 562-69 (a) The department shall evaluate a local mental health [or mental

563-1 ~~retardation~~] authority's compliance with its contract to ensure the
563-2 provision of specific services to priority populations.

563-3 (b) If, by a date set by the commissioner, a local mental
563-4 health [~~or mental retardation~~] authority fails to comply with its
563-5 contract to ensure the provision of services to the satisfaction of
563-6 the commissioner, the department may impose a sanction as provided
563-7 by the applicable contract rule until the dispute is resolved. The
563-8 department shall notify the authority in writing of the
563-9 department's decision to impose a sanction.

563-10 (c) A local mental health [~~or mental retardation~~] authority
563-11 may appeal the department's decision to impose a sanction on the
563-12 authority. The executive commissioner [~~board~~] by rule shall
563-13 prescribe the appeal procedure.

563-14 (d) The filing of a notice of appeal stays the imposition of
563-15 the department's decision to impose a sanction except when an act or
563-16 omission by a local mental health [~~or mental retardation~~] authority
563-17 is endangering or may endanger the life, health, welfare, or safety
563-18 of a person.

563-19 (e) While an appeal under this section is pending, the
563-20 department may limit general revenue allocations to a local mental
563-21 health [~~or mental retardation~~] authority to monthly distributions.

563-22 Sec. 534.060. PROGRAM AND SERVICE MONITORING AND REVIEW OF
563-23 LOCAL AUTHORITIES. (a) The department shall develop mechanisms
563-24 for monitoring the services provided by a local mental health [~~or~~
563-25 ~~mental retardation~~] authority.

563-26 (b) The department shall review the program quality and
563-27 program performance results of a local mental health [~~or mental~~
563-28 ~~retardation~~] authority in accordance with a risk assessment and
563-29 evaluation system appropriate to the authority's contract
563-30 requirements. The department may determine the scope of the
563-31 review.

563-32 (c) A contract between a local mental health [~~or mental~~
563-33 ~~retardation~~] authority and the department must authorize the
563-34 department to have unrestricted access to all facilities, records,
563-35 data, and other information under the control of the authority as
563-36 necessary to enable the department to audit, monitor, and review
563-37 the financial and program activities and services associated with
563-38 department funds.

563-39 Sec. 534.0601. COORDINATED PROGRAM AUDITS OF LOCAL
563-40 AUTHORITIES. (a) The executive commissioner [~~department~~] shall
563-41 coordinate with each agency or department of the state that
563-42 contracts with a local mental health [~~or mental retardation~~]
563-43 authority to prescribe procedures for a coordinated program audit
563-44 of the authority. The procedures must be:

563-45 (1) consistent with the requirements for the receipt
563-46 of federal funding by the authority; and
563-47 (2) based on risk assessment.

563-48 (b) A program audit must evaluate:
563-49 (1) the extent to which a local mental health [~~or~~
563-50 ~~mental retardation~~] authority is achieving the results or benefits
563-51 established by an agency or department of the state or by the
563-52 legislature;

563-53 (2) the effectiveness of the authority's organization,
563-54 program, activities, or functions; and
563-55 (3) the authority's compliance with law.

563-56 (c) A program audit of a local mental health [~~or mental~~
563-57 ~~retardation~~] authority must be performed in accordance with the
563-58 procedures prescribed under this section.

563-59 (d) The department may not implement a procedure for a
563-60 program audit under this section without the approval of the
563-61 executive commissioner [~~Health and Human Services Commission~~].

563-62 (e) This section does not prohibit an agency, department, or
563-63 other entity providing funding to a local mental health [~~or mental~~
563-64 ~~retardation~~] authority from investigating a complaint against the
563-65 authority or performing additional contract monitoring of the
563-66 authority.

563-67 Sec. 534.0602. FINANCIAL AUDITS OF LOCAL AUTHORITIES. (a)
563-68 The executive commissioner [~~department~~] shall prescribe procedures
563-69 for a financial audit of a local mental health [~~or mental~~

564-1 ~~retardation~~] authority. The procedures must be consistent with
 564-2 requirements for the receipt of federal funding by the authority.

564-3 (b) The executive commissioner [department] shall develop
 564-4 the procedures with the assistance of each agency or department of
 564-5 the state that contracts with a local mental health [or mental
 564-6 ~~retardation~~] authority. The executive commissioner [department]
 564-7 shall incorporate each agency's or department's financial or
 564-8 compliance requirements for an authority into a single audit that
 564-9 meets the requirements of Section 534.068.

564-10 (c) Before prescribing or amending a procedure under this
 564-11 section, the executive commissioner [department] must set a
 564-12 deadline for agencies and departments of the state that contract
 564-13 with local mental health [and mental retardation] authorities to
 564-14 submit proposals relating to the procedure.

564-15 (d) An agency or department of the state that contracts with
 564-16 a local mental health [or mental retardation] authority must comply
 564-17 with a procedure developed under this section.

564-18 (e) The department may not implement a procedure under this
 564-19 section without the approval of the executive commissioner [Health
 564-20 and Human Services Commission].

564-21 Sec. 534.0603. ADDITIONAL FINANCIAL AUDIT ACTIVITY. (a)
 564-22 The executive commissioner [department] shall develop protocols
 564-23 for an agency or department of the state to conduct additional
 564-24 financial audit activities of a local mental health [or mental
 564-25 ~~retardation~~] authority.

564-26 (b) An agency or department of the state may not conduct
 564-27 additional financial audit activities relating to a local mental
 564-28 health [or mental retardation] authority without the approval of
 564-29 the executive commissioner [Health and Human Services Commission].

564-30 (c) This section, and a protocol developed under this
 564-31 section, do not apply to an audit conducted under Chapter 321,
 564-32 Government Code.

564-33 Sec. 534.061. PROGRAM AND SERVICE MONITORING AND REVIEW OF
 564-34 CERTAIN COMMUNITY SERVICES. (a) [The department shall develop
 564-35 mechanisms for periodically monitoring the services of a provider
 564-36 who contracts with a local mental health or mental retardation
 564-37 authority to provide services for persons with mental retardation
 564-38 or mental illness at the community level, including residential
 564-39 services, if state funds or funds for which the state has oversight
 564-40 responsibility are used to pay for at least part of the services.]

564-41 (b) [] The local mental health [or mental retardation]
 564-42 authority shall monitor the services of a provider who contracts
 564-43 with the authority to provide services for persons with mental
 564-44 illness to ensure that the provider is delivering the services in a
 564-45 manner consistent with the provider's contract.

564-46 (b) [] Each provider contract involving the use of state
 564-47 funds or funds for which the state has oversight responsibility
 564-48 must authorize the local mental health [or mental retardation]
 564-49 authority or the authority's designee and the department or the
 564-50 department's designee to have unrestricted access to all
 564-51 facilities, records, data, and other information under the control
 564-52 of the provider as necessary to enable the department to audit,
 564-53 monitor, and review the financial and program activities and
 564-54 services associated with the contract.

564-55 (c) [] The department may withdraw funding from a local
 564-56 mental health [or mental retardation] authority that fails to
 564-57 cancel a contract with a provider involving the use of state funds
 564-58 or funds for which the state has oversight responsibility if:

564-59 (1) the provider is not fulfilling its contractual
 564-60 obligations; and

564-61 (2) the authority has not taken appropriate action to
 564-62 remedy the problem in accordance with department [board] rules.

564-63 (d) [] The executive commissioner [board] by rule shall
 564-64 prescribe procedures a local mental health [or mental retardation]
 564-65 authority must follow in remedying a problem with a provider.

564-66 Sec. 534.063. PEER REVIEW ORGANIZATION. The department
 564-67 shall assist a local mental health [or mental retardation]
 564-68 authority in developing a peer review organization to provide
 564-69 self-assessment of programs and to supplement department reviews

565-1 under Section 534.060.

565-2 Sec. 534.064. CONTRACT RENEWAL. The executive commissioner
 565-3 may refuse to renew a contract with a local mental health [~~or mental~~
 565-4 ~~retardation~~] authority and may select other agencies, entities, or
 565-5 organizations to be the local mental health [~~or mental retardation~~] authority
 565-6 if the department's evaluation of the authority's performance
 565-7 under Section 534.059 indicates that the authority
 565-8 cannot ensure the availability of the specific services to priority
 565-9 populations required by the department and this subtitle.

565-10 Sec. 534.065. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY
 565-11 SERVICES. (a) A local mental health [~~or mental retardation~~] authority
 565-12 shall review a contract scheduled for renewal that:

565-13 (1) is between the authority and a private provider;
 565-14 (2) is for the provision of mental health [~~or mental~~
 565-15 ~~retardation~~] services at the community level, including
 565-16 residential services; and

565-17 (3) involves the use of state funds or funds for which
 565-18 the state has oversight responsibility.

565-19 (b) The local mental health [~~or mental retardation~~] authority
 565-20 may renew the contract only if the contract meets the
 565-21 criteria provided by Section 533.016.

565-22 (c) The local mental health [~~or mental retardation~~] authority and private provider shall negotiate a contract renewal
 565-23 at arm's [~~arms~~] length and in good faith.

565-24 (d) This section applies to a contract renewal regardless of
 565-25 the date on which the original contract was initially executed.

565-26 Sec. 534.066. LOCAL MATCH REQUIREMENT. (a) The department
 565-27 shall include in a contract with a local mental health [~~or mental~~
 565-29 ~~retardation~~] authority a requirement that some or all of the state
 565-30 funds the authority receives be matched by local support in an
 565-31 amount or proportion jointly agreed to by the department and the
 565-32 authority's board of trustees and based on the authority's
 565-33 financial capability and its overall commitment to other mental
 565-34 health [~~or mental retardation~~] programs, as appropriate.

565-35 (b) [The department shall establish, for community services
 565-36 divisions of department facilities that provide community-based
 565-37 services required under this subchapter, a local match requirement
 565-38 that is consistent with the requirements applied to other local
 565-39 mental health or mental retardation authorities.]

565-40 (c) Patient fee income, third-party insurance income,
 565-41 services and facilities contributed by the local mental health [~~or~~
 565-42 ~~mental retardation~~] authority, contributions by a county or
 565-43 municipality, and other locally generated contributions, including
 565-44 local tax funds, may be counted when calculating the local support
 565-45 for a local mental health [~~or mental retardation~~] authority. The
 565-46 department may disallow or reduce the value of services claimed as
 565-47 support.

565-48 Sec. 534.067. FEE COLLECTION POLICY. The executive
 565-49 commissioner [~~department~~] shall establish a uniform fee collection
 565-50 policy for all local mental health [~~or mental retardation~~]
 565-51 authorities that is equitable, provides for collections, and
 565-52 maximizes contributions to local revenue.

565-53 Sec. 534.0675. NOTICE OF DENIAL, REDUCTION, OR TERMINATION
 565-54 OF SERVICES. The executive commissioner [~~board~~] by rule, in
 565-55 cooperation with local mental health [~~and mental retardation~~] authorities,
 565-56 consumers, consumer advocates, and service providers,
 565-57 shall establish a uniform procedure that each local mental health
 565-58 [~~or mental retardation~~] authority shall use to notify consumers in
 565-59 writing of the denial, involuntary reduction, or termination of
 565-60 services and of the right to appeal those decisions.

565-61 Sec. 534.068. AUDITS. (a) As a condition to receiving
 565-62 funds under this subtitle, a local mental health [~~and mental~~
 565-63 ~~retardation~~] authority other than a state facility designated as an
 565-64 authority must annually submit to the department a financial and
 565-65 compliance audit prepared by a certified public accountant or
 565-66 public accountant licensed by the Texas State Board of Public
 565-67 Accountancy. To ensure the highest degree of independence and
 565-68 quality, the local mental health [~~or mental retardation~~] authority
 565-69 shall use an invitation-for-proposal process as prescribed by the

566-1 executive commissioner [department] to select the auditor.

566-2 (a-1) The audit required under Subsection (a) may be
 566-3 published electronically on the local mental health [~~an~~] authority's Internet website. An authority that electronically
 566-4 publishes an audit under this subsection shall notify the department that the audit is available on the authority's Internet
 566-5 website on or before the date the audit is due.

566-6 (b) The audit must meet the minimum requirements as shall
 566-7 be, and be in the form and in the number of copies as may be,
 566-8 prescribed by the executive commissioner [department], subject to
 566-9 review and comment by the state auditor.

566-10 (c) The local mental health [~~or mental retardation~~] authority shall file the required number of copies of the audit
 566-11 report with the department by the date prescribed by the executive
 566-12 commissioner [department]. From the copies filed with the
 566-13 department, copies of the report shall be submitted to the governor
 566-14 and Legislative Budget Board.

566-15 (d) The local mental health [~~or mental retardation~~] authority shall either approve or refuse to approve the audit
 566-16 report. If the authority refuses to approve the report, the
 566-17 authority shall include with the department's copies a statement
 566-18 detailing the reasons for refusal.

566-19 (e) The commissioner and state auditor have access to all
 566-20 vouchers, receipts, journals, or other records the commissioner or
 566-21 auditor considers necessary to review and analyze the audit report.

566-22 (f) The department shall annually submit to the governor,
 566-23 Legislative Budget Board, and Legislative Audit Committee a summary
 566-24 of the significant findings identified during the department's
 566-25 reviews of fiscal audit activities.

566-26 (g) The report required under Subsection (f) may be
 566-27 published electronically on the department's Internet website. The
 566-28 department shall notify each entity entitled to receive a copy of
 566-29 the report that the report is available on the department's
 566-30 Internet website on or before the date the report is due.

566-31 Sec. 534.069. CRITERIA FOR PROVIDING FUNDS FOR START-UP
 566-32 COSTS. (a) The executive commissioner [board] by rule shall
 566-33 develop criteria to regulate the provision of payment to a private
 566-34 provider for start-up costs associated with the development of
 566-35 residential and other community services for persons with mental
 566-36 illness [~~or mental retardation~~].

566-37 (b) The criteria shall provide that start-up funds be
 566-38 awarded only as a last resort and shall include provisions relating
 566-39 to:

566-40 (1) the purposes for which start-up funds may be used;
 566-41 (2) the ownership of capital property and equipment
 566-42 obtained by the use of start-up funds; and

566-43 (3) the obligation of the private provider to repay
 566-44 the start-up funds awarded by the department by direct repayment or
 566-45 by providing services for a period agreed to by the parties.

566-46 Sec. 534.070. USE OF PROSPECTIVE PAYMENT FUNDS. (a) Each
 566-47 local mental health [~~or mental retardation~~] authority that receives
 566-48 prospective payment funds shall submit to the department a
 566-49 quarterly report that clearly identifies how the provider or
 566-50 program used the funds during the preceding fiscal quarter.

566-51 (b) The executive commissioner [board] by rule shall
 566-52 prescribe the form of the report, the specific information that
 566-53 must be included in the report, and the deadlines for submitting the
 566-54 report.

566-55 (c) The department may not provide prospective payment
 566-56 funds to a local mental health [~~or mental retardation~~] authority
 566-57 that fails to submit the quarterly reports required by this
 566-58 section.

566-59 (d) In this section, "prospective payment funds" means
 566-60 money the department prospectively provides to a local mental
 566-61 health [~~or mental retardation~~] authority to provide community
 566-62 services to certain persons with [~~mental retardation or~~] mental
 566-63 illness.

566-64 Sec. 534.071. ADVISORY COMMITTEE. A local mental health
 566-65 [~~or mental retardation~~] authority may appoint a committee to advise

567-1 its governing board on a matter relating to the oversight and
 567-2 provision of mental health [and mental retardation] services. The
 567-3 appointment of a committee does not relieve the authority's
 567-4 governing board of a responsibility prescribed by this subtitle.

567-5 SUBCHAPTER B-1. COMMUNITY-BASED INTELLECTUAL DISABILITY SERVICES

567-6 Sec. 534.101. DEFINITIONS. In this subchapter:

567-7 (1) "Commissioner" means the commissioner of aging and
 567-8 disability services.

567-9 (2) "Department" means the Department of Aging and
 567-10 Disability Services.

567-11 (3) "Department facility" means a state supported
 567-12 living center, including the ICF-IID component of the Rio Grande
 567-13 State Center.

567-14 Sec. 534.102. RULES AND STANDARDS. (a) The executive
 567-15 commissioner shall adopt rules, including standards, the executive
 567-16 commissioner considers necessary and appropriate to ensure the
 567-17 adequate provision of community-based intellectual disability
 567-18 services through a local intellectual and developmental disability
 567-19 authority under this subchapter.

567-20 (b) The department shall send a copy of the rules to each
 567-21 local intellectual and developmental disability authority or other
 567-22 provider receiving contract funds as a local intellectual and
 567-23 developmental disability authority or designated provider.

567-24 Sec. 534.103. REQUIRED COMMUNITY-BASED INTELLECTUAL
 567-25 DISABILITY SERVICES. (a) The department shall ensure that, at a
 567-26 minimum, the following services are available in each service area:

567-27 (1) community-based assessments, including diagnosis
 567-28 and evaluation services;

567-29 (2) respite care; and

567-30 (3) case management services.

567-31 (b) The department shall arrange for appropriate
 567-32 community-based services, including the assignment of a case
 567-33 manager, to be available in each service area for each person
 567-34 discharged from a department facility who is in need of care.

567-35 (c) To the extent that resources are available, the
 567-36 department shall ensure that the services listed in this section
 567-37 are available for children, including adolescents, as well as
 567-38 adults, in each service area.

567-39 Sec. 534.104. JOINT DISCHARGE PLANNING. (a) The executive
 567-40 commissioner shall adopt, and the department shall enforce, rules
 567-41 that require continuity of services and planning for client care
 567-42 between department facilities and local intellectual and
 567-43 developmental disability authorities.

567-44 (b) At a minimum, the rules must require joint discharge
 567-45 planning between a department facility and a local intellectual and
 567-46 developmental disability authority before a facility discharges a
 567-47 client or places the client on an extended furlough with an intent
 567-48 to discharge.

567-49 (c) The local intellectual and developmental disability
 567-50 authority shall plan with the department facility and determine the
 567-51 appropriate community services for the client.

567-52 (d) The local intellectual and developmental disability
 567-53 authority shall arrange for the provision of the services if
 567-54 department funds are to be used and may subcontract with or make a
 567-55 referral to a local agency or entity.

567-56 Sec. 534.105. DESIGNATION OF PROVIDER. (a) The department
 567-57 shall identify and contract with a local intellectual and
 567-58 developmental disability authority for each service area to ensure
 567-59 that services are provided to client populations determined by the
 567-60 department. A local intellectual and developmental disability
 567-61 authority shall ensure that services to address the needs of
 567-62 priority populations are provided as required by the department and
 567-63 shall comply with the rules and standards adopted under Section
 567-64 **534.102.**

567-65 (b) The department may contract with a local agency or a
 567-66 private provider or organization to act as a designated provider of
 567-67 a service if the department:

567-68 (1) cannot negotiate a contract with a local
 567-69 intellectual and developmental disability authority to ensure that

568-1 a specific required service for priority populations is available
 568-2 in that service area; or

568-3 (2) determines that a local intellectual and
 568-4 developmental disability authority does not have the capacity to
 568-5 ensure the availability of that service.

568-6 Sec. 534.106. CONTRACTS FOR CERTAIN COMMUNITY SERVICES.

568-7 (a) The executive commissioner shall design a competitive
 568-8 procurement or similar system that an intellectual and
 568-9 developmental disability authority shall use in awarding an initial
 568-10 contract for the provision of services at the community level for
 568-11 persons with an intellectual disability, including residential
 568-12 services, if the contract involves the use of state money or money
 568-13 for which the state has oversight responsibility.

568-14 (b) The system must require that each local intellectual and
 568-15 developmental disability authority:

568-16 (1) ensure public participation in the authority's
 568-17 decisions regarding whether to provide or to contract for a
 568-18 service;

568-19 (2) make a reasonable effort to give notice of the
 568-20 intent to contract for services to each potential private provider
 568-21 in the local service area of the authority; and

568-22 (3) review each submitted proposal and award the
 568-23 contract to the applicant that the authority determines has made
 568-24 the lowest and best bid to provide the needed services.

568-25 (c) Each local intellectual and developmental disability
 568-26 authority, in determining the lowest and best bid, shall consider
 568-27 any relevant information included in the authority's request for
 568-28 bid proposals, including:

568-29 (1) price;

568-30 (2) the ability of the bidder to perform the contract
 568-31 and to provide the required services;

568-32 (3) whether the bidder can perform the contract or
 568-33 provide the services within the period required, without delay or
 568-34 interference;

568-35 (4) the bidder's history of compliance with the laws
 568-36 relating to the bidder's business operations and the affected
 568-37 services and whether the bidder is currently in compliance;

568-38 (5) whether the bidder's financial resources are
 568-39 sufficient to perform the contract and to provide the services;

568-40 (6) whether necessary or desirable support and
 568-41 ancillary services are available to the bidder;

568-42 (7) the character, responsibility, integrity,
 568-43 reputation, and experience of the bidder;

568-44 (8) the quality of the facilities and equipment
 568-45 available to or proposed by the bidder;

568-46 (9) the ability of the bidder to provide continuity of
 568-47 services; and

568-48 (10) the ability of the bidder to meet all applicable
 568-49 written departmental policies, principles, and regulations.

568-50 Sec. 534.107. COORDINATION OF ACTIVITIES. A local
 568-51 intellectual and developmental disability authority shall
 568-52 coordinate its activities with the activities of other appropriate
 568-53 agencies that provide care and treatment for persons with drug or
 568-54 alcohol problems.

568-55 Sec. 534.1075 [534.057]. RESPITE CARE. (a) The executive
 568-56 commissioner [board] shall adopt rules relating to the provision of
 568-57 respite care and shall develop a system to reimburse providers of
 568-58 in-home respite care.

568-59 (b) The rules must:

568-60 (1) encourage the use of existing local providers;
 568-61 (2) encourage family participation in the choice of a
 568-62 qualified provider;

568-63 (3) establish procedures necessary to administer this
 568-64 section, including procedures for:

568-65 (A) determining the amount and type of in-home
 568-66 respite care to be authorized;

568-67 (B) reimbursing providers;

568-68 (C) handling appeals from providers;

568-69 (D) handling complaints from recipients of

569-1 in-home respite care;

569-2 (E) providing emergency backup for in-home
569-3 respite care providers; and

569-4 (F) advertising for, selecting, and training
569-5 in-home respite care providers; and

569-6 (4) specify the conditions and provisions under which
569-7 a provider's participation in the program can be canceled.

569-8 (c) The executive commissioner [board] shall establish
569-9 service and performance standards for department facilities and
569-10 designated providers to use in operating the in-home respite care
569-11 program. The executive commissioner [board] shall establish the
569-12 standards from information obtained from the families of [patients
569-13 and] clients receiving in-home respite care and from providers of
569-14 in-home respite care. The executive commissioner [board] may
569-15 obtain the information at a public hearing or from an advisory
569-16 group.

569-17 (d) The service and performance standards established by
569-18 the executive commissioner [board] under Subsection (c) must:

569-19 (1) prescribe minimum personnel qualifications the
569-20 executive commissioner [board] determines are necessary to protect
569-21 health and safety;

569-22 (2) establish levels of personnel qualifications that
569-23 are dependent on the needs of the [patient or] client; and

569-24 (3) permit a health professional with a valid Texas
569-25 practitioner's license to provide care that is consistent with the
569-26 professional's training and license without requiring additional
569-27 training unless the executive commissioner [board] determines that
569-28 additional training is necessary.

569-29 Sec. 534.108. STANDARDS OF CARE. (a) The executive
569-30 commissioner shall develop standards of care for the services
569-31 provided by a local intellectual and developmental disability
569-32 authority and its subcontractors under this subchapter.

569-33 (b) The standards must be designed to ensure that the
569-34 quality of community-based intellectual disability services is
569-35 consistent with the quality of care available in department
569-36 facilities.

569-37 (c) In conjunction with local intellectual and
569-38 developmental disability authorities, the executive commissioner
569-39 shall review the standards biennially to determine if each standard
569-40 is necessary to ensure the quality of care.

569-41 Sec. 534.109. CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES.
569-42 (a) The department shall evaluate a local intellectual and
569-43 developmental disability authority's compliance with its contract
569-44 to ensure the provision of specific services to priority
569-45 populations.

569-46 (b) If, by a date set by the commissioner, a local
569-47 intellectual and developmental disability authority fails to
569-48 comply with its contract to ensure the provision of services to the
569-49 satisfaction of the commissioner, the department may impose a
569-50 sanction as provided by the applicable contract rule until the
569-51 dispute is resolved. The department shall notify the authority in
569-52 writing of the department's decision to impose a sanction.

569-53 (c) A local intellectual and developmental disability
569-54 authority may appeal the department's decision to impose a sanction
569-55 on the authority. The executive commissioner by rule shall
569-56 prescribe the appeal procedure.

569-57 (d) The filing of a notice of appeal stays the imposition of
569-58 the department's decision to impose a sanction except when an act or
569-59 omission by a local intellectual and developmental disability
569-60 authority is endangering or may endanger the life, health, welfare,
569-61 or safety of a person.

569-62 (e) While an appeal under this section is pending, the
569-63 department may limit general revenue allocations to a local
569-64 intellectual and developmental disability authority to monthly
569-65 distributions.

569-66 Sec. 534.110. PROGRAM AND SERVICE MONITORING AND REVIEW OF
569-67 LOCAL AUTHORITIES. (a) The department shall develop mechanisms
569-68 for monitoring the services provided by a local intellectual and
569-69 developmental disability authority.

570-1 (b) The department shall review the program quality and
570-2 program performance results of a local intellectual and
570-3 developmental disability authority in accordance with a risk
570-4 assessment and evaluation system appropriate to the authority's
570-5 contract requirements. The department may determine the scope of
570-6 the review.

570-7 (c) A contract between a local intellectual and
570-8 developmental disability authority and the department must
570-9 authorize the department to have unrestricted access to all
570-10 facilities, records, data, and other information under the control
570-11 of the authority as necessary to enable the department to audit,
570-12 monitor, and review the financial and program activities and
570-13 services associated with department funds.

570-14 Sec. 534.111. COORDINATED PROGRAM AUDITS OF LOCAL
570-15 AUTHORITIES. (a) The executive commissioner shall coordinate with
570-16 each agency or department of the state that contracts with a local
570-17 intellectual and developmental disability authority to prescribe
570-18 procedures for a coordinated program audit of the authority. The
570-19 procedures must be:

570-20 (1) consistent with the requirements for the receipt
570-21 of federal funding by the authority; and
570-22 (2) based on risk assessment.

570-23 (b) A program audit must evaluate:

570-24 (1) the extent to which a local intellectual and
570-25 developmental disability authority is achieving the results or
570-26 benefits established by an agency or department of the state or by
570-27 the legislature;

570-28 (2) the effectiveness of the authority's organization,
570-29 program, activities, or functions; and
570-30 (3) the authority's compliance with law.

570-31 (c) A program audit of a local intellectual and
570-32 developmental disability authority must be performed in accordance
570-33 with the procedures prescribed under this section.

570-34 (d) The department may not implement a procedure for a
570-35 program audit under this section without the approval of the
570-36 executive commissioner.

570-37 (e) This section does not prohibit an agency, department, or
570-38 other entity providing funding to a local intellectual and
570-39 developmental disability authority from investigating a complaint
570-40 against the authority or performing additional contract monitoring
570-41 of the authority.

570-42 Sec. 534.112. FINANCIAL AUDITS OF LOCAL AUTHORITIES. (a)
570-43 The executive commissioner shall prescribe procedures for a
570-44 financial audit of a local intellectual and developmental
570-45 disability authority. The procedures must be consistent with
570-46 requirements for the receipt of federal funding by the authority.

570-47 (b) The executive commissioner shall develop the procedures
570-48 with the assistance of each agency or department of the state that
570-49 contracts with a local intellectual and developmental disability
570-50 authority. The executive commissioner shall incorporate each
570-51 agency's or department's financial or compliance requirements for
570-52 an authority into a single audit that meets the requirements of
570-53 Section 534.121.

570-54 (c) Before prescribing or amending a procedure under this
570-55 section, the executive commissioner must set a deadline for
570-56 agencies and departments of the state that contract with local
570-57 intellectual and developmental disability authorities to submit
570-58 proposals relating to the procedure.

570-59 (d) An agency or department of the state that contracts with
570-60 a local intellectual and developmental disability authority must
570-61 comply with a procedure developed under this section.

570-62 (e) The department may not implement a procedure under this
570-63 section without the approval of the executive commissioner.

570-64 Sec. 534.113. ADDITIONAL FINANCIAL AUDIT ACTIVITY. (a)
570-65 The executive commissioner shall develop protocols for an agency or
570-66 department of the state to conduct additional financial audit
570-67 activities of a local intellectual and developmental disability
570-68 authority.

570-69 (b) An agency or department of the state may not conduct

571-1 additional financial audit activities relating to a local
 571-2 intellectual and developmental disability authority without the
 571-3 approval of the executive commissioner.

571-4 (c) This section, and a protocol developed under this
 571-5 section, do not apply to an audit conducted under Chapter 321,
 571-6 Government Code.

571-7 Sec. 534.114. PROGRAM AND SERVICE MONITORING AND REVIEW OF
 571-8 CERTAIN COMMUNITY SERVICES. (a) The local intellectual and
 571-9 developmental disability authority shall monitor the services of a
 571-10 provider who contracts with the authority to provide services to
 571-11 persons with an intellectual disability to ensure that the provider
 571-12 is delivering the services in a manner consistent with the
 571-13 provider's contract.

571-14 (b) Each provider contract involving the use of state funds
 571-15 or funds for which the state has oversight responsibility must
 571-16 authorize the local intellectual and developmental disability
 571-17 authority or the authority's designee and the department or the
 571-18 department's designee to have unrestricted access to all
 571-19 facilities, records, data, and other information under the control
 571-20 of the provider as necessary to enable the department to audit,
 571-21 monitor, and review the financial and program activities and
 571-22 services associated with the contract.

571-23 (c) The department may withdraw funding from a local
 571-24 intellectual and developmental disability authority that fails to
 571-25 cancel a contract with a provider involving the use of state funds
 571-26 or funds for which the state has oversight responsibility if:

571-27 (1) the provider is not fulfilling its contractual
 571-28 obligations; and

571-29 (2) the authority has not taken appropriate action to
 571-30 remedy the problem in accordance with department rules.

571-31 (d) The executive commissioner by rule shall prescribe
 571-32 procedures a local intellectual and developmental disability
 571-33 authority must follow in remedying a problem with a provider.

571-34 Sec. 534.115. PEER REVIEW ORGANIZATION. The department
 571-35 shall assist a local intellectual and developmental disability
 571-36 authority in developing a peer review organization to provide
 571-37 self-assessment of programs and to supplement department reviews
 571-38 under Section 534.110.

571-39 Sec. 534.116. CONTRACT RENEWAL. The executive commissioner
 571-40 may refuse to renew a contract with a local intellectual and
 571-41 developmental disability authority and may select other agencies,
 571-42 entities, or organizations to be the local intellectual and
 571-43 developmental disability authority if the department's evaluation
 571-44 of the authority's performance under Section 534.109 indicates that
 571-45 the authority cannot ensure the availability of the specific
 571-46 services to priority populations required by the department and
 571-47 this subtitle.

571-48 Sec. 534.117. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY
 571-49 SERVICES. (a) A local intellectual and developmental disability
 571-50 authority shall review a contract scheduled for renewal that:

571-51 (1) is between the authority and a private provider;
 571-52 (2) is for the provision of intellectual disability
 571-53 services at the community level, including residential services;
 571-54 and

571-55 (3) involves the use of state funds or funds for which
 571-56 the state has oversight responsibility.

571-57 (b) The local intellectual and developmental disability
 571-58 authority may renew the contract only if the contract meets the
 571-59 criteria provided by Section 533A.016.

571-60 (c) The local intellectual and developmental disability
 571-61 authority and private provider shall negotiate a contract renewal
 571-62 at arm's length and in good faith.

571-63 (d) This section applies to a contract renewal regardless of
 571-64 the date on which the original contract was initially executed.

571-65 Sec. 534.118. LOCAL MATCH REQUIREMENT. (a) The department
 571-66 shall include in a contract with a local intellectual and
 571-67 developmental disability authority a requirement that some or all
 571-68 of the state funds the authority receives be matched by local
 571-69 support in an amount or proportion jointly agreed to by the

572-1 department and the authority's board of trustees and based on the
 572-2 authority's financial capability and its overall commitment to
 572-3 other intellectual disability programs, as appropriate.

572-4 (b) Client fee income, third-party insurance income,
 572-5 services and facilities contributed by the local intellectual and
 572-6 developmental disability authority, contributions by a county or
 572-7 municipality, and other locally generated contributions, including
 572-8 local tax funds, may be counted when calculating the local support
 572-9 for a local intellectual and developmental disability authority.
 572-10 The department may disallow or reduce the value of services claimed
 572-11 as support.

572-12 Sec. 534.119. FEE COLLECTION POLICY. The executive
 572-13 commissioner shall establish a uniform fee collection policy for
 572-14 all local intellectual and developmental disability authorities
 572-15 that is equitable, provides for collections, and maximizes
 572-16 contributions to local revenue.

572-17 Sec. 534.120. NOTICE OF DENIAL, REDUCTION, OR TERMINATION
 572-18 OF SERVICES. The executive commissioner by rule, in cooperation
 572-19 with local intellectual and developmental disability authorities,
 572-20 consumers, consumer advocates, and service providers, shall
 572-21 establish a uniform procedure that each local intellectual and
 572-22 developmental disability authority shall use to notify consumers in
 572-23 writing of the denial, involuntary reduction, or termination of
 572-24 services and of the right to appeal those decisions.

572-25 Sec. 534.121. AUDITS. (a) As a condition to receiving
 572-26 funds under this subtitle, a local intellectual and developmental
 572-27 disability authority other than a state facility designated as an
 572-28 authority must annually submit to the department a financial and
 572-29 compliance audit prepared by a certified public accountant or
 572-30 public accountant licensed by the Texas State Board of Public
 572-31 Accountancy. To ensure the highest degree of independence and
 572-32 quality, the local intellectual and developmental disability
 572-33 authority shall use an invitation-for-proposal process as
 572-34 prescribed by the executive commissioner to select the auditor.

572-35 (a-1) The audit required under Subsection (a) may be
 572-36 published electronically on the local intellectual and
 572-37 developmental disability authority's Internet website. An
 572-38 authority that electronically publishes an audit under this
 572-39 subsection shall notify the department that the audit is available
 572-40 on the authority's Internet website on or before the date the audit
 572-41 is due.

572-42 (b) The audit must meet the minimum requirements as shall
 572-43 be, and be in the form and in the number of copies as may be,
 572-44 prescribed by the executive commissioner, subject to review and
 572-45 comment by the state auditor.

572-46 (c) The local intellectual and developmental disability
 572-47 authority shall file the required number of copies of the audit
 572-48 report with the department by the date prescribed by the executive
 572-49 commissioner. From the copies filed with the department, copies of
 572-50 the report shall be submitted to the governor and Legislative
 572-51 Budget Board.

572-52 (d) The local intellectual and developmental disability
 572-53 authority shall either approve or refuse to approve the audit
 572-54 report. If the authority refuses to approve the report, the
 572-55 authority shall include with the department's copies a statement
 572-56 detailing the reasons for refusal.

572-57 (e) The commissioner and state auditor have access to all
 572-58 vouchers, receipts, journals, or other records the commissioner or
 572-59 auditor considers necessary to review and analyze the audit report.

572-60 (f) The department shall annually submit to the governor,
 572-61 Legislative Budget Board, and Legislative Audit Committee a summary
 572-62 of the significant findings identified during the department's
 572-63 reviews of fiscal audit activities.

572-64 (g) The report required under Subsection (f) may be
 572-65 published electronically on the department's Internet website. The
 572-66 department shall notify each entity entitled to receive a copy of
 572-67 the report that the report is available on the department's
 572-68 Internet website on or before the date the report is due.

572-69 Sec. 534.122. CRITERIA FOR PROVIDING FUNDS FOR START-UP

573-1 COSTS. (a) The executive commissioner by rule shall develop
 573-2 criteria to regulate the provision of payment to a private provider
 573-3 for start-up costs associated with the development of residential
 573-4 and other community services for persons with an intellectual
 573-5 disability.

573-6 (b) The criteria shall provide that start-up funds be
 573-7 awarded only as a last resort and shall include provisions relating
 573-8 to:

573-9 (1) the purposes for which start-up funds may be used;
 573-10 (2) the ownership of capital property and equipment
 573-11 obtained by the use of start-up funds; and
 573-12 (3) the obligation of the private provider to repay
 573-13 the start-up funds awarded by the department by direct repayment or
 573-14 by providing services for a period agreed to by the parties.

573-15 Sec. 534.123. USE OF PROSPECTIVE PAYMENT FUNDS. (a) Each
 573-16 local intellectual and developmental disability authority that
 573-17 receives prospective payment funds shall submit to the department a
 573-18 quarterly report that clearly identifies how the provider or
 573-19 program used the funds during the preceding fiscal quarter.

573-20 (b) The executive commissioner by rule shall prescribe the
 573-21 form of the report, the specific information that must be included
 573-22 in the report, and the deadlines for submitting the report.

573-23 (c) The department may not provide prospective payment
 573-24 funds to a local intellectual and developmental disability
 573-25 authority that fails to submit the quarterly reports required by
 573-26 this section.

573-27 (d) In this section, "prospective payment funds" means
 573-28 money the department prospectively provides to a local intellectual
 573-29 and developmental disability authority to provide community
 573-30 services to certain persons with an intellectual disability.

573-31 Sec. 534.124. ADVISORY COMMITTEE. A local intellectual and
 573-32 developmental disability authority may appoint a committee to
 573-33 advise its governing board on a matter relating to the oversight and
 573-34 provision of intellectual disability services. The appointment of
 573-35 a committee does not relieve the authority's governing board of a
 573-36 responsibility prescribed by this subtitle.

SUBCHAPTER C. HEALTH MAINTENANCE ORGANIZATIONS

573-38 Sec. 534.151 [534.101]. HEALTH MAINTENANCE ORGANIZATION
 573-39 CERTIFICATE OF AUTHORITY. (a) One or more community centers may
 573-40 create or operate a nonprofit corporation pursuant to the laws of
 573-41 this state for the purpose of accepting capitated or other at-risk
 573-42 payment arrangements for the provision of services designated in a
 573-43 plan approved by each appropriate [the] department under Subchapter
 573-44 A.

573-45 (b) Before a nonprofit corporation organized or operating
 573-46 under Subsection (a) accepts or enters into any capitated or other
 573-47 at-risk payment arrangement for services designated in a plan
 573-48 approved by each appropriate [the] department under Subchapter A,
 573-49 the nonprofit corporation must obtain the appropriate certificate
 573-50 of authority from the Texas Department of Insurance to operate as a
 573-51 health maintenance organization pursuant to Chapter 843, Insurance
 573-52 Code.

573-53 (c) Before submitting any bids, a nonprofit corporation
 573-54 operating under this subchapter shall disclose in an open meeting
 573-55 the services to be provided by the community center through any
 573-56 capitated or other at-risk payment arrangement by the nonprofit
 573-57 corporation. Notice of the meeting must be posted in accordance
 573-58 with Sections 551.041, 551.043, and 551.054, Government Code. Each
 573-59 appropriate [The] department shall verify that the services
 573-60 provided under any capitated or other at-risk payment arrangement
 573-61 are within the scope of services approved by each appropriate [the]
 573-62 department in each community center's plan required under
 573-63 Subchapter A.

573-64 (d) The board of the nonprofit corporation shall:

573-65 (1) provide for public notice of the nonprofit
 573-66 corporation's intent to submit a bid to provide or arrange services
 573-67 through a capitated or other at-risk payment arrangement through
 573-68 placement as a board agenda item on the next regularly scheduled
 573-69 board meeting that allows at least 15 days' public review of the

574-1 plan; and

574-2 (2) provide an opportunity for public comment on the
574-3 services to be provided through such arrangements and on the
574-4 consideration of local input into the plan.

574-5 (e) The nonprofit corporation shall provide:

574-6 (1) public notice before verification and disclosure
574-7 of services to be provided by the community center through any
574-8 capitated or other at-risk payment arrangements by the nonprofit
574-9 corporation;

574-10 (2) an opportunity for public comment on the community
574-11 center services within the capitated or other at-risk payment
574-12 arrangements offered by the nonprofit corporation;

574-13 (3) published summaries of all relevant documentation
574-14 concerning community center services arranged through the
574-15 nonprofit corporation, including summaries of any similar
574-16 contracts the nonprofit corporation has entered into; and

574-17 (4) public access and review of all relevant
574-18 documentation.

574-19 (f) A nonprofit corporation operating under this
574-20 subchapter:

574-21 (1) is subject to the requirements of Chapters 551 and
574-22 552, Government Code;

574-23 (2) shall solicit public input on the operations of
574-24 the nonprofit corporation and allow public access to information on
574-25 the operations, including services, administration, governance,
574-26 revenues, and expenses, on request unless disclosure is expressly
574-27 prohibited by law or the information is confidential under law; and

574-28 (3) shall publish an annual report detailing the
574-29 services, administration, governance, revenues, and expenses of
574-30 the nonprofit corporation, including the disposition of any excess
574-31 revenues.

574-32 Sec. 534.152 [~~534.102~~]. LAWS AND RULES. A nonprofit
574-33 corporation created or operated under this subchapter that obtains
574-34 and holds a valid certificate of authority as a health maintenance
574-35 organization may exercise the powers and authority and is subject
574-36 to the conditions and limitations provided by this subchapter,
574-37 Chapter 843, Insurance Code, the Texas Nonprofit Corporation Law as
574-38 described by Section 1.008(d), Business Organizations Code
574-39 [~~Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's~~
574-40 ~~Texas Civil Statutes)~~], and rules of the Texas Department of
574-41 Insurance.

574-42 Sec. 534.153 [~~534.103~~]. APPLICATION OF LAWS AND RULES. A
574-43 health maintenance organization created and operating under this
574-44 subchapter is governed as, and is subject to the same laws and rules
574-45 of the Texas Department of Insurance as, any other health
574-46 maintenance organization of the same type. The commissioner of
574-47 insurance may adopt rules as necessary to accept funding sources
574-48 other than the sources specified by Section 843.405, Insurance
574-49 Code, from a nonprofit health maintenance organization created and
574-50 operating under this subchapter, to meet the minimum surplus
574-51 requirements of that section.

574-52 Sec. 534.154 [~~534.104~~]. APPLICABILITY [APPLICATION] OF
574-53 SPECIFIC LAWS. (a) A nonprofit health maintenance organization
574-54 created under Section 534.151 [~~534.101~~] is a health care provider
574-55 that is a nonprofit health maintenance organization created and
574-56 operated by a community center for purposes of Section 84.007(e),
574-57 Civil Practice and Remedies Code. The nonprofit health maintenance
574-58 organization is not a governmental unit or a unit of local
574-59 government, for purposes of Chapters 101 and 102, Civil Practice
574-60 and Remedies Code, respectively, or a local government for purposes
574-61 of Chapter 791, Government Code.

574-62 (b) Nothing in this subchapter precludes one or more
574-63 community centers from forming a nonprofit corporation under
574-64 Chapter 162, Occupations Code, to provide services on a
574-65 risk-sharing or capitated basis as permitted under Chapter 844,
574-66 Insurance Code.

574-67 Sec. 534.155 [~~534.105~~]. CONSIDERATION OF BIDS. Each
574-68 appropriate [The] department shall give equal consideration to bids
574-69 submitted by any entity, whether it be public, for-profit, or

575-1 nonprofit, if the department accepts bids to provide services
 575-2 through a capitated or at-risk payment arrangement and if the
 575-3 entities meet all other criteria as required by the department.

575-4 Sec. 534.156 [534.106]. CONDITIONS FOR CERTAIN CONTRACTS.

575-5 A contract between each appropriate [~~the~~] department and a health
 575-6 maintenance organization formed by one or more community centers
 575-7 must provide that the health maintenance organization may not form
 575-8 a for-profit entity unless the organization transfers all of the
 575-9 organization's assets to the control of the boards of trustees of
 575-10 the community centers that formed the organization.

575-11 SECTION 3.1337. Chapter 551, Health and Safety Code, is
 575-12 amended to read as follows:

575-13 CHAPTER 551. GENERAL PROVISIONS

575-14 SUBCHAPTER A. GENERAL POWERS AND DUTIES RELATING TO STATE
 575-15 FACILITIES

575-16 Sec. 551.001. DEFINITIONS. In this subtitle:

575-17 (1) "Commission" means the Health and Human Services
 575-18 Commission. [~~Board~~ means the Texas Board of Mental Health and
 575-19 Mental Retardation.]

575-20 (2) "Commissioner" means:

575-21 (A) the commissioner of state health services in
 575-22 relation to mental health services; and
 575-23 (B) the commissioner of aging and disability
 575-24 services in relation to intellectual disability services [mental
 575-25 health and mental retardation].

575-26 (3) "Department" means:

575-27 (A) the [~~Texas~~] Department of State Health
 575-28 Services in relation to mental health services; and
 575-29 (B) the Department of Aging and Disability
 575-30 Services in relation to intellectual disability services [Mental
 575-31 Health and Mental Retardation].

575-32 (4) "Department facility" means:

575-33 (A) a facility [~~under the department's~~
 575-34 ~~jurisdiction~~] for persons with mental illness under the
 575-35 jurisdiction of the Department of State Health Services; and
 575-36 (B) a facility for persons with an intellectual
 575-37 disability under the jurisdiction of the Department of Aging and
 575-38 Disability Services [or mental retardation].

575-39 (5) "Executive commissioner" means the executive
 575-40 commissioner of the Health and Human Services Commission.

575-41 Sec. 551.002. PROHIBITION OF INTEREST. The [~~A member of the~~
 575-42 ~~board, the~~] superintendent or director of a department facility[~~or~~]
 575-43 or a person connected with that [~~a~~] department facility may not:

575-44 (1) sell or have a concern in the sale of merchandise,
 575-45 supplies, or other items to a department facility; or
 575-46 (2) have an interest in a contract with a department
 575-47 facility.

575-48 Sec. 551.003. DEPOSIT OF PATIENT OR CLIENT FUNDS. (a) The
 575-49 superintendent or director of a department facility is the
 575-50 custodian of the personal funds that belong to a facility patient or
 575-51 client and that are on deposit with the institution.

575-52 (b) The superintendent or director may deposit or invest
 575-53 those funds in:

575-54 (1) a bank in this state;
 575-55 (2) federal bonds or obligations; or
 575-56 (3) bonds or obligations for which the faith and
 575-57 credit of the United States are pledged.

575-58 (c) The superintendent or director may combine the funds of
 575-59 facility patients or clients only to deposit or invest the funds.

575-60 (d) The person performing the function of [~~facility's~~]
 575-61 business manager at that facility shall maintain records of the
 575-62 amount of funds on deposit for each facility patient or client.

575-63 Sec. 551.004. BENEFIT FUND. (a) The superintendent or
 575-64 director may deposit the interest or increment accruing from funds
 575-65 deposited or invested under Section 551.003 into a fund to be known
 575-66 as the benefit fund. The superintendent or director is the trustee
 575-67 of the fund.

575-68 (b) The superintendent or director may spend money from the
 575-69 benefit fund for:

(1) educating or entertaining the patients or clients;
(2) barber or cosmetology services for the patients or
clients; and
(3) the actual expense incurred in maintaining the
fund.

Sec. 551.005. DISBURSEMENT OF PATIENT OR CLIENT FUNDS. Funds in the benefit fund or belonging to a facility patient or client may be disbursed only on the signatures of both the facility's superintendent or director and the person performing the function of business manager at that facility.

Sec. 551.006. FACILITY STANDARDS [BY DEPARTMENT OF HEALTH].
(a) The executive commissioner [~~Texas Department of Health~~] by rule shall prescribe standards for department facilities relating to building safety and the number and quality of staff. The staff standards must provide that adequate staff exist to ensure a continuous plan of adequate medical, psychiatric, nursing, and social work services for patients and clients of a department facility.

(b) Each department [The Texas Department of Health] shall approve [department] facilities of that department that meet applicable standards and, when requested, shall certify the approval to the Centers for Medicare and Medicaid Services [Texas Department of Human Services or the United States Health Care Financing Administration].

Sec. 551.007. BUILDING AND IMPROVEMENT PROGRAM. (a) The executive commissioner, in coordination with the appropriate department, shall design, construct, equip, furnish, and maintain buildings and improvements authorized by law at department facilities.

(b) The executive commissioner [department] may employ architects and engineers to prepare plans and specifications and to supervise construction of buildings and improvements. The executive commissioner [department] shall employ professional, technical, and clerical personnel to carry out the design and construction functions prescribed by this section, subject to the General Appropriations Act and other applicable law.

[(c) The board shall adopt rules in accordance with this section and other applicable law relating to awarding contracts for the construction of buildings and improvements. The department shall award contracts for the construction of buildings and improvements to the qualified bidder who makes the lowest and best bid.

[(d) The department may not award a construction contract for an amount that exceeds the amount of funds available for the project.]

[(e) The department shall require each successful bidder to give a bond payable to the state in an amount equal to the amount of the bid and conditioned on the faithful performance of the contract.]

[f) The department may reject any or all bids.

[g) The department may waive, suspend, or modify a provision of this section that might conflict with a federal statute, rule, regulation, or administrative procedure if the waiver, suspension, or modification is essential to the receipt of federal funds for a project. If a project is financed entirely from federal funds, a standard required by a federal statute, rule, or regulation controls.

[Sec. 551.008. TRANSFER OF FACILITIES. (a) The department may transfer the South Campus of the Vernon State Hospital to the Texas Youth Commission contingent upon the agreement of the governing board of the department and the executive commissioner of the Texas Youth Commission.]

[(b) In this section, "transfer" means to convey title to, lease, or otherwise convey the beneficial use of facilities, equipment, and land appurtenant to the facilities.]

Sec. 551.009. HILL COUNTRY LOCAL MENTAL HEALTH AUTHORITY CRISIS STABILIZATION UNIT. (a) In this section, "department" means the Department of State Health Services.

(a-1) The department [Department of State Health Services]

577-1 shall contract with the local mental health authority serving the
 577-2 Hill Country area, including Kerr County, to operate a crisis
 577-3 stabilization unit on the grounds of the Kerrville State Hospital
 577-4 as provided by this section. The unit must be a 16-bed facility
 577-5 separate from the buildings used by the Kerrville State Hospital.

577-6 (b) The department shall include provisions in the contract
 577-7 requiring the local mental health authority to ensure that the
 577-8 crisis stabilization unit provides short-term residential
 577-9 treatment, including medical and nursing services, designed to
 577-10 reduce a patient's acute symptoms of mental illness and prevent a
 577-11 patient's admission to an inpatient mental health facility.

577-12 (c) The local mental health authority shall contract with
 577-13 Kerrville State Hospital to provide food service, laundry service,
 577-14 and lawn care.

577-15 (d) The crisis stabilization unit may not be used to provide
 577-16 care to:

577-17 (1) children; or
 577-18 (2) adults committed to or court ordered to [sentenced
 577-19 to] a department [state mental] facility as provided by Chapter
 577-20 46C, Code of Criminal Procedure.

577-21 (e) The local mental health authority operating the crisis
 577-22 stabilization unit under contract shall use, for the purpose of
 577-23 operating the 16-bed unit, the money appropriated to the department
 577-24 for operating 16 beds in state hospitals that is allocated to the
 577-25 local mental health authority. The department shall ensure that
 577-26 the local mental health authority retains the remainder of the
 577-27 local authority's state hospital allocation that is not used for
 577-28 operating the 16-bed unit. The department may allocate additional
 577-29 funds appropriated to the department for state hospitals to the
 577-30 crisis stabilization unit.

577-31 (f) The department shall reduce the number of beds the
 577-32 department operates in the state hospital system by 16. The
 577-33 department, in collaboration with the local mental health
 577-34 authority, shall ensure that the 16 beds in the crisis
 577-35 stabilization unit are made available to other mental health
 577-36 authorities for use as designated by the department.

577-37 SUBCHAPTER B. PROVISIONS APPLICABLE TO FACILITY SUPERINTENDENT OR
 577-38 DIRECTOR [AND BUSINESS MANAGER]

577-39 Sec. 551.022. POWERS AND DUTIES OF SUPERINTENDENT. (a) The
 577-40 superintendent of a department facility for persons with mental
 577-41 illness is the administrative head of that facility.

577-42 (b) The superintendent has the custody of and
 577-43 responsibility to care for the buildings, grounds, furniture, and
 577-44 other property relating to the facility.

577-45 (c) The superintendent shall:
 577-46 (1) oversee the admission and discharge of patients
 577-47 [and clients];
 577-48 (2) keep a register of all patients [and clients]
 577-49 admitted to or discharged from the facility;

577-50 (3) supervise repairs and improvements to the
 577-51 facility;

577-52 (4) ensure that facility money is spent judiciously
 577-53 and economically;

577-54 (5) keep an accurate and detailed account of all money
 577-55 received and spent, stating the source of the money and to whom and
 577-56 the purpose for which the money is spent; and

577-57 (6) keep a full record of the facility's operations.

577-58 (d) In accordance with department [board] rules and
 577-59 departmental operating procedures, the superintendent may:

577-60 (1) establish policy to govern the facility that the
 577-61 superintendent considers will best promote the patients' [and
 577-62 clients'] interest and welfare;

577-63 (2) appoint subordinate officers, teachers, and other
 577-64 employees and set their salaries, in the absence of other law; and

577-65 (3) remove an officer, teacher, or employee for good
 577-66 cause.

577-67 (e) This section does not apply to a state supported living
 577-68 center or the director of a state supported living center.

577-69 Sec. 551.0225. POWERS AND DUTIES OF STATE SUPPORTED LIVING

578-1 CENTER DIRECTOR. (a) The director of a state supported living
 578-2 center is the administrative head of the center.

578-3 (b) The director of a state supported living center has the
 578-4 custody of and responsibility to care for the buildings, grounds,
 578-5 furniture, and other property relating to the center.

578-6 (c) The director of a state supported living center shall:

578-7 (1) oversee the admission and discharge of residents
 578-8 and clients;

578-9 (2) keep a register of all residents and clients
 578-10 admitted to or discharged from the center;

578-11 (3) ensure that the civil rights of residents and
 578-12 clients of the center are protected;

578-13 (4) ensure the health, safety, and general welfare of
 578-14 residents and clients of the center;

578-15 (5) supervise repairs and improvements to the center;

578-16 (6) ensure that center money is spent judiciously and
 578-17 economically;

578-18 (7) keep an accurate and detailed account of all money
 578-19 received and spent, stating the source of the money and on whom and
 578-20 the purpose for which the money is spent;

578-21 (8) keep a full record of the center's operations;

578-22 (9) monitor the arrival and departure of individuals
 578-23 to and from the center as appropriate to ensure the safety of
 578-24 residents; and

578-25 (10) ensure that residents' family members and legally
 578-26 authorized representatives are notified of serious events that may
 578-27 indicate problems in the care or treatment of residents.

578-28 (d) In accordance with department rules and operating
 578-29 procedures, the director of a state supported living center may:

578-30 (1) establish policy to govern the center that the
 578-31 director considers will best promote the residents' interest and
 578-32 welfare;

578-33 (2) hire subordinate officers, teachers, and other
 578-34 employees and set their salaries, in the absence of other law; and

578-35 (3) dismiss a subordinate officer, teacher, or
 578-36 employee for good cause.

578-37 (e) The Department of Aging and Disability Services shall,
 578-38 with input from residents of a state supported living center, and
 578-39 the family members and legally authorized representatives of those
 578-40 residents, develop a policy that defines "serious event" for
 578-41 purposes of Subsection (c)(10).

578-42 Sec. 551.024. SUPERINTENDENT'S OR DIRECTOR'S DUTY TO ADMIT
 578-43 COMMISSIONER AND EXECUTIVE COMMISSIONER [BOARD MEMBERS]. (a) The
 578-44 superintendent or director shall admit into every part of the
 578-45 department facility the commissioner of that department and the
 578-46 executive commissioner [members of the board].

578-47 (b) The superintendent or director shall on request show any
 578-48 book, paper, or account relating to the department facility's
 578-49 business, management, discipline, or government to the
 578-50 commissioner of that department or the executive commissioner
 578-51 [board member].

578-52 (c) The superintendent or director shall give to the
 578-53 commissioner of that department or the executive commissioner [a
 578-54 board member] any requested copy, abstract, or report.

578-55 Sec. 551.025. DUTY TO REPORT MISSING PATIENT OR CLIENT. If
 578-56 a person receiving inpatient intellectual disability [mental
 578-57 retardation] services or court-ordered inpatient mental health
 578-58 services [in a department facility] leaves a department [the]
 578-59 facility without notifying the facility or without the facility's
 578-60 consent, the facility director or superintendent shall immediately
 578-61 report the person as a missing person to an appropriate law
 578-62 enforcement agency in the area in which the facility is located.

578-63 Sec. 551.026. PERSON PERFORMING BUSINESS MANAGER FUNCTION.
 578-64 (a) The person performing the function of business manager of a
 578-65 department facility is the chief disbursing officer of the
 578-66 department facility.

578-67 (b) The person performing the function of business manager
 578-68 of a department facility is directly responsible to the
 578-69 superintendent or director.

579-1 SUBCHAPTER C. POWERS AND DUTIES RELATING TO PATIENT OR CLIENT CARE
 579-2 Sec. 551.041. MEDICAL AND DENTAL TREATMENT. (a) Each [The]
 579-3 department shall provide or perform recognized medical and dental
 579-4 treatment or services to a person admitted or committed to that
 579-5 [~~the~~] department's care. Each [The] department may perform this
 579-6 duty through an authorized agent.

579-7 (b) Each [The] department may contract for the support,
 579-8 maintenance, care, or medical or dental treatment or service with a
 579-9 municipal, county, or state hospital, a private physician, a
 579-10 licensed nursing facility [~~home~~] or hospital, or a hospital
 579-11 district. The authority to contract provided by this subsection is
 579-12 in addition to other contractual authority granted to the
 579-13 department. A contract entered into under this subsection may not
 579-14 assign a lien accruing to this state.

579-15 (c) If a [~~the~~] department requests consent to perform
 579-16 medical or dental treatment or services from a person or the
 579-17 guardian of the person whose consent is considered necessary and a
 579-18 reply is not obtained immediately, or if there is no guardian or
 579-19 responsible relative of the person to whom a request can be made,
 579-20 the superintendent or director of a department facility shall
 579-21 order:

579-22 (1) medical treatment or services for the person on
 579-23 the advice and consent of three physicians licensed by the Texas
 579-24 Medical [State] Board [~~of Medical Examiners~~], at least one of whom
 579-25 is primarily engaged in the private practice of medicine; or

579-26 (2) dental treatment or services for the person on the
 579-27 advice and consent of a dentist licensed by the State Board of
 579-28 Dental Examiners and of two physicians licensed by the Texas
 579-29 Medical [State] Board [~~of Medical Examiners~~], at least one of whom
 579-30 is primarily engaged in the private practice of medicine.

579-31 (d) This section does not authorize the performance of an
 579-32 operation involving sexual sterilization or a frontal lobotomy.

579-33 Sec. 551.042. OUTPATIENT CLINICS. (a) If funds are
 579-34 available, the Department of State Health Services [~~department~~] may
 579-35 establish in locations the department considers necessary
 579-36 outpatient clinics to treat persons with mental illness.

579-37 (b) As necessary to establish and operate the clinics:

579-38 (1) [~~r~~] the department may:

579-39 (A) [~~(1)~~] acquire facilities;

579-40 (B) [~~(2)~~] hire personnel;

579-41 [~~(3) adopt rules,~~] and

579-42 (C) [~~(4)~~] contract with persons, corporations,
 579-43 and local, state, and federal agencies; and

579-44 (2) the executive commissioner may adopt rules.

579-45 [Sec. 551.043. MENTAL HYGIENE CLINIC SERVICE. (a) The
 579-46 department may establish a mental hygiene clinic service through
 579-47 its agents and facilities.]

579-48 [(b) The clinic service shall cooperate with the Texas
 579-49 Education Agency and local boards of education in studying the
 579-50 mental and physical health of children.]

579-51 [(1) with serious retardation in school progress or in
 579-52 mental development; or]

579-53 [(2) who have personality development problems.]

579-54 Sec. 551.044. OCCUPATIONAL THERAPY PROGRAMS. (a) Each
 579-55 [The] department may provide equipment, materials, and merchandise
 579-56 for occupational therapy programs at department facilities.

579-57 (b) The superintendent or director of a department facility
 579-58 may, in accordance with rules of that department [~~rules~~], contract
 579-59 for the provision of equipment, materials, and merchandise for
 579-60 occupational therapy programs. If the contractor retains the
 579-61 finished or semi-finished product, the contract shall provide for a
 579-62 fair and reasonable rental payment to the applicable department by
 579-63 the contractor for the use of facility premises or equipment. The
 579-64 rental payment is determined by the amount of time the facility
 579-65 premises or equipment is used in making the products.

579-66 (c) The finished products made in an occupational therapy
 579-67 program may be sold and the proceeds placed in the patients' or
 579-68 clients' benefit fund, the patients' or clients' trust fund, or a
 579-69 revolving fund for use by the patients or clients. A patient or

580-1 client may keep the finished product if the patient or client
 580-2 purchases the material for the product from the state.

580-3 (d) Each [The] department may accept donations of money or
 580-4 materials for use in occupational therapy programs and may use a
 580-5 donation in the manner requested by the donor if not contrary to the
 580-6 [board] policy of that department.

580-7 SECTION 3.1338. Sections 552.016(b), (c), and (d), Health
 580-8 and Safety Code, are amended to read as follows:

580-9 (b) The executive commissioner [department] may use the
 580-10 projected cost of providing inpatient services to establish by rule
 580-11 the maximum fee that may be charged to a payer.

580-12 (c) The executive commissioner by rule [department] may
 580-13 establish the maximum fee according to one or a combination of the
 580-14 following:

- 580-15 (1) a statewide per capita;
- 580-16 (2) an individual facility per capita; or
- 580-17 (3) the type of service provided.

580-18 (d) Notwithstanding Subsection (b), the executive
 580-19 commissioner by rule [department] may establish a fee in excess of
 580-20 the department's projected cost of providing inpatient services
 580-21 that may be charged to a payer:

580-22 (1) who is not an individual; and
 580-23 (2) whose method of determining the rate of
 580-24 reimbursement to a provider results in the excess.

580-25 SECTION 3.1339. Sections 552.017(a), (b), (d), and (e),
 580-26 Health and Safety Code, are amended to read as follows:

580-27 (a) The executive commissioner [department] by rule shall
 580-28 establish a sliding fee schedule for the payment by the patient's
 580-29 parents of the state's total costs for the support, maintenance,
 580-30 and treatment of a patient younger than 18 years of age.

580-31 (b) The executive commissioner [department] shall set the
 580-32 fee according to the parents' net taxable income and ability to pay.

580-33 (d) In determining the portion of the costs of the patient's
 580-34 support, maintenance, and treatment that the parents are required
 580-35 to pay, the department, in accordance with rules adopted by the
 580-36 executive commissioner, shall adjust, when appropriate, the
 580-37 payment required under the fee schedule to allow for consideration
 580-38 of other factors affecting the ability of the parents to pay.

580-39 (e) The executive commissioner [department] shall evaluate
 580-40 and, if necessary, revise the fee schedule at least once every five
 580-41 years.

580-42 SECTION 3.1340. Section 552.018(e), Health and Safety Code,
 580-43 is amended to read as follows:

580-44 (e) For the purposes of this section, the following are not
 580-45 considered to be trusts and are not entitled to the exemption
 580-46 provided by this section:

580-47 (1) a guardianship established under the former Texas
 580-48 Probate Code or under the Estates Code;

580-49 (2) a trust established under Chapter 142, Property
 580-50 Code;

580-51 (3) a facility custodial account established under
 580-52 Section 551.003;

580-53 (4) the provisions of a divorce decree or other court
 580-54 order relating to child support obligations;

580-55 (5) an administration of a decedent's estate; or

580-56 (6) an arrangement in which funds are held in the
 580-57 registry or by the clerk of a court.

580-58 SECTION 3.1341. Sections 552.019(a), (b), (c), and (g),
 580-59 Health and Safety Code, are amended to read as follows:

580-60 (a) A county or district attorney shall, on the written
 580-61 request of the department, represent the state in filing a claim in
 580-62 probate court or a petition in a court of competent jurisdiction[+]

580-63 [+] to require the person responsible for a patient
 580-64 to appear in court and show cause why the state should not have
 580-65 judgment against the person for the costs of the patient's support,
 580-66 maintenance, and treatment[+ or

580-67 [+] if the liability arises under Subchapter D,
 580-68 Chapter 593, to require a person responsible for a resident to
 580-69 appear in court and show cause why the state should not have

581-1 judgment against the person for the resident's support and
 581-2 maintenance in a residential care facility operated by the
 581-3 department].

581-4 (b) On a sufficient showing, the court may enter judgment
 581-5 against [+] .

581-6 [+] the person responsible for the patient for the
 581-7 costs of the patient's support, maintenance, and treatment [+] or
 581-8 [+] the person responsible for the resident for the
 581-9 costs of the resident's support and maintenance].

581-10 (c) Sufficient evidence to authorize the court to enter
 581-11 judgment is [+] .

581-12 [+] a verified account, sworn to by the
 581-13 superintendent [or director] of the hospital in which the patient
 581-14 is being treated, or has been treated, as to the amount due [+] or

581-15 [+] a verified account, sworn to by the
 581-16 superintendent or director of the residential care facility in
 581-17 which the person with mental retardation resided or has resided, as
 581-18 to the amount due].

581-19 (g) In this section, "person" [+]

581-20 [+] "Person" responsible for a patient" means the
 581-21 guardian of a patient, a person liable for the support of the
 581-22 patient, or both.

581-23 [+] "Person responsible for a resident" means the
 581-24 resident, a person liable for the support of the resident, or both.

581-25 [+] "Resident" means a person admitted to a
 581-26 residential care facility operated by the department for persons
 581-27 with mental retardation.]

581-28 SECTION 3.1342. The heading to Chapter 553, Health and
 581-29 Safety Code, is amended to read as follows:

581-30 CHAPTER 553. SAN ANTONIO STATE SUPPORTED LIVING CENTER [SCHOOLS]

581-31 SECTION 3.1343. Section 553.001, Health and Safety Code, is
 581-32 transferred to Subchapter A, Chapter 593, Health and Safety Code,
 581-33 redesignated as Section 593.014, Health and Safety Code, and
 581-34 amended to read as follows:

581-35 Sec. 593.014 [553.001]. EPILEPSY. A person may not be
 581-36 denied admission to a residential care facility [state institution
 581-37 or school] because the person suffers from epilepsy.

581-38 SECTION 3.1344. Section 553.022, Health and Safety Code, is
 581-39 amended to read as follows:

581-40 Sec. 553.022. SAN ANTONIO STATE SUPPORTED LIVING CENTER
 581-41 [SCHOOL]. (a) The San Antonio State Supported Living Center
 581-42 [School] is for the education, care, and treatment of persons with
 581-43 an intellectual disability [mental retardation].

581-44 (b) The [Texas] Department of Aging and Disability Services
 581-45 [Mental Health and Mental Retardation] may enter into agreements
 581-46 with the [Texas] Department of State Health Services for use of the
 581-47 excess facilities of a public health hospital as defined by Section
 581-48 13.033 [the Texas Center for Infectious Disease] in the operation
 581-49 of the state supported living center [school].

581-50 SECTION 3.1345. Chapter 554, Health and Safety Code, is
 581-51 amended by adding Section 554.0001 to read as follows:

581-52 Sec. 554.0001. DEFINITION. In this chapter, "department"
 581-53 means the Department of State Health Services.

581-54 SECTION 3.1346. Section 555.001, Health and Safety Code, is
 581-55 amended by amending Subdivisions (1), (2), (3), (4), (6), and (15)
 581-56 and adding Subdivision (10-a) to read as follows:

581-57 (1) "Alleged offender resident" means a person with an
 581-58 intellectual disability [mental retardation] who:

581-59 (A) was committed to or transferred to a state
 581-60 supported living center under Chapter 46B or 46C, Code of Criminal
 581-61 Procedure, as a result of being charged with or convicted of a
 581-62 criminal offense; or

581-63 (B) is a child committed to or transferred to a
 581-64 state supported living center under Chapter 55, Family Code, as a
 581-65 result of being alleged by petition or having been found to have
 581-66 engaged in delinquent conduct constituting a criminal offense.

581-67 (2) "Center" means the state supported living centers
 581-68 and the ICF-IID [ICF-MR] component of the Rio Grande State Center.

581-69 (3) "Center employee" means an employee of a state

582-1 supported living center or the ICF-IID [~~ICF-MR~~] component of the
 582-2 Rio Grande State Center.

582-3 (4) "Client" means a person with an intellectual
 582-4 disability [~~mental retardation~~] who receives ICF-IID [~~ICF-MR~~]
 582-5 services from a state supported living center or the ICF-IID
 582-6 [~~ICF-MR~~] component of the Rio Grande State Center.

582-7 (6) "Complaint" means information received by the
 582-8 office of independent ombudsman regarding a possible violation of a
 582-9 right of a resident or client and includes information received
 582-10 regarding a failure by a state supported living center or the
 582-11 ICF-IID [~~ICF-MR~~] component of the Rio Grande State Center to comply
 582-12 with the department's policies and procedures relating to the
 582-13 community living options information process.

582-14 (10-a) "ICF-IID" has the meaning assigned by Section
 582-15 531.002.

582-16 (15) "Resident" means a person with an intellectual
 582-17 disability [~~mental retardation~~] who resides in a state supported
 582-18 living center or the ICF-IID [~~ICF-MR~~] component of the Rio Grande
 582-19 State Center.

582-20 SECTION 3.1347. Sections 555.002(d) and (e), Health and
 582-21 Safety Code, are amended to read as follows:

582-22 (d) The department shall ensure that the forensic state
 582-23 supported living center:

582-24 (1) complies with the requirements for ICF-IID
 582-25 [~~ICF-MR~~] certification under the Medicaid program, as appropriate;
 582-26 and

582-27 (2) has additional center employees, including direct
 582-28 care employees, to protect the safety of center employees,
 582-29 residents, and the community.

582-30 (e) The department shall collect data regarding the
 582-31 commitment of alleged offender residents to state supported living
 582-32 centers, including any offense with which an alleged offender
 582-33 resident is charged, the location of the committing court, whether
 582-34 the alleged offender resident has previously been in the custody of
 582-35 the Texas Juvenile Justice Department [~~Youth Commission~~] or the
 582-36 Department of Family and Protective Services, and whether the
 582-37 alleged offender resident receives mental health services or
 582-38 previously received any services under a Section 1915(c) waiver
 582-39 program. The department shall annually submit to the governor, the
 582-40 lieutenant governor, the speaker of the house of representatives,
 582-41 and the standing committees of the legislature with primary subject
 582-42 matter jurisdiction over state supported living centers a report of
 582-43 the information collected under this section. The report may not
 582-44 contain personally identifiable information for any person in the
 582-45 report.

582-46 SECTION 3.1348. Sections 555.024(a), (b), and (e), Health
 582-47 and Safety Code, are amended to read as follows:

582-48 (a) Before a center employee begins to perform the
 582-49 employee's duties without direct supervision, the department shall
 582-50 provide the employee with competency training and a course of
 582-51 instruction about the general duties of a center employee. The
 582-52 department shall ensure the basic center employee competency course
 582-53 focuses on:

582-54 (1) the uniqueness of the individuals the center
 582-55 employee serves;

582-56 (2) techniques for improving quality of life for and
 582-57 promoting the health and safety of individuals with an intellectual
 582-58 disability [~~mental retardation~~]; and

582-59 (3) the conduct expected of center employees.

582-60 (b) The department shall ensure the training required by
 582-61 Subsection (a) provides instruction and information regarding the
 582-62 following topics:

582-63 (1) the general operation and layout of the center at
 582-64 which the person is employed, including armed intruder lockdown
 582-65 procedures;

582-66 (2) an introduction to intellectual disabilities
 582-67 [~~mental retardation~~];

582-68 (3) an introduction to autism;

582-69 (4) an introduction to mental illness and dual

583-1 diagnosis;

583-2 (5) the rights of individuals with an intellectual
 583-3 disability [~~mental retardation~~] who receive services from the
 583-4 department;

583-5 (6) respecting personal choices made by residents and
 583-6 clients;

583-7 (7) the safe and proper use of restraints;

583-8 (8) recognizing and reporting:

583-9 (A) evidence of abuse, neglect, and exploitation
 583-10 of individuals with an intellectual disability [~~mental~~
 583-11 ~~retardation~~];

583-12 (B) unusual incidents;

583-13 (C) reasonable suspicion of illegal drug use in
 583-14 the workplace;

583-15 (D) workplace violence; or

583-16 (E) sexual harassment in the workplace;

583-17 (9) preventing and treating infection;

583-18 (10) first aid;

583-19 (11) cardiopulmonary resuscitation;

583-20 (12) the Health Insurance Portability and
 583-21 Accountability Act of 1996 (Pub. L. No. 104-191); and
 583-22 (13) the rights of center employees.

583-23 (e) A center may allow an employee of an ICF-IID
 583-24 [~~intermediate care facility for persons with mental retardation~~] licensed by the department, an employee of a person licensed or
 583-25 certified to provide Section 1915(c) waiver program services, or
 583-26 another employee or professional involved in the provision of
 583-27 services to persons with an intellectual disability [~~mental~~
 583-28 ~~retardation~~] to receive information and training under this
 583-29 section, as appropriate. The center may charge an administrative
 583-30 fee in an amount not to exceed the cost of providing the information
 583-31 or training.

583-32 SECTION 3.1349. Section 555.025(d), Health and Safety Code,
 583-33 is amended to read as follows:

583-34 (d) The department shall ensure that the use of video
 583-35 surveillance equipment under this section complies with federal
 583-36 requirements for ICF-IID [~~ICF-MR~~] certification.

583-37 SECTION 3.1350. Section 555.051, Health and Safety Code, is
 583-38 amended to read as follows:

583-39 Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of
 583-40 independent ombudsman is established for the purpose of
 583-41 investigating, evaluating, and securing the rights of residents and
 583-42 clients of state supported living centers and the ICF-IID [~~ICF-MR~~]
 583-43 component of the Rio Grande State Center. The office is
 583-44 administratively attached to the department. The department shall
 583-45 provide administrative support and resources to the office as
 583-46 necessary for the office to perform its duties.

583-47 SECTION 3.1351. Section 555.053(b), Health and Safety Code,
 583-48 is amended to read as follows:

583-49 (b) The governor may appoint as independent ombudsman only
 583-50 an individual with at least five years of experience managing and
 583-51 ensuring the quality of care and services provided to individuals
 583-52 with an intellectual disability [~~mental retardation~~].

583-53 SECTION 3.1352. Section 555.054(b), Health and Safety Code,
 583-54 is amended to read as follows:

583-55 (b) The independent ombudsman may hire as assistant
 583-56 ombudsmen only individuals with at least five years of experience
 583-57 ensuring the quality of care and services provided to individuals
 583-58 with an intellectual disability [~~mental retardation~~].

583-59 SECTION 3.1353. Section 555.057(b), Health and Safety Code,
 583-60 is amended to read as follows:

583-61 (b) The records of the independent ombudsman are
 583-62 confidential, except that the independent ombudsman shall:

583-63 (1) share with the Department of Family and Protective
 583-64 Services a communication that may involve the abuse, neglect, or
 583-65 exploitation of a resident or client;

583-66 (2) share with the inspector general a communication
 583-67 that may involve an alleged criminal offense;

583-68 (3) share with the regulatory services division of the

584-1 department a communication that may involve a violation of an
 584-2 ICF-IID [~~ICF-MR~~] standard or condition of participation; and
 584-3 (4) disclose the ombudsman's nonprivileged records if
 584-4 required by a court order on a showing of good cause.

584-5 SECTION 3.1354. Section 555.059(a), Health and Safety Code,
 584-6 is amended to read as follows:

584-7 (a) The independent ombudsman shall:

584-8 (1) evaluate the process by which a center
 584-9 investigates, reviews, and reports an injury to a resident or
 584-10 client or an unusual incident;

584-11 (2) evaluate the delivery of services to residents and
 584-12 clients to ensure that the rights of residents and clients are fully
 584-13 observed, including ensuring that each center conducts sufficient
 584-14 unannounced patrols;

584-15 (3) immediately refer a complaint alleging the abuse,
 584-16 neglect, or exploitation of a resident or client to the Department
 584-17 of Family and Protective Services;

584-18 (4) refer a complaint alleging employee misconduct
 584-19 that does not involve abuse, neglect, or exploitation or a possible
 584-20 violation of an ICF-IID [~~ICF-MR~~] standard or condition of
 584-21 participation to the regulatory services division of the
 584-22 department;

584-23 (5) refer a complaint alleging a criminal offense,
 584-24 other than an allegation of abuse, neglect, or exploitation of a
 584-25 resident or client, to the inspector general;

584-26 (6) conduct investigations of complaints, other than
 584-27 complaints alleging criminal offenses or the abuse, neglect, or
 584-28 exploitation of a resident or client, if the office determines
 584-29 that:

584-30 (A) a resident or client or the resident's or
 584-31 client's family may be in need of assistance from the office; or
 584-32 (B) a complaint raises the possibility of a
 584-33 systemic issue in the center's provision of services;

584-34 (7) conduct biennial on-site audits at each center of:
 584-35 (A) the ratio of direct care employees to
 584-36 residents;

584-37 (B) the provision and adequacy of training to:
 584-38 (i) center employees; and
 584-39 (ii) direct care employees; and

584-40 (C) if the center serves alleged offender
 584-41 residents, the provision of specialized training to direct care
 584-42 employees;

584-43 (8) conduct an annual audit of each center's policies,
 584-44 practices, and procedures to ensure that each resident and client
 584-45 is encouraged to exercise the resident's or client's rights,
 584-46 including:

584-47 (A) the right to file a complaint; and
 584-48 (B) the right to due process;

584-49 (9) prepare and deliver an annual report regarding the
 584-50 findings of each audit to the:

584-51 (A) executive commissioner;
 584-52 (B) commissioner;
 584-53 (C) Aging and Disability Services Council;
 584-54 (D) governor;
 584-55 (E) lieutenant governor;
 584-56 (F) speaker of the house of representatives;
 584-57 (G) standing committees of the senate and house
 584-58 of representatives with primary jurisdiction over state supported
 584-59 living centers; and

584-60 (H) state auditor;

584-61 (10) require a center to provide access to all
 584-62 records, data, and other information under the control of the
 584-63 center that the independent ombudsman determines is necessary to
 584-64 investigate a complaint or to conduct an audit under this section;

584-65 (11) review all final reports produced by the
 584-66 Department of Family and Protective Services, the regulatory
 584-67 services division of the department, and the inspector general
 584-68 regarding a complaint referred by the independent ombudsman;

584-69 (12) provide assistance to a resident, client,

585-1 authorized representative of a resident or client, or family member
 585-2 of a resident or client who the independent ombudsman determines is
 585-3 in need of assistance, including advocating with an agency,
 585-4 provider, or other person in the best interests of the resident or
 585-5 client;

585-6 (13) make appropriate referrals under any of the
 585-7 duties and powers listed in this subsection; and

585-8 (14) monitor and evaluate the department's actions
 585-9 relating to any problem identified or recommendation included in a
 585-10 report received from the Department of Family and Protective
 585-11 Services relating to an investigation of alleged abuse, neglect, or
 585-12 exploitation of a resident or client.

585-13 SECTION 3.1355. Section 571.003, Health and Safety Code, is
 585-14 amended by amending Subdivisions (2), (5), (7), (9), (11), (14),
 585-15 and (18) and adding Subdivision (5-a) to read as follows:

585-16 (2) "Commissioner" means the commissioner of state
 585-17 health services [~~mental health and mental retardation~~].

585-18 (5) "Department" means the [Texas] Department of State
 585-19 Health Services [~~Mental Health and Mental Retardation~~].

585-20 (5-a) "Executive commissioner" means the executive
 585-21 commissioner of the Health and Human Services Commission.

585-22 (7) "General hospital" means a hospital operated
 585-23 primarily to diagnose, care for, and treat [~~physically ill~~] persons
 585-24 who are physically ill.

585-25 (9) "Inpatient mental health facility" means a mental
 585-26 health facility that can provide 24-hour residential and
 585-27 psychiatric services and that is:

585-28 (A) a facility operated by the department;
 585-29 (B) a private mental hospital licensed by the
 585-30 department [~~Texas Department of Health~~];

585-31 (C) a community center, facility operated by or
 585-32 under contract with a community center or other entity the
 585-33 department designates to provide mental health services;

585-34 (D) a local mental health authority or a facility
 585-35 operated by or under contract with a local mental health authority;

585-36 (E) an identifiable part of a general hospital in
 585-37 which diagnosis, treatment, and care for persons with mental
 585-38 illness is provided and that is licensed by the department [~~Texas~~
 585-39 ~~Department of Health~~]; or

585-40 (F) a hospital operated by a federal agency.

585-41 (11) "Local mental health authority" means an entity
 585-42 to which the executive commissioner [~~board~~] delegates the executive
 585-43 commissioner's [~~its~~] authority and responsibility within a
 585-44 specified region for planning, policy development, coordination,
 585-45 including coordination with criminal justice entities, and
 585-46 resource development and allocation and for supervising and
 585-47 ensuring the provision of mental health services to persons with
 585-48 mental illness in the most appropriate and available setting to
 585-49 meet individual needs in one or more local service areas.

585-50 (14) "Mental illness" means an illness, disease, or
 585-51 condition, other than epilepsy, dementia, substance abuse
 585-52 [~~senility, alcoholism~~], or intellectual disability [~~mental~~
 585-53 ~~deficiency~~], that:

585-54 (A) substantially impairs a person's thought,
 585-55 perception of reality, emotional process, or judgment; or

585-56 (B) grossly impairs behavior as demonstrated by
 585-57 recent disturbed behavior.

585-58 (18) "Physician" means:

585-59 (A) a person licensed to practice medicine in
 585-60 this state;

585-61 (B) a person employed by a federal agency who has
 585-62 a license to practice medicine in any state; or

585-63 (C) a person authorized to perform medical acts
 585-64 under a physician-in-training [~~an institutional~~] permit at a Texas
 585-65 postgraduate training program approved by the Accreditation
 585-66 Council for [~~on~~] Graduate Medical Education, the American
 585-67 Osteopathic Association, or the Texas Medical [~~State~~] Board [~~of~~
 585-68 ~~Medical Examiners~~].

585-69 SECTION 3.1356. Section 571.006, Health and Safety Code, is

586-1 amended to read as follows:

586-2 Sec. 571.006. EXECUTIVE COMMISSIONER AND DEPARTMENT
 586-3 POWERS. (a) The executive commissioner may adopt rules as
 586-4 necessary for the proper and efficient treatment of persons with
 586-5 mental illness.

586-6 (b) The department may:

586-7 (1) [adopt rules as necessary for the proper and
 586-8 efficient treatment of persons with mental illness;]

586-9 (2) [+] prescribe the form and content of applications,
 586-10 certificates, records, and reports provided for under this
 586-11 subtitle;

586-12 (2) [+] require reports from a facility
 586-13 administrator relating to the admission, examination, diagnosis,
 586-14 release, or discharge of any patient;

586-15 (3) [+] regularly visit each mental health facility
 586-16 to review the commitment procedure for each new patient admitted
 586-17 after the last visit; and

586-18 (4) [+] visit a mental health facility to
 586-19 investigate a complaint made by a patient or by a person on behalf
 586-20 of a patient.

586-21 SECTION 3.1357. Section 571.0065, Health and Safety Code,
 586-22 is amended to read as follows:

586-23 Sec. 571.0065. TREATMENT METHODS. (a) The executive
 586-24 commissioner [board] by rule may adopt procedures for an advisory
 586-25 committee to review treatment methods for persons with mental
 586-26 illness.

586-27 (b) A state agency that has knowledge of or receives a
 586-28 complaint relating to an abusive treatment method shall report that
 586-29 knowledge or forward a copy of the complaint to the department
 586-30 [board].

586-31 (c) A mental health facility, physician, or other mental
 586-32 health professional is not liable for an injury or other damages
 586-33 sustained by a person as a result of the failure of the facility,
 586-34 physician, or professional to administer or perform a treatment
 586-35 prohibited by statute or rules adopted by the executive
 586-36 commissioner [board].

586-37 SECTION 3.1358. Section 571.0066(a), Health and Safety
 586-38 Code, is amended to read as follows:

586-39 (a) The executive commissioner [board] by rule shall
 586-40 require a mental health facility that admits a patient under this
 586-41 subtitle to provide to the patient in the patient's primary
 586-42 language, if possible, information relating to prescription
 586-43 medications ordered by the patient's treating physician.

586-44 SECTION 3.1359. Section 571.009, Health and Safety Code, is
 586-45 amended to read as follows:

586-46 Sec. 571.009. EFFECT OF CERTAIN CONDITIONS ON ADMISSION OR
 586-47 COMMITMENT. A person with mental illness may not be denied
 586-48 admission or commitment to a mental health facility because the
 586-49 person also suffers from epilepsy, dementia, substance abuse
 586-50 [senility, alcoholism], or intellectual disability [mental
 586-51 deficiency].

586-52 SECTION 3.1360. Section 571.0167(c), Health and Safety
 586-53 Code, is amended to read as follows:

586-54 (c) In a habeas corpus proceeding in which a department
 586-55 [state] inpatient mental health facility or a physician employed by
 586-56 a department [state] inpatient mental health facility is a party as
 586-57 a result of enforcing a commitment order, the appropriate attorney
 586-58 prescribed by Section 571.016 shall represent the facility or
 586-59 physician, or both the facility and physician if both are parties,
 586-60 unless the attorney determines that representation violates the
 586-61 Texas Disciplinary Rules of Professional Conduct.

586-62 SECTION 3.1361. Sections 571.025(a), (d), (e), (f), (g),
 586-63 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
 586-64 amended to read as follows:

586-65 (a) The department [board] may impose an administrative
 586-66 penalty against a person licensed or regulated under this subtitle
 586-67 who violates this subtitle or a rule or order adopted under this
 586-68 subtitle.

586-69 (d) If the department [commissioner] determines that a

587-1 violation has occurred, the department [commissioner] may issue [~~to~~
 587-2 ~~the board~~] a report that states the facts on which the determination
 587-3 is based and the department's [commissioner's] recommendation on
 587-4 the imposition of a penalty, including a recommendation on the
 587-5 amount of the penalty.

587-6 (e) Within 14 days after the date the report is issued, the
 587-7 department [commissioner] shall give written notice of the report
 587-8 to the person. The notice may be given by certified mail. The
 587-9 notice must include a brief summary of the alleged violation and a
 587-10 statement of the amount of the recommended penalty and must inform
 587-11 the person that the person has a right to a hearing on the
 587-12 occurrence of the violation, the amount of the penalty, or both the
 587-13 occurrence of the violation and the amount of the penalty.

587-14 (f) Within 20 days after the date the person receives the
 587-15 notice, the person in writing may accept the determination and
 587-16 recommended penalty of the department [commissioner] or may make a
 587-17 written request for a hearing on the occurrence of the violation,
 587-18 the amount of the penalty, or both the occurrence of the violation
 587-19 and the amount of the penalty.

587-20 (g) If the person accepts the determination and recommended
 587-21 penalty of the department [commissioner], the department [board] by
 587-22 order shall [~~approve the determination and~~] impose the recommended
 587-23 penalty.

587-24 (h) If the person requests a hearing or fails to respond
 587-25 timely to the notice, the department [commissioner] shall set a
 587-26 hearing and give notice of the hearing to the person. The
 587-27 administrative law judge shall make findings of fact and
 587-28 conclusions of law and promptly issue to the department [board] a
 587-29 proposal for a decision about the occurrence of the violation and
 587-30 the amount of a proposed penalty. Based on the findings of fact,
 587-31 conclusions of law, and proposal for a decision, the department
 587-32 [board] by order may find that a violation has occurred and impose a
 587-33 penalty or may find that no violation occurred.

587-34 (i) The notice of the department's [board's] order given to
 587-35 the person under Chapter 2001, Government Code, must include a
 587-36 statement of the right of the person to judicial review of the
 587-37 order.

587-38 (j) Within 30 days after the date the department's [board's]
 587-39 order is final as provided by Subchapter F, Chapter 2001,
 587-40 Government Code, the person shall:

587-41 (1) pay the amount of the penalty;
 587-42 (2) pay the amount of the penalty and file a petition
 587-43 for judicial review contesting the occurrence of the violation, the
 587-44 amount of the penalty, or both the occurrence of the violation and
 587-45 the amount of the penalty; or

587-46 (3) without paying the amount of the penalty, file a
 587-47 petition for judicial review contesting the occurrence of the
 587-48 violation, the amount of the penalty, or both the occurrence of the
 587-49 violation and the amount of the penalty.

587-50 (k) Within the 30-day period, a person who acts under
 587-51 Subsection (j)(3) may:

587-52 (1) stay enforcement of the penalty by:
 587-53 (A) paying the amount of the penalty to the court
 587-54 for placement in an escrow account; or
 587-55 (B) giving to the court a supersedeas bond that
 587-56 is approved by the court for the amount of the penalty and that is
 587-57 effective until all judicial review of the department's [board's]
 587-58 order is final; or

587-59 (2) request the court to stay enforcement of the
 587-60 penalty by:

587-61 (A) filing with the court a sworn affidavit of
 587-62 the person stating that the person is financially unable to pay the
 587-63 amount of the penalty and is financially unable to give the
 587-64 supersedeas bond; and

587-65 (B) giving a copy of the affidavit to the
 587-66 department [commissioner] by certified mail.

587-67 (l) The department [commissioner] on receipt of a copy of an
 587-68 affidavit under Subsection (k)(2) may file with the court within
 587-69 five days after the date the copy is received a contest to the

588-1 affidavit. The court shall hold a hearing on the facts alleged in
 588-2 the affidavit as soon as practicable and shall stay the enforcement
 588-3 of the penalty on finding that the alleged facts are true. The
 588-4 person who files an affidavit has the burden of proving that the
 588-5 person is financially unable to pay the amount of the penalty and to
 588-6 give a supersedeas bond.

588-7 (m) If the person does not pay the amount of the penalty and
 588-8 the enforcement of the penalty is not stayed, the department
 588-9 [commissioner] may refer the matter to the attorney general for
 588-10 collection of the amount of the penalty.

588-11 (n) Judicial review of the order of the department [board]:

588-12 (1) is instituted by filing a petition as provided by
 588-13 Subchapter G, Chapter 2001, Government Code; and

588-14 (2) is under the substantial evidence rule.

588-15 SECTION 3.1362. Sections 571.027(a) through (e), Health and
 588-16 Safety Code, are amended to read as follows:

588-17 (a) The executive commissioner [board] shall appoint an
 588-18 advisory committee on inpatient mental health services to advise
 588-19 the executive commissioner [board] on:

588-20 (1) issues and policies related to the provision of
 588-21 mental health services in a facility described by Section
 588-22 571.003(9)(B) or (E); and

588-23 (2) [coordination and communication between the
 588-24 department, the Texas Department of Health, and facilities
 588-25 described by Section 571.003(9)(B) or (E) to address consistency
 588-26 between the agencies in interpretation and enforcement of agency
 588-27 policies and other rules; and

588-28 [+3] training for inpatient mental health facility
 588-29 surveyors or investigators.

588-30 (b) The executive commissioner [board] shall appoint to the
 588-31 committee:

588-32 (1) three representatives of hospitals, at least two
 588-33 of whom represent a facility described by Section 571.003(9)(B) or
 588-34 (E);

588-35 (2) three consumers of mental health services, each of
 588-36 whom has received treatment in a facility described by Section
 588-37 571.003(9)(B) or (E);

588-38 (3) two physicians licensed under Subtitle B, Title 3,
 588-39 Occupations Code, who practice psychiatry and are board certified
 588-40 in psychiatry, at least one of whom is board certified in child and
 588-41 adolescent psychiatry; and

588-42 (4) one family member of a person who has been a
 588-43 consumer of mental health services provided by a facility described
 588-44 by Section 571.003(9)(B) or (E).

588-45 (c) The executive commissioner [Texas Board of Health]
 588-46 shall provide the advisory committee with two persons to represent
 588-47 the department [Texas Department of Health]. The representatives
 588-48 may address the advisory committee on any issue relevant to a matter
 588-49 before the advisory committee, but the representatives may not vote
 588-50 on any matter. The executive commissioner [Texas Board of Health]
 588-51 shall consider designating an inpatient mental health facility
 588-52 surveyor or investigator to be a representative under this
 588-53 subsection.

588-54 (d) Except for persons who represent the department [Texas
 588-55 Department of Health] designated under Subsection (c), members of
 588-56 the advisory committee serve staggered four-year terms. A member's
 588-57 term expires on August 31 of the fourth year following the member's
 588-58 appointment.

588-59 (e) The executive commissioner [board] shall fill vacancies
 588-60 on the advisory committee [board] in the same manner as the original
 588-61 appointment.

588-62 SECTION 3.1363. Section 572.0022(a), Health and Safety
 588-63 Code, is amended to read as follows:

588-64 (a) A mental health facility shall provide to a patient in
 588-65 the patient's primary language, if possible, and in accordance with
 588-66 department [board] rules information relating to prescription
 588-67 medication ordered by the patient's treating physician.

588-68 SECTION 3.1364. Sections 572.0025(a), (c), and (e), Health
 588-69 and Safety Code, are amended to read as follows:

(a) The executive commissioner [board] shall adopt rules governing the voluntary admission of a patient to an inpatient mental health facility, including rules governing the intake and assessment procedures of the admission process.

(c) The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by department [board] rules.

(e) In accordance with department [board] rule, a facility shall provide annually a minimum of eight hours of inservice training regarding intake and assessment for persons who will be conducting an intake or assessment for the facility. A person may not conduct intake or assessments without having completed the initial and applicable annual inservice training.

SECTION 3.1365. Section 572.003(e), Health and Safety Code, is amended to read as follows:

(e) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under Section 572.002(3)(B) has the right to be evaluated by a physician at regular intervals to determine the person's need for continued inpatient treatment. The executive commissioner [department] by rule shall establish the intervals at which a physician shall evaluate a person under this subsection.

SECTION 3.1366. Section 573.001(a), Health and Safety Code, is amended to read as follows:

(a) A peace officer, without a warrant, may take a person into custody if the officer:

(1) has reason to believe and does believe that:

(A) the person is a person with mental illness
[mentally ill]; and

(B) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and

(2) believes that there is not sufficient time to

obtain a warrant before taking the person into custody.

SECTION 3.1367. Section 573.003(a), Health and Safety Code, is amended to read as follows:

(a) A guardian of the person of a ward who is 18 years of age or older, without the assistance of a peace officer, may transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Section 573.021 if the guardian has reason to believe and does believe that:

(1) the ward is a person with mental illness [mentally ill]; and

(2) because of that mental illness there is a substantial risk of serious harm to the ward or to others unless the ward is immediately restrained.

(a) A person may be admitted to a facility for emergency

(1) is acceptable to the facility;

(2) states that after a preliminary examination it is the physician's opinion that:

(A) the person is a person with mental illness
[mentally ill]; (B) the person evidences a substantial risk of

- (D) the person evidences a substantial risk of serious harm to the person [himself] or to others;
- (C) the described risk of harm is imminent unless the person is immediately restrained; and
- (D) emergency detention is the least restrictive means by which the necessary restraint may be accomplished; and

means by which the necessary restraint may be accomplished; and
(3) includes:
(A) a description of the nature of the person's
mental illness;

590-1 the person cannot remain at liberty; and

590-2 (C) the specific detailed information from which
590-3 the physician formed the opinion in Subdivision (2).

590-4 SECTION 3.1369. Section 573.023(b), Health and Safety Code,
590-5 is amended to read as follows:

590-6 (b) A person admitted to a facility under Section 573.022
590-7 shall be released if the facility administrator determines at any
590-8 time during the emergency detention period that one of the criteria
590-9 prescribed by Section 573.022(a)(2) [573.022(2)] no longer
590-10 applies.

590-11 SECTION 3.1370. Section 573.025(c), Health and Safety Code,
590-12 is amended to read as follows:

590-13 (c) The executive commissioner [of the Health and Human
590-14 Services Commission] by rule shall prescribe the manner in which
590-15 the person is informed of the person's rights under this section and
590-16 this subtitle.

590-17 SECTION 3.1371. Section 574.001(f), Health and Safety Code,
590-18 is amended to read as follows:

590-19 (f) An application in which the proposed patient is a child
590-20 in the custody of the Texas Juvenile Justice Department [Youth
590-21 Commission] may be filed in the county in which the child's
590-22 commitment to the Texas Juvenile Justice Department [commission]
590-23 was ordered.

590-24 SECTION 3.1372. Section 574.002(c), Health and Safety Code,
590-25 is amended to read as follows:

590-26 (c) Any application must contain the following information
590-27 according to the applicant's information and belief:

590-28 (1) the proposed patient's name and address;
590-29 (2) the proposed patient's county of residence in this
590-30 state;

590-31 (3) a statement that the proposed patient is a person
590-32 with mental illness [mentally ill] and meets the criteria in
590-33 Section 574.034 or 574.035 for court-ordered mental health
590-34 services; and

590-35 (4) whether the proposed patient is charged with a
590-36 criminal offense.

590-37 SECTION 3.1373. Section 574.011(a), Health and Safety Code,
590-38 is amended to read as follows:

590-39 (a) A certificate of medical examination for mental illness
590-40 must be sworn to, dated, and signed by the examining physician. The
590-41 certificate must include:

590-42 (1) the name and address of the examining physician;
590-43 (2) the name and address of the person examined;
590-44 (3) the date and place of the examination;
590-45 (4) a brief diagnosis of the examined person's
590-46 physical and mental condition;

590-47 (5) the period, if any, during which the examined
590-48 person has been under the care of the examining physician;

590-49 (6) an accurate description of the mental health
590-50 treatment, if any, given by or administered under the direction of
590-51 the examining physician; and

590-52 (7) the examining physician's opinion that:
590-53 (A) the examined person is a person with mental
590-54 illness [mentally ill]; and

590-55 (B) as a result of that illness the examined
590-56 person is likely to cause serious harm to the person [himself] or to
590-57 others or is:

590-58 (i) suffering severe and abnormal mental,
590-59 emotional, or physical distress;

590-60 (ii) experiencing substantial mental or
590-61 physical deterioration of the proposed patient's [his] ability to
590-62 function independently, which is exhibited by the proposed
590-63 patient's inability, except for reasons of indigence, to provide
590-64 for the proposed patient's basic needs, including food, clothing,
590-65 health, or safety; and

590-66 (iii) not able to make a rational and
590-67 informed decision as to whether to submit to treatment.

590-68 SECTION 3.1374. Section 574.022(a), Health and Safety Code,
590-69 is amended to read as follows:

591-1 (a) The judge or designated magistrate may issue a
 591-2 protective custody order if the judge or magistrate determines:
 591-3 (1) that a physician has stated the physician's [his]
 591-4 opinion and the detailed reasons for the physician's [his] opinion
 591-5 that the proposed patient is a person with mental illness [mentally
 591-6 ill]; and

591-7 (2) the proposed patient presents a substantial risk
 591-8 of serious harm to the proposed patient [himself] or others if not
 591-9 immediately restrained pending the hearing.

591-10 SECTION 3.1375. Section 574.025(a), Health and Safety Code,
 591-11 is amended to read as follows:

591-12 (a) A hearing must be held to determine if:

591-13 (1) there is probable cause to believe that a proposed
 591-14 patient under a protective custody order presents a substantial
 591-15 risk of serious harm to the proposed patient [himself] or others to
 591-16 the extent that the proposed patient [he] cannot be at liberty
 591-17 pending the hearing on court-ordered mental health services; and

591-18 (2) a physician has stated the physician's [his]
 591-19 opinion and the detailed reasons for the physician's [his] opinion
 591-20 that the proposed patient is a person with mental illness [mentally
 591-21 ill].

591-22 SECTION 3.1376. Section 574.026(d), Health and Safety Code,
 591-23 is amended to read as follows:

591-24 (d) The notification of probable cause hearing shall read as
 591-25 follows:

591-26 (Style of Case)

591-27 NOTIFICATION OF PROBABLE CAUSE HEARING

591-28 On this the _____ day of _____, 20____ [19____], the
 591-29 undersigned hearing officer heard evidence concerning the need for
 591-30 protective custody of _____ (hereinafter referred to as
 591-31 proposed patient). The proposed patient was given the opportunity
 591-32 to challenge the allegations that the proposed patient [s]he
 591-33 presents a substantial risk of serious harm to self or others.

591-34 The proposed patient and the proposed patient's [his]
 591-35 attorney _____ have been given written notice that the
 591-36 (attorney)

591-37 proposed patient was placed under an order of protective custody
 591-38 and the reasons for such order on _____.

591-39 (date of notice)

591-40 I have examined the certificate of medical examination for mental
 591-41 illness and _____. Based on

591-42 (other evidence considered)

591-43 this evidence, I find that there is probable cause to believe that
 591-44 the proposed patient presents a substantial risk of serious harm to
 591-45 the proposed patient [himself] (yes ____ or no ____) or others (yes
 591-46 ____ or no ____) such that the proposed patient [s]he cannot be at
 591-47 liberty pending final hearing because

591-48 _____.

591-49 (reasons for finding; type of risk found)

591-50 SECTION 3.1377. Section 574.032(f), Health and Safety Code,
 591-51 is amended to read as follows:

591-52 (f) In a hearing before a jury, the jury shall determine if
 591-53 the proposed patient is a person with mental illness [mentally ill]
 591-54 and meets the criteria for court-ordered mental health services.
 591-55 The jury may not make a finding about the type of services to be
 591-56 provided to the proposed patient.

591-57 SECTION 3.1378. Section 574.033(a), Health and Safety Code,
 591-58 is amended to read as follows:

591-59 (a) The court shall enter an order denying an application
 591-60 for court-ordered temporary or extended mental health services if
 591-61 after a hearing the court or jury fails to find, from clear and
 591-62 convincing evidence, that the proposed patient is a person with
 591-63 mental illness [mentally ill] and meets the applicable criteria for
 591-64 court-ordered mental health services.

591-65 SECTION 3.1379. Sections 574.034(a) and (b), Health and
 591-66 Safety Code, are amended to read as follows:

591-67 (a) The judge may order a proposed patient to receive
 591-68 court-ordered temporary inpatient mental health services only if

592-1 the judge or jury finds, from clear and convincing evidence, that:

592-2 (1) the proposed patient is a person with mental
592-3 illness [mentally ill]; and

592-4 (2) as a result of that mental illness the proposed
592-5 patient:

592-6 (A) is likely to cause serious harm to the
592-7 proposed patient [himself];

592-8 (B) is likely to cause serious harm to others; or

592-9 (C) is:

592-10 (i) suffering severe and abnormal mental,
592-11 emotional, or physical distress;

592-12 (ii) experiencing substantial mental or
592-13 physical deterioration of the proposed patient's ability to
592-14 function independently, which is exhibited by the proposed
592-15 patient's inability, except for reasons of indigence, to provide
592-16 for the proposed patient's basic needs, including food, clothing,
592-17 health, or safety; and

592-18 (iii) unable to make a rational and
592-19 informed decision as to whether or not to submit to treatment.

592-20 (b) The judge may order a proposed patient to receive
592-21 court-ordered temporary outpatient mental health services only if:

592-22 (1) the judge finds that appropriate mental health
592-23 services are available to the proposed patient; and

592-24 (2) the judge or jury finds, from clear and convincing
592-25 evidence, that:

592-26 (A) the proposed patient is a person with mental
592-27 illness [mentally ill];

592-28 (B) the nature of the mental illness is severe
592-29 and persistent;

592-30 (C) as a result of the mental illness, the
592-31 proposed patient will, if not treated, continue to:

592-32 (i) suffer severe and abnormal mental,
592-33 emotional, or physical distress; and

592-34 (ii) experience deterioration of the
592-35 ability to function independently to the extent that the proposed
592-36 patient will be unable to live safely in the community without
592-37 court-ordered outpatient mental health services; and

592-38 (D) the proposed patient has an inability to
592-39 participate in outpatient treatment services effectively and
592-40 voluntarily, demonstrated by:

592-41 (i) any of the proposed patient's actions
592-42 occurring within the two-year period which immediately precedes the
592-43 hearing; or

592-44 (ii) specific characteristics of the
592-45 proposed patient's clinical condition that make impossible a
592-46 rational and informed decision whether to submit to voluntary
592-47 outpatient treatment.

592-48 SECTION 3.1380. Sections 574.035(a) and (b), Health and
592-49 Safety Code, are amended to read as follows:

592-50 (a) The judge may order a proposed patient to receive
592-51 court-ordered extended inpatient mental health services only if the
592-52 jury, or the judge if the right to a jury is waived, finds, from
592-53 clear and convincing evidence, that:

592-54 (1) the proposed patient is a person with mental
592-55 illness [mentally ill];

592-56 (2) as a result of that mental illness the proposed
592-57 patient:

592-58 (A) is likely to cause serious harm to the
592-59 proposed patient [himself];

592-60 (B) is likely to cause serious harm to others; or

592-61 (C) is:

592-62 (i) suffering severe and abnormal mental,
592-63 emotional, or physical distress;

592-64 (ii) experiencing substantial mental or
592-65 physical deterioration of the proposed patient's ability to
592-66 function independently, which is exhibited by the proposed
592-67 patient's inability, except for reasons of indigence, to provide
592-68 for the proposed patient's basic needs, including food, clothing,
592-69 health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment;

(3) the proposed patient's condition is expected to continue for more than 90 days; and

(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.

(b) The judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the proposed patient; and

(2) the jury, or the judge if the right to a jury is waived, finds from clear and convincing evidence that:

(A) the proposed patient is a person with mental illness [mentally ill];

(B) the nature of the mental illness is severe and persistent;

(c) as a result of the mental illness, the proposed patient will, if not treated, continue to:

(i) suffer severe and abnormal mental, emotional, or physical distress; and

(ii) experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services;

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period which immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that make impossible a rational and informed decision whether to submit to voluntary outpatient treatment;

(E) the proposed patient's condition is expected to continue for more than 90 days; and

(F) the proposed patient has received:
(i) court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(ii) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

SECTION 3.1381. Section 574.036(a), Health and Safety Code, is amended to read as follows:

(a) The judge shall dismiss the jury, if any, after a hearing in which a person is found to be a person with mental illness [~~mentally ill~~] and to meet the criteria for court-ordered temporary or extended mental health services.

SECTION 3.1382. Section 574.0415(a), Health and Safety Code, is amended to read as follows:

(a) A mental health facility shall provide to a patient in the patient's primary language, if possible, and in accordance with department [board] rules information relating to prescription medication ordered by the patient's treating physician.

SECTION 3.1383. Section 574.0455(b), Health and Safety Code, is amended to read as follows:

(1) that a person must meet to be listed as a qualified

- (1) that a person must meet to be listed as a qualified transportation service provider under Subsection (a); and
- (2) prescribing requirements relating to how the transportation of a person to a mental health facility by a qualified transportation service provider is provided.

SECTION 3.1384. Section 574.103(a), Health and Safety Code,

594-1 is amended to read as follows:

594-2 (a) In this section, "ward" has the meaning assigned by
 594-3 Section 1002.030, Estates [601, Texas Probate] Code.

594-4 SECTION 3.1385. Section 575.003, Health and Safety Code, is
 594-5 amended to read as follows:

594-6 Sec. 575.003. ADMISSION OF PERSONS WITH CHEMICAL DEPENDENCY
 594-7 [ALCOHOLICS] AND PERSONS CHARGED WITH CRIMINAL OFFENSE. This
 594-8 subtitle does not affect the admission to a state mental health
 594-9 facility of:

594-10 (1) a person with a chemical dependency [an alcoholic] admitted under Chapter 462; or

594-11 (2) a person charged with a criminal offense admitted under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

594-12 SECTION 3.1386. Section 575.012, Health and Safety Code, is
 594-13 amended to read as follows:

594-14 Sec. 575.012. TRANSFER OF PERSON WITH AN INTELLECTUAL
 594-15 DISABILITY [MENTAL RETARDATION] TO AN INPATIENT MENTAL HEALTH
 594-16 FACILITY OPERATED BY THE DEPARTMENT. (a) An inpatient mental
 594-17 health facility may not transfer a patient who is also a person with
 594-18 an intellectual disability [mental retardation] to a department
 594-19 mental health facility unless, before initiating the transfer, the
 594-20 facility administrator of the inpatient mental health facility
 594-21 obtains from the commissioner a determination that space is
 594-22 available in a department facility unit that is specifically
 594-23 designed to serve such a person.

594-24 (b) The department shall maintain an appropriate number of
 594-25 hospital-level beds for persons with an intellectual disability
 594-26 [mental retardation] who are committed for court-ordered mental
 594-27 health services to meet the needs of the local mental health
 594-28 authorities. The number of beds the department maintains must be
 594-29 determined according to the previous year's need.

594-30 SECTION 3.1387. The heading to Section 575.013, Health and
 594-31 Safety Code, is amended to read as follows:

594-32 Sec. 575.013. TRANSFER OF PERSON WITH AN INTELLECTUAL
 594-33 DISABILITY [MENTAL RETARDATION] TO STATE SUPPORTED LIVING CENTER
 594-34 [SCHOOL].

594-35 SECTION 3.1388. Sections 575.013(a) and (b), Health and
 594-36 Safety Code, are amended to read as follows:

594-37 (a) The facility administrator of an inpatient mental
 594-38 health facility operated by the department may transfer an
 594-39 involuntary patient in the facility to a state supported living
 594-40 center [school] for persons with an intellectual disability [mental
 594-41 retardation] if:

594-42 (1) an examination of the patient indicates that the
 594-43 patient has symptoms of an intellectual disability [mental
 594-44 retardation] to the extent that training, education,
 594-45 rehabilitation, care, treatment, and supervision in a state
 594-46 supported living center [school] are in the patient's best
 594-47 interest;

594-48 (2) the director of the state supported living center
 594-49 to which the patient is to be transferred agrees to the transfer;
 594-50 and

594-51 (3) the facility administrator coordinates the
 594-52 transfer with the director of that state supported living center.

594-53 (b) A certificate containing the diagnosis and the facility
 594-54 administrator's recommendation of transfer to a specific state
 594-55 supported living center [school] shall be furnished to the
 594-56 committing court.

594-57 SECTION 3.1389. Section 575.017, Health and Safety Code, is
 594-58 amended to read as follows:

594-59 Sec. 575.017. TRANSFER OF RECORDS. The facility
 594-60 administrator of the transferring inpatient mental health facility
 594-61 shall send the patient's appropriate hospital records, or a copy of
 594-62 the records, to the hospital or facility administrator of the
 594-63 mental hospital or state supported living center [school] to which
 594-64 the patient is transferred.

594-65 SECTION 3.1390. Section 577.001(b), Health and Safety Code,
 594-66 is amended to read as follows:

594-67 (b) A community center or other entity designated by the

595-1 department [Texas Department of Mental Health and Mental
 595-2 Retardation] to provide mental health services may not operate a
 595-3 mental health facility that provides court-ordered mental health
 595-4 services without a license issued by the department under this
 595-5 chapter.

595-6 SECTION 3.1391. Section 577.002, Health and Safety Code, is
 595-7 amended to read as follows:

595-8 Sec. 577.002. EXEMPTIONS FROM LICENSING REQUIREMENT. A
 595-9 mental health facility operated by the department [Texas Department
 595-10 of Mental Health and Mental Retardation] or a federal agency need
 595-11 not be licensed under this chapter.

595-12 SECTION 3.1392. Section 577.003, Health and Safety Code, is
 595-13 amended to read as follows:

595-14 Sec. 577.003. ADDITIONAL LICENSE NOT REQUIRED. A mental
 595-15 hospital licensed under this chapter that the department [Texas
 595-16 Department of Mental Health and Mental Retardation] designates to
 595-17 provide mental health services is not required to obtain an
 595-18 additional license to provide court-ordered mental health
 595-19 services.

595-20 SECTION 3.1393. Sections 577.006(a), (b), (c), (e), (g),
 595-21 and (i), Health and Safety Code, are amended to read as follows:

595-22 (a) The department shall charge each hospital every two
 595-23 years a [an annual] license fee for an initial license or a license
 595-24 renewal.

595-25 (b) The executive commissioner [board] by rule shall adopt
 595-26 the fees authorized by Subsection (a) in accordance with Section
 595-27 12.0111 and according to a schedule under which the number of beds
 595-28 in the hospital determines the amount of the fee. [The fee may not
 595-29 exceed \$15 a bed.] A minimum license fee may be established. [The
 595-30 minimum fee may not exceed \$1,000.]

595-31 (c) The executive commissioner [board] by rule shall adopt
 595-32 fees for hospital plan reviews according to a schedule under which
 595-33 the amounts of the fees are based on the estimated construction
 595-34 costs.

595-35 (e) The department shall charge a fee for field surveys of
 595-36 construction plans reviewed under this section. The executive
 595-37 commissioner [board] by rule shall adopt a fee schedule for the
 595-38 surveys that provides a minimum fee [~~of \$500~~] and a maximum fee [~~of~~
 595-39 \$1,000] for each survey conducted.

595-40 (g) The executive commissioner [department] may establish
 595-41 staggered license renewal dates and dates on which fees are due.

595-42 (i) All license fees collected shall be deposited to the
 595-43 credit of the general revenue fund [in the state treasury to the
 595-44 credit of the department to administer and enforce this chapter.
 595-45 These fees may be appropriated only to the department].

595-46 SECTION 3.1394. Section 577.009, Health and Safety Code, is
 595-47 amended to read as follows:

595-48 Sec. 577.009. LIMITATION ON CERTAIN CONTRACTS. A community
 595-49 center or other entity the department [Texas Department of Mental
 595-50 Health and Mental Retardation] designates to provide mental health
 595-51 services may not contract with a mental health facility to provide
 595-52 court-ordered mental health services unless the facility is
 595-53 licensed by the department.

595-54 SECTION 3.1395. Section 577.010(a), Health and Safety Code,
 595-55 is amended to read as follows:

595-56 (a) The executive commissioner [Texas Board of Mental
 595-57 Health and Mental Retardation] shall adopt rules and standards the
 595-58 executive commissioner [board] considers necessary and appropriate
 595-59 to ensure the proper care and treatment of patients in a private
 595-60 mental hospital or mental health facility required to obtain a
 595-61 license under this chapter.

595-62 SECTION 3.1396. Section 577.0101(a), Health and Safety
 595-63 Code, is amended to read as follows:

595-64 (a) The executive commissioner [board] shall adopt rules
 595-65 governing the transfer or referral of a patient from a private
 595-66 mental hospital to an inpatient mental health facility.

595-67 SECTION 3.1397. Section 578.003(a), Health and Safety Code,
 595-68 is amended to read as follows:

595-69 (a) The executive commissioner [board] by rule shall adopt a

standard written consent form to be used when electroconvulsive therapy is considered. The executive commissioner [board] by rule shall also prescribe the information that must be contained in the written supplement required under Subsection (c). In addition to the information required under this section, the form must include the information required by the Texas Medical Disclosure Panel for electroconvulsive therapy. In developing the form, the executive commissioner [board] shall consider recommendations of the panel. Use of the consent form prescribed by the executive commissioner [board] in the manner prescribed by this section creates a rebuttable presumption that the disclosure requirements of Sections 74.104 and 74.105, Civil Practice and Remedies Code, have been met.

SECTION 3.1398. Sections 578.006(b), (c), (d), and (f), Health and Safety Code, are amended to read as follows:

(b) A mental hospital or facility administering electroconvulsive therapy or a private physician administering the therapy on an outpatient basis must file an application for registration under this section. The applicant must submit the application to the department on a form prescribed by [the] department rule.

(c) The application must be accompanied by a nonrefundable application fee. The executive commissioner by rule [board] shall set the fee in a reasonable amount not to exceed the cost to the department to administer this section.

(d) The application must contain:

(1) the model, manufacturer, and age of each piece of equipment used to administer the therapy; and
 (2) any other information required by [the] department rule.

(f) The executive commissioner [board] by rule may prohibit the registration and use of equipment of a type, model, or age the executive commissioner [board] determines is dangerous.

SECTION 3.1399. Section 578.007(b), Health and Safety Code, is amended to read as follows:

(b) A report must state for each quarter:

(1) the number of patients who received the therapy, including:

(A) the number of persons voluntarily receiving mental health services who consented to the therapy;

(B) the number of involuntary patients who consented to the therapy; and

(C) the number of involuntary patients for whom a guardian of the person consented to the therapy;

(2) the age, sex, and race of the persons receiving the therapy;

(3) the source of the treatment payment;

(4) the average number of nonelectroconvulsive treatments;

(5) the average number of electroconvulsive treatments administered for each complete series of treatments, but not including maintenance treatments;

(6) the average number of maintenance electroconvulsive treatments administered per month;

(7) the number of fractures, reported memory losses, incidents of apnea, and cardiac arrests without death;

(8) autopsy findings if death followed within 14 days after the date of the administration of the therapy; and

(9) any other information required by [the] department rule.

SECTION 3.1400. The heading to Subtitle D, Title 7, Health and Safety Code, is amended to read as follows:

SUBTITLE D. PERSONS WITH AN INTELLECTUAL DISABILITY [MENTAL RETARDATION] ACT

SECTION 3.1401. Section 591.001, Health and Safety Code, is amended to read as follows:

Sec. 591.001. SHORT TITLE. This subtitle may be cited as the Persons with an Intellectual Disability [Mental Retardation] Act.

597-1 SECTION 3.1402. Section 591.002, Health and Safety Code, is
 597-2 amended to read as follows:

597-3 Sec. 591.002. PURPOSE. (a) It is the public policy of this
 597-4 state that persons with an intellectual disability [~~mental~~
 597-5 ~~retardation~~] have the opportunity to develop to the fullest extent
 597-6 possible their potential for becoming productive members of
 597-7 society.

597-8 (b) It is the purpose of this subtitle to provide and assure
 597-9 a continuum of quality services to meet the needs of all persons
 597-10 with an intellectual disability [~~mental retardation~~] in this state.

597-11 (c) The state's responsibility to persons with an
 597-12 intellectual disability [~~mental retardation~~] does not replace or
 597-13 impede parental rights and responsibilities or terminate the
 597-14 activities of persons, groups, or associations that advocate for
 597-15 and assist persons with an intellectual disability [~~mental~~
 597-16 ~~retardation~~].

597-17 (d) It is desirable to preserve and promote living at home
 597-18 if feasible. If living at home is not possible and placement in a
 597-19 residential care facility [~~for persons with mental retardation~~] is
 597-20 necessary, a person must be admitted in accordance with basic due
 597-21 process requirements, giving appropriate consideration to parental
 597-22 desires if possible. The person must be admitted to a facility that
 597-23 provides habilitative training for the person's condition, that
 597-24 fosters the personal development of the person, and that enhances
 597-25 the person's ability to cope with the environment.

597-26 (e) Because persons with an intellectual disability [~~mental~~
 597-27 ~~retardation~~] have been denied rights solely because they are
 597-28 persons with an intellectual disability [~~of their retardation~~], the
 597-29 general public should be educated to the fact that persons with an
 597-30 intellectual disability [~~mental retardation~~] who have not been
 597-31 adjudicated incompetent and for whom a guardian has not been
 597-32 appointed by a due process proceeding in a court have the same
 597-33 rights and responsibilities enjoyed by all citizens of this state.
 597-34 All citizens are urged to assist persons with an intellectual
 597-35 disability [~~mental retardation~~] in acquiring and maintaining
 597-36 rights and in participating in community life as fully as possible.

597-37 SECTION 3.1403. Section 591.003, Health and Safety Code, is
 597-38 amended by amending Subdivisions (3), (4), (5), (6), (7), (8), (9),
 597-39 (10), (14), (15-a), (16), (18), (19), (22), and (23) and adding
 597-40 Subdivisions (4-a) and (9-a) to read as follows:

597-41 (3) "Care" means the life support and maintenance
 597-42 services or other aid provided to a person with an intellectual
 597-43 disability [~~mental retardation~~], including dental, medical, and
 597-44 nursing care and similar services.

597-45 (4) "Client" means a person receiving intellectual
 597-46 disability [~~mental retardation~~] services from the department or a
 597-47 community center. The term includes a resident.

597-48 (4-a) "Commission" means the Health and Human Services
 597-49 Commission.

597-50 (5) "Commissioner" means the commissioner of aging and
 597-51 disability services [~~mental health and mental retardation~~].

597-52 (6) "Community center" means an entity organized under
 597-53 Subchapter A, Chapter 534, that provides intellectual disability
 597-54 services [~~mental retardation~~].

597-55 (7) "Department" means the [Texas] Department of Aging
 597-56 and Disability Services [~~Mental Health and Mental Retardation~~].

597-57 (8) "Interdisciplinary team" means a group of
 597-58 intellectual disability [~~mental retardation~~] professionals and
 597-59 paraprofessionals who assess the treatment, training, and
 597-60 habilitation needs of a person with an intellectual disability
 597-61 services [~~mental retardation~~] and make recommendations for services for that
 597-62 person.

597-63 (9) "Director" means the director or superintendent of
 597-64 a residential care facility [~~community center~~].

597-65 (9-a) "Executive commissioner" means the executive
 597-66 commissioner of the Health and Human Services Commission.

597-67 (10) "Group home" means a residential arrangement,
 597-68 other than a residential care facility, operated by the department
 597-69 or a community center in which not more than 15 persons with an

598-1 intellectual disability [~~mental retardation~~] voluntarily live and
 598-2 under appropriate supervision may share responsibilities for
 598-3 operation of the living unit.

598-4 (14) "Intellectual disability [~~Mental retardation~~]
 598-5 services" means programs and assistance for persons with an
 598-6 intellectual disability [~~mental retardation~~] that may include a
 598-7 determination of an intellectual disability [~~mental retardation~~],
 598-8 interdisciplinary team recommendations, education, special
 598-9 training, supervision, care, treatment, rehabilitation,
 598-10 residential care, and counseling, but does not include those
 598-11 services or programs that have been explicitly delegated by law to
 598-12 other state agencies.

598-13 (15-a) "Person with an intellectual disability" means a person
 598-14 determined by a physician or psychologist licensed in this
 598-15 state or certified by the department to have subaverage general
 598-16 intellectual functioning with deficits in adaptive behavior.

598-17 (16) "Person with mental retardation" means a person
 598-18 with an intellectual disability.

598-19 (18) "Residential care facility" means a state
 598-20 supported living center or the ICF-IID component of the Rio Grande
 598-21 Center [~~facility operated by the department or a community center~~
 598-22 ~~that provides 24-hour services, including domiciliary services,~~
 598-23 ~~directed toward enhancing the health, welfare, and development of~~
 598-24 ~~persons with mental retardation~~].

598-25 (19) "Service provider" means a person who provides
 598-26 intellectual disability [~~mental retardation~~] services.

598-27 (22) "Training" means the process by which a person
 598-28 with an intellectual disability [~~mental retardation~~] is
 598-29 habilitated and may include the teaching of life and work skills.

598-30 (23) "Treatment" means the process by which a service
 598-31 provider attempts to ameliorate the condition of a person with an
 598-32 intellectual disability [~~mental retardation~~].

598-33 SECTION 3.1404. Section 591.004, Health and Safety Code, is
 598-34 amended to read as follows:

598-35 Sec. 591.004. RULES. The executive commissioner [~~board~~] by
 598-36 rule shall ensure the implementation of this subtitle.

598-37 SECTION 3.1405. Sections 591.011(a), (b), (c), and (e),
 598-38 Health and Safety Code, are amended to read as follows:

598-39 (a) Subject to the executive commissioner's authority to
 598-40 adopt rules and policies, the [~~The~~] department shall make all
 598-41 reasonable efforts consistent with available resources to:

598-42 (1) assure that each identified person with an
 598-43 intellectual disability [~~mental retardation~~] who needs
 598-44 intellectual disability [~~mental retardation~~] services is given
 598-45 while these services are needed quality care, treatment, education,
 598-46 training, and rehabilitation appropriate to the person's
 598-47 individual needs other than those services or programs explicitly
 598-48 delegated by law to other governmental agencies;

598-49 (2) initiate, carry out, and evaluate procedures to
 598-50 guarantee to persons with an intellectual disability [~~mental~~
 598-51 ~~retardation~~] the rights listed in this subtitle;

598-52 (3) carry out this subtitle, including planning,
 598-53 initiating, coordinating, promoting, and evaluating all programs
 598-54 developed;

598-55 (4) provide either directly or by cooperation,
 598-56 negotiation, or contract with other agencies and those persons and
 598-57 groups listed in Section 533A.034 [~~533.034~~], a continuum of
 598-58 services to persons with an intellectual disability [~~mental~~
 598-59 ~~retardation~~]; and

598-60 (5) provide, either directly or by contract with other
 598-61 agencies, a continuum of services to children, juveniles, or adults
 598-62 with an intellectual disability [~~mental retardation~~] committed
 598-63 into the department's custody by the juvenile or criminal courts.

598-64 (b) The services provided by the department under
 598-65 Subsection (a)(4) shall include:

598-66 (1) treatment and care;
 598-67 (2) education and training, including sheltered
 598-68 workshop programs;

598-69 (3) counseling and guidance; and

(4) development of residential and other facilities to enable persons with an intellectual disability [mental retardation] to live and be habilitated in the community.

(c) The facilities provided under Subsection (b) shall include group homes, foster homes, halfway houses, and day-care facilities for persons with an intellectual disability [mental retardation] to which the department has assigned persons with an intellectual disability [mental retardation].

(e) The department shall have the right of access to all clients [residents] and records of clients [residents] who are placed with residential service providers.

SECTION 3.1406. Section 591.013, Health and Safety Code, is amended to read as follows:

Sec. 591.013. LONG-RANGE PLAN. (a) The commission [department and the Texas Department of Human Services] shall [jointly] develop a long-range plan for services to persons with intellectual and developmental disabilities[, including mental retardation].

(b) The executive commissioner [~~of each department~~] shall appoint the necessary staff to develop the plan through research of appropriate topics and public hearings to obtain testimony from persons with knowledge of or interest in state services to persons with intellectual and developmental disabilities[~~, including mental retardation~~].

(c) In developing the plan, the commission [department] shall consider existing plans or studies made by the commission or department [departments].

(d) The plan must address at least the following topics:

(1) the needs of persons with intellectual and developmental disabilities[, including mental retardation];

(2) how state services should be structured to meet those needs;

(3) how the ICF-IID [~~ICF-MR~~] program, the waiver program under Section 1915(c), federal Social Security Act, other programs under Title XIX, federal Social Security Act, and other federally funded programs can best be structured and financed to assist the state in delivering services to persons with intellectual and developmental disabilities[, ~~including mental retardation~~];

(4) the statutory limits and rule or policy changes necessary to ensure the controlled growth of the programs under Title XIX, federal Social Security Act, and other federally funded programs;

(5) methods for expanding services available through the ICF-IID [~~ICF-MR~~] program to persons with related conditions as defined by federal regulations relating to the medical assistance program; and

(6) the cost of implementing the plan.

(e) The commission and the department [departments] shall, if necessary, modify their respective long-range plans and other existing plans relating to the provision of services to persons with intellectual and developmental disabilities[, including mental retardation,] to incorporate the provisions of the [joint] plan.

(f) The commission [departments] shall review and revise the plan biennially. The commission and the [~~Each~~] department shall consider the most recent revision of the plan in any modifications of the commission's or [~~that~~] department's long-range plans and in each future budget request.

(g) This section does not affect the authority of the commission and the department [and the Texas Department of Human Services] to carry out their separate functions as established by state and federal law.

(h) In this section, "ICF-IID [ICF-MR] program" means the medical assistance program serving persons with intellectual and developmental disabilities [mental retardation] who receive care in intermediate care facilities.

SECTION 3.1407. Sections 591.022(a), (b), and (c), Health and Safety Code, are amended to read as follows:

600-1 (a) A person who intentionally violates the rights
 600-2 guaranteed by this subtitle to a person with an intellectual
 600-3 disability [mental retardation] is liable to the person injured by
 600-4 the violation in an amount of not less than \$100 or more than
 600-5 \$5,000.

600-6 (b) A person who recklessly violates the rights guaranteed
 600-7 by this subtitle to a person with an intellectual disability
 600-8 [mental retardation] is liable to the person injured by the
 600-9 violation in an amount of not less than \$100 or more than \$1,000.

600-10 (c) A person who intentionally releases confidential
 600-11 information or records of a person with an intellectual disability
 600-12 [mental retardation] in violation of law is liable to the person
 600-13 injured by the unlawful disclosure for \$1,000 or three times the
 600-14 actual damages, whichever is greater.

600-15 SECTION 3.1408. Sections 591.023(a) and (e), Health and
 600-16 Safety Code, are amended to read as follows:

600-17 (a) A district court, in an action brought in the name of the
 600-18 state by the state attorney general or a district or county attorney
 600-19 within the attorney's respective jurisdiction, may issue a
 600-20 temporary restraining order, a temporary injunction, or a permanent
 600-21 injunction to:

600-22 (1) restrain and prevent a person from violating this
 600-23 subtitle or a rule adopted by the executive commissioner
 600-24 [department] under this subtitle; or

600-25 (2) enforce compliance with this subtitle or a rule
 600-26 adopted by the executive commissioner [department] under this
 600-27 subtitle.

600-28 (e) A civil penalty recovered under this section shall be
 600-29 paid to the state for use in intellectual disability [mental
 600-30 retardation] services.

600-31 SECTION 3.1409. The heading to Chapter 592, Health and
 600-32 Safety Code, is amended to read as follows:

600-33 CHAPTER 592. RIGHTS OF PERSONS WITH AN INTELLECTUAL DISABILITY
 600-34 [MENTAL RETARDATION]

600-35 SECTION 3.1410. Section 592.001, Health and Safety Code, is
 600-36 amended to read as follows:

600-37 Sec. 592.001. PURPOSE. The purpose of this chapter is to
 600-38 recognize and protect the individual dignity and worth of each
 600-39 person with an intellectual disability [mental retardation].

600-40 SECTION 3.1411. Section 592.002, Health and Safety Code, is
 600-41 amended to read as follows:

600-42 Sec. 592.002. RULES. The executive commissioner [board] by
 600-43 rule shall ensure the implementation of the rights guaranteed in
 600-44 this chapter.

600-45 SECTION 3.1412. Subchapter B, Chapter 592, Health and
 600-46 Safety Code, is amended to read as follows:

600-47 SUBCHAPTER B. BASIC BILL OF RIGHTS

600-48 Sec. 592.011. RIGHTS GUARANTEED. (a) Each person with an
 600-49 intellectual disability [mental retardation] in this state has the
 600-50 rights, benefits, and privileges guaranteed by the constitution and
 600-51 laws of the United States and this state.

600-52 (b) The rights specifically listed in this subtitle are in
 600-53 addition to all other rights that persons with an intellectual
 600-54 disability [mental retardation] have and are not exclusive or
 600-55 intended to limit the rights guaranteed by the constitution and
 600-56 laws of the United States and this state.

600-57 Sec. 592.012. PROTECTION FROM EXPLOITATION AND ABUSE. Each
 600-58 person with an intellectual disability [mental retardation] has the
 600-59 right to protection from exploitation and abuse because of the
 600-60 person's intellectual disability [mental retardation].

600-61 Sec. 592.013. LEAST RESTRICTIVE LIVING ENVIRONMENT. Each
 600-62 person with an intellectual disability [mental retardation] has the
 600-63 right to live in the least restrictive setting appropriate to the
 600-64 person's individual needs and abilities and in a variety of living
 600-65 situations, including living:

- 600-66 (1) alone;
- 600-67 (2) in a group home;
- 600-68 (3) with a family; or
- 600-69 (4) in a supervised, protective environment.

601-1 Sec. 592.014. EDUCATION. Each person with an intellectual
 601-2 disability [~~mental retardation~~] has the right to receive publicly
 601-3 supported educational services, including those services provided
 601-4 under the Education Code, that are appropriate to the person's
 601-5 individual needs regardless of [~~the person's~~]:

- 601-6 (1) the person's chronological age;
- 601-7 (2) the degree of the person's intellectual disability
 [~~retardation~~];
- 601-8 (3) the person's accompanying disabilities or
 handicaps; or
- 601-9 (4) the person's admission or commitment to
 intellectual disability [~~mental retardation~~] services.

601-10 Sec. 592.015. EMPLOYMENT. An employer, employment agency,
 601-11 or labor organization may not deny a person equal opportunities in
 601-12 employment because of the person's intellectual disability [~~mental~~
 601-13 ~~retardation~~], unless:

- 601-14 (1) the person's intellectual disability [~~mental~~
 ~~retardation~~] significantly impairs the person's ability to perform
 the duties and tasks of the position for which the person has
 applied; or
- 601-15 (2) the denial is based on a bona fide occupational
 qualification reasonably necessary to the normal operation of the
 particular business or enterprise.

601-16 Sec. 592.016. HOUSING. An owner, lessee, sublessee,
 601-17 assignee, or managing agent or other person having the right to
 601-18 sell, rent, or lease real property, or an agent or employee of any
 601-19 of these, may not refuse to sell, rent, or lease to any person or
 601-20 group of persons solely because the person is a person with an
 601-21 intellectual disability [~~mental retardation~~] or a group that
 601-22 includes one or more persons with an intellectual disability
 601-23 [~~mental retardation~~].

601-24 Sec. 592.017. TREATMENT AND SERVICES. Each person with an
 601-25 intellectual disability [~~mental retardation~~] has the right to
 601-26 receive for the person's intellectual disability [~~mental~~
 601-27 ~~retardation~~] adequate treatment and habilitative services that:

- 601-28 (1) are suited to the person's individual needs;
- 601-29 (2) maximize the person's capabilities;
- 601-30 (3) enhance the person's ability to cope with the
 person's environment; and
- 601-31 (4) are administered skillfully, safely, and humanely
 with full respect for the dignity and personal integrity of the
 person.

601-32 Sec. 592.018. DETERMINATION OF AN INTELLECTUAL DISABILITY
 601-33 [~~MENTAL RETARDATION~~]. A person thought to be a person with an
 601-34 intellectual disability [~~mental retardation~~] has the right
 601-35 promptly to receive a determination of an intellectual disability
 601-36 [~~mental retardation~~] using diagnostic techniques that are adapted
 601-37 to that person's cultural background, language, and ethnic origin
 601-38 to determine if the person is in need of intellectual disability
 601-39 [~~mental retardation~~] services as provided by Subchapter A, Chapter
 601-40 593.

601-41 Sec. 592.019. ADMINISTRATIVE HEARING. A person who files
 601-42 an application for a determination of an intellectual disability
 601-43 [~~mental retardation~~] has the right to request and promptly receive
 601-44 an administrative hearing under Subchapter A, Chapter 593, to
 601-45 contest the findings of the determination of an intellectual
 601-46 disability [~~mental retardation~~].

601-47 Sec. 592.020. INDEPENDENT DETERMINATION OF AN INTELLECTUAL
 601-48 DISABILITY [~~MENTAL RETARDATION~~]. A person for whom a determination
 601-49 of an intellectual disability [~~mental retardation~~] is performed or
 601-50 a person who files an application for a determination of an
 601-51 intellectual disability [~~mental retardation~~] under Section 593.004
 601-52 and who questions the validity or results of the determination of an
 601-53 intellectual disability [~~mental retardation~~] has the right to an
 601-54 additional, independent determination of an intellectual
 601-55 disability [~~mental retardation~~] performed at the person's own
 601-56 expense.

601-57 Sec. 592.021. ADDITIONAL RIGHTS. Each person with an
 601-58 intellectual disability [~~mental retardation~~] has the right to:

(1) presumption of competency;
(2) due process in guardianship proceedings; and
(3) fair compensation for the person's labor for the economic benefit of another, regardless of any direct or incidental therapeutic value to the person.

SECTION 3.1413. Sections 592.033(c) and (d), Health and Safety Code, are amended to read as follows:

(c) The plan shall be implemented as soon as possible but not later than the 30th day after the date on which the client is admitted or committed to intellectual disability [mental retardation] services.

(d) The content of an individualized habilitation plan is as required by department rule and as may be required by the department by contract.

SECTION 3.1414. Section 592.036(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Section 593.030, a client, the parent if the client is a minor, or a guardian of the person may withdraw the client from intellectual disability [mental retardation] services.

SECTION 3.1415. Section 592.039, Health and Safety Code, is amended to read as follows:

Sec. 592.039. GRIEVANCES. A client, or a person acting on behalf of a person with an intellectual disability [~~mental retardation~~] or a group of persons with an intellectual disability [~~mental retardation~~], has the right to submit complaints or grievances regarding the infringement of the rights of a person with an intellectual disability [~~mental retardation~~] or the delivery of intellectual disability [~~mental retardation~~] services against a person, group of persons, organization, or business to the department's Office of Consumer Rights and Services [~~appropriate public responsibility committee~~] for investigation and appropriate action.

SECTION 3.1416. Section 592.040(a), Health and Safety Code, is amended to read as follows:

(a) On admission for intellectual disability [~~mental retardation~~] services, each client, and the parent if the client is a minor or the guardian of the person of the client, shall be given written notice of the rights guaranteed by this subtitle. The notice shall be in plain and simple language.

SECTION 3.1417. The heading to Section 592.054, Health and Safety Code, is amended to read as follows:

Sec. 592.054. DUTIES OF [SUPERINTENDENT OR] DIRECTOR.

SECTION 3.1418. Section 592.054(a), Health and Safety Code, is amended to read as follows:

(a) Except as limited by this subtitle, the [superintendent or] director shall provide without further consent necessary care and treatment to each court-committed resident and make available necessary care and treatment to each voluntary resident.

SECTION 3.1419. Section 592.153(a), Health and Safety Code, is amended to read as follows:

(a) In this section, "ward" has the meaning assigned by Section 1002.030, Estates [601, Texas Probate] Code.

SECTION 3.1420. The heading to Chapter 593, Health and Safety Code, is amended to read as follows:

CHAPTER 393. ADMISSION AND COMMITMENT TO INTELLECTUAL DISABILITY
[MENTAL RETARDATION] SERVICES

Sec. 593.001. ADMISSION. A person may be admitted for intellectual disability [mental retardation] services offered by the department or a community center, admitted voluntarily to a residential care program, or committed to a residential care facility only as provided by this chapter.

SECTION 3.1422. Section 593.002, Health and Safety Code, is amended to read as follows:

Sec. 593.002. CONSENT REQUIRED. (a) Except as provided by Subsection (b), the department or a community center may not provide intellectual disability [mental retardation] services to a

603-1 client without the client's legally adequate consent.

603-2 (b) The department or community center may provide
 603-3 nonresidential intellectual disability [~~mental retardation~~] services, including a determination of an intellectual disability
 603-4 [~~mental retardation~~], to a client without the client's legally
 603-5 adequate consent if the department or community center has made all
 603-6 reasonable efforts to obtain consent.

603-7 (c) The executive commissioner [~~board~~] by rule shall
 603-8 prescribe the efforts to obtain consent that are reasonable and the
 603-9 documentation for those efforts.

603-10 SECTION 3.1423. Section 593.003, Health and Safety Code, is
 603-11 amended to read as follows:

603-12 Sec. 593.003. REQUIREMENT OF DETERMINATION OF AN
 603-13 INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]. [(a)] Except as
 603-14 provided by Sections 593.027, 593.0275, and 593.028, a person is
 603-15 not eligible to receive intellectual disability [~~mental~~
 603-16 ~~retardation~~] services unless the person first is determined to be a
 603-17 person with an intellectual disability [~~have mental retardation~~].

603-18 [(b) This section does not apply to an eligible child with a
 603-19 developmental disability receiving services under Subchapter A,
 603-20 Chapter 535.]

603-21 SECTION 3.1424. The heading to Section 593.004, Health and
 603-22 Safety Code, is amended to read as follows:

603-23 Sec. 593.004. APPLICATION FOR DETERMINATION OF AN
 603-24 INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~].

603-25 SECTION 3.1425. Section 593.004(b), Health and Safety Code,
 603-26 is amended to read as follows:

603-27 (b) A person believed to be a person with an intellectual
 603-28 disability [~~mental retardation~~], the parent if the person is a
 603-29 minor, or the guardian of the person may make written application to
 603-30 an authorized provider for a determination of an intellectual
 603-31 disability [~~mental retardation~~] using forms provided by the
 603-32 department.

603-33 SECTION 3.1426. The heading to Section 593.005, Health and
 603-34 Safety Code, is amended to read as follows:

603-35 Sec. 593.005. DETERMINATION OF AN INTELLECTUAL DISABILITY
 603-36 [~~MENTAL RETARDATION~~].

603-37 SECTION 3.1427. Sections 593.005(a-1) and (d), Health and
 603-38 Safety Code, are amended to read as follows:

603-39 (a-1) An authorized provider shall perform the
 603-40 determination of an intellectual disability [~~mental retardation~~].
 603-41 The department may charge a reasonable fee for certifying an
 603-42 authorized provider.

603-43 (d) If the person is indigent, the determination of an
 603-44 intellectual disability [~~mental retardation~~] shall be performed at
 603-45 the department's expense by an authorized provider.

603-46 SECTION 3.1428. Section 593.006, Health and Safety Code, is
 603-47 amended to read as follows:

603-48 Sec. 593.006. REPORT. A person who files an application for
 603-49 a determination of an intellectual disability [~~mental retardation~~]
 603-50 under Section 593.004 shall be promptly notified in writing of the
 603-51 findings.

603-52 SECTION 3.1429. Section 593.007, Health and Safety Code, is
 603-53 amended to read as follows:

603-54 Sec. 593.007. NOTIFICATION OF CERTAIN RIGHTS. The
 603-55 department shall inform the person who filed an application for a
 603-56 determination of an intellectual disability [~~mental retardation~~]
 603-57 of the person's right to:

603-58 (1) an independent determination of an intellectual
 603-59 disability [~~mental retardation~~] under Section 592.020; and

603-60 (2) an administrative hearing under Section 593.008 by
 603-61 the agency that conducted the determination of an intellectual
 603-62 disability [~~mental retardation~~] to contest the findings.

603-63 SECTION 3.1430. Sections 593.008(b) and (e), Health and
 603-64 Safety Code, are amended to read as follows:

603-65 (b) The proposed client, contestant, and their respective
 603-66 representative by right may:

603-67 (1) have reasonable access at a reasonable time before
 603-68 the hearing to any records concerning the proposed client relevant

604-1 to the proposed action;

604-2 (2) present oral or written testimony and evidence,
 604-3 including the results of an independent determination of an
intellectual disability [mental retardation]; and

604-4 (3) examine witnesses.

604-5 (e) The executive commissioner [board] by rule shall
 604-6 implement the hearing procedures.

604-7 SECTION 3.1431. Section 593.012(a), Health and Safety Code,
 604-8 is amended to read as follows:

604-9 (a) The director [superintendent] of a residential care
 604-10 facility to which a client has been admitted for court-ordered care
 604-11 and treatment may have a client who is absent without authority
 604-12 taken into custody, detained, and returned to the facility by
 604-13 issuing a certificate to a law enforcement agency of the
 604-14 municipality or county in which the facility is located or by
 604-15 obtaining a court order issued by a magistrate in the manner
 604-16 prescribed by Section 574.083.

604-17 SECTION 3.1432. Sections 593.013(b) and (f), Health and
 604-18 Safety Code, are amended to read as follows:

604-19 (b) An interdisciplinary team shall:

604-20 (1) interview the person with an intellectual
disability [mental retardation], the person's parent if the person
 604-21 is a minor, and the person's guardian;

604-22 (2) review the person's:

604-23 (A) social and medical history;

604-24 (B) medical assessment, which shall include an
 604-25 audiological, neurological, and vision screening;

604-26 (C) psychological and social assessment; and

604-27 (D) determination of adaptive behavior level;

604-28 (3) determine the person's need for additional
 604-29 assessments, including educational and vocational assessments;

604-30 (4) obtain any additional assessment necessary to plan
 604-31 services;

604-32 (5) identify the person's habilitation and service
 604-33 preferences and needs; and

604-34 (6) recommend services to address the person's needs
 604-35 that consider the person's preferences.

604-36 (f) If the court has ordered the interdisciplinary team
 604-37 report and recommendations under Section 593.041, the team shall
 604-38 promptly send a copy of the report and recommendations to the court,
 604-39 the person with an intellectual disability [mental retardation] or
 604-40 the person's legal representative, the person's parent if the
 604-41 person is a minor, and the person's guardian.

604-42 SECTION 3.1433. The heading to Subchapter B, Chapter 593,
 604-43 Health and Safety Code, is amended to read as follows:

604-44 SUBCHAPTER B. APPLICATION AND ADMISSION TO VOLUNTARY INTELLECTUAL
DISABILITY [MENTAL RETARDATION] SERVICES

604-45 SECTION 3.1434. Section 593.021(a), Health and Safety Code,
 604-46 is amended to read as follows:

604-47 (a) The proposed client or the parent if the proposed client
 604-48 is a minor may apply for voluntary intellectual disability [mental
retardation] services under Section 593.022, 593.026, 593.027,
 604-49 593.0275, or 593.028.

604-50 SECTION 3.1435. The heading to Section 593.022, Health and
 604-51 Safety Code, is amended to read as follows:

604-52 Sec. 593.022. ADMISSION TO VOLUNTARY INTELLECTUAL
DISABILITY [MENTAL RETARDATION] SERVICES.

604-53 SECTION 3.1436. Section 593.022(a), Health and Safety Code,
 604-54 is amended to read as follows:

604-55 (a) An eligible person who applies for intellectual
 604-56 disability [mental retardation] services may be admitted as soon as
 604-57 appropriate services are available.

604-58 SECTION 3.1437. Section 593.023(a), Health and Safety Code,
 604-59 is amended to read as follows:

604-60 (a) The executive commissioner [board] by rule shall
 604-61 develop and adopt procedures permitting a client, a parent if the
 604-62 client is a minor, or a guardian of the person to participate in
 604-63 planning the client's treatment and habilitation, including a
 604-64 decision to recommend or place a client in an alternative setting.

605-1 SECTION 3.1438. Section 593.026, Health and Safety Code, is
 605-2 amended to read as follows:

605-3 Sec. 593.026. REGULAR VOLUNTARY ADMISSION. A regular
 605-4 voluntary admission is permitted if:

605-5 (1) space is available at the facility for which
 605-6 placement is requested; and

605-7 (2) the facility director [superintendent] determines
 605-8 that the facility provides services that meet the needs of the
 605-9 proposed resident.

605-10 SECTION 3.1439. Section 593.027, Health and Safety Code, is
 605-11 amended to read as follows:

605-12 Sec. 593.027. EMERGENCY ADMISSION. (a) An emergency
 605-13 admission to a residential care facility is permitted without a
 605-14 determination of an intellectual disability [mental retardation]
 605-15 and an interdisciplinary team recommendation if:

605-16 (1) there is persuasive evidence that the proposed
 605-17 resident is a person with an intellectual disability [mental
 605-18 retardation];

605-19 (2) space is available at the facility for which
 605-20 placement is requested;

605-21 (3) the proposed resident has an urgent need for
 605-22 services that the facility director [superintendent] determines
 605-23 the facility provides; and

605-24 (4) the facility can provide relief for the urgent
 605-25 need within a year after admission.

605-26 (b) A determination of an intellectual disability [mental
 605-27 retardation] and an interdisciplinary team recommendation for the
 605-28 person admitted under this section shall be performed within 30
 605-29 days after the date of admission.

605-30 SECTION 3.1440. Section 593.0275, Health and Safety Code,
 605-31 is amended to read as follows:

605-32 Sec. 593.0275. EMERGENCY SERVICES. (a) A person may
 605-33 receive emergency services without a determination of an
 605-34 intellectual disability [mental retardation] if:

605-35 (1) there is persuasive evidence that the person is a
 605-36 person with an intellectual disability [mental retardation];

605-37 (2) emergency services are available; and

605-38 (3) the person has an urgent need for emergency
 605-39 services.

605-40 (b) A determination of an intellectual disability [mental
 605-41 retardation] for the person served under this section shall be
 605-42 performed within 30 days after the date the services begin.

605-43 SECTION 3.1441. Sections 593.028(a) and (b), Health and
 605-44 Safety Code, are amended to read as follows:

605-45 (a) A person may be admitted to a residential care facility
 605-46 for respite care without a determination of an intellectual
 605-47 disability [mental retardation] and interdisciplinary team
 605-48 recommendation if:

605-49 (1) there is persuasive evidence that the proposed
 605-50 resident is a person with an intellectual disability [mental
 605-51 retardation];

605-52 (2) space is available at the facility for which
 605-53 respite care is requested;

605-54 (3) the facility director [superintendent] determines
 605-55 that the facility provides services that meet the needs of the
 605-56 proposed resident; and

605-57 (4) the proposed resident or the proposed resident's
 605-58 family urgently requires assistance or relief that can be provided
 605-59 within a period not to exceed 30 consecutive days after the date of
 605-60 admission.

605-61 (b) If the relief sought by the proposed resident or the
 605-62 proposed resident's family has not been provided within 30 days,
 605-63 one 30-day extension may be allowed if:

605-64 (1) the facility director [superintendent] determines
 605-65 that the relief may be provided in the additional period; and

605-66 (2) the parties agreeing to the original placement
 605-67 consent to the extension.

605-68 SECTION 3.1442. Section 593.029, Health and Safety Code, is
 605-69 amended to read as follows:

606-1 Sec. 593.029. TREATMENT OF MINOR WHO REACHES MAJORITY.
 606-2 When a facility resident who is voluntarily admitted as a minor
 606-3 approaches 18 years of age and continues to be in need of
 606-4 residential services, the facility director [superintendent] shall
 606-5 ensure that when the resident becomes an adult:

606-6 (1) the resident's legally adequate consent for
 606-7 admission to the facility is obtained from the resident or the
 606-8 guardian of the person; or

606-9 (2) an application is filed for court commitment under
 606-10 Subchapter C.

606-11 SECTION 3.1443. Section 593.030, Health and Safety Code, is
 606-12 amended to read as follows:

606-13 Sec. 593.030. WITHDRAWAL FROM SERVICES. A resident
 606-14 voluntarily admitted to a residential care facility may not be
 606-15 detained more than 96 hours after the time the resident, the
 606-16 resident's parents if the resident is a minor, or the guardian of
 606-17 the resident's person requests discharge of the resident as
 606-18 provided by department rules, unless:

606-19 (1) the facility director [superintendent] determines
 606-20 that the resident's condition or other circumstances are such that
 606-21 the resident cannot be discharged without endangering the safety of
 606-22 the resident or the general public;

606-23 (2) the facility director [superintendent] files an
 606-24 application for judicial commitment under Section 593.041; and

606-25 (3) a court issues a protective custody order under
 606-26 Section 593.044 pending a final determination on the application.

606-27 SECTION 3.1444. Sections 593.041(a), (b), (c), and (e),
 606-28 Health and Safety Code, are amended to read as follows:

606-29 (a) A proposed resident, if an adult, a parent if the
 606-30 proposed resident is a minor, the guardian of the person, the court,
 606-31 or any other interested person, including a community center or
 606-32 agency that conducted a determination of an intellectual disability
 606-33 [mental retardation] of the proposed resident, may file an
 606-34 application for an interdisciplinary team report and
 606-35 recommendation that the proposed client is in need of long-term
 606-36 placement in a residential care facility.

606-37 (b) Except as provided by Subsection (e), the application
 606-38 must be filed with the county clerk in the county in which the
 606-39 proposed resident resides. If the director [superintendent] of a
 606-40 residential care facility files an application for judicial
 606-41 commitment of a voluntary resident, the county in which the
 606-42 facility is located is considered the resident's county of
 606-43 residence.

606-44 (c) The county court has original jurisdiction of all
 606-45 judicial proceedings for commitment of a person with an
 606-46 intellectual disability [mental retardation] to residential care
 606-47 facilities.

606-48 (e) An application in which the proposed patient is a child
 606-49 in the custody of the Texas Juvenile Justice Department [Youth
 606-50 Commission] may be filed in the county in which the child's
 606-51 commitment to the Texas Juvenile Justice Department [the
 606-52 commission] was ordered.

606-53 SECTION 3.1445. Section 593.044(a), Health and Safety Code,
 606-54 is amended to read as follows:

606-55 (a) The court in which an application for a hearing is filed
 606-56 may order the proposed resident taken into protective custody if
 606-57 the court determines from certificates filed with the court that
 606-58 the proposed resident is:

606-59 (1) believed to be a person with an intellectual
 606-60 disability [mental retardation]; and

606-61 (2) likely to cause injury to the proposed resident
 606-62 [himself] or others if not immediately restrained.

606-63 SECTION 3.1446. Section 593.048, Health and Safety Code, is
 606-64 amended to read as follows:

606-65 Sec. 593.048. HEARING NOTICE. (a) Not later than the 11th
 606-66 day before the date set for the hearing, a copy of the application,
 606-67 notice of the time and place of the hearing and, if appropriate, the
 606-68 order for the determination of an intellectual disability [mental
 606-69 retardation] and interdisciplinary team report and recommendations

607-1 shall be served on:

- 607-2 (1) the proposed resident or the proposed resident's
607-3 representative;
- 607-4 (2) the parent if the proposed resident is a minor;
- 607-5 (3) the guardian of the person; and
- 607-6 (4) the department.

607-7 (b) The notice must specify in plain and simple language:

- 607-8 (1) the right to an independent determination of an
607-9 intellectual disability [~~mental retardation~~] under Section
607-10 593.007; and
- 607-11 (2) the provisions of Sections 593.043, 593.047,
607-12 593.049, 593.050, and 593.053.

607-13 SECTION 3.1447. Section 593.050(d), Health and Safety Code,
607-14 is amended to read as follows:

607-15 (d) The Texas Rules of Evidence apply. The results of the
607-16 determination of an intellectual disability [~~mental retardation~~] and the current interdisciplinary team report and recommendations
607-17 shall be presented in evidence.

607-18 SECTION 3.1448. Section 593.052(a), Health and Safety Code,
607-19 is amended to read as follows:

607-20 (a) A proposed resident may not be committed to a
607-21 residential care facility unless:

607-22 (1) the proposed resident is a person with an
607-23 intellectual disability [~~mental retardation~~];

607-24 (2) evidence is presented showing that because of the
607-25 proposed resident's intellectual disability [~~retardation~~], the
607-26 proposed resident:

607-27 (A) represents a substantial risk of physical
607-28 impairment or injury to the proposed resident [himself] or others;
607-29 or

607-30 (B) is unable to provide for and is not providing
607-31 for the proposed resident's most basic personal physical needs;

607-32 (3) the proposed resident cannot be adequately and
607-33 appropriately habilitated in an available, less restrictive
607-34 setting; and

607-35 (4) the residential care facility provides
607-36 habilitative services, care, training, and treatment appropriate
607-37 to the proposed resident's needs.

607-38 SECTION 3.1449. Section 593.073, Health and Safety Code, is
607-39 amended to read as follows:

607-40 Sec. 593.073. DETERMINATION OF RESIDENTIAL COSTS. The
607-41 executive commissioner [~~board~~] by rule may determine the cost of
607-42 support, maintenance, and treatment of a resident.

607-43 SECTION 3.1450. Sections 593.074(b), (c), and (d), Health
607-44 and Safety Code, are amended to read as follows:

607-45 (b) The executive commissioner [~~department~~] may use the
607-46 projected cost of providing residential services to establish by
607-47 rule the maximum fee that may be charged to a payer.

607-48 (c) The executive commissioner by rule [~~department~~] may
607-49 establish maximum fees on one or a combination of the following:

607-50 (1) a statewide per capita;
607-51 (2) an individual facility per capita; or
607-52 (3) the type of service provided.

607-53 (d) Notwithstanding Subsection (b), the executive
607-54 commissioner by rule [~~department~~] may establish a fee in excess of
607-55 the department's projected cost of providing residential services
607-56 that may be charged to a payer:

607-57 (1) who is not an individual; and
607-58 (2) whose method of determining the rate of
607-59 reimbursement to a provider results in the excess.

607-60 SECTION 3.1451. Sections 593.075(a), (b), (d), and (e),
607-61 Health and Safety Code, are amended to read as follows:

607-62 (a) The executive commissioner [~~board~~] by rule shall
607-63 establish a sliding fee schedule for the payment by the resident's
607-64 parents of the state's total costs for the support, maintenance,
607-65 and treatment of a resident younger than 18 years of age.

607-66 (b) The executive commissioner by rule [~~board~~] shall set the
607-67 fee according to the parents' net taxable income and ability to pay.

607-68 (d) In determining the portion of the costs of the

resident's support, maintenance, and treatment that the parents are required to pay, the department, in accordance with rules adopted by the executive commissioner, shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

(e) The executive commissioner [department] shall evaluate and, if necessary, revise the fee schedule at least once every five years.

SECTION 3.1452. Section 593.077(a), Health and Safety Code, is amended to read as follows:

(a) Child support payments for the benefit of a resident paid or owed by a parent under court order are considered the property and estate of the resident and the [department may]:

(1) department may be reimbursed for the costs of a resident's support, maintenance, and treatment from those amounts; and

(2) executive commissioner by rule may establish a fee based on the child support obligation in addition to other fees authorized by this subchapter.

SECTION 3.1453. Section 593.081(f), Health and Safety Code, is amended to read as follows:

(f) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption provided by this section:

(1) a guardianship established under the former Texas Probate Code or under the Estates Code;

(2) a trust established under Chapter 142, Property Code;

(3) a facility custodial account established under Section 551.003;

(4) the provisions of a divorce decree or other court order relating to child support obligations;

(5) an administration of a decedent's estate; or

(6) an arrangement in which funds are held in the registry or by the clerk of a court.

SECTION 3.1454. Subchapter D, Chapter 593, Health and Safety Code, is amended by adding Section 593.082 to read as follows:

Sec. 593.082. FILING OF CLAIMS. (a) In this section:

(1) "Person responsible for a resident" means the resident, a person liable for the support of the resident, or both.

(2) "Resident" means a person admitted to a residential care facility operated by the department for persons with an intellectual disability.

(b) A county or district attorney shall, on the written request of the department, represent the state in filing a claim in probate court or a petition in a court of competent jurisdiction to require a person responsible for a resident to appear in court and show cause why the state should not have judgment against the person for the resident's support and maintenance in a residential care facility operated by the department.

(c) On a sufficient showing, the court may enter judgment against the person responsible for the resident for the costs of the resident's support and maintenance.

(d) Sufficient evidence to authorize the court to enter judgment is a verified account, sworn to by the director of the residential care facility in which the person with an intellectual disability resided or has resided, as to the amount due.

(e) The judgment may be enforced as in other cases.

(f) The county or district attorney representing the state is entitled to a commission of 10 percent of the amount collected.

(g) The attorney general shall represent the state if the county and district attorney refuse or are unable to act on the department's request.

SECTION 3.1455. Section 593.092, Health and Safety Code, is amended to read as follows:

Sec. 593.092. DISCHARGE OF PERSON VOLUNTARILY ADMITTED TO RESIDENTIAL CARE FACILITY. (a) Except as otherwise provided, a resident voluntarily admitted to a residential care facility under

609-1 a law in force before January 1, 1978, shall be discharged not later
 609-2 than the 96th hour after the time the facility director
 609-3 [~~superintendent~~] receives written request from the person on whose
 609-4 application the resident was admitted, or on the resident's own
 609-5 request.

609-6 (b) The facility director [~~superintendent~~] may detain the
 609-7 resident for more than 96 hours in accordance with Section **593.030**.

609-8 SECTION 3.1456. Sections **594.001**(b) and (c), Health and
 609-9 Safety Code, are amended to read as follows:

609-10 (b) This chapter does not apply to the:

609-11 (1) transfer of a client for emergency medical,
 609-12 dental, or psychiatric care for not more than 30 consecutive days;
 609-13 (2) voluntary withdrawal of a client from intellectual
 609-14 disability [~~mental retardation~~] services; or

609-15 (3) discharge of a client by a [~~superintendent or~~]
 609-16 director because the person is not a person with an intellectual
 609-17 disability [~~mental retardation~~] according to the results of the
 609-18 determination of an intellectual disability [~~mental retardation~~].

609-19 (c) A discharge under Subsection (b)(3) is without further
 609-20 hearings, unless an administrative hearing under Subchapter A,
 609-21 Chapter 593, to contest the determination of an intellectual
 609-22 disability [~~mental retardation~~] is requested.

609-23 SECTION 3.1457. Section **594.002**, Health and Safety Code, is
 609-24 amended to read as follows:

609-25 Sec. 594.002. LEAVE; FURLough. The director
 609-26 [~~superintendent~~] may grant or deny a resident a leave of absence or
 609-27 furlough.

609-28 SECTION 3.1458. Section **594.014**(b), Health and Safety Code,
 609-29 is amended to read as follows:

609-30 (b) A client may not be transferred to another facility or
 609-31 discharged from intellectual disability [~~mental retardation~~]
 609-32 services unless the client is given the opportunity to request and
 609-33 receive an administrative hearing to contest the proposed transfer
 609-34 or discharge.

609-35 SECTION 3.1459. Section **594.015**(b), Health and Safety Code,
 609-36 is amended to read as follows:

609-37 (b) The client, the parent of a client who is a minor, the
 609-38 guardian of the person, and the director [~~superintendent~~] have the
 609-39 right to:

609-40 (1) be present and represented at the hearing; and
 609-41 (2) have reasonable access at a reasonable time before
 609-42 the hearing to any records concerning the client relevant to the
 609-43 proposed action.

609-44 SECTION 3.1460. Section **594.016**(d), Health and Safety Code,
 609-45 is amended to read as follows:

609-46 (d) If an appeal is not filed from a final order granting a
 609-47 request for a transfer or discharge, the director [~~superintendent~~]
 609-48 shall proceed with the transfer or discharge.

609-49 SECTION 3.1461. Section **594.019**(a), Health and Safety Code,
 609-50 is amended to read as follows:

609-51 (a) The department shall provide appropriate alternative or
 609-52 follow-up supportive services consistent with available resources
 609-53 by agreement among the department, the local intellectual and
 609-54 developmental disability [~~mental retardation~~] authority in the
 609-55 area in which the client will reside, and the client, parent of a
 609-56 client who is a minor, or guardian of the person. The services
 609-57 shall be consistent with the rights guaranteed in Chapter 592.

609-58 SECTION 3.1462. Subchapter C, Chapter 594, Health and
 609-59 Safety Code, is amended by adding Section 594.0301 to read as
 609-60 follows:

609-61 Sec. 594.0301. DEFINITION. In this subchapter, "state
 609-62 mental hospital" has the meaning assigned by Section **571.003**.

609-63 SECTION 3.1463. Section **594.032**(a), Health and Safety Code,
 609-64 is amended to read as follows:

609-65 (a) The director [~~superintendent~~] may transfer a resident
 609-66 committed to a residential care facility under Subchapter C,
 609-67 Chapter 593, to a state mental hospital for mental health care if:

609-68 (1) an examination of the resident by a licensed
 609-69 physician indicates symptoms of mental illness to the extent that

care, treatment, [control] and rehabilitation in a state mental hospital is in the best interest of the resident;

(2) the hospital administrator of the state mental hospital to which the resident is to be transferred agrees to the transfer; and

(3) the director coordinates the transfer with the hospital administrator of the state mental hospital.

SECTION 3.1464. Section 594.036(b), Health and Safety Code, is amended to read as follows:

(b) Notice shall also be served on the parents if the resident is a minor and on the guardian for the resident's person if the resident has been declared to be incapacitated as provided by the former Texas Probate Code or the Estates Code and a guardian has been appointed.

SECTION 3.1465. Section 594.041(b), Health and Safety Code, is amended to read as follows:

(b) A person may not be transferred to a state mental hospital except on competent medical or psychiatric testimony.

SECTION 3.1466. The heading to Section 594.044, Health and Safety Code, is amended to read as follows:

Sec. 594.044. TRANSFER TO [OF] RESIDENTIAL CARE FACILITY.

SECTION 3.1467. Section 594.044(b), Health and Safety Code, is amended to read as follows:

(b) The hospital administrator of the state mental hospital shall notify the director [superintendent] of the facility from which the resident was transferred that hospitalization in a state mental hospital is not necessary or appropriate for the resident. The director [superintendent] shall immediately provide for the return of the resident to the facility.

SECTION 3.1468. Section 594.045(a), Health and Safety Code, is amended to read as follows:

(a) If a resident has been transferred to a state mental hospital under a court order under this subchapter, the hospital administrator of the state mental hospital shall:

(1) send a certificate to the committing court stating that the resident does not require hospitalization in a state mental hospital but requires care in a residential care facility because of the resident's intellectual disability [mental retardation]; and

(2) request that the resident be transferred to a residential care facility.

SECTION 3.1469. Section 595.001, Health and Safety Code, is amended to read as follows:

Sec. 595.001. CONFIDENTIALITY OF RECORDS. Records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to an intellectual disability [mental retardation] are confidential and may be disclosed only for the purposes and under the circumstances authorized by this chapter, subject to applicable federal and other state law [under Sections 595.003 and 595.004].

SECTION 3.1470. Section 595.002, Health and Safety Code, is amended to read as follows:

Sec. 595.002. RULES. The executive commissioner [board] shall adopt rules to carry out this chapter that are [the department considers] necessary or proper to:

(1) prevent circumvention or evasion of the chapter; or

(2) facilitate compliance with the chapter.

SECTION 3.1471. Section 595.005(a), Health and Safety Code, is amended to read as follows:

(a) The content of a confidential record may be disclosed without the consent required under Section 595.003 to:

(1) medical personnel to the extent necessary to meet a medical emergency;

(2) qualified personnel for management audits, financial audits, program evaluations, or research approved by the department; or

(3) personnel legally authorized to conduct

611-1 investigations concerning complaints of abuse or denial of rights
 611-2 of persons with an intellectual disability [~~mental retardation~~].

611-3 SECTION 3.1472. Section 595.0055(b), Health and Safety
 611-4 Code, is amended to read as follows:

611-5 (b) Notwithstanding any other law, on request by a
 611-6 representative of a cemetery organization or funeral
 611-7 establishment, the director [~~superintendent~~] of a residential care
 611-8 facility shall release to the representative the name, date of
 611-9 birth, or date of death of a person who was a resident at the
 611-10 facility when the person died, unless the person or the person's
 611-11 guardian provided written instructions to the facility not to
 611-12 release the person's name or dates of birth and death. A
 611-13 representative of a cemetery organization or a funeral
 611-14 establishment may use a name or date released under this subsection
 611-15 only for the purpose of inscribing the name or date on a grave
 611-16 marker.

611-17 SECTION 3.1473. Section 595.008, Health and Safety Code, is
 611-18 amended to read as follows:

611-19 Sec. 595.008. EXCHANGE OF RECORDS. The prohibitions
 611-20 against disclosure apply to an exchange of records between
 611-21 government agencies or persons, except for exchanges of information
 611-22 necessary for:

611-23 (1) delivery of services to clients; or
 611-24 (2) payment for intellectual disability [~~mental~~
 611-25 ~~retardation~~] services as defined in this subtitle.

611-26 SECTION 3.1474. Section 595.010, Health and Safety Code, is
 611-27 amended to read as follows:

611-28 Sec. 595.010. DISCLOSURE OF PHYSICAL OR MENTAL CONDITION.
 611-29 This chapter does not prohibit a qualified professional from
 611-30 disclosing the current physical and mental condition of a person
 611-31 with an intellectual disability [~~mental retardation~~] to the
 611-32 person's parent, guardian, relative, or friend.

611-33 SECTION 3.1475. Sections 597.001(2), (4), (5), and (8),
 611-34 Health and Safety Code, are amended to read as follows:

611-35 (2) "Client" means a person receiving services in a
 611-36 community-based ICF-IID [~~ICF-MR facility~~].

611-37 (4) "ICF-IID" [~~ICF-MR~~] has the meaning assigned by
 611-38 Section 531.002.

611-39 (5) "Interdisciplinary team" means those
 611-40 interdisciplinary teams defined in the Code of Federal Regulations
 611-41 for participation in the intermediate care facilities for
 611-42 individuals with intellectual and developmental disabilities [~~the~~
 611-43 ~~mentally retarded~~].

611-44 (8) "Surrogate decision-maker" means an individual
 611-45 authorized under Section 597.041 to consent on behalf of a client
 611-46 residing in an ICF-IID [~~ICF-MR facility~~].

611-47 SECTION 3.1476. Section 597.002, Health and Safety Code, is
 611-48 amended to read as follows:

611-49 Sec. 597.002. RULES. The executive commissioner [~~board~~]
 611-50 may adopt rules necessary to implement this chapter [~~not later than~~
 611-51 ~~180 days after its effective date~~].

611-52 SECTION 3.1477. Section 597.021, Health and Safety Code, is
 611-53 amended to read as follows:

611-54 Sec. 597.021. ICF-IID [~~ICF-MR~~] ASSESSMENT OF CLIENT'S
 611-55 CAPACITY TO CONSENT TO TREATMENT. (a) The executive commissioner
 611-56 [~~board~~] by rule shall require an ICF-IID [~~ICF-MR facility~~]
 611-57 certified in this state to assess the capacity of each adult client
 611-58 without a legal guardian to make treatment decisions when there is
 611-59 evidence to suggest the individual is not capable of making a
 611-60 decision covered under this chapter.

611-61 (b) The rules must require the use of a uniform assessment
 611-62 process prescribed by department [~~board~~] rule to determine a
 611-63 client's capacity to make treatment decisions.

611-64 SECTION 3.1478. The heading to Subchapter C, Chapter 597,
 611-65 Health and Safety Code, is amended to read as follows:

611-66 SUBCHAPTER C. SURROGATE CONSENT FOR ICF-IID [~~ICF-MR~~] CLIENTS

611-67 SECTION 3.1479. Section 597.041(d), Health and Safety Code,
 611-68 is amended to read as follows:

611-69 (d) Any dispute as to the right of a party to act as a

612-1 surrogate decision-maker may be resolved only by a court of record
 612-2 under Title 3, Estates [~~Chapter V, Texas Probate~~] Code.

612-3 SECTION 3.1480. Section 597.043(c), Health and Safety Code,
 612-4 is amended to read as follows:

612-5 (c) The list of qualified individuals from which committee
 612-6 members are drawn shall include:

612-7 (1) health care professionals licensed or registered
 612-8 in this state who have specialized training in medicine,
 612-9 psychopharmacology, nursing, or psychology;

612-10 (2) persons with an intellectual disability [~~mental~~
 612-11 ~~retardation~~] or parents, siblings, spouses, or children of a person
 612-12 with an intellectual disability [~~mental retardation~~];

612-13 (3) attorneys licensed in this state who have
 612-14 knowledge of legal issues of concern to persons with an
 612-15 intellectual disability [~~mental retardation~~] or to the families of
 612-16 persons with an intellectual disability [~~mental retardation~~];

612-17 (4) members of private organizations that advocate on
 612-18 behalf of persons with an intellectual disability [~~mental~~
 612-19 ~~retardation~~]; and

612-20 (5) persons with demonstrated expertise or interest in
 612-21 the care and treatment of persons with an intellectual disability
 612-22 [~~mental disabilities~~].

612-23 SECTION 3.1481. Section 597.044(a), Health and Safety Code,
 612-24 is amended to read as follows:

612-25 (a) If the results of the assessment conducted in accordance
 612-26 with Section 597.021 indicate that a client who does not have a
 612-27 legal guardian or surrogate decision-maker lacks the capacity to
 612-28 make a treatment decision about major medical or dental treatment,
 612-29 psychoactive medication, or a highly restrictive procedure, the
 612-30 ICF-IID [~~ICF-MR facility~~] must file an application for a treatment
 612-31 decision with the department.

612-32 SECTION 3.1482. Sections 597.045(b) and (c), Health and
 612-33 Safety Code, are amended to read as follows:

612-34 (b) The ICF-IID [~~ICF-MR facility~~] with assistance from the
 612-35 department shall schedule a review of the application.

612-36 (c) The ICF-IID [~~ICF-MR facility~~] with assistance from the
 612-37 department shall send notice of the date, place, and time of the
 612-38 review to the surrogate consent committee, the client who is the
 612-39 subject of the application, the client's actively involved parent,
 612-40 spouse, adult child, or other person known to have a demonstrated
 612-41 interest in the care and welfare of the client, and any other person
 612-42 as prescribed by department [~~board~~] rule. The ICF-IID [~~ICF-MR~~
 612-43 ~~facility~~] shall include a copy of the application and a statement of
 612-44 the committee's procedure for consideration of the application,
 612-45 including the opportunity to be heard or to present evidence and to
 612-46 appeal.

612-47 SECTION 3.1483. Section 597.047, Health and Safety Code, is
 612-48 amended to read as follows:

612-49 Sec. 597.047. CONFIDENTIAL INFORMATION. Notwithstanding
 612-50 any other state law, a person licensed by this state to provide
 612-51 services related to health care or to the treatment or care of a
 612-52 person with an intellectual disability [~~mental retardation~~], a
 612-53 developmental disability, or a mental illness shall provide to the
 612-54 committee members any information the committee requests that is
 612-55 relevant to the client's need for a proposed treatment.

612-56 SECTION 3.1484. Section 597.048(f), Health and Safety Code,
 612-57 is amended to read as follows:

612-58 (f) At any time before the committee makes its determination
 612-59 of a client's best interest under Section 597.049, the committee
 612-60 chair may suspend the review of the application for not more than
 612-61 five days if any person applies for appointment as the client's
 612-62 guardian of the person in accordance with the Estates [~~Texas~~
 612-63 ~~Probate~~] Code.

612-64 SECTION 3.1485. Section 597.050(b), Health and Safety Code,
 612-65 is amended to read as follows:

612-66 (b) The ICF-IID [~~ICF-MR facility~~] shall send a copy of the
 612-67 committee's opinion to:

- 612-68 (1) each person notified under Section 597.045; and
- 612-69 (2) the department.

613-1 SECTION 3.1486. Section 597.054(a), Health and Safety Code,
 613-2 is amended to read as follows:

613-3 (a) Each ICF-IID [~~ICF-MR~~] shall develop procedures for the
 613-4 surrogate consent committees in accordance with the rules adopted
 613-5 under Section 597.002.

613-6 SECTION 3.1487. Section 612.002(a), Health and Safety Code,
 613-7 is amended to read as follows:

613-8 (a) Under the compact, the governor shall appoint the
 613-9 executive commissioner of the Health and Human Services Commission
 613-10 [~~mental health and mental retardation~~] as the compact
 613-11 administrator.

613-12 SECTION 3.1488. Section 612.005(b), Health and Safety Code,
 613-13 is amended to read as follows:

613-14 (b) If a supplementary agreement requires or contemplates
 613-15 the use of an institution or facility of this state or requires or
 613-16 contemplates the provision of a service by this state, the
 613-17 supplementary agreement does not take effect until approved by the
 613-18 executive commissioner and the head of the department or agency:

613-19 (1) under whose jurisdiction the institution or
 613-20 facility is operated; or
 613-21 (2) that will perform the service.

613-22 SECTION 3.1489. Section 614.001, Health and Safety Code, is
 613-23 amended by amending Subdivisions (2), (6), (7), (8), and (10) and
 613-24 adding Subdivision (4-a) to read as follows:

613-25 (2) "Case management" means a process by which a
 613-26 person or team responsible for establishing and continuously
 613-27 maintaining contact with a person with mental illness, a
 613-28 developmental disability, or an intellectual disability [~~mental~~
 613-29 ~~retardation~~] provides that person with access to services required
 613-30 by the person and ensures the coordinated delivery of those
 613-31 services to the person.

613-32 (4-a) "Executive commissioner" means the executive
 613-33 commissioner of the Health and Human Services Commission.

613-34 (6) "Mental impairment" means a mental illness, an
 613-35 intellectual disability [~~mental retardation~~], or a developmental
 613-36 disability.

613-37 (7) "Intellectual disability" [~~Mental retardation~~]
 613-38 has the meaning assigned by Section 591.003.

613-39 (8) "Offender with a medical or mental impairment"
 613-40 means a juvenile or adult who is arrested or charged with a criminal
 613-41 offense and who:

613-42 (A) is a person with:
 613-43 (i) [has] a mental impairment; or
 613-44 (ii) a physical disability, terminal
 613-45 illness, or significant illness; or
 613-46 (B) is elderly[, physically disabled, terminally
 613-47 ill, or significantly ill].

613-48 (10) "Person with an intellectual disability [~~mental~~
 613-49 ~~retardation~~]" means a juvenile or adult with an intellectual
 613-50 disability [~~mental retardation~~] that is not a mental disorder who,
 613-51 because of the mental deficit, requires special training,
 613-52 education, supervision, treatment, care, or control in the person's
 613-53 home or community or in a private [~~or state~~] school or state
 613-54 supported living center for persons with an intellectual disability
 613-55 [~~mental retardation~~].

613-56 SECTION 3.1490. Sections 614.002(a), (b), and (e), Health
 613-57 and Safety Code, are amended to read as follows:

613-58 (a) The Advisory Committee to the Texas Board of Criminal
 613-59 Justice on Offenders with Medical or Mental Impairments is composed
 613-60 of 28 [~~29~~] members.

613-61 (b) The governor shall appoint, with the advice and consent
 613-62 of the senate:

613-63 (1) four at-large members who have expertise in mental
 613-64 health, intellectual disabilities [~~mental retardation~~], or
 613-65 developmental disabilities, three of whom must be forensic
 613-66 psychiatrists or forensic psychologists;

613-67 (2) one at-large member who is the judge of a district
 613-68 court with criminal jurisdiction;

613-69 (3) one at-large member who is a prosecuting attorney;

(4) one at-large member who is a criminal defense attorney;

(5) two at-large members who have expertise in the juvenile justice or criminal justice system; and

(6) one at-large member whose expertise can further the mission of the committee.

(e) The executive head of each of the following agencies, divisions of agencies, or associations, or that person's designated representative, shall serve as a member of the committee:

(1) the correctional institutions division of the Texas Department of Criminal Justice;

(2) the Department of State Health Services;
(3) the parole division of the Texas Department of
Criminal Justice;

(4) the community justice assistance division of the Texas Department of Criminal Justice;

- (5) the Texas Juvenile Justice Department;
- (6) the Department of Assistive and Rehabilitative Services;

(7) the Correctional Managed Health Care Committee;

(8) [the] Mental Health America of [Association in]
Texas:

(9) the Board of Pardons and Paroles;

- (9) the Board of Pardons and Paroles;
- (10) the Texas Commission on Law Enforcement;
- (11) the Texas Council of Community [Mental Health and Mental Retardation] Centers;

(12) the Commission on Jail Standards;
(13) the Texas Council for Developmental Disabilities.

(15) the National Alliance on Mental Illness [~~for the
Mentally Ill~~] of Texas;

(16) the Parent Association for the Retarded of Texas,
Inc.

Inc.;
(17) the Health and Human Services Commission; and
(18) the Department of Aging and Disability Services.

SECTION 3.1491. Section 614.008(a), Health and Safety Code, is amended to read as follows:

(a) The office may maintain at least one program in a county selected by the office to employ a cooperative community-based alternative system to divert from the state criminal justice system offenders with mental impairments or offenders who are identified as being elderly or persons with physical disabilities, terminal illnesses, or significant illnesses[physically disabled, terminally ill, or significantly ill] and to rehabilitate those offenders.

SECTION 3.1492. Section 614.013, Health and Safety Code, is amended to read as follows:

Sec. 614.013. CONTINUITY OF CARE FOR OFFENDERS WITH MENTAL IMPAIRMENTS. (a) The Texas Department of Criminal Justice, the Department of State Health Services, the bureau of identification and records of the Department of Public Safety, representatives of local mental health or intellectual and developmental disability [~~mental retardation~~] authorities appointed by the commissioner of the Department of State Health Services, and the directors of community supervision and corrections departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders with mental impairments in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders with mental impairments in the criminal justice system and collecting and reporting prevalence rate data to the office;

615-1 exchange of information on offenders with mental impairments by
 615-2 local and state criminal justice agencies, the Department of State
 615-3 Health Services and the Department of Aging and Disability Services
 615-4 [Texas Department of Mental Health and Mental Retardation], local
 615-5 mental health or intellectual and developmental disability [mental
 615-6 retardation] authorities, the Commission on Jail Standards, and
 615-7 local jails;

615-8 (3) identifying the services needed by offenders with
 615-9 mental impairments to reenter the community successfully; and

615-10 (4) establishing a process to report implementation
 615-11 activities to the office.

615-12 (c) The Texas Department of Criminal Justice, the
 615-13 Department of State Health Services, local mental health or
 615-14 intellectual and developmental disability [mental retardation]
 615-15 authorities, and community supervision and corrections departments
 615-16 shall:

615-17 (1) operate the continuity of care and service program
 615-18 for offenders with mental impairments in the criminal justice
 615-19 system with funds appropriated for that purpose; and

615-20 (2) actively seek federal grants or funds to operate
 615-21 and expand the program.

615-22 (d) Local and state criminal justice agencies shall,
 615-23 whenever possible, contract with local mental health or
 615-24 intellectual and developmental disability [mental retardation]
 615-25 authorities to maximize Medicaid funding and improve on the
 615-26 continuity of care and service program for offenders with mental
 615-27 impairments in the criminal justice system.

615-28 (e) The office, in coordination with each state agency
 615-29 identified in Subsection (b)(2), shall develop a standardized
 615-30 process for collecting and reporting the memorandum of
 615-31 understanding implementation outcomes by local and state criminal
 615-32 justice agencies and local and state mental health or intellectual
 615-33 and developmental disability [mental retardation] authorities.
 615-34 The findings of these reports shall be submitted to the office by
 615-35 September 1 of each even-numbered year and shall be included in
 615-36 recommendations to the board in the office's biennial report under
 615-37 Section 614.009.

615-38 SECTION 3.1493. Section 614.014, Health and Safety Code, is
 615-39 amended to read as follows:

615-40 Sec. 614.014. CONTINUITY OF CARE FOR ELDERLY OFFENDERS.

615-41 (a) The Texas Department of Criminal Justice and the executive
 615-42 commissioner[, the Texas Department of Human Services, and the
 615-43 Texas Department on Aging] by rule shall adopt a memorandum of
 615-44 understanding that establishes the [their] respective
 615-45 responsibilities of the Texas Department of Criminal Justice, the
 615-46 Department of State Health Services, the Department of Aging and
 615-47 Disability Services, and the Department of Assistive and
 615-48 Rehabilitative Services to institute a continuity of care and
 615-49 service program for elderly offenders in the criminal justice
 615-50 system. The office shall coordinate and monitor the development
 615-51 and implementation of the memorandum of understanding.

615-52 (b) The memorandum of understanding must establish methods
 615-53 for:

615-54 (1) identifying elderly offenders in the criminal
 615-55 justice system;

615-56 (2) developing interagency rules, policies, and
 615-57 procedures for the coordination of care of and the exchange of
 615-58 information on elderly offenders by local and state criminal
 615-59 justice agencies, the Department of State Health Services, the
 615-60 Department of Aging and Disability Services, and the Department of
 615-61 Assistive and Rehabilitative Services [Texas Department of Human
 615-62 Services, and the Texas Department on Aging]; and

615-63 (3) identifying the services needed by elderly
 615-64 offenders to reenter the community successfully.

615-65 (c) The Texas Department of Criminal Justice, the
 615-66 Department of State Health Services, the Department of Aging and
 615-67 Disability Services, and the Department of Assistive and
 615-68 Rehabilitative Services [Texas Department of Human Services, and
 615-69 the Texas Department on Aging] shall:

(1) operate the continuity of care and service program for elderly offenders in the criminal justice system with funds appropriated for that purpose; and

(2) actively seek federal grants or funds to operate and expand the program.

SECTION 3.1494. Section 614.015, Health and Safety Code, is amended to read as follows:

Sec. 614.015. CONTINUITY OF CARE FOR [PHYSICALLY DISABLED, TERMINALLY ILL, OR SIGNIFICANTLY ILL] OFFENDERS WITH PHYSICAL DISABILITIES, TERMINAL ILLNESSES, OR SIGNIFICANT ILLNESSES. (a) The Texas Department of Criminal Justice and the executive commissioner[, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services] by rule shall adopt a memorandum of understanding that establishes the [~~their~~] respective responsibilities of the Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services to institute a continuity of care and service program for offenders in the criminal justice system who are persons with physical disabilities, terminal illnesses, or significant illnesses [physically disabled, terminally ill, or significantly ill]. The council shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders in the criminal justice system who are persons with physical disabilities, terminal illnesses, or significant illnesses [physically disabled, terminally ill, or significantly ill];

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on offenders who are persons with physical disabilities, terminal illnesses, or significant illnesses [physically disabled, terminally ill, or significantly ill] by local and state criminal justice agencies, the Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services; and

(3) identifying the services needed by offenders who are persons with physical disabilities, terminal illnesses, or significant illnesses [physically disabled, terminally ill, or significantly ill] to reenter the community successfully.

(c) The Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services shall:

(1) operate, with funds appropriated for that purpose, the continuity of care and service program for offenders in the criminal justice system who are persons with physical disabilities, terminal illnesses, or significant illnesses [physically disabled, terminally ill, or significantly ill]; and

(2) actively seek federal grants or funds to operate and expand the program.

SECTION 3.1495. Section 614.016, Health and Safety Code, is amended to read as follows:

Sec. 614.016. CONTINUITY OF CARE FOR CERTAIN OFFENDERS BY LAW ENFORCEMENT AND JAILS. (a) The office, the Texas Commission on Law Enforcement, the bureau of identification and records of the Department of Public Safety, and the Commission on Jail Standards by rule shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders in the criminal justice system who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are [mentally impaired,] elderly[, physically disabled, terminally ill, or significantly ill].

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders in the criminal justice system who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are [mentally impaired,] elderly[, physically disabled, terminally ill, or significantly ill];

(2) developing procedures for the exchange of information relating to offenders who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are [mentally impaired,] elderly [~~physically disabled, terminally ill, or significantly ill~~] by the office, the Texas Commission on Law Enforcement, and the Commission on Jail Standards for use in the continuity of care and services program; and

(3) adopting rules and standards that assist in the development of a continuity of care and services program for offenders who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are [mentally impaired,] elderly[, physically disabled, terminally ill, or significantly ill].

SECTION 3.1496. Section 614.018(b), Health and Safety Code, is amended to read as follows:

(b) The memorandum of understanding must establish methods for:

(1) identifying juveniles with mental impairments in the juvenile justice system and collecting and reporting relevant data to the office;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on juveniles with mental impairments who are committed to or treated, served, or supervised by the Texas Juvenile Justice Department, the Department of Public Safety, the Department of State Health Services, the Department of Family and Protective Services, the Department of Aging and Disability Services, the Texas Education Agency, local juvenile probation departments, local mental health or intellectual and developmental disability [~~mental retardation~~] authorities, and independent school districts; and

(3) identifying the services needed by juveniles with mental impairments in the juvenile justice system.

SECTION 3.1497. Section 614.019, Health and Safety Code, is amended to read as follows:

Sec. 614.019. PROGRAMS FOR JUVENILES. (a) The office, in cooperation with the Department of State Health Services [~~Texas Commission on Alcohol and Drug Abuse, the Texas Department of Mental Health and Mental Retardation~~], the Department of Family and Protective [and Regulatory] Services, the Texas Juvenile Justice Department [~~Probation Commission, the Texas Youth Commission~~], and the Texas Education Agency, may establish and maintain programs, building on existing successful efforts in communities, to address prevention, intervention, and continuity of care for juveniles with mental health and substance abuse disorders.

(b) A child with mental illness who is receiving continuity of care services during parole from the Texas Juvenile Justice Department [~~Youth Commission~~] and who is no longer eligible to receive services from a local mental health authority when the child becomes 17 years of age because the child does not meet the requirements of a local service area plan under Section 533.0352(a) may continue to receive continuity of care services from the office until the child completes the child's parole.

(c) A child with mental illness or an intellectual disability [mental retardation] who is discharged from the Texas Juvenile Justice Department under Section 244.011, Human Resources Code, may receive continuity of care services from the office for a minimum of 90 days after discharge from the department [commission] and for as long as necessary for the child to demonstrate sufficient stability to transition successfully to mental health or intellectual disability [mental retardation] services provided by a local mental health or intellectual and developmental disability [mental retardation] authority.

618-1 SECTION 3.1498. Section 614.020(b), Health and Safety Code,
 618-2 is amended to read as follows:

618-3 (b) The program must be modeled after other assertive
 618-4 community treatment programs established by the [Texas] Department
 618-5 of State Health Services [~~Mental Health and Mental Retardation~~].
 618-6 The program is limited to serving not more than 30 program
 618-7 participants at any time.

618-8 SECTION 3.1499. Section 614.021(a), Health and Safety Code,
 618-9 is amended to read as follows:

618-10 (a) In this section, "wrongfully imprisoned person" has the
 618-11 meaning assigned by Section 501.101 [501.102], Government Code.

618-12 SECTION 3.1500. Chapter 615, Health and Safety Code, is
 618-13 amended to read as follows:

618-14 CHAPTER 615. MISCELLANEOUS PROVISIONS

618-15 Sec. 615.001. COUNTY RESPONSIBILITY. Each commissioners
 618-16 court shall provide for the support of a person with mental illness
 618-17 or an intellectual disability [~~mental retardation~~] who is:

- 618-18 (1) a resident of the county;
- 618-19 (2) unable to provide self-support; and
- 618-20 (3) cannot be admitted to a state mental health or
 618-21 intellectual disability [~~mental retardation~~] facility.

618-22 Sec. 615.002. ACCESS TO [~~MENTAL HEALTH~~] RECORDS BY
 618-23 PROTECTION AND ADVOCACY SYSTEM. (a) Notwithstanding other state
 618-24 law, the protection and advocacy system established in this state
 618-25 under the federal Protection and Advocacy for Individuals with
 618-26 Mental Illness [~~Mentally Ill Individuals~~] Act [of 1986] (42 U.S.C.
 618-27 Sec. 10801 et seq.) and the Developmental Disabilities Assistance
 618-28 and Bill of Rights Act of 2000 (42 U.S.C. Sec. 15001 et seq.) is
 618-29 entitled to access to records relating to persons with mental
 618-30 illness or developmental disabilities to the extent authorized by
 618-31 federal law.

618-32 (b) If the person [~~patient~~] consents to notification, the
 618-33 protection and advocacy system shall notify the [Texas] Department
 618-34 of State Health Services or the Department of Aging and Disability
 618-35 Services, as appropriate, [~~Mental Health and Mental Retardation's~~
 618-36 ~~Office of Client Services and Rights Protection~~] if the system
 618-37 decides to investigate a complaint of abuse, neglect, or rights
 618-38 violation that relates to a person with mental illness or a
 618-39 developmental disability who is a patient or client in a facility or
 618-40 program operated by, licensed by, certified by, or in a contractual
 618-41 relationship with that [~~the~~] department.

618-42 SECTION 3.1501. Section 671.001(d), Health and Safety Code,
 618-43 is amended to read as follows:

618-44 (d) A registered nurse or physician assistant may determine
 618-45 and pronounce a person dead in situations other than those
 618-46 described by Subsection (b) if permitted by written policies of a
 618-47 licensed health care facility, institution, or entity providing
 618-48 services to that person. Those policies must include physician
 618-49 assistants who are credentialed or otherwise permitted to practice
 618-50 at the facility, institution, or entity. If the facility,
 618-51 institution, or entity has an organized nursing staff and an
 618-52 organized medical staff or medical consultant, the nursing staff
 618-53 and medical staff or consultant shall jointly develop and approve
 618-54 those policies. The executive commissioner of the Health and Human
 618-55 Services Commission [~~board~~] shall adopt rules to govern policies
 618-56 for facilities, institutions, or entities that do not have
 618-57 organized nursing staffs and organized medical staffs or medical
 618-58 consultants.

618-59 SECTION 3.1502. Section 672.002(d), Health and Safety Code,
 618-60 is amended to read as follows:

618-61 (d) A review team may include:

- 618-62 (1) a criminal prosecutor involved in prosecuting
 618-63 crimes involving family violence;
- 618-64 (2) a peace officer;
- 618-65 (3) a justice of the peace or medical examiner;
- 618-66 (4) a public health professional;
- 618-67 (5) a representative of the Department of Family and
 618-68 Protective [~~and Regulatory~~] Services engaged in providing adult
 618-69 protective services;

619-1 (6) a mental health services provider;
 619-2 (7) a representative of the family violence shelter
 619-3 center providing services to the county;
 619-4 (8) the victim witness advocate in the county
 619-5 prosecutor's office;
 619-6 (9) a representative from the battering intervention
 619-7 and prevention program for the county; and
 619-8 (10) a community supervision and corrections
 619-9 department officer.

619-10 SECTION 3.1503. Section 672.008, Health and Safety Code, is
 619-11 amended to read as follows:

619-12 Sec. 672.008. REPORT. (a) Not later than December 15 of
 619-13 each even-numbered year, each review team shall submit to the
 619-14 Department of Family and Protective [and Regulatory] Services a
 619-15 report on deaths reviewed.

619-16 (b) Subject to Section 672.009, the Department of Family and
 619-17 Protective [and Regulatory] Services shall make the reports
 619-18 received under Subsection (a) available to the public.

619-19 SECTION 3.1504. Section 673.001, Health and Safety Code, is
 619-20 amended to read as follows:

619-21 Sec. 673.001. DEFINITIONS. In this chapter:
 619-22 (1) "Commissioner" means the commissioner of state
 619-23 health services.

619-24 (2) "Department" means the [Texas] Department of State
 619-25 Health Services.

619-26 (3) "Executive commissioner" means the executive
 619-27 commissioner of the Health and Human Services Commission.

619-28 SECTION 3.1505. Sections 673.002(b) and (c), Health and
 619-29 Safety Code, are amended to read as follows:

619-30 (b) The justice of the peace or medical examiner shall
 619-31 inform the child's legal guardian or parents that an autopsy shall
 619-32 be performed on the child. The state shall reimburse a county \$500
 619-33 for the cost of the autopsy if the primary cause of death of the
 619-34 child is sudden infant death syndrome. The executive commissioner
 619-35 [department] shall adopt rules that:

619-36 (1) define sudden infant death syndrome; and
 619-37 (2) describe the method for obtaining reimbursement
 619-38 for the cost of an autopsy.

619-39 (c) Reimbursement required by Subsection (b) [of this
 619-40 section] is subject to the availability of funds.

619-41 SECTION 3.1506. Section 694.001, Health and Safety Code, is
 619-42 amended to read as follows:

619-43 Sec. 694.001. DUTIES OF [TEXAS] DEPARTMENT OF STATE HEALTH
 619-44 SERVICES. The [Texas] Department of State Health Services shall
 619-45 regulate the disposal, transportation, interment, and disinterment
 619-46 of dead bodies to the extent reasonable and necessary to protect
 619-47 public health and safety.

619-48 SECTION 3.1507. Section 751.010(a), Health and Safety Code,
 619-49 is amended to read as follows:

619-50 (a) After notice and a public hearing, the executive
 619-51 commissioner of the Health and Human Services Commission [Texas
 619-52 Board of Health] shall adopt rules relating to minimum standards of
 619-53 health and sanitation to be maintained at mass gatherings.

619-54 SECTION 3.1508. Section 755.033(a), Health and Safety Code,
 619-55 is amended to read as follows:

619-56 (a) The executive director shall enter into interagency
 619-57 agreements with the [Texas] Department of State Health Services,
 619-58 the Texas Commission on Fire Protection, and the Texas Department
 619-59 of Insurance under which inspectors, marshals, or investigators
 619-60 from those agencies who discover unsafe or unregistered boilers in
 619-61 the course and scope of inspections conducted as part of regulatory
 619-62 or safety programs administered by those agencies are required to
 619-63 report the unsafe or unregistered boilers to the executive
 619-64 director.

619-65 SECTION 3.1509. Section 757.010(b), Health and Safety Code,
 619-66 is amended to read as follows:

619-67 (b) An owner of a multiunit rental complex or a rental
 619-68 dwelling in a condominium, cooperative, or town home project with a
 619-69 pool or a property owners association that owns, controls, or

620-1 maintains a pool may, at the person's option, exceed the standards
 620-2 of this chapter or those adopted [by the Texas Board of Health]
 620-3 under Section 757.011. A tenant or occupant in a multiunit rental
 620-4 complex and a member of a property owners association may, by
 620-5 express written agreement, require the owner of the complex or the
 620-6 association to exceed those standards.

620-7 SECTION 3.1510. Section 757.011, Health and Safety Code, is
 620-8 amended to read as follows:

620-9 Sec. 757.011. RULEMAKING AUTHORITY [OF TEXAS BOARD OF
 620-10 HEALTH]. The executive commissioner of the Health and Human
 620-11 Services Commission [Texas Board of Health] may adopt rules
 620-12 requiring standards for design and construction of pool yard
 620-13 enclosures that exceed the requirements of this chapter and that
 620-14 apply to all pools and pool yards subject to this chapter. An owner
 620-15 of a multiunit rental complex or a rental dwelling in a condominium,
 620-16 cooperative, or town home project with a pool or a property owners
 620-17 association that owns, controls, or maintains a pool shall comply
 620-18 with and shall be liable for failure to comply with those rules to
 620-19 the same extent as if they were part of this chapter.

620-20 SECTION 3.1511. Sections 773.003(6), (10), and (18), Health
 620-21 and Safety Code, are amended to read as follows:

620-22 (6) "Commissioner" means the commissioner of state
 620-23 health services.

620-24 (10) "Emergency medical services personnel" means:

- 620-25 (A) emergency care attendant;
 - 620-26 (B) emergency medical technicians;
 - 620-27 (C) advanced emergency medical technicians
- 620-28 [technicians intermediate];
- 620-29 (D) emergency medical technicians--paramedic; or
 - 620-30 (E) licensed paramedic.

620-31 (18) "Medical supervision" means direction given to
 620-32 emergency medical services personnel by a licensed physician under
 620-33 Subtitle B, Title 3, Occupations Code, and the rules adopted under
 620-34 that subtitle by the Texas [State Board of] Medical Board
 620-35 [Examiners].

620-36 SECTION 3.1512. Section 773.0045(b), Health and Safety
 620-37 Code, is amended to read as follows:

620-38 (b) The department on a case-by-case basis may temporarily
 620-39 exempt emergency medical services personnel who primarily practice
 620-40 in a rural area from a requirement imposed either by Section 773.050
 620-41 or 773.055 or by a department rule adopted [by the department] under
 620-42 Section 773.050 or 773.055 if specific circumstances that affect
 620-43 the rural area served by the emergency medical services personnel
 620-44 justify the exemption. The department may temporarily exempt the
 620-45 emergency medical services personnel from a requirement imposed:

620-46 (1) by a department rule adopted under Section 773.050
 620-47 or 773.055 only if the department finds that, under the
 620-48 circumstances, imposing the requirement would not be in the best
 620-49 interests of the people in the rural area who are served by the
 620-50 emergency medical services personnel; and

620-51 (2) by Section 773.050 or 773.055 only if the
 620-52 department finds that, under the circumstances, there is a
 620-53 substantial risk that imposing the requirement will detrimentally
 620-54 affect the health or safety of one or more persons in the affected
 620-55 rural area or hinder the ability of emergency medical services
 620-56 personnel who practice in the area to alleviate a threat to the
 620-57 health or safety of one or more persons in the area.

620-58 SECTION 3.1513. Section 773.006, Health and Safety Code, is
 620-59 amended to read as follows:

620-60 Sec. 773.006. FUND FOR EMERGENCY MEDICAL SERVICES, TRAUMA
 620-61 FACILITIES, AND TRAUMA CARE SYSTEMS. (a) The fund for emergency
 620-62 medical services, trauma facilities, and trauma care systems is
 620-63 established as an account in the general revenue fund. Money in the
 620-64 account may be appropriated only to the department [bureau] for the
 620-65 purposes specified by Section 773.122.

620-66 (b) The account is composed of money deposited to the
 620-67 account under Article 102.0185, Code of Criminal Procedure[, and
 620-68 the earnings of the account].

620-69 (c) Section [Sections 403.095 and] 404.071, Government

621-1 Code, ~~does~~ [do] not apply to the account.

621-2 SECTION 3.1514. Sections [773.011](#)(b), (c), and (d), Health
621-3 and Safety Code, are amended to read as follows:

621-4 (b) The executive commissioner ~~[board]~~ shall adopt rules
621-5 establishing minimum standards for the creation and operation of a
621-6 subscription program.

621-7 (c) The executive commissioner ~~[board]~~ shall adopt a rule
621-8 that requires an emergency medical services provider to secure a
621-9 surety bond in the amount of sums to be subscribed before soliciting
621-10 subscriptions and creating and operating a subscription program.
621-11 The surety bond must be issued by a company that is licensed by or
621-12 eligible to do business in this state.

621-13 (d) The executive commissioner ~~[board]~~ may adopt rules for
621-14 waiver of the surety bond.

621-15 SECTION 3.1515. Sections [773.012](#)(a) and (j), Health and
621-16 Safety Code, are amended to read as follows:

621-17 (a) The governor shall appoint an advisory council to advise
621-18 the department ~~[board]~~ regarding matters related to the
621-19 responsibilities of the executive commissioner ~~[board]~~,
621-20 commissioner, and department under this chapter. In making
621-21 appointments to the advisory council, the governor shall ensure
621-22 that approximately one-half of the members of the advisory council
621-23 are residents of rural areas of the state.

621-24 (j) The advisory council periodically shall review
621-25 department ~~[board]~~ rules relating to this chapter and may recommend
621-26 changes in those rules to the department ~~[board]~~. The department
621-27 ~~[board and the commissioner]~~ shall ensure that the advisory council
621-28 is given adequate time and opportunity to review and comment on each
621-29 rule proposed for adoption by the executive commissioner ~~[board]~~
621-30 under this chapter, including the amendment or repeal of an
621-31 existing rule, but not including an emergency rule.

621-32 SECTION 3.1516. Section [773.013](#), Health and Safety Code, is
621-33 amended to read as follows:

621-34 Sec. 773.013. PEER ASSISTANCE PROGRAM. The department may
621-35 establish, approve, and fund a peer assistance program in
621-36 accordance with Section [467.003](#) and department ~~[board]~~ rules.

621-37 SECTION 3.1517. Sections [773.014](#)(b) and (c), Health and
621-38 Safety Code, are amended to read as follows:

621-39 (b) The executive commissioner ~~[department]~~ shall adopt
621-40 rules designed to protect the public health and safety to implement
621-41 this section. The rules must provide that emergency medical
621-42 services personnel may administer an epinephrine auto-injector
621-43 device to another only if the person has successfully completed a
621-44 training course, approved by the department, in the use of the
621-45 device that is consistent with the national standard training
621-46 curriculum for emergency medical technicians.

621-47 (c) An emergency medical services provider or first
621-48 responder organization may acquire, possess, maintain, and dispose
621-49 of epinephrine auto-injector devices, and emergency medical
621-50 services personnel may carry, maintain, administer, and dispose of
621-51 epinephrine auto-injector devices, only in accordance with:

621-52 (1) rules adopted ~~[by the department]~~ under this
621-53 section; and

621-54 (2) a delegated practice agreement that provides for
621-55 medical supervision by a licensed physician who either:

621-56 (A) acts as a medical director for an emergency
621-57 medical services system or a licensed hospital; or
621-58 (B) has knowledge and experience in the delivery
621-59 of emergency care.

621-60 SECTION 3.1518. Sections [773.021](#)(a) and (c), Health and
621-61 Safety Code, are amended to read as follows:

621-62 (a) The department ~~[bureau]~~ shall develop a state plan for
621-63 the prompt and efficient delivery of adequate emergency medical
621-64 services to acutely sick or injured persons.

621-65 (c) The advisory council shall consider the department's
621-66 ~~[bureau's]~~ actions under Subsection (a), and the department ~~[board]~~
621-67 shall review the council's recommendations.

621-68 SECTION 3.1519. Section [773.022](#), Health and Safety Code, is
621-69 amended to read as follows:

622-1 Sec. 773.022. SERVICE DELIVERY AREAS. The department
622-2 [bureau] shall divide the state into emergency medical services
622-3 delivery areas that coincide, to the extent possible, with other
622-4 regional planning areas.

622-5 SECTION 3.1520. Section 773.023(a), Health and Safety Code,
622-6 is amended to read as follows:

622-7 (a) The department [bureau] shall:

622-8 (1) identify all public or private agencies and
622-9 institutions that are used or may be used for emergency medical
622-10 services in each delivery area; and

622-11 (2) enlist the cooperation of all concerned agencies
622-12 and institutions in developing a well-coordinated plan for
622-13 delivering emergency medical services in each delivery area.

622-14 SECTION 3.1521. Section 773.024, Health and Safety Code, is
622-15 amended to read as follows:

622-16 Sec. 773.024. FEDERAL PROGRAMS. The department [bureau] is
622-17 the state agency designated to develop state plans required for
622-18 participation in federal programs involving emergency medical
622-19 services. The department [bureau] may receive and disburse
622-20 available federal funds to implement the service programs.

622-21 SECTION 3.1522. Sections 773.025(a), (c), (d), and (e),
622-22 Health and Safety Code, are amended to read as follows:

622-23 (a) The department [bureau] shall identify all individuals
622-24 and public or private agencies and institutions that are or may be
622-25 engaged in emergency medical services training in each delivery
622-26 area.

622-27 (c) A governmental entity that sponsors or wishes to sponsor
622-28 an emergency medical services provider may request the department
622-29 [bureau] to provide emergency medical services training for
622-30 emergency care attendants at times and places that are convenient
622-31 for the provider's personnel, if the training is not available
622-32 locally.

622-33 (d) A governmental entity or nongovernmental organization
622-34 that sponsors or wishes to sponsor an emergency medical services
622-35 provider or first responder organization in a rural or underserved
622-36 area may request the department [bureau] to provide or facilitate
622-37 the provision of initial training for emergency care attendants, if
622-38 the training is not available locally. The department [bureau]
622-39 shall ensure that the training is provided. The department
622-40 [bureau] shall provide the training without charge, or contract
622-41 with qualified instructors to provide the training without charge,
622-42 to students who agree to perform emergency care attendant services
622-43 for at least one year with the local emergency medical services
622-44 provider or first responder organization. The training must be
622-45 provided at times and places that are convenient to the students.
622-46 The department [bureau] shall require that at least three students
622-47 are scheduled to take any class offered under this subsection.

622-48 (e) To facilitate all levels of emergency medical services
622-49 training, the department [bureau] shall consult with and solicit
622-50 comment from emergency medical services providers, first responder
622-51 organizations, persons who provide emergency medical services
622-52 training, and other entities interested in emergency medical
622-53 services training programs.

622-54 SECTION 3.1523. Section 773.0415, Health and Safety Code,
622-55 is amended to read as follows:

622-56 Sec. 773.0415. LIMITATION ON INFORMATION REQUIRED FOR
622-57 CERTIFICATE RENEWAL. The requirements and procedures adopted by
622-58 the executive commissioner [department] for the renewal of a
622-59 certificate to practice as emergency medical services personnel
622-60 issued under this chapter:

622-61 (1) may not require an applicant to provide unchanged
622-62 criminal history information already included in one or more of the
622-63 applicant's previous applications for certification or for
622-64 certificate renewal filed with the department; and

622-65 (2) may require the applicant to provide only
622-66 information relevant to the period occurring since the date of the
622-67 applicant's last application for certification or for certificate
622-68 renewal, as applicable, including information relevant to any new
622-69 requirement applicable to the certificate held by the applicant.

623-1 SECTION 3.1524. Section 773.045(c), Health and Safety Code,
 623-2 is amended to read as follows:

623-3 (c) An air ambulance company based in another state that
 623-4 transports patients from a point in this state is required to be
 623-5 licensed by the department as an emergency medical services
 623-6 provider. The department shall issue a license to an air ambulance
 623-7 company under this subsection if the company applies as required by
 623-8 this chapter and has met the [department's] qualifications
 623-9 specified in department rules for safely transporting patients. An
 623-10 air ambulance company accredited by the Commission [Committee] on
 623-11 Accreditation of [Air Ambulance] Medical Transport Systems
 623-12 [Services] is rebuttably presumed to have met the department's
 623-13 qualifications.

623-14 SECTION 3.1525. Section 773.046(c), Health and Safety Code,
 623-15 is amended to read as follows:

623-16 (c) The executive commissioner [board] shall adopt rules as
 623-17 necessary to administer this section.

623-18 SECTION 3.1526. Sections 773.048 and 773.0495, Health and
 623-19 Safety Code, are amended to read as follows:

623-20 Sec. 773.048. ADVANCED EMERGENCY MEDICAL TECHNICIAN
 623-21 [~~TECHNICIAN-INTERMEDIATE~~] QUALIFICATIONS. An individual
 623-22 qualifies as an advanced emergency medical technician
 623-23 [~~technician-intermediate~~] if the individual is certified by the
 623-24 department as minimally proficient to provide emergency
 623-25 prehospital care by initiating under medical supervision certain
 623-26 procedures, including intravenous therapy and endotracheal or
 623-27 esophageal intubation.

623-28 Sec. 773.0495. LICENSED PARAMEDIC QUALIFICATIONS. An
 623-29 individual qualifies as a licensed paramedic if the department
 623-30 determines that the individual is minimally proficient to provide
 623-31 advanced life support that includes initiation under medical
 623-32 supervision of certain procedures, including intravenous therapy,
 623-33 endotracheal or esophageal intubation, electrical cardiac
 623-34 defibrillation or cardioversion, and drug therapy. In addition, a
 623-35 licensed paramedic must complete a curriculum that includes
 623-36 college-level course work in accordance with department rules
 623-37 [~~adopted by the board~~].

623-38 SECTION 3.1527. Section 773.050(h), Health and Safety Code,
 623-39 is amended to read as follows:

623-40 (h) The department may provide a prescreening criminal
 623-41 history record check for an emergency medical services personnel
 623-42 applicant to determine the applicant's eligibility to receive
 623-43 certification before enrollment in the educational and training
 623-44 requirements mandated by the executive commissioner. The executive
 623-45 commissioner by rule may prescribe [~~department may charge~~] a
 623-46 reasonable fee for the costs associated with prescreening to charge
 623-47 each applicant who requests prescreening. The department shall
 623-48 collect the prescribed fee.

623-49 SECTION 3.1528. Section 773.0505, Health and Safety Code,
 623-50 is amended to read as follows:

623-51 Sec. 773.0505. RULES REGARDING ADVERTISING OR COMPETITIVE
 623-52 BIDDING. (a) The executive commissioner [board] may not adopt
 623-53 rules restricting advertising or competitive bidding by a license
 623-54 or certificate holder except to prohibit false, misleading, or
 623-55 deceptive practices.

623-56 (b) In [~~its~~] rules to prohibit false, misleading, or
 623-57 deceptive practices, the executive commissioner [board] may not
 623-58 include a rule that:

623-59 (1) restricts the use of any medium for advertising;
 623-60 (2) restricts the use of a license or certificate
 623-61 holder's personal appearance or voice in an advertisement;
 623-62 (3) relates to the size or duration of an
 623-63 advertisement by the license or certificate holder; or
 623-64 (4) restricts the license or certificate holder's
 623-65 advertisement under a trade name.

623-66 SECTION 3.1529. Sections 773.052(a) and (c), Health and
 623-67 Safety Code, are amended to read as follows:

623-68 (a) An emergency medical services provider with a specific
 623-69 hardship may apply to the department [~~bureau chief~~] for a variance

624-1 from a rule adopted under this chapter. The executive commissioner
 624-2 by rule [board] may adopt a fee of not more than \$30 for filing an
 624-3 application for a variance.

624-4 (c) The department [bureau chief] shall grant to a sole
 624-5 provider for a service area a variance from the minimum standards
 624-6 for staffing and equipment for the provision of basic life-support
 624-7 emergency medical services if the provider is an emergency medical
 624-8 services provider exempt from the payment of fees under Section
 624-9 **773.0581.**

624-10 SECTION 3.1530. Section **773.054**(b), Health and Safety Code,
 624-11 is amended to read as follows:

624-12 (b) Each application must be made to the department on a
 624-13 form prescribed by the department [board] and under department
 624-14 rules [adopted by the board].

624-15 SECTION 3.1531. Sections **773.055**(a), (d), and (g), Health
 624-16 and Safety Code, are amended to read as follows:

624-17 (a) A nonrefundable fee must accompany each application for
 624-18 emergency medical services personnel certification. The fee may
 624-19 not exceed:

624-20 (1) \$90 for an emergency medical technician-paramedic
 624-21 or advanced emergency medical technician
 624-22 [technician-intermediate];

624-23 (2) \$60 for an emergency medical technician or
 624-24 emergency care attendant;

624-25 (3) \$90 for recertification of an emergency medical
 624-26 technician-paramedic or advanced emergency medical technician
 624-27 [technician-intermediate];

624-28 (4) \$60 for recertification of an emergency medical
 624-29 technician or emergency care attendant; or

624-30 (5) \$120 for certification or recertification of a
 624-31 licensed paramedic.

624-32 (d) The department shall furnish a person who fails an
 624-33 examination for certification with an analysis of the person's
 624-34 performance on the examination if requested in writing by that
 624-35 person. The executive commissioner [board] may adopt rules to
 624-36 allow a person who fails the examination to retake all or part of
 624-37 the examination. A fee of not more than \$30 must accompany each
 624-38 application for reexamination.

624-39 (g) The executive commissioner [board] by rule may adopt a
 624-40 system under which certificates expire on various dates during the
 624-41 year. For the year in which the certificate expiration date is
 624-42 changed, the department shall prorate certificate fees on a monthly
 624-43 basis so that each certificate holder pays only that portion of the
 624-44 certificate fee that is allocable to the number of months during
 624-45 which the certificate is valid. On renewal of the certificate on
 624-46 the new expiration date, the total certificate renewal fee is
 624-47 payable.

624-48 SECTION 3.1532. Sections **773.057**(a), (b), and (c), Health
 624-49 and Safety Code, are amended to read as follows:

624-50 (a) An emergency medical services provider must submit an
 624-51 application for a license in accordance with procedures prescribed
 624-52 by the executive commissioner [board].

624-53 (b) A nonrefundable application and vehicle fee determined
 624-54 by the executive commissioner by rule [board] must accompany each
 624-55 application. The application fee may not exceed \$500 for each
 624-56 application and the vehicle fee may not exceed \$180 for each
 624-57 emergency medical services vehicle operated by the provider.

624-58 (c) The department may delegate vehicle inspections to the
 624-59 commissioners court of a county or the governing body of a
 624-60 municipality. The delegation must be made:

624-61 (1) at the request of the commissioners court or
 624-62 governing body; and

624-63 (2) in accordance with criteria and procedures adopted
 624-64 by the executive commissioner [board].

624-65 SECTION 3.1533. Section **773.0572**, Health and Safety Code,
 624-66 is amended to read as follows:

624-67 Sec. 773.0572. PROVISIONAL LICENSES. The executive
 624-68 commissioner [board] by rule shall establish conditions under which
 624-69 an emergency medical services provider who fails to meet the

625-1 minimum standards prescribed by this chapter may be issued a
 625-2 provisional license. The department may issue a provisional
 625-3 license to an emergency medical services provider under this
 625-4 chapter if the department finds that issuing the license would
 625-5 serve the public interest and that the provider meets the
 625-6 requirements of the rules adopted under this section. A
 625-7 nonrefundable fee of not more than \$30 must accompany each
 625-8 application for a provisional license.

625-9 SECTION 3.1534. Section 773.060(b), Health and Safety Code,
 625-10 is amended to read as follows:

625-11 (b) The department shall deposit the fees and other funds in
 625-12 the state treasury to the credit of the bureau of emergency
 625-13 management account in the general revenue fund. The account [fund]
 625-14 may be used only to administer this chapter.

625-15 SECTION 3.1535. Section 773.061(d), Health and Safety Code,
 625-16 is amended to read as follows:

625-17 (d) The department may place on probation a course or
 625-18 training program or a person, including emergency medical services
 625-19 personnel, an emergency medical services provider license holder,
 625-20 or a program instructor, examiner, or course coordinator, whose
 625-21 certificate, license, or approval is suspended. If a suspension is
 625-22 probated, the department may require the person or the sponsor of a
 625-23 course or training program, as applicable:

625-24 (1) to report regularly to the department on matters
 625-25 that are the basis of the probation;

625-26 (2) to limit practice to the areas prescribed by the
department [board]; or

625-27 (3) to continue or review professional education until
 625-28 the person attains a degree of skill satisfactory to the department
 625-29 in those areas that are the basis of the probation.

625-30 SECTION 3.1536. Section 773.0611(c), Health and Safety
 625-31 Code, is amended to read as follows:

625-32 (c) The executive commissioner [board] shall adopt rules
 625-33 for unannounced inspections authorized under this section. The
 625-34 department or its representative shall perform unannounced
 625-35 inspections in accordance with those rules. An emergency medical
 625-36 services provider shall pay to the department a nonrefundable fee
 625-37 of not more than \$30 if reinspection is necessary to determine
 625-38 compliance with this chapter and the rules adopted under this
 625-39 chapter.

625-40 SECTION 3.1537. Section 773.0612(b), Health and Safety
 625-41 Code, is amended to read as follows:

625-42 (b) A report, record, or working paper used or developed in
 625-43 an investigation under this section is confidential and may be used
 625-44 only for purposes consistent with department [the] rules [adopted
by the board].

625-45 SECTION 3.1538. Section 773.0613(b), Health and Safety
 625-46 Code, is amended to read as follows:

625-47 (b) The executive commissioner [department] shall adopt
 625-48 rules relating to the type of information an emergency medical
 625-49 services provider must provide under this section and the manner in
 625-50 which the information must be provided.

625-51 SECTION 3.1539. Section 773.0614(a), Health and Safety
 625-52 Code, is amended to read as follows:

625-53 (a) In addition to the grounds under Section 773.061, the
 625-54 department [commissioner] may suspend or revoke a certificate,
 625-55 disqualify a person from receiving a certificate, or deny a person
 625-56 the opportunity to take a certification examination on the grounds
 625-57 that the person has been convicted of, or placed on deferred
 625-58 adjudication community supervision or deferred disposition for, an
 625-59 offense that directly relates to the duties and responsibilities of
 625-60 emergency medical services personnel.

625-61 SECTION 3.1540. Section 773.06141(a), Health and Safety
 625-62 Code, is amended to read as follows:

625-63 (a) The department [commissioner] may suspend, revoke, or
 625-64 deny an emergency medical services provider license on the grounds
 625-65 that the provider's administrator of record, employee, or other
 625-66 representative:

625-67 (1) has been convicted of, or placed on deferred

626-1 adjudication community supervision or deferred disposition for, an
 626-2 offense that directly relates to the duties and responsibilities of
 626-3 the administrator, employee, or representative, other than an
 626-4 offense for which points are assigned under Section **708.052**,
 626-5 Transportation Code;

626-6 (2) has been convicted of or placed on deferred
 626-7 adjudication community supervision or deferred disposition for an
 626-8 offense, including:

626-9 (A) an offense listed in Sections 3g(a)(1)(A)
 626-10 through (H), Article **42.12**, Code of Criminal Procedure; or
 626-11 (B) an offense, other than an offense described
 626-12 by Subdivision (1), for which the person is subject to registration
 626-13 under Chapter 62, Code of Criminal Procedure; or

626-14 (3) has been convicted of Medicare or Medicaid fraud,
 626-15 has been excluded from participation in the state Medicaid program,
 626-16 or has a hold on payment for reimbursement under the state Medicaid
 626-17 program under Subchapter C, Chapter 531, Government Code.

626-18 SECTION 3.1541. Sections **773.0615**(a), (b), and (c), Health
 626-19 and Safety Code, are amended to read as follows:

626-20 (a) In determining whether an offense directly relates to
 626-21 the duties and responsibilities of emergency medical services
 626-22 personnel under Section **773.0614**(a), the department [~~commissioner~~]
 626-23 shall consider:

626-24 (1) the nature and seriousness of the crime;
 626-25 (2) the relationship of the crime to the purposes for
 626-26 requiring certification to engage in emergency medical services;
 626-27 (3) the extent to which certification might offer an
 626-28 opportunity to engage in further criminal activity of the same type
 626-29 as that in which the person previously had been involved; and
 626-30 (4) the relationship of the crime to the ability,
 626-31 capacity, or fitness required to perform the duties and discharge
 626-32 the responsibilities of emergency medical services personnel.

626-33 (b) In determining the fitness to perform the duties and
 626-34 discharge the responsibilities of emergency medical services
 626-35 personnel for a person who has been convicted of, or placed on
 626-36 deferred adjudication community supervision or deferred
 626-37 disposition for, a crime the department [~~commissioner~~] shall
 626-38 consider, in addition to the factors listed in Subsection (a):

626-39 (1) the extent and nature of the person's past criminal
 626-40 activity;

626-41 (2) the age of the person when the crime was committed;
 626-42 (3) the amount of time that has elapsed since the
 626-43 person's last criminal activity;

626-44 (4) the conduct and work activity of the person before
 626-45 and after the criminal activity;

626-46 (5) evidence of the person's rehabilitation or
 626-47 rehabilitative effort while incarcerated, after release, or since
 626-48 imposition of community supervision or deferred adjudication; and

626-49 (6) other evidence of the person's fitness, including
 626-50 letters of recommendation from:

626-51 (A) prosecutors, law enforcement officers,
 626-52 correctional officers, or community supervision officers who
 626-53 prosecuted, arrested, or had custodial or other responsibility for
 626-54 the person;

626-55 (B) the sheriff or chief of police in the
 626-56 community where the person resides; and

626-57 (C) any other person in contact with the person.

626-58 (c) The applicant or certificate holder has the
 626-59 responsibility, to the extent possible, to obtain and provide to
 626-60 the department [~~commissioner~~] the recommendations of the persons
 626-61 required by Subsection (b)(6).

626-62 SECTION 3.1542. Sections **773.0616**(a) and (b), Health and
 626-63 Safety Code, are amended to read as follows:

626-64 (a) A proceeding [~~before the commissioner~~] to consider the
 626-65 issues under Section **773.0615** is governed by Chapter 2001,
 626-66 Government Code.

626-67 (b) The executive commissioner shall issue guidelines
 626-68 relating to the department's [~~commissioner's~~] decision-making
 626-69 under Sections **773.0614** and **773.0615**. The guidelines must state

627-1 the reasons a particular crime is considered to relate to emergency
 627-2 medical services personnel and include any other criterion that may
 627-3 affect the decisions of the department [commissioner].

627-4 SECTION 3.1543. Section 773.0617, Health and Safety Code,
 627-5 is amended to read as follows:

627-6 Sec. 773.0617. NOTICE AND REVIEW OF SUSPENSION, REVOCATION,
 627-7 DISQUALIFICATION FOR, OR DENIAL OF CERTIFICATION. (a) If the
 627-8 department [commissioner] suspends or revokes a certification,
 627-9 denies a person a certificate, or denies the opportunity to be
 627-10 examined for a certificate under Section 773.0614, the department
 627-11 [commissioner] shall notify the person in writing of:

627-12 (1) the reason for the suspension, revocation, denial,
 627-13 or disqualification;

627-14 (2) the review procedure provided by Subsection (b);
 627-15 and

627-16 (3) the earliest date the person may appeal the action
 627-17 of the department [commissioner].

627-18 (b) A person whose certificate has been suspended or revoked
 627-19 or who has been denied a certificate or the opportunity to take an
 627-20 examination and who has exhausted the person's administrative
 627-21 appeals may file an action in the district court in Travis County
 627-22 for review of the evidence presented to the department
 627-23 [commissioner] and the decision of the department [commissioner].

627-24 (c) The petition for an action under Subsection (b) must be
 627-25 filed not later than the 30th day after the date the department's
 627-26 [commissioner's] decision is final.

627-27 SECTION 3.1544. Sections 773.062(a) and (c), Health and
 627-28 Safety Code, are amended to read as follows:

627-29 (a) The commissioner [bureau chief] shall issue an
 627-30 emergency order to suspend a certificate or license issued under
 627-31 this chapter if the commissioner [bureau chief] has reasonable
 627-32 cause to believe that the conduct of any certificate or license
 627-33 holder creates an imminent danger to the public health or safety.

627-34 (c) The holder may request in writing a hearing on the
 627-35 emergency suspension. The department shall refer the matter to the
 627-36 State Office of Administrative Hearings. An administrative law
 627-37 judge of that office shall conduct the hearing not earlier than the
 627-38 10th day or later than the 30th day after the date on which the
 627-39 request is received by the department, shall make findings of fact,
 627-40 and shall issue a written proposal for decision regarding whether
 627-41 the department should [and may] continue, modify, or rescind the
 627-42 suspension. The department's [department] hearing rules and
 627-43 Chapter 2001, Government Code, govern the hearing and any appeal
 627-44 from a disciplinary action related to the hearing.

627-45 SECTION 3.1545. Section 773.064(a), Health and Safety Code,
 627-46 is amended to read as follows:

627-47 (a) A person commits an offense if the person knowingly
 627-48 practices as, attempts to practice as, or represents himself to be
 627-49 an emergency medical technician-paramedic, advanced emergency
 627-50 medical technician [technician-intermediate], emergency medical
 627-51 technician, emergency care attendant, or licensed paramedic and the
 627-52 person does not hold an appropriate certificate issued by the
 627-53 department under this chapter. An offense under this subsection is
 627-54 a Class A misdemeanor.

627-55 SECTION 3.1546. Sections 773.065(a), (b), and (c), Health
 627-56 and Safety Code, are amended to read as follows:

627-57 (a) The department [commissioner] may assess an
 627-58 administrative penalty against an emergency medical services
 627-59 provider or a course coordinator who violates this chapter or a rule
 627-60 adopted or an order issued under this chapter.

627-61 (b) In determining the amount of the penalty, the department
 627-62 [commissioner] shall consider:

627-63 (1) the emergency medical services provider's or
 627-64 course coordinator's previous violations;

627-65 (2) the seriousness of the violation;

627-66 (3) any hazard to the health and safety of the public;

627-67 (4) the emergency medical services provider's or
 627-68 course coordinator's demonstrated good faith; and

627-69 (5) any other matter as justice may require.

(c) The penalty may not exceed \$7,500 for each violation. The executive commissioner [board] by rule shall establish gradations of penalties in accordance with the relative seriousness of the violation.

SECTION 3.1547. Sections 773.066(b), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(b) If a hearing is held, the department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office [commissioner] shall conduct the hearing, make findings of fact, and [shall] issue to the department a written proposal for decision regarding whether the emergency medical services provider or course coordinator committed a violation and the amount of any penalty to be assessed.

(c) If the emergency medical services provider or course coordinator charged with the violation does not request a hearing, the department [commissioner] shall determine whether the provider or course coordinator committed a violation and the amount of any penalty to be assessed.

(d) After making a determination under this section [Subsection (b) or (c)] that a penalty is to be assessed against an emergency medical services provider or a course coordinator, the department [commissioner] shall issue an order requiring that the emergency medical services provider or course coordinator pay the penalty.

(e) Not later than the 30th day after the date an order is issued under Subsection (d), the department [~~commissioner~~] shall give written notice of the order to the emergency medical services provider or course coordinator.

SECTION 3.1548. Sections 773.067(b), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's [commissioner's] order is final; or

(2) request the court to stay enforcement of the

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department [commissioner] by certified mail.

(c) If the department [~~commissioner~~] receives a copy of an affidavit under Subsection (b)(2), the department [~~commissioner~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(d) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department [commissioner] may refer the matter to the attorney general for collection of the amount of the penalty.

(e) Judicial review of the order of the department [commissioner]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 3.1549. Section 773.069, Health and Safety Code, is amended to read as follows:

Sec. 773.069. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the

629-1 department [commissioner] may bring a civil action to recover an
 629-2 administrative penalty assessed under this subchapter.

629-3 SECTION 3.1550. Section 773.070, Health and Safety Code, is
 629-4 amended to read as follows:

629-5 Sec. 773.070. DENIAL OF CERTIFICATION OR LICENSURE FOR
 629-6 FAILURE TO PROVIDE [~~ACCESS TO~~] CERTAIN CRIMINAL HISTORY RECORD
 629-7 INFORMATION. [~~(e)~~] The department [board] may deny licensure or
 629-8 certification to an applicant who does not provide a complete set of
 629-9 the required fingerprints to obtain criminal history record
 629-10 information.

629-11 SECTION 3.1551. Section 773.071(a), Health and Safety Code,
 629-12 is amended to read as follows:

629-13 (a) To the extent feasible, the executive commissioner
 629-14 [~~board~~] by rule shall set the fees under this subchapter in amounts
 629-15 necessary for the department to recover the cost of administering
 629-16 this subchapter.

629-17 SECTION 3.1552. Sections 773.092(b), (c), and (e), Health
 629-18 and Safety Code, are amended to read as follows:

629-19 (b) Information under Subsection (a)(4) [~~Subdivision (4)~~]
 629-20 is discoverable in any court or administrative proceeding in this
 629-21 state if the court or administrative body has jurisdiction of the
 629-22 subject matter, pursuant to rules of procedure specified for the
 629-23 matter.

629-24 (c) Subsection (a)(5) [~~Subdivision (5)~~] does not authorize
 629-25 the release of confidential information to instigate or
 629-26 substantiate criminal charges against a patient.

629-27 (e) Communications and records that are confidential under
 629-28 this section may be disclosed to:

629-29 (1) medical or law enforcement personnel if the
 629-30 emergency medical services personnel, the physician providing
 629-31 medical supervision, or the emergency medical services provider
 629-32 determines that there is a probability of imminent physical danger
 629-33 to any person or if there is a probability of immediate mental or
 629-34 emotional injury to the patient;

629-35 (2) governmental agencies if the disclosure is
 629-36 required or authorized by law;

629-37 (3) qualified persons to the extent necessary for
 629-38 management audits, financial audits, program evaluation, system
 629-39 improvement, or research, except that any report of the research,
 629-40 audit, or evaluation may not directly or indirectly identify a
 629-41 patient;

629-42 (4) any person who bears a written consent of the
 629-43 patient or other persons authorized to act on the patient's behalf
 629-44 for the release of confidential information as provided by Section
 629-45 773.093;

629-46 (5) the department for data collection or complaint
 629-47 investigation;

629-48 (6) other emergency medical services personnel, other
 629-49 physicians, and other personnel under the direction of a physician
 629-50 who are participating in the diagnosis, evaluation, or treatment of
 629-51 a patient; or

629-52 (7) individuals, corporations, or governmental
 629-53 agencies involved in the payment or collection of fees for
 629-54 emergency medical services rendered by emergency medical services
 629-55 personnel.

629-56 SECTION 3.1553. The heading to Section 773.112, Health and
 629-57 Safety Code, is amended to read as follows:

629-58 Sec. 773.112. [~~DUTIES OF BOARD;~~] RULES.

629-59 SECTION 3.1554. Section 773.112(a), Health and Safety Code,
 629-60 is amended to read as follows:

629-61 (a) The executive commissioner [~~board~~] by rule shall adopt
 629-62 minimum standards and objectives to implement emergency medical
 629-63 services and trauma care systems. The executive commissioner
 629-64 [~~board~~] by rule shall provide for the designation of trauma
 629-65 facilities and for triage, transfer, and transportation policies.
 629-66 The executive commissioner [~~board~~] shall consider guidelines
 629-67 adopted by the American College of Surgeons and the American
 629-68 College of Emergency Physicians in adopting rules under this
 629-69 section.

630-1 SECTION 3.1555. Section 773.113, Health and Safety Code, is
630-2 amended to read as follows:

630-3 Sec. 773.113. DUTIES OF DEPARTMENT [BUREAU]. (a) The
630-4 department [bureau] shall:

630-5 (1) develop and monitor a statewide emergency medical
630-6 services and trauma care system;

630-7 (2) designate trauma facilities;

630-8 (3) develop and maintain a trauma reporting and
630-9 analysis system to:

630-10 (A) identify severely injured trauma patients at
630-11 each health care facility in this state;

630-12 (B) identify the total amount of uncompensated
630-13 trauma care expenditures made each fiscal year by each health care
630-14 facility in this state; and

630-15 (C) monitor trauma patient care in each health
630-16 care facility, including each designated trauma center, in
630-17 emergency medical services and trauma care systems in this state;
630-18 and

630-19 (4) provide for coordination and cooperation between
630-20 this state and any other state with which this state shares a
630-21 standard metropolitan statistical area.

630-22 (b) The department [bureau] may grant an exception to a rule
630-23 adopted under Section 773.112 if it finds that compliance with the
630-24 rule would not be in the best interests of the persons served in the
630-25 affected local emergency medical services and trauma care delivery
630-26 area.

630-27 SECTION 3.1556. Section 773.1135, Health and Safety Code,
630-28 is transferred to Section 773.113, Health and Safety Code,
630-29 redesignated as Section 773.113(c), Health and Safety Code, and
630-30 amended to read as follows:

630-31 (c) [Sec. 773.1135. DUTIES OF DEPARTMENT.] The department
630-32 shall develop performance measures for regional advisory councils
630-33 in trauma service areas to:

630-34 (1) promote the provision of a minimum level of
630-35 emergency medical services in a trauma service area in accordance
630-36 with the rules adopted under Section 773.112;

630-37 (2) promote the provision of quality care and service
630-38 by the emergency medical services and trauma care system in
630-39 accordance with the rules adopted under Section 773.112; and

630-40 (3) maximize the accuracy of information provided by a
630-41 regional advisory council to the department [or bureau] for
630-42 increased council effectiveness.

630-43 SECTION 3.1557. Section 773.114(a), Health and Safety Code,
630-44 is amended to read as follows:

630-45 (a) Each emergency medical services and trauma care system
630-46 must have:

630-47 (1) local or regional medical control for all field
630-48 care and transportation, consistent with geographic and current
630-49 communications capability;

630-50 (2) triage, transport, and transfer protocols; and

630-51 (3) one or more hospitals categorized according to
630-52 trauma care capabilities using standards adopted by department
630-53 [board] rule.

630-54 SECTION 3.1558. Section 773.115, Health and Safety Code, is
630-55 amended to read as follows:

630-56 Sec. 773.115. TRAUMA FACILITIES. (a) The department
630-57 [bureau] may designate trauma facilities that are a part of an
630-58 emergency medical services and trauma care system. A trauma
630-59 facility shall be designated by the level of trauma care and
630-60 services provided in accordance with the American College of
630-61 Surgeons guidelines for level I and II trauma facilities and
630-62 department rules [adopted by the board] for level III and IV trauma
630-63 facilities. In adopting rules under this section, the executive
630-64 commissioner [board] may consider trauma caseloads, geographic
630-65 boundaries, or minimum population requirements, but the department
630-66 [bureau] may not deny designation solely on these criteria. The
630-67 executive commissioner [board] may not set an arbitrary limit on
630-68 the number of facilities designated as trauma facilities.

630-69 (b) A health care facility may apply to the department

631-1 [bureau] for designation as a trauma facility, and the department
 631-2 [bureau] shall grant the designation if the facility meets the
 631-3 requirements for designation prescribed by department [board]
 631-4 rules.

631-5 (c) A [After September 1, 1993, a] health care facility may
 631-6 not use the terms "trauma facility," "trauma hospital," "trauma
 631-7 center," or similar terminology in its signs or advertisements or
 631-8 in the printed materials and information it provides to the public
 631-9 unless the facility has been designated as a trauma facility under
 631-10 this subchapter.

631-11 SECTION 3.1559. Sections 773.116(a), (b), and (d), Health
 631-12 and Safety Code, are amended to read as follows:

631-13 (a) The department [bureau] shall charge a fee to a health
 631-14 care facility that applies for initial or continuing designation as
 631-15 a trauma facility.

631-16 (b) The executive commissioner [board] by rule shall set the
 631-17 amount of the fee schedule for initial or continuing designation as
 631-18 a trauma facility according to the number of beds in the health care
 631-19 facility. The amount of the fee may not exceed:

- 631-20 (1) \$5,000 for a Level I or II facility;
- 631-21 (2) \$2,500 for a Level III facility; or
- 631-22 (3) \$1,000 for a Level IV facility.

631-23 (d) To the extent feasible, the executive commissioner
 631-24 [board] by rule shall set the fee in an amount necessary for the
 631-25 department to recover the cost directly related to designating
 631-26 trauma facilities under this subchapter.

631-27 SECTION 3.1560. Sections 773.119(b) and (c), Health and
 631-28 Safety Code, are amended to read as follows:

631-29 (b) The executive commissioner [board] by rule shall
 631-30 establish eligibility criteria for awarding the grants. The rules
 631-31 must require the department to consider:

631-32 (1) the need of an area for the provision of emergency
 631-33 medical services or trauma care and the extent to which the grant
 631-34 would meet the identified need;

631-35 (2) the availability of personnel and training
 631-36 programs;

631-37 (3) the availability of other funding sources;

631-38 (4) the assurance of providing quality services;

631-39 (5) the use or acquisition of helicopters for
 631-40 emergency medical evacuation; and

631-41 (6) the development or existence of an emergency
 631-42 medical services system.

631-43 (c) The department may approve grants according to
 631-44 department [~~the~~] rules [~~adopted by the board~~]. A grant awarded
 631-45 under this section is governed by Chapter 783, Government Code,
 631-46 [~~the Uniform Grant and Contract Management Act of 1981 (Article~~
 631-47 ~~4413(32g), Vernon's Texas Civil Statutes~~] and by the rules adopted
 631-48 under that chapter [Act].

631-49 SECTION 3.1561. Section 773.122(e), Health and Safety Code,
 631-50 is amended to read as follows:

631-51 (e) In any fiscal year, the commissioner may use not more
 631-52 than three percent of the appropriated money from the accounts
 631-53 after any amount necessary to maintain the reserve established by
 631-54 Subsection (b) is deducted to fund the administrative costs [~~of the~~
 631-55 ~~bureau of emergency management~~] of the department associated with
 631-56 administering the state emergency medical services program, the
 631-57 trauma program, and the accounts and to fund the costs of monitoring
 631-58 and providing technical assistance for those programs and the
 631-59 accounts.

631-60 SECTION 3.1562. The heading to Subchapter F, Chapter 773,
 631-61 Health and Safety Code, is amended to read as follows:

631-62 SUBCHAPTER F. MEDICAL INFORMATION PROVIDED BY CERTAIN EMERGENCY
 631-63 MEDICAL SERVICES CALL TAKERS [OPERATORS]

631-64 SECTION 3.1563. Section 773.141(2), Health and Safety Code,
 631-65 is amended to read as follows:

631-66 (2) "Emergency medical services call taker
 631-67 [operator]" means a person who, as a volunteer or employee of a
 631-68 public agency, as that term is defined by Section 771.001, receives
 631-69 emergency calls.

632-1 SECTION 3.1564. Section 773.143, Health and Safety Code, is
 632-2 amended to read as follows:

632-3 Sec. 773.143. PROVISION OF MEDICAL INFORMATION. An
 632-4 emergency medical services call taker [operator] may provide
 632-5 medical information to a member of the public during an emergency
 632-6 call if:

632-7 (1) the call taker [operator] has successfully
 632-8 completed an emergency medical services call taker [operator]
 632-9 training program and holds a certificate issued under Section
 632-10 773.144; and

632-11 (2) the information provided substantially conforms
 632-12 to the protocol for delivery of the information adopted by the
 632-13 executive commissioner [board] under Section 773.145.

632-14 SECTION 3.1565. Section 773.144, Health and Safety Code, is
 632-15 amended to read as follows:

632-16 Sec. 773.144. TRAINING PROGRAMS. (a) The department may
 632-17 offer emergency medical services call taker [operator] training
 632-18 programs and may approve training programs offered by other
 632-19 persons. The executive commissioner [board] by rule shall
 632-20 establish minimum standards for approval of training programs and
 632-21 certification and decertification of program instructors.

632-22 (b) The provider of an emergency medical services call taker
 632-23 [operator] training program shall issue an emergency medical
 632-24 services call taker [operator] a certificate evidencing completion
 632-25 of the training program. The executive commissioner [board] by
 632-26 rule may require that, before issuance of the certificate, the call
 632-27 taker [operator] successfully complete an examination administered
 632-28 by the department [board], by the provider of the training program,
 632-29 or by another person.

632-30 (c) The executive commissioner [board] by rule may provide
 632-31 that a certificate issued under Subsection (b) expires at the end of
 632-32 a specified period not less than one year after the date on which
 632-33 the certificate is issued and may adopt requirements, including
 632-34 additional training or examination, for renewal of the certificate.

632-35 (d) The executive commissioner [board] by rule may adopt
 632-36 other requirements relating to emergency medical services call
 632-37 taker [operator] training programs. The establishment of minimum
 632-38 standards under this section does not prohibit the entity that is
 632-39 employing or accepting the volunteer services of the emergency
 632-40 medical services call taker [operator] from imposing additional
 632-41 training standards or procedures.

632-42 SECTION 3.1566. Section 773.145, Health and Safety Code, is
 632-43 amended to read as follows:

632-44 Sec. 773.145. MEDICAL INFORMATION. The executive
 632-45 commissioner [board] by rule shall adopt a protocol that must be
 632-46 used to provide medical information under Section 773.143. The
 632-47 protocol may include the use of a flash-card system or other similar
 632-48 system designed to make the information readily accessible to the
 632-49 emergency medical services call taker [operator] in an
 632-50 understandable form.

632-51 SECTION 3.1567. Section 773.146(a), Health and Safety Code,
 632-52 is amended to read as follows:

632-53 (a) An emergency medical services call taker [operator] who
 632-54 holds a certificate under Section 773.144 is not liable for damages
 632-55 that arise from the provision of medical information according to
 632-56 the protocol adopted under Section 773.145 if the information is
 632-57 provided in good faith. This subsection does not apply to an act or
 632-58 omission of the call taker [operator] that constitutes gross
 632-59 negligence, recklessness, or intentional misconduct. This
 632-60 subsection does not affect any liability imposed on a public agency
 632-61 for the conduct of the emergency medical services call taker
 632-62 [operator] under Section 101.062, Civil Practice and Remedies Code.

632-63 SECTION 3.1568. Section 773.147(a), Health and Safety Code,
 632-64 is amended to read as follows:

632-65 (a) The executive commissioner [board] by rule may adopt
 632-66 fees for:

632-67 (1) training programs provided by the department
 632-68 [board] under Section 773.144; and

632-69 (2) the approval of program instructors and of

633-1 training programs offered by other persons.

633-2 SECTION 3.1569. Section 773.171(a), Health and Safety Code,
633-3 is amended to read as follows:

633-4 (a) The emergency medical services for children program is
633-5 in the ~~department [bureau of emergency management]~~.

633-6 SECTION 3.1570. The heading to Section 773.173, Health and
633-7 Safety Code, is amended to read as follows:

633-8 Sec. 773.173. ~~[DUTIES OF BOARD]~~ RULES.

633-9 SECTION 3.1571. Sections 773.173(a), (b), and (c), Health
633-10 and Safety Code, are amended to read as follows:

633-11 (a) On the recommendation of the advisory council
633-12 ~~[committee]~~, the executive commissioner ~~[board]~~ shall adopt
633-13 minimum standards and objectives to implement a pediatric emergency
633-14 services system, including rules that:

633-15 (1) provide guidelines for categorization of a
633-16 facility's pediatric capability;

633-17 (2) provide for triage, transfer, and transportation
633-18 policies for pediatric care;

633-19 (3) establish guidelines for:

633-20 (A) prehospital care management for triage and
633-21 transportation of a pediatric patient;

633-22 (B) prehospital and hospital equipment that is
633-23 necessary and appropriate for the care of a pediatric patient;

633-24 (C) necessary pediatric emergency equipment and
633-25 training in long-term care facilities; and

633-26 (D) an interhospital transfer system for a
633-27 critically ill or injured pediatric patient; and

633-28 (4) provide for data collection and analysis.

633-29 (b) The executive commissioner ~~[board]~~ and the advisory
633-30 council ~~[committee]~~ shall consider guidelines endorsed by the
633-31 American Academy of Pediatrics and the American College of Surgeons
633-32 in recommending and adopting rules under this section.

633-33 (c) The department ~~[bureau]~~ may grant an exception to a rule
633-34 adopted under this section if it finds that compliance with the rule
633-35 would not be in the best interests of persons served in the affected
633-36 local pediatric emergency medical services system.

633-37 SECTION 3.1572. Section 773.204(c), Health and Safety Code,
633-38 is amended to read as follows:

633-39 (c) In developing the stroke emergency transport plan and
633-40 stroke facility criteria, the stroke committee shall consult the
633-41 criteria for stroke facilities established by national medical
633-42 organizations such as The ~~[the]~~ Joint Commission ~~[on Accreditation~~
633-43 ~~of Healthcare Organizations]~~.

633-44 SECTION 3.1573. Section 774.002(a), Health and Safety Code,
633-45 is amended to read as follows:

633-46 (a) A municipality or other political subdivision that
633-47 employs emergency medical technicians may pay educational
633-48 incentive pay to employees holding certificates from the ~~[Texas]~~
633-49 Department of State Health Services as emergency medical
633-50 technicians.

633-51 SECTION 3.1574. Section 777.008(b), Health and Safety Code,
633-52 is amended to read as follows:

633-53 (b) The committee is composed of:

633-54 (1) one public member appointed by the Commission on
633-55 State Emergency Communications;

633-56 (2) six members who represent the six regional poison
633-57 control centers, one appointed by the chief executive officer of
633-58 each center;

633-59 (3) one member appointed by the commissioner of state
633-60 health services ~~[the Department of State Health Services]~~; and

633-61 (4) one member who is a health care professional
633-62 designated as the poison control program coordinator appointed by
633-63 the Commission on State Emergency Communications.

633-64 SECTION 3.1575. Section 779.002, Health and Safety Code, is
633-65 amended to read as follows:

633-66 Sec. 779.002. TRAINING. (a) A person or entity that
633-67 acquires an automated external defibrillator shall ensure that:

633-68 (1) each user of the automated external defibrillator
633-69 receives training given or approved by the ~~[Texas]~~ Department of

State Health Services in:

(A) cardiopulmonary resuscitation; and
(B) use of the automated external defibrillator;

and

(2) a licensed physician is involved in the training program to ensure compliance with the requirements of this chapter.

(b) The executive commissioner of the Health and Human Services Commission [~~Texas Department of Health~~] shall adopt rules establishing the minimum requirements for the training required by this section. In adopting rules under this section, the executive commissioner [~~Texas Department of Health~~] shall consider the guidelines for automated external defibrillator training approved by the American Heart Association, the American Red Cross, or another nationally recognized association.

SECTION 3.1576. Section 781.001, Health and Safety Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1577. Sections 781.051(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) The executive commissioner shall adopt rules necessary to administer this chapter.

(c) The executive commissioner by rule shall establish fees necessary to administer this chapter, including fees for processing and issuing or renewing a license or registration under this chapter.

(d) The department [commissioner] shall prescribe forms required by this chapter.

SECTION 3.1578. Section 781.103, Health and Safety Code, is amended to read as follows:

Sec. 781.103. APPLICATION FOR LICENSE. An application for a license under this chapter must be in the form prescribed by the department [commissioner] and include:

department [commissioner] and include:
(1) the full name and business address of the applicant;

applicant; (2) the name under which the applicant intends to do business;

(3) a statement as to the general nature of the business in which the applicant intends to engage;

(4) if the applicant is an entity other than an individual, the full name and residence address of each partner,

officer, and director of the applicant, and of the applicant's manager; (5) a verified statement of the applicant's experience

(6) a report from the Department of Public Safety stating the applicant's record of communications from a Class B

(7) the social security number of the individual making the application; and

(8) other information, evidence, statements, or documents required by the department.

SECTION 3.1579. Section 781.105, Health and Safety Code, is amended to read as follows:

Sec. 781.105. FORM OF LICENSE. The department [commissioner] shall prescribe the form of a license, including a

branch office license. The license must include:

(1) the name of the license holder;

(2) the name under which the license holder is to operate; and
(3) the license number and the date the license was issued.

SECTION 3.1580. Section 81.108(d), Health and Safety Code, is amended to read as follows:

(d) After suspension of the license, the department may not reinstate the license until an application, in the form prescribed by the department [~~commissioner~~], is filed accompanied by a proper insurance certificate. The department may deny the application notwithstanding the applicant's compliance with this section:

(1) for a reason that would justify suspending, revoking, or denying a license; or

(2) if, during the suspension, the applicant performs a practice for which a license is required.

SECTION 3.1581. Section 781.155(b), Health and Safety Code, is amended to read as follows:

(b) The executive commissioner [department] by rule may adopt additional qualifications for an individual to be registered under this subchapter.

under this Subchapter.

SECTION 3.1582. Section 781.254, Health and Safety Code, is amended to read as follows:

Sec. 781.254. STAGGERED RENEWAL; PRORATION OF LICENSE FEE.
The executive commissioner [department] by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date of a license is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

SECTION 3.1583. Section 781.352, Health and Safety Code, is amended to read as follows:

Sec. 781.352. HEARING. (a) If the department proposes to revoke or suspend a person's license or registration, the person is entitled to a hearing before an administrative law judge of [a hearings officer appointed by] the State Office of Administrative Hearings.

(b) The executive commissioner shall prescribe procedures for appealing to the department a decision to revoke or suspend a license or registration.

SECTION 3.1584. Section 781.453, Health and Safety Code, is amended to read as follows:

Sec. 781.453. [REPORT AND] NOTICE OF VIOLATION AND PENALTY.

(a) If the department [~~commissioner or the commissioner's designee~~] determines that a violation occurred, the [~~commissioner or the designee may issue to the~~] department, within [a report stating:

[1] the facts on which the determination is based;

[(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.]

[(b) Within] 14 days after the date the report is issued, [~~the commissioner or the commissioner's designee~~] shall give written notice of the violation [~~report~~] to the person by certified mail.

(b) The notice under Subsection (a) must:

(1) include a brief summary of the alleged violation;
(2) state the amount of the recommended administrative
penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

SECTION 3.1585. Section 781.454, Health and Safety Code, is amended to read as follows:

Sec. 781.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(2) [make a] request [for] a hearing on the occurrence

(b) If the person accepts the determination and recommended penalty [of the commissioner or the commissioner's designee] the

SECTION 3.1586 Section 781.455(a) Health and Safety Code

SECTION 3.1586. Section 781.455(a), Health and Safety Code, is amended to read as follows:

636-1 (a) If the person requests a hearing or fails to respond in a
 636-2 timely manner to the notice, an administrative law judge of the
 636-3 State Office of Administrative Hearings [the commissioner or the
 636-4 commissioner's designee] shall set a hearing and the department
 636-5 shall give written notice of the hearing to the person.

636-6 SECTION 3.1587. Sections 781.457(b) and (c), Health and
 636-7 Safety Code, are amended to read as follows:

636-8 (b) Within the 30-day period prescribed by Subsection (a), a
 636-9 person who files a petition for judicial review may:

636-10 (1) stay enforcement of the penalty by:

636-11 (A) paying the penalty to the court for placement
 636-12 in an escrow account; or
 636-13 (B) giving the court a supersedeas bond approved
 636-14 by the court that:

636-15 (i) is for the amount of the penalty; and
 636-16 (ii) is effective until all judicial review
 636-17 of the department's order is final; or
 636-18 (2) request the court to stay enforcement of the
 636-19 penalty by:

636-20 (A) filing with the court a sworn affidavit of
 636-21 the person stating that the person is financially unable to pay the
 636-22 penalty and is financially unable to give the supersedeas bond; and
 636-23 (B) giving a copy of the affidavit to the
 636-24 department [commissioner or the commissioner's designee] by
 636-25 certified mail.

636-26 (c) If the department [commissioner or the commissioner's
 636-27 designee] receives a copy of an affidavit under Subsection (b)(2),
 636-28 the department [commissioner or the designee] may file with the
 636-29 court, within five days after the date the copy is received, a
 636-30 contest to the affidavit.

636-31 SECTION 3.1588. Section 782.001(2), Health and Safety Code,
 636-32 is amended to read as follows:

636-33 (2) "Executive commissioner" ["Commissioner"] means
 636-34 the executive commissioner of the Health and Human Services
 636-35 Commission.

636-36 SECTION 3.1589. Section 782.002(b), Health and Safety Code,
 636-37 as added by Chapter 1149 (S.B. 1119), Acts of the 80th Legislature,
 636-38 Regular Session, 2007, is amended to read as follows:

636-39 (b) The account is composed of money deposited to the credit
 636-40 of the account under Sections 542.406 and [Section] 707.008,
 636-41 Transportation Code[, and the earnings of the account].

636-42 SECTION 3.1590. Section 782.002(c), Health and Safety Code,
 636-43 is amended to read as follows:

636-44 (c) Section [Sections 403.095 and] 404.071, Government
 636-45 Code, does [~~do~~] not apply to the account.

636-46 SECTION 3.1591. Section 782.003(a), Health and Safety Code,
 636-47 as added by Chapter 1149 (S.B. 1119), Acts of the 80th Legislature,
 636-48 Regular Session, 2007, is amended to read as follows:

636-49 (a) The executive commissioner shall use money appropriated
 636-50 from the regional trauma account established under Section 782.002
 636-51 to fund uncompensated care of designated trauma facilities and
 636-52 county and regional emergency medical services located in the area
 636-53 served by the trauma service area regional advisory council that
 636-54 serves the local authority submitting money under Section 542.406
 636-55 or 707.008, Transportation Code.

636-56 SECTION 3.1592. Section 782.003(b), Health and Safety Code,
 636-57 is amended to read as follows:

636-58 (b) In any fiscal year, the executive commissioner shall
 636-59 use:

636-60 (1) 96 percent of the money appropriated from the
 636-61 account to fund a portion of the uncompensated trauma care provided
 636-62 at facilities designated as state trauma facilities by the
 636-63 Department of State Health Services;

636-64 (2) two percent of the money appropriated from the
 636-65 account for county and regional emergency medical services;

636-66 (3) one percent of the money appropriated from the
 636-67 account for distribution to the 22 trauma service area regional
 636-68 advisory councils; and

636-69 (4) one percent of the money appropriated from the

637-1 account to fund administrative costs of the commission.

637-2 SECTION 3.1593. Section 821.001, Health and Safety Code, is
637-3 amended to read as follows:

637-4 Sec. 821.001. DEFINITION. In this subchapter, "animal"
637-5 includes every living nonhuman [~~dumb~~] creature.

637-6 SECTION 3.1594. Section 821.052(b), Health and Safety Code,
637-7 is amended to read as follows:

637-8 (b) A person may euthanize all other animals in the custody
637-9 of an animal shelter, including birds and reptiles, only in
637-10 accordance with the applicable methods, recommendations, and
637-11 procedures set forth in the edition [2000 Report] of the American
637-12 Veterinary Medical Association Guidelines for the [Panel on]
637-13 Euthanasia of Animals [as modified or superseded by a subsequent
637-14 report of the American Veterinary Medical Association Panel on
637-15 Euthanasia] that is approved by the executive commissioner [board].

637-16 SECTION 3.1595. Section 821.053, Health and Safety Code, is
637-17 amended to read as follows:

637-18 Sec. 821.053. REQUIREMENTS FOR USE OF SODIUM PENTOBARBITAL.
637-19 (a) The executive commissioner [board] by rule shall establish the
637-20 requirements and procedures for administering sodium pentobarbital
637-21 to euthanize an animal in the custody of an animal shelter.

637-22 (b) A person may administer sodium pentobarbital to
637-23 euthanize an animal in the custody of an animal shelter only in
637-24 accordance with the requirements and procedures established by
637-25 department [board] rule.

637-26 SECTION 3.1596. Section 821.056(a), Health and Safety Code,
637-27 is amended to read as follows:

637-28 (a) A person commits an offense if the person violates this
637-29 subchapter or a [board] rule adopted under this subchapter.

637-30 SECTION 3.1597. Section 821.057, Health and Safety Code, is
637-31 amended to read as follows:

637-32 Sec. 821.057. INJUNCTION. A court of competent
637-33 jurisdiction, on the petition of any person, may prohibit by
637-34 injunction the substantial violation of this subchapter or a
637-35 [board] rule adopted under this subchapter.

637-36 SECTION 3.1598. Section 822.006(d), Health and Safety Code,
637-37 is amended to read as follows:

637-38 (d) It is a defense to prosecution under Section 822.005(a)
637-39 that the person is a person with a disability [~~disabled~~] and uses
637-40 the dog to provide assistance, the dog is trained to provide
637-41 assistance to a person with a disability, and the person is using
637-42 the dog to provide assistance in connection with the person's
637-43 disability.

637-44 SECTION 3.1599. Section 822.101, Health and Safety Code, is
637-45 amended by adding Subdivision (4-a) to read as follows:

637-46 (4-a) "Executive commissioner" means the executive
637-47 commissioner of the Health and Human Services Commission.

637-48 SECTION 3.1600. Section 822.102(a), Health and Safety Code,
637-49 is amended to read as follows:

637-50 (a) This subchapter does not apply to:

637-51 (1) a county, municipality, or agency of the state or
637-52 an agency of the United States or an agent or official of a county,
637-53 municipality, or agency acting in an official capacity;

637-54 (2) a research facility, as that term is defined by
637-55 Section 2(e), Animal Welfare Act (7 U.S.C. Section 2132), and its
637-56 subsequent amendments, that is licensed by the secretary of
637-57 agriculture of the United States under that Act;

637-58 (3) an organization that is an accredited member of
637-59 the American Zoo and Aquarium Association of Zoos and Aquariums;

637-60 (4) an injured, infirm, orphaned, or abandoned
637-61 dangerous wild animal while being transported for care or
637-62 treatment;

637-63 (5) an injured, infirm, orphaned, or abandoned
637-64 dangerous wild animal while being rehabilitated, treated, or cared
637-65 for by a licensed veterinarian, an incorporated humane society or
637-66 animal shelter, or a person who holds a rehabilitation permit
637-67 issued under Subchapter C, Chapter 43, Parks and Wildlife Code;

637-68 (6) a dangerous wild animal owned by and in the custody
637-69 and control of a transient circus company that is not based in this

638-1 state if:

638-2 (A) the animal is used as an integral part of the
638-3 circus performances; and

638-4 (B) the animal is kept within this state only
638-5 during the time the circus is performing in this state or for a
638-6 period not to exceed 30 days while the circus is performing outside
638-7 the United States;

638-8 (7) a dangerous wild animal while in the temporary
638-9 custody or control of a television or motion picture production
638-10 company during the filming of a television or motion picture
638-11 production in this state;

638-12 (8) a dangerous wild animal owned by and in the
638-13 possession, custody, or control of a college or university solely
638-14 as a mascot for the college or university;

638-15 (9) a dangerous wild animal while being transported in
638-16 interstate commerce through the state in compliance with the Animal
638-17 Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent
638-18 amendments and the regulations adopted under that Act;

638-19 (10) a nonhuman primate owned by and in the control and
638-20 custody of a person whose only business is supplying nonhuman
638-21 primates directly and exclusively to biomedical research
638-22 facilities and who holds a Class "A" or Class "B" dealer's license
638-23 issued by the secretary of agriculture of the United States under
638-24 the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its
638-25 subsequent amendments;

638-26 (11) a dangerous wild animal that is:

638-27 (A) owned by or in the possession, control, or
638-28 custody of a person who is a participant in a species survival plan
638-29 of the ~~American Zoo and Aquarium~~ Association of Zoos and
638-30 Aquariums for that species; and

638-31 (B) an integral part of that species survival
638-32 plan; and

638-33 (12) in a county west of the Pecos River that has a
638-34 population of less than 25,000, a cougar, bobcat, or coyote in the
638-35 possession, custody, or control of a person that has trapped the
638-36 cougar, bobcat, or coyote as part of a predator or depredation
638-37 control activity.

638-38 SECTION 3.1601. Section 822.106(b), Health and Safety Code,
638-39 is amended to read as follows:

638-40 (b) Not later than the 10th day after the date a person
638-41 receives a certificate of registration, the person shall file a
638-42 clear and legible copy of the certificate of registration with the
638-43 ~~Texas~~ Department of State Health Services. The executive
638-44 commissioner ~~[department]~~ shall establish a procedure for filing a
638-45 certificate of registration and by rule shall establish ~~[charge]~~ a
638-46 reasonable fee to be collected by the department in an amount
638-47 sufficient to recover the cost associated with filing a certificate
638-48 of registration under this subsection.

638-49 SECTION 3.1602. Section 822.111, Health and Safety Code, is
638-50 amended to read as follows:

638-51 Sec. 822.111. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
638-52 ~~[BOARD]~~; CAGING REQUIREMENTS AND STANDARDS. (a) The executive
638-53 commissioner ~~[board]~~ by rule shall establish caging requirements
638-54 and standards for the keeping and confinement of a dangerous wild
638-55 animal to ensure that the animal is kept in a manner and confined in
638-56 a primary enclosure that:

638-57 (1) protects and enhances the public's health and
638-58 safety;

638-59 (2) prevents escape by the animal; and

638-60 (3) provides a safe, healthy, and humane environment
638-61 for the animal.

638-62 (b) An owner of a dangerous wild animal shall keep and
638-63 confine the animal in accordance with the caging requirements and
638-64 standards established by the executive commissioner ~~[board]~~.

638-65 (c) An animal registration agency may approve a deviation
638-66 from the caging requirements and standards established by the
638-67 executive commissioner ~~[board]~~, only if:

638-68 (1) the animal registration agency has good cause for
638-69 the deviation; and

(2) the deviation:

(A) does not compromise the public's health and safety;

(B) does not reduce the total area of the primary enclosure below that established by the executive commissioner [board]; and

(C) does not otherwise adversely affect the overall welfare of the animal involved.

SECTION 3.1603. Section 823.001(4), Health and Safety Code, is amended to read as follows:

(4) "Department" means the [Texas] Department of State Health Services.

SECTION 3.1604. Sections 823.003(a) and (e), Health and Safety Code, are amended to read as follows:

(a) Each animal shelter operated in this state shall comply with the standards for:

(1) housing and sanitation as provided in [existing on September 1, 1982, and adopted under] Chapter 826 for quarantine and impoundment facilities; and

(2) animal control officer training adopted under Chapter 829.

(e) The executive commissioner of the Health and Human Services Commission [board] may require each person operating an animal shelter to keep records of the date and disposition of animals in its custody, to maintain the records on the business premises of the animal shelter, and to make the records available for inspection at reasonable times.

SECTION 3.1605. Section 826.002, Health and Safety Code, is amended by amending Subdivisions (5) and (9) and adding Subdivision (7-a) to read as follows:

(5) "Department" means the [Texas] Department of State Health Services.

(7-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(A) on the private premises of the animal's owner

or at a facility approved by the department [board] or its designee; and

(B) under restraint by closed cage or paddock or

in any other manner approved by department [board] rule.

SECTION 3.1606. The heading to Subchapter B, Chapter 826,

Health and Safety Code, is amended to read as follows:

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF EXECUTIVE COMMISSIONER,

DEPARTMENT, [BOARD] AND LOCAL GOVERNMENTS
SECTION 3.1607. Section 826.011, Health and Safety Code, is

amended to read as follows:

Sec. 826.011. GENERAL POWERS AND DUTIES OF EXECUTIVE

COMMISSIONER AND DEPARTMENT [BOARD]. (a) The department [board] or its designee, with the cooperation of the governing bodies of counties and municipalities, shall administer the rabies control program established by this chapter.

(c) The department [board] or its designee may enter into

(c) The department [board] or its designee may enter into contracts or agreements with public or private entities to carry out this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(d) Subject to any limitations or conditions prescribed by the legislature, the department [board] or its designee may seek, receive, and spend funds received through appropriations, grants, or donations from public or private sources for the rabies control program established by this chapter.

(e) The department [board] or its designee may compile, analyze, publish, and distribute information relating to the control of rabies for the education of physicians, veterinarians, public health personnel, and the public.

SECTION 3.1608. Section [826.012](#), Health and Safety Code, is amended to read as follows:

640-1 Sec. 826.012. MINIMUM STANDARDS FOR RABIES CONTROL. This
640-2 chapter and the rules adopted by the executive commissioner [board]
640-3 under this chapter are the minimum standards for rabies control.

640-4 SECTION 3.1609. Section 826.013, Health and Safety Code, is
640-5 amended to read as follows:

640-6 Sec. 826.013. COUNTIES AND MUNICIPALITIES MAY ADOPT
640-7 CHAPTER. The governing body of a municipality or the commissioners
640-8 court of a county may adopt this chapter and the standards adopted
640-9 by the executive commissioner [board].

640-10 SECTION 3.1610. Section 826.014, Health and Safety Code, is
640-11 amended to read as follows:

640-12 Sec. 826.014. COUNTIES MAY ADOPT ORDINANCES AND RULES. (a)
640-13 The commissioners court of a county may adopt ordinances or rules
640-14 that establish a local rabies control program in the county and set
640-15 local standards that are compatible with and equal to or more
640-16 stringent than the program established by this chapter and the
640-17 department rules adopted under this chapter [by the board].

640-18 (b) County ordinances or rules adopted under this section
640-19 supersede this chapter and the department rules adopted under this
640-20 chapter [of the board] within that county so that dual enforcement
640-21 will not occur.

640-22 SECTION 3.1611. Section 826.015, Health and Safety Code, is
640-23 amended to read as follows:

640-24 Sec. 826.015. MUNICIPALITIES MAY ADOPT ORDINANCES OR RULES.
640-25 (a) The governing body of a municipality may adopt ordinances or
640-26 rules that establish a local rabies control program in the
640-27 municipality and set local standards that are compatible with and
640-28 equal to or more stringent than:

640-29 (1) the ordinances or rules adopted by the county in
640-30 which the municipality is located; and

640-31 (2) the program established by this chapter and the
640-32 department rules adopted under this chapter [by the board].

640-33 (b) Municipal ordinances or rules adopted under this
640-34 section supersede ordinances or rules adopted by the county in
640-35 which the municipality is located, this chapter, and the department
640-36 rules adopted under this chapter [of the board] within that
640-37 municipality so that multiple enforcement will not occur.

640-38 SECTION 3.1612. Sections 826.017(b) and (c), Health and
640-39 Safety Code, are amended to read as follows:

640-40 (b) Except as restricted by department [board] rule, the
640-41 officer designated as the local rabies control authority may be the
640-42 county health officer, municipal health officer, animal control
640-43 officer, peace officer, or any entity that the commissioners court
640-44 or governing body considers appropriate.

640-45 (c) Among other duties, the local rabies control authority
640-46 shall enforce:

640-47 (1) this chapter and the department [board] rules that
640-48 comprise the minimum standards for rabies control;

640-49 (2) the ordinances or rules of the municipality or
640-50 county that the local rabies control authority serves; and

640-51 (3) the rules adopted by the executive commissioner
640-52 [board] under the area rabies quarantine provisions of Section
640-53 826.045.

640-54 SECTION 3.1613. Sections 826.021(a) and (b), Health and
640-55 Safety Code, are amended to read as follows:

640-56 (a) Except as otherwise provided by department [board]
640-57 rule, the owner of a dog or cat shall have the animal vaccinated
640-58 against rabies by the time the animal is four months of age and at
640-59 regular intervals thereafter as prescribed by department [board]
640-60 rule.

640-61 (b) A veterinarian who vaccinates a dog or cat against
640-62 rabies shall issue to the animal's owner a vaccination certificate
640-63 in a form that meets the minimum standards approved by the executive
640-64 commissioner [board].

640-65 SECTION 3.1614. Section 826.022(a), Health and Safety Code,
640-66 is amended to read as follows:

640-67 (a) A person commits an offense if the person fails or
640-68 refuses to have each dog or cat owned by the person vaccinated
640-69 against rabies and the animal is required to be vaccinated under:

(1) Section 826.021 and department [board] rules; or

(2) ordinances or rules adopted under this chapter by municipality within whose jurisdiction the act occurs.

SECTION 3.1615. Sections 826.025(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The department may provide vaccine and hyperimmune serum in accordance with department [board] policies or procedures for the use and benefit of a person exposed, or suspected of having been exposed, to rabies.

(b) In accordance with department [board] rules and eligibility standards, the department is entitled to be reimbursed by or on behalf of the person receiving the vaccine or serum for actual costs incurred in providing the vaccine or serum.

SECTION 3.1616. Sections 826.042(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner [board] shall adopt rules governing the testing of quarantined animals and the procedure for and method of quarantine.

(b) The local rabies control authority or a veterinarian shall quarantine or test in accordance with department [board] rules any animal that the local rabies control authority or veterinarian has probable cause to believe is rabid, may have been exposed to rabies, or may have exposed a person to rabies.

SECTION 3.1617. Section 826.044(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person fails or refuses to quarantine or present for quarantine or testing an animal that:

(1) is required to be placed in quarantine or presented for testing under Section 826.042 and department [board] rules; or

(2) is required to be placed in quarantine under ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

SECTION 3.1618. Sections 826.045(a), (b), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) If rabies is known to exist in an area, the department [board] or its designee may declare an area rabies quarantine to prevent or contain a rabies epizootic.

(1) define the borders of the quarantine area; and

(d) The quarantine remains in effect until the 181st

(d) The quarantine remains in effect until the 181st day after the date on which the last case of rabies is diagnosed in a dog, cat, or other animal species that caused the department [board] or its designee to declare a quarantine, unless the department [board] or its designee, by declaration, removes the quarantine before that date.

(e) While the quarantine is in effect, the rules adopted by the executive commissioner [board] supersede all other applicable ordinances or rules applying to the quarantine area and apply until the department [board] or its designee removes the quarantine by declaration or until the rules expire or are revoked by the executive commissioner [board].

SECTION 3.1619. Section 826.046(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person violates or attempts to violate a department rule [~~of the board~~] adopted under Section 826.045 governing an area rabies quarantine.

SECTION 3.1620. Section 826.051, Health and Safety Code, is amended to read as follows:

Sec. 826.051. MINIMUM STANDARDS FOR QUARANTINE AND
IMPOUNDMENT FACILITIES. (a) The executive commissioner [board]
shall adopt rules governing the types of facilities that may be used
to quarantine animals.

(b) The executive commissioner [board] by rule shall establish minimum standards for impoundment facilities and for the care of impounded animals.

(c) In accordance with department [board] rules, a local rabies control authority may contract with one or more public or private entities to provide and operate a quarantine facility.

SECTION 3.1621. Section 826.052, Health and Safety Code, is amended to read as follows:

Sec. 826.052. INSPECTIONS. An employee of the department, on the presentation of appropriate credentials to the local rabies control authority or the authority's designee, may conduct a reasonable inspection of a quarantine or impoundment facility at a reasonable hour to determine if the facility complies with:

(1) the minimum standards adopted by the executive commissioner [board] for those facilities; and
(2) the requirements for animal control officer training adopted under Chapter 829.

SECTION 3.1622. Section 826.053, Health and Safety Code, is amended to read as follows:

Sec. 826.053. HEARING. (a) A person aggrieved by an action of the department in amending, limiting, suspending, or revoking any approval required of the department by this chapter may request a hearing [before the department].

(b) A [The department shall conduct the] hearing held under this section must be conducted in accordance with Chapter 2001, Government Code, and the department's formal hearing rules.

SECTION 3.1623. Section 826.054(a), Health and Safety Code, is amended to read as follows:

(a) At the request of the commissioner, the attorney general may bring suit in the name of the state to enjoin the operation of a

may bring suit in the name of the state to enjoin the operation of a quarantine or impoundment facility that fails to meet the minimum standards established by this chapter and department [board] rules.

SECTION 3.1624. Section 826.055(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person operates a facility for quarantined or impounded animals that fails to meet

facility for quarantined or impounded animals that fails to meet standards for approval established by:

- (1) department [board] rules; or
- (2) ordinances or rules adopted under this chapter by a county or municipality.

SECTION 3.1625. The heading to Section [828.014](#), Health and Safety Code, is amended to read as follows:

Sec. 828.014. ANIMAL FRIENDLY ACCOUNT; DEDICATION.

SECTION 3.1626. Section 828.014, Health and Safety Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (b-1) to read as follows:

(a) The [Texas Department of Health] animal friendly account is a separate account in the general revenue fund. The account is composed of:

(1) money deposited to the credit of the account under former Section 502.291, Transportation Code, and under Section 504.605, Transportation Code; and

(2) gifts, grants, donations, and legislative appropriations.

(b) The [Texas] Department of State Health Services administers the account.

(b-1) The Department of State Health Services [department] may spend money credited to the account or money deposited to the associated trust fund account created under Section 504.6012, Transportation Code, only to:

(1) make grants to eligible organizations that sterilize animals owned by the general public at minimal or no cost; and

(c) The Department of State Health Services [Texas Board of Health] may accept gifts, donations, and grants from any source for the benefit of the account. The executive commissioner

of the Health and Human Services Commission [~~and~~
[~~(2)~~] by rule shall establish guidelines for spending
money described by Subsection (b-1) [~~credited to the account~~].

643-1 amended to read as follows:

643-2 Sec. 829.005. FEE. The department and any authorized
 643-3 animal control course sponsor, in accordance with department rules,
 643-4 may collect [charge] reasonable fees to cover the cost of arranging
 643-5 and conducting an animal control course.

643-6 SECTION 3.1628. Sections 841.022(a) and (c), Health and
 643-7 Safety Code, are amended to read as follows:

643-8 (a) The executive director of the Texas Department of
 643-9 Criminal Justice and the commissioner of state health services [~~the~~
 643-10 ~~Department of State Health Services~~] jointly shall establish a
 643-11 multidisciplinary team to review available records of a person
 643-12 referred to the team under Section 841.021. The team must include:

643-13 (1) one person from the Department of State Health
 643-14 Services;

643-15 (2) two persons from the Texas Department of Criminal
 643-16 Justice, one of whom must be from the victim services division
 643-17 [~~office~~] of that department;

643-18 (3) one person from the Department of Public Safety;

643-19 (4) two persons from the office or office personnel;

643-20 and

643-21 (5) one person from the Council on Sex Offender
 643-22 Treatment.

643-23 (c) Not later than the 60th day after the date the
 643-24 multidisciplinary team receives notice under Section 841.021(a) or
 643-25 (b), the team shall:

643-26 (1) assess whether the person is a repeat sexually
 643-27 violent offender and whether the person is likely to commit a
 643-28 sexually violent offense after release or discharge;

643-29 (2) give notice of that assessment to the Texas
 643-30 Department of Criminal Justice or the [~~Texas~~] Department of State
 643-31 [~~Mental~~] Health Services [~~and Mental Retardation~~], as appropriate;
 643-32 and

643-33 (3) recommend the assessment of the person for a
 643-34 behavioral abnormality, as appropriate.

643-35 SECTION 3.1629. Section 841.150, Health and Safety Code, is
 643-36 amended to read as follows:

643-37 Sec. 841.150. EFFECT OF SUBSEQUENT COMMITMENT OR
 643-38 CONFINEMENT ON ORDER OF CIVIL COMMITMENT. (a) The duties imposed
 643-39 by this chapter are suspended for the duration of any confinement of
 643-40 a person, or if applicable any other commitment of a person to a
 643-41 community center, mental health facility, or state supported living
 643-42 center [~~school~~], by governmental action.

643-43 (b) In this section:

643-44 (1) "Community center" means a center established
 643-45 under Subchapter A, Chapter 534.

643-46 (2) "Mental health facility" has the meaning assigned
 643-47 by Section 571.003.

643-48 (3) "State supported living center [~~school~~]" has the
 643-49 meaning assigned by Section 531.002.

643-50 SECTION 3.1630. Section 1001.001, Health and Safety Code,
 643-51 is amended to read as follows:

643-52 Sec. 1001.001. DEFINITIONS. In this title [~~chapter~~]:

643-53 (1) "Commission" means the Health and Human Services
 643-54 Commission.

643-55 (2) "Commissioner" means the commissioner of state
 643-56 health services.

643-57 (3) "Council" means the State Health Services Council.

643-58 (4) "Department" means the Department of State Health
 643-59 Services.

643-60 (5) "Executive commissioner" means the executive
 643-61 commissioner of the Health and Human Services Commission.

643-62 SECTION 3.1631. Section 1001.051(c), Health and Safety
 643-63 Code, is amended to read as follows:

643-64 (c) Subject to the control of the executive commissioner,
 643-65 the commissioner shall:

643-66 (1) act as the department's chief administrative
 643-67 officer;

643-68 (2) in accordance with the procedures prescribed by

643-69 Section 531.00551, Government Code, assist the executive

644-1 commissioner in the development and implementation of policies and
 644-2 guidelines needed for the administration of the department's
 644-3 functions;

644-4 (3) in accordance with the procedures adopted by the
 644-5 executive commissioner under Section 531.00551, Government Code,
 644-6 assist the executive commissioner in the development of rules
 644-7 relating to the matters within the department's jurisdiction,
 644-8 including the delivery of services to persons and the rights and
 644-9 duties of persons who are served or regulated by the department; and
 644-10 (4) serve as a liaison between the department and
 644-11 commission.

644-12 SECTION 3.1632. Section 1001.056(c), Health and Safety
 644-13 Code, is amended to read as follows:

644-14 (c) The policy statement must be:

644-15 (1) updated annually;

644-16 (2) reviewed by the Texas Workforce [state] Commission
 644-17 civil rights division [on Human Rights] for compliance with
 644-18 Subsection (b)(1); and

644-19 (3) filed with the governor's office.

644-20 SECTION 3.1633. Section 1001.0711(a), Health and Safety
 644-21 Code, is amended to read as follows:

644-22 (a) The executive commissioner [commission] by rule shall
 644-23 establish a School Health Advisory Committee at the department to
 644-24 provide assistance to the council in establishing a leadership role
 644-25 for the department in support for and delivery of coordinated
 644-26 school health programs and school health services.

644-27 SECTION 3.1634. Section 1001.080(a), Health and Safety
 644-28 Code, is amended to read as follows:

644-29 (a) In this section, "individual's legally authorized
 644-30 representative" means:

644-31 (1) a parent, managing conservator, or guardian of an
 644-32 individual, if the individual is a minor;

644-33 (2) a guardian of an individual, if the individual has
 644-34 been adjudicated incompetent to manage the individual's personal
 644-35 affairs; or

644-36 (3) an agent of the individual authorized under a
 644-37 medical [durable] power of attorney for health care.

644-38 SECTION 3.1635. Subchapter D, Chapter 1001, Health and
 644-39 Safety Code, is amended by adding Sections 1001.084 and 1001.085 to
 644-40 read as follows:

644-41 Sec. 1001.084. CONTRACTING AND AUDITING AUTHORITY;
 644-42 DELEGATION. (a) The executive commissioner, as authorized by
 644-43 Section 531.0055, Government Code, may delegate to the department
 644-44 the executive commissioner's authority under that section for
 644-45 contracting and auditing relating to the department's powers,
 644-46 duties, functions, and activities.

644-47 (b) If the executive commissioner does not make a delegation
 644-48 under Subsection (a), a reference in law to the department with
 644-49 respect to the department's contracting or auditing authority means
 644-50 the executive commissioner. If the executive commissioner makes a
 644-51 delegation under Subsection (a), a reference in law to the
 644-52 department's contracting or auditing authority means that
 644-53 authority the executive commissioner has delegated to the
 644-54 department.

644-55 (c) If the executive commissioner revokes all or part of a
 644-56 delegation made under Subsection (a), a reference in law to the
 644-57 department with respect to a function for which the delegation was
 644-58 revoked means the executive commissioner or another entity to which
 644-59 the executive commissioner delegates that authority.

644-60 (d) It is the legislature's intent that the executive
 644-61 commissioner retain the authority over and responsibility for
 644-62 contracting and auditing at each health and human services agency
 644-63 as provided by Section 531.0055, Government Code. A statute
 644-64 enacted on or after January 1, 2015, that references the
 644-65 contracting or auditing authority of the department does not give
 644-66 the department direct contracting or auditing authority unless the
 644-67 statute expressly provides that the contracting or auditing
 644-68 authority:

644-69 (1) is given directly to the department; and

(2) is an exception to the exclusive contracting and auditing authority given to the executive commissioner under Section 531.0055, Government Code.

Sec. 1001.085. MANAGEMENT AND DIRECTION BY EXECUTIVE COMMISSIONER. The department's powers and duties prescribed by this chapter and other law, including enforcement activities and functions, are subject to the executive commissioner's oversight under Chapter 531, Government Code, to manage and direct the operations of the department.

SECTION 3.1636. Section 1001.202(c), Health and Safety Code, as added by Chapter 352 (H.B. 2392), Acts of the 83rd Legislature, Regular Session, 2013, is amended to read as follows:

(c) The executive commissioner [department] may adopt rules necessary to implement this subchapter.

SECTION 3.1637. Section 1002.052(b), Health and Safety Code, is amended to read as follows:

(b) The following ex officio, nonvoting members also serve on the board:

(1) the commissioner [of the department];
(2) the executive commissioner;
(3) the chief executive officer;

(3) the commissioner of insurance;
(4) the executive director of the Employees Retirement System of Texas;

(5) the executive director of the Teacher Retirement System of Texas;

(6) the state Medicaid director of the commission

(7) the executive director of the Texas Medical Board;
(8) the commissioner of aging and disability services

[the Department of Aging and Disability Services];
(9) the executive director of the Texas Workforce Commission;

(10) the commissioner of the Texas Higher Education Coordinating Board; and

(11) a representative from each state agency or system of higher education that purchases or provides health care services, as determined by the governor.

SECTION 3.1638. Section 1002.102(b), Health and Safety Code, is amended to read as follows:

(b) The institute shall study and develop recommendations for measuring quality of care and efficiency across:

(1) all state employee and state retiree benefit plans; (2) employee and retiree benefit plans provided through the Teacher Retirement System of Texas;

through the Teacher Retirement System of Texas;
(3) the [state] medical assistance program under Chapter 32, Human Resources Code; and
(4) the child health plan program under Chapter 63.

(4) the child health plan program under Chapter 62.
SECTION 3.1639. The following provisions of the Health and Safety Code are repealed:

- (1) Section 11.002;
- (2) Section 11.003(a);
- (3) the heading to Section 11.004;
- (4) Section 11.004()

- (4) Section 11.004(a);
- (5) Sections 11.0045, 11.005, 11.0055, 11.006,
11.007, 11.008, 11.009, 11.010, and 11.011;
- (6) All other sections.

- (6) the heading to Section 11.012;
- (7) Section 11.012(e);
- (8) Section 11.013;
- (9) Section 11.015;

- (9) Section 11.015;
- (10) Section 11.0161;
- (11) Section 11.017;
- (12) Section 11.018;

(12) Section 11.018;
(13) Section 12.0123, as added by Chapters 1447 and
1460, Acts of the 76th Legislature, Regular Session, 1999;

- (14) Section 12.017;
- (15) Subchapter C, Chapter 12;
- (16) Sections 33.018(a)(2) and (3) and 33.051(1) and

(2);

646-1 (17) Sections 34.001(1), (2), and (3);
646-2 (18) Sections 42.002(1) and 42.005(e);
646-3 (19) Section 47.0035;
646-4 (20) Sections 48.001(2), (3), (5), and (6);
646-5 (21) Section 61.002(1);
646-6 (22) Sections 62.002(1) and (2);
646-7 (23) Section 62.055(d);
646-8 (24) Section 62.059;
646-9 (25) Section 62.101(b-1);
646-10 (26) Section 62.1012;
646-11 (27) Section 63.001;
646-12 (28) Sections 81.043(c) and (d) and 81.050(i);
646-13 (29) Section 85.013;
646-14 (30) Sections 85.083 and 85.084;
646-15 (31) Subchapter F, Chapter 85;
646-16 (32) Sections 85.271(1) and (3);
646-17 (33) Sections 87.001(5) and (10);
646-18 (34) Section 88.001(12);
646-19 (35) Section 92.008;
646-20 (36) Section 93.011;
646-21 (37) Sections 96.001(1) and (2);
646-22 (38) Sections 98.001(3), (4), and (5);
646-23 (39) Section 101.0075;
646-24 (40) Section 103.0105;
646-25 (41) Sections 103A.001(1) and (3);
646-26 (42) Sections 104.002(1), (2), (3), and (4);
646-27 (43) Section 105.008;
646-28 (44) Chapter 112;
646-29 (45) Sections 115.001(2) and (3);
646-30 (46) Sections 117.001(1) and (3);
646-31 (47) Sections 141.013(b) and 141.017(e);
646-32 (48) Sections 142.001(10) and (11-b);
646-33 (49) Section 142.015;
646-34 (50) Section 142.016;
646-35 (51) Section 144.082(e);
646-36 (52) Section 146.019(s);
646-37 (53) Section 161.0901;
646-38 (54) Section 162.017;
646-39 (55) Sections 181.001(b)(1) and (2-b);
646-40 (56) Section 241.024;
646-41 (57) Section 241.181, as added by Chapter 217 (H.B.
646-42 15), Acts of the 83rd Legislature, Regular Session, 2013;
646-43 (58) Section 242.004;
646-44 (59) Section 242.094(e), as added by Chapter 583 (S.B.
646-45 28), Acts of the 73rd Legislature, Regular Session, 1993;
646-46 (60) Section 244.002(2);
646-47 (61) Section 244.008;
646-48 (62) Section 245.002(3);
646-49 (63) Section 245.008;
646-50 (64) Sections 247.006 and 247.047;
646-51 (65) Section 248.029(e);
646-52 (66) Section 251.001(1);
646-53 (67) Sections 252.045 and 252.099;
646-54 (68) Section 254.051(f);
646-55 (69) Sections 311.004(b) and 311.031(1);
646-56 (70) Sections 312.002(1) and (2);
646-57 (71) Section 321.002(e);
646-58 (72) Section 341.001(1);
646-59 (73) Section 345.043(b);
646-60 (74) Sections 401.003(2), 401.249(d), and 401.501(2);
646-61 (75) Sections 431.002(3), (4), (7), and (12),
646-62 431.045(d), 431.055(e), 431.2021, 431.243, 431.247(a), 431.2471,
646-63 431.275, and 431.277;
646-64 (76) Sections 432.003(1), (2), and (4) and 432.022(e);
646-65 (77) Sections 433.003(4) and 433.095(e);
646-66 (78) Sections 436.002(4), (5), (13), and (17);
646-67 (79) Sections 437.001(1), (2), (3), and (3-a);
646-68 (80) Section 438.041(1);
646-69 (81) Section 438.042(b), as added by Chapter 885 (H.B.

647-1 1682), Acts of the 72nd Legislature, Regular Session, 1991;
 647-2 (82) Section 438.101(1);
 647-3 (83) Section 438.151;
 647-4 (84) Section 439.004;
 647-5 (85) Sections 440.003(2), (3), (4), and (15);
 647-6 (86) Section 441.001;
 647-7 (87) Chapter 461;
 647-8 (88) Section 462.001(4);
 647-9 (89) Chapter 463;
 647-10 (90) Sections 464.001(2) and 464.013;
 647-11 (91) Sections 466.002(2) and (3);
 647-12 (92) Section 466.023(g);
 647-13 (93) Subchapters A and C, Chapter 468;
 647-14 (94) Section 485.001(3);
 647-15 (95) Section 486.001(a)(2);
 647-16 (96) Section 501.001(1);
 647-17 (97) Sections 502.003(2) and (8);
 647-18 (98) Section 502.0141(e);
 647-19 (99) Section 503.001(1);
 647-20 (100) Sections 505.004(2) and (6) and 505.011(f);
 647-21 (101) Sections 506.004(2) and (6) and 506.011(f);
 647-22 (102) Sections 507.004(2) and (6) and 507.010(f);
 647-23 (103) Chapter 535;
 647-24 (104) Sections 552.0011(1) and (5);
 647-25 (105) the headings to Subchapters A and B, Chapter
 647-26 553;
 647-27 (106) the heading to Subchapter A, Chapter 554;
 647-28 (107) Sections 555.001(5) and (9);
 647-29 (108) Section 571.003(1);
 647-30 (109) Sections 577.0011 and 577.006(d);
 647-31 (110) Sections 591.003(2) and (21) and 591.012;
 647-32 (111) Section 592.101;
 647-33 (112) Section 593.079;
 647-34 (113) Sections 756.081(2) and (3);
 647-35 (114) Sections 773.003(3), (4), and (5), 773.005, and
 647-36 773.066(f);
 647-37 (115) Section 781.001(3);
 647-38 (116) Section 782.002(b), as added by Chapter 1027
 647-39 (H.B. 1623), Acts of the 80th Legislature, Regular Session, 2007;
 647-40 (117) Section 782.003(a), as added by Chapter 1027
 647-41 (H.B. 1623), Acts of the 80th Legislature, Regular Session, 2007;
 647-42 (118) Section 821.051(3);
 647-43 (119) Section 822.101(2);
 647-44 (120) Sections 823.001(2) and (3);
 647-45 (121) Sections 826.002(2) and (4);
 647-46 (122) Section 828.015;
 647-47 (123) Section 1001.076; and
 647-48 (124) Sections 1002.001(2), (3), and (4).
 647-49 SECTION 3.1640. The repeal by this Act of Chapter 463,
 647-50 Health and Safety Code, does not apply to an offense committed under
 647-51 that chapter before the effective date of this Act. An offense
 647-52 committed under Chapter 463, Health and Safety Code, is governed by
 647-53 the law in effect when the offense was committed, and the former law
 647-54 is continued in effect for that purpose.
 647-55 ARTICLE 4. HUMAN RESOURCES CODE
 647-56 SECTION 4.001. The heading to Title 2, Human Resources
 647-57 Code, is amended to read as follows:
 647-58 TITLE 2. [DEPARTMENT OF] HUMAN SERVICES AND [DEPARTMENT OF]
 647-59 PROTECTIVE [AND REGULATORY] SERVICES IN GENERAL
 647-60 SECTION 4.002. Chapter 11, Human Resources Code, is amended
 647-61 to read as follows:
 647-62 CHAPTER 11. GENERAL PROVISIONS
 647-63 Sec. 11.001. DEFINITIONS. In [Except as provided by
 647-64 Section 40.001, in] this title:
 647-65 (1) ["Board" means the Texas Board of Human Services.
 647-66 [(2) "Department" means the Texas Department of Human
 647-67 Services.
 647-68 [(3) "Commissioner" means the Commissioner of Human
 647-69 Services.]

648-1 [44] "Assistance" means all forms of assistance and
 648-2 services for needy persons authorized by Subtitle C.

648-3 (2) "Commission" means the Health and Human Services
 648-4 Commission.

648-5 (3) "Executive commissioner" means the executive
 648-6 commissioner of the Health and Human Services Commission.

648-7 (4) [45] "Financial assistance" means money payments
 648-8 for needy persons authorized by Chapter 31.

648-9 (5) [46] "Medical assistance" means assistance for
 648-10 needy persons authorized by Chapter 32.

648-11 Sec. 11.002. PURPOSE OF TITLE; CONSTRUCTION. (a) The
 648-12 purpose of this title is to establish a program of social security
 648-13 to provide necessary and prompt assistance to the citizens of this
 648-14 state who are entitled to avail themselves of its provisions.

648-15 (b) This title shall be liberally construed in order that
 648-16 its purposes may be accomplished as equitably, economically, and
 648-17 expeditiously as possible.

648-18 Sec. 11.003. RESPONSIBILITY OF COUNTIES AND MUNICIPALITIES
 648-19 NOT AFFECTED. No provision of this title is intended to release the
 648-20 counties and municipalities in this state from the specific
 648-21 responsibilities they have with regard to the support of public
 648-22 welfare, child welfare, and relief services. Funds which the
 648-23 counties and municipalities may appropriate for the support of
 648-24 those programs may be administered through the [department's] local
 648-25 or regional offices of the commission or Department of Aging and
 648-26 Disability Services, and if administered in that manner must be
 648-27 devoted exclusively to the programs in the county or municipality
 648-28 making the appropriation.

648-29 Sec. 11.004. POWERS AND FUNCTIONS NOT AFFECTED. The
 648-30 provisions of this title are not intended to interfere with the
 648-31 powers and functions of the commission, the health and human
 648-32 services agencies, as defined by Section 531.001, Government Code
 648-33 [Texas Rehabilitation Commission, the Texas Commission for the
 648-34 Blind, the division of maternal and child health of the Texas
 648-35 Department of Health], or county juvenile boards.

648-36 SECTION 4.003. Chapter 12, Human Resources Code, is amended
 648-37 to read as follows:

CHAPTER 12. PENAL PROVISIONS

648-39 Sec. 12.001. PROHIBITED ACTIVITIES. (a) A person who is
 648-40 not licensed to practice law in Texas commits an offense if the
 648-41 person charges a fee for representing or aiding an applicant or
 648-42 recipient in procuring assistance from the state agency
administering the assistance [department].

648-44 (b) A person commits an offense if the person advertises,
 648-45 holds himself or herself out for, or solicits the procurement of
 648-46 assistance from the state agency administering the assistance
department.

648-48 (c) An offense under this section is a Class A misdemeanor.

648-49 Sec. 12.002. UNLAWFUL USE OF FUNDS. (a) A person charged
 648-50 with the duty or responsibility of administering, disbursing,
 648-51 auditing, or otherwise handling the grants, funds, or money
 648-52 provided for in this title commits an offense if the person
 648-53 misappropriates the grants, funds, or money or by deception or
 648-54 fraud wrongfully distributes the grants, funds, or money to any
 648-55 person.

648-56 (b) An offense under this section is a felony punishable by
 648-57 confinement in the Texas Department of Criminal Justice for a term
 648-58 of not less than two or more than seven years.

648-59 Sec. 12.003. DISCLOSURE OF INFORMATION PROHIBITED. (a)
 648-60 Except for purposes directly connected with the administration of
 648-61 the [department's] assistance programs of the commission or
 648-62 Department of Aging and Disability Services, as applicable, it is
 648-63 an offense for a person to solicit, disclose, receive, or make use
 648-64 of, or to authorize, knowingly permit, participate in, or acquiesce
 648-65 in the use of the names of, or any information concerning, persons
 648-66 applying for or receiving assistance if the information is directly
 648-67 or indirectly derived from the records, papers, files, or
 648-68 communications of the commission or department or acquired by
 648-69 employees of the commission or department in the performance of

649-1 their official duties.

649-2 (b) An offense under this section is a Class A misdemeanor.

649-3 SECTION 4.004. The heading to Subtitle B, Title 2, Human
649-4 Resources Code, is amended to read as follows:

649-5 SUBTITLE B. ADMINISTRATIVE PROVISIONS AND GENERAL FUNCTIONS
649-6 RELATING TO ~~STRUCTURE AND FUNCTIONS OF DEPARTMENT OF~~ HUMAN
649-7 SERVICES

649-8 SECTION 4.005. The heading to Chapter 21, Human Resources
649-9 Code, is amended to read as follows:

649-10 CHAPTER 21. ADMINISTRATIVE PROVISIONS RELATING TO AGENCIES
649-11 ADMINISTERING ASSISTANCE PROGRAMS ~~FOR DEPARTMENT OF HUMAN~~
649-12 SERVICES]

649-13 SECTION 4.006. Section 21.007, Human Resources Code, is
649-14 transferred to Subchapter C, Chapter 161, Human Resources Code,
649-15 redesignated as Section 161.0541, Human Resources Code, and amended
649-16 to read as follows:

649-17 Sec. 161.0541 [21.007]. MAINTENANCE OF MERIT SYSTEM. ~~[The~~
649-18 ~~department may establish a merit system for its employees.]~~ The
649-19 merit system established as provided by Section 161.054 may be
649-20 maintained in conjunction with other state agencies that are
649-21 required by federal law to operate under a merit system.

649-22 SECTION 4.007. Sections 21.011, 21.012, and 21.013, Human
649-23 Resources Code, are amended to read as follows:

649-24 Sec. 21.011. ANNUAL REPORT ON DEPARTMENT OF AGING AND
649-25 DISABILITY SERVICES ~~[REPORTS]~~. ~~[(a)]~~ On or before December 31 of
649-26 each year the Department of Aging and Disability Services
649-27 ~~[commissioner]~~ shall prepare and submit to the commission ~~[board]~~ a
649-28 full report on the operation and administration of the department
649-29 under this title together with the department's ~~[commissioner's]~~
649-30 recommendations for changes. ~~[The report must include information~~
649-31 ~~relating to the status of the client-centered outcome measures~~
649-32 ~~developed by the department under Section 21.00605(b) and the~~
649-33 ~~department's progress in improving those outcome measures.]~~ The
649-34 commission ~~[board]~~ shall submit the report to the governor and the
649-35 legislature.

649-36 Sec. 21.012. CONFIDENTIALITY OF INFORMATION. (a) The
649-37 executive commissioner ~~[department]~~ shall establish ~~[and enforce]~~
649-38 reasonable rules governing the custody, use, and preservation of
649-39 the ~~[department's]~~ records, papers, files, and communications of
649-40 the commission and the Department of Aging and Disability Services
649-41 under this title. The commission and the department shall:

649-42 (1) enforce the agency's rules; and

649-43 (2) provide safeguards which restrict the use or
649-44 disclosure of information concerning applicants for or recipients
649-45 of the commission's and the department's assistance programs to
649-46 purposes directly connected with the administration of the
649-47 programs.

649-48 (b) If under a provision of law lists of the names and
649-49 addresses of recipients of the commission's or the department's
649-50 assistance programs are furnished to or held by a governmental
649-51 agency other than the commission or the department, that agency or
649-52 the person with responsibility for adopting rules for that agency
649-53 shall adopt rules necessary to prevent the publication of the lists
649-54 or the use of the lists for purposes not directly connected with the
649-55 administration of the assistance programs.

649-56 Sec. 21.013. OATHS AND ACKNOWLEDGMENTS. A local
649-57 representative of the commission or the Department of Aging and
649-58 Disability Services ~~[department]~~ who is responsible for
649-59 investigating and determining the eligibility of an applicant for
649-60 assistance authorized in this title may administer oaths and take
649-61 acknowledgments concerning all matters relating to the
649-62 administration of this title. The representative shall sign the
649-63 oaths or acknowledgments and indicate the representative's ~~[his or~~
649-64 ~~her]~~ position and title but need not seal the instruments. The
649-65 representative ~~[agent]~~ has the same authority as a notary public
649-66 coextensive with the limits of the state for the purpose of
649-67 administering the provisions of this title.

649-68 SECTION 4.008. The heading to Chapter 22, Human Resources
649-69 Code, is amended to read as follows:

650-1 CHAPTER 22. GENERAL FUNCTIONS RELATING TO [OF DEPARTMENT OF] HUMAN
650-2 SERVICES650-3 SECTION 4.009. Section 22.0001, Human Resources Code, is
650-4 amended to read as follows:650-5 Sec. 22.0001. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
650-6 CONFLICT WITH OTHER LAW [OF COMMISSIONER OF HEALTH AND HUMAN
650-7 SERVICES]. [The commissioner of health and human services has the
650-8 powers and duties relating to the board and commissioner as
650-9 provided by Section 531.0055, Government Code.] To the extent a
650-10 power or duty given to the [board or] commissioner of aging and
650-11 disability services by this title or another law conflicts with
650-12 Section 531.0055, Government Code, Section 531.0055 controls.650-13 SECTION 4.010. Section 22.001, Human Resources Code, is
650-14 amended to read as follows:650-15 Sec. 22.001. GENERAL POWERS AND DUTIES OF COMMISSION [THE
650-16 DEPARTMENT]. (a) The executive commissioner [department] is
650-17 responsible for supervising the administration of [administering]
650-18 the welfare functions authorized in this title.650-19 (b) The commission [The department] shall administer
650-20 medical assistance to needy persons [who are aged, blind, or
650-21 disabled] and financial and medical assistance to [needy] families
650-22 with dependent children.650-23 (b-1) The executive commissioner [department] shall [also
650-24 administer or] supervise general relief services. [The department
650-25 may administer state child day-care services.]650-26 (c) The commission [department] shall assist other
650-27 governmental agencies in performing services in conformity with the
650-28 purposes of this title when so requested and shall cooperate with
650-29 the agencies when expedient.650-30 (d) The commission [department] shall conduct research and
650-31 compile statistics on public welfare programs in the state. The
650-32 research must include all phases of dependency and delinquency and
650-33 related problems. The commission [department] shall cooperate with
650-34 other public and private agencies in developing plans for the
650-35 prevention and treatment of conditions giving rise to public
650-36 welfare problems.650-37 SECTION 4.011. Sections 22.0011 and 22.0015, Human
650-38 Resources Code, are amended to read as follows:650-39 Sec. 22.0011. DEFINITIONS [DEFINITION]. In this chapter:
650-40 (1) "Department" means the Department of Aging and
650-41 Disability Services.650-42 (2) "Long-term" [, except in Section 22.032,
650-43 "long term] care services" means the provision of personal care and
650-44 assistance related to health and social services given episodically
650-45 or over a sustained period to assist individuals of all ages and
650-46 their families to achieve the highest level of functioning
650-47 possible, regardless of the setting in which the assistance is
650-48 given.650-49 Sec. 22.0015. EVALUATION AND IMPROVEMENT OF PROGRAMS. The
650-50 commission and the department shall conduct research, analysis, and
650-51 reporting of the [its] programs administered by each agency under
650-52 this title to evaluate and improve the programs. The commission and
650-53 the department may contract with one or more independent entities
650-54 to assist the commission or the department, as applicable, with the
650-55 research, analysis, and reporting required by this section.650-56 SECTION 4.012. Sections 22.002 and 22.003, Human Resources
650-57 Code, are amended to read as follows:650-58 Sec. 22.002. ADMINISTRATION OF FEDERAL WELFARE PROGRAMS.
650-59 (a) The commission [department] is the state agency designated to
650-60 cooperate with the federal government in the administration of
650-61 Titles IV, XIX, and XX of the federal Social Security Act. The
650-62 commission [department] shall administer other titles added to the
650-63 act after January 1, 1979, unless another state agency is
650-64 designated by law to perform the additional functions. The
650-65 commission [department] shall cooperate with federal, state, and
650-66 local governmental agencies in the enforcement and administration
650-67 of the federal act, and the executive commissioner shall promulgate
650-68 rules to effect that cooperation.

650-69 (b) The commission [department] shall cooperate with the

United States Department of Health and Human Services [Education, and Welfare] and other federal agencies in a reasonable manner and in conformity with the provisions of this title to the extent necessary to qualify for federal assistance for persons entitled to benefits under the federal Social Security Act. The commission [department] shall make reports periodically in compliance with federal regulations.

(c) The commission [department] may establish and maintain programs of assistance and services authorized by federal law and designed to help needy families and individuals attain and retain the capability of independence and self-care. Notwithstanding any other provision of law, the commission [department] may extend the scope of its programs to the extent necessary to ensure that federal matching funds are available, if the commission [department] determines that the extension of scope is feasible and within the limits of appropriated funds.

(d) If the commission [department] determines that a provision of state welfare law conflicts with a provision of federal law, the executive commissioner [department] may promulgate policies and rules necessary to allow the state to receive and expend federal matching funds to the fullest extent possible in accordance with the federal statutes and the provisions of this title and the state constitution and within the limits of appropriated funds.

(e) The commission [department] may accept, expend, and transfer federal and state funds appropriated for programs authorized by federal law. The commission [department] may accept, expend, and transfer funds received from a county, municipality, or public or private agency or from any other source, and the funds shall be deposited in the state treasury subject to withdrawal on order of the executive commissioner in accordance with the commission's [department's] rules.

(f) The commission [department] may enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized in Subsection (c) [~~of this section~~]. The agreements or contracts between the commission [department] and other state agencies are not subject to Chapter 771, Government Code [~~the Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes~~]).

(g) In administering social service programs authorized by the Social Security Act, the commission [department] may prepay an agency or facility for expenses incurred under a contract with the commission [department] to provide a social service.

(h) The executive commissioner by rule [department] may set and the commission may charge reasonable fees for services provided in administering social service programs authorized by the Social Security Act. The executive commissioner [department] shall set the amount of each fee according to the cost of the service provided and the ability of the recipient to pay.

(i) The commission [department] may not deny services administered under this section to any person because of that person's inability to pay for services.

Sec. 22.003. RESEARCH AND DEMONSTRATION PROJECTS. (a) The commission and the department may conduct research and demonstration projects that in the judgment of the executive commissioner will assist in promoting the purposes of the commission's and the department's assistance programs. The commission and the department may conduct the projects independently or in cooperation with a public or private agency.

(b) The executive commissioner [department] may authorize the use of state or federal funds available for commission or department [~~its~~] assistance programs or for research and demonstration projects to support the projects. The projects must be consistent with the state and federal laws making the funds available.

SECTION 4.013. Sections 22.0031(a) and (d), Human Resources Code, are amended to read as follows:

(a) The commission [department] shall establish programs of

652-1 case management for high-risk pregnant women and high-risk children
 652-2 to age one as provided under Section 1915(g) of the federal Social
 652-3 Security Act (42 U.S.C. Section 1396n).

652-4 (d) The commission [department] shall use existing funds of
 652-5 the commission [department] or any other lawful source to fund and
 652-6 support the projects for high-risk pregnant women and high-risk
 652-7 children.

652-8 SECTION 4.014. Section 22.004, Human Resources Code, is
 652-9 amended to read as follows:

652-10 Sec. 22.004. PROVISION OF LEGAL SERVICES. (a) On request,
 652-11 the commission [department] may provide legal services to an
 652-12 applicant for or recipient of assistance at a hearing before the
 652-13 commission [department].

652-14 (b) The services must be provided by an attorney licensed to
 652-15 practice law in Texas or by a law student acting under the
 652-16 supervision of a law teacher or a legal services organization, and
 652-17 the attorney or law student must be approved by the commission
 652-18 [department].

652-19 (c) The executive commissioner [department] shall adopt a
 652-20 reasonable fee schedule for the legal services. The fees may not
 652-21 exceed those customarily charged by an attorney for similar
 652-22 services for a private client. The fees may be paid only from funds
 652-23 appropriated to the commission [department] for the purpose of
 652-24 providing these legal services.

652-25 SECTION 4.015. The heading to Section 22.005, Human
 652-26 Resources Code, is amended to read as follows:

652-27 Sec. 22.005. CUSTODIAN OF ASSISTANCE FUNDS.

652-28 SECTION 4.016. Section 22.005(f), Human Resources Code, is
 652-29 amended to read as follows:

652-30 (f) The comptroller is the designated custodian of all funds
 652-31 administered by the commission and the department and received by
 652-32 the state from the federal government or any other source for the
 652-33 purpose of implementing the provisions of the Social Security Act.
 652-34 The comptroller may receive the funds, pay them into the proper fund
 652-35 or account of the general fund of the state treasury, provide for
 652-36 the proper custody of the funds, and make disbursements of the funds
 652-37 on the order of the commission or the department and on warrant of
 652-38 the comptroller.

652-39 SECTION 4.017. Section 22.007, Human Resources Code, is
 652-40 amended to read as follows:

652-41 Sec. 22.007. PUBLIC INFORMATION CONTRACT REQUIREMENT. (a)
 652-42 Each contract between the commission or the department and a
 652-43 provider of services under this title must contain a provision that
 652-44 authorizes the commission or the department to display at the
 652-45 service provider's place of business public awareness information
 652-46 on services provided by the commission or the department.

652-47 (b) Notwithstanding Subsection (a) [of this section], the
 652-48 commission or department may not require a physician to display in
 652-49 the physician's private offices public awareness information on
 652-50 services provided by the commission or department.

652-51 SECTION 4.018. Section 22.008(a), Human Resources Code, is
 652-52 amended to read as follows:

652-53 (a) The executive commissioner [department] shall adopt
 652-54 rules [develop enforcement guidelines] for the department's [its]
 652-55 community care program that relate to the service delivery
 652-56 standards required of persons who contract with the department to
 652-57 carry out its community care program. The department shall apply
 652-58 the rules [guidelines] consistently across the state.

652-59 SECTION 4.019. Sections 22.009(a), (b), (c), (d), (e), and
 652-60 (g), Human Resources Code, are amended to read as follows:

652-61 (a) The executive commissioner [board] shall appoint
 652-62 advisory committees [on the recommendation of the commissioner] to
 652-63 assist the executive commissioner, commission, and department
 652-64 [board] in performing their [its] duties.

652-65 (b) The executive commissioner [board] shall appoint each
 652-66 advisory committee to provide for a balanced representation of the
 652-67 general public, providers, consumers, and other persons, state
 652-68 agencies, or groups with knowledge of and interest in the
 652-69 committee's field of work.

(c) The executive commissioner [board] shall specify each advisory committee's purpose, powers, and duties and shall require each committee to report to the executive commissioner [board] in a manner specified by the executive commissioner [board] concerning the committee's activities and the results of its work.

(d) The executive commissioner [board] shall establish procedures for receiving reports concerning activities and accomplishments of advisory committees established to advise the executive commissioner, commission, [board] or department. The executive commissioner [board on the recommendation of the commissioner] may appoint additional members to those committees and establish additional duties of those committees as the executive commissioner [board] determines to be necessary.

(e) The executive commissioner [board] shall adopt rules to implement this section. Those rules must provide that during the development of rules relating to an area in which an advisory committee exists the committee must be allowed to assist in the development of and to comment on the rules before the rules are 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.]

(g) Subsections (c) through (f) [of this section] apply to each [department] advisory committee created under this section [~~or under other law~~].

SECTION 4.020. Sections 22.011 through 22.017, Human Resources Code, are amended to read as follows:

Sec. 22.011. MEMORANDUM OF UNDERSTANDING ON SERVICES TO
[~~DISABLED~~] PERSONS WITH DISABILITIES. (a) The commission, the department, the [~~Texas~~] Department of State Health Services, the [~~Texas~~] Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services [~~Mental Health and Mental Retardation~~, the Texas Rehabilitation Commission, the Texas Commission for the Blind, the Texas Commission for the Deaf and Hard of Hearing], and the Texas Education Agency shall enter into [adopt] a joint memorandum of understanding to facilitate the coordination of services to [~~disabled~~] persons with disabilities. The memorandum shall:

(1) clarify the financial and service responsibilities of each agency in relation to [disabled] persons with disabilities; and

(2) address how the agency will share data relating to services delivered to [disabled] persons with disabilities by each agency.

(b) These agencies in the formulation of this memorandum of understanding shall consult with and solicit input from advocacy and consumer groups.

(c) Not later than the last month of each state fiscal year, the [department and the other] agencies shall review and update the memorandum.

(d) The executive commissioner and the commissioner of education [Each agency] by rule shall adopt the memorandum of

understanding and all revisions to the memorandum.

Sec. 22.013. MEMORANDUM OF UNDERSTANDING ON PUBLIC
WILDERNESS INFORMATION (a) The parties will

AWARENESS INFORMATION. (a) The commission, the department, the [Texas] Department of State Health Services, [the Texas Department of Mental Health and Mental Retardation,] and the Department of Assistive and Rehabilitative Services [Texas Rehabilitation Commission] shall enter into [adopt] a joint memorandum of understanding that authorizes and requires the exchange and distribution among the agencies of public awareness information relating to services provided by or through the agencies.

(b) Not later than the last month of each state fiscal year, the [department and the other] agencies shall review and update the memorandum.

(c) The executive commissioner [Each agency] by rule shall adopt the memorandum of understanding and all revisions to the memorandum.

654-1 Sec. 22.014. MEMORANDUM OF UNDERSTANDING ON HOSPITAL AND
654-2 LONG-TERM CARE SERVICES. (a) The commission, the department, and
654-3 the [Texas] Department of State Health Services[, and the Texas
654-4 Department of Mental Health and Mental Retardation] shall enter
654-5 into [adopt] a memorandum of understanding that:

654-6 (1) clearly defines the responsibilities of each
654-7 agency in providing, regulating, and funding hospital or long-term
654-8 care services; and

654-9 (2) defines the procedures and standards that each
654-10 agency will use to provide, regulate, and fund hospital or
654-11 long-term care services.

654-12 (b) The memorandum must provide that no new rules or
654-13 regulations that would increase the costs of providing the required
654-14 services or would increase the number of personnel in hospital or
654-15 long-term care facilities may be promulgated by the executive
654-16 commissioner [either the department, the Department of Health, or
654-17 the Department of Mental Health and Mental Retardation] unless the
654-18 executive commissioner [of health] certifies that the new rules or
654-19 regulations are urgent as well as necessary to protect the health or
654-20 safety of recipients of hospital or long-term care services.

654-21 (c) The memorandum must provide that any rules or
654-22 regulations proposed by the commission, the department, or the
654-23 Department of State Health Services[, or the Department of Mental
654-24 Health and Mental Retardation] which would increase the costs of
654-25 providing the required services or which would increase the number
654-26 of personnel in hospital or long-term care facilities must be
654-27 accompanied by a fiscal note prepared by the agency proposing said
654-28 rules and submitted to the executive commissioner [department].
654-29 The fiscal note should set forth the expected impact which the
654-30 proposed rule or regulation will have on the cost of providing the
654-31 required service and the anticipated impact of the proposed rule or
654-32 regulation on the number of personnel in hospital or long-term care
654-33 facilities. The memorandum must provide that in order for a rule to
654-34 be finally adopted the commission [department] must provide written
654-35 verification that funds are available to adequately reimburse
654-36 hospital or long-term care service providers for any increased
654-37 costs resulting from the rule or regulation. The commission
654-38 [department] is not required to provide written verification if the
654-39 executive commissioner [of health] certifies that a new rule or
654-40 regulation is urgent as well as necessary to protect the health or
654-41 safety of recipients of hospital or long-term care services.

654-42 (d) The memorandum must provide that upon final adoption of
654-43 any rule increasing the cost of providing the required services,
654-44 the executive commissioner [department] must establish
654-45 reimbursement rates sufficient to cover the increased costs related
654-46 to the rule. The executive commissioner [department] is not
654-47 required to establish reimbursement rates sufficient to cover the
654-48 increased cost related to a rule or regulation if the executive
654-49 commissioner [of health] certifies that the rule or regulation is
654-50 urgent as well as necessary to protect the health or safety of
654-51 recipients of hospital or long-term care services.

654-52 (e) The memorandum must provide that Subsections (b)
654-53 through (d) [of this section] do not apply if the rules are required
654-54 by state or federal law or federal regulations.

654-55 (f) These agencies in the formulation of this memorandum of
654-56 understanding shall consult with and solicit input from advocacy
654-57 and consumer groups.

654-58 (g) Not later than the last month of each state fiscal year,
654-59 the [department and the other] agencies shall review and update the
654-60 memorandum.

654-61 (h) The executive commissioner [Each agency] by rule shall
654-62 adopt the memorandum of understanding and all revisions to the
654-63 memorandum.

654-64 Sec. 22.015. REPORTING OF PHYSICIAN MISCONDUCT OR
654-65 MALPRACTICE. (a) If the commission or the department receives an
654-66 allegation that a physician employed by or under contract with the
654-67 commission or the department under this title has committed an
654-68 action that constitutes a ground for the denial or revocation of the
654-69 physician's license under Section 164.051, Occupations Code, the

655-1 commission or the department, as applicable, shall report the
 655-2 information to the Texas [State Board of] Medical Board [Examiners]
 655-3 in the manner provided by Section 154.051, Occupations Code.

655-4 (b) The commission or the department shall provide the Texas
 655-5 [State Board of] Medical Board [Examiners] with a copy of any report
 655-6 or finding relating to an investigation of an allegation reported
 655-7 to the Texas [State Board of] Medical Board [Examiners].

655-8 Sec. 22.016. SPECIAL PURCHASING PROCEDURES. The department
 655-9 shall coordinate with the commission in complying [comply] with any
 655-10 special purchasing procedures requiring competitive review under
 655-11 Subtitle D, Title 10, Government Code, for purchasing under this
 655-12 title.

655-13 Sec. 22.017. PROGRAM ACCESSIBILITY. The commission
 655-14 [department] shall prepare and maintain a written plan that
 655-15 describes how persons who do not speak English or who have physical,
 655-16 mental, or developmental disabilities can be provided reasonable
 655-17 access to the commission's and the department's programs under this
 655-18 title. The commission may solicit the assistance of a health and
 655-19 human services agency in the preparation or maintenance of the
 655-20 plan.

655-21 SECTION 4.021. Sections 22.018(a), (b), and (c), Human
 655-22 Resources Code, are amended to read as follows:

655-23 (a) The department and the chief administrative law judge of
 655-24 the State Office of Administrative Hearings shall enter into
 655-25 [adopt] a memorandum of understanding under which the State Office
 655-26 of Administrative Hearings, on behalf of the department, conducts
 655-27 all contested case hearings authorized or required by law to be
 655-28 conducted under this title by the department under the
 655-29 administrative procedure law, Chapter 2001, Government Code.

655-30 (b) The memorandum of understanding shall require the chief
 655-31 administrative law judge, the department, and the executive
 655-32 commissioner to cooperate in connection with a contested case
 655-33 hearing and may authorize the State Office of Administrative
 655-34 Hearings to perform any administrative act, including giving of
 655-35 notice, that is required to be performed by the department or
 655-36 commissioner of aging and disability services.

655-37 (c) The memorandum of understanding shall address whether
 655-38 the administrative law judge who conducts a contested case hearing
 655-39 for the State Office of Administrative Hearings on behalf of the
 655-40 department shall:

655-41 (1) enter the final decision in the case after
 655-42 completion of the hearing; or

655-43 (2) propose a decision to the department or the
 655-44 commissioner of aging and disability services for final
 655-45 consideration.

655-46 SECTION 4.022. Section 22.019, Human Resources Code, is
 655-47 amended to read as follows:

655-48 Sec. 22.019. DUE PROCESS PROCEDURES. (a) The commission
 655-49 and the department may not retroactively apply a rule, standard,
 655-50 guideline, or policy interpretation under this title.

655-51 (b) Any [The department shall adopt any] changes in agency
 655-52 [departmental] policy shall be adopted in accordance with the
 655-53 rulemaking [rule-making] provisions of Chapter 2001, Government
 655-54 Code. Periodic [The department shall use periodic] bulletins and
 655-55 indexes shall be used to notify contractors of changes in policy and
 655-56 to explain the changes. A [The department may not adopt a] change
 655-57 in agency [departmental] policy may not be adopted if it [that]
 655-58 takes effect before the date on which [the department notifies]
 655-59 contractors are notified as prescribed by this subsection.

655-60 (c) The executive commissioner [board] shall adopt a rule
 655-61 requiring the commission or the department, as applicable, to
 655-62 respond in writing to each written inquiry from a contractor under
 655-63 this title not later than the 14th day after the date on which the
 655-64 commission or the department receives the inquiry.

655-65 SECTION 4.023. Section 22.020, Human Resources Code, is
 655-66 amended to read as follows:

655-67 Sec. 22.020. AUDIT PROCEDURE. At any time during an audit,
 655-68 the commission or the department, as applicable, shall permit a
 655-69 contractor under this title to submit additional or alternative

656-1 documentation to prove that services were delivered to an eligible
 656-2 client. Any recovery of costs by the commission or the department
 656-3 from the contractor for using additional or alternative
 656-4 documentation may not exceed the amount the contractor would
 656-5 otherwise be entitled to receive under the contract as
 656-6 administrative costs.

656-7 SECTION 4.024. Section 22.021(a), Human Resources Code, is
 656-8 amended to read as follows:

656-9 (a) Funds [~~If funds are~~] appropriated to the commission or
 656-10 the department for the general support or development of a service
 656-11 under this title that is needed throughout the state[, ~~the~~
 656-12 ~~department~~] shall be allocated [~~allocate those funds~~] equitably
 656-13 across the state.

656-14 SECTION 4.025. Section 22.022, Human Resources Code, is
 656-15 amended to read as follows:

656-16 Sec. 22.022. RESIDENCY REQUIREMENTS. To the extent
 656-17 permitted by law the commission and the department shall only
 656-18 provide services under this title to legal residents of the United
 656-19 States or the State of Texas.

656-20 SECTION 4.026. Sections 22.023(b), (c), (d), and (e), Human
 656-21 Resources Code, are amended to read as follows:

656-22 (b) Subject to the limitations in Subsection (c) [~~of this~~
 656-23 ~~section~~], the commission [~~department~~] may purchase and pay the
 656-24 premiums for a conversion policy or other health insurance coverage
 656-25 for a person who is diagnosed as having AIDS, HIV, or other terminal
 656-26 or chronic illness and whose income level is less than 200 percent
 656-27 of the federal poverty level, based on the federal Office of
 656-28 Management and Budget poverty index in effect at the time coverage
 656-29 is provided, even though a person may be eligible for benefits under
 656-30 Chapter 32 [~~of this code~~]. Health insurance coverage for which
 656-31 premiums may be paid under this section includes coverage purchased
 656-32 from an insurance company authorized to do business in this state, a
 656-33 group hospital service [~~services~~] corporation operating under
 656-34 Chapter 842, Insurance Code, a health maintenance organization
 656-35 operating under Chapter 843, Insurance Code, or an insurance pool
 656-36 created by the federal or state government or a political
 656-37 subdivision of the state.

656-38 (c) If a person is eligible for benefits under Chapter 32
 656-39 [~~of this code~~], the commission [~~department~~] may not purchase or pay
 656-40 premiums for a health insurance policy under this section if the
 656-41 premiums to be charged for the health insurance coverage are
 656-42 greater than premiums paid for benefits under Chapter 32 [~~of this~~
 656-43 ~~code~~]. The commission [~~department~~] may not purchase or pay
 656-44 premiums for health insurance coverage under this section for a
 656-45 person at the same time that that person is covered by benefits
 656-46 under Chapter 32 [~~of this code~~].

656-47 (d) The commission [~~department~~] shall pay for that coverage
 656-48 with money made available to the commission [~~is~~] for that purpose.

656-49 (e) The executive commissioner [~~board~~] by rule may adopt
 656-50 necessary rules, criteria, and plans and may enter into necessary
 656-51 contracts to carry out this section.

656-52 SECTION 4.027. Sections 22.024 and 22.025, Human Resources
 656-53 Code, are amended to read as follows:

656-54 Sec. 22.024. DEVELOPMENT OF SERVICE PLAN FOR ELDERLY
 656-55 PERSONS OR PERSONS WITH DISABILITIES [~~DISABLED~~]. If the
 656-56 commission, the department, the Department of State Health
 656-57 Services, the Department of Assistive and Rehabilitative Services
 656-58 [~~the Texas Department of Human Services, Texas Department of Mental~~
 656-59 ~~Health and Mental Retardation, Texas Commission for the Deaf and~~
 656-60 ~~Hard of Hearing, Texas Department on Aging~~], or another agency
 656-61 funded in the General Appropriations Act under appropriations for
 656-62 health, welfare, and rehabilitation agencies receives funds to
 656-63 provide case management services to [~~the~~] elderly persons or
 656-64 persons with disabilities [~~disabled~~], the agency shall provide
 656-65 information to its staff concerning the services other agencies
 656-66 provide to those populations. The agency's staff shall use that
 656-67 information to develop a comprehensive service plan for its
 656-68 clients.

656-69 Sec. 22.025. ERROR-RATE REDUCTION. (a) The commission

657-1 [department] shall:

657-2 (1) set progressive goals for improving the
 657-3 commission's [department's] error rates in the financial assistance
 657-4 program under Chapter 31 [aid to families with dependent children]
 657-5 and supplemental nutrition assistance program [food stamp
 657-6 programs]; and

657-7 (2) develop a specific schedule to meet those goals.

657-8 (c) As appropriate, the commission [department] shall
 657-9 include in its employee evaluation process a rating system that
 657-10 emphasizes error-rate reduction and workload.

657-11 (d) The commission [department] shall take appropriate
 657-12 action if a region has a higher than average error rate and that
 657-13 rate is not reduced in a reasonable period.

657-14 SECTION 4.028. Sections 22.0251 through 22.0255, Human
 657-15 Resources Code, are amended to read as follows:

657-16 Sec. 22.0251. TIMELY DETERMINATION OF OVERPAYMENTS. (a)
 657-17 Subject to the approval of the executive commissioner [of health
 657-18 and human services], the commission [department] shall:

657-19 (1) determine and record the time taken by the
 657-20 commission [department] to establish an overpayment claim in the
 657-21 supplemental nutrition assistance [food stamp] program or the
 657-22 program of financial assistance under Chapter 31;

657-23 (2) set progressive goals for reducing the time
 657-24 described by Subdivision (1); and

657-25 (3) adopt a schedule to meet the goals set under
 657-26 Subdivision (2).

657-27 (b) The commission [department] shall submit to the
 657-28 governor and the Legislative Budget Board an annual report
 657-29 detailing the commission's [department's] progress in reaching its
 657-30 goals under Subsection (a)(2). The report may be consolidated with
 657-31 any other report relating to the same subject that the commission
 657-32 [department] is required to submit under other law.

657-33 Sec. 22.0252. TELEPHONE COLLECTION PROGRAM. (a) The
 657-34 commission [department] shall use the telephone to attempt to
 657-35 collect reimbursement from a person who receives a benefit granted
 657-36 in error under the supplemental nutrition assistance [food stamp]
 657-37 program or the program of financial assistance under Chapter 31.

657-38 (b) The commission [department] shall submit to the
 657-39 governor and the Legislative Budget Board an annual report on the
 657-40 operation and success of the telephone collection program. The
 657-41 report may be consolidated with any other report relating to the
 657-42 same subject that the commission [department] is required to submit
 657-43 under other law.

657-44 (c) The commission [department] shall ensure that the
 657-45 telephone collection program attempts to collect reimbursement for
 657-46 all identified delinquent payments for which 15 days or more have
 657-47 elapsed since the initial notice of delinquency was sent to the
 657-48 recipient.

657-49 (d) The commission [department] shall use an automated
 657-50 collections system to monitor the results of the telephone
 657-51 collection program. The system must:

657-52 (1) accept data from the accounts receivable tracking
 657-53 system used by the commission [department];

657-54 (2) automate recording tasks performed by a collector,
 657-55 including providing access to commission [department] records
 657-56 regarding the recipient and recording notes and actions resulting
 657-57 from a call placed to the recipient;

657-58 (3) automatically generate a letter to a recipient
 657-59 following a telephone contact that confirms the action to be taken
 657-60 regarding the delinquency;

657-61 (4) monitor the receipt of scheduled payments from a
 657-62 recipient for repayment of a delinquency; and

657-63 (5) generate reports regarding the effectiveness of
 657-64 individual collectors and of the telephone collection program.

657-65 Sec. 22.0253. PARTICIPATION IN FEDERAL TAX REFUND OFFSET
 657-66 PROGRAM. The commission [department] shall participate in the
 657-67 Federal Tax Refund Offset Program (FTROP) to attempt to recover
 657-68 benefits granted by the commission [department] in error under the
 657-69 supplemental nutrition assistance [food stamp] program. The

658-1 commission [department] shall submit as many claims that meet
 658-2 program criteria as possible for offset against income tax returns.

658-3 Sec. 22.0254. PROSECUTION OF FRAUDULENT CLAIMS. (a) The
 658-4 commission [department] shall keep a record of the dispositions of
 658-5 referrals made by the commission [department] to a district
 658-6 attorney concerning fraudulent claims for benefits under the
 658-7 supplemental nutrition assistance [food stamp] program or the
 658-8 program of financial assistance under Chapter 31.

658-9 (b) The commission [department] may:

658-10 (1) request status information biweekly from the appropriate
 658-11 district attorney on each major fraudulent claim referred by the commission [department];

658-12 (2) request a written explanation from the appropriate
 658-13 district attorney for each case referred in which the district
 658-14 attorney declines to prosecute; and

658-15 (3) encourage the creation of a special welfare fraud
 658-16 unit in each district attorney's office that serves a municipality
 658-17 with a population of more than 250,000, to be financed by amounts
 658-18 provided by the commission [department].

658-19 (c) The executive commissioner [department] by rule may
 658-20 define what constitutes a major fraudulent claim under Subsection
 658-21 (b)(1).

658-22 Sec. 22.0255. ELECTRONIC BENEFITS TRANSFER CARD;
 658-23 RETURNED-MAIL REDUCTION. (a) The commission [department] shall
 658-24 develop and implement policies and procedures designed to improve
 658-25 the commission's [department's] electronic benefits transfer cards
 658-26 used for federal and state entitlement programs administered by the
 658-27 commission [department].

658-28 (b) The commission [department] shall set an annual goal of
 658-29 reducing the amount of returned mail it receives under the programs
 658-30 described by Subsection (a) so that the percentage rate of returned
 658-31 mail is within one percent of the percentage rate of returned mail
 658-32 reported annually for the credit card and debit card industries.

658-33 SECTION 4.029. Sections 22.026 through 22.028, Human
 658-34 Resources Code, are amended to read as follows:

658-35 Sec. 22.026. REDUCTION OF CLIENT FRAUD. The commission and
 658-36 the department shall:

658-37 (1) ensure that errors attributed to client fraud are
 658-38 appropriate; and

658-39 (2) take immediate and appropriate action to limit any
 658-40 client fraud that occurs.

658-41 Sec. 22.027. FRAUD PREVENTION. (e) The commission, the
 658-42 department, and the comptroller shall coordinate their efforts to
 658-43 cross-train agency staff whose duties include fraud prevention and
 658-44 detection to enable the staff to identify and report possible
 658-45 fraudulent activity in programs, taxes, or funds administered by
 658-46 each of those [the] other agencies [agency].

658-47 (f) A local law enforcement agency that seizes an electronic
 658-48 benefits transfer (EBT) card issued by the commission [department]
 658-49 to a recipient of an entitlement program administered by the
 658-50 commission [department] shall immediately notify the commission
 658-51 [department] of the seizure and return the card to the commission
 658-52 [department]. The commission [department] shall send letters to
 658-53 local law enforcement agencies or post materials in the buildings
 658-54 in which those agencies are located to ensure that local law
 658-55 enforcement officials are aware of this requirement.

658-56 Sec. 22.028. ELECTRONIC BENEFITS TRANSFER: MONITORING. (a)
 658-57 The private electronic benefits transfer (EBT) operator with which
 658-58 the commission [department] contracts to administer the EBT
 658-59 system[–] shall establish procedures to maintain records that
 658-60 monitor all debit transactions relating to EBT client accounts
 658-61 under this section. The EBT operator shall deliver copies of the
 658-62 records to the commission [department] and the comptroller not
 658-63 later than the first day of each month. The commission [department]
 658-64 shall immediately review the records and assess the propriety of
 658-65 the debit transactions.

658-66 (b) After reviewing the records under Subsection (a), the
 658-67 commission [department] shall take necessary or advisable action to
 658-68 ensure compliance with EBT rules by the EBT operator, retailers,

659-1 and clients.

659-2 (c) No later than the first day of each month, the
 659-3 ~~commission [department]~~ shall send the comptroller a report listing
 659-4 the accounts on which enforcement actions or other steps were taken
 659-5 by the ~~commission [department]~~ in response to the records received
 659-6 from the EBT operator under this section, and the action taken by
 659-7 the ~~commission [department]~~. The comptroller shall promptly review
 659-8 the report and, as appropriate, may solicit the advice of the
 659-9 Medicaid and Public Assistance Fraud Oversight Task Force regarding
 659-10 the results of the ~~commission's [department's]~~ enforcement actions.

659-11 SECTION 4.030. Sections [22.029](#)(a) and (c), Human Resources
 659-12 Code, are amended to read as follows:

659-13 (a) In order to enhance the state's ability to detect and
 659-14 prevent fraud in the payment of claims under federal and state
 659-15 entitlement programs, the ~~commission [Health and Human Services
 659-16 Commission]~~ shall implement a data matching project as described by
 659-17 Subsection (b). The costs of developing and administering the data
 659-18 matching project shall be paid entirely from amounts recovered by
 659-19 participating agencies as a result of potential fraudulent
 659-20 occurrences or administrative errors identified by the project.

659-21 (c) Each agency participating in a matching cycle shall
 659-22 document actions taken to investigate and resolve fraudulent issues
 659-23 noted on the list provided by the commission. The commission shall
 659-24 compile the documentation furnished by participating agencies for
 659-25 each matching cycle~~, and shall report the results of the project to
 659-26 the governor, lieutenant governor, speaker of the house of
 659-27 representatives, and Legislative Budget Board not later than
 659-28 December 1, 1996.~~.

659-29 SECTION 4.031. Section [22.0292](#), Human Resources Code, is
 659-30 amended to read as follows:

659-31 Sec. 22.0292. INFORMATION MATCHING SYSTEM RELATING TO
 659-32 IMMIGRANTS AND FOREIGN VISITORS. (a) The ~~commission [department]~~
 659-33 shall, through the use of a computerized matching system, compare
 659-34 ~~commission [department]~~ information relating to applicants for and
 659-35 recipients of supplemental nutrition assistance program benefits
 659-36 [~~food stamps~~] and financial assistance under Chapter 31 with
 659-37 information obtained from the United States Department of State [~~of
 659-38 the United States~~] and the United States Department of Justice
 659-39 relating to immigrants and visitors to the United States for the
 659-40 purpose of preventing individuals from unlawfully receiving public
 659-41 assistance benefits administered by the ~~commission [department]~~.

659-42 (b) The ~~commission [department]~~ may enter into an agreement
 659-43 with the United States Department of State [~~of the United States~~]
 659-44 and the United States Department of Justice as necessary to
 659-45 implement this section.

659-46 (c) The ~~commission [department]~~ and federal agencies
 659-47 sharing information under this section shall protect the
 659-48 confidentiality of the shared information in compliance with all
 659-49 existing state and federal privacy guidelines.

659-50 (d) The ~~commission [department]~~ shall submit to the
 659-51 governor and the Legislative Budget Board an annual report on the
 659-52 operation and success of the information matching system required
 659-53 by this section. The report may be consolidated with any other
 659-54 report relating to the same subject matter the ~~commission
 659-55 [department]~~ is required to submit under other law.

659-56 SECTION 4.032. Sections [22.030](#) through [22.032](#), Human
 659-57 Resources Code, are amended to read as follows:

659-58 Sec. 22.030. AGREEMENTS FOR PURCHASE OF SERVICES FOR
 659-59 CHILDREN. (a) To ensure the maximum use of available federal
 659-60 matching funds for child care services and other support services
 659-61 under Section [31.010](#), the ~~commission and any other agency providing
 659-62 the services [Department of Human Services]~~ shall enter into
 659-63 agreements with the appropriate local community organizations to
 659-64 receive donations to be used for the purchase of services for which
 659-65 matching federal funds are available.

659-66 (b) An agency described under Subsection (a) [~~The
 659-67 Department of Human Services~~] shall cooperate with each local
 659-68 community organization to develop guidelines for the use of that
 659-69 community's donation to provide the services described in

660-1 Subsection (a) [~~of this section~~].

660-2 Sec. 22.031. UNANNOUNCED INSPECTIONS. The commission and
 660-3 the department may make any inspection of a facility or program
 660-4 under the agency's [~~department's~~] jurisdiction under this title
 660-5 without announcing the inspection.

660-6 Sec. 22.032. USE OF EARNED FEDERAL FUNDS. Subject to the
 660-7 General Appropriations Act, the commission [~~department~~] may use
 660-8 earned federal funds derived from recovery of amounts paid or
 660-9 benefits granted by the commission [~~department~~] as a result of
 660-10 fraud to pay the costs of the commission's [~~department's~~]
 660-11 activities relating to preventing fraud.

660-12 SECTION 4.033. Sections 22.035(a), (b), (e), (f), (g), (i),
 660-13 (j), (k), and (l), Human Resources Code, are amended to read as
 660-14 follows:

660-15 (a) A work group to be known as the Children's Policy
 660-16 Council shall assist the department [~~Department of Aging and~~
 660-17 ~~Disability Services~~], the commission [~~Health and Human Services~~
 660-18 ~~Commission~~], the Department of State Health Services, the
 660-19 Department of Assistive and Rehabilitative Services, and the
 660-20 Department of Family and Protective Services in developing,
 660-21 implementing, and administering family support policies for
 660-22 children with disabilities relating to:

- 660-23 (1) long-term services and supports;
- 660-24 (2) health services; and
- 660-25 (3) mental health services.

660-26 (b) The executive commissioner [~~of the Health and Human~~
 660-27 ~~Services Commission~~] shall appoint the members of the work group,
 660-28 which must include the following:

660-29 (1) a person who is younger than 22 years of age and is
 660-30 a consumer of long-term care and health programs for children;
 660-31 (2) an individual who is younger than 25 years of age
 660-32 and who receives or has received mental health services;
 660-33 (3) relatives of consumers of long-term care and
 660-34 health programs for children 26 years of age or younger;
 660-35 (4) a representative from an organization that is an
 660-36 advocate for consumers of long-term care and health programs for
 660-37 children;
 660-38 (5) a person from a private entity that provides
 660-39 long-term care and health programs for children;
 660-40 (6) a person from a public entity that provides
 660-41 long-term care and health programs for children;
 660-42 (7) a person with expertise in the availability of
 660-43 funding and the application of funding formulas for children's
 660-44 long-term care and health services;
 660-45 (8) a representative from a faith-based organization;
 660-46 (9) a representative from a nonspecialized community
 660-47 services organization; and
 660-48 (10) a representative from a business that is not
 660-49 related to providing services to persons with disabilities.

660-50 (e) The commission [~~Health and Human Services Commission~~]
 660-51 shall provide administrative support, including staff, to the work
 660-52 group.

660-53 (f) A member of the work group serves at the will of the
 660-54 executive commissioner [~~of the Health and Human Services~~
 660-55 ~~Commission~~].

660-56 (g) The executive commissioner [~~of the Health and Human~~
 660-57 ~~Services Commission~~] shall appoint a member of the work group to
 660-58 serve as a presiding officer.

660-59 (i) A member of the work group receives no additional
 660-60 compensation for serving on the work group. Consumers and
 660-61 relatives of consumers serving on the work group shall be
 660-62 reimbursed for travel and other expenses necessary for
 660-63 participation as provided in the General Appropriations Act. Other
 660-64 members of the work group may not be reimbursed for travel or other
 660-65 expenses incurred while conducting the business of the work group.
 660-66 Reimbursement under this subsection shall be paid equally out of
 660-67 funds appropriated to the department [~~Department of Aging and~~
 660-68 ~~Disability Services~~] and funds appropriated to the Department of
 660-69 State Health Services.

661-1 (j) The work group may study and make recommendations in the
661-2 following areas:

661-3 (1) access of a child or a child's family to effective
661-4 case management services, including case management services with a
661-5 single case manager, parent case managers, or independent case
661-6 managers;

661-7 (2) the transition needs of children who reach an age
661-8 at which they are no longer eligible for services at the Department
661-9 of State Health Services, the Texas Education Agency, and other
661-10 applicable state agencies;

661-11 (3) the blending of funds, including case management
661-12 funding, for children needing long-term care, health services, and
661-13 mental health services;

661-14 (4) collaboration and coordination of children's
661-15 services between the ~~department [Department of Aging and Disability~~
661-16 ~~Services]~~, the Department of State Health Services, the Department
661-17 of Assistive and Rehabilitative Services, the Department of Family
661-18 and Protective Services, and any other agency determined to be
661-19 applicable by the work group;

661-20 (5) budgeting and the use of funds appropriated for
661-21 children's long-term care services, health services, and mental
661-22 health services;

661-23 (6) services and supports for families providing care
661-24 for children with disabilities;

661-25 (7) effective permanency planning for children who
661-26 reside in institutions or who are at risk of placement in an
661-27 institution;

661-28 (8) barriers to enforcement of regulations regarding
661-29 institutions that serve children with disabilities; and

661-30 (9) the provision of services under the medical
661-31 assistance program to children younger than 23 years of age with
661-32 disabilities or special health care needs under a waiver granted
661-33 under Section 1915(c) of the federal Social Security Act (42 U.S.C.
661-34 Section 1396n(c)).

661-35 (k) Not later than September 1 of each even-numbered year,
661-36 the work group shall report on its findings and recommendations to
661-37 the legislature and the executive commissioner [~~of the Health and~~
661-38 ~~Human Services Commission~~].

661-39 (l) After evaluating and considering recommendations
661-40 reported under Subsection (k), the executive commissioner [~~of the~~
661-41 ~~Health and Human Services Commission~~] shall adopt rules to
661-42 implement guidelines for providing long-term care, health
661-43 services, and mental health services to children with disabilities.

661-44 SECTION 4.034. Section 22.036, Human Resources Code, is
661-45 amended to read as follows:

661-46 Sec. 22.036. PROGRAMS FOR [~~DEAF-BLIND MULTIHANDICAPPED~~]
661-47 INDIVIDUALS WHO ARE DEAF-BLIND WITH MULTIPLE DISABILITIES AND THEIR
661-48 PARENTS. (a) The department shall establish programs to serve
661-49 [~~deaf-blind multihandicapped~~] individuals who are deaf-blind with
661-50 multiple disabilities by helping them attain self-sufficiency and
661-51 independent living.

661-52 (b) The department shall establish a program of parental
661-53 counseling for the parents of [~~deaf-blind multihandicapped~~]
661-54 individuals who are deaf-blind with multiple disabilities. The
661-55 counseling program may be provided on an individual or group basis
661-56 and must include programs, activities, and services necessary to
661-57 foster greater understanding and to improve relationships among
661-58 professionals, parents, and [~~deaf-blind multihandicapped~~]
661-59 individuals who are deaf-blind with multiple disabilities.

661-60 (c) The department shall establish a summer outdoor
661-61 training program for [~~deaf-blind multihandicapped~~] individuals who
661-62 are deaf-blind with multiple disabilities. The outdoor training
661-63 program must be designed to help meet the unique needs of
661-64 [~~deaf-blind multihandicapped~~] individuals who are deaf-blind with
661-65 multiple disabilities for the purpose of broadening their
661-66 educational experiences and improving their ability to function
661-67 more independently.

661-68 (d) The executive commissioner [~~department~~] shall establish
661-69 regulations for implementing and administering the programs.

662-1 (e) The department may contract for services or goods with
 662-2 private or public entities for purposes of this section.

662-3 (f) From information collected from the programs, the
 662-4 department shall determine the need for related future services and
 662-5 the most efficient and effective method of delivering the future
 662-6 services.

662-7 SECTION 4.035. Section 22.039(a)(1), Human Resources Code,
 662-8 is amended to read as follows:

662-9 (1) "Long-term care facility" means a nursing
 662-10 institution, an assisted living facility, or an intermediate care
 662-11 facility [~~for the mentally retarded~~] licensed under Chapter 242,
 662-12 247, or 252, Health and Safety Code.

662-13 SECTION 4.036. Section 22.039(c), Human Resources Code, as
 662-14 amended by Chapters 879 (S.B. 223) and 980 (H.B. 1720), Acts of the
 662-15 82nd Legislature, Regular Session, 2011, is reenacted to read as
 662-16 follows:

662-17 (c) The department shall semiannually provide training for
 662-18 surveyors and providers on subjects that address the 10 most common
 662-19 violations by long-term care facilities of federal or state law.
 662-20 The department may charge providers a fee not to exceed \$50 per
 662-21 person for the training.

662-22 SECTION 4.037. Sections 22.040 and 22.041, Human Resources
 662-23 Code, are amended to read as follows:

662-24 Sec. 22.040. DETERMINATION OF ELIGIBILITY FOR COMMUNITY
 662-25 CARE SERVICES FOR ELDERLY PERSONS OR PERSONS WITH DISABILITIES.
 662-26 The executive commissioner [~~department~~] by rule shall develop and
 662-27 the department shall implement a plan to assist elderly persons or
 662-28 persons with disabilities requesting community care services in
 662-29 receiving those services as quickly as possible when those services
 662-30 become available. The plan must require the department to:

662-31 (1) forecast participant openings that will become
 662-32 available in a community care program serving the elderly person or
 662-33 person with a disability during the next fiscal quarter because of
 662-34 program expansion or case closures;

662-35 (2) contact an individual on an interest list and
 662-36 begin the program eligibility determination process at least 30
 662-37 days before an opening is forecasted to become available in the
 662-38 program; and

662-39 (3) ensure that an individual determined to be
 662-40 eligible for services does not begin receiving services until after
 662-41 the opening actually becomes available.

662-42 Sec. 22.041. THIRD-PARTY INFORMATION. Notwithstanding any
 662-43 other provision of this code, the commission [~~department~~] may use
 662-44 information obtained from a third party to verify the assets and
 662-45 resources of a person for purposes of determining the person's
 662-46 eligibility and need for medical assistance, financial assistance,
 662-47 or nutritional assistance. Third-party information includes
 662-48 information obtained from:

662-49 (1) a consumer reporting agency, as defined by Section
 662-50 20.01, Business & Commerce Code;

662-51 (2) an appraisal district; or

662-52 (3) the Texas Department of Motor Vehicles vehicle
 662-53 registration record database.

662-54 SECTION 4.038. Chapter 23, Human Resources Code, is amended
 662-55 to read as follows:

662-56 CHAPTER 23. SUSPENSION OF DRIVER'S OR RECREATIONAL LICENSE FOR
 662-57 FAILURE TO REIMBURSE COMMISSION [~~DEPARTMENT~~]

662-58 Sec. 23.001. DEFINITIONS. In this chapter:

662-59 (1) "License" means a license, certificate,
 662-60 registration, permit, or other authorization that:

662-61 (A) is issued by a licensing authority;

662-62 (B) is subject before expiration to suspension,
 662-63 revocation, forfeiture, or termination by an issuing licensing
 662-64 authority; and

662-65 (C) a person must obtain to:

662-66 (i) operate a motor vehicle; or

662-67 (ii) engage in a recreational activity,
 662-68 including hunting and fishing, for which a license or permit is
 662-69 required.

(2) "Order suspending a license" means an order issued by the commission [department] directing a licensing authority to suspend a license.

Sec. 23.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. In this chapter, "licensing authority" means:

- (1) the Parks and Wildlife Department; and
(2) the Department of Public Safety of the State of Texas.

Sec. 23.003. SUSPENSION OF LICENSE. The commission
[department] may issue an order suspending a license as provided by
this chapter of a person who, after notice:

- (1) has failed to reimburse the commission [department] for an amount in excess of \$250 granted in error to the person under the supplemental nutrition assistance [~~food stamp~~] program or the program of financial assistance under Chapter 31;

- (2) has been provided an opportunity to make payments toward the amount owed under a repayment schedule; and
 - (3) has failed to comply with the repayment schedule.

Sec. 23.004. INITIATION OF PROCEEDING. (a) The commission [department] may initiate a proceeding to suspend a person's license by filing a petition with the commission's appeals [department's hearings] division.

(b) The proceeding shall be conducted by the commission's appeals [~~department's hearings~~] division. The proceeding is a contested case under Chapter 2001, Government Code, except that Section 2001.054 does not apply.

(c) The executive commissioner or the executive commissioner's designated representative shall render a final decision or order in the proceeding. A reference to the commission in this chapter with respect to a final decision or order in the proceeding means the executive commissioner or the executive commissioner's designated representative.

Sec. 23.005. CONTENTS OF PETITION. A petition under this chapter must state that license suspension is authorized under Section [23.003](#) and allege:

- (1) the name and, if known, social security number of the person;
(2) the type of license the person is believed to hold

- and the name of the licensing authority; and
 (3) the amount owed to the commission [department].
Sec. 23.006. NOTICE. (a) On initiating a proceeding un-

Section 23.004, the commission [department] shall give the person named in the petition:

- (1) notice of the person's right to a hearing before the commission's appeals [hearings] division [~~of the department~~];
 - (2) notice of the deadline for requesting a hearing;

- and (3) a form requesting a hearing.

(b) Notice under this section may be served as in civil cases generally.

(c) The notice must state that an order suspending a license shall be rendered on the 60th day after the date of service of the notice unless by that date:

- (1) the person pays the amount owed to the commission [department];

- (2) the person presents evidence of a payment history satisfactory to the commission [department] in compliance with a reasonable repayment schedule; or

- (3) the person appears at a hearing before the commission's appeals [hearings] division and shows that the request for suspension should be denied or stayed.

Sec. 23.007. HEARING ON PETITION TO SUSPEND LICENSE. (a) A request for a hearing and motion to stay suspension must be filed with the commission [department] not later than the 20th day after the date of service of the notice under Section 23.006.

(b) If a request for a hearing is filed, the commission's appeals [hearings] division [of the department] shall:

- (1) promptly schedule a hearing;
 - (2) notify the person and an appropriate

664-1 representative of the commission [department] of the date, time,
664-2 and location of the hearing; and

664-3 (3) stay suspension pending the hearing.

664-4 Sec. 23.008. ORDER SUSPENDING LICENSE. (a) On making the
664-5 findings required by Section 23.003, the commission [department]
664-6 shall render an order suspending a license.

664-7 (b) The commission [department] may stay an order
664-8 suspending a license conditioned on the person's compliance with a
664-9 reasonable repayment schedule that is incorporated in the order.
664-10 An order suspending a license with a stay of the suspension may not
664-11 be served on the licensing authority unless the stay is revoked as
664-12 provided by this chapter.

664-13 (c) A final order suspending a license rendered by the
664-14 commission [department] shall be forwarded to the appropriate
664-15 licensing authority.

664-16 (d) If the commission [department] renders an order
664-17 suspending a license, the person may also be ordered not to engage
664-18 in the licensed activity.

664-19 (e) If the commission's appeals division [department] finds
664-20 that the petition for suspension should be denied, the petition
664-21 shall be dismissed without prejudice, and an order suspending a
664-22 license may not be rendered.

664-23 Sec. 23.009. DEFAULT ORDER. The commission [department]
664-24 shall consider the allegations of the petition for suspension to be
664-25 admitted and shall render an order suspending a license if the
664-26 person fails to:

- 664-27 (1) respond to a notice issued under Section 23.006;
664-28 (2) request a hearing; or
664-29 (3) appear at a hearing.

664-30 Sec. 23.010. REVIEW OF FINAL ADMINISTRATIVE ORDER. An
664-31 order issued by the commission [department] under this chapter is a
664-32 final agency decision and is subject to review as provided by
664-33 Chapter 2001, Government Code.

664-34 Sec. 23.011. ACTION BY LICENSING AUTHORITY. (a) On receipt
664-35 of a final order suspending a license, the licensing authority
664-36 shall immediately determine if the authority has issued a license
664-37 to the person named on the order and, if a license has been issued:

664-38 (1) record the suspension of the license in the
664-39 licensing authority's records;

664-40 (2) report the suspension as appropriate; and
664-41 (3) demand surrender of the suspended license if
664-42 required by law for other cases in which a license is suspended.

664-43 (b) A licensing authority shall implement the terms of a
664-44 final order suspending a license without additional review or
664-45 hearing. The authority may provide notice as appropriate to the
664-46 license holder or to others concerned with the license.

664-47 (c) A licensing authority may not modify, remand, reverse,
664-48 vacate, or stay an order suspending a license issued under this
664-49 chapter and may not review, vacate, or reconsider the terms of a
664-50 final order suspending a license.

664-51 (d) A person who is the subject of a final order suspending a
664-52 license is not entitled to a refund for any fee or deposit paid to
664-53 the licensing authority.

664-54 (e) A person who continues to engage in the licensed
664-55 activity after the implementation of the order suspending a license
664-56 by the licensing authority is liable for the same civil and criminal
664-57 penalties provided for engaging in the licensed activity without a
664-58 license or while a license is suspended that apply to any other
664-59 license holder of that licensing authority.

664-60 (f) A licensing authority is exempt from liability to a
664-61 license holder for any act authorized under this chapter performed
664-62 by the authority.

664-63 (g) Except as provided by this chapter, an order suspending
664-64 a license or dismissing a petition for the suspension of a license
664-65 does not affect the power of a licensing authority to grant, deny,
664-66 suspend, revoke, terminate, or renew a license.

664-67 (h) The denial or suspension of a driver's license under
664-68 this chapter is governed by this chapter and not by Subtitle B,
664-69 Title 7, Transportation Code.

665-1 Sec. 23.012. MOTION TO REVOKE STAY. (a) The commission
 665-2 [department] may file a motion with the commission's appeals
 665-3 [department's hearings] division to revoke the stay of an order
 665-4 suspending a license if the person does not comply with the terms of
 665-5 a reasonable repayment plan entered into by the person.

665-6 (b) Notice to the person of a motion to revoke stay under
 665-7 this section may be given by personal service or by mail to the
 665-8 address provided by the person, if any, in the order suspending a
 665-9 license. The notice must include a notice of hearing before the
 665-10 appeals [hearings] division. The notice must be provided to the
 665-11 person not less than 10 days before the date of the hearing.

665-12 (c) A motion to revoke stay must allege the manner in which
 665-13 the person failed to comply with the repayment plan.

665-14 (d) If the commission [department] finds that the person is
 665-15 not in compliance with the terms of the repayment plan, the
 665-16 commission [department] shall revoke the stay of the order
 665-17 suspending a license and render a final order suspending a license.

665-18 Sec. 23.013. VACATING OR STAYING ORDER SUSPENDING [A]
 665-19 LICENSE. (a) The commission [department] may render an order
 665-20 vacating or staying an order suspending a license if the person has
 665-21 paid all amounts owed to the commission [department] or has
 665-22 established a satisfactory payment record.

665-23 (b) The commission [department] shall promptly deliver an
 665-24 order vacating or staying an order suspending a license to the
 665-25 appropriate licensing authority.

665-26 (c) On receipt of an order vacating or staying an order
 665-27 suspending a license, the licensing authority shall promptly
 665-28 reinstate and return the affected license to the person if the
 665-29 person is otherwise qualified for the license.

665-30 (d) An order rendered under this section does not affect the
 665-31 right of the commission [department] to any other remedy provided
 665-32 by law, including the right to seek relief under this chapter. An
 665-33 order rendered under this section does not affect the power of a
 665-34 licensing authority to grant, deny, suspend, revoke, terminate, or
 665-35 renew a license as otherwise provided by law.

665-36 Sec. 23.014. FEE BY LICENSING AUTHORITY. A licensing
 665-37 authority may charge a fee to a person who is the subject of an order
 665-38 suspending a license in an amount sufficient to recover the
 665-39 administrative costs incurred by the authority under this chapter.

665-40 Sec. 23.015. COOPERATION BETWEEN LICENSING AUTHORITIES AND
 665-41 COMMISSION [DEPARTMENT]. (a) The commission [department] may
 665-42 request from each licensing authority the name, address, social
 665-43 security number, license renewal date, and other identifying
 665-44 information for each individual who holds, applies for, or renews a
 665-45 license issued by the authority.

665-46 (b) A licensing authority shall provide the requested
 665-47 information in the manner agreed to by the commission [department]
 665-48 and the licensing authority.

665-49 (c) The commission [department] may enter into a
 665-50 cooperative agreement with a licensing authority to administer this
 665-51 chapter in a cost-effective manner.

665-52 (d) The commission [department] may adopt a reasonable
 665-53 implementation schedule for the requirements of this section.

665-54 Sec. 23.016. RULES, FORMS, AND PROCEDURES. The executive
 665-55 commissioner [department] by rule shall prescribe forms and
 665-56 procedures for the implementation of this chapter.

665-57 SECTION 4.039. Section 31.001, Human Resources Code, is
 665-58 amended to read as follows:

665-59 Sec. 31.001. TEMPORARY ASSISTANCE FOR NEEDY [AID TO]
 665-60 FAMILIES [WITH DEPENDENT CHILDREN]. The commission [department]
 665-61 shall provide financial assistance and services to families with
 665-62 dependent children in accordance with the provisions of this
 665-63 chapter. The commission [department] shall give first priority in
 665-64 administering this chapter to assisting an adult recipient of or
 665-65 unemployed applicant for the financial assistance and services in
 665-66 finding and retaining a job.

665-67 SECTION 4.040. Section 31.002(b), Human Resources Code, is
 665-68 amended to read as follows:

665-69 (b) In this chapter, the term "dependent child" also applies

666-1 to a child:

666-2 (1) who meets the specifications set forth in
 666-3 Subsections (a)(1)-(4) [Subdivisions (1)-(4) of the preceding
 666-4 subsection];

666-5 (2) who has been removed from the home of a relative
 666-6 specified in Subsection (a)(5) [Subdivision (5) of the preceding
 666-7 subsection] as a result of a judicial determination that the
 666-8 child's residence there is contrary to his or her welfare;

666-9 (3) whose placement and care are the responsibility of
 666-10 the [department, the] Department of Family and Protective [and
 666-11 Regulatory] Services[~~7~~] or an agency with which the [department or
 666-12 the] Department of Family and Protective [and Regulatory] Services
 666-13 has entered into an agreement for the care and supervision of the
 666-14 child;

666-15 (4) who has been placed in a foster home or child-care
 666-16 institution by the [department or the] Department of Family and
 666-17 Protective [and Regulatory] Services; and

666-18 (5) for whom the state may receive federal funds for
 666-19 the purpose of providing foster care in accordance with rules
 666-20 promulgated by the executive commissioner [department].

666-21 SECTION 4.041. Section 31.0021(b), Human Resources Code, is
 666-22 amended to read as follows:

666-23 (b) "Nonrecipient parent" does not include:

666-24 (1) a minor parent who is not the head of household;
 666-25 (2) a person who is ineligible for financial
 666-26 assistance because of the person's immigration status; or
 666-27 (3) a parent who cares for a [disabled] family member
 666-28 with a disability living in the home if the family member does not
 666-29 attend school full-time and the need for the care is supported by
 666-30 medical documentation.

666-31 SECTION 4.042. Section 31.003, Human Resources Code, is
 666-32 amended to read as follows:

666-33 Sec. 31.003. AMOUNT OF FINANCIAL ASSISTANCE. (a) The
 666-34 executive commissioner [department] shall adopt rules governing
 666-35 the determination of the amount of financial assistance to be
 666-36 granted for the support of a dependent child. The amount granted,
 666-37 when combined with the income and other resources available for the
 666-38 child's support, must be sufficient to provide the child with a
 666-39 subsistence compatible with decency and health.

666-40 (b) In considering the amount of income or other resources
 666-41 available to a child or a relative claiming financial assistance on
 666-42 the child's behalf, the commission [department] shall also consider
 666-43 reasonable expenses attributable to earning the income. The
 666-44 commission [department] may permit all or part of the earned or
 666-45 other income to be set aside for the future identifiable needs of
 666-46 the child, subject to limitations prescribed by the executive
 666-47 commissioner [department].

666-48 (c) The commission's [department's] agents employed in the
 666-49 region or county in which the dependent child resides shall
 666-50 determine the amount to be paid in accordance with the rules
 666-51 promulgated by the executive commissioner [department].

666-52 SECTION 4.043. Sections 31.0031(a), (c), (d), (e), (f),
 666-53 (g), and (h), Human Resources Code, are amended to read as follows:

666-54 (a) The commission [department] shall require each adult
 666-55 recipient to sign a bill of responsibilities that defines the
 666-56 responsibilities of the state and of the recipient and encourages
 666-57 personal responsibility. The commission [department] shall
 666-58 explain to the applicant the work requirements and time-limited
 666-59 benefits in addition to the other provisions of the agreement
 666-60 before the applicant signs the agreement. The commission
 666-61 [department] shall provide each applicant with a copy of the signed
 666-62 agreement. The agreement shall include pertinent case information,
 666-63 including the case number and a listing of the state's benefits.

666-64 (c) The executive commissioner [department] shall adopt
 666-65 rules governing sanctions and penalties under this section to or
 666-66 for:

666-67 (1) a person who fails to cooperate with each
 666-68 applicable requirement of the responsibility agreement prescribed
 666-69 by this section; and

(2) the family of a person who fails to cooperate with each applicable requirement of the responsibility agreement.

(d) The responsibility agreement shall require that:

(1) the parent of a dependent child cooperate with the commission [department] and the Title IV-D agency if necessary to establish the paternity of the dependent child and to establish or enforce child support;

(2) if adequate and accessible providers of the services are available in the geographic area and subject to the availability of funds, each dependent child, as appropriate, complete early and periodic screening, diagnosis, and treatment checkups on schedule and receive the immunization series prescribed by Section 161.004, Health and Safety Code, unless the child is exempt under that section;

(3) each adult recipient, or teen parent recipient who has completed the requirements regarding school attendance in Subdivision (6), not voluntarily terminate paid employment of at least 30 hours each week without good cause in accordance with rules adopted by the executive commissioner [department];

(4) each adult recipient for whom a needs assessment is conducted participate in an activity to enable that person to become self-sufficient by:

(A) continuing the person's education or becoming literate;

- (B) entering a job placement or employment skills training program;
- (C) serving as a volunteer in the person's

(D) serving in a community work program or other work program approved by the commission [department]:

(5) each caretaker relative or parent receiving assistance not use, sell, or possess marihuana or a controlled substance in violation of Chapter 481, Health and Safety Code, or abuse alcohol;

(6) each dependent child younger than 18 years of age or teen parent younger than 19 years of age attend school regularly, unless the child has a high school diploma or high school equivalency certificate or is specifically exempted from school attendance under Section **25.086**, Education Code;

(7) each recipient comply with commission [department] rules regarding proof of school attendance; and

(e) In conjunction with the Texas Education Agency, the

(c) In conjunction with the Texas Education Agency, the executive commissioner [department] by rule shall ensure compliance with the school attendance requirements of Subsection (d)(6) by establishing criteria for:

(1) determining whether a child is regularly attending school;

(2) exempting a child from school attendance in accordance with Subchapter C, Chapter 25, Education Code; and
(3) determining when an absence is excused.

(f) The executive commissioner [department] by rule may provide for exemptions from Subsection (d)(4) or for a teen parent under Subsection (d)(6). The commission [department] may not require participation in an activity under Subsection (d)(4) or for a teen parent under Subsection (d)(6) if funding for support services is unavailable.

(g) In this section:

(1) "Caretaker relative" means a person who is listed under Section 31.002(a)(5) in whose home residence a dependent child lives [as a relative eligible to receive assistance under 42 U.S.C. Section 602(a)].

(2) "Payee" means a person who resides in a household with a dependent child and who is within the degree of relationship with the child that is required of a caretaker relative but whose needs are not included in determining the amount of financial assistance provided for the person's household.

(h) The commission [department] shall require each payee to

668-1 sign a bill of responsibilities that defines the responsibilities
 668-2 of the state and of the payee. The responsibility agreement must
 668-3 require that a payee comply with the requirements of Subsections
 668-4 (d)(1), (2), (5), (6), and (7).

668-5 SECTION 4.044. Section 31.0032, Human Resources Code, is
 668-6 amended to read as follows:

668-7 Sec. 31.0032. PAYMENT OF ASSISTANCE FOR PERFORMANCE. (a)
 668-8 Except as provided by Section 231.115, Family Code, if after an
 668-9 investigation the commission [department] or the Title IV-D agency
 668-10 determines that a person is not cooperating with a requirement of
 668-11 the responsibility agreement required under Section 31.0031, the
 668-12 commission [department] shall immediately apply a sanction
 668-13 terminating the total amount of financial assistance provided under
 668-14 this chapter to or for the person and the person's family.

668-15 (a-1) The commission [department] shall apply a sanction or
 668-16 penalty imposed under Subsection (a) for a period ending when the
 668-17 person demonstrates cooperation with the requirement of the
 668-18 responsibility agreement for which the sanction was imposed or for
 668-19 a one-month period, whichever is longer.

668-20 (b) The commission [department] shall immediately notify
 668-21 the caretaker relative, second parent, or payee receiving the
 668-22 financial assistance if the commission [department] will not make
 668-23 the financial assistance payment for the period prescribed by
 668-24 Subsection (a-1) because of a person's failure to cooperate with
 668-25 the requirements of the responsibility agreement during a month.

668-26 (c) To the extent allowed by federal law, the commission
 668-27 [~~Health and Human Services Commission or any health and human~~
 668-28 ~~services agency, as defined by Section 531.001, Government Code,~~] may
 668-29 deny medical assistance for a person who is eligible for
 668-30 financial assistance but to whom that assistance is not paid
 668-31 because of the person's failure to cooperate. Medical assistance
 668-32 to the person's family may not be denied for the person's failure to
 668-33 cooperate. Medical assistance may not be denied to a person
 668-34 receiving assistance under this chapter who is under the age of 19,
 668-35 a pregnant adult, or any other person who may not be denied medical
 668-36 assistance under federal law.

668-37 (d) This section does not prohibit the Texas Workforce
 668-38 Commission, the commission [~~Health and Human Services Commission~~],
 668-39 or any health and human services agency, as defined by Section
 668-40 531.001, Government Code, from providing child care or any other
 668-41 related social or support services for an individual who is
 668-42 eligible for financial assistance but to whom that assistance is
 668-43 not paid because of the individual's failure to cooperate.

668-44 (e) The executive commissioner [department] by rule shall
 668-45 establish procedures to determine whether a person has cooperated
 668-46 with the requirements of the responsibility agreement.

668-47 SECTION 4.045. Sections 31.0033(a), (b), (c), and (d),
 668-48 Human Resources Code, are amended to read as follows:

668-49 (a) If the commission [department] or Title IV-D agency
 668-50 determines that a person has failed to cooperate with the
 668-51 requirements of the responsibility agreement under Section
 668-52 31.0031, the person determined to have failed to cooperate or, if
 668-53 different, the person receiving the financial assistance may
 668-54 request a hearing to show good cause for failure to cooperate not
 668-55 later than the 13th day after the date the notice is sent under
 668-56 Section 31.0032. If the person determined to have failed to
 668-57 cooperate or, if different, the person receiving the financial
 668-58 assistance requests a hearing to show good cause not later than the
 668-59 13th day after the date on which the notice is sent under Section
 668-60 31.0032, the commission [department] may not withhold or reduce the
 668-61 payment of financial assistance until the commission [department]
 668-62 determines whether the person had good cause for the person's
 668-63 failure to cooperate. On a showing of good cause for failure to
 668-64 cooperate, the person may receive a financial assistance payment
 668-65 for the period in which the person failed to cooperate, but had good
 668-66 cause for that failure to cooperate.

668-67 (b) The commission [department] shall promptly conduct a
 668-68 hearing if a timely request is made under Subsection (a).

668-69 (c) If the commission [department] finds that good cause for

669-1 the person's failure to cooperate was not shown at a hearing, the
 669-2 commission [department] may not make a financial assistance payment
 669-3 in any amount to the person or the person's family
 669-4 for the period prescribed by Section 31.0032(a-1).

669-5 (d) The executive commissioner [department] by rule shall
 669-6 establish criteria for good cause failure to cooperate and
 669-7 guidelines for what constitutes a good faith effort on behalf of a
 669-8 recipient under this section.

669-9 SECTION 4.046. Sections 31.0035 and 31.0036, Human
 669-10 Resources Code, are amended to read as follows:

669-11 Sec. 31.0035. TRANSITIONAL CHILD-CARE SERVICES. (a) The
 669-12 Texas Workforce Commission [department] shall provide necessary
 669-13 transitional child-care services, in accordance with Texas
 669-14 Workforce Commission [department] rules and federal law, to a
 669-15 person who was receiving financial assistance under this chapter
 669-16 but is no longer eligible to receive the assistance because:

669-17 (1) the person's household income has increased; or
 669-18 (2) the person has exhausted the person's benefits
 669-19 under Section 31.0065.

669-20 (b) Except as provided by Section 31.012(c), the Texas
 669-21 Workforce Commission [department] may provide the child-care
 669-22 services only until the earlier of:

669-23 (1) the end of the applicable period prescribed by
 669-24 Section 31.0065 for the provision of transitional benefits; or

669-25 (2) the first anniversary of the date on which the
 669-26 person becomes ineligible for financial assistance because of
 669-27 increased household income.

669-28 (c) The Texas Workforce Commission [department] by rule
 669-29 shall adopt a system of copayments [co-payments] in order to have a
 669-30 person who receives child-care services under this section
 669-31 contribute an amount toward the cost of the services according to
 669-32 the person's ability to pay.

669-33 (d) The Texas Workforce Commission [department] by rule
 669-34 shall provide for sanctions for a person who is financially able to
 669-35 contribute the amount required by Subsection (c) but fails to pay.

669-36 Sec. 31.0036. DEPENDENT CHILD'S INCOME. The commission
 669-37 [department] may not consider any income earned by a dependent
 669-38 child who is attending school and whose income is derived from the
 669-39 child's part-time employment for purposes of determining:

669-40 (1) the amount of financial assistance granted to an
 669-41 individual under this chapter for the support of dependent
 669-42 children; or

669-43 (2) whether the family meets household income and
 669-44 resource requirements for eligibility for financial assistance
 669-45 under this chapter.

669-46 SECTION 4.047. Section 31.0038(a), Human Resources Code, is
 669-47 amended to read as follows:

669-48 (a) Subject to the limitations prescribed by Subsection
 669-49 (b), income earned by an individual who marries an individual
 669-50 receiving financial assistance at the time of the marriage may not
 669-51 be considered by the commission [department] during the six-month
 669-52 period following the date of the marriage for purposes of
 669-53 determining:

669-54 (1) the amount of financial assistance granted to an
 669-55 individual under this chapter for the support of dependent
 669-56 children; or

669-57 (2) whether the family meets household income and
 669-58 resource requirements for financial assistance under this chapter.

669-59 SECTION 4.048. Sections 31.0039 and 31.004, Human Resources
 669-60 Code, are amended to read as follows:

669-61 Sec. 31.0039. EXCLUSION OF ASSETS IN PREPAID TUITION
 669-62 PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. For purposes of
 669-63 determining the amount of financial assistance granted to an
 669-64 individual under this chapter for the support of dependent children
 669-65 or determining whether the family meets household income and
 669-66 resource requirements for financial assistance under this chapter,
 669-67 the commission [department] may not consider the right to assets
 669-68 held in or the right to receive payments or benefits under:

669-69 (1) any fund or plan established under Subchapter G,

670-1 H, or I, Chapter 54, Education Code, including an interest in a
 670-2 savings trust account, prepaid tuition contract, or related
 670-3 matching account; or

670-4 (2) any qualified tuition program of any state that
 670-5 meets the requirements of Section 529, Internal Revenue Code of
 670-6 1986.

670-7 Sec. 31.004. FOSTER CARE. The Department of Family and
 670-8 Protective ~~[and Regulatory]~~ Services may accept and spend funds
 670-9 available from any source to provide foster care in facilities
 670-10 approved by the Department of Family and Protective ~~[and~~
 670-11 ~~Regulatory]~~ Services for dependent children who meet the
 670-12 specifications set out in Section 31.002(b).

670-13 SECTION 4.049. Sections 31.0041(a), (c), and (d), Human
 670-14 Resources Code, are amended to read as follows:

670-15 (a) To the extent funds are appropriated for this purpose,
 670-16 the commission ~~[department]~~ may provide supplemental financial
 670-17 assistance in addition to the amount of financial assistance
 670-18 granted for the support of a dependent child under Section 31.003 to
 670-19 a person who:

670-20 (1) is 45 years of age or older;
 670-21 (2) is the grandparent of the dependent child, as
 670-22 defined by Section 31.002, who lives at the person's residence;
 670-23 (3) is the primary caretaker of the dependent child;
 670-24 (4) has a family income that is at or below 200 percent
 670-25 of the federal poverty level; and
 670-26 (5) does not have resources that exceed the amount
 670-27 allowed for financial assistance under this chapter.

670-28 (c) The commission ~~[department]~~ shall inform an applicant
 670-29 for financial assistance under this chapter who meets the
 670-30 eligibility requirements under Subsection (a) of the availability
 670-31 of supplemental financial assistance.

670-32 (d) The commission ~~[department]~~ shall maintain complete
 670-33 records and compile statistics regarding the number of households
 670-34 that receive supplemental financial assistance under this section.

670-35 SECTION 4.050. Sections 31.005(a), (b), and (d), Human
 670-36 Resources Code, are amended to read as follows:

670-37 (a) If after an investigation the commission ~~[department]~~
 670-38 determines that a family with a dependent child is needy and that
 670-39 the child resides with the family, the commission ~~[department]~~
 670-40 shall provide financial assistance and services for the support of
 670-41 the family.

670-42 (b) The commission ~~[department]~~ shall formulate policies
 670-43 for studying and improving the child's home conditions and shall
 670-44 plan services for the protection of the child and for the child's
 670-45 health and educational needs.

670-46 (d) The commission ~~[department]~~ shall develop a plan for the
 670-47 coordination of the services provided for dependent children under
 670-48 this chapter and other child welfare services provided by the state
 670-49 ~~[for which the department is responsible]~~.

670-50 SECTION 4.051. Sections 31.0051, 31.006, and 31.0065, Human
 670-51 Resources Code, are amended to read as follows:

670-52 Sec. 31.0051. MINOR PARENT RESIDING WITH RELATIVES. If the
 670-53 commission ~~[department]~~ determines based on documentation provided
 670-54 that a minor caretaker who is receiving financial assistance and
 670-55 services under this chapter on behalf of a dependent child benefits
 670-56 from residing with an adult family member who is also receiving
 670-57 assistance under this chapter, the commission ~~[department]~~ shall
 670-58 provide assistance and services to both persons as if they were
 670-59 living separately.

670-60 Sec. 31.006. WELFARE AND RELATED SERVICES. (a) The
 670-61 commission ~~[department]~~ shall develop and implement a program of
 670-62 welfare and related services for each dependent child which, in
 670-63 light of the particular home conditions and other needs of the
 670-64 child, will best promote the welfare of the child and his or her
 670-65 family and will help to maintain and strengthen family life by
 670-66 assisting the child's parents or relatives to attain and retain
 670-67 their capabilities for maximum self-support and personal
 670-68 independence consistent with the maintenance of continued parental
 670-69 care and protection.

(b) The commission [department] shall coordinate the services provided under the program with other services provided by the commission [department] and by other public and private welfare agencies, including other state agencies, for the care and protection of children.

(c) The executive commissioner and the Texas Workforce Commission [department] may promulgate rules which will enable the Health and Human Services Commission and the Texas Workforce Commission [~~it~~] to fully participate in work and training programs authorized by federal law, to provide for all services required or deemed advisable under the provisions of the program, and to accept, transfer, and expend funds made available from public or private sources for the purpose of carrying out the provisions of this section.

Sec. 31.0065. TIME-LIMITED BENEFITS. (a) The commission [department] may provide financial assistance under this chapter only in accordance with the time limits specified by this section. The executive commissioner [department] by rule may provide for exceptions to these time limits if severe personal hardship or community economic factors prevent the recipient from obtaining employment or if the state is unable to provide support services.

(b) The commission [department] shall limit financial assistance and transitional benefits in accordance with the following schedule:

(1) financial assistance is limited to a cumulative total of 12 months and transitional benefits are limited to 12 months if the person receiving financial assistance on behalf of a dependent child has:

(A) a high school diploma, a high school equivalency certificate, or a certificate or degree from a two-year or four-year institution of higher education or technical or vocational school; or

(B) recent work experience of 18 months or more;

(2) financial assistance is limited to a cumulative total of 24 months and transitional benefits are limited to 12 months if the person receiving financial assistance on behalf of a dependent child has:

(A) completed three years of high school; or
(B) recent work experience of not less than six
or more than 18 months; and

(3) financial assistance is limited to a cumulative total of 36 months and transitional benefits of 12 months if the person receiving financial assistance on behalf of a dependent child has:

(A) completed less than three years of high school; and

(B) less than six months of work experience.

(c) If the recipient has completed less than three years of high school and has less than six months work experience, the commission [department] shall perform an in-depth assessment of the needs of that person and that person's family. If the recipient cooperates with the commission's [department's] assessment, the time period prescribed by Subsection (b)(3) begins on the first anniversary of the date on which the commission [department] completes the assessment, as determined by the commission [department].

(d) The computation of time limits under Subsection (b) begins when the adult or teen parent recipient receives notification in accordance with the procedures under Section 31.012(b) of the availability of an opening in and eligibility for a Temporary Assistance for Needy Families employment program established under Part A, Subchapter IV, Social Security Act (42 U.S.C. Section 601 et seq.) [the job opportunity and basic skills (JOBS) program Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682)].

(e) In implementing the time-limited benefits program, the commission [department]:

(1) shall provide that a participant in the program may reapply with the commission [department] for financial

672-1 assistance on or after the fifth anniversary of the date on which
 672-2 the participant is totally disqualified from receiving assistance
 672-3 because of the application of Subsection (b); and

672-4 (2) shall establish the criteria for determining what
 672-5 constitutes severe personal hardship under Subsection (a).

672-6 (f) If the commission [department] is imposing time-limited
 672-7 benefits on an individual, the commission [department] shall
 672-8 consider:

672-9 (1) the assessment of the individual's need that was
 672-10 conducted by the commission [department], provided that if the
 672-11 needs assessment indicates discrepancies between a client's
 672-12 self-reported educational level and the client's functional
 672-13 abilities, the time limits shall be based upon the functional
 672-14 educational level; and

672-15 (2) the prevailing economic and employment conditions
 672-16 in the area of the state where the individual resides.

672-17 SECTION 4.052. Section 31.0066(a), Human Resources Code, is
 672-18 amended to read as follows:

672-19 (a) The executive commissioner and [department], the Texas
 672-20 Workforce Commission[, and the Health and Human Services
 672-21 Commission] shall jointly adopt rules prescribing circumstances
 672-22 that constitute a hardship for purposes of exempting a recipient of
 672-23 financial assistance from the application of time limits imposed by
 672-24 federal law on the receipt of benefits.

672-25 SECTION 4.053. Sections 31.007, 31.008, and 31.0095, Human
 672-26 Resources Code, are amended to read as follows:

672-27 Sec. 31.007. FINANCIAL ASSISTANCE TO INDIVIDUALS IN
 672-28 INSTITUTIONS. A person who is in an institution is eligible to
 672-29 receive financial assistance under this chapter if the person would
 672-30 be eligible to receive the financial assistance if the person [he]
 672-31 were not in an institution and if the payments are made in
 672-32 accordance with the commission's [department's] rules promulgated
 672-33 in conformity with federal law and rules.

672-34 Sec. 31.008. COUNSELING AND GUIDANCE SERVICES. (a) If the
 672-35 commission [department] believes that financial assistance to a
 672-36 family with a dependent child is not being, or may not be, used in
 672-37 the best interest of the child, the commission [department] may
 672-38 provide counseling and guidance services to the relative receiving
 672-39 financial assistance with respect to the use of the funds and the
 672-40 management of other funds in the child's best interest.

672-41 (b) The commission [department] may advise the relative
 672-42 that continued failure to use the funds in the child's best interest
 672-43 will result in the funds being paid to a substitute payee. If the
 672-44 commission [department] determines that protective payments are
 672-45 required to safeguard the best interest of the child, the
 672-46 commission [department] may pay the funds to a substitute payee on a
 672-47 temporary basis in accordance with the commission's [department's]
 672-48 rules.

672-49 (c) If the situation in the home which made the protective
 672-50 payments necessary does not improve, and if the commission
 672-51 [department] determines that the relative with whom the child is
 672-52 living is unable or does not have the capacity to use the funds for
 672-53 the best interest of the child, then the commission, with the
 672-54 assistance of other appropriate state agencies, [department] may
 672-55 make arrangements with the family for other plans for the care of
 672-56 the child. The other plans may include:

672-57 (1) removing the child to the home of another
 672-58 relative;

672-59 (2) appointment of a guardian or legal representative
 672-60 for the relative with whom the child is living;

672-61 (3) imposition of criminal or civil penalties if a
 672-62 court determines that the relative is not using, or has not used,
 672-63 the payments for the benefit of the child; or

672-64 (4) referral of the case to a court for the removal of
 672-65 the child and the placement of the child in a foster home.

672-66 (d) The commission [department] may make payments on behalf
 672-67 of a dependent child residing in a foster family home or a
 672-68 child-care institution in accordance with the provisions of this
 672-69 chapter and commission [the] rules [of the department].

673-1 Sec. 31.0095. NEEDS ASSESSMENT. The commission [~~Health and~~
 673-2 ~~Human Services Commission~~] shall assist a recipient or a
 673-3 nonrecipient parent in assessing the particular needs of that
 673-4 person and the person's family upon notification of entry into a
 673-5 Temporary Assistance for Needy Families employment program
 673-6 established under Part A, Subchapter IV, Social Security Act (42
 673-7 U.S.C. Section 601 et seq.). The Texas Workforce Commission and the
 673-8 recipient or the nonrecipient parent shall develop an employability
 673-9 plan to help the recipient or nonrecipient parent achieve
 673-10 independence from public assistance granted to the recipient and
 673-11 the recipient's family, or to the child of the nonrecipient parent,
 673-12 as applicable.

673-13 SECTION 4.054. Sections 31.010(b), (d), and (e), Human
 673-14 Resources Code, are amended to read as follows:

673-15 (b) The Texas Workforce Commission [~~department~~] shall
 673-16 consider the needs assessment and employability plan developed
 673-17 under Section 31.0095 in determining the support services needed.

673-18 (d) The Texas Workforce Commission [~~department~~] by rule
 673-19 shall provide for implementation of the support services.

673-20 (e) The Texas Workforce Commission [~~department~~] may
 673-21 contract with other state agencies, community colleges, technical
 673-22 schools, residence training facilities, or public or private
 673-23 entities to provide support services under this section.

673-24 SECTION 4.055. The heading to Section 31.012, Human
 673-25 Resources Code, is amended to read as follows:

673-26 Sec. 31.012. MANDATORY WORK OR PARTICIPATION IN EMPLOYMENT
 673-27 ACTIVITIES THROUGH TEMPORARY ASSISTANCE FOR NEEDY FAMILIES
 673-28 EMPLOYMENT [~~THE JOB OPPORTUNITIES AND BASIC SKILLS~~] PROGRAM.

673-29 SECTION 4.056. Sections 31.012(a), (b), (c), (d), and (e),
 673-30 Human Resources Code, are amended to read as follows:

673-31 (a) The Health and Human Services Commission [~~department~~]
 673-32 shall require that, during any one-month period in which an adult is
 673-33 receiving financial assistance under this chapter, the adult shall
 673-34 during that period:

673-35 (1) work not less than 30 hours a week; or
 673-36 (2) participate for not less than 20 hours a week in an
 673-37 activity established under a Temporary Assistance for Needy
 673-38 Families employment program established under Part A, Subchapter
 673-39 IV, Social Security Act (42 U.S.C. Section 601 et seq.) [~~the job~~
 673-40 ~~opportunities and basic skills (JOBS) training program under Part~~
 673-41 ~~F, Subchapter IV, Social Security Act (42 U.S.C. Section 682)~~].

673-42 (b) The Texas Workforce Commission [~~department~~] by rule
 673-43 shall establish criteria for good cause failure to cooperate and
 673-44 for notification procedures regarding participation in work or
 673-45 employment activities under this section.

673-46 (c) A person who is the caretaker of a [~~physically or~~
 673-47 ~~mentally disabled~~] child with a physical disability or mental,
 673-48 intellectual, or developmental disability who requires the
 673-49 caretaker's presence is not required to participate in a program
 673-50 under this section. A single person who is the caretaker of a child
 673-51 is exempt until the caretaker's youngest child at the time the
 673-52 caretaker first became eligible for assistance reaches the age of
 673-53 one. Notwithstanding Sections 31.0035(b) and 32.0255(b), the
 673-54 Health and Human Services Commission [~~department~~] shall provide to
 673-55 a person who is exempt under this subsection and who voluntarily
 673-56 participates in a program under Subsection (a)(2) six months of
 673-57 transitional benefits in addition to the applicable limit
 673-58 prescribed by Section 31.0065.

673-59 (d) A state program operated under this section shall be
 673-60 administered by the division of workforce development of the Texas
 673-61 Workforce Commission [~~when the program is transferred to that~~
 673-62 ~~commission~~].

673-63 (e) The Texas Workforce Commission [~~department~~] shall allow
 673-64 a person who is participating in work or employment activities
 673-65 under this section to complete those activities if the person
 673-66 becomes ineligible to receive financial assistance under this
 673-67 chapter because the person receives child support in an amount that
 673-68 makes the person ineligible for that assistance. The Texas
 673-69 Workforce Commission [~~department~~] shall provide to the person

674-1 necessary child care services until the date on which the person
 674-2 completes work or employment activities under this section.

674-3 SECTION 4.057. Section 31.0124, Human Resources Code, is
 674-4 amended to read as follows:

674-5 Sec. 31.0124. REFERRAL TO EDUCATIONAL PROGRAMS. The Texas
 674-6 Workforce Commission [department] shall determine whether a person
 674-7 who registers to participate in a Temporary Assistance for Needy
 674-8 Families employment program established under Part A, Subchapter
 674-9 IV, Social Security Act (42 U.S.C. Section 601 et seq.) [the job
 674-10 opportunities and basic skills training program] needs and is
 674-11 eligible for adult education and literacy programs [services]
 674-12 provided under Chapter 315, Labor [Section 11.2093, Education]
 674-13 Code. If the person is eligible for the adult education and
 674-14 literacy programs [services], the Texas Workforce Commission
 674-15 [department] shall determine the person's needs and goals and refer
 674-16 the person to the appropriate adult education and literacy program
 674-17 [service] provided under Chapter 315, Labor [Section 11.2093,
 674-18 Education] Code.

674-19 SECTION 4.058. Sections 31.0126(b), (c), and (e), Human
 674-20 Resources Code, are amended to read as follows:

674-21 (b) The Texas Workforce Commission [department] shall
 674-22 develop the programs prescribed by this section in accordance with
 674-23 federal law as a part of a Temporary Assistance for Needy Families
 674-24 employment program established under Part A, Subchapter IV, Social
 674-25 Security Act (42 U.S.C. Section 601 et seq.) [the job opportunities
 674-26 and basic skills (JOBS) training program under Part F, Subchapter
 674-27 IV, Social Security Act (42 U.S.C. Section 682)].

674-28 (c) In adopting rules governing a program prescribed by this
 674-29 section, the executive commissioner [of the Health and Human
 674-30 Services Commission] shall:

674-31 (1) establish the criteria for determining which
 674-32 recipients and nonrecipient parents who are eligible to participate
 674-33 in the Temporary Assistance for Needy Families employment programs
 674-34 established under Part A, Subchapter IV, Social Security Act (42
 674-35 U.S.C. Section 601 et seq.), may be required to participate in a
 674-36 particular program; and

674-37 (2) ensure that a recipient or a nonrecipient parent
 674-38 who is incapable of participating in a particular program is not
 674-39 required to participate in that program.

674-40 (e) The Texas Workforce Commission [department] shall
 674-41 submit a waiver application or a renewal waiver application that a
 674-42 federal agency may require before a local workforce development
 674-43 board can implement one or more of the programs prescribed by this
 674-44 section in a workforce development area.

674-45 SECTION 4.059. Sections 31.0127(a), (b), (c), (d), (h), and
 674-46 (i), Human Resources Code, are amended to read as follows:

674-47 (a) The Health and Human Services Commission shall [is the
 674-48 state agency designated to] coordinate with the Texas Workforce
 674-49 Commission for the provision of [between the department and another
 674-50 state agency providing] child care services, Temporary Assistance
 674-51 for Needy Families employment [work] programs, and supplemental
 674-52 nutrition assistance program employment and training [Food Stamp
 674-53 Employment and Training] services to an individual or family who
 674-54 has been referred for programs and services by the Health and Human
 674-55 Services Commission [department]. The purpose of this section is
 674-56 to accomplish the following:

674-57 (1) increase the self-sufficiency of recipients of
 674-58 Temporary Assistance for Needy Families and improve the delivery of
 674-59 services to those recipients; and

674-60 (2) improve the effectiveness of job-training
 674-61 programs funded under the Workforce Investment Act of 1998 [Job
 674-62 Training Partnership Act] (29 U.S.C. Section 2801 [1501] et seq.)
 674-63 or a successor program in obtaining employment for individuals
 674-64 receiving Temporary Assistance for Needy Families cash assistance.

674-65 (b) The Health and Human Services Commission shall require
 674-66 the Texas Workforce Commission [a state agency providing program
 674-67 services described by Subsection (a)] to comply with Chapter 531,
 674-68 Government Code, solely for:

674-69 (1) the promulgation of rules relating to the programs

675-1 described by Subsection (a);
 675-2 (2) the expenditure of funds relating to the programs
 675-3 described by Subsection (a), within the limitations established by
 675-4 and subject to the General Appropriations Act and federal and other
 675-5 law applicable to the use of the funds;

675-6 (3) data collection and reporting relating to the
 675-7 programs described by Subsection (a); and
 675-8 (4) evaluation of services relating to the programs
 675-9 described by Subsection (a).

675-10 (c) The Health and Human Services Commission [department]
 675-11 and the Texas Workforce Commission [a state agency providing
 675-12 program services described by Subsection (a)] shall jointly develop
 675-13 and adopt a memorandum of understanding[, subject to the approval
 675-14 of the Health and Human Services Commission]. The memorandum of
 675-15 understanding must:

675-16 (1) outline measures to be taken to increase the
 675-17 number of individuals receiving Temporary Assistance for Needy
 675-18 Families cash assistance who are using job-training programs funded
 675-19 under the Workforce Investment Act of 1998 [Job Training
 675-20 Partnership Act] (29 U.S.C. Section 2801 [1501] et seq.), or a
 675-21 successor program; and

675-22 (2) identify specific measures to improve the delivery
 675-23 of services to clients served by programs described by Subsection
 675-24 (a).

675-25 (d) Not later than January 15 of each odd-numbered year, the
 675-26 Health and Human Services Commission shall provide a report to the
 675-27 governor, the lieutenant governor, and the speaker of the house of
 675-28 representatives that:

675-29 (1) evaluates the efficiency and effectiveness of
 675-30 client services in the Temporary Assistance for Needy Families
 675-31 program;

675-32 (2) evaluates the status of the coordination among
 675-33 agencies and compliance with this section;

675-34 (3) recommends measures to increase self-sufficiency
 675-35 of recipients of Temporary Assistance for Needy Families cash
 675-36 assistance and to improve the delivery of services to these
 675-37 recipients; and

675-38 (4) evaluates the effectiveness of job-training
 675-39 programs funded under the Workforce Investment Act of 1998 [Job
 675-40 Training Partnership Act] (29 U.S.C. Section 2801 [1501] et seq.)
 675-41 or a successor program in obtaining employment outcomes for
 675-42 recipients of Temporary Assistance for Needy Families cash
 675-43 assistance.

675-44 (h) This section does not authorize the Health and Human
 675-45 Services Commission to transfer programs to or from the commission
 675-46 [department] and another agency serving clients of the Temporary
 675-47 Assistance for Needy Families program or the federal supplemental
 675-48 nutrition assistance [food stamp] program administered under
 675-49 Chapter 33 without explicit legislative authorization.

675-50 (i) The executive commissioner may not promulgate rules
 675-51 relating to eligibility for the [Health and Human Services
 675-52 Commission and any state agency providing] program services
 675-53 described by Subsection (a) and the Texas Workforce Commission may
 675-54 not promulgate rules in accordance with Subsection (b)(1) without
 675-55 holding a public hearing.

675-56 SECTION 4.060. Sections 31.0128, 31.0129, and 31.0135,
 675-57 Human Resources Code, are amended to read as follows:

675-58 Sec. 31.0128. COORDINATED INTERAGENCY PLAN. (a) The
 675-59 commission [department] and the Texas Workforce Commission shall
 675-60 jointly develop [and adopt] a memorandum of understanding
 675-61 establishing[, subject to the approval of the Health and Human
 675-62 Services Commission. The memorandum of understanding must
 675-63 establish] guidelines for a coordinated interagency case
 675-64 management plan to:

675-65 (1) identify each recipient of financial assistance
 675-66 who has, in comparison to other recipients, higher levels of
 675-67 barriers to employment; and

675-68 (2) provide coordinated services that address those
 675-69 barriers to assist the recipient in finding and retaining

676-1 employment.

676-2 (b) The commission [~~department~~] and the Texas Workforce
676-3 Commission shall:

676-4 (1) jointly develop [~~and adopt~~] a memorandum of
676-5 understanding[, subject to the approval of the Health and Human
676-6 Services Commission,] that establishes a coordinated interagency
676-7 case management plan consistent with the guidelines established
676-8 under Subsection (a); and

676-9 (2) using existing resources, [~~by rule~~] implement in
676-10 accordance with agency rules the plan to the maximum extent
676-11 possible through local [~~department and commission~~] offices of the
676-12 agency in local workforce development areas in which a local
676-13 workforce development board is not established.

676-14 (c) The executive commissioner and the Texas Workforce
676-15 Commission [~~Each agency~~] by rule shall adopt the memoranda of
676-16 understanding required by this section and all revisions to the
676-17 memoranda.

676-18 (d) In a local workforce development area in which a local
676-19 workforce development board is established, the Texas Workforce
676-20 Commission shall require in the [~~commission's~~] contract between the
676-21 Texas Workforce Commission and [~~with~~] the board that the board, in
676-22 cooperation with local Health and Human Services Commission
676-23 [~~department~~] offices, develop and implement a coordinated
676-24 interagency case management plan consistent with the guidelines
676-25 established under Subsection (a).

676-26 (e) On the [~~department's~~] formulation of recommendations
676-27 and strategies by the Health and Human Services Commission under
676-28 Section 31.0129(b), the commission [~~department~~] and the Texas
676-29 Workforce Commission shall, as necessary, revise and update a
676-30 memorandum of understanding and coordinated interagency case
676-31 management plan under this section to include the recommendations
676-32 and strategies.

676-33 Sec. 31.0129. COORDINATED PLAN TO IMPROVE INTERAGENCY
676-34 TRANSITIONS. (a) The Health and Human Services Commission
676-35 [~~department~~], the Texas Workforce Commission, and representatives
676-36 of local workforce development boards shall conduct a survey of
676-37 best practices used to transition clients between local Health and
676-38 Human Services Commission [~~department~~] offices and workforce
676-39 centers.

676-40 (b) The Health and Human Services Commission [~~department~~]
676-41 shall:

676-42 (1) analyze information collected by a survey under
676-43 Subsection (a); and

676-44 (2) formulate recommendations and strategies to
676-45 improve practices used to transition clients between local
676-46 commission [~~department~~] offices and workforce centers.

676-47 (c) Using existing resources, the Health and Human Services
676-48 Commission [~~department~~] and local workforce development boards
676-49 shall adopt policies to implement the recommendations and
676-50 strategies contained in the revised and updated memorandum of
676-51 understanding under Section 31.0128.

676-52 Sec. 31.0135. PARENTING SKILLS TRAINING. (a) The
676-53 commission [~~department~~], in cooperation with the Texas Education
676-54 Agency, the Department of Family and Protective [~~and Regulatory~~]
676-55 Services, the Texas A&M AgriLife [~~Agricultural~~] Extension Service,
676-56 or any other public or private entity, shall develop a parenting
676-57 skills training program to assist a recipient of assistance under
676-58 this chapter, including a child who receives assistance on behalf
676-59 of a dependent child. The program shall include nutrition
676-60 education, budgeting and survival skills, and instruction on the
676-61 necessity of physical and emotional safety for children.

676-62 (b) The commission [~~department~~] shall require that a
676-63 caretaker relative or parent who is receiving assistance under this
676-64 chapter on behalf of a dependent child receive appropriate
676-65 parenting skills training as needed. The training must include one
676-66 or more components of the parenting skills training program that
676-67 the commission [~~department~~] determines will be useful to the
676-68 caretaker relative or parent.

676-69 (c) In this section, "caretaker relative" means a person who

677-1 is listed under Section 31.002(a)(5) in whose home residence a
 677-2 dependent child lives [as a relative eligible to receive assistance
 677-3 under 42 U.S.C. Section 602(a)].

677-4 SECTION 4.061. Sections 31.015(a), (c), (d), (e), and (f),
 677-5 Human Resources Code, are amended to read as follows:

677-6 (a) Subject to available federal funding, the commission
 677-7 [~~department~~] shall develop and implement a healthy marriage
 677-8 development program for recipients of financial assistance under
 677-9 this chapter.

677-10 (c) The commission [~~department~~] shall provide to a
 677-11 recipient of financial assistance under this chapter additional
 677-12 financial assistance of not more than \$20 for the recipient's
 677-13 participation in a course offered through the healthy marriage
 677-14 development program up to a maximum payment of \$60 a month.

677-15 (d) The commission [~~department~~] may provide the courses or
 677-16 may contract with any person, including a community or faith-based
 677-17 organization, for the provision of the courses. The commission
 677-18 [~~department~~] must provide all participants with an option of
 677-19 attending courses in a non-faith-based organization.

677-20 (e) The executive commissioner [~~department~~] shall develop
 677-21 rules as necessary for the administration of the healthy marriage
 677-22 development program.

677-23 (f) The commission [~~department~~] must ensure that the
 677-24 courses provided by the commission [~~department~~] and courses
 677-25 provided through contracts with other organizations will be
 677-26 sensitive to the needs of individuals from different religions,
 677-27 races, and genders.

677-28 SECTION 4.062. Sections 31.016, 31.017, and 31.018, Human
 677-29 Resources Code, are amended to read as follows:

677-30 Sec. 31.016. SERVICE REFERRALS FOR CERTAIN RECIPIENTS. To
 677-31 the extent practicable using existing revenue, the executive
 677-32 commissioner [~~department~~], by rule, shall develop and the
 677-33 commission shall implement a plan to:

677-34 (1) identify recipients of financial assistance that
 677-35 are at risk of exhausting their benefits under Section 31.0065; and
 677-36 (2) provide referrals for the recipient and the
 677-37 recipient's family to appropriate preventive and support services,
 677-38 including faith-based services.

677-39 Sec. 31.017. HEALTHY MARRIAGES AND STRONG FAMILIES GRANT
 677-40 PROGRAM. (a) The commission [~~Health and Human Services~~
 677-41 ~~Commission~~] may administer a grant program to provide grants in
 677-42 amounts not to exceed \$50,000 to programs that provide marriage
 677-43 education services and support the development of healthy marriages
 677-44 or strengthening of families. Grant recipients may use grant money
 677-45 to provide direct services to participants, develop a program,
 677-46 enlarge program capacity, or pay other program expenses, including
 677-47 provider training and technical assistance expenses.

677-48 (b) In selecting grant recipients, the commission [~~Health~~
 677-49 and ~~Human Services Commission~~] shall give preference to applicants:

677-50 (1) whose programs will contribute to the geographic
 677-51 diversity of program locations; or
 677-52 (2) who operate small programs, but who seek to
 677-53 maximize service delivery and build capacity.

677-54 (c) The commission [~~Health and Human Services Commission~~]
 677-55 shall require that each grant recipient provide program services at
 677-56 no cost to participants.

677-57 (d) The commission [~~Health and Human Services Commission~~]
 677-58 may contract with private entities to provide marriage education
 677-59 training and curriculum, technical assistance, and other support to
 677-60 grant recipients. In selecting entities to provide these
 677-61 services, the commission shall consider whether a prospective
 677-62 provider has knowledge and understanding of the needs of grant
 677-63 recipients operating programs in different areas of this state.

677-64 (e) The executive commissioner [~~of the Health and Human~~
 677-65 ~~Services Commission~~] may adopt rules to implement this section.

677-66 Sec. 31.018. MARRIAGE AND FAMILY PROGRAM FUNDING. (a) To
 677-67 the extent authorized by federal law, the commission [~~Health and~~
 677-68 ~~Human Services Commission~~] shall spend a minimum of one percent of
 677-69 money received under the federal Temporary Assistance for Needy

678-1 Families block grant during each state fiscal year to fund programs
 678-2 that support the development of healthy marriages or the
 678-3 strengthening of families, including the healthy marriage
 678-4 development program under Section 31.015 and the healthy marriages
 678-5 and strong families grant program under Section 31.017.

678-6 (b) Using not more than 10 percent of the money required to
 678-7 be spent as provided by Subsection (a), the commission [Health and
 678-8 Human Services Commission], through a contract or agreement with a
 678-9 public senior college or university, as defined by Section 61.003,
 678-10 Education Code, shall establish a process for evaluating the best
 678-11 practices and outcomes of programs funded under Subsection (a).

678-12 SECTION 4.063. Sections 31.031(a), (b), (c), (d), (e), and
 678-13 (f), Human Resources Code, are amended to read as follows:

678-14 (a) The executive commissioner [department] by rule shall
 678-15 prescribe the form for applications for assistance authorized by
 678-16 this chapter and the manner of their submission.

678-17 (b) The commission [department] may require the applicant
 678-18 to state the amount of property in which he or she has an interest,
 678-19 the amount of income which he or she has at the time the application
 678-20 is filed, and other information.

678-21 (c) The commission [department] shall require the applicant
 678-22 to provide proof to the commission [department] that each person
 678-23 who will receive assistance under this chapter is:

678-24 (1) a United States citizen or has a satisfactory
 678-25 immigration status under Title IV, Personal Responsibility and Work
 678-26 Opportunity Reconciliation Act of 1996 (8 U.S.C. Sections
 678-27 1601-1646) [as defined in Title IV, Social Security Act (42 U.S.C.
 678-28 Section 602(a)(33)), in effect as of the effective date of this
 678-29 Act]; and

678-30 (2) a resident of this state.

678-31 (d) The commission [department] shall require the applicant
 678-32 to provide proof to the commission [department] that each child
 678-33 five years of age or younger, or a child who is not enrolled in
 678-34 public school, for whom the applicant will receive assistance:

678-35 (1) has been immunized in accordance with Section
 678-36 161.004, Health and Safety Code;

678-37 (2) is currently receiving an immunization series in
 678-38 accordance with Section 161.004, Health and Safety Code, if the
 678-39 child is of sufficient age; or

678-40 (3) is exempted under Section 161.004(d), Health and
 678-41 Safety Code.

678-42 (e) An applicant who cannot provide the proof required by
 678-43 Subsection (d) at the time of application shall provide the proof
 678-44 not later than the 180th day after the date the commission
 678-45 [department] determines the applicant is eligible for financial
 678-46 assistance.

678-47 (f) The commission [department] shall provide the applicant
 678-48 with information regarding immunization services available in the
 678-49 applicant's residential area. If the applicant does not read or
 678-50 comprehend English, the commission [department] shall provide the
 678-51 information in a language that the applicant reads or comprehends.

678-52 SECTION 4.064. Sections 31.0315(d) and (e), Human Resources
 678-53 Code, are amended to read as follows:

678-54 (d) The commission [department] may waive the requirements
 678-55 of this section if it determines that there exists a reasonable
 678-56 explanation why it is impossible to provide the information
 678-57 required under Subsection (a), (b), or (c) or if it would not be in
 678-58 the best interests of the child to provide the information. In
 678-59 determining whether the best interests of the child warrant waiving
 678-60 the information requirements of this section, the commission
 678-61 [department] shall consider all relevant provisions of federal law
 678-62 and regulations.

678-63 (e) The commission [department] shall forward to the
 678-64 attorney general's office information received under this section.

678-65 SECTION 4.065. Section 31.032, Human Resources Code, is
 678-66 amended to read as follows:

678-67 Sec. 31.032. INVESTIGATION AND DETERMINATION OF
 678-68 ELIGIBILITY. (a) On receipt of an application for assistance
 678-69 authorized by this chapter, the commission [department] shall

679-1 investigate and record the applicant's circumstances in order to
 679-2 ascertain the facts supporting the application and to obtain other
 679-3 information it may require.

679-4 (b) After completing its investigation, the commission
 679-5 [~~department~~] shall determine whether the applicant is eligible for
 679-6 the assistance, the type and amount of assistance, the date on which
 679-7 the assistance shall begin, and the manner in which payments shall
 679-8 be made.

679-9 (c) The commission [~~department~~] shall promptly notify the
 679-10 applicant of its final action.

679-11 (d) In determining whether an applicant is eligible for
 679-12 assistance, the commission [~~department~~] shall exclude from the
 679-13 applicant's available resources:

679-14 (1) \$1,000 for the applicant's household, including a
 679-15 household in which there is a person with a disability or a person
 679-16 who is at least 60 years of age; and

679-17 (2) the fair market value of the applicant's ownership
 679-18 interest in a motor vehicle, but not more than [~~the amount~~
 679-19 determined according to the following schedule:

679-20 [(A) \$4,550 on or after September 1, 1995, but
 679-21 before October 1, 1995;]

679-22 [(B) \$4,600 on or after October 1, 1995, but
 679-23 before October 1, 1996;]

679-24 [(C) \$5,000 on or after October 1, 1996, but
 679-25 before October 1, 1997; and]

679-26 [(D)] \$5,000 plus or minus an amount to be
 679-27 determined annually beginning on October 1, 1997, to reflect
 679-28 changes in the new car component of the Consumer Price Index for All
 679-29 Urban Consumers published by the Bureau of Labor Statistics.

679-30 (e) If federal regulations governing the maximum allowable
 679-31 resources under the supplemental nutrition assistance [~~food stamp~~]
 679-32 program, 7 C.F.R. [~~CFR~~] Part 273, are revised, the executive
 679-33 commissioner [~~department~~] shall adjust the standards that
 679-34 determine available resources under Subsection (d) to reflect those
 679-35 revisions.

679-36 SECTION 4.066. Sections 31.0322(a), (c), (d), (e), and (g),
 679-37 Human Resources Code, are amended to read as follows:

679-38 (a) The executive commissioner [~~department~~], the Texas
 679-39 Workforce Commission, and the Title IV-D agency by rule shall adopt
 679-40 procedures under which requirements relating to financial
 679-41 assistance and related services, including time limits, child
 679-42 support enforcement, paternity establishment, work activity, and
 679-43 residency, may be waived or modified for an individual who is a
 679-44 victim of family violence if application of the requirements would:

679-45 (1) adversely affect the individual's ability to
 679-46 attain financial independence;

679-47 (2) make it more difficult for the individual to
 679-48 escape family violence; or

679-49 (3) place the individual at greater risk for
 679-50 additional family violence.

679-51 (c) The commission [~~department~~], the Texas Workforce
 679-52 Commission, and the Title IV-D agency may not deny an individual
 679-53 access to education, training, employment, or other services
 679-54 because the individual is a victim of family violence.

679-55 (d) The commission [~~department~~] shall coordinate the
 679-56 development and implementation of procedures under this section in
 679-57 collaboration with the Texas Workforce Commission, the Title IV-D
 679-58 agency, and at least one statewide advocacy group for victims of
 679-59 family violence.

679-60 (e) The commission [~~department~~], the Texas Workforce
 679-61 Commission, the Title IV-D agency, and each local workforce
 679-62 development board, using existing resources, shall provide not less
 679-63 than four hours of training regarding family violence to each
 679-64 employee or other person who on behalf of the commission
 679-65 [~~department~~], Texas Workforce Commission [~~commission~~], agency, or
 679-66 board:

679-67 (1) provides information relating to requirements
 679-68 described by Subsection (a) and the availability of waivers or
 679-69 modifications of those requirements to an individual seeking or

680-1 receiving financial assistance;

680-2 (2) recommends or grants waivers or modifications
680-3 authorized by this section of requirements described by Subsection
680-4 (a);

680-5 (3) recommends or imposes sanctions for
680-6 noncooperation or noncompliance with requirements described by
680-7 Subsection (a); or

680-8 (4) assesses employment readiness or provides
680-9 employment planning or employment retention services to an
680-10 individual receiving financial assistance.

680-11 (g) Before the application of a sanction or penalty based on
680-12 an individual's failure to cooperate with the commission
680-13 [~~department~~] or Title IV-D agency, as required by Section
680-14 31.0031(d)(1), or failure to comply with the work or participation
680-15 requirements imposed by Section 31.012, the agency recommending or
680-16 applying the sanction or penalty must make reasonable attempts to
680-17 contact the individual to determine the cause of the failure to
680-18 cooperate or comply. If the agency determines that family violence
680-19 contributed to the failure, the agency shall ensure that a person
680-20 trained in family violence issues in accordance with Subsection (e)
680-21 interviews the individual to identify the types of services
680-22 necessary to assist the individual in safely and successfully
680-23 entering the workforce.

680-24 SECTION 4.067. Sections 31.0324(b) and (c), Human Resources
680-25 Code, are amended to read as follows:

680-26 (b) The executive commissioner [~~department~~] by rule shall
680-27 develop and the commission shall implement a process that provides
680-28 for the grandparent of a child receiving financial assistance under
680-29 this chapter to serve as a protective payee to:

680-30 (1) receive and use the assistance on behalf of the
680-31 child; and

680-32 (2) apply for financial assistance and be interviewed
680-33 instead of the child's parent at any subsequent review of
680-34 eligibility required by the commission [~~department~~].

680-35 (c) The commission [~~department~~] shall [+] [–]
680-36 [+] limit the use of the process established by
680-37 Subsection (b) to situations in which the commission [~~department~~]
680-38 determines the parent is not using the assistance for the child's
680-39 needs as required by Section 31.0355(a), [+] and the executive
680-40 commissioner shall

680-41 [+] establish by rule the circumstances under which
680-42 the grandparent may be removed as a protective payee.

680-43 SECTION 4.068. Sections 31.0326, 31.033, 31.034, and
680-44 31.035, Human Resources Code, are amended to read as follows:

680-45 Sec. 31.0326. VERIFICATION OF IDENTITY AND PREVENTION OF
680-46 DUPLICATE PARTICIPATION. The commission [~~Health and Human~~
680-47 Services Commission] shall use appropriate technology to:

680-48 (1) confirm the identity of applicants for benefits
680-49 under the financial assistance program; and

680-50 (2) prevent duplicate participation in the program by
680-51 a person.

680-52 Sec. 31.033. REINVESTIGATION AND RERECONSIDERATION OF
680-53 ELIGIBILITY. (a) The commission [~~department~~] may require periodic
680-54 reconsideration of continued eligibility for assistance.

680-55 (b) After reconsideration of continuing eligibility, the
680-56 commission [~~department~~] may change the amount of assistance or
680-57 withdraw it if the commission [~~department~~] finds that the
680-58 recipient's circumstances have altered sufficiently to warrant
680-59 that action.

680-60 (c) The commission [~~department~~] may cancel or suspend
680-61 assistance for a period of time if the commission [~~department~~]
680-62 finds that the recipient is currently ineligible to receive it.

680-63 (d) The commission [~~department~~] shall notify the recipient
680-64 immediately of its decision to change or withdraw assistance.

680-65 (e) A recipient of assistance must notify the commission
680-66 [~~department~~] immediately if he or she comes into possession of
680-67 income or resources in excess of the amount previously reported.

680-68 Sec. 31.034. APPEAL FROM LOCAL ELIGIBILITY OFFICES
680-69 [~~ADMINISTRATIVE UNITS~~]. (a) An applicant for or recipient of

681-1 financial assistance authorized by this chapter may appeal to the
 681-2 commission [department] an action or failure to act by a local
 681-3 eligibility office [administrative unit] relating to the financial
 681-4 assistance. The commission [department] shall grant the applicant
 681-5 or recipient an opportunity for a hearing after reasonable notice.

681-6 (b) An applicant or recipient, or his or her authorized
 681-7 agent, may submit a written request for the information contained
 681-8 in the [unit's] records of the local eligibility office on which the
 681-9 action being appealed is based, and the local eligibility office
 681-10 [unit] shall advise the person making the request of the
 681-11 information within a reasonable time prior to the hearing.
 681-12 Information not provided to the requesting party may not be
 681-13 considered by the commission [department] at the hearing as a basis
 681-14 for decision.

681-15 Sec. 31.035. METHOD OF PAYMENT. (a) The commission
 681-16 [department] shall periodically furnish the comptroller with a list
 681-17 of persons eligible for financial assistance under this chapter and
 681-18 the amount to which each person is entitled.

681-19 (b) The comptroller shall draw payments [warrants] for the
 681-20 specified amounts on the proper accounts [of the Texas Department
 681-21 of Human Services fund] and shall transmit the payments [warrants]
 681-22 to the commission [commissioner]. The commission [commissioner]
 681-23 shall supervise the delivery of the payments [warrants] to the
 681-24 persons entitled to them.

681-25 SECTION 4.069. Sections 31.035(a) and (c), Human Resources
 681-26 Code, are amended to read as follows:

681-27 (a) Financial assistance granted to a person under this
 681-28 chapter may be used only to purchase goods and services that are
 681-29 considered essential and necessary for the welfare of the family,
 681-30 including food, clothing, housing, utilities, child care, and
 681-31 incidentals such as transportation and medicine or medical supplies
 681-32 or equipment not covered by Medicaid. The executive commissioner
 681-33 [department] by rule shall define what constitutes essential and
 681-34 necessary goods and services for purposes of this subsection.

681-35 (c) The commission [department] shall encourage housing
 681-36 authorities, utility companies, public transportation companies,
 681-37 and other nonfood retailers to accept payment for goods and
 681-38 services described by Subsection (a) through the state's electronic
 681-39 benefits transfer (EBT) system.

681-40 SECTION 4.070. Sections 31.036, 31.037, 31.038, 31.039, and
 681-41 31.042, Human Resources Code, are amended to read as follows:

681-42 Sec. 31.036. ELIGIBILITY OF PERSON LEAVING THE STATE. A
 681-43 recipient of assistance who moves out of the state is no longer
 681-44 eligible for the assistance. However, a recipient's temporary
 681-45 absence from the state for reasons and for periods of time approved
 681-46 by the commission [department] does not terminate the recipient's
 681-47 eligibility for assistance.

681-48 Sec. 31.037. PAYMENT OF FINANCIAL ASSISTANCE FUNDS ON DEATH
 681-49 OF RECIPIENT. (a) If a person dies during a month for which the
 681-50 person is eligible for financial assistance and has not spent all of
 681-51 that month's financial assistance payment [endorsed or cashed the
 681-52 warrant issued for financial assistance during that month], the
 681-53 commission [department] may pay financial assistance to the person
 681-54 who was responsible for caring for the recipient at the time of his
 681-55 or her death and who is responsible for paying the obligations
 681-56 incurred by the recipient.

681-57 (b) The executive commissioner [department] shall adopt
 681-58 rules prescribing the method of determining the person entitled to
 681-59 receive the deceased recipient's financial assistance, the manner
 681-60 of payment of the funds, and limitations on the payments.

681-61 (c) Payments to persons responsible for deceased recipients
 681-62 under this section may be made only in the manner and to the extent
 681-63 permissible under the laws and regulations governing the
 681-64 disbursement of funds received through the United States Department
 681-65 of Health and Human Services [, Education, and Welfare].

681-66 Sec. 31.038. CANCELLATION OF UNUSED BENEFITS [UNCASHED
 681-67 WARRANTS]. The commission [department] may cancel [a] financial
 681-68 assistance benefits [warrant] that have [has] not been spent
 681-69 [cashed] within a reasonable period of time after issuance. The

682-1 cancellation must be performed in the manner required by rules of
 682-2 the comptroller.

682-3 Sec. 31.039. ISSUANCE OF REPLACEMENT FINANCIAL ASSISTANCE
 682-4 WARRANTS AND ELECTRONIC BENEFITS TRANSFER CARDS. (a) The
 682-5 comptroller may issue a replacement financial assistance warrant to
 682-6 a recipient who has failed to receive or has lost the original
 682-7 warrant in accordance with Section 403.054, Government Code.

682-8 (b) The commission may issue a replacement electronic
 682-9 benefits transfer card to a recipient who failed to receive or lost
 682-10 the original card.

682-11 Sec. 31.042. PRORATION OF FINANCIAL ASSISTANCE. If at any
 682-12 time state funds are not available to pay in full all financial
 682-13 assistance authorized in this chapter, the executive commissioner
 682-14 [~~department~~] may direct the proration of the financial assistance.

682-15 SECTION 4.071. Sections 31.043(a) and (b), Human Resources
 682-16 Code, are amended to read as follows:

682-17 (a) To extend the period of supported employment for
 682-18 families who receive financial assistance under this chapter, the
 682-19 commission [~~department~~] may use a form of fill-the-gap budgeting or
 682-20 another method under which the commission [~~department~~] disregards
 682-21 earnings of family members who obtain employment while receiving
 682-22 the assistance.

682-23 (b) The commission [~~department~~] may limit the percentage of
 682-24 earnings disregarded, impose a time limit on how long the earnings
 682-25 are disregarded, or gradually reduce the percentage of earnings
 682-26 disregarded in order to remain within available funding.

682-27 SECTION 4.072. Section 31.044(b), Human Resources Code, is
 682-28 amended to read as follows:

682-29 (b) The commission [~~department~~] shall close an account that
 682-30 has not been used by the account holder during the preceding 12
 682-31 months.

682-32 SECTION 4.073. Sections 32.003(1) and (4), Human Resources
 682-33 Code, are amended to read as follows:

682-34 (1) "Health and human services agencies" has the
 682-35 meaning assigned by Section 531.001, Government Code ["Board" means
 682-36 the Health and Human Services Commission or the governing body of an
 682-37 agency operating part of the medical assistance program, as
 682-38 appropriate].

682-39 (4) "Medical assistance" and "Medicaid" include
 682-40 [includes] all of the health care and related services and benefits
 682-41 authorized or provided under federal law for needy individuals of
 682-42 this state.

682-43 SECTION 4.074. Section 32.021, Human Resources Code, is
 682-44 amended by amending Subsections (a), (b), (c), (d), (e), (f), (h),
 682-45 (l), (m), (o), (p), (q), and (r) and adding Subsection (a-1) to read
 682-46 as follows:

682-47 (a) The commission [~~department~~] is the single state agency
 682-48 designated to administer the medical assistance program provided in
 682-49 this chapter in accordance with 42 U.S.C. Section 1396a(a)(5).
 682-50 Subject to applicable federal law, the commission may delegate the
 682-51 operation of a part of the medical assistance program to another
 682-52 state agency. Notwithstanding any delegation, the commission
 682-53 retains ultimate authority over the medical assistance program.

682-54 (a-1) To the extent the commission delegates the operation
 682-55 of a part of the medical assistance program to another state agency,
 682-56 or to the extent that state law assigns a function of the medical
 682-57 assistance program to another health and human services agency
 682-58 operating under the commission's oversight, a reference in this
 682-59 chapter to the commission with respect to that part of the medical
 682-60 assistance program means the state agency to which the operation of
 682-61 that part is delegated or assigned.

682-62 (b) The commission [~~department~~] shall enter into agreements
 682-63 with any federal agency designated by federal law to administer
 682-64 medical assistance when the commission [~~department~~] determines the
 682-65 agreements to be compatible with the state's participation in the
 682-66 medical assistance program and within the limits of appropriated
 682-67 funds. The commission [~~department~~] shall cooperate with federal
 682-68 agencies designated by federal law to administer medical assistance
 682-69 in any reasonable manner necessary to qualify for federal funds.

683-1 (c) The executive commissioner [department] shall establish
683-2 methods of administration and adopt necessary rules for the proper
683-3 and efficient operation of the medical assistance program.

683-4 (d) The commission [department] shall include in its
683-5 contracts for the delivery of medical assistance by nursing
683-6 facilities provisions for monetary penalties to be assessed for
683-7 violations as required by 42 U.S.C. Section 1396r, including
683-8 without limitation the Omnibus Budget Reconciliation Act (OBRA),
683-9 Pub. [P.] L. No. 100-203, Nursing Home Reform Amendments of 1987,
683-10 provided that the executive commissioner [department] shall:

683-11 (1) provide for an informal dispute resolution process
683-12 in the commission [Health and Human Services Commission] as
683-13 provided by Section 531.058, Government Code; and

683-14 (2) develop rules to adjudicate claims in contested
683-15 cases, including claims unresolved by the informal dispute
683-16 resolution process of the commission [Health and Human Services
683-17 Commission].

683-18 (e) Rules governing the application of penalties shall
683-19 include the following:

683-20 (1) specific and objective criteria which describe the
683-21 scope and severity of a contract violation which results in a
683-22 recommendation for each specific penalty. Penalties must be
683-23 appropriate to the violation, and the most severe financial
683-24 penalties must be reserved for situations which create an immediate
683-25 and serious threat to the health and safety of residents;
683-26 "immediate and serious threat" means a situation in which there is a
683-27 high probability that serious harm or injury to residents
683-28 [patients] could occur at any time or already has occurred and may
683-29 well occur again if residents [patients] are not protected
683-30 effectively from the harm or if the threat is not removed;

683-31 (2) a system to ensure standard and consistent
683-32 application of penalties among surveyors and different areas of the
683-33 state;

683-34 (3) due process for nursing facilities providers,
683-35 including an appeals procedure consistent with Chapter 2001,
683-36 Government Code; and

683-37 (4) per diem and/or minimum penalties. The executive
683-38 commissioner [department] may by rule prescribe a minimum penalty
683-39 period; however, once a facility gives the Department of Aging and
683-40 Disability Services [department] notice that deficiencies have
683-41 been corrected, if surveyors are unable to revisit the facility
683-42 within five days and the deficiencies are later shown to be
683-43 corrected, the per diem penalties cease as of the day the facility
683-44 gave notice to the Department of Aging and Disability Services
683-45 [department] or on the last day of the minimum penalty period
683-46 established by the executive commissioner [department], whichever
683-47 is later.

683-48 (f) To encourage facilities to provide the best possible
683-49 care, the commission [department] shall develop an incentive
683-50 program to recognize facilities providing the highest quality care
683-51 to Medicaid residents.

683-52 (h) Medicaid nursing facilities shall also comply with
683-53 state licensure rules, which may be more stringent than the
683-54 requirements for certification. The Department of Aging and
683-55 Disability Services [department] shall use appropriate civil,
683-56 administrative, or criminal remedies authorized by state or federal
683-57 law with respect to a facility that is in violation of a
683-58 certification or licensing requirement.

683-59 (l) The commission [department] may not include as a
683-60 reimbursable item to a nursing facility an administrative or civil
683-61 penalty assessed against the facility under this chapter or under
683-62 Chapter 242, Health and Safety Code.

683-63 (m) Notwithstanding any provision of law to the contrary,
683-64 the commission [department] shall terminate a nursing facility's
683-65 provider agreement if the Department of Aging and Disability
683-66 Services [department] has imposed required Category 2 or Category 3
683-67 remedies on the facility three times within a 24-month period. The
683-68 executive commissioner [of the Health and Human Services
683-69 Commission] by rule shall establish criteria under which the

684-1 requirement to terminate the provider agreement may be waived. In
 684-2 this subsection, "Category 2 remedies" and "Category 3 remedies"
 684-3 have the meanings assigned by 42 C.F.R. Section 488.408.

684-4 (o) In any circumstance in which a nursing facility would
 684-5 otherwise be required to admit a resident transferred from another
 684-6 facility, because of an emergency or otherwise, the nursing
 684-7 facility may not admit a resident whose needs cannot be met through
 684-8 service from the facility's staff or in cooperation with community
 684-9 resources or other providers under contract. If a nursing facility
 684-10 refuses to admit a resident under this subsection, the nursing
 684-11 facility shall provide a written statement of the reasons for the
 684-12 refusal to the Department of Aging and Disability Services
[department] within a period specified by [department] rule. A
 684-13 nursing facility that fails to provide the written statement, or
 684-14 that includes false or misleading information in the statement, is
 684-15 subject to monetary penalties assessed in accordance with this
 684-16 chapter.

684-17 (p) In order to increase the personal needs allowance under
 684-18 Section 32.024(w) [32.024(v), as added by Chapter 1333, Acts of the
 684-19 76th Legislature, Regular Session, 1999], the commission
 684-20 [department] shall develop an early warning system to detect fraud
 684-21 in the handling of the personal needs allowance and other funds of
 684-22 residents of long-term care facilities.

684-23 (q) The commission [department] shall include in its
 684-24 contracts for the delivery of medical assistance by nursing
 684-25 facilities clearly defined minimum standards that relate directly
 684-26 to the quality of care for residents of those facilities. [The
 684-27 department shall consider the recommendations made by the nursing
 684-28 facility quality assurance team under Section 32.060 in
 684-29 establishing the standards.] The commission [department] shall
 684-30 include in each contract:

684-31 (1) specific performance measures by which the
 684-32 commission [department] may evaluate the extent to which the
 684-33 nursing facility is meeting the standards; and

684-34 (2) provisions that allow the commission [department]
 684-35 to terminate the contract if the nursing facility is not meeting the
 684-36 standards.

684-37 (r) The commission [department] may not award a contract for
 684-38 the delivery of medical assistance to a nursing facility that does
 684-39 not meet the minimum standards that would be included in the
 684-40 contract as required by Subsection (q). The commission
 684-41 [department] shall terminate a contract for the delivery of medical
 684-42 assistance by a nursing facility that does not meet or maintain the
 684-43 minimum standards included in the contract in a manner consistent
 684-44 with the terms of the contract.

684-45 SECTION 4.075. Sections 32.0211 and 32.0212, Human
 684-46 Resources Code, are amended to read as follows:

684-47 Sec. 32.0211. RESTRICTIONS ON EXECUTIVE COMMISSIONERS,
 684-48 FORMER MEMBERS OF A [THE] BOARD, COMMISSIONERS, AND THEIR BUSINESS
 684-49 PARTNERS. (a) After service in the commission or a health and
 684-50 human services agency, including an agency that formerly operated
 684-51 part of the medical assistance program but that has been abolished,
 684-52 [department] ends, a former executive commissioner, member of the
 684-53 board, or [a former] commissioner of the applicable agency may not
 684-54 knowingly represent a person before an agency or court:

684-55 (1) in a matter related to the medical assistance
 684-56 program in which the agency the person served [department] or the
 684-57 federal government has a direct interest and in which the executive
 684-58 commissioner, board member, or commissioner participated
 684-59 personally while employed with the agency [department]; or

684-60 (2) for two years after the date on which service ends
 684-61 in a matter related to the medical assistance program if the
 684-62 commission, the health and human services agency, [department] or
 684-63 the federal government has a direct interest in the matter, the
 684-64 matter was pending during the executive commissioner's or
 684-65 commissioner's [his] last year of service to the applicable agency
 684-66 [department], and the matter was one for which the executive
 684-67 commissioner [board member] or commissioner had responsibility.

684-68 (b) Subsection (a) [of this section] does not apply to a

685-1 former executive commissioner, board member, or commissioner who
 685-2 holds one of the following positions and is acting in the scope of
 685-3 that position:

- 685-4 (1) employee or officer of federal, state, or local
 government;
- 685-5 (2) employee of a nonprofit hospital or medical
 research organization; or
- 685-6 (3) employee of an accredited degree-granting college
 or university.

685-7 (c) The [A] current executive commissioner [board member]
 685-8 or a current commissioner of a health and human services agency may
 685-9 not knowingly participate in the course of the executive
 685-10 commissioner's or commissioner's [his] service in a matter related
 685-11 to the medical assistance program in which the agency the person
 685-12 serves [department] or the federal government has a direct interest
 685-13 and in which the executive commissioner or commissioner, or the
 685-14 executive commissioner's or commissioner's spouse [he, his spouse],
 685-15 minor child, or business partner, has a substantial financial
 685-16 interest.

685-17 (d) A business partner of a current executive commissioner
 685-18 [board member] or a current commissioner of a health and human
 685-19 services agency may not knowingly represent a person before an
 685-20 agency or court in a matter related to the medical assistance
 685-21 program:

685-22 (1) in which the executive commissioner [board member]
 685-23 or commissioner participates or has participated personally and
 685-24 substantially; or

685-25 (2) that is under the official responsibility of the
 685-26 executive commissioner [board member] or commissioner.

685-27 (e) A past [Past] or present executive commissioner, a past
 685-28 board member of a health and human services agency, including an
 685-29 abolished agency, [members] or a past or present commissioner of a
 685-30 health and human services agency is [commissioners are] subject to
 685-31 a civil penalty of \$5,000 for each violation of this section. A
 685-32 partner of a current executive commissioner [board member] or
 685-33 commissioner is subject to a civil penalty of \$2,500 for each
 685-34 violation of this section. Each appearance before an agency or
 685-35 court constitutes a separate offense.

685-36 (f) If it appears that this section has been violated, the
 685-37 commission [department] may request the attorney general to conduct
 685-38 a suit in the name of the State of Texas to enjoin the prohibited
 685-39 activity and to recover the penalty provided for in this section.

685-40 Sec. 32.0212. DELIVERY OF MEDICAL ASSISTANCE.
 685-41 Notwithstanding any other law and subject to Section 533.0025,
 685-42 Government Code, the commission [department] shall provide medical
 685-43 assistance for acute care services through the Medicaid managed
 685-44 care system implemented under Chapter 533, Government Code, or
 685-45 another Medicaid capitated managed care program.

685-46 SECTION 4.076. Sections 32.0213(a), (c), (d), and (e),
 685-47 Human Resources Code, are amended to read as follows:

685-48 (a) The executive commissioner [department] by rule shall
 685-49 establish procedures for:

- 685-50 (1) controlling the number of Medicaid beds in nursing
 facilities;
- 685-51 (2) decertification of unused Medicaid beds in nursing
 facilities; and
- 685-52 (3) reallocation of nursing facility [home] beds
 decertified under Subdivision (2) to other nursing facilities.

685-53 (c) The executive commissioner [department] may exempt a
 685-54 nursing facility from the procedures established under this section
 685-55 if the facility:

- 685-56 (1) is affiliated with a state-supported medical
 school;
- 685-57 (2) is located on land owned or controlled by the
 state-supported medical school; and
- 685-58 (3) serves as a teaching facility for physicians and
 related health care professionals.

685-59 (d) The executive commissioner [of the Health and Human
 685-60 Services Commission] by rule may require an applicant for Medicaid

686-1 beds in a nursing facility under a Medicaid bed waiver application
 686-2 to provide a performance bond in the amount of \$500,000 or other
 686-3 financial security as determined by the Department of Aging and
686-4 Disability Services [department] to ensure that the applicant
 686-5 provides the Medicaid beds granted to the applicant under the
 686-6 waiver within the time frame required by the Department of Aging and
686-7 Disability Services [department]. A performance bond provided
 686-8 under this subsection must:

686-9 (1) be executed by a corporate surety [entity] in
 686-10 accordance with Subchapter A, Chapter 3503, Insurance Code;

686-11 (2) be in a form approved by the Department of Aging
686-12 and Disability Services [department]; and

686-13 (3) clearly and prominently display on the face of the
 686-14 bond or on an attachment to the bond:

686-15 (A) the name, mailing address, physical address,
 686-16 and telephone number, including the area code, of the surety
 686-17 company to which any notice of claim should be sent; or

686-18 (B) the toll-free telephone number maintained by
 686-19 the Texas Department of Insurance under Subchapter B, Chapter 521,
 686-20 Insurance Code, and a statement that the address of the surety
 686-21 company to which any notice of claim should be sent may be obtained
 686-22 from the Texas Department of Insurance by calling the toll-free
 686-23 telephone number.

686-24 (e) The executive commissioner [department] may not require
 686-25 an applicant for Medicaid beds in a nursing facility to obtain a
 686-26 performance bond from a specific insurance or surety agency, agent,
 686-27 or broker.

686-28 SECTION 4.077. Section 32.0214(a), Human Resources Code, is
 686-29 amended to read as follows:

686-30 (a) If the commission [department] determines that it is
 686-31 cost-effective and feasible and subject to Subsection (b), the
 686-32 commission [department] shall require each recipient of medical
 686-33 assistance to designate a primary care provider with whom the
 686-34 recipient will have a continuous, ongoing professional
 686-35 relationship and who will provide and coordinate the recipient's
 686-36 initial and primary care, maintain the continuity of care provided
 686-37 to the recipient, and initiate any referrals to other health care
 686-38 providers.

686-39 SECTION 4.078. Sections 32.0215(a), (b), (d), and (e),
 686-40 Human Resources Code, are amended to read as follows:

686-41 (a) The commission [department] may include in a contract
 686-42 for the delivery of medical assistance by a home or community care
 686-43 provider a provision for monetary penalties to be assessed for a
 686-44 contract violation or any violation of home or community care
 686-45 requirements, as required by 42 U.S.C. Section 1396t(j).

686-46 (b) The executive commissioner [department] shall adopt
 686-47 [develop] rules governing the application of civil money penalties,
 686-48 including rules prescribing:

686-49 (1) criteria that describe when and how a civil money
 686-50 penalty may be assessed and the amount of the penalty;

686-51 (2) a system to ensure standard and consistent
 686-52 application of the penalties throughout the state; and

686-53 (3) an administrative appeals process to adjudicate
 686-54 claims in contested cases in accordance with Chapter 2001,
 686-55 Government Code.

686-56 (d) A penalty must be appropriate to the violation. The
 686-57 commission [department] may assess incrementally more severe
 686-58 penalties for repeated or uncorrected violations.

686-59 (e) The commission [department] shall review a penalized
 686-60 provider within 10 working days after the provider notifies the
 686-61 Department of Aging and Disability Services [department] that the
 686-62 deficiency that caused the imposition of the penalty has been
 686-63 corrected. If the commission [department] is unable to review the
 686-64 provider within that 10-working-day period, the penalty ceases on
 686-65 the earlier of the last day of the minimum penalty period or the
 686-66 date the provider gives notice to the Department of Aging and
686-67 Disability Services [department].

686-68 SECTION 4.079. Sections 32.022, 32.023, and 32.0231, Human
 686-69 Resources Code, are amended to read as follows:

687-1 Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES.
 687-2 (a) The executive [board, on the recommendation of the]
 687-3 commissioner[~~T~~] shall appoint a medical care advisory committee to
 687-4 advise the executive commissioner [board] and the commission
 687-5 [~~department~~] in developing and maintaining the medical assistance
 687-6 program and in making immediate and long-range plans for reaching
 687-7 the program's goal of providing access to high quality,
 687-8 comprehensive medical and health care services to medically
 687-9 indigent persons in the state. To ensure that qualified applicants
 687-10 receive services, the committee shall consider changes in the
 687-11 process the commission [department] uses to determine eligibility.

687-12 (b) The executive commissioner [board] shall appoint the
 687-13 committee in compliance with the requirements of the federal agency
 687-14 administering medical assistance. The appointments shall provide
 687-15 for a balanced representation of the general public, providers,
 687-16 consumers, and other persons, state agencies, or groups with
 687-17 knowledge of and interest in the committee's field of work.

687-18 (c) The executive commissioner [department] shall adopt
 687-19 rules for membership on the committee to provide for efficiency of
 687-20 operation, rotation, stability, and continuity.

687-21 (d) The executive [board, on the recommendation of the]
 687-22 commissioner[~~T~~] may appoint regional and local medical care
 687-23 advisory committees and other advisory committees as considered
 687-24 necessary.

687-25 (e) The executive [board, on the recommendation of the]
 687-26 commissioner[~~T~~] shall appoint a hospital payment advisory
 687-27 committee. The committee shall advise the executive commissioner
 687-28 [~~board~~] and the commission [department] on necessary changes in
 687-29 hospital payment methodologies for inpatient hospital prospective
 687-30 payments and on adjustments for disproportionate share hospitals
 687-31 that will ensure reasonable, adequate, and equitable payments to
 687-32 hospital providers and that will address the essential role of
 687-33 rural hospitals. The executive commissioner [board] shall appoint
 687-34 to the committee persons with knowledge of and an interest in
 687-35 hospital payment issues.

687-36 Sec. 32.023. COOPERATION WITH OTHER STATE AGENCIES. (a)
 687-37 The commission's [department's] plan for administering medical
 687-38 assistance must include procedures for using health services
 687-39 administered by other state agencies pursuant to cooperative
 687-40 arrangements.

687-41 (b) The commission [department] may enter into agreements
 687-42 with appropriate state agencies that will enable the commission
 687-43 [~~department~~] to implement Title XIX of the federal Social Security
 687-44 Act (42 U.S.C. Section 1396 et seq.) to provide medical assistance
 687-45 for individuals in institutions or in alternate care arrangements.
 687-46 The agreements must comply with federal law and rules. The
 687-47 commission [department] may make medical assistance payments in
 687-48 accordance with the agreements. The agreements are not subject to
 687-49 Chapter 771, Government Code [~~the Interagency Cooperation Act~~
 687-50 (Article 4413(32), Vernon's Texas Civil Statutes)].

687-51 (c) State agencies responsible for the administration or
 687-52 supervision of facilities to which medical assistance payments may
 687-53 be made under federal law shall enter into the agreements with the
 687-54 commission [department] and maintain compliance with the
 687-55 agreements so that the commission [department] may receive federal
 687-56 matching funds to support the medical assistance program.

687-57 (d) The commission [department] may pay medical assistance
 687-58 to other facilities as required under federal law and rules.

687-59 Sec. 32.0231. ANNOUNCEMENT OF FUNDING OR PROGRAM CHANGE.
 687-60 (a) The executive commissioner [department] shall publish notice
 687-61 in the Texas Register of:

687-62 (1) any attempt to obtain a waiver of federal
 687-63 regulations in the medical assistance program;
 687-64 (2) any attempt to obtain or the receipt of funding
 687-65 under Title XIX of the federal Social Security Act (42 U.S.C.
 687-66 Section 1396 [~~301~~] et seq.) for a pilot program; and
 687-67 (3) any amendment to the state medical assistance
 687-68 plan.

687-69 (b) The notice must include the name and telephone number of

688-1 a commission [department] employee who can provide information
 688-2 relating to the matter for which notice was published under this
 688-3 section.

688-4 (c) The commission [department] shall provide to any
 688-5 requestor information relating to a matter for which notice was
 688-6 published, including the effect and cost of the change, any
 688-7 possible cost savings, the criteria for receiving services, and the
 688-8 number of people to be served.

688-9 SECTION 4.080. Sections 32.024(a), (b), (c), (c-1), (d),
 688-10 (e), (f), (g), (h), (l), (n), (o), (p), (q), (r), (s), (t), (t-1),
 688-11 (u), (v), (w), (x), (y), (z), (z-1), (aa), (bb), (cc), (ff), (gg),
 688-12 (ii), and (jj), Human Resources Code, are amended to read as
 688-13 follows:

688-14 (a) The commission [department] shall provide medical
 688-15 assistance to all persons who receive financial assistance from the
 688-16 state under Chapter 31 [~~of this code~~] and to other related groups of
 688-17 persons if the provision of medical assistance to those persons is
 688-18 required by federal law and rules as a condition for obtaining
 688-19 federal matching funds for the support of the medical assistance
 688-20 program.

688-21 (b) The commission [department] may provide medical
 688-22 assistance to other persons who are financially unable to meet the
 688-23 cost of medical services if federal matching funds are available
 688-24 for that purpose. The executive commissioner [department] shall
 688-25 adopt rules governing the eligibility of those persons for the
 688-26 services.

688-27 (c) The executive commissioner [department] shall establish
 688-28 standards governing the amount, duration, and scope of services
 688-29 provided under the medical assistance program. The standards may
 688-30 not be lower than the minimum standards required by federal law and
 688-31 rule as a condition for obtaining federal matching funds for
 688-32 support of the program[~~, and may not be lower than the standards in
 688-33 effect on August 27, 1967. Standards or payments for the vendor
 688-34 drug program may not be lower than those in effect on January 1,
 688-35 1973.~~].

688-36 (c-1) The commission [department] shall ensure that money
 688-37 spent for purposes of the demonstration project for women's health
 688-38 care services under former Section 32.0248[~~, Human Resources Code,~~]
 688-39 or a similar successor program is not used to perform or promote
 688-40 elective abortions, or to contract with entities that perform or
 688-41 promote elective abortions or affiliate with entities that perform
 688-42 or promote elective abortions.

688-43 (d) The executive commissioner [department] may establish
 688-44 standards that increase the amount, duration, and scope of the
 688-45 services provided only if federal matching funds are available for
 688-46 the optional services and payments and if the executive
 688-47 commissioner [department] determines that the increase is feasible
 688-48 and within the limits of appropriated funds. The executive
 688-49 commissioner [department] may establish and maintain priorities
 688-50 for the provision of the optional medical services.

688-51 (e) The commission [department] may not authorize the
 688-52 provision of any service to any person under the program unless
 688-53 federal matching funds are available to pay the cost of the service.

688-54 (f) The executive commissioner [department] shall set the
 688-55 income eligibility cap for persons qualifying for nursing facility
 688-56 [home] care at an amount that is not less than \$1,104 and that does
 688-57 not exceed the highest income for which federal matching funds are
 688-58 payable. The executive commissioner [department] shall set the cap
 688-59 at a higher amount than the minimum provided by this subsection if
 688-60 appropriations made by the legislature for a fiscal year will
 688-61 finance benefits at the higher cap for at least the same number of
 688-62 recipients of the benefits during that year as were served during
 688-63 the preceding fiscal year, as estimated by the commission
 688-64 [department]. In setting an income eligibility cap under this
 688-65 subsection, the executive commissioner [department] shall consider
 688-66 the cost of the adjustment required by Subsection (g) [~~of this~~
 688-67 section].

688-68 (g) During a fiscal year for which the cap described by
 688-69 Subsection (f) [~~of this section~~] has been set, the executive

689-1 commissioner [department] shall adjust the cap in accordance with
 689-2 any percentage change in the amount of benefits being paid to social
 689-3 security recipients during the year.

689-4 (h) Subject to the amount of the cap set as provided by
 689-5 Subsections (f) and (g) [~~of this section~~], and to the extent
 689-6 permitted by federal law, the income eligibility cap for the
 689-7 community care for aged and disabled persons program shall be the
 689-8 same as the income eligibility cap for nursing facility [~~home~~]
 689-9 care. The executive commissioner [department] shall ensure that
 689-10 the eligibility requirements for persons receiving other services
 689-11 under the medical assistance program are not affected.

689-12 (l) The executive commissioner [department] shall set the
 689-13 income eligibility cap for medical assistance for pregnant women
 689-14 and infants up to age one at not less than 130 percent of the federal
 689-15 poverty guidelines.

689-16 (n) The executive commissioner, [department] in the [~~its~~]
 689-17 adoption of rules and standards governing the scope of hospital and
 689-18 long-term services, shall authorize the providing of respite care
 689-19 by hospitals.

689-20 (o) The executive commissioner [department], in the [~~its~~]
 689-21 rules and standards governing the scope of hospital and long-term
 689-22 services, shall establish a swing bed program in accordance with
 689-23 federal regulations to provide reimbursement for skilled nursing
 689-24 patients who are served in hospital settings provided that the
 689-25 length of stay is limited to 30 days per year and the hospital is
 689-26 located in a county with a population of 100,000 or less. If the
 689-27 swing beds are used for more than one 30-day length of stay per
 689-28 year, per patient, the hospital must comply with the minimum
 689-29 licensing standards [~~Minimum Licensing Standards~~] as mandated by
 689-30 Chapter 242, Health and Safety Code, and the Medicaid standards for
 689-31 nursing facility [~~home~~] certification, as promulgated by the
 689-32 executive commissioner [department].

689-33 (p) The commission [department] shall provide home
 689-34 respiratory therapy services for ventilator-dependent persons to
 689-35 the extent permitted by federal law.

689-36 (q) The commission [department] shall provide physical
 689-37 therapy services.

689-38 (r) The commission [department], from funds otherwise
 689-39 appropriated to the commission [department] for the early and
 689-40 periodic screening, diagnosis, and treatment program, shall
 689-41 provide to a child who is 14 years of age or younger, permanent
 689-42 molar sealants as dental service under that program as follows:

689-43 (1) sealant shall be applied only to the occlusal
 689-44 buccal and lingual pits and fissures of a permanent molar within
 689-45 four years of its eruption;

689-46 (2) teeth to be sealed must be free of proximal caries
 689-47 and free of previous restorations on the surface to be sealed;

689-48 (3) if a second molar is the prime tooth to be sealed,
 689-49 a non-restored first molar may be sealed at the same sitting, if the
 689-50 fee for the first molar sealing is no more than half the usual
 689-51 sealant fee;

689-52 (4) the sealing of premolars and primary molars will
 689-53 not be reimbursed; and

689-54 (5) replacement sealants will not be reimbursed.

689-55 (s) The executive commissioner [department], in the [~~its~~]
 689-56 rules governing the early and periodic screening, diagnosis, and
 689-57 treatment program, shall:

689-58 (1) revise the periodicity schedule to allow for
 689-59 periodic visits at least as often as the frequency recommended by
 689-60 the American Academy of Pediatrics and allow for interperiodic
 689-61 screens without prior approval when there are indications that it
 689-62 is medically necessary; and

689-63 (2) require, as a condition for eligibility for
 689-64 reimbursement under the program for the cost of services provided
 689-65 at a visit or screening, that a child younger than 15 years of age be
 689-66 accompanied at the visit or screening by:

689-67 (A) the child's parent or guardian; or

689-68 (B) another adult, including an adult related to
 689-69 the child, authorized by the child's parent or guardian to

690-1 accompany the child.

690-2 (t) The executive commissioner [department] by rule shall
 690-3 require a physician, nursing facility, health care provider, or
 690-4 other responsible party to obtain authorization from the commission
 690-5 [department] or a person authorized to act on behalf of the
 690-6 commission [department] on the same day or the next business day
 690-7 following the day of transport when an ambulance is used to
 690-8 transport a recipient of medical assistance under this chapter in
 690-9 circumstances not involving an emergency and the request is for the
 690-10 authorization of the provision of transportation for only one day.
 690-11 If the request is for authorization of the provision of
 690-12 transportation on more than one day, the executive commissioner
 690-13 [department] by rule shall require a physician, nursing facility,
 690-14 health care provider, or other responsible party to obtain a single
 690-15 authorization before an ambulance is used to transport a recipient
 690-16 of medical assistance under this chapter in circumstances not
 690-17 involving an emergency. The rules must provide that:

690-18 (1) except as provided by Subdivision (3), a request
 690-19 for authorization must be evaluated based on the recipient's
 690-20 medical needs and may be granted for a length of time appropriate to
 690-21 the recipient's medical condition;

690-22 (2) except as provided by Subdivision (3), a response
 690-23 to a request for authorization must be made not later than 48 hours
 690-24 after receipt of the request;

690-25 (3) a request for authorization must be immediately
 690-26 granted and must be effective for a period of not more than 180 days
 690-27 from the date of issuance if the request includes a written
 690-28 statement from a physician that:

690-29 (A) states that alternative means of
 690-30 transporting the recipient are contraindicated; and

690-31 (B) is dated not earlier than the 60th day before
 690-32 the date on which the request for authorization is made;

690-33 (4) a person denied payment for ambulance services
 690-34 rendered is entitled to payment from the nursing facility, health
 690-35 care provider, or other responsible party that requested the
 690-36 services if:

690-37 (A) payment under the medical assistance program
 690-38 is denied because of lack of prior authorization; and

690-39 (B) the person provides the nursing facility,
 690-40 health care provider, or other responsible party with a copy of the
 690-41 bill for which payment was denied;

690-42 (5) a person denied payment for services rendered
 690-43 because of failure to obtain prior authorization or because a
 690-44 request for prior authorization was denied is entitled to appeal
 690-45 the denial of payment to the commission [department]; and

690-46 (6) the commission [department] or a person authorized
 690-47 to act on behalf of the commission [department] must be available to
 690-48 evaluate requests for authorization under this subsection not less
 690-49 than 12 hours each day, excluding weekends and state holidays.

690-50 (t-1) The executive commissioner [department], in the [its]
 690-51 rules governing the medical transportation program, may not
 690-52 prohibit a recipient of medical assistance from receiving
 690-53 transportation services through the program to obtain renal
 690-54 dialysis treatment on the basis that the recipient resides in a
 690-55 nursing facility.

690-56 (u) The executive commissioner [department] by rule shall
 690-57 require a health care provider who arranges for durable medical
 690-58 equipment for a child who receives medical assistance under this
 690-59 chapter to:

690-60 (1) ensure that the child receives the equipment
 690-61 prescribed, the equipment fits properly, if applicable, and the
 690-62 child or the child's parent or guardian, as appropriate considering
 690-63 the age of the child, receives instruction regarding the
 690-64 equipment's use; and

690-65 (2) maintain a record of compliance with the
 690-66 requirements of Subdivision (1) in an appropriate location.

690-67 (v) The executive commissioner [department] by rule shall
 690-68 provide a screening test for hearing loss in accordance with
 690-69 Chapter 47, Health and Safety Code, and any necessary diagnostic

691-1 follow-up care related to the screening test to a child younger than
 691-2 30 days old who receives medical assistance.

691-3 (w) The executive commissioner [department] shall set a
 691-4 personal needs allowance of not less than \$60 a month for a resident
 691-5 of a convalescent or nursing facility [home] or related institution
 691-6 licensed under Chapter 242, Health and Safety Code, assisted living
 691-7 [personal care] facility, ICF-IID [ICF-MR] facility, or other
 691-8 similar long-term care facility who receives medical
 691-9 assistance. The commission [department] may send the personal
 691-10 needs allowance directly to a resident who receives Supplemental
 691-11 Security Income (SSI) (42 U.S.C. Section 1381 et seq.). This
 691-12 subsection does not apply to a resident who is participating in a
 691-13 medical assistance waiver program administered by the commission
 691-14 [department].

691-15 (x) The commission [department] shall provide dental
 691-16 services annually to a resident of a nursing facility who is a
 691-17 recipient of medical assistance under this chapter. The dental
 691-18 services must include:

691-19 (1) a dental examination by a licensed dentist;
 691-20 (2) a prophylaxis by a licensed dentist or licensed
 691-21 dental hygienist, if practical considering the health of the
 691-22 resident; and
 691-23 (3) diagnostic dental x-rays, if possible.

691-24 (y) The commission [department] shall provide medical
 691-25 assistance to a person in need of treatment for breast or cervical
 691-26 cancer who is eligible for that assistance under the Breast and
 691-27 Cervical Cancer Prevention and Treatment Act of 2000 (Pub. L.
 691-28 No. 106-354) for a continuous period during which the person
 691-29 requires that treatment. The executive commissioner [department]
 691-30 shall simplify the provider enrollment process for a provider of
 691-31 that medical assistance and shall adopt rules to provide for
 691-32 certification of presumptive eligibility of a person for that
 691-33 assistance. In determining a person's eligibility for medical
 691-34 assistance under this subsection, the executive commissioner
 691-35 [department], to the extent allowed by federal law, may not require
 691-36 a personal interview.

691-37 (z) In the executive commissioner's [its] rules and
 691-38 standards governing the vendor drug program, the executive
 691-39 commissioner [department], to the extent allowed by federal law and
 691-40 if the executive commissioner [department] determines the policy to
 691-41 be cost-effective, may ensure that a recipient of prescription drug
 691-42 benefits under the medical assistance program does not, unless
 691-43 authorized by the commission [department] in consultation with the
 691-44 recipient's attending physician or advanced practice nurse,
 691-45 receive under the medical assistance program:

691-46 (1) more than four different outpatient brand-name
 691-47 prescription drugs during a month; or
 691-48 (2) more than a 34-day supply of a brand-name
 691-49 prescription drug at any one time.

691-50 (z-1) Subsection (z) does not affect any other limit on
 691-51 prescription medications otherwise prescribed by commission
 691-52 [department] rule.

691-53 (aa) The commission [department] shall incorporate
 691-54 physician-oriented instruction on the appropriate procedures for
 691-55 authorizing ambulance service into current medical education
 691-56 courses.

691-57 (bb) The commission [department] may not provide an
 691-58 erectile dysfunction medication under the Medicaid vendor drug
 691-59 program to a person required to register as a sex offender under
 691-60 Chapter 62, Code of Criminal Procedure, to the maximum extent
 691-61 federal law allows the commission [department] to deny that
 691-62 medication.

691-63 (cc) In this subsection, "deaf" and "hard of hearing" have
 691-64 the meanings assigned by Section 81.001. Subject to the
 691-65 availability of funds, the commission [department] shall provide
 691-66 interpreter services as requested during the receipt of medical
 691-67 assistance under this chapter to:

691-68 (1) a person receiving that assistance who is deaf or
 691-69 hard of hearing; or

(2) a parent or guardian of a person receiving that assistance if the parent or guardian is deaf or hard of hearing.

(ff) The executive commissioner [department] shall establish a separate provider type for prosthetic and orthotic providers for purposes of enrollment as a provider of and reimbursement under the medical assistance program. The executive commissioner [department] may not classify prosthetic and orthotic providers under the durable medical equipment provider type.

(gg) Notwithstanding any other law, including Sections 843.312 and 1301.052, Insurance Code, the commission [department] shall ensure that advanced practice registered nurses and physician assistants may be selected by and assigned to recipients of medical assistance as the primary care providers of those recipients. The commission [department] must require that advanced practice registered nurses and physician assistants be treated in the same manner as primary care physicians with regard to:

(1) selection and assignment as primary care providers; and

(2) inclusion as primary care providers in any directory of providers of medical assistance maintained by the commission [department].

(ii) The commission [department] shall provide medical assistance reimbursement to a pharmacist who is licensed to practice pharmacy in this state, is authorized to administer immunizations in accordance with rules adopted by the Texas State Board of Pharmacy, and administers an immunization to a recipient of medical assistance to the same extent the commission [department] provides reimbursement to a physician or other health care provider participating in the medical assistance program for the administration of that immunization.

(jj) The executive commissioner [department] shall establish a separate provider type for prescribed pediatric extended care centers licensed under Chapter 248A, Health and Safety Code, for purposes of enrollment as a provider for and reimbursement under the medical assistance program.

SECTION 4.081. Section 32.024(i), Human Resources Code, as amended by Chapters 198 (H.B. 2292) and 1251 (S.B. 1862), Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(i) [Subject to appropriated state funds, the] The executive commissioner [department] in adopting [its adoption of] rules may establish a medically needy program that serves pregnant women, children, and caretakers who have high medical expenses, subject to the availability of appropriated funds.

SECTION 4.082. Sections 32.0241, 32.0242, and 32.0243, Human Resources Code, are amended to read as follows:

Sec. 32.0241. REVIEW OF WAIVER REQUEST. The commission [department] shall, at least biennially, review the feasibility of requesting a waiver for the elderly under Section 1915(c), federal Social Security Act (42 U.S.C. Section 1396n), if the reimbursement rates for nursing facilities [homes] under the medical assistance program have increased since the preceding review.

Sec. 32.0242. VERIFICATION OF CERTAIN INFORMATION. To the extent possible, the commission [department] shall verify an applicant's residential address at the time the application for medical assistance is filed.

Sec. 32.0243. PERIODIC REVIEW OF ELIGIBILITY FOR CERTAIN
RECIPIENTS. (a) The commission [department], in cooperation with
the United States Social Security Administration, shall
periodically review the eligibility of a recipient of medical
assistance who is eligible on the basis of the recipient's
eligibility for Supplemental Security Income (SSI) benefits under
42 U.S.C. Section 1381 et seq., as amended.

(b) In reviewing the eligibility of a recipient as required by Subsection (a), the commission [department] shall ensure that only recipients who reside in this state and who continue to be eligible for Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq., as amended, remain eligible for medical assistance.

693-1 SECTION 4.083. The heading to Section 32.0244, Human
693-2 Resources Code, is amended to read as follows:

693-3 Sec. 32.0244. NURSING FACILITY [HOME] BEDS IN CERTAIN
693-4 COUNTIES.

693-5 SECTION 4.084. Sections 32.0244(a), (c), and (d), Human
693-6 Resources Code, are amended to read as follows:

693-7 (a) At the request of the commissioners court of a county in
693-8 which not more than two nursing facilities are certified to
693-9 participate in the state Medicaid program, and subject to
693-10 Subsection (d), the commission [department] may contract for
693-11 additional nursing facility [home] beds under the state Medicaid
693-12 program in the county without regard to the occupancy rate of
693-13 available Medicaid beds.

693-14 (c) A commissioners court shall determine whether to
693-15 proceed with a request after considering all comments and proposals
693-16 received in response to the notices provided under Subsection (b). If the
693-17 commissioners court proceeds with the request, the court may
693-18 recommend that the commission [department] contract with a specific
693-19 nursing facility that submitted a proposal. In determining whether
693-20 to proceed with the request and whether to recommend a specific
693-21 nursing facility, the commissioners court shall consider:

693-22 (1) the demographic and economic needs of the county;
693-23 (2) the quality of existing nursing facility services
693-24 under the state Medicaid program in the county;
693-25 (3) the quality of the proposals submitted; and
693-26 (4) the degree of community support for additional
693-27 nursing facility services.

693-28 (d) The commission [department] may not contract under this
693-29 section for more than 120 additional nursing facility [home] beds
693-30 per county per year and may not exceed 500 additional nursing
693-31 facility [home] beds statewide in a calendar year.

693-32 SECTION 4.085. Section 32.0245, Human Resources Code, is
693-33 amended to read as follows:

693-34 Sec. 32.0245. NURSING FACILITY [HOME] BEDS FOR CERTAIN
693-35 FACILITIES TREATING ALZHEIMER'S DISEASE. The commission
693-36 [department] shall waive for a nursing facility a restriction
693-37 imposed by state law on the authority to contract under the state
693-38 Medicaid program for nursing facility [home] beds based on the
693-39 percentage of beds that are occupied in a geographical area if the
693-40 facility:

693-41 (1) is affiliated with a medical school operated by
693-42 the state;

693-43 (2) is participating in a research program for the
693-44 care and treatment of persons with Alzheimer's disease; and
693-45 (3) is designed to separate and treat Alzheimer's
693-46 disease by stage or functional level.

693-47 SECTION 4.086. Section 32.02451, Human Resources Code, is
693-48 amended to read as follows:

693-49 Sec. 32.02451. ADDITIONAL PERSONAL NEEDS ALLOWANCE FOR
693-50 GUARDIANSHIP EXPENSES OF CERTAIN RECIPIENTS. (a) In this section,
693-51 "applied income" has the meaning assigned by Section 1155.201,
693-52 Estates [670, Texas Probate] Code.

693-53 (b) To the extent allowed by federal law, the commission
693-54 [department], in computing the applied income of a recipient of
693-55 medical assistance, shall deduct in the manner provided by this
693-56 section an additional personal needs allowance from the earned and
693-57 unearned income of the recipient or, if applicable, the recipient
693-58 and the recipient's spouse, for compensation and costs ordered to
693-59 be deducted under Section 1155.202, Estates [670, Texas Probate]
693-60 Code. Subject to Subsection (f), a deduction ordered by the court
693-61 under Section 1155.202, Estates [670, Texas Probate] Code, is
693-62 effective beginning on the later of:

693-63 (1) the month in which the order is signed; or
693-64 (2) the first month of medical assistance eligibility
693-65 for which the recipient is subject to a copayment.

693-66 (c) The commission [department] shall compute the applied
693-67 income of a recipient of medical assistance as follows:

693-68 (1) the commission [department] shall deduct from the
693-69 earned and unearned income the personal needs allowance authorized

694-1 by Section 32.024(w) before making any other deduction;

694-2 (2) if after the deduction under Subdivision (1) the
694-3 recipient has remaining income, the commission [department] shall
694-4 deduct the lesser of the following:

694-5 (A) the amount of the remaining income; or

694-6 (B) the amount of the additional personal needs
694-7 allowance for compensation and costs ordered to be deducted under
694-8 Section 1155.202, Estates [670, Texas Probate] Code; and

694-9 (3) if after the deductions under Subdivisions (1) and
694-10 (2) the recipient has remaining income, the commission [department]
694-11 shall deduct any other authorized allowances.

694-12 (d) The amount of income remaining, if any, after the
694-13 commission [department] makes the deductions as provided by
694-14 Subsection (c) is the amount of the applied income of the recipient
694-15 of medical assistance.

694-16 (e) The executive commissioner [~~of the Health and Human~~
694-17 ~~Services Commission~~] shall adopt rules providing a procedure by
694-18 which a recipient of medical assistance for whom amounts are
694-19 ordered deducted under Section 1155.202, Estates [670, Texas
694-20 Probate] Code, may submit to the commission [department] a copy of
694-21 the court order issued under that section to receive a deduction of
694-22 those amounts from the recipient's income as provided by this
694-23 section.

694-24 (f) The commission [department] may not allow a deduction
694-25 for the additional personal needs allowance for compensation and
694-26 costs ordered to be deducted under Section 1155.202, Estates [670,
694-27 Texas Probate] Code, if the order is issued after the recipient of
694-28 medical assistance dies.

694-29 SECTION 4.087. Sections 32.0247(b), (c), (d), and (e),
694-30 Human Resources Code, are amended to read as follows:

694-31 (b) The commission [department] shall provide medical
694-32 assistance, in accordance with commission [department] rules, to an
694-33 independent foster care adolescent who:

694-34 (1) is not otherwise eligible for medical assistance;
694-35 and

694-36 (2) is not covered by a health benefits plan offering
694-37 adequate benefits, as determined by the commission [~~Health and~~
694-38 ~~Human Services Commission~~].

694-39 (c) To the extent allowed by federal law, the executive
694-40 commissioner [~~The department~~] shall by rule establish a specific
694-41 set of income, assets, or resources allowable for recipients under
694-42 this section. The income level shall not be less than 200 percent
694-43 or more than 400 percent of the federal poverty level. Allowable
694-44 asset or resource levels shall not be less than:

694-45 (1) the levels allowed for individuals who are in
694-46 foster care; and

694-47 (2) the levels allowed for a person under 19 years of
694-48 age who is eligible for the medical assistance program.

694-49 (d) In setting allowable income, asset, or resource levels,
694-50 the executive commissioner [department] shall, to the extent
694-51 allowed by federal law, exclude:

694-52 (1) any financial benefit used for the purpose of
694-53 educational or vocational training, such as scholarships, student
694-54 loans, or grants;

694-55 (2) any financial benefit used for the purpose of
694-56 housing; and

694-57 (3) any grants or subsidies obtained as a result of the
694-58 Foster Care Independence Act of 1999 (Pub. L. No. 106-169).

694-59 (e) The Department of Family and Protective [~~and~~
694-60 ~~Regulatory~~] Services shall certify the income, assets, or resources
694-61 of each individual on the date the individual exits substitute
694-62 care. An individual qualifying for medical assistance as
694-63 established by this section shall remain eligible for 12 calendar
694-64 months after certification and after each recertification.

694-65 SECTION 4.088. Section 32.02471(b), Human Resources Code,
694-66 is amended to read as follows:

694-67 (b) The commission [department] shall provide medical
694-68 assistance to a person who:

694-69 (1) is 21 years of age or older but younger than 23

695-1 years of age;

695-2 (2) would be eligible to receive assistance as an
695-3 independent foster care adolescent under Section [32.0247](#) if the
695-4 person were younger than 21 years of age; and

695-5 (3) is enrolled in an institution of higher education,
695-6 as defined by Section [61.003](#)(8), Education Code, or a private or
695-7 independent institution of higher education, as defined by Section
695-8 [61.003](#)(15), Education Code, that is located in this state and is
695-9 making satisfactory academic progress as determined by the
695-10 institution.

695-11 SECTION 4.089. Section [32.025](#), Human Resources Code, is
695-12 amended to read as follows:

695-13 Sec. 32.025. APPLICATION FOR MEDICAL ASSISTANCE. (a) A
695-14 recipient of benefits under Chapter 31 [~~of this code~~] or
695-15 supplemental security income from the federal government is
695-16 automatically eligible for medical assistance, and an application
695-17 for benefits under these programs constitutes an application for
695-18 medical assistance.

695-19 (b) The executive commissioner [~~department~~] shall prescribe
695-20 application forms for persons who are not recipients of benefits
695-21 under Chapter 31 [~~of this code~~] or supplemental security income
695-22 from the federal government and shall adopt rules for processing
695-23 the applications.

695-24 (c) The commission [~~department~~] shall inform applicants for
695-25 nursing facility [~~home~~] care of any community services which might
695-26 be available under the community care for the aged and disabled
695-27 program.

695-28 (d) The executive commissioner [~~department~~] shall adopt an
695-29 application form and procedures for a request for medical
695-30 assistance provided to a child under 19 years of age. To the extent
695-31 allowed by federal law and except as otherwise provided by this
695-32 section, the application form and procedures must be the same as the
695-33 form and procedures adopted under Section [62.103](#), Health and Safety
695-34 Code. The executive commissioner [~~department~~] shall coordinate the
695-35 form and procedures adopted under this subsection with the form and
695-36 procedures adopted under Section [62.103](#), Health and Safety Code, to
695-37 ensure that there is a single consolidated application for a child
695-38 under 19 years of age to seek medical assistance or to request
695-39 coverage under the state child health plan under Chapter 62, Health
695-40 and Safety Code.

695-41 (e) The executive commissioner [~~department~~] shall permit an
695-42 application requesting medical assistance for a child under 19
695-43 years of age to be conducted by mail instead of through a personal
695-44 appearance at an [~~a department~~] office, unless the executive
695-45 commissioner [~~department~~] determines that the information needed
695-46 to verify eligibility cannot be obtained in that manner. The
695-47 executive commissioner [~~department~~] by rule may develop procedures
695-48 requiring an application for a child described by this subsection
695-49 to be conducted through a personal interview with a commission
695-50 [~~department~~] representative only if the executive commissioner
695-51 [~~department~~] determines that information needed to verify
695-52 eligibility cannot be obtained in any other manner.

695-53 (f) The executive commissioner by rule may develop
695-54 procedures by which:

695-55 (1) any office of a health and human services agency
695-56 may accept an application requesting medical assistance for a child
695-57 under 19 years of age; and

695-58 (2) the commission [~~department~~] may contract with
695-59 hospital districts, hospitals, including state-owned teaching
695-60 hospitals, federally qualified health centers, and county health
695-61 departments to accept applications requesting medical assistance
695-62 for a child under 19 years of age.

695-63 SECTION 4.090. Sections [32.0251](#), [32.0255](#), [32.026](#), [32.0261](#),
695-64 and [32.02611](#), Human Resources Code, are amended to read as follows:

695-65 Sec. 32.0251. ELIGIBILITY NOTIFICATION AND REVIEW FOR
695-66 CERTAIN CHILDREN. (a) The executive commissioner [~~department~~]
695-67 shall establish and the commission shall implement procedures under
695-68 which the commission [~~department~~] automatically reviews a child's
695-69 eligibility for medical assistance if:

(1) the child originally establishes eligibility for medical assistance on the basis of receipt of financial assistance under Chapter 31, as provided by Section 32.025(a); and

(2) that receipt of financial assistance under Chapter 31 ceases.

(b) If the review required by this section indicates that the child may be eligible for medical assistance on a basis other than receipt of financial assistance under Chapter 31, the commission [department] may provide for provisional eligibility for medical assistance for the child pending a recertification review. The provisional eligibility period authorized by this subsection may not exceed one month.

(c) In addition to the review required by this section, the commission [department] shall also promote continued medical assistance for a child described by Subsection (a) through:

(1) revising client education and notification policies relating to a child's eligibility for medical assistance; and

(2) providing specific notification of a child's potential eligibility for medical assistance to the child's parent or other caretaker at the time the parent or caretaker is notified of:

review; or

(A) a scheduled eligibility recertification

(B) the termination of financial assistance.

(B) the termination of financial assistance.

Sec. 32.0255. TRANSITIONAL MEDICAL ASSISTANCE. (a) The commission [~~state~~] shall provide transitional medical assistance, in accordance with state rules and federal law, to a person who was receiving financial assistance under Chapter 31 but is no longer eligible to receive the assistance because:

(1) the person's household income has increased; or
(2) the person has exhausted the person's benefits under Section 31.0065.

(b) Except as provided by Section 31.012(c), the commission [state] may provide the medical assistance only until the earlier of:

(1) the end of the applicable period prescribed by Section 31.0065 for the provision of transitional benefits; or
(2) the first anniversary of the date on which the person becomes ineligible for financial assistance because of increased household income.

increased household income.

Sec. 32.026. CERTIFICATION OF ELIGIBILITY AND NEED FOR MEDICAL ASSISTANCE. (a) The executive commissioner [department] shall promulgate rules for determining and certifying a person's eligibility and need for medical assistance.

(b) The executive commissioner [department] shall promulgate rules to provide for determination and certification of presumptive eligibility for any pregnant woman who applies for Medicaid and who meets the basic eligibility requirements under Title XIX of the federal Social Security Act (42 U.S.C. Section 1396 et seq.).

(c) Medical assistance payments may not be made on a person's behalf until the person's eligibility and need for medical assistance have been certified in accordance with commission [~~the department's~~] rules.

(d) In adopting rules under this section, the executive commissioner [department] shall ensure, to the extent allowed by federal law, that documentation and verification procedures used in determining and certifying the eligibility and need for medical assistance of a child under 19 years of age, including the documentation and verification procedures used to evaluate the assets and resources of the child, the child's parents, or the child's other caretaker for that purpose, if applicable, are the same as the documentation and verification procedures used to determine and certify a child's eligibility for coverage under Chapter 62, Health and Safety Code, except that the documentation and verification procedures adopted in accordance with this subsection may not be more stringent than the documentation and verification procedures existing on January 1, 2001, for

697-1 determination and certification of a child's eligibility for
 697-2 coverage under Chapter 62, Health and Safety Code.

697-3 (d-1) In adopting rules under this section, the executive
 697-4 commissioner [~~of the Health and Human Services Commission~~] shall,
 697-5 to the extent allowed by federal law, develop and implement an
 697-6 expedited process for determining eligibility for and enrollment in
 697-7 the medical assistance program for an active duty member of the
 697-8 United States armed forces, reserves, or National Guard or of the
 697-9 state military forces, or the spouse or dependent of that person.

697-10 (e) The executive commissioner [~~department~~] shall permit a
 697-11 recertification review of the eligibility and need for medical
 697-12 assistance of a child under 19 years of age to be conducted by
 697-13 telephone or mail instead of through a personal appearance at an [~~a~~
 697-14 department] office, unless the commission [~~department~~] determines
 697-15 that the information needed to verify eligibility cannot be
 697-16 obtained in that manner. The executive commissioner [~~department~~]
 697-17 by rule may develop procedures to determine whether there is a need
 697-18 for a recertification review of a child described by this
 697-19 subsection to be conducted through a personal interview with a
 697-20 commission [~~department~~] representative. Procedures developed
 697-21 under this subsection shall be based on objective, risk-based
 697-22 factors and conditions and shall focus on a targeted group of
 697-23 recertification reviews for which there is a high probability that
 697-24 eligibility will not be recertified.

697-25 (f) In adopting rules under this section, the executive
 697-26 commissioner [~~department~~] shall ensure, to the extent allowed by
 697-27 federal law, that forms and procedures used in conducting a
 697-28 recertification review of the eligibility and need for medical
 697-29 assistance of a child under 19 years of age, including
 697-30 documentation and verification procedures, are the same as the
 697-31 forms and procedures used to determine and certify a child's
 697-32 renewal of coverage under Chapter 62, Health and Safety Code.

697-33 (g) Notwithstanding any other provision of this code, the
 697-34 commission [~~department~~] may use information obtained from a third
 697-35 party to verify the assets and resources of a person for purposes of
 697-36 determining the person's eligibility and need for medical
 697-37 assistance to the extent that verification is applicable under
 697-38 federal law. Third-party information includes information
 697-39 obtained from:

- 697-40 (1) a consumer reporting agency, as defined by Section
 20.01, Business & Commerce Code;
- 697-41 (2) an appraisal district; or
- 697-42 (3) the Texas Department of Motor Vehicles vehicle
 697-43 registration record database.

697-44 Sec. 32.0261. CONTINUOUS ELIGIBILITY. The executive
 697-45 commissioner [~~department~~] shall adopt rules in accordance with 42
 697-46 U.S.C. Section 1396a(e)(12), as amended, to provide for a period of
 697-47 continuous eligibility for a child under 19 years of age who is
 697-48 determined to be eligible for medical assistance under this
 697-49 chapter. The rules shall provide that the child remains eligible
 697-50 for medical assistance, without additional review by the commission
 697-51 [~~department~~] and regardless of changes in the child's resources or
 697-52 income, until the earlier of:

- 697-53 (1) the end of the six-month period following the date
 on which the child's eligibility was determined; or
- 697-54 (2) the child's 19th birthday.

697-55 Sec. 32.02611. EXCLUSION OF ASSETS IN PREPAID TUITION
 697-56 PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. (a) Except
 697-57 as provided by Subsection (b), in determining eligibility and need
 697-58 for medical assistance, the commission [~~department~~] may not
 697-59 consider as assets or resources, to the extent applicable under
 697-60 federal law, a right to assets held in or a right to receive
 697-61 payments or benefits under:

- 697-62 (1) any fund or plan established under Subchapter G,
 697-63 H, or I, Chapter 54, Education Code, including an interest in a
 697-64 savings trust account, prepaid tuition contract, or related
 697-65 matching account; or

- 697-66 (2) any qualified tuition program of any state that
 697-67 meets the requirements of Section 529, Internal Revenue Code of

698-1 1986.

698-2 (b) In determining eligibility and need for medical
 698-3 assistance for an applicant who may be eligible on the basis of the
 698-4 applicant's eligibility for medical assistance for the aged, blind,
 698-5 or disabled under 42 U.S.C. Section 1396a(a)(10), the commission
 698-6 [~~department~~] may consider as assets or resources, to the extent
 698-7 applicable under federal law, a right to assets held in or a right
 698-8 to receive payments or benefits under any fund, plan, or tuition
 698-9 program described by Subsection (a).

698-10 (c) Notwithstanding Subsection (b), the commission
 698-11 [~~department~~] shall seek a federal waiver authorizing the commission
 698-12 [~~department~~] to exclude, for purposes of determining the
 698-13 eligibility of an applicant described by that subsection and to the
 698-14 extent included under federal law, the right to assets held in or a
 698-15 right to receive payments or benefits under any fund, plan, or
 698-16 tuition program described by Subsection (a) if the fund, plan, or
 698-17 tuition program was established before the 21st birthday of the
 698-18 beneficiary of the fund, plan, or tuition program.

698-19 SECTION 4.091. Sections 32.02613(a), (1), (m), and (o),
 698-20 Human Resources Code, are amended to read as follows:

698-21 (a) For purposes of this section, "long-term care services
 698-22 and support" includes home health care, assisted living, and
 698-23 nursing facility [~~home~~] services.

698-24 (1) The commission [~~department~~] shall educate applicants
 698-25 for long-term care services and support under the medical
 698-26 assistance program about options for life insurance policies,
 698-27 including options that do not allow a life insurance policy to be
 698-28 considered as an asset or resource in determining eligibility for
 698-29 medical assistance.

698-30 (m) The executive commissioner [~~of the Health and Human~~
 698-31 ~~Services Commission~~], in consultation with the commissioner of
 698-32 insurance, shall adopt rules necessary to implement this section.
 698-33 The rules must ensure that:

698-34 (1) proceeds from a life settlement contract are used
 698-35 to reimburse a provider of long-term care services and support or
 698-36 the state to offset the cost of medical assistance long-term care
 698-37 services and support;

698-38 (2) eligibility and need for medical assistance are determined without considering the balance of proceeds from a life
 698-39 settlement contract as provided in this section; and

698-40 (3) payments to a provider of long-term care services
 698-41 and support and applied income payments are made in accordance with
 698-42 this chapter.

698-43 (o) Notwithstanding the provisions of this section, the
 698-44 commission [~~department~~] may not implement a provision of this
 698-45 section if the commission determines that implementation of the
 698-46 provision is not cost-effective or feasible.

698-47 SECTION 4.092. Sections 32.0262 and 32.0263, Human
 698-48 Resources Code, are amended to read as follows:

698-49 Sec. 32.0262. ELIGIBILITY TRANSITION. (a) The executive
 698-50 commissioner [~~department~~] shall develop procedures to ensure that
 698-51 all necessary information regarding a child who will be denied
 698-52 continued medical assistance under this chapter because of an
 698-53 increase in income, assets, or resources but who is eligible for
 698-54 enrollment in the child health plan under Chapter 62, Health and
 698-55 Safety Code, is promptly transmitted to the child health plan in
 698-56 accordance with the standards established under Section 62.104(d),
 698-57 Health and Safety Code.

698-58 (b) The executive commissioner [~~department~~] shall develop
 698-59 procedures to ensure that the parent or caretaker of a child who
 698-60 will be denied continued medical assistance under this chapter
 698-61 because of a failure to keep an appointment, including an
 698-62 appointment for recertification of eligibility, a failure to
 698-63 provide information, or for another procedural reason, is promptly
 698-64 contacted and informed of:

698-65 (1) the need to recertify eligibility for continued
 698-66 medical assistance under this chapter; and

698-67 (2) the availability of medical coverage under the
 698-68 child health plan under Chapter 62, Health and Safety Code.

(c) The commission [department] shall develop materials under this section in consultation with [~~the Health and Human Services Commission and~~] the appropriate agencies administering all or part of the child health plan under Chapter 62, Health and Safety Code.

(d) The executive commissioner [department] by rule shall adopt procedures to assist a family whose child loses eligibility for medical assistance under this chapter in making a transition to the child health plan under Chapter 62, Health and Safety Code, with no interruption in coverage.

Sec. 32.0263. HEALTH CARE ORIENTATION. (a) The commission
~~department~~ shall require that the parent or guardian of a child
under 19 years of age who originally establishes eligibility for
medical assistance must:

(1) attend an in-person counseling session with a commission [department] representative not later than the 31st day after the date the child originally establishes eligibility; or

(2) accompany the child to an appointment with a health care provider for a comprehensive health care orientation not later than the 61st day after the date the child originally establishes eligibility.

(b) The executive commissioner by rule shall develop procedures to verify that:

(1) the parent or guardian of the child who originally establishes eligibility complies with the requirement of Subsection (a)(2), if applicable; and

(2) the child is provided a comprehensive health care orientation at the appointment with the health care provider.

SECTION 4.093. Sections 32.027(a), (d), (f), (h), (i), and (l), Human Resources Code, are amended to read as follows:

(a) Except as provided by Subsections (f) and [g] (g), [and (h),] a recipient of medical assistance authorized in this chapter may select any provider authorized by the commission [department] to provide medical assistance.

(d) The commission [department] shall permit a recipient of medical assistance under this chapter to receive services relating to physical therapy from any person authorized to practice physical therapy under Chapter 453, Occupations Code.

(f) The executive commissioner [of the Health and Human Services Commission] by rule may develop a system of selective contracting with health care providers for the provision of nonemergency inpatient hospital services to a recipient of medical assistance under this chapter. In implementing this subsection, the executive commissioner shall:

(1) seek input from consumer representatives and from representatives of hospitals licensed under Chapter 241, Health and Safety Code, and from organizations representing those hospitals; and

(2) ensure that providers selected under the system meet the needs of a recipient of medical assistance under this chapter.

(h) A proposal or bid submitted by a hospital and any work papers, cost reports, or other financial data used to prepare the proposal or bid shall be confidential and not subject to required disclosure by the commission [department] or the hospital under any other statute until the executed contracts have been awarded.

(i) In its establishment of provider criteria for hospitals, home health providers, or hospice providers, the commission [department] shall accept licensure by the Department of Aging and Disability Services or the Department of State Health Services, as appropriate, [Texas Department of Health] or certification by the Medicare program, Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.).

(1) Subject to appropriations, the commission [department] shall assure that a recipient of medical assistance under this chapter may select a licensed psychologist, a licensed marriage and family therapist, as defined by Section 502.002, Occupations Code, a licensed professional counselor, as defined by Section 503.002, Occupations Code, or a licensed master social worker, as defined by

700-1 Section 505.002, Occupations Code, to perform any health care
700-2 service or procedure covered under the medical assistance program
700-3 if the selected person is authorized by law to perform the service
700-4 or procedure. This subsection shall be liberally construed.

700-5 SECTION 4.094. Section 32.027(j), Human Resources Code, as
700-6 added by Chapter 812 (H.B. 803), Acts of the 77th Legislature,
700-7 Regular Session, 2001, is amended to read as follows:

700-8 (j) The commission [department] shall assure that a
700-9 recipient of medical assistance under this chapter may select a
700-10 nurse first assistant, as defined by Section 301.354 [301.1525],
700-11 Occupations Code, to perform any health care service or procedure
700-12 covered under the medical assistance program if:

700-13 (1) the selected nurse first assistant is authorized
700-14 by law to perform the service or procedure; and

700-15 (2) the physician requests that the service or
700-16 procedure be performed by the nurse first assistant.

700-17 SECTION 4.095. Subsection (j), Section 32.027, Human
700-18 Resources Code, as added by Chapter 1014 (H.B. 1183), Acts of the
700-19 77th Legislature, Regular Session, 2001, is redesignated as
700-20 Subsection (k), Section 32.027, Human Resources Code, and amended
700-21 to read as follows:

700-22 (k) [j] The commission [department] shall assure that a
700-23 recipient of medical assistance under this chapter may select a
700-24 surgical assistant licensed under Chapter 206, Occupations Code, to
700-25 perform any health care service or procedure covered under the
700-26 medical assistance program if:

700-27 (1) the selected surgical assistant is authorized by
700-28 law to perform the service or procedure; and

700-29 (2) the physician requests that the service or
700-30 procedure be performed by the surgical assistant.

700-31 SECTION 4.096. Sections 32.028(a), (d), (e), (f), (g), (h),
700-32 (i), (j), (l), and (n), Human Resources Code, are amended to read as
700-33 follows:

700-34 (a) The executive commissioner [department] shall adopt
700-35 reasonable rules and standards governing the determination of fees,
700-36 charges, and rates for medical assistance payments.

700-37 (d) The executive commissioner [department] in the [its]
700-38 adoption of reasonable rules and standards governing the
700-39 determination of rates paid for inpatient hospital services on a
700-40 prospective payment basis shall:

700-41 (1) assure that the payment rates are reasonable and
700-42 adequate to meet the costs incurred by the hospital in rendering
700-43 services to Medicaid recipients;

700-44 (2) assure that the prospective payment methodology
700-45 for hospital services sets the hospital-specific standardized
700-46 amount at a minimum level of \$1,600; and

700-47 (3) assure that the adjustment in payment rates for
700-48 hospital services furnished by disproportionate share hospitals
700-49 takes into account the essential role of rural hospitals in
700-50 providing access to hospital services to medically indigent persons
700-51 in rural areas of the state.

700-52 (e) The executive commissioner [department] in the [its]
700-53 adoption of reasonable rules and standards governing the
700-54 determination of rates paid for services provided by a federally
700-55 qualified health center, as defined by 42 U.S.C. Section
700-56 1396d(1)(B), shall assure that a center is reimbursed for 100
700-57 percent of reasonable costs incurred by the center in rendering
700-58 services to Medicaid recipients.

700-59 (f) The executive commissioner [department] in the [its]
700-60 adoption of reasonable rules and standards governing the
700-61 determination of rates paid for services provided by a rural health
700-62 clinic, as defined by 42 U.S.C. Section 1396d(1)(1), shall assure
700-63 that a clinic is reimbursed for 100 percent of reasonable costs
700-64 incurred by the clinic in rendering services to Medicaid
700-65 recipients.

700-66 (g) Subject to Subsection (i), the executive commissioner
700-67 [~~Health and Human Services Commission~~] shall ensure that the rules
700-68 governing the determination of rates paid for nursing facility
700-69 [~~home~~] services improve the quality of care by:

(1) providing a program offering incentives for increasing direct care staff and direct care wages and benefits, but only to the extent that appropriated funds are available after money is allocated to base rate reimbursements as determined by the commission's [Health and Human Services Commission's] nursing facility rate setting methodologies; and

(2) if appropriated funds are available after money is allocated for payment of incentive-based rates under Subdivision (1), providing incentives that incorporate the use of a quality of care index, a customer satisfaction index, and a resolved complaints index developed by the commission.

(h) The executive commissioner [Health and Human Services Commission] shall ensure that the rules governing the determination of rates paid for nursing facility [home] services provide for the rate component derived from reported liability insurance costs to be paid only to those facilities [homes] that purchase liability insurance acceptable to the commission.

(i) The executive commissioner [Health and Human Services Commission] shall ensure that rules governing the incentives program described by Subsection (g)(1):

(1) provide that participation in the program by a nursing facility [home] is voluntary;

(2) do not impose on a nursing facility [home] not participating in the program a minimum spending requirement for direct care staff wages and benefits;

(3) do not set a base rate for a nursing facility [home] participating in the program that is more than the base rate for a nursing facility [home] not participating in the program; and

(j) The executive commissioner [Health and Human Services Commission] shall adopt rules governing the determination of the

~~Commission~~ shall adopt rules governing the determination of the amount of reimbursement or credit for restocking drugs under Section 562.1085, Occupations Code, that recognize the costs of processing the drugs, including the cost of:

(1) reporting the drugs' prescription number and date

- (1) reporting the drug's prescription number and date of original issue;
- (2) verifying whether the drug's expiration date or the drug's recommended shelf life exceeds 120 days;
- (3) determining the source of payment; and
- (4) preparing credit records.

(1) The executive commissioner [commission] shall establish a task force to develop the rules necessary to implement Subsections (j) and (k). The task force must include representatives of nursing facilities and pharmacists.

(n) The executive commissioner [~~commission~~] shall ensure that rules governing the determination of rates paid for nursing facility [~~home~~] services provide for the reporting of all revenue and costs, without regard to whether a cost is an allowable cost for reimbursement under the medical assistance program, except:

(1) as provided by Subsection (b); and

(1) as provided by Subsection (h); and
(2) a penalty imposed under this chapter or Chapter 242, Health and Safety Code.

SECTION 4.097. Sections 32.0281(a), (b), (c), and (e), Human Resources Code, are amended to read as follows:

(a) The executive commissioner [department] shall by rule describe the process used to determine payment rates for medical assistance and shall notify providers, consumers, the Legislative Budget Board, and the Governor's Office of Budget, Planning, and Policy [governor's office for budget and planning] of that process.

(b) The executive commissioner [department] shall adopt rules relating to payment rates that include:

- (1) a description of the process used to determine payment rates;
- (2) a description of each cost of living index used in calculating inflation rates and the procedure for determining the level of inflation used in the executive commissioner's [department's] calculations.

(3) the criteria for desk audits;
 (4) the procedure for notifying providers of exclusions and adjustments to reported expenses, if notification is requested; and

(5) a method of adjusting rates if new legislation, regulations, or economic factors affect costs.

(c) The commission [department] shall include in the Title XIX State Medicaid Plan submitted to the federal government for approval the procedures for making available to the public the data and methodology used in establishing payment rates.

(e) An interested party may appeal an action taken by the commission [department] under this section, and an appeal of such action shall be governed by the procedures for a contested case hearing under Chapter 2001, Government Code. The filing of an appeal under this section shall not stay the implementation of payment rates adopted by the executive commissioner [department] in accordance with commission [its] rules.

SECTION 4.098. Section 32.0282, Human Resources Code, is amended to read as follows:

Sec. 32.0282. PUBLIC HEARING ON RATES. (a) The commission [department] shall hold a public hearing to allow interested persons to present comments relating to proposed payment rates for medical assistance.

(b) The commission [department] shall provide notice of each hearing to the public.

SECTION 4.099. Section 32.0284(a), Human Resources Code, is amended to read as follows:

(a) In this section, "supplemental" [+]
 [(1)] "Commission" means the Health and Human Services Commission.

[(2)] "Supplemental" hospital payment program" means:
 (1) [(A)] the disproportionate share hospitals supplemental payment program administered according to 42 U.S.C. Section 1396r-4; and

(2) [(B)] the uncompensated care payment program established under the Texas Health Care Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315).

SECTION 4.100. Section 32.029, Human Resources Code, is amended to read as follows:

Sec. 32.029. METHODS OF PAYMENT. (a) The commission [department] may prescribe a method of payment for medical assistance claims by establishing a direct vendor payment program that is administered by the commission [department], or by an insurance plan, a hospital or medical service plan, or any other health service plan authorized to do business in the state, or by a combination of those plans.

(b) The commission [department] may use any fiscal intermediary, method of payment, or combination of methods it finds most satisfactory and economical. The commission [department] may make whatever changes it finds necessary from time to time to administer the program in an economical and equitable manner consistent with simplicity of administration and the best interest of the recipients of medical assistance.

(c) If the commission [department] elects to make direct vendor payments, the payments shall be made by vouchers and warrants drawn by the comptroller on the proper account. The commission [department] shall furnish the comptroller with a list of those vendors entitled to payments and the amounts to which each is entitled. When the warrants are drawn, they must be delivered to the commission [department], which shall supervise the delivery to vendors.

(d) If at any time state funds are not available to fully pay all claims for medical assistance, the executive commissioner [board] shall prorate the claims.

(e) The commission [department] or its designee must notify providers of health care services in clear and concise language of the status of their claims on any claim not paid or denied within 30 days of receipt by the payor.

703-1 SECTION 4.101. Sections 32.0291(a) and (b), Human Resources
 703-2 Code, are amended to read as follows:

703-3 (a) Notwithstanding any other law, the commission
 703-4 [~~department~~] may:

703-5 (1) perform a prepayment review of a claim for
 703-6 reimbursement under the medical assistance program to determine
 703-7 whether the claim involves fraud or abuse; and

703-8 (2) as necessary to perform that review, withhold
 703-9 payment of the claim for not more than five working days without
 703-10 notice to the person submitting the claim.

703-11 (b) Subject to Section 531.102, Government Code, and
 703-12 notwithstanding any other law, the commission [~~department~~] may
 703-13 impose a payment hold on future claims submitted by a provider.

703-14 SECTION 4.102. Sections 32.031(a), (b), (d), and (e), Human
 703-15 Resources Code, are amended to read as follows:

703-16 (a) The commission [~~department~~] may accept federal funds
 703-17 for the support of the medical assistance program and may expend the
 703-18 funds in the manner prescribed by this chapter or other laws. The
 703-19 expenditures must be made in accordance with appropriate agreements
 703-20 between the state and the federal government.

703-21 (b) The commission [~~department~~] may administer and expend
 703-22 state funds appropriated for the program in accordance with
 703-23 commission [~~its~~] rules and the provisions of this chapter.

703-24 (d) The executive commissioner [~~board~~] is empowered and
 703-25 authorized to pursue the use of local funds as part of the state
 703-26 share under the Medicaid program as provided by federal law and
 703-27 regulation.

703-28 (e) Public hospitals, including hospitals owned, operated,
 703-29 or leased by a governmental entity, including a municipality,
 703-30 county, hospital district, or this state, and specifically
 703-31 including a state teaching hospital, may transfer funds to the
 703-32 commission [~~department~~] for use as the state share under the
 703-33 Medicaid disproportionate share program.

703-34 SECTION 4.103. Section 32.0311, Human Resources Code, is
 703-35 amended to read as follows:

703-36 Sec. 32.0311. DRUG REIMBURSEMENT UNDER CERTAIN PROGRAMS.
 703-37 The commission [~~department~~] shall require a recipient of medical
 703-38 assistance to exhaust drug benefits available under the medical
 703-39 assistance program before reimbursing the recipient, pharmacist,
 703-40 or other health care provider for drugs purchased by or on behalf of
 703-41 the recipient under the Kidney Health Care Program or the Children
 703-42 with Special Health Care Needs [~~Chronically Ill and Disabled~~
 703-43 Children's] Services Program.

703-44 SECTION 4.104. Section 32.0312, Human Resources Code, is
 703-45 amended to read as follows:

703-46 Sec. 32.0312. REIMBURSEMENT FOR SERVICES ASSOCIATED WITH
 703-47 PREVENTABLE ADVERSE EVENTS. The executive commissioner [~~of the~~
 703-48 ~~Health and Human Services Commission~~] shall adopt rules regarding
 703-49 the denial or reduction of reimbursement under the medical
 703-50 assistance program for preventable adverse events that occur in a
 703-51 hospital setting. In adopting the rules, the executive
 703-52 commissioner:

703-53 (1) shall ensure that the commission imposes the same
 703-54 reimbursement denials or reductions for preventable adverse events
 703-55 as the Medicare program imposes for the same types of health
 703-56 care-associated adverse conditions and the same types of health
 703-57 care providers and facilities under a policy adopted by the federal
 703-58 Centers for Medicare and Medicaid Services;

703-59 (2) shall consult an advisory committee on health care
 703-60 quality, if established by the executive commissioner, to obtain
 703-61 the advice of that committee regarding denial or reduction of
 703-62 reimbursement claims for any other preventable adverse events that
 703-63 cause patient death or serious disability in health care settings,
 703-64 including events on the list of adverse events identified by the
 703-65 National Quality Forum; and

703-66 (3) may allow the commission to impose reimbursement
 703-67 denials or reductions for preventable adverse events described by
 703-68 Subdivision (2).

703-69 SECTION 4.105. Sections 32.0313 and 32.0314, Human

704-1 Resources Code, are amended to read as follows:

704-2 Sec. 32.0313. INDUCED DELIVERIES OR CESAREAN SECTIONS
 704-3 BEFORE 39TH WEEK. (a) The commission [department] shall achieve
 704-4 cost savings with improved outcomes by adopting and implementing
 704-5 quality initiatives that are evidence-based, tested, and fully
 704-6 consistent with established standards of clinical care and that are
 704-7 designed to reduce the number of elective or nonmedically indicated
 704-8 induced deliveries or cesarean sections performed at a hospital on
 704-9 a medical assistance recipient before the 39th week of gestation.

704-10 (b) The commission [department] shall coordinate with
 704-11 physicians, hospitals, managed care organizations, and the
 704-12 commission's [department's] billing contractor for the medical
 704-13 assistance program to develop a process for collecting information
 704-14 regarding the number of induced deliveries and cesarean sections
 704-15 described by Subsection (a) that occur during prescribed periods.

704-16 Sec. 32.0314. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT
 704-17 AND SUPPLIES. The executive commissioner [~~of the Health and Human~~
 704-18 Services Commission] shall adopt rules requiring the electronic
 704-19 submission of any claim for reimbursement for durable medical
 704-20 equipment and supplies under the medical assistance program.

704-21 SECTION 4.106. Sections 32.0315 and 32.032, Human Resources
 704-22 Code, are amended to read as follows:

704-23 Sec. 32.0315. FUNDS FOR GRADUATE MEDICAL EDUCATION. (a)
 704-24 Subject to appropriated state funds, the executive commissioner
 704-25 [~~department~~] shall establish procedures and formulas for the
 704-26 allocation of federal medical assistance funds that are directed to
 704-27 be used to support graduate medical education in connection with
 704-28 the medical assistance program.

704-29 (b) The executive commissioner [~~department~~] shall allocate
 704-30 the funds in the manner the executive commissioner [~~department~~]
 704-31 determines most effectively and equitably achieves the purposes for
 704-32 which those federal funds are received, consistent with the needs
 704-33 of this state for graduate medical education and the training of
 704-34 resident physicians in accredited residency programs in
 704-35 appropriate fields and specialties, taking into account other money
 704-36 available to support graduate medical education. In determining
 704-37 the needs of this state for graduate medical education, the
 704-38 executive commissioner [~~department~~] shall give primary emphasis to
 704-39 graduate medical education in primary care specialties and shall
 704-40 also recognize the growth in residency training slots since 1997 in
 704-41 the Lower Rio Grande Valley and other health care shortage areas of
 704-42 this state.

704-43 (c) The executive commissioner [~~department~~] shall consult
 704-44 with the Texas Higher Education Coordinating Board before adopting
 704-45 or revising a formula under this section. At the request of the
 704-46 executive commissioner [~~department~~], the coordinating board shall
 704-47 provide the executive commissioner [~~department~~] with any
 704-48 information the board possesses to assist the executive
 704-49 commissioner [~~department~~] in administering this section.

704-50 Sec. 32.032. PREVENTION AND DETECTION OF FRAUD AND ABUSE.
 704-51 The executive commissioner [~~department~~] shall adopt reasonable
 704-52 rules for minimizing the opportunity for fraud and abuse, for
 704-53 establishing and maintaining methods for detecting and identifying
 704-54 situations in which a question of fraud or abuse in the program may
 704-55 exist, and for referring cases where fraud or abuse appears to exist
 704-56 to the appropriate law enforcement agencies for prosecution.

704-57 SECTION 4.107. Sections 32.0321(a), (b), (c), and (d),
 704-58 Human Resources Code, are amended to read as follows:

704-59 (a) The executive commissioner [~~department~~] by rule may
 704-60 require each provider of medical assistance in a provider type that
 704-61 has demonstrated significant potential for fraud or abuse to file
 704-62 with the commission [~~department~~] a surety bond in a reasonable
 704-63 amount. The executive commissioner [~~department~~] by rule shall
 704-64 require a provider of medical assistance to file with the
 704-65 commission [~~department~~] a surety bond in a reasonable amount if the
 704-66 commission [~~department~~] identifies a pattern of suspected fraud or
 704-67 abuse involving criminal conduct relating to the provider's
 704-68 services under the medical assistance program that indicates the
 704-69 need for protection against potential future acts of fraud or

705-1 abuse.

705-2 (b) The bond under Subsection (a) must be payable to the
 705-3 commission [department] to compensate the commission [department]
 705-4 for damages resulting from or penalties or fines imposed in
 705-5 connection with an act of fraud or abuse committed by the provider
 705-6 under the medical assistance program.

705-7 (c) Subject to Subsection (d) or (e), the executive
 705-8 commissioner [department] by rule may require each provider of
 705-9 medical assistance that establishes a resident's trust fund account
 705-10 to post a surety bond to secure the account. The bond must be
 705-11 payable to the commission [department] to compensate residents of
 705-12 the bonded provider for trust funds that are lost, stolen, or
 705-13 otherwise unaccounted for if the provider does not repay any
 705-14 deficiency in a resident's trust fund account to the person legally
 705-15 entitled to receive the funds.

705-16 (d) The executive commissioner [department] may not require
 705-17 the amount of a surety bond posted for a single facility provider
 705-18 under Subsection (c) to exceed the average of the total average
 705-19 monthly balance of all the provider's resident trust fund accounts
 705-20 for the 12-month period preceding the bond issuance or renewal
 705-21 date.

705-22 SECTION 4.108. Section 32.0322, Human Resources Code, is
 705-23 amended to read as follows:

705-24 Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION;
 705-25 ENROLLMENT OF PROVIDERS. (a) The commission [department] or the
 705-26 office of inspector general established under Chapter 531,
 705-27 Government Code, may obtain from any law enforcement or criminal
 705-28 justice agency the criminal history record information that relates
 705-29 to a provider under the medical assistance program or a person
 705-30 applying to enroll as a provider under the medical assistance
 705-31 program.

705-32 (a-1) The criminal history record information the
 705-33 commission [department] and the office of inspector general are
 705-34 authorized to obtain under Subsection (a) includes criminal history
 705-35 record information relating to:

705-36 (1) a person with a direct or indirect ownership or
 705-37 control interest, as defined by 42 C.F.R. Section 455.101, in a
 705-38 provider of five percent or more; and

705-39 (2) a person whose information is required to be
 705-40 disclosed in accordance with 42 C.F.R. Part 1001.

705-41 (b) Subject to Subsections (b-1) and (e), the executive
 705-42 commissioner [of the Health and Human Services Commission] by rule
 705-43 shall establish criteria for the commission [department] or the
 705-44 commission's office of inspector general to suspend a provider's
 705-45 billing privileges under the medical assistance program, revoke a
 705-46 provider's enrollment under the program, or deny a person's
 705-47 application to enroll as a provider under the program based on:

705-48 (1) the results of a criminal history check;
 705-49 (2) any exclusion or debarment of the provider from
 705-50 participation in a state or federally funded health care program;

705-51 (3) the provider's failure to bill for medical
 705-52 assistance or refer clients for medical assistance within a
 705-53 12-month period; or

705-54 (4) any of the provider screening or enrollment
 705-55 provisions contained in 42 C.F.R. Part 455, Subpart E.

705-56 (b-1) In adopting rules under this section, the executive
 705-57 commissioner [of the Health and Human Services Commission] shall
 705-58 require revocation of a provider's enrollment or denial of a
 705-59 person's application for enrollment as a provider under the medical
 705-60 assistance program if the person has been excluded or debarred from
 705-61 participation in a state or federally funded health care program as
 705-62 a result of:

705-63 (1) a criminal conviction or finding of civil or
 705-64 administrative liability for committing a fraudulent act, theft,
 705-65 embezzlement, or other financial misconduct under a state or
 705-66 federally funded health care program; or

705-67 (2) a criminal conviction for committing an act under
 705-68 a state or federally funded health care program that caused bodily
 705-69 injury to:

- (A) a person who is 65 years of age or older;
- (B) a person with a disability; or
- (C) a person under 18 years of age.

(c) As a condition of eligibility to participate as a provider in the medical assistance program, the executive commissioner [of the Health and Human Services Commission] by rule shall:

(1) require a provider or a person applying to enroll as a provider to disclose:

(A) all persons described by Subsection (a-1)(1);

(B) any managing employees of the provider; and

(C) an agent or subcontractor of the provider if:

(i) the provider or a person described by Subsection (a-1)(1) has a direct or indirect ownership interest of at least five percent in the agent or subcontractor; or

(ii) the provider engages in a business transaction with the agent or subcontractor that meets the criteria

(2) require disclosure by persons applying for enrollment as providers and provide for screening of applicants for enrollment in conformity and compliance with the requirements of 42 C.F.R. Part 455, Subparts B and E.

(d) In adopting rules under this section, the executive commissioner [of the Health and Human Services Commission] shall adopt rules as authorized by and in conformity with 42 C.F.R. Section 455.470 for the imposition of a temporary moratorium on enrollment of new providers, or to impose numerical caps or other limits on the enrollment of providers, that the commission [department] or the commission's office of inspector general[, in consultation with the department,] determines have a significant potential for fraud, waste, or abuse.

(e) The commission [department] may reinstate a provider's enrollment under the medical assistance program or grant a person's previously denied application to enroll as a provider, including a person described by Subsection (b-1), if the commission [department] finds:

(1) good cause to determine that it is in the best interest of the medical assistance program; and

(2) the person has not committed an act that would require revocation of a provider's enrollment or denial of a person's application to enroll since the person's enrollment was revoked or application was denied, as appropriate.

(f) The commission [department] must support a determination made under Subsection (e) with written findings of good cause for the determination.

SECTION 4.109. Sections 32.033(b), (d), (e), (f), (g), and (h), Human Resources Code, are amended to read as follows:

(b) A person who applies for or receives medical assistance shall inform the commission [department], at the time of application or at any time during eligibility and receipt of services, of any unsettled tort claim which may affect medical needs and of any private accident or sickness insurance coverage that is or may become available. A recipient shall inform the commission [department] of any injury requiring medical attention that is caused by the act or failure to act of some other person. An applicant or a recipient shall inform the commission [department] as required by this subsection within 60 days of the date the person learns of his or her insurance coverage, tort claim, or potential cause of action. An applicant or [a] recipient who knowingly and intentionally fails to disclose the information required by this subsection commits a Class C misdemeanor.

(d) A separate and distinct cause of action in favor of the state is hereby created, and the commission [department] may, without written consent, take direct civil action in any court of competent jurisdiction. A suit brought under this section need not be ancillary to or dependent upon any other action.

(e) The commission's [department's] right of recovery is limited to the amount of the cost of medical care services paid by

707-1 the commission [department]. Other subrogation rights granted
 707-2 under this section are limited to the cost of the services provided.

707-3 (f) The executive commissioner may waive the commission's
 707-4 [department's] right of recovery in whole or in part when the
 707-5 executive commissioner finds that enforcement would tend to defeat
 707-6 the purpose of public assistance.

707-7 (g) The commission [department] may designate an agent to
 707-8 collect funds the commission [department] has a right to recover
 707-9 from third parties under this section. The commission [department]
 707-10 shall use any funds collected to pay costs of administering the
 707-11 medical assistance program.

707-12 (h) The executive commissioner [department] may adopt rules
 707-13 for the enforcement of the commission's [its] right of recovery.

707-14 SECTION 4.110. Sections 32.034(a) and (b), Human Resources
 707-15 Code, are amended to read as follows:

707-16 (a) The commission [department] has authority to adjudicate
 707-17 claims of contested cases in accordance with Chapter 2001,
 707-18 Government Code. When the commission [department] intends to
 707-19 cancel its contract or impose monetary penalties under a contract
 707-20 with a person providing medical assistance, the commission
 707-21 [department] shall give reasonable notice and an opportunity for
 707-22 hearing if one is requested. The executive commissioner
 707-23 [department] shall adopt rules consistent with Chapter 2001,
 707-24 Government Code, to implement this section, and hearings under this
 707-25 section are contested cases under that act.

707-26 (b) The commission [department] may not terminate a
 707-27 contract during the pendency of a hearing under this section. The
 707-28 commission [department] may withhold payments during the pendency
 707-29 of a hearing, but the commission [department] shall pay the
 707-30 withheld payments and resume contract payments if the final
 707-31 determination is favorable to the contractor. The commission's
 707-32 [department's] authority to withhold payments shall be established
 707-33 by contract.

707-34 SECTION 4.111. Section 32.035, Human Resources Code, is
 707-35 amended to read as follows:

707-36 Sec. 32.035. APPEALS. The provisions of Section 31.034 [~~of this code~~]
 707-37 governing the right of appeal of an applicant for or
 707-38 recipient of financial assistance authorized under Chapter 31 [~~of this code~~]
 707-39 also apply to applicants for medical assistance
 707-40 authorized in this chapter.

707-41 SECTION 4.112. Sections 32.038 and 32.0381, Human Resources
 707-42 Code, are amended to read as follows:

707-43 Sec. 32.038. COLLECTION OF INSURANCE PAYMENTS. (a) The
 707-44 commission [department] may receive directly from an insurance
 707-45 company any payments to which the commission [department] is
 707-46 entitled under Section 1204.153, Insurance Code.

707-47 (b) The executive commissioner [department] shall adopt
 707-48 rules to implement this section, including rules establishing
 707-49 procedures relating to:

707-50 (1) notification to the commission [department] that a
 707-51 child receiving benefits under Chapter 31 or this chapter [Chapter
 707-52 ~~32 of this code~~] is covered by an insurance policy under which the
 707-53 commission [department] is eligible to receive direct payments;

707-54 (2) claims made by the commission [department] to
 707-55 receive payments under Subsection (a) [~~of this section~~];

707-56 (3) notification to the commission [department] of any
 707-57 change in the status of the child or the parent; and

707-58 (4) notification to the insurance company that the
 707-59 commission [department] is to receive payments under Subsection (a)
 707-60 [~~of this section~~].

707-61 (c) Commission [Department] rules relating to the notice
 707-62 prescribed by Subsection (b)(4) [~~of this section~~] must require the
 707-63 notice to be attached to the claim for insurance benefits when the
 707-64 claim is first submitted to the insurance company.

707-65 Sec. 32.0381. ICF-IID [~~ICF-MR~~] PAYMENT RATES. (a) The
 707-66 executive commissioner [board] shall set the payment rates for
 707-67 ICF-IID [~~ICF-MR~~] facilities at least annually.

707-68 (b) The executive commissioner [board] shall adopt by rule
 707-69 the methodology used by the executive commissioner [department] in

708-1 setting payment rates for ICF-IID [~~ICF-MR~~] facilities. The
 708-2 methodology shall clearly define the procedures and methods used in
 708-3 projecting the costs of economic and efficient facilities and the
 708-4 procedures and methods used in setting payment rates that
 708-5 reasonably reimburse facilities at each level of care and in each
 708-6 class of providers, including size categories.

708-7 (c) The executive commissioner [~~board~~] shall ensure that
 708-8 the methodology used in projecting costs and setting payment rates
 708-9 and its implementation is the same for state-operated ICF-IID
 708-10 [~~ICF-MR~~] facilities and for private ICF-IID [~~ICF-MR~~] facilities.
 708-11 Methods used to project costs, including those involving the
 708-12 handling of gifts, grants, and donations, upper limits on facility
 708-13 and administrative costs, occupancy adjustments, and in assessing
 708-14 the cost impact of new or revised requirements, must be the same for
 708-15 state-operated and private facilities.

708-16 (d) To the extent allowed by federal law, any differences in
 708-17 methodology or its implementation between state-operated
 708-18 facilities and private facilities must be stated explicitly in the
 708-19 rule, must be related to actual differences in the nature of the
 708-20 expenses incurred by the class of providers, including size
 708-21 categories, and must not favor state-operated facilities in setting
 708-22 payment rates. When the proposed rule or amendments to the rule are
 708-23 published for public comment, the executive commissioner must
 708-24 certify that any differences in methodology between classes of
 708-25 providers, including size categories, are necessitated by cost
 708-26 structure and will not favor state-operated facilities in the
 708-27 setting of payment rates.

708-28 SECTION 4.113. Section 32.039(a)(1), Human Resources Code,
 708-29 is amended to read as follows:

708-30 (1) "Claim" means an application for payment of health
 708-31 care services under Title XIX of the federal Social Security Act (42
 708-32 U.S.C. Section 1396 et seq.) that is submitted by a person who is
 708-33 under a contract or provider agreement with the commission
 708-34 [~~department~~].

708-35 SECTION 4.114. Sections 32.039(b), (b-1), (c), (d), (e),
 708-36 (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r),
 708-37 (u), (v), (w), and (x), Human Resources Code, are amended to read as
 708-38 follows:

708-39 (b) A person commits a violation if the person:

708-40 (1) presents or causes to be presented to the
 708-41 commission [~~department~~] a claim that contains a statement or
 708-42 representation the person knows or should know to be false;

708-43 (1-a) engages in conduct that violates Section
 708-44 102.001, Occupations Code;

708-45 (1-b) solicits or receives, directly or indirectly,
 708-46 overtly or covertly any remuneration, including any kickback,
 708-47 bribe, or rebate, in cash or in kind for referring an individual to
 708-48 a person for the furnishing of, or for arranging the furnishing of,
 708-49 any item or service for which payment may be made, in whole or in
 708-50 part, under the medical assistance program, provided that this
 708-51 subdivision does not prohibit the referral of a patient to another
 708-52 practitioner within a multispecialty group or university medical
 708-53 services research and development plan (practice plan) for
 708-54 medically necessary services;

708-55 (1-c) solicits or receives, directly or indirectly,
 708-56 overtly or covertly any remuneration, including any kickback,
 708-57 bribe, or rebate, in cash or in kind for purchasing, leasing, or
 708-58 ordering, or arranging for or recommending the purchasing, leasing,
 708-59 or ordering of, any good, facility, service, or item for which
 708-60 payment may be made, in whole or in part, under the medical
 708-61 assistance program;

708-62 (1-d) offers or pays, directly or indirectly, overtly
 708-63 or covertly any remuneration, including any kickback, bribe, or
 708-64 rebate, in cash or in kind to induce a person to refer an individual
 708-65 to another person for the furnishing of, or for arranging the
 708-66 furnishing of, any item or service for which payment may be made, in
 708-67 whole or in part, under the medical assistance program, provided
 708-68 that this subdivision does not prohibit the referral of a patient to
 708-69 another practitioner within a multispecialty group or university

709-1 medical services research and development plan (practice plan) for
 709-2 medically necessary services;

709-3 (1-e) offers or pays, directly or indirectly, overtly
 709-4 or covertly any remuneration, including any kickback, bribe, or
 709-5 rebate, in cash or in kind to induce a person to purchase, lease, or
 709-6 order, or arrange for or recommend the purchase, lease, or order of,
 709-7 any good, facility, service, or item for which payment may be made,
 709-8 in whole or in part, under the medical assistance program;

709-9 (1-f) provides, offers, or receives an inducement in a
 709-10 manner or for a purpose not otherwise prohibited by this section or
 709-11 Section 102.001, Occupations Code, to or from a person, including a
 709-12 recipient, provider, employee or agent of a provider, third-party
 709-13 vendor, or public servant, for the purpose of influencing or being
 709-14 influenced in a decision regarding:

709-15 (A) selection of a provider or receipt of a good
 709-16 or service under the medical assistance program;

709-17 (B) the use of goods or services provided under
 709-18 the medical assistance program; or

709-19 (C) the inclusion or exclusion of goods or
 709-20 services available under the medical assistance program;

709-21 (2) is a managed care organization that contracts with
 709-22 the commission [department] to provide or arrange to provide health
 709-23 care benefits or services to individuals eligible for medical
 709-24 assistance and:

709-25 (A) fails to provide to an individual a health
 709-26 care benefit or service that the organization is required to
 709-27 provide under the contract with the commission [department];

709-28 (B) fails to provide to the commission
 709-29 [department] information required to be provided by law, commission
 709-30 [department] rule, or contractual provision;

709-31 (C) engages in a fraudulent activity in
 709-32 connection with the enrollment in the organization's managed care
 709-33 plan of an individual eligible for medical assistance or in
 709-34 connection with marketing the organization's services to an
 709-35 individual eligible for medical assistance; or

709-36 (D) engages in actions that indicate a pattern
 709-37 of:

709-38 (i) wrongful denial of payment for a health
 709-39 care benefit or service that the organization is required to
 709-40 provide under the contract with the commission [department]; or

709-41 (ii) wrongful delay of at least 45 days or a
 709-42 longer period specified in the contract with the commission
 709-43 [department], not to exceed 60 days, in making payment for a health
 709-44 care benefit or service that the organization is required to
 709-45 provide under the contract with the commission [department]; or

709-46 (3) fails to maintain documentation to support a claim
 709-47 for payment in accordance with the requirements specified by
 709-48 commission [department] rule or medical assistance program policy
 709-49 or engages in any other conduct that a commission [department] rule
 709-50 has defined as a violation of the medical assistance program.

709-51 (b-1) A person who commits a violation described by
 709-52 Subsection (b)(3) is liable to the commission [department] for
 709-53 either the amount paid in response to the claim for payment or the
 709-54 payment of an administrative penalty in an amount not to exceed \$500
 709-55 for each violation, as determined by the commission [department].

709-56 (c) A person who commits a violation under Subsection (b) is
 709-57 liable to the commission [department] for:

709-58 (1) the amount paid, if any, as a result of the
 709-59 violation and interest on that amount determined at the rate
 709-60 provided by law for legal judgments and accruing from the date on
 709-61 which the payment was made; and

709-62 (2) payment of an administrative penalty of an amount
 709-63 not to exceed twice the amount paid, if any, as a result of the
 709-64 violation, plus an amount:

709-65 (A) not less than \$5,000 or more than \$15,000 for
 709-66 each violation that results in injury to an elderly person, as
 709-67 defined by Section 48.002(a)(1) [48.002(1)], a [disabled] person
 709-68 with a disability, as defined by Section 48.002(a)(8)(A)
 709-69 [48.002(8)(A)], or a person younger than 18 years of age; or

710-1 (B) not more than \$10,000 for each violation that
710-2 does not result in injury to a person described by Paragraph (A).

710-3 (d) Unless the provider submitted information to the
710-4 commission [department] for use in preparing a voucher that the
710-5 provider knew or should have known was false or failed to correct
710-6 information that the provider knew or should have known was false
710-7 when provided an opportunity to do so, this section does not apply
710-8 to a claim based on the voucher if the commission [department]
710-9 calculated and printed the amount of the claim on the voucher and
710-10 then submitted the voucher to the provider for the provider's
710-11 signature. In addition, the provider's signature on the voucher
710-12 does not constitute fraud. The executive commissioner [department]
710-13 shall adopt rules that establish a grace period during which errors
710-14 contained in a voucher prepared by the commission [department] may
710-15 be corrected without penalty to the provider.

710-16 (e) In determining the amount of the penalty to be assessed
710-17 under Subsection (c)(2), the commission [department] shall
710-18 consider:

710-19 (1) the seriousness of the violation;
710-20 (2) whether the person had previously committed a
710-21 violation; and
710-22 (3) the amount necessary to deter the person from
710-23 committing future violations.

710-24 (f) If after an examination of the facts the commission
710-25 [department] concludes that the person committed a violation, the
710-26 commission [department] may issue a preliminary report stating the
710-27 facts on which it based its conclusion, recommending that an
710-28 administrative penalty under this section be imposed and
710-29 recommending the amount of the proposed penalty.

710-30 (g) The commission [department] shall give written notice
710-31 of the report to the person charged with committing the violation.
710-32 The notice must include a brief summary of the facts, a statement of
710-33 the amount of the recommended penalty, and a statement of the
710-34 person's right to an informal review of the alleged violation, the
710-35 amount of the penalty, or both the alleged violation and the amount
710-36 of the penalty.

710-37 (h) Not later than the 10th day after the date on which the
710-38 person charged with committing the violation receives the notice,
710-39 the person may either give the commission [department] written
710-40 consent to the report, including the recommended penalty, or make a
710-41 written request for an informal review by the commission
710-42 [department].

710-43 (i) If the person charged with committing the violation
710-44 consents to the penalty recommended by the commission [department]
710-45 or fails to timely request an informal review, the commission
710-46 [department] shall assess the penalty. The commission [department]
710-47 shall give the person written notice of its action. The person
710-48 shall pay the penalty not later than the 30th day after the date on
710-49 which the person receives the notice.

710-50 (j) If the person charged with committing the violation
710-51 requests an informal review as provided by Subsection (h), the
710-52 commission [department] shall conduct the review. The commission
710-53 [department] shall give the person written notice of the results of
710-54 the review.

710-55 (k) Not later than the 10th day after the date on which the
710-56 person charged with committing the violation receives the notice
710-57 prescribed by Subsection (j), the person may make to the commission
710-58 [department] a written request for a hearing. The hearing must be
710-59 conducted in accordance with Chapter 2001, Government Code.

710-60 (l) If, after informal review, a person who has been ordered
710-61 to pay a penalty fails to request a formal hearing in a timely
710-62 manner, the commission [department] shall assess the penalty. The
710-63 commission [department] shall give the person written notice of its
710-64 action. The person shall pay the penalty not later than the 30th
710-65 day after the date on which the person receives the notice.

710-66 (m) Within 30 days after the date on which the commission's
710-67 [board's] order issued after a hearing under Subsection (k) becomes
710-68 final as provided by Section 2001.144, Government Code, the person
710-69 shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a
or judicial review contesting the occurrence of the
the amount of the penalty, or both the occurrence of the
and the amount of the penalty.

(n) A person who acts under Subsection (m)(3) within the 30-day period may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court an escrow account; or

(B) giving to the court a supersedeas bond that
the court for the amount of the penalty and that is
all judicial review of the commission's
order is final; or

(2) request the court to stay enforcement of the

penalty by:
 (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive commissioner by certified mail.

(o) If the executive commissioner receives a copy of an affidavit under Subsection (n)(2), the executive commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(p) If the person charged does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commission [department] may forward the matter to the attorney general for enforcement of the penalty and interest as provided by law for legal judgments. An action to enforce a penalty order under this section must be initiated in a court of competent jurisdiction in Travis County or in the county in which the violation was committed.

(q) Judicial review of a commission [department] order or review under this section assessing a penalty is under the substantial evidence rule. A suit may be initiated by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(r) If a penalty is reduced or not assessed, the commission [department] shall remit to the person the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the commission [department] under this subsection shall be paid at a rate equal to the rate provided by law for legal judgments and shall be paid for the period beginning on the date the penalty is paid to the commission [department] under this section and ending on the date the penalty is remitted.

(u) Except as provided by Subsection (w), a person found liable for a violation under Subsection (c) that resulted in injury to an elderly person, as defined by Section 48.002(a)(1), a [disabled] person with a disability, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of 10 years. The executive commissioner [department] by rule may provide for a period of ineligibility longer than 10 years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final.

712-1 (v) Except as provided by Subsection (w), a person found
 712-2 liable for a violation under Subsection (c) that did not result in
 712-3 injury to an elderly person, as defined by Section 48.002(a)(1), a
 712-4 [disabled] person with a disability, as defined by Section
 712-5 48.002(a)(8)(A), or a person younger than 18 years of age may not
 712-6 provide or arrange to provide health care services under the
 712-7 medical assistance program for a period of three years. The
 712-8 executive commissioner [department] by rule may provide for a
 712-9 period of ineligibility longer than three years. The period of
 712-10 ineligibility begins on the date on which the determination that
 712-11 the person is liable becomes final.

712-12 (w) The executive commissioner [department] by rule may
 712-13 prescribe criteria under which a person described by Subsection (u)
 712-14 or (v) is not prohibited from providing or arranging to provide
 712-15 health care services under the medical assistance program. The
 712-16 criteria may include consideration of:

- 712-17 (1) the person's knowledge of the violation;
- 712-18 (2) the likelihood that education provided to the
 712-19 person would be sufficient to prevent future violations;
- 712-20 (3) the potential impact on availability of services
 712-21 in the community served by the person; and
- 712-22 (4) any other reasonable factor identified by the
 712-23 executive commissioner [department].

712-24 (x) Subsections (b)(1-b) through (1-f) do not prohibit a
 712-25 person from engaging in:

- 712-26 (1) generally accepted business practices, as
 712-27 determined by commission [department] rule, including:
 - 712-28 (A) conducting a marketing campaign;
 - 712-29 (B) providing token items of minimal value that
 712-30 advertise the person's trade name; and
 - 712-31 (C) providing complimentary refreshments at an
 712-32 informational meeting promoting the person's goods or services;
- 712-33 (2) the provision of a value-added service if the
 712-34 person is a managed care organization; or
- 712-35 (3) other conduct specifically authorized by law,
 712-36 including conduct authorized by federal safe harbor regulations (42
 712-37 C.F.R. Section 1001.952).

712-38 SECTION 4.115. Sections 32.042(b), (b-1), (d), (e), (f),
 712-39 (g), and (i), Human Resources Code, are amended to read as follows:

712-40 (b) The state's Medicaid third-party recovery division
 712-41 shall identify state medical assistance recipients who have
 712-42 third-party health coverage or insurance as provided by this
 712-43 subsection. The commission [department] may:

- 712-44 (1) provide to an insurer Medicaid data tapes that
 712-45 identify medical assistance recipients and request that the insurer
 712-46 identify each enrollee, beneficiary, subscriber, or policyholder
 712-47 of the insurer whose name also appears on the Medicaid data tape; or
- 712-48 (2) request that an insurer provide to the commission
 712-49 [department] identifying information for each enrollee,
 712-50 beneficiary, subscriber, or policyholder of the insurer.

712-51 (b-1) An insurer from which the commission [department]
 712-52 requests information under Subsection (b) shall provide that
 712-53 information, except that the insurer is only required to provide
 712-54 the commission [department] with the information maintained under
 712-55 Subsection (a) by the insurer or made available to the insurer from
 712-56 the plan. A plan administrator is subject to Subsection (b) and
 712-57 shall provide information under that subsection to the extent the
 712-58 information is made available to the plan administrator from the
 712-59 insurer or plan.

712-60 (d) An insurer shall provide the information required under
 712-61 Subsection (b)(1) only if the commission [department] certifies
 712-62 that the identified individuals are applicants for or recipients of
 712-63 services under Medicaid or are legally responsible for an applicant
 712-64 for or recipient of Medicaid services.

712-65 (e) The commission [department] shall enter into an
 712-66 agreement to reimburse an insurer or plan administrator for
 712-67 necessary and reasonable costs incurred in providing information
 712-68 requested under Subsection (b)(1), not to exceed \$5,000 for each
 712-69 data match made under that subdivision. If the commission

[department] makes a data match using information provided under Subsection (b)(2), the commission [department] shall reimburse the insurer or plan administrator for reasonable administrative expenses incurred in providing the information. The reimbursement for information under Subsection (b)(2) may not exceed \$5,000 for initially producing information with respect to a person, or \$200 for each subsequent production of information with respect to the person. The commission [department] may enter into an agreement with an insurer or plan administrator that provides procedures for requesting and providing information under this section. An agreement under this subsection may not be inconsistent with any law relating to the confidentiality or privacy of personal information or medical records. The procedures agreed to under this subsection must state the time and manner the procedures take effect.

(f) Information required to be furnished to the commission [department] under this section is limited to information necessary to determine whether health benefits have been or should have been claimed and paid under a health insurance policy or plan for medical care or services received by an individual for whom Medicaid coverage would otherwise be available.

(g) Information regarding an individual certified to an insurer as an applicant for or recipient of medical assistance may only be used to identify the records or information requested and may not violate the confidentiality of the applicant or recipient. The commission [department] shall establish guidelines not later than the date on which the procedures agreed to under Subsection (e) take effect.

(i) In this section:

(1) "Insurer" means a group hospital service [health services] corporation, a health maintenance organization, a self-funded or self-insured welfare or benefit plan or program to the extent the regulation of the plan or program is not preempted by federal law, and any other entity that provides health coverage in this state through an employer, union, trade association, or other organization or other source.

(2) "Plan administrator" means a third-party administrator, prescription drug payer or administrator, pharmacy benefit manager, or dental payer or administrator.

SECTION 4.116. Sections 32.0421(a) and (c), Human Resources Code, are amended to read as follows:

(a) The commission [department] may impose an administrative penalty on a person who does not comply with a request for information made under Section 32.042(b).

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commission [department] to contest the affidavit as provided by those rules.

SECTION 4.117. Sections 32.0422(a), (j-1), and (k), Human Resources Code, are amended to read as follows:

(a) In this section, "group[+]

[+] "Commission" means the Health and Human Services Commission.

[+] "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

[+] "Group" health benefit plan" means a plan described by Section 1207.001, Insurance Code.

(j-1) An individual described by Subsection (e-1) who enrolls in a group health benefit plan is not ineligible for home and community-based services provided under a Section 1915(c) waiver program or another federal home and community-based services waiver program solely based on the individual's enrollment in the group health benefit plan, and the individual may receive those services if the individual is otherwise eligible for the

714-1 program. The individual is otherwise limited to the health
 714-2 benefits coverage provided under the health benefit plan in which
 714-3 the individual is enrolled, and the individual may not receive any
 714-4 benefits or services under the medical assistance program other
 714-5 than the premium payment as provided by Subsection (f-1) and, if
 714-6 applicable, waiver program services described by this subsection.
 714-7

714-8 (k) The commission may not require or permit an individual
 714-9 who is enrolled in a group health benefit plan under this section to
 714-10 participate in the Medicaid managed care program under Chapter 533,
 714-11 Government Code[, or a Medicaid managed care demonstration project
 714-11 under section 32.041].

714-12 SECTION 4.118. Sections 32.0424(a), (c), and (d), Human
 714-13 Resources Code, are amended to read as follows:

714-14 (a) A third-party health insurer is required to provide to
 714-15 the commission [department], on the commission's [department's]
 714-16 request, information in a form prescribed by the executive
 714-17 commissioner [department] necessary to determine:

714-18 (1) the period during which an individual entitled to
 714-19 medical assistance, the individual's spouse, or the individual's
 714-20 dependents may be, or may have been, covered by coverage issued by
 714-21 the health insurer;

714-22 (2) the nature of the coverage; and

714-23 (3) the name, address, and identifying number of the
 714-24 health plan under which the person may be, or may have been,
 714-25 covered.

714-26 (c) A third-party health insurer shall respond to any
 714-27 inquiry by the commission [department] regarding a claim for
 714-28 payment for any health care item or service reimbursed by the
 714-29 commission [department] under the medical assistance program not
 714-30 later than the third anniversary of the date the health care item or
 714-31 service was provided.

714-32 (d) A third-party health insurer may not deny a claim
 714-33 submitted by the commission [department] or the commission's
 714-34 [department's] designee for which payment was made under the
 714-35 medical assistance program solely on the basis of the date of
 714-36 submission of the claim, the type or format of the claim form, or a
 714-37 failure to present proper documentation at the point of service
 714-38 that is the basis of the claim, if:

714-39 (1) the claim is submitted by the commission
 714-40 [department] or the commission's [department's] designee not later
 714-41 than the third anniversary of the date the item or service was
 714-42 provided; and

714-43 (2) any action by the commission [department] or the
 714-44 commission's [department's] designee to enforce the state's rights
 714-45 with respect to the claim is commenced not later than the sixth
 714-46 anniversary of the date the commission [department] or the
 714-47 commission's [department's] designee submits the claim.

714-48 SECTION 4.119. Section 32.04242, Human Resources Code, is
 714-49 amended to read as follows:

714-50 Sec. 32.04242. PAYOR OF LAST RESORT. The executive
 714-51 commissioner [of the Health and Human Services Commission] shall
 714-52 adopt rules to ensure, to the extent allowed by federal law, that
 714-53 the Medicaid program:

714-54 (1) is the payor of last resort; and

714-55 (2) provides reimbursement for services, including
 714-56 long-term care services, only if, and to the extent, other adequate
 714-57 public or private sources of payment are not available.

714-58 SECTION 4.120. Section 32.0425(a)(1), Human Resources
 714-59 Code, is amended to read as follows:

714-60 (1) "Qualified rehabilitation professional" means a
 714-61 person who:

714-62 (A) holds a certification as an assistive
 714-63 technology professional or a rehabilitation engineering
 714-64 technologist issued by, and is in good standing with, the
 714-65 Rehabilitation Engineering and Assistive Technology Society of
 714-66 North America, provided that the requirements for that
 714-67 certification are at least as stringent as the requirements in
 714-68 effect on January 1, 2009; or

714-69 (B) is otherwise qualified to conduct the

715-1 professional activities of a person who holds a certification
715-2 described by Paragraph (A), as determined by rules adopted by the
715-3 executive commissioner [of the Health and Human Services
715-4 Commission].

715-5 SECTION 4.121. Sections 32.0425(b) and (c), Human Resources
715-6 Code, are amended to read as follows:

715-7 (b) The commission [department] may provide medical
715-8 assistance reimbursement for the provision of, or the performance
715-9 of a major modification to, a wheeled mobility system only if:

715-10 (1) the system is delivered to a recipient by a medical
715-11 assistance provider that is, or directly employs or contracts with,
715-12 a qualified rehabilitation professional and that professional was
715-13 present and involved in any clinical assessment of the recipient
715-14 that is required for obtaining the system; and

715-15 (2) at the time the wheeled mobility system is
715-16 delivered to the recipient, the qualified rehabilitation
715-17 professional:

715-18 (A) is present for and directs a fitting to
715-19 ensure that the system is appropriate for the recipient; and

715-20 (B) verifies that the system functions relative
715-21 to the recipient.

715-22 (c) The executive commissioner [of the Health and Human
715-23 Services Commission] shall adopt rules specifying:

715-24 (1) the scope, including any required components, of
715-25 the fitting and verification of functionality required by
715-26 Subsection (b);

715-27 (2) documentation of the fitting and verification of
715-28 functionality that must be submitted as part of a claim for
715-29 reimbursement for the provision or modification of a wheeled
715-30 mobility system; and

715-31 (3) the appropriate reimbursement methodology for
715-32 compensating the evaluation and final fitting services provided by
715-33 qualified rehabilitation professionals involved in the provision
715-34 or modification of wheeled mobility systems.

715-35 SECTION 4.122. Sections 32.043(b) and (d), Human Resources
715-36 Code, are amended to read as follows:

715-37 (b) The public hospital shall acquire goods or services by
715-38 any procurement method approved by the commission [Health and Human
715-39 Services Commission] that provides the best value to the public
715-40 hospital. The public hospital shall document that it considered
715-41 all relevant factors under Subsection (c) in making the
715-42 acquisition.

715-43 (d) The state auditor or the commission [department] may
715-44 audit the public hospital's acquisitions of goods and services to
715-45 the extent that state money or federal money appropriated by the
715-46 state is used to acquire the goods and services.

715-47 SECTION 4.123. Section 32.044(d), Human Resources Code, is
715-48 amended to read as follows:

715-49 (d) The executive commissioner [department] with the
715-50 assistance of [the Health and Human Services Commission and] the
715-51 comptroller shall adopt rules under this section that allow the
715-52 public or private hospital to make purchases through group
715-53 purchasing programs except when the commission [department] has
715-54 reason to believe that a better value is available through another
715-55 procurement method.

715-56 SECTION 4.124. Sections 32.045, 32.046, 32.0461, 32.0462,
715-57 32.0463, 32.047, 32.048, and 32.049, Human Resources Code, are
715-58 amended to read as follows:

715-59 Sec. 32.045. ENHANCED REIMBURSEMENT. The commission
715-60 [department] shall develop a procedure for:

715-61 (1) identifying each service provided under the
715-62 medical assistance program for which the state is eligible to
715-63 receive enhanced reimbursement of costs from the federal
715-64 government; and

715-65 (2) ensuring that the state seeks the highest level of
715-66 federal reimbursement available for each service provided.

715-67 Sec. 32.046. SANCTIONS AND PENALTIES RELATED TO THE
715-68 PROVISION OF PHARMACY PRODUCTS. (a) The executive commissioner
715-69 [of the Health and Human Services Commission] shall adopt rules

716-1 governing sanctions and penalties that apply to a provider who
 716-2 participates in the vendor drug program or is enrolled as a network
 716-3 pharmacy provider of a managed care organization contracting with
 716-4 the commission under Chapter 533, Government Code, or its
 716-5 subcontractor and who submits an improper claim for reimbursement
 716-6 under the program.

716-7 (b) The commission [department] shall notify each provider
 716-8 in the vendor drug program that the provider is subject to sanctions
 716-9 and penalties for submitting an improper claim.

716-10 Sec. 32.0461. VENDOR DRUG PROGRAM; COMPETITIVE BIDDING.

716-11 (a) In consultation and coordination with the State Council on
 716-12 Competitive Government, the commission [~~Texas Department of~~
 716-13 ~~Health~~] shall seek competitive bids for the claims processing
 716-14 function of the vendor drug program. [~~The department and the Texas~~
 716-15 ~~Department of Human Services may submit a bid proposal under this~~
 716-16 ~~section in the same manner as a private entity.~~]

716-17 (b) The commission [~~Texas Department of Health~~] shall
 716-18 require any person seeking to contract for services under this
 716-19 section to comply with competitive bidding procedures adopted by
 716-20 the executive commissioner [~~that department~~].

716-21 (c) The commission [~~Texas Department of Health~~] may award a
 716-22 contract under this section to another person only if the
 716-23 department and the State Council on Competitive Government
 716-24 determine that the provision of services under that contract would
 716-25 be more cost-effective and the time to process claims under the
 716-26 contract would be the same as or faster than having employees of the
 716-27 commission [department] continue to process claims.

716-28 Sec. 32.0462. VENDOR DRUG PROGRAM; PRICING STANDARD. (a)
 716-29 Notwithstanding any other provision of state law, the commission
 716-30 [~~department~~] shall:

716-31 (1) consider a nationally recognized, unbiased
 716-32 pricing standard for prescription drugs in determining
 716-33 reimbursement amounts under the vendor drug program; and

716-34 (2) update reimbursement amounts under the vendor drug
 716-35 program at least weekly.

716-36 (b) The executive commissioner shall adopt rules
 716-37 implementing this section. In adopting rules, the executive
 716-38 commissioner shall ensure that implementation of this section does
 716-39 not adversely affect the amount of federal funds available to the
 716-40 state for providing benefits under the vendor drug program.

716-41 Sec. 32.0463. MEDICATIONS AND MEDICAL SUPPLIES. The
 716-42 executive commissioner [~~department~~] may adopt rules establishing
 716-43 procedures for the purchase and distribution of medically
 716-44 necessary, over-the-counter medications and medical supplies under
 716-45 the medical assistance program that were previously being provided
 716-46 by prescription if the executive commissioner [~~department~~]
 716-47 determines it is more cost-effective than obtaining those
 716-48 medications and medical supplies through a prescription.

716-49 Sec. 32.047. PROHIBITION OF CERTAIN HEALTH CARE SERVICE
 716-50 PROVIDERS. (a) A person is permanently prohibited from providing
 716-51 or arranging to provide health care services under the medical
 716-52 assistance program if:

716-53 (1) the person is convicted of an offense arising from
 716-54 a fraudulent act under the program; and

716-55 (2) the person's fraudulent act results in injury to an
 716-56 elderly person, as defined by Section 48.002(a)(1), a [~~disabled~~]
 716-57 person with a disability, as defined by Section 48.002(a)(8)(A), or
 716-58 a person younger than 18 years of age.

716-59 (b) The executive commissioner [~~of the Health and Human~~
 716-60 ~~Services Commission~~] shall adopt rules for prohibiting a person
 716-61 from participating in the medical assistance program as a health
 716-62 care provider for a reasonable period, as determined by the
 716-63 executive commissioner, if the person:

716-64 (1) fails to repay overpayments under the program; or
 716-65 (2) owns, controls, manages, or is otherwise

716-66 affiliated with and has financial, managerial, or administrative
 716-67 influence over a provider who has been suspended or prohibited from
 716-68 participating in the program.

716-69 Sec. 32.048. MANAGED CARE INFORMATION AND TRAINING PLAN.

717-1 (a) Subject to the availability of funds, the commission
717-2 [~~department~~] shall develop a comprehensive plan to provide
717-3 information and training about the requirements of a managed care
717-4 plan to recipients of medical assistance, providers of medical
717-5 assistance, local health and human services agencies, and other
717-6 interested parties in each service area in which the commission
717-7 provides [~~department plans to provide~~] medical assistance through a
717-8 managed care plan.

717-9 (b) The commission [~~department~~] shall include in the
717-10 comprehensive plan:

717-11 (1) [~~180 days of initial information and training in a~~
717-12 ~~service area beginning not later than the 90th day before the date~~
717-13 ~~on which the department plans to begin to provide medical~~
717-14 ~~assistance through a managed care plan in that service area,~~

717-15 (2) [~~additional~~] information and training at regular
717-16 intervals determined by the commission [~~department~~]; and

717-17 (2) [~~(3)~~] performance measures to evaluate the
717-18 effectiveness of the information and training.

717-19 (c) In developing the comprehensive plan, the commission
717-20 [~~department~~] shall consult with the Medicaid medical care advisory
717-21 committee.

717-22 Sec. 32.049. MANAGED CARE CONTRACT COMPLIANCE. (a) The
717-23 commission [~~department~~] shall review each managed care
717-24 organization that has contracted with the commission [~~department~~]
717-25 to provide medical assistance to medical assistance recipients
717-26 through a managed care plan issued by the organization to determine
717-27 whether the organization is prepared to meet its contractual
717-28 obligations.

717-29 (b)(1) The commission [~~department~~] shall require each
717-30 managed care organization that has contracted with the commission
717-31 [~~department~~] to submit an implementation plan not later than the
717-32 90th day before the date on which the managed care organization
717-33 [~~department~~] plans to begin to provide medical assistance through a
717-34 managed care plan in a service area. The implementation plan must
717-35 include:

717-36 (A) specific staffing patterns by function for
717-37 all operations, including enrollment, information systems, member
717-38 services, quality improvement, claims management, case management,
717-39 and provider and enrollee training; and

717-40 (B) specific time frames for demonstrating
717-41 preparedness for implementation before the date on which the
717-42 managed care organization [~~department~~] plans to begin to provide
717-43 medical assistance through a managed care plan in a service area.

717-44 (2) The commission [~~department~~] shall respond within
717-45 10 working days if the implementation plan does not adequately meet
717-46 preparedness guidelines.

717-47 (3) The commission [~~department~~] shall require each
717-48 managed care organization that has contracted with the commission
717-49 [~~department~~] to submit status reports on the implementation plan
717-50 not later than the 60th day and the 30th day before the date on which
717-51 the managed care organization [~~department~~] plans to begin to
717-52 provide medical assistance through a managed care plan in a service
717-53 area and every 30th day after the managed care organization
717-54 [~~department~~] begins to provide medical assistance through a managed
717-55 care plan in a service area until the 180th day of operations.

717-56 (c) The commission [~~department~~] shall conduct a compliance
717-57 and readiness review of each managed care organization that
717-58 contracts with the state not later than the 15th day before the date
717-59 on which the [~~department plans to begin the enrollment~~] process of
717-60 enrolling recipients in a managed care plan issued by the managed
717-61 care organization is to begin in a service area and again not later
717-62 than the 15th day before the date on which the managed care
717-63 organization [~~department~~] plans to begin to provide medical
717-64 assistance through a managed care plan in that [~~a~~] service area.
717-65 The review shall include an on-site inspection and tests of service
717-66 authorization and claims payment systems, complaint processing
717-67 systems, and any other process or system required by the contract.

717-68 (d) The commission [~~department~~] may delay enrollment of
717-69 medical assistance recipients in a managed care plan if the review

718-1 reveals that the managed care organization is not prepared to meet
718-2 its contractual obligations.

718-3 SECTION 4.125. Sections 32.050(a), (b), (d), and (e), Human
718-4 Resources Code, are amended to read as follows:

718-5 (a) At least annually the commission [department] shall
718-6 identify each individual receiving medical assistance under the
718-7 medical assistance program who is eligible to receive similar
718-8 assistance under the Medicare program.

718-9 (b) The commission [department] shall analyze claims
718-10 submitted for payment for a service provided under the medical
718-11 assistance program to an individual identified under Subsection (a)
718-12 to ensure that payment is sought first under the Medicare program to
718-13 the extent allowed by law.

718-14 (d) Except as provided by Subsection (e), a nursing
718-15 facility, a home health services provider, or any other similar
718-16 long-term care services provider that is Medicare-certified and
718-17 provides care to individuals who are eligible for Medicare must:

718-18 (1) seek reimbursement from Medicare before billing
718-19 the medical assistance program for services provided to an
718-20 individual identified under Subsection (a); and

718-21 (2) as directed by the commission [department], appeal
718-22 Medicare claim denials for payment services provided to an
718-23 individual identified under Subsection (a).

718-24 (e) A home health services provider is not required to seek
718-25 reimbursement from Medicare before billing the medical assistance
718-26 program for services provided to a person who is eligible for
718-27 Medicare and who:

718-28 (1) has been determined as not being homebound; or
718-29 (2) meets other criteria determined by the executive
718-30 commissioner [department].

718-31 SECTION 4.126. Section 32.051, Human Resources Code, is
718-32 amended to read as follows:

718-33 Sec. 32.051. MISDIRECTED BILLING. To the extent authorized
718-34 by federal law, the commission [department] shall develop a
718-35 procedure for the state to:

718-36 (1) match claims for payment for medical assistance
718-37 provided under the medical assistance program against data
718-38 available from other entities, including the United States
718-39 Department of Veterans Affairs [Administration] and nursing
718-40 facilities, to determine alternative responsibility for payment of
718-41 the claims; and

718-42 (2) ensure that the appropriate entity bears the cost
718-43 of a claim.

718-44 SECTION 4.127. Sections 32.052(c) and (d), Human Resources
718-45 Code, are amended to read as follows:

718-46 (c) In developing and providing services subject to this
718-47 section, the commission [department] shall:

718-48 (1) fully assess a child at the time the child applies
718-49 for assistance to determine all appropriate services for the child
718-50 under the medical assistance program, including both waiver and
718-51 nonwaiver services;

718-52 (2) ensure that permanency planning is implemented to
718-53 identify and establish the family support necessary to maintain a
718-54 child's permanent living arrangement with a family;

718-55 (3) implement a transition and referral process to
718-56 prevent breaks in services when a child is leaving a medical
718-57 assistance waiver program or moving between service delivery
718-58 systems due to a change in the child's disability status or needs,
718-59 aging out of the current delivery system, or moving between
718-60 geographic areas within the state;

718-61 (4) identify and provide core services addressing a
718-62 child's developmental needs and the needs of the child's family to
718-63 strengthen and maintain the child's family;

718-64 (5) provide for comprehensive coordination and use of
718-65 available services and resources in a manner that ensures support
718-66 for families in keeping their children at home;

718-67 (6) ensure that eligibility requirements, assessments
718-68 for service needs, and other components of service delivery are
718-69 designed to be fair and equitable for all families, including

719-1 families with parents who work outside the home; and

719-2 (7) provide for a broad array of service options and a
719-3 reasonable choice of service providers.

719-4 (d) To ensure that services subject to this section are cost
719-5 neutral and not duplicative of other services provided under the
719-6 medical assistance program, the commission [department] shall
719-7 coordinate the provision of services subject to this section with
719-8 services provided under the Texas Health Steps Comprehensive Care
719-9 Program.

719-10 SECTION 4.128. Sections 32.053(a), (b), (c), (e), (f), (h),
719-11 and (i), Human Resources Code, are amended to read as follows:

719-12 (a) The commission [department], as an integral part of the
719-13 medical assistance program, shall develop and implement a program
719-14 of all-inclusive care for the elderly (PACE) in accordance with
719-15 Section 4802 of the Balanced Budget Act of 1997 (Pub. L. No.
719-16 105-33), as amended. The commission [department] shall provide
719-17 medical assistance to a participant in the PACE program in the
719-18 manner and to the extent authorized by federal law.

719-19 (b) The executive commissioner [~~of the Health and Human~~
719-20 Services Commission] shall adopt rules as necessary to implement
719-21 this section. In adopting rules, the executive commissioner shall:

719-22 (1) use the Bienvivir Senior Health Services of El
719-23 Paso initiative as a model for the program;

719-24 (2) ensure that a person is not required to hold a
719-25 certificate of authority as a health maintenance organization under
719-26 Chapter 843, Insurance Code, to provide services under the PACE
719-27 program;

719-28 (3) ensure that participation in the PACE program is
719-29 available as an alternative to enrollment in a Medicaid managed
719-30 care plan under Chapter 533, Government Code, for eligible
719-31 recipients, including recipients eligible for assistance under
719-32 both the medical assistance and Medicare programs;

719-33 (4) ensure that managed care organizations that
719-34 contract under Chapter 533, Government Code, consider the
719-35 availability of the PACE program when considering whether to refer
719-36 a recipient to a nursing facility [~~home~~] or other long-term care
719-37 facility; and

719-38 (5) establish protocols for the referral of eligible
719-39 persons to the PACE program.

719-40 (c) The commission [department] may not contract with a
719-41 person to provide services under the PACE program unless the
719-42 person:

719-43 (1) purchases reinsurance in an amount determined by
719-44 the commission [department] that is sufficient to ensure the
719-45 person's continued solvency; or

719-46 (2) has the financial resources sufficient to cover
719-47 expenses in the event of the person's insolvency.

719-48 (e) The Department of Aging and Disability Services and area
719-49 agencies on aging shall develop and implement a coordinated plan to
719-50 promote PACE program sites operating under this section. The
719-51 executive commissioner [department] shall adopt policies and
719-52 procedures, including operating guidelines, to ensure that
719-53 caseworkers and any other appropriate department staff discuss the
719-54 benefits of participating in the PACE program with long-term care
719-55 clients.

719-56 (f) The commission [department] shall consider the PACE
719-57 program as a community-based service option under any "Money
719-58 Follows the Person" demonstration project or other initiative that
719-59 is designed to eliminate barriers or mechanisms that prevent or
719-60 restrict the flexible use of funds under the medical assistance
719-61 program to enable a recipient to receive long-term services or
719-62 supports in a setting of the recipient's choice.

719-63 (h) The executive commissioner [commission] shall adopt a
719-64 standard reimbursement methodology for the payment of all PACE
719-65 organizations for purposes of encouraging a natural increase in the
719-66 number of PACE program sites throughout the state.

719-67 (i) To the extent allowed by the General Appropriations Act,
719-68 the commission [Health and Human Services Commission] may transfer
719-69 general revenue funds appropriated to the commission for the

720-1 medical assistance program to the Department of Aging and
 720-2 Disability Services to provide PACE services in PACE program
 720-3 service areas to eligible recipients whose medical assistance
 720-4 benefits would otherwise be delivered as home and community-based
 720-5 services through the STAR + PLUS Medicaid managed care program and
 720-6 whose personal incomes are at or below the level of income required
 720-7 to receive Supplemental Security Income (SSI) benefits under 42
 720-8 U.S.C. Section 1381 et seq.

720-9 SECTION 4.129. Sections 32.054(c), (d), and (e), Human
 720-10 Resources Code, are amended to read as follows:

720-11 (c) In providing dental services under the medical
 720-12 assistance program, the commission [department] shall:

720-13 (1) ensure that a stainless steel crown is not used as
 720-14 a preventive measure;

720-15 (2) require a dentist participating in the medical
 720-16 assistance program to document, through x-rays or other methods
 720-17 established by commission [department] rule, the dental necessity
 720-18 for a stainless steel crown before the crown is applied;

720-19 (3) require a dentist participating in the medical
 720-20 assistance program to comply with a minimum standard of
 720-21 documentation and recordkeeping for each of the dentist's patients,
 720-22 regardless of whether the patient's costs are paid privately or
 720-23 through the medical assistance program;

720-24 (4) replace the 15-point system used for determining
 720-25 the dental necessity for hospitalization and general anesthesia
 720-26 with a more objective and comprehensive system developed by the
 720-27 commission [department]; and

720-28 (5) take all necessary action to eliminate unlawful
 720-29 acts described by Section 36.002 in the provision of dental
 720-30 services under the medical assistance program, including:

720-31 (A) aggressively investigating and prosecuting
 720-32 any dentist who abuses the system for reimbursement under the
 720-33 medical assistance program; and

720-34 (B) conducting targeted audits of dentists whose
 720-35 billing activities under the medical assistance program are
 720-36 excessive or otherwise inconsistent with the billing activities of
 720-37 other similarly situated dentists.

720-38 (d) In setting reimbursement rates for dental services
 720-39 under the medical assistance program, the executive commissioner
 720-40 [department] shall:

720-41 (1) ~~[reduce the amount of the hospitalization fee in
 720-42 effect on December 1, 2000, and redistribute amounts made available
 720-43 through reduction of that fee to other commonly billed dental
 720-44 services for which adequate accountability measures exist;~~

720-45 (2) ~~[eliminate the nutritional consultation fee and
 720-46 redistribute amounts made available through elimination of that fee
 720-47 to other commonly billed dental services for which adequate
 720-48 accountability measures exist;~~

720-49 (3) provide for reimbursement of a behavior
 720-50 management fee only if:

720-51 (A) the patient receiving dental treatment has
 720-52 been previously diagnosed with an intellectual or developmental
 720-53 disability [mental retardation] or a mental disability or disorder,
 720-54 and extraordinary behavior management techniques are necessary for
 720-55 therapeutic dental treatment because of the patient's
 720-56 uncooperative behavior; and

720-57 (B) the dentist includes in the patient's records
 720-58 and on the claim form for reimbursement a narrative description of:

720-59 (i) the specific behavior problem
 720-60 demonstrated by the patient that required the use of behavior
 720-61 management techniques;

720-62 (ii) the dentist's initial efforts to
 720-63 manage the patient's behavior through routine behavior management
 720-64 techniques; and

720-65 (iii) the dentist's extraordinary behavior
 720-66 management techniques subsequently required to manage the
 720-67 patient's behavior; and

720-68 (2) ~~[+4]~~ redistribute amounts made available through
 720-69 limitation of the behavior management fee under Subdivision (1)

721-1 [43] to other commonly billed dental services for which adequate
 721-2 accountability measures exist.

721-3 (e) The commission [~~department~~] shall develop the minimum
 721-4 standard described by Subsection (c)(3) in cooperation with the
 721-5 State Board of Dental Examiners.

721-6 SECTION 4.130. Sections 32.055(a) and (c), Human Resources
 721-7 Code, are amended to read as follows:

721-8 (a) The commission [~~department~~] shall develop and implement
 721-9 a catastrophic case management system to be used in providing
 721-10 medical assistance to persons with catastrophic health problems.

721-11 (c) The commission [~~department~~] shall identify the services
 721-12 to be provided by a case manager assigned under the system. The
 721-13 services must include assessment of the recipient's needs and
 721-14 coordination of all available medical services and payment options.
 721-15 The services may include other support services such as:

721-16 (1) assistance with making arrangements to receive
 721-17 care from medical facilities;

721-18 (2) assistance with travel and lodging in connection
 721-19 with receipt of medical care;

721-20 (3) education of the recipient and the recipient's family
 721-21 members regarding the nature of the recipient's health problems;

721-22 (4) referral to appropriate support groups; and
 721-23 (5) any other service likely to result in better care
 721-25 provided in a cost-effective manner.

721-26 SECTION 4.131. Sections 32.0551 and 32.056, Human Resources
 721-27 Code, are amended to read as follows:

721-28 Sec. 32.0551. OPTIMIZATION OF CASE MANAGEMENT SYSTEMS. The
 721-29 commission [~~Health and Human Services Commission~~] shall:

721-30 (1) create and coordinate staffing and other
 721-31 administrative efficiencies for case management initiatives across
 721-32 the commission and health and human services agencies[, as defined
 721-33 by Section 531.001, Government Code]; and

721-34 (2) optimize federal funding revenue sources and
 721-35 maximize the use of state funding resources for case management
 721-36 initiatives across the commission and health and human services
 721-37 agencies.

721-38 Sec. 32.056. COMPLIANCE WITH TEXAS HEALTH STEPS
 721-39 COMPREHENSIVE CARE PROGRAM. The executive commissioner by rule
 721-40 shall develop procedures to ensure that recipients of medical
 721-41 assistance who are eligible for Texas Health Steps Comprehensive
 721-42 Care Program comply with the regimen of care prescribed by the
 721-43 [Texas Health Steps] program.

721-44 SECTION 4.132. Sections 32.057(a), (b), (c), (d), (e), and
 721-45 (f), Human Resources Code, are amended to read as follows:

721-46 (a) The commission [~~department~~] shall request contract
 721-47 proposals from providers of disease management programs to provide
 721-48 program services to recipients of medical assistance who:

721-49 (1) have a disease or other chronic health condition,
 721-50 such as heart disease, hemophilia, chronic kidney disease and its
 721-51 medical complications, diabetes, respiratory illness, end-stage
 721-52 renal disease, HIV infection, or AIDS, that the commission
 721-53 [~~department~~] determines is a disease or condition that needs
 721-54 disease management; and

721-55 (2) are not eligible to receive those services under a
 721-56 Medicaid managed care plan.

721-57 (b) The commission [~~department~~] may contract with a public
 721-58 or private entity to:

721-59 (1) write the requests for proposals;
 721-60 (2) determine how savings will be measured;
 721-61 (3) identify populations that need disease
 721-62 management;

721-63 (4) develop appropriate contracts; and
 721-64 (5) assist the commission [~~department~~] in:
 721-65 (A) developing the content of disease management

721-66 programs; and

721-67 (B) obtaining funding for those programs.

721-68 (c) The executive commissioner [~~of the Health and Human~~
 721-69 ~~Services Commission~~] by rule[~~r~~] shall prescribe the minimum

722-1 requirements a provider of a disease management program must meet
 722-2 to be eligible to receive a contract under this section. The
 722-3 provider must, at a minimum, be required to:

722-4 (1) use disease management approaches that are based
 722-5 on evidence-supported models, standards of care in the medical
 722-6 community, and clinical outcomes; and

722-7 (2) ensure that a recipient's primary care physician
 722-8 and other appropriate specialty physicians, or registered nurses,
 722-9 advanced practice nurses, or physician assistants specified and
 722-10 directed or supervised in accordance with applicable law by the
 722-11 recipient's primary care physician or other appropriate specialty
 722-12 physicians, become directly involved in the disease management
 722-13 program through which the recipient receives services.

722-14 (d) The commission [department] may not award a contract for
 722-15 a disease management program under this section unless the contract
 722-16 includes a written guarantee of state savings on expenditures for
 722-17 the group of medical assistance recipients covered by the program.

722-18 (e) The commission [department] may enter into a contract
 722-19 under this section with a comprehensive hemophilia diagnostic
 722-20 treatment center that receives funding through a maternal and child
 722-21 health services block grant under Section 501(a)(2), Social
 722-22 Security Act (42 U.S.C. Section 701(a)(2) [Section 701]), and the
 722-23 center shall be considered a disease management provider.

722-24 (f) Directly or through a provider of a disease management
 722-25 program that enters into a contract with the commission
 722-26 [department] under this section, the commission [department]
 722-27 shall, as appropriate and to the extent possible without cost to the
 722-28 state:

722-29 (1) identify recipients of medical assistance under
 722-30 this chapter or, at the discretion of the commission [department],
 722-31 enrollees in the child health plan under Chapter 62, Health and
 722-32 Safety Code, who are eligible to participate in federally funded
 722-33 disease management research programs operated by research-based
 722-34 disease management providers; and

722-35 (2) assist and refer eligible persons identified by
 722-36 the commission [department] under Subdivision (1) to participate in
 722-37 the research programs described by Subdivision (1).

722-38 SECTION 4.133. Sections 32.058(a) and (g), Human Resources
 722-39 Code, are amended to read as follows:

722-40 (a) In this section:

722-41 (1) "Department" means the Department of Aging and
 722-42 Disability Services.

722-43 (2) "Medical["medical"] assistance waiver program"
 722-44 means a program operated [administered] by the Department of Aging
 722-45 and Disability Services, other than the Texas home living wiaver
 722-46 program, that provides services under a waiver granted in
 722-47 accordance with 42 U.S.C. Section 1396n(c).

722-48 (g) The executive commissioner [~~of the Health and Human~~
 722-49 ~~Services Commission~~] may adopt rules to implement Subsections (d),
 722-50 (e), and (f).

722-51 SECTION 4.134. Section 32.059, Human Resources Code, is
 722-52 amended to read as follows:

722-53 Sec. 32.059. USE OF RESPIRATORY THERAPISTS FOR RESPIRATORY
 722-54 THERAPY SERVICES. The executive commissioner [department] by rule
 722-55 shall require that respiratory therapy services for
 722-56 ventilator-dependent persons furnished as part of a plan of care
 722-57 under this chapter be provided by a respiratory care practitioner
 722-58 [~~therapist~~] authorized to practice respiratory care under Chapter
 722-59 604, Occupations Code, when:

722-60 (1) respiratory therapy is determined by the
 722-61 recipient's treating physician to be the most effective method of
 722-62 treatment; and

722-63 (2) the use of a respiratory care practitioner
 722-64 [~~therapist~~] is practicable and cost-neutral or cost-effective.

722-65 SECTION 4.135. Section 32.061, Human Resources Code, is
 722-66 amended to read as follows:

722-67 Sec. 32.061. COMMUNITY ATTENDANT SERVICES PROGRAM. (a)
 722-68 Any home and community-based services that the commission
 722-69 [department] provides under Section 1929, Social Security Act (42

U.S.C. Section 1396t) and its subsequent amendments to functionally disabled individuals who have income that exceeds the limit established by federal law for Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.) and its subsequent amendments shall be provided through the community attendant services program.

(b) In determining an applicant's eligibility for home and community-based services described by Subsection (a), the commission [department] shall exclude \$20 of unearned or earned income from the applicant's monthly income.

SECTION 4.136. Sections 32.062(a) and (c), Human Resources Code, are amended to read as follows:

(a) The following are not admissible as evidence in a civil action:

(1) any finding by the Department of Aging and Disability Services [department] that an institution licensed under Chapter 242, Health and Safety Code, has violated a standard for participation in the medical assistance program under this chapter; or

(2) the fact of the assessment of a monetary penalty against an institution under Section 32.021 or the payment of the penalty by an institution[; or]

[3) any information exchanged between the department and a nursing facility under Section 531.912, Government Code].

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the Department of Aging and Disability Services [department] that directly involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; [and]

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the Department of Aging and Disability Services [department] after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

SECTION 4.137. Section 32.063, Human Resources Code, is amended to read as follows:

Sec. 32.063. THIRD-PARTY BILLING VENDORS. (a) A third-party billing vendor may not submit a claim with the commission [department] for reimbursement on behalf of a provider of medical services under the medical assistance program unless the vendor has entered into a contract with the commission [department] authorizing that activity.

(b) To the extent practical, the contract shall contain provisions comparable to the provisions contained in contracts between the commission [department] and providers of medical services, with an emphasis on provisions designed to prevent fraud or abuse under the medical assistance program. At a minimum, the contract must require the third-party billing vendor to:

(1) provide documentation of the vendor's authority to bill on behalf of each provider for whom the vendor submits claims;

(2) submit a claim in a manner that permits the commission [department] to identify and verify the vendor, any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim; and

(3) subject to any confidentiality requirements imposed by federal law, provide the commission [department], the office of the attorney general, or authorized representatives with:

(A) access to any records maintained by the vendor, including original records and records maintained by the

724-1 vendor on behalf of a provider, relevant to an audit or
 724-2 investigation of the vendor's services or another function of the
 724-3 commission [department] or office of the attorney general relating
 724-4 to the vendor; and

724-5 (B) if requested, copies of any records described
 724-6 by Paragraph (A) at no charge to the commission [department], the
 724-7 office of the attorney general, or authorized representatives.

724-8 (c) On receipt of a claim submitted by a third-party billing
 724-9 vendor, the commission [department] shall send a remittance notice
 724-10 directly to the provider referenced in the claim. The notice must:

724-11 (1) include detailed information regarding the claim
 724-12 submitted on behalf of the provider; and

724-13 (2) require the provider to review the claim for
 724-14 accuracy and notify the commission [department] promptly regarding
 724-15 any errors.

724-16 (d) The commission [department] shall take all action
 724-17 necessary, including any modifications of the commission's
 724-18 [department's] claims processing system, to enable the commission
 724-19 [department] to identify and verify a third-party billing vendor
 724-20 submitting a claim for reimbursement under the medical assistance
 724-21 program, including identification and verification of any computer
 724-22 or telephone line used in submitting the claim, any relevant user
 724-23 password used in submitting the claim, and any provider number
 724-24 referenced in the claim.

724-25 (e) The commission [department] shall audit each
 724-26 third-party billing vendor subject to this section at least
 724-27 annually to prevent fraud and abuse under the medical assistance
 724-28 program.

724-29 SECTION 4.138. Section 32.064(a), Human Resources Code, is
 724-30 amended to read as follows:

724-31 (a) To the extent permitted under Title XIX, Social Security
 724-32 Act (42 U.S.C. Section 1396 et seq.), as amended, and any other
 724-33 applicable law or regulations, the executive commissioner [~~Health~~
 724-34 ~~and Human Services Commission~~] shall adopt provisions requiring
 724-35 recipients of medical assistance to share the cost of medical
 724-36 assistance, including provisions requiring recipients to pay:

724-37 (1) an enrollment fee;

724-38 (2) a deductible; or

724-39 (3) coinsurance or a portion of the plan premium, if
 724-40 the recipients receive medical assistance under the Medicaid
 724-41 managed care program under Chapter 533, Government Code[, or a
 724-42 Medicaid managed care demonstration project under Section 32.041].

724-43 SECTION 4.139. Section 32.0641, Human Resources Code, is
 724-44 amended to read as follows:

724-45 Sec. 32.0641. RECIPIENT ACCOUNTABILITY PROVISIONS;
 724-46 COST-SHARING REQUIREMENT TO IMPROVE APPROPRIATE UTILIZATION OF
 724-47 SERVICES. (a) To the extent permitted under and in a manner that is
 724-48 consistent with Title XIX, Social Security Act (42 U.S.C. Section
 724-49 1396 et seq.) and any other applicable law or regulation or under a
 724-50 federal waiver or other authorization, the executive commissioner
 724-51 [~~of the Health and Human Services Commission~~] shall adopt, after
 724-52 consulting with the Medicaid and CHIP Quality-Based Payment
 724-53 Advisory Committee established under Section 536.002, Government
 724-54 Code, cost-sharing provisions that encourage personal
 724-55 accountability and appropriate utilization of health care
 724-56 services, including a cost-sharing provision applicable to a
 724-57 recipient who chooses to receive a nonemergency medical service
 724-58 through a hospital emergency room.

724-59 (b) The commission [department] may not seek a federal
 724-60 waiver or other authorization under this section that would:

724-61 (1) prevent a Medicaid recipient who has a condition
 724-62 requiring emergency medical services from receiving care through a
 724-63 hospital emergency room; or

724-64 (2) waive any provision under Section 1867, Social
 724-65 Security Act (42 U.S.C. Section 1395dd).

724-66 SECTION 4.140. Section 32.067(b), Human Resources Code, is
 724-67 amended to read as follows:

724-68 (b) The commission [department] shall assure that any
 724-69 agency licensed to provide home health services under Chapter 142,

725-1 Health and Safety Code, and not only a certified agency licensed
725-2 under that chapter, may provide home health services to individuals
725-3 enrolled in the Texas Health Steps Comprehensive Care Program.

725-4 SECTION 4.141. Section 32.068(c), Human Resources Code, is
725-5 amended to read as follows:

725-6 (c) The executive commissioner [of the Health and Human
725-7 Services Commission] shall adopt rules necessary to implement this
725-8 section. The executive commissioner may by rule adopt limited
725-9 exceptions to the requirements of this section.

725-10 SECTION 4.142. Section 32.069, Human Resources Code, is
725-11 amended to read as follows:

725-12 Sec. 32.069. CHRONIC KIDNEY DISEASE MANAGEMENT INITIATIVE.
725-13 A provider of disease management programs under Section 32.057
725-14 [32.059, as added by Chapter 208, Acts of the 78th Legislature,
725-15 Regular Session, 2003,] shall develop a program to provide
725-16 screening for and diagnosis and treatment of chronic kidney disease
725-17 and its medical complications under the medical assistance program.
725-18 The program must use generally recognized clinical practice
725-19 guidelines and laboratory assessments that identify chronic kidney
725-20 disease on the basis of impaired kidney function or the presence of
725-21 kidney damage.

725-22 SECTION 4.143. Section 32.070, Human Resources Code, is
725-23 amended to read as follows:

725-24 Sec. 32.070. AUDITS OF PROVIDERS. (a) In this section,
725-25 "provider" means an individual, firm, partnership, corporation,
725-26 agency, association, institution, or other entity that is or was
725-27 approved by the commission [department] to provide medical
725-28 assistance under contract or provider agreement with the commission
725-29 [department].

725-30 (b) The executive commissioner [of the Health and Human
725-31 Services Commission] shall adopt rules governing the audit of
725-32 providers in the medical assistance program.

725-33 (c) The rules must:

725-34 (1) provide that the agency conducting the audit must
725-35 notify the provider, and the provider's corporate headquarters, if
725-36 the provider is a pharmacy that is incorporated, of the impending
725-37 audit not later than the seventh day before the date the field audit
725-38 portion of the audit begins;

725-39 (2) limit the period covered by an audit to three
725-40 years;

725-41 (3) provide that the agency conducting the audit must
725-42 accommodate the provider's schedule to the greatest extent possible
725-43 when scheduling the field audit portion of the audit;

725-44 (4) require the agency conducting the audit to conduct
725-45 an entrance interview before beginning the field audit portion of
725-46 the audit;

725-47 (5) provide that each provider must be audited under
725-48 the same standards and parameters as other providers of the same
725-49 type;

725-50 (6) provide that the audit must be conducted in
725-51 accordance with generally accepted government auditing standards
725-52 issued by the Comptroller General of the United States or other
725-53 appropriate standards;

725-54 (7) require the agency conducting the audit to conduct
725-55 an exit interview at the close of the field audit portion of the
725-56 audit with the provider to review the agency's initial findings;

725-57 (8) provide that, at the exit interview, the agency
725-58 conducting the audit shall:

725-59 (A) allow the provider to:

725-60 (i) respond to questions by the agency;

725-61 (ii) comment, if the provider desires, on
725-62 the initial findings of the agency; and

725-63 (iii) correct a questioned cost by
725-64 providing additional supporting documentation that meets the
725-65 auditing standards required by Subdivision (6) if there is no
725-66 indication that the error or omission that resulted in the
725-67 questioned cost demonstrates intent to commit fraud; and

725-68 (B) provide to the provider a preliminary audit
725-69 report and a copy of any document used to support a proposed

726-1 adjustment to the provider's cost report;

726-2 (9) permit the provider to produce documentation to
726-3 address any exception found during an audit not later than the 10th
726-4 day after the date the field audit portion of the audit is
726-5 completed;

726-6 (10) provide that the agency conducting the audit
726-7 shall deliver a draft audit report to the provider not later than
726-8 the 60th day after the date the field audit portion of the audit is
726-9 completed;

726-10 (11) permit the provider to submit to the agency
726-11 conducting the audit a written management response to the draft
726-12 audit report or to appeal the findings in the draft audit report not
726-13 later than the 30th day after the date the draft audit report is
726-14 delivered to the provider;

726-15 (12) provide that the agency conducting the audit
726-16 shall deliver the final audit report to the provider not later than
726-17 the 180th day after the date the field audit portion of the audit is
726-18 completed or the date on which a final decision is issued on an
726-19 appeal made under Subdivision (13), whichever is later; and

726-20 (13) establish an ad hoc review panel, composed of
726-21 providers practicing or doing business in this state appointed by
726-22 the executive commissioner [of the Health and Human Services
726-23 Commission], to administer an informal process through which:

726-24 (A) a provider may obtain an early review of an
726-25 audit report or an unfavorable audit finding without the need to
726-26 obtain legal counsel; and

726-27 (B) a recommendation to revise or dismiss an
726-28 unfavorable audit finding that is found to be unsubstantiated may
726-29 be made by the review panel to the agency, provided that the
726-30 recommendation is not binding on the agency.

726-31 (d) This section does not apply to a computerized audit
726-32 conducted using the Medicaid Fraud Detection [Audit] System or an
726-33 audit or investigation of fraud and abuse conducted by the Medicaid
726-34 fraud control unit of the office of the attorney general, the office
726-35 of the state auditor, the office of the inspector general, or the
726-36 Office of Inspector General in the United States Department of
726-37 Health and Human Services.

726-38 SECTION 4.144. Sections 32.071(a), (c), (d), (e), (f), and
726-39 (g), Human Resources Code, are amended to read as follows:

726-40 (a) The commission [department] shall develop and implement
726-41 a comprehensive medical assistance education campaign for
726-42 recipients and providers to ensure that care is provided in such a
726-43 way as to improve patient outcomes and maximize cost-effectiveness.
726-44 The commission [department] shall ensure that educational
726-45 information developed under this section is demographically
726-46 relevant and appropriate for each recipient or provider to whom the
726-47 information is provided.

726-48 (c) The commission [department] shall evaluate whether
726-49 certain risk groups may disproportionately increase their
726-50 appropriate use of the health care system as a result of targeted
726-51 elements of an education campaign. If the commission [department]
726-52 determines that certain risk groups will respond with more
726-53 appropriate use of the system, the commission [department] shall
726-54 develop and implement the appropriate targeted educational
726-55 elements.

726-56 (d) The commission [department] shall develop a system for
726-57 reviewing recipient prescription drug use and educating providers
726-58 with respect to that drug use in a manner that emphasizes reducing
726-59 inappropriate prescription drug use and the possibility of adverse
726-60 drug interactions.

726-61 (e) The commission [department] shall coordinate the
726-62 medical assistance education campaign with area health education
726-63 centers, federally qualified health centers, as defined by 42
726-64 U.S.C. Section 1396d(1)(2)(B), and other stakeholders who use
726-65 public funds to educate recipients and providers about the health
726-66 care system in this state. The commission [department] shall make
726-67 every effort to maximize state funds by working through these
726-68 partners to maximize receipt of additional federal funding for
726-69 administrative and other costs.

(f) The commission [department] shall coordinate with other state and local agencies to ensure that community-based health workers, health educators, state eligibility determination employees who work in hospitals and other provider locations, and promoters are used in the medical assistance education campaign, as appropriate.

(g) The commission [department] shall ensure that all state agencies that work with recipients, all administrative persons who provide eligibility determination and enrollment services, and all service providers use the same curriculum for recipient and provider education, as appropriate.

SECTION 4.145. Section 32.072(b), Human Resources Code, is amended to read as follows:

(b) The commission [department] may require an ophthalmologist or therapeutic optometrist selected as provided by this section by a recipient of medical assistance who is otherwise required to have a primary care physician or other gatekeeper or health care coordinator to forward to the recipient's physician, gatekeeper, or health care coordinator information concerning the eye health care services provided to the recipient.

SECTION 4.146. Sections 32.073(b) and (c), Human Resources Code, are amended to read as follows:

(b) The commission [Health and Human Services Commission] shall ensure that any health information technology used by the commission or any entity acting on behalf of the commission in the medical assistance program conforms to standards required under federal law.

(c) Not later than the second anniversary of the date national standards for electronic prior authorization of benefits are adopted, the commission [Health and Human Services Commission] shall require a health benefit plan issuer participating in the medical assistance program or the agent of the health benefit plan issuer that manages or administers prescription drug benefits to exchange prior authorization requests electronically with a prescribing provider participating in the medical assistance program who has electronic prescribing capability and who initiates a request electronically.

SECTION 4.147. Section 32.074(b), Human Resources Code, is amended to read as follows:

(b) The commission [department] shall ensure that each Medicaid recipient enrolled in a home and community-based services waiver program that includes a personal emergency response system as a service has access to a personal emergency response system, if necessary, without regard to the recipient's access to a landline telephone.

SECTION 4.148. Section 32.075(c), Human Resources Code, is amended to read as follows:

(c) The commission [department] shall provide employment assistance and supported employment to participants in the waiver programs identified in Subsection (b).

SECTION 4.149. Section 32.201(1), Human Resources Code, is amended to read as follows:

(1) "Electronic health record" means electronically originated and maintained health and claims information regarding the health status of an individual that may be derived from multiple sources and includes the following core functionalities:

(A) a patient health and claims information or data entry function to aid with medical diagnosis, nursing assessment, medication lists, allergy recognition, demographics, clinical narratives, and test results;

(B) a results management function that may include computerized laboratory test results, diagnostic imaging reports, interventional radiology reports, and automated displays of past and present medical or laboratory test results;

(C) a computerized physician order entry of medication, care orders, and ancillary services;

(D) clinical decision support that may include electronic reminders and prompts to improve prevention, diagnosis, and management; and

(E) electronic communication and connectivity that allows online communication;

(i) among physicians and health care providers; and
(ii) among the commission [~~Health and Human Services Commission~~], the operating agencies, and participating providers.

SECTION 4.150. Sections 32.202(a) and (b), Human Resources Code, are amended to read as follows:

(a) To the extent allowed by federal law, the executive commissioner may adopt rules allowing the commission [~~Health and Human Services Commission~~] to permit, facilitate, and implement the use of health information technology for the medical assistance program to allow for electronic communication among the commission, the operating agencies, and participating providers for:

(1) eligibility, enrollment, verification procedures, and prior authorization for health care services or procedures covered by the medical assistance program, as determined by the executive commissioner, including diagnostic imaging;

(2) the update of practice information by participating providers;

(3) the exchange of recipient health care information, including electronic prescribing and electronic health records;

(4) any document or information requested or required under the medical assistance program by the commission [~~Health and Human Services Commission~~], the operating agencies, or participating providers; and

(5) the enhancement of clinical and drug information available through the vendor drug program to ensure a comprehensive electronic health record for recipients.

(b) If the executive commissioner determines that a need exists for the use of health information technology in the medical assistance program and that the technology is cost-effective, the commission [Health and Human Services Commission] may, for the purposes prescribed by Subsection (a):

(1) acquire and implement the technology; or
(2) evaluate the feasibility of developing and, if feasible, develop[–] the technology through the use or expansion of other systems or technologies the commission uses for other purposes, including[+]

[(A)] the technologies used in the pilot program implemented under Section 531.1063, Government Code, and
[(B)] the health passport developed under Section 266.006, Family Code.

SECTION 4.151. Section 32.252, Human Resources Code, is amended to read as follows:

Sec. 32.252. PARTNERSHIP FOR LONG-TERM CARE PROGRAM. The partnership for long-term care program is administered as part of the medical assistance program by the commission [department] with the assistance of the Texas Department of Insurance. The program must be consistent with provisions governing the expansion of a state long-term care partnership program established under the federal Deficit Reduction Act of 2005 (Pub. L. No. 109-171).

SECTION 4.152. Sections 32.253(b) and (c), Human Resources Code, are amended to read as follows:

(b) The commission [department] may not consider the resources of an individual who has used all or part of the individual's benefits under an approved plan to the extent those resources are the subject of a dollar-for-dollar asset disregard in determining:

(2) the amount of medical assistance provided by

(2) the amount of medical assistance provided; or
(3) any subsequent recovery by this state from the individual's estate for medical assistance provided to the individual.

(c) The commission [department] may not provide to an individual eligible for medical assistance under this section those medical assistance services covered under the medical assistance

729-1 program that are also covered by the individual's benefits under
 729-2 the approved plan until the individual has fully exhausted the
 729-3 individual's benefits under the plan.

729-4 SECTION 4.153. Sections 32.254 and 32.255, Human Resources
 729-5 Code, are amended to read as follows:

729-6 Sec. 32.254. RECIPROCAL AGREEMENTS. The commission
 729-7 [~~department~~] may enter into reciprocal agreements with other states
 729-8 to extend asset protection to a resident of this state who purchased
 729-9 a long-term care benefit plan in another state that has a
 729-10 substantially similar asset disregard program.

729-11 Sec. 32.255. TRAINING; INFORMATION AND TECHNICAL
 729-12 ASSISTANCE. The commission [~~Health and Human Services Commission~~]
 729-13 shall provide information and technical assistance to the Texas
 729-14 Department of Insurance regarding that department's role in
 729-15 ensuring that each individual who sells a long-term care benefit
 729-16 plan under the partnership for long-term care program receives
 729-17 training and demonstrates evidence of an understanding of these
 729-18 plans as required by Section 1651.105, Insurance Code. The
 729-19 training must satisfy the training requirements imposed under the
 729-20 provisions governing the expansion of a state long-term care
 729-21 partnership program established under the federal Deficit
 729-22 Reduction Act of 2005 (Pub. L. No. 109-171).

729-23 SECTION 4.154. Sections 33.0005 and 33.0006, Human
 729-24 Resources Code, are amended to read as follows:

729-25 Sec. 33.0005. DEFINITIONS. In this chapter:

729-26 (1) "Commissioner" means the commissioner of
 729-27 agriculture.

729-28 (1-a) "Department" means the Department of
 729-29 Agriculture[+]

729-30 [(A) with respect to the food stamp program, the
 729-31 ~~Health and Human Services Commission~~; and

729-32 [(B) with respect to any other nutritional
 729-33 assistance program or special nutrition program listed in
 729-34 Subdivision (3), the ~~Health and Human Services Commission~~ or the
 729-35 agency of this state that operates the program, as applicable].

729-36 (2) "Executive commissioner" means the executive
 729-37 commissioner of the ~~Health and Human Services Commission~~[, or the
 729-38 chief administrative officer of an agency of this state operating a
 729-39 nutritional assistance program, as applicable].

729-40 (3) "Supplemental nutrition assistance program" and
 729-41 "SNAP" mean the program operated pursuant to 7 U.S.C. Section 2011
 729-42 et seq. [~~Nutritional assistance program~~ or ~~special nutrition~~
 729-43 ~~program~~] includes the following programs authorized by federal law
 729-44 that provide nutritional assistance to needy individuals in this
 729-45 state:

729-46 [(A) the food stamp program;
 729-47 [(B) the child and adult care food program;
 729-48 [(C) the summer food service program;
 729-49 [(D) the food distribution program;
 729-50 [(E) the emergency food assistance program; and
 729-51 [(F) the commodity supplemental food program.]

729-52 Sec. 33.0006. OPERATION OF SNAP [FOOD STAMP PROGRAM]. The
 729-53 commission [~~Health and Human Services Commission~~] operates the
 729-54 supplemental nutrition assistance [food stamp] program.

729-55 SECTION 4.155. Section 33.002, Human Resources Code, is
 729-56 amended to read as follows:

729-57 Sec. 33.002. DISTRIBUTION OF COMMODITIES AND SNAP BENEFITS
 729-58 [~~FOOD STAMPS~~]. (a) The department is responsible for the
 729-59 distribution of commodities and the commission is responsible for
 729-60 the distribution of supplemental nutrition assistance program
 729-61 benefits [~~Food stamps~~] allocated respectively to the department and
 729-62 the commission by the federal government.

729-63 (b) The department and commission may enter into agreements
 729-64 with federal agencies that are required as a prerequisite to the
 729-65 allocation of the commodities or supplemental nutrition assistance
 729-66 program benefits [~~Food stamps~~]. The department and commission may
 729-67 enter into agreements with eleemosynary institutions, schools, and
 729-68 other eligible agencies and recipients of the commodities and
 729-69 supplemental nutrition assistance program benefits [~~Food stamps~~].

730-1 The department [administering the distribution of federal surplus
 730-2 commodities and other resources] may cooperate with a municipality
 730-3 or county as necessary to properly administer the [that]
 730-4 distribution of federal surplus commodities and other resources for
 730-5 which the department is responsible.

730-6 (c) The department and the executive commissioner, as
 730-7 applicable, shall establish policies and rules that will ensure the
 730-8 widest and most efficient distribution of the commodities and
 730-9 supplemental nutrition assistance program benefits [food stamps]
 730-10 to those eligible to receive them.

730-11 (d) The commission [department] shall continually monitor
 730-12 the expedited issuance of supplemental nutrition assistance
 730-13 program [food stamp] benefits to ensure that each region in the
 730-14 state complies with federal regulations and that those households
 730-15 eligible for expedited issuance are identified, processed, and
 730-16 certified within the timeframes prescribed within the federal
 730-17 regulations.

730-18 (e) The commission [department] shall screen all applicants
 730-19 for expedited issuance of supplemental nutrition assistance
 730-20 program benefits on a priority basis within one working day.
 730-21 Applicants who meet the federal criteria for expedited issuance and
 730-22 have an immediate need for food assistance shall receive those
 730-23 benefits [either a manual Authorization-to-Purchase card or the
 730-24 immediate issuance of food stamp coupons] within one working day.

730-25 (f) The commission [department] shall conspicuously post in
 730-26 each local supplemental nutrition assistance program benefits
 730-27 [food stamp] office a notice of the availability of and procedure
 730-28 for applying for expedited issuance.

730-29 (g) The commission [department] may, within federal limits,
 730-30 modify the one-day screening and service delivery requirements
 730-31 prescribed by Subsection (e) if the commission [department]
 730-32 determines that the modification is necessary to reduce fraud in
 730-33 the supplemental nutrition assistance [food stamp] program.

730-34 SECTION 4.156. Sections 33.0021(a) and (c), Human Resources
 730-35 Code, are amended to read as follows:

730-36 (a) The commission [department] shall develop general
 730-37 informational materials that contain eligibility guidelines for
 730-38 supplemental nutrition assistance program benefits under this
 730-39 chapter and that clearly and simply explain the process for
 730-40 applying for benefits, as well as indicate the availability of
 730-41 expedited benefits [food stamps], the existence of toll-free
 730-42 telephone hotlines, and the existence of a procedure in each region
 730-43 to handle complaints. These informational materials shall be
 730-44 nonpromotional in nature.

730-45 (c) The commission [department] shall distribute the
 730-46 materials to community action agencies, legal services offices, and
 730-47 emergency food programs and other programs likely to have contact
 730-48 with potential applicants.

730-49 SECTION 4.157. Section 33.0023, Human Resources Code, is
 730-50 amended to read as follows:

730-51 Sec. 33.0023. SNAP [FOOD STAMP] INFORMATION MATCHING
 730-52 SYSTEM. (a) To detect and prevent fraud in the supplemental
 730-53 nutrition assistance [food stamp] program, the commission
 730-54 [department], through the use of a computerized matching system,
 730-55 shall compare at least semiannually commission [department]
 730-56 information relating to supplemental nutrition assistance program
 730-57 benefits [food stamp] transactions and redemptions by benefits
 730-58 recipients [of food stamps] and retailers with information obtained
 730-59 from the comptroller and other appropriate state agencies relating
 730-60 to those recipients and retailers.

730-61 (b) The commission [department], the comptroller, and the
 730-62 appropriate agencies shall take all necessary measures to protect
 730-63 the confidentiality of information provided under this section, in
 730-64 compliance with all existing state and federal privacy guidelines.

730-65 (c) In this section, "retailer" means a business approved
 730-66 for participation in the supplemental nutrition assistance [food
 730-67 stamp] program.

730-68 SECTION 4.158. Section 33.003(a), Human Resources Code, is
 730-69 amended to read as follows:

(a) The department may establish distribution districts and employ distributing agents or may make other arrangements necessary to provide for the efficient distribution of commodities [and food stamps].

SECTION 4.159. Section 33.004, Human Resources Code, is amended to read as follows:

Sec. 33.004. COMMODITY DISTRIBUTION PROGRAM ADVISORY
BOARDS. (a) The department may establish state or district-level
advisory boards to facilitate the operations of the commodity
distribution program [or food stamp programs].

(b) The advisory boards shall be of the size, membership, and experience that the [executive] commissioner determines to be essential for the accomplishment of the purposes of this chapter and not in conflict with or duplicative of other laws on this subject.

SECTION 4.160. Section 33.006, Human Resources Code, is amended to read as follows:

Sec. 33.006. HANDLING CHARGES. (a) The department may assess reasonable handling charges against the recipients of commodities [~~or food stamps~~] to cover the cost of distribution. The total operation must be conducted on a nonprofit basis.

(b) The department shall make the assessments at the times and in the amounts that it considers necessary for the proper administration of the commodity distribution program [programs]. However, the assessments must be uniform in each distribution district and may not exceed \$1 per recipient per year.

SECTION 4.161. Section 33.008, Human Resources Code, is amended to read as follows:

Sec. 33.008. SALE OF USED COMMODITY CONTAINERS. The department may sell used commodity containers. Proceeds from the sales in each distribution district shall be deposited in the general revenue [~~commodity distribution~~] fund [~~and used for the commodity distribution program~~].

SECTION 4.162. Section 33.011, Human Resources Code, is amended to read as follows:

Sec. 33.011. PROHIBITED ACTIVITIES; PENALTIES. (a) A person commits an offense if the person knowingly uses, alters, or transfers a supplemental nutrition assistance program electronic [food stamp] benefit transfer card [permits] in any manner not authorized by law. An offense under this subsection is a Class A misdemeanor if the value of the supplemental nutrition assistance program electronic [food stamp] benefit transfer card [permits] is less than \$200 and a felony of the third degree if the value [of the food stamp benefit permits] is \$200 or more.

(b) A person commits an offense if the person knowingly possesses a supplemental nutrition assistance program electronic [food stamp] benefit transfer card [permits] when not authorized by law to possess the card [them], knowingly redeems supplemental nutrition assistance program benefits [food stamp benefit permits] when not authorized by law to redeem them, or knowingly redeems supplemental nutrition assistance program benefits [food stamp benefit permits] for purposes not authorized by law. An offense under this subsection is a Class A misdemeanor if the value of the supplemental nutrition assistance program electronic benefit transfer card possessed, or the program benefits redeemed, [food stamp benefit permits] is less than \$200 and a felony of the third degree if the value of the supplemental nutrition assistance program electronic benefit transfer card possessed, or the program benefits redeemed, [food stamp benefit permits] is \$200 or more.

[(c) A person commits an offense if the person knowingly possesses blank authorizations to participate in the food stamp program when not authorized by law to possess them. An offense under this subsection is a felony of the third degree.]

(d) When cash, exchange value, or supplemental nutrition assistance program electronic [food stamp] benefit transfer cards [permits] of various values are obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the values aggregated in determining

732-1 the grade of the offense.

732-2 (e) The commission [department] may contract with county
 732-3 commissioners courts to provide funds to pay for professional and
 732-4 support services necessary for the enforcement of any criminal
 732-5 offense that involves illegally obtaining, possessing, or misusing
 732-6 supplemental nutrition assistance program benefits [food stamps].

732-7 (f) For the purposes of Subsections (a) and (b), the value
 732-8 of a supplemental nutrition assistance program electronic [food
 732-9 stamp] benefit transfer card [permits] is the cash or exchange
 732-10 value obtained in violation of this section.

732-11 (g) In this section, "supplemental nutrition assistance
 732-12 program benefits [food stamp benefit permits]" includes [+]
 732-13 [+] food stamp coupons;
 732-14 [+] electronic benefit transfer (EBT) cards[+, and
 732-15 [+] authorizations to participate in the food stamp
 732-16 program].

732-17 SECTION 4.163. Sections 33.012, 33.013, 33.015, 33.022,
 732-18 33.023, 33.0231, and 33.025, Human Resources Code, are amended to
 732-19 read as follows:

732-20 Sec. 33.012. CHEMICAL DEPENDENCY TREATMENT PROGRAM AS
 732-21 REPRESENTATIVE. The commission [department] shall provide an
 732-22 individual's supplemental nutrition assistance program [food
 732-23 stamp] allotment to the residential chemical dependency treatment
 732-24 program in which the person resides to the extent allowed under
 732-25 Section 8(f), Food Stamp Act of 1977 (7 U.S.C. Section 2017(e)), if
 732-26 the individual designates the program as the individual's
 732-27 authorized representative.

732-28 Sec. 33.013. INFORMATION AND REFERRAL SERVICES. (a) Each
 732-29 local supplemental nutrition assistance program benefits [food
 732-30 stamp] office shall compile and maintain a current list of
 732-31 emergency food providers in the area served by the local
 732-32 supplemental nutrition assistance program benefits [food stamp]
 732-33 office and refer individuals who need food to local programs that
 732-34 may be able to provide assistance.

732-35 (b) The commission [department] shall establish regional or
 732-36 statewide toll-free telephone hotlines to provide emergency food
 732-37 information and to refer needy individuals to local programs that
 732-38 may be able to provide assistance. The commission [department]
 732-39 shall publish the telephone number for referrals in the emergency
 732-40 telephone numbers section of local telephone books. The commission
 732-41 [department] shall display this telephone number in all of its
 732-42 offices.

732-43 (c) Where emergency food programs do not exist, the
 732-44 commission [department office] shall assist community groups in
 732-45 establishing emergency food assistance programs.

732-46 (d) The commission [department] may establish other local,
 732-47 regional, or statewide programs to provide emergency food
 732-48 information and referral services where needed and where none
 732-49 presently exist.

732-50 Sec. 33.015. INITIAL ESTABLISHMENT AND RECERTIFICATION OF
 732-51 ELIGIBILITY FOR CERTAIN PERSONS. (a) In administering the
 732-52 supplemental nutrition assistance [food stamp] program, the
 732-53 commission [department] shall, except as provided by Subsection
 732-54 (c), allow a person to comply with initial eligibility
 732-55 requirements, including any initial interview, and with subsequent
 732-56 periodic eligibility recertification requirements by telephone
 732-57 instead of through a personal appearance at commission [department]
 732-58 offices if:

732-59 (1) the person and each member of the person's
 732-60 household:

732-61 (A) have no earned income; and
 732-62 (B) are elderly or persons with disabilities
 732-63 [disabled]; or

732-64 (2) the person is subject to a hardship, as determined
 732-65 by commission rule [the department].

732-66 (b) For purposes of rules under Subsection (a)(2), a
 732-67 hardship includes a situation in which a person is prevented from
 732-68 personally appearing at commission [department] offices because
 732-69 the person is:

(1) subject to a work or training schedule;
(2) subject to transportation difficulties;
(3) subject to other difficulties arising from the person's residency in a rural area;
(4) subject to prolonged severe weather;
(5) ill; or
(6) needed to care for a member of the person's household.

(c) The commission [department] may require a person described by Subsection (a) to personally appear at commission [department] offices to establish initial eligibility or to comply with periodic eligibility recertification requirements if the commission [department] considers a personal appearance necessary to:

- (1) protect the integrity of the supplemental nutrition assistance [~~food stamp~~] program; or
- (2) prevent an adverse determination regarding the person's eligibility that would be less likely to occur if the person made a personal appearance.

(d) A person described by Subsection (a) may elect to personally appear at commission [department] offices to establish initial eligibility or to comply with periodic eligibility recertification requirements.

(e) The commission [~~department~~] shall require a person exempted under this section from making a personal appearance at commission [~~department~~] offices to provide verification of the person's entitlement to the exemption on initial eligibility certification and on each subsequent periodic eligibility recertification. If the person does not provide verification and the commission [~~department~~] considers the verification necessary to protect the integrity of the supplemental nutrition assistance [~~food stamp~~] program, the commission [~~department~~] shall initiate a fraud referral to the commission's [~~department's~~] office of inspector general.

Sec. 33.022. APPLICATION ASSISTANCE. (a) On request of an applicant for supplemental nutrition assistance program benefits, the commission [department] shall assist the applicant in filling out forms and completing the application process.

(b) The commission [department] shall inform each applicant of the availability of assistance.

Sec. 33.023. INFORMATION VERIFICATION. (a) The commission [department] shall develop and implement for expedited issuance a uniform procedure for verifying information required of an applicant for supplemental nutrition assistance program benefits.

(b) In developing the uniform procedure, the commission [department] shall attempt to minimize the cost and complexity of the procedure to the applicant.

(c) The commission [department] shall not require an applicant [applicants] for expedited service to verify more eligibility items than the minimum necessary to conform to the federal regulations and shall assist the applicant in obtaining materials needed to verify an application. The commission [department] shall not deny or delay determination of eligibility due to lack of verification of items that may be postponed if they cannot be verified within the timeframes prescribed by the federal regulations.

(d) The commission [department] shall post a notice in each of its offices indicating to whom an applicant for or client of the supplemental nutrition assistance program can talk to resolve problems or complaints. This notice should indicate persons available to handle problems in local, regional, and state offices. Notification of the existence of each office and complaint procedures shall be posted in each supplemental nutrition assistance program benefits [~~food stamp~~] office and in materials made available to applicants regarding the application process.

Sec. 33.0231. VERIFICATION OF IDENTITY AND PREVENTION OF DUPLICATE PARTICIPATION IN SNAP. The commission [department] shall use appropriate technology to:

(1) confirm the identity of applicants for benefits

734-1 under the supplemental nutrition assistance program; and
 734-2 (2) prevent duplicate participation in the program by
 734-3 a person.

734-4 Sec. 33.025. NUTRITION EDUCATION AND OUTREACH FOR THOSE
 734-5 ELIGIBLE FOR SNAP BENEFITS [FOOD STAMPS]. (a) The commission
 734-6 [~~department~~] shall develop and implement a plan of operation to
 734-7 provide nutrition education and outreach to persons eligible for
 734-8 supplemental nutrition assistance program benefits [food stamps].

734-9 (b) The plan of operation for education and outreach shall:
 734-10 (1) ensure that low-income consumers are provided with
 734-11 informational materials that include but are not limited to
 734-12 information on:

734-13 (A) food budgeting for low-income consumers;
 734-14 (B) purchasing and preparing low-cost
 734-15 nutritional meals;
 734-16 (C) basic nutrition and healthy foods;
 734-17 (D) the availability of supplemental nutrition
 734-18 assistance program benefits [food stamps];
 734-19 (E) the eligibility requirements for
 734-20 supplemental nutrition assistance program benefits [food stamps];
 734-21 and

734-22 (F) the application procedures for receiving
 734-23 supplemental nutrition assistance program benefits [food stamps];

734-24 (2) identify a target population for the informational
 734-25 activities, which may include:

734-26 (A) recipients of the Special Supplemental
 734-27 Nutrition [Food] Program for Women, Infants and Children;
 734-28 (B) families which have children who are eligible
 734-29 for the free or reduced-priced meals programs;
 734-30 (C) recipients of commodity surplus foods;
 734-31 (D) senior citizens attending nutrition sites
 734-32 and participating in nutritional activities;

734-33 (E) clients of emergency food pantries;
 734-34 (F) farm workers or migrants; and
 734-35 (G) others who may benefit from the information
 734-36 including but not limited to senior citizens, persons with
 734-37 disabilities, and working poor families;

734-38 (3) identify geographical areas, if any, which
 734-39 specifically will be targeted; and

734-40 (4) ensure that all informational activities are
 734-41 multilingual and available in accessible alternative formats.

734-42 (c) The commission [~~department~~] shall submit the plan of
 734-43 operation to the Food and Nutrition Service of the United States
 734-44 Department of Agriculture for approval, making the commission
 734-45 [~~department~~] eligible for reimbursement for 50 percent of the cost
 734-46 of the informational activities.

734-47 (d) The commission [~~department~~] shall cooperate with other
 734-48 state agencies that currently operate nutrition education
 734-49 programs.

734-50 (e) The commission [~~department~~] shall enlist the assistance
 734-51 of pro bono public relations firms where available.

734-52 SECTION 4.164. Section 33.026(c), Human Resources Code, is
 734-53 amended to read as follows:

734-54 (c) The department may, with respect to [~~department's~~
 734-55 ~~advisory committee on~~] the federal Child and Adult Care Food
 734-56 Program [~~may~~]:

734-57 (1) conduct public hearings in accordance with
 734-58 department procedures;

734-59 (2) refer issues relating to the program to the
 734-60 commissioner [~~board~~] for discussion; and

734-61 (3) recommend modifications to the department's
 734-62 training programs for sponsoring organizations and other persons
 734-63 participating in the program.

734-64 SECTION 4.165. Section 33.0271(h), Human Resources Code, is
 734-65 amended to read as follows:

734-66 (h) The department [~~executive commissioner~~] by rule may
 734-67 establish procedures that would allow an entity that had the
 734-68 entity's application to participate in the Child and Adult Care
 734-69 Food Program denied or authority to participate in the program

735-1 revoked under Subsection (g) to appeal the department's
735-2 determination under that subsection.

735-3 SECTION 4.166. Section 33.028, Human Resources Code, is
735-4 amended to read as follows:

735-5 Sec. 33.028. GRANT PROGRAMS FOR NUTRITION EDUCATION. (a)
735-6 The department [Department of Agriculture] shall develop a program
735-7 under which the department awards grants to:

735-8 (1) participants in the Child and Adult Care Food
735-9 Program, the Head Start program, or other early childhood education
735-10 programs to operate nutrition education programs for children who
735-11 are at least three years of age but younger than five years of age;
735-12 and

735-13 (2) community and faith-based initiatives that
735-14 provide recreational, social, volunteer, leadership, mentoring, or
735-15 developmental programs to incorporate nutrition education into
735-16 programs provided for children younger than 19 years of age.

735-17 (b) The department [Department of Agriculture] may solicit
735-18 and accept gifts, grants, and donations from any public or private
735-19 source for the purposes of this section.

735-20 (c) The department [Department of Agriculture] may adopt
735-21 rules as necessary to administer the grant programs established
735-22 under this section.

735-23 SECTION 4.167. Sections 34.002(a) and (d), Human Resources
735-24 Code, are amended to read as follows:

735-25 (a) The Health and Human Services Commission[~~, the~~
735-26 ~~department,~~] and the Texas Workforce Commission, with the
735-27 participation of local workforce development boards, shall jointly
735-28 develop and implement a state program of temporary assistance and
735-29 related support services that is distinct from the financial
735-30 assistance program authorized by Chapter 31.

735-31 (d) If federal law is enacted that imposes work
735-32 participation rate requirements on two-parent families for
735-33 purposes of the financial assistance program under Chapter 31 that
735-34 are substantively identical to those that federal law imposes on
735-35 one-parent families for purposes of that program, the Health and
735-36 Human Services Commission [~~department~~] may, on the effective date
735-37 of the federal law relating to the work participation rate
735-38 requirements for two-parent families, provide for establishment of
735-39 that recipient's eligibility for financial assistance under
735-40 Chapter 31 instead of under this chapter in a manner that avoids
735-41 disruption of benefits for which the recipient is eligible.

735-42 SECTION 4.168. Sections 34.003(a) and (c), Human Resources
735-43 Code, are amended to read as follows:

735-44 (a) The executive commissioner [~~Health and Human Services~~
735-45 ~~Commission, the department,~~] and the Texas Workforce Commission
735-46 shall adopt all rules necessary for implementation of the state
735-47 program, including rules regarding eligibility, work requirements,
735-48 work exemptions, time limits, and related support services.

735-49 (c) The Health and Human Services Commission[~~, the~~
735-50 ~~department,~~] and the Texas Workforce Commission shall form an
735-51 interagency work group to develop the rules required under this
735-52 section. The interagency work group shall provide for
735-53 participation in development of the rules by representatives of
735-54 local workforce development boards.

735-55 SECTION 4.169. Section 34.004, Human Resources Code, is
735-56 amended to read as follows:

735-57 Sec. 34.004. PROCEDURES APPLICABLE TO PERSONS RESIDING IN
735-58 MINIMUM SERVICE COUNTIES. The Health and Human Services
735-59 Commission[~~, the department,~~] and the Texas Workforce Commission
735-60 shall develop and implement procedures to:

735-61 (1) determine the date on which a person's eligibility
735-62 for temporary assistance and related support services based on
735-63 residency in a minimum service county, as defined by the Texas
735-64 Workforce Commission, will cease as a result of the county's
735-65 reclassification; and

735-66 (2) provide for establishment of that person's
735-67 eligibility for financial assistance and related support services
735-68 under Chapter 31 in a manner that avoids disruption of benefits for
735-69 which the person is eligible.

736-1 SECTION 4.170. Section 34.006, Human Resources Code, is
736-2 amended to read as follows:

736-3 Sec. 34.006. STUDY. The Texas Workforce Commission, in
736-4 collaboration with local workforce development boards and the
736-5 appropriate standing committees of the senate and house of
736-6 representatives, shall:

736-7 (1) study methods to improve the delivery of workforce
736-8 services to persons residing in minimum service counties, as
736-9 defined by the Texas Workforce Commission [~~commission~~]; and

736-10 (2) develop recommendations to improve the delivery of
736-11 services described by Subdivision (1).

736-12 SECTION 4.171. Section 35.001(3), Human Resources Code, is
736-13 amended to read as follows:

736-14 (3) "Department" means the ~~Texas~~ Department of Aging
736-15 and Disability [~~Human~~] Services.

736-16 SECTION 4.172. Section 35.002, Human Resources Code, is
736-17 amended to read as follows:

736-18 Sec. 35.002. ADOPTION OF RULES AND IMPLEMENTATION OF
736-19 PROGRAM. The executive commissioner [~~department~~] shall adopt rules
736-20 to implement and administer this chapter, including:

736-21 (1) procedures and guidelines for determining eligibility
736-22 standards relating to financial qualifications and the
736-23 need for services and for determining eligibility criteria for
736-24 selecting clients to receive assistance;

736-25 (2) standards and procedures for approving qualified
736-26 programs and support services;

736-27 (3) procedures for conducting a periodic review of
736-28 clients;

736-29 (4) procedures and guidelines for determining when
736-30 assistance duplicates other support programs or results in
736-31 excessive support to a client;

736-32 (5) reasonable payment rates for qualified programs
736-33 and support services under this chapter; and

736-34 (6) a copayment system in accordance with Section
736-35 35.007 [~~of this code~~].

736-36 SECTION 4.173. Sections 35.003(a), (b), (c), and (f), Human
736-37 Resources Code, are amended to read as follows:

736-38 (a) The department's rules must provide that an applicant
736-39 for assistance is eligible to receive assistance if the applicant
736-40 resides in this state and meets the department's eligibility
736-41 criteria for income and need [~~and is not eligible for services under~~
736-42 ~~Subchapter A, Chapter 535, Health and Safety Code~~]. A family or a
736-43 person with a disability living independently may apply for
736-44 assistance.

736-45 (b) The department shall determine in accordance with
736-46 department rules eligibility for support services from the results
736-47 of current evaluations, program plans, and medical reports. Those
736-48 documents shall be provided to the department on request. The
736-49 department, if it considers necessary, shall provide any additional
736-50 evaluations.

736-51 (c) The department shall determine the applicant's needs
736-52 and the support services for which the applicant is eligible in
736-53 accordance with department rules and after consulting with the
736-54 applicant.

736-55 (f) If requested by the applicant, the commission's appeals
736-56 division [~~department~~] shall hold a hearing on the denial of an
736-57 application.

736-58 SECTION 4.174. Section 35.004(b), Human Resources Code, is
736-59 amended to read as follows:

736-60 (b) The executive commissioner [~~department~~] by rule may add
736-61 services and programs for which the department may provide
736-62 assistance.

736-63 SECTION 4.175. Sections 35.005(a) and (b), Human Resources
736-64 Code, are amended to read as follows:

736-65 (a) The department may grant assistance of not more than
736-66 \$3,600 a year to a client and make periodic distributions or a
736-67 lump-sum distribution according to the client's needs. The
736-68 commissioner of aging and disability services or the commissioner's
736-69 designee may grant additional amounts on consideration of an

737-1 individual client's needs.

737-2 (b) In addition to the assistance authorized by Subsection
 737-3 (a) [~~of this section~~], the department may award to a client a
 737-4 one-time [~~onetime~~] grant of assistance of not more than \$3,600 for
 737-5 architectural renovation or other capital expenditure to improve or
 737-6 facilitate the care, treatment, therapy, general living
 737-7 conditions, or access of a person with a disability. The
 737-8 commissioner of aging and disability services or the commissioner's
 737-9 designee may grant additional amounts on consideration of an
 737-10 individual client's needs.

737-11 SECTION 4.176. Section 35.007, Human Resources Code, is
 737-12 amended to read as follows:

737-13 Sec. 35.007. COPAYMENT SYSTEM. In accordance with
 737-14 department rules, the [~~the~~] department shall establish a copayment
 737-15 system with each client using a scale for payments determined
 737-16 according to the client's need for financial assistance to acquire
 737-17 the necessary support services and the client's ability to pay for
 737-18 those services.

737-19 SECTION 4.177. Section 35.008(a), Human Resources Code, is
 737-20 amended to read as follows:

737-21 (a) The executive commissioner [~~department~~] by rule shall
 737-22 establish a reasonable charge for each authorized support service.

737-23 SECTION 4.178. Section 35.009, Human Resources Code, is
 737-24 amended to read as follows:

737-25 Sec. 35.009. CLIENT RESPONSIBILITY FOR PAYMENT. Each
 737-26 client shall pay:

737-27 (1) the client's copayment;
 737-28 (2) the amount of charges in excess of the amount
 737-29 determined by the executive commissioner [~~department~~] to be
 737-30 reasonable; and

737-31 (3) the amount of charges incurred in excess of the
 737-32 maximum amount of assistance authorized by this chapter to be
 737-33 provided by the department.

737-34 SECTION 4.179. Section 36.001(3), Human Resources Code, is
 737-35 amended to read as follows:

737-36 (3) "Fiscal agent" means:
 737-37 (A) a person who, through a contractual
 737-38 relationship with a [~~the Texas Department of Human Services, the~~
 737-39 ~~Texas Department of Health, or another~~] state agency, receives,
 737-40 processes, and pays a claim under the Medicaid program; or
 737-41 (B) the designated agent of a person described by
 737-42 Paragraph (A).

737-43 SECTION 4.180. Section 36.002, Human Resources Code, is
 737-44 amended to read as follows:

737-45 Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful
 737-46 act if the person:

737-47 (1) knowingly makes or causes to be made a false
 737-48 statement or misrepresentation of a material fact to permit a
 737-49 person to receive a benefit or payment under the Medicaid program
 737-50 that is not authorized or that is greater than the benefit or
 737-51 payment that is authorized;

737-52 (2) knowingly conceals or fails to disclose
 737-53 information that permits a person to receive a benefit or payment
 737-54 under the Medicaid program that is not authorized or that is greater
 737-55 than the benefit or payment that is authorized;

737-56 (3) knowingly applies for and receives a benefit or
 737-57 payment on behalf of another person under the Medicaid program and
 737-58 converts any part of the benefit or payment to a use other than for
 737-59 the benefit of the person on whose behalf it was received;

737-60 (4) knowingly makes, causes to be made, induces, or
 737-61 seeks to induce the making of a false statement or
 737-62 misrepresentation of material fact concerning:

737-63 (A) the conditions or operation of a facility in
 737-64 order that the facility may qualify for certification or
 737-65 recertification required by the Medicaid program, including
 737-66 certification or recertification as:

737-67 (i) a hospital;
 737-68 (ii) a nursing facility or skilled nursing
 737-69 facility;

(iii) a hospice;
(iv) an ICF-IID [intermediate care facility
for the mentally retarded];

(v) an assisted living facility; or

(vi) a home health agency; or

information required to be provided by a rule, regulation, or provider agreement
aid program;

(5) except as authorized under the Medicaid program, knowingly pays, charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product if the cost of the service or product is paid for, in whole or in part, under the Medicaid program;

(6) knowingly presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly makes or causes to be made a claim under the Medicaid program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care

practitioner; (B) a service or product that is substantially

inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased,

mislabeled, or that is otherwise inappropriate;

(8) makes a claim under the Medicaid program and

knowingly fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service;

(9) conspires to commit a violation of Subdivision

(10) is a managed care organization that contracts with the commission [Health and Human Services Commission] or other

with the commission [~~Health and Human Services Commission~~] or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under the Medicaid program and knowingly:

- (A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;
- (B) fails to provide to the commission or

(C) engages in a fraudulent activity in connection with the enrollment of an individual eligible under the Medicaid program in the organization's managed care plan or in connection with marketing the organization's services to an individual eligible under the Medicaid program;

- (11) knowingly obstructs an investigation by the attorney general of an alleged unlawful act under this section;
- (12) knowingly makes, uses, or causes the making or

use of a false record or statement material to an obligation to pay or transmit money or property to this state under the Medicaid program, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to this state under the Medicaid program; or

(13) knowingly engages in conduct that constitutes a violation under Section 32.039(b).

SECTION 4.181. Section 36.003(a), Human Resources Code, is amended to read as follows:

(a) A state agency, including the commission [Health and Human Services Commission], the [Texas] Department of State Health [Human] Services, the [Texas] Department of Aging and Disability

739-1 Services [~~Health, the Texas Department of Mental Health and Mental~~
 739-2 ~~Retardation~~, and [or] the Department of Family and Protective [and
 739-3 ~~Regulatory~~] Services, shall provide the attorney general access to
 739-4 all documentary materials of persons and Medicaid recipients under
 739-5 the Medicaid program to which that agency has access. Documentary
 739-6 material provided under this subsection is provided to permit
 739-7 investigation of an alleged unlawful act or for use or potential use
 739-8 in an administrative or judicial proceeding.

739-9 SECTION 4.182. Sections 36.005(a), (b), and (b-2), Human
 739-10 Resources Code, are amended to read as follows:

739-11 (a) A health and human services agency, as defined by
 739-12 Section 531.001, Government Code:

739-13 (1) shall suspend or revoke:

739-14 (A) a provider agreement between the agency and a
 739-15 person, other than a person who operates a nursing facility or an
 739-16 ICF-IID [~~ICF-MR facility~~], found liable under Section 36.052; and
 739-17 (B) a permit, license, or certification granted
 739-18 by the agency to a person, other than a person who operates a
 739-19 nursing facility or an ICF-IID [~~ICF-MR facility~~], found liable
 739-20 under Section 36.052; and

739-21 (2) may suspend or revoke:

739-22 (A) a provider agreement between the agency and a
 739-23 person who operates a nursing facility or an ICF-IID [~~ICF-MR~~
 739-24 facility] and who is found liable under Section 36.052; or
 739-25 (B) a permit, license, or certification granted
 739-26 by the agency to a person who operates a nursing facility or an
 739-27 ICF-IID [~~ICF-MR facility~~] and who is found liable under Section
 739-28 36.052.

739-29 (b) A provider found liable under Section 36.052 for an
 739-30 unlawful act may not, for a period of 10 years, provide or arrange
 739-31 to provide health care services under the Medicaid program or
 739-32 supply or sell, directly or indirectly, a product to or under the
 739-33 Medicaid program. The executive commissioner [~~of the Health and~~
 739-34 ~~Human Services Commission~~] may by rule:

739-35 (1) provide for a period of ineligibility longer than
 739-36 10 years; or

739-37 (2) grant a provider a full or partial exemption from
 739-38 the period of ineligibility required by this subsection if the
 739-39 executive commissioner finds that enforcement of the full period of
 739-40 ineligibility is harmful to the Medicaid program or a beneficiary
 739-41 of the program.

739-42 (b-2) Subsections (b) and (b-1) do not apply to a provider
 739-43 who operates a nursing facility or an ICF-IID [~~ICF-MR facility~~].

739-44 SECTION 4.183. Section 36.052(a), Human Resources Code, is
 739-45 amended to read as follows:

739-46 (a) Except as provided by Subsection (c), a person who
 739-47 commits an unlawful act is liable to the state for:

739-48 (1) the amount of any payment or the value of any
 739-49 monetary or in-kind benefit provided under the Medicaid program,
 739-50 directly or indirectly, as a result of the unlawful act, including
 739-51 any payment made to a third party;

739-52 (2) interest on the amount of the payment or the value
 739-53 of the benefit described by Subdivision (1) at the prejudgment
 739-54 interest rate in effect on the day the payment or benefit was
 739-55 received or paid, for the period from the date the benefit was
 739-56 received or paid to the date that the state recovers the amount of
 739-57 the payment or value of the benefit;

739-58 (3) a civil penalty of:

739-59 (A) not less than \$5,500 or the minimum amount
 739-60 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
 739-61 exceeds \$5,500, and not more than \$15,000 or the maximum amount
 739-62 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
 739-63 exceeds \$15,000, for each unlawful act committed by the person that
 739-64 results in injury to an elderly person, as defined by Section
 739-65 48.002(a)(1), a [~~disabled~~] person with a disability, as defined by
 739-66 Section 48.002(a)(8)(A), or a person younger than 18 years of age;
 739-67 or

739-68 (B) not less than \$5,500 or the minimum amount
 739-69 imposed as provided by 31 U.S.C. Section 3729(a), if that amount

740-1 exceeds \$5,500, and not more than \$11,000 or the maximum amount
 740-2 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
 740-3 exceeds \$11,000, for each unlawful act committed by the person that
 740-4 does not result in injury to a person described by Paragraph (A);
 740-5 and

740-6 (4) two times the amount of the payment or the value of
 740-7 the benefit described by Subdivision (1).

740-8 SECTION 4.184. Section 36.110(a-1), Human Resources Code,
 740-9 is amended to read as follows:

740-10 (a-1) If the state does not proceed with an action under
 740-11 this subchapter, the person bringing the action is entitled, except
 740-12 as provided by Subsection (b), to receive at least 25 percent but
 740-13 not more than 30 percent of the proceeds of the action. The
 740-14 entitlement of a person under this subsection is not affected by any
 740-15 subsequent intervention in the action by the state in accordance
 740-16 with Section 36.104(b-1) [36.104(b)].

740-17 SECTION 4.185. Sections 40.002(a), (b), and (c), Human
 740-18 Resources Code, are amended to read as follows:

740-19 (a) The Department of Family and Protective Services is
 740-20 composed of the council, the commissioner, an administrative staff,
 740-21 and other [officers and] employees necessary to efficiently carry
 740-22 out the purposes of this chapter.

740-23 (b) Notwithstanding any other law, the department shall:

740-24 (1) provide protective services for children and
 740-25 elderly persons and [disabled] persons with disabilities,
 740-26 including investigations of alleged abuse, neglect, or
 740-27 exploitation in facilities of the Department of State Health
 740-28 Services and the [Texas] Department of Aging [Mental Health] and
 740-29 Disability Services [Mental Retardation] or the [its] successor
 740-30 agency for either of those agencies;

740-31 (2) provide family support and family preservation
 740-32 services that respect the fundamental right of parents to control
 740-33 the education and upbringing of their children;

740-34 (3) license, register, and enforce regulations
 740-35 applicable to child-care facilities, child-care administrators,
 740-36 and child-placing agency administrators; and

740-37 (4) implement and manage programs intended to provide
 740-38 early intervention or prevent at-risk behaviors that lead to child
 740-39 abuse, delinquency, running away, truancy, and dropping out of
 740-40 school.

740-41 (c) The department is the state agency designated to
 740-42 cooperate with the federal government in the administration of
 740-43 programs under:

740-44 (1) Parts B and E, Title IV, federal Social Security
 740-45 Act (42 U.S.C. Sections 620 et seq. and 670 et seq.); [and]

740-46 (2) the Child Abuse Prevention and Treatment Act (42
 740-47 U.S.C. Section 5101 et seq.); and

740-48 (3) other federal law for which the department has
 740-49 administrative responsibility.

740-50 SECTION 4.186. Sections 40.0041(a), (d), and (f), Human
 740-51 Resources Code, are amended to read as follows:

740-52 (a) The executive commissioner by rule [department] shall
 740-53 develop and implement a uniform process for receiving and resolving
 740-54 complaints against the department throughout the state. The
 740-55 process shall include:

740-56 (1) statewide procedures through which the public,
 740-57 consumers, and service recipients are informed:

740-58 (A) of the right to make a complaint against the
 740-59 department, including the mailing addresses and telephone numbers
 740-60 of appropriate department personnel responsible for receiving
 740-61 complaints and providing related assistance; and

740-62 (B) of the department's procedures for resolving
 740-63 a complaint, including the right to appeal a decision made at the
 740-64 local level;

740-65 (2) development and statewide distribution of a form
 740-66 or telephone system that may be used to make a complaint;

740-67 (3) a requirement that the department provide
 740-68 information by mail or telephone regarding the department's
 740-69 procedures for investigating and resolving a complaint to each

741-1 person who makes a complaint; and

741-2 (4) a requirement that the department provide status
 741-3 information at least quarterly to a person with a pending complaint
 741-4 against the department, unless the information would jeopardize an
 741-5 undercover investigation.

741-6 (d) The executive commissioner [~~executive director~~] shall
 741-7 develop a consistent, statewide process for addressing an appeal by
 741-8 a person dissatisfied with the resolution of a complaint at the
 741-9 regional level. The process shall include an opportunity for
 741-10 appeal of a complaint without the participation of the department's
 741-11 ombudsman office.

741-12 (f) The department shall periodically prepare and deliver
 741-13 reports to the executive commissioner [~~board~~] and the commissioner
 741-14 [~~executive director~~] regarding the number, type, and resolution of
 741-15 complaints made in the state against the department.

741-16 SECTION 4.187. Sections 40.005(a), (b), and (c), Human
 741-17 Resources Code, are amended to read as follows:

741-18 (a) The executive commissioner [~~department~~] shall establish
 741-19 and the department shall enforce rules governing the custody, use,
 741-20 and preservation of the department's records, papers, files, and
 741-21 communications.

741-22 (b) The executive commissioner [~~department~~] shall prescribe
 741-23 safeguards to govern the use or disclosure of information relating
 741-24 to a recipient of a department service or to an investigation the
 741-25 department conducts in performing its duties and responsibilities.
 741-26 The safeguards must be consistent with the purposes of the
 741-27 department's programs and must comply with applicable state and
 741-28 federal law and department rules.

741-29 (c) Notwithstanding any other provision of law, the
 741-30 executive commissioner [~~department~~] by rule may prescribe a process
 741-31 by which an administrative law judge may disclose requested
 741-32 confidential information that the department possesses. The rules
 741-33 must provide that the information may be disclosed by the
 741-34 administrative law judge only if the administrative law judge:

741-35 (1) provides notice to the department and any
 741-36 interested party; and

741-37 (2) determines after an in camera review of the
 741-38 information that disclosure is essential to the administration of
 741-39 justice and will not endanger the life or safety of any individual.

741-40 SECTION 4.188. Section 40.027(c), Human Resources Code, is
 741-41 amended to read as follows:

741-42 (c) Subject to the control of the executive commissioner,
 741-43 the commissioner shall:

741-44 (1) act as the department's chief administrative
 741-45 officer;

741-46 (2) in accordance with the procedures prescribed by
 741-47 Section 531.00551, Government Code, assist the executive
 741-48 commissioner in the development and implementation of policies and
 741-49 guidelines needed for the administration of the department's
 741-50 functions;

741-51 (3) in accordance with the procedures adopted by the
 741-52 executive commissioner under Section 531.00551, Government Code,
 741-53 assist the executive commissioner in the development of rules
 741-54 relating to the matters within the department's jurisdiction,
 741-55 including the delivery of services to persons and the rights and
 741-56 duties of persons who are served or regulated by the department; and
 741-57 (4) serve as a liaison between the department and
 741-58 commission.

741-59 SECTION 4.189. Section 40.0315, Human Resources Code, is
 741-60 amended to read as follows:

741-61 Sec. 40.0315. INVESTIGATION UNIT FOR ADULT PROTECTIVE
 741-62 SERVICES. (a) The adult protective services division of the
 741-63 department shall maintain an investigation unit to investigate
 741-64 allegations of abuse, neglect, and exploitation of elderly persons
 741-65 and [~~disabled~~] persons with disabilities reported to the division.

741-66 (b) An investigator in the unit shall determine whether an
 741-67 elderly person or [~~disabled~~] person with a disability who is the
 741-68 subject of a report made under Section 48.051(a) may have suffered
 741-69 from abuse, neglect, or exploitation as a result of the criminal

742-1 conduct of another person. If the investigator determines that
 742-2 criminal conduct may have occurred, the investigator shall
 742-3 immediately notify:

742-4 (1) the commission's office of inspector general if
 742-5 the [disabled] person with a disability who is the subject of the
 742-6 report resides in a state supported living center or the ICF-IID
 742-7 [ICF-MR] component of the Rio Grande State Center; and

742-8 (2) the appropriate law enforcement agency, unless the
 742-9 law enforcement agency reported the alleged abuse, neglect, or
 742-10 exploitation to the department.

742-11 SECTION 4.190. Sections 40.032(a), (b), (c), (d), (e), and
 742-12 (f), Human Resources Code, are amended to read as follows:

742-13 (a) The department [~~executive director~~] may employ
 742-14 personnel necessary to administer the department's duties.

742-15 (b) The department [~~executive director or the executive~~
 742-16 ~~director's designated representative~~] shall develop an
 742-17 intradepartmental career ladder program that addresses
 742-18 opportunities for mobility and advancement for employees within the
 742-19 department. The program shall require the intradepartmental
 742-20 posting of all positions concurrently with any public posting.

742-21 (c) The department [~~executive director or the executive~~
 742-22 ~~director's designated representative~~] shall develop a system of
 742-23 annual performance evaluations based on measurable job tasks. All
 742-24 merit pay for department employees must be based on the system
 742-25 established under this subsection.

742-26 (d) The department [~~executive director or the executive~~
 742-27 ~~director's designated representative~~] shall provide [~~to members of~~
 742-28 ~~the board and~~] to the department's employees, as often as is
 742-29 necessary, information regarding their qualifications for office
 742-30 or employment under this chapter and their responsibilities under
 742-31 applicable laws relating to standards of conduct for state officers
 742-32 or employees.

742-33 (e) The department [~~executive director or the executive~~
 742-34 ~~director's designated representative~~] shall prepare and maintain a
 742-35 written policy statement to ensure implementation of a program of
 742-36 equal employment opportunity under which all personnel
 742-37 transactions are made without regard to race, color, disability,
 742-38 sex, religion, age, or national origin. The policy statement must
 742-39 include:

742-40 (1) personnel policies, including policies relating
 742-41 to recruitment, evaluation, selection, appointment, training, and
 742-42 promotion of personnel, that comply with Chapter 21, Labor Code;

742-43 (2) a comprehensive analysis of the department's
 742-44 workforce that meets federal and state laws, rules, and regulations
 742-45 and instructions adopted under those laws, rules, and regulations;

742-46 (3) procedures by which a determination can be made
 742-47 about the extent of underuse in the department's workforce of all
 742-48 persons for whom federal or state laws, rules, and regulations and
 742-49 instructions adopted under those laws, rules, and regulations
 742-50 encourage a more equitable balance; and

742-51 (4) reasonable methods to appropriately address those
 742-52 areas of underuse.

742-53 (f) The policy statement required under Subsection (e)
 742-54 shall:

742-55 (1) be filed with the governor's office;
 742-56 (2) cover an annual period;
 742-57 (3) be updated at least annually; and
 742-58 (4) be reviewed by the Texas Workforce Commission
 742-59 civil rights division [~~on Human Rights~~] for compliance with
 742-60 Subsection (e)(1).

742-61 SECTION 4.191. Section 40.0321(d), Human Resources Code, is
 742-62 amended to read as follows:

742-63 (d) The department may [~~shall~~] not require a salary
 742-64 supplement as a condition for creating or maintaining a position in
 742-65 the region.

742-66 SECTION 4.192. Section 40.0322(a), Human Resources Code, is
 742-67 amended to read as follows:

742-68 (a) In hiring department employees whose duties include
 742-69 providing services as part of, or relating to, the provision of

adult protective services directly to an elderly person or [disabled] person with a disability, the commissioner shall ensure that the department hires, as often as possible, persons with professional credentials related to adult protective services, including persons who are licensed master social workers, as defined by Section 505.002, Occupations Code, or licensed professional counselors.

SECTION 4.193. Section 40.0323, Human Resources Code, is amended to read as follows:

Sec. 40.0323. COORDINATION REGARDING RECRUITMENT FOR AND CURRICULUM OF CERTAIN CERTIFICATE OR DEGREE PROGRAMS. Subject to the availability of funds, the department and the Texas Higher Education Coordinating Board jointly shall develop strategies to:

(1) promote certificate or degree programs in the fields of social work and psychology to individuals enrolled in or admitted to institutions of higher education in this state; and

(2) ensure that persons receiving a certificate or degree, including a graduate degree, in social work or psychology from an institution of higher education in this state have the knowledge and skills regarding protective services that are provided directly to elderly persons or [disabled] persons with disabilities and necessary for successful employment by the adult protective services division of the department.

SECTION 4.194. Section 40.033(a), Human Resources Code, is amended to read as follows:

(a) Subject to rules adopted by the executive commissioner, the [The] department may establish a merit system for its employees.

SECTION 4.195. Sections 40.035(a), (b), and (d), Human Resources Code, are amended to read as follows:

(a) The department shall develop and implement a training program that each newly hired or assigned department employee must complete before:

(1) initiating an investigation of a report of alleged abuse, neglect, or exploitation of an elderly person or [disabled] person with a disability under Chapter 48; or

(2) providing protective services to elderly persons or [disabled] persons with disabilities under that chapter.

(b) The training program must:

(1) provide the person with appropriate comprehensive information regarding:

(A) the incidence and types of reports of abuse, neglect, and exploitation of elderly persons or [disabled] persons with disabilities that are received by the department, including information concerning false reports; and

(B) the use and proper implementation of:

(i) the risk assessment criteria developed under Section 48.004;

(ii) the criteria used by caseworkers to determine whether elderly persons or [disabled] persons with disabilities lack capacity to consent to receive protective services; and

(iii) the legal procedures available under Chapter 48 for the protection of elderly persons or [disabled] persons with disabilities, including the procedures for obtaining a court order for emergency protective services under Section 48.208;

(2) include best practices for management of a case from the intake process to the provision of protective services, including criteria that specify the circumstances under which an employee should:

(A) consult a supervisor regarding a case; or

(B) refer an elderly person or [disabled] person with a disability to an appropriate public agency or community service provider for guardianship or other long-term services after the delivery of protective services to that person has been completed;

(3) provide appropriate specialized training in any necessary topics, including:

(A) investigation of suspected identity theft

and other forms of financial exploitation and suspected self-neglect; and

(B) establishment and maintenance of working relationships with community organizations and other local providers who provide services to elderly persons and [disabled] persons with disabilities;

(4) include on-the-job training, which must require another department caseworker with more experience to accompany and train the caseworker in the field;

(5) provide for the development of individualized training plans;

(6) include training in working with law enforcement agencies and the court system when legal intervention is sought for investigations or emergency orders;

(7) to the maximum extent possible, include nationally recognized best practices in addition to the best practices required under Subdivision (2); and

(8) include testing, progress reports, or other evaluations to assess the performance of trainees.

(d) The department shall develop and implement appropriate continuing education programs for employees of the adult protective services division who have completed initial training under this section. The continuing education programs must include nationally recognized best practices to the maximum extent possible and must be designed to provide an annual update regarding changes in:

(1) adult protective services division policies and procedures; and

(2) applicable law, including statutory changes affecting the adult protective services division or elderly persons or [disabled] persons with disabilities served by the division.

SECTION 4.196. Section 40.0505, Human Resources Code, is amended to read as follows:

Sec. 40.0505. POWERS AND DUTIES OF COMMISSIONER; EFFECT OF CONFLICT WITH OTHER LAW [OF HEALTH AND HUMAN SERVICES]. [The commissioner of health and human services has the powers and duties relating to the board and executive director as provided by Section 531.0055, Government Code.] To the extent a power or duty given to the commissioner [board or executive director] by this chapter or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

SECTION 4.197. Subchapter C, Chapter 40, Human Resources Code, is amended by adding Sections 40.0506 and 40.0507 to read as follows:

Sec. 40.0506. MANAGEMENT AND DIRECTION BY EXECUTIVE COMMISSIONER. The department's powers and duties prescribed by this chapter and other law, including enforcement activities and functions, are subject to the executive commissioner's oversight under Chapter 531, Government Code, to manage and direct the operations of the department.

Sec. 40.0507. CONTRACTING AND AUDITING AUTHORITY; DELEGATION. (a) The executive commissioner, as authorized by Section [531.0055](#), Government Code, may delegate to the department the executive commissioner's authority under that section for contracting and auditing relating to the department's powers, duties, functions, and activities.

(b) If the executive commissioner does not make a delegation under Subsection (a), a reference in law to the department with respect to the department's contracting or auditing authority means the executive commissioner. If the executive commissioner makes a delegation under Subsection (a), a reference in law to the department's contracting or auditing authority means the authority the executive commissioner has delegated to the department.

(c) If the executive commissioner revokes all or part of a delegation made under Subsection (a), a reference in law to the department with respect to a function for which the delegation was revoked means the executive commissioner or another entity to which the executive commissioner delegates that authority.

(d) It is the legislature's intent that the executive commissioner retain the authority over and responsibility for

745-1 contracting and auditing at each health and human services agency
 745-2 as provided by Section 531.0055, Government Code. A statute that
 745-3 becomes law on or after January 1, 2015, that references the
 745-4 contracting or auditing authority of the department does not give
 745-5 the department direct contracting or auditing authority unless the
 745-6 statute expressly provides that the contracting or auditing
 745-7 authority:

745-8 (1) is given directly to the department; and
 745-9 (2) is an exception to the exclusive contracting and
 745-10 auditing authority given to the executive commissioner under
 745-11 Section 531.0055, Government Code.

745-12 SECTION 4.198. Sections 40.0521(a) and (b), Human Resources
 745-13 Code, are amended to read as follows:

745-14 (a) The executive commissioner [department] shall adopt and
 745-15 the department shall implement rules that require an investigating
 745-16 employee to document indications of domestic violence, including
 745-17 elder, spousal, and child abuse. The department may develop forms
 745-18 to facilitate the documentation process.

745-19 (b) The executive commissioner [department] by rule shall
 745-20 require that written information, printed in English and Spanish,
 745-21 concerning community services that are available to victims of
 745-22 domestic violence be distributed to those victims. The department
 745-23 may coordinate its efforts under this subsection with local law
 745-24 enforcement agencies already providing that information.

745-25 SECTION 4.199. Section 40.0523, Human Resources Code, is
 745-26 amended to read as follows:

745-27 Sec. 40.0523. INFANT MORTALITY PREVENTION EDUCATION
 745-28 PROGRAM. (a) The department [and the Children's Trust Fund of
 745-29 Texas Council jointly] shall develop and implement a statewide
 745-30 education program designed to prevent infant mortality. [The
 745-31 department and the council shall develop and mutually agree to a
 745-32 memorandum of understanding to clearly define the responsibilities
 745-33 of the department and the council under this section.]

745-34 (b) In developing and implementing the program, the
 745-35 department [and the Children's Trust Fund of Texas Council] shall
 745-36 request the assistance of individuals, governmental entities,
 745-37 private organizations, and other entities with specific knowledge
 745-38 of infant mortality prevention.

745-39 (c) The executive commissioner [board and the Children's
 745-40 Trust Fund of Texas Council] shall adopt rules to implement this
 745-41 section.

745-42 SECTION 4.200. Section 40.0524(b), Human Resources Code, is
 745-43 amended to read as follows:

745-44 (b) Members of a multidisciplinary team may exchange
 745-45 information relating to a report of child abuse or neglect as
 745-46 necessary to facilitate a thorough investigation of the report.
 745-47 The executive commissioner [department] may adopt rules governing
 745-48 the exchange of information between team members.

745-49 SECTION 4.201. Sections 40.0527(a) and (c), Human Resources
 745-50 Code, are amended to read as follows:

745-51 (a) Subject to the availability of funds, the executive
 745-52 commissioner by rule shall develop and the department shall
 745-53 implement a statewide public awareness campaign designed to educate
 745-54 the public regarding the abuse, neglect, and exploitation of
 745-55 elderly persons and [disabled] persons with disabilities.

745-56 (c) A public awareness strategy implemented for the program
 745-57 must include:

745-58 (1) the provision of information on the incidence and
 745-59 types of reports of abuse, neglect, and exploitation of elderly
 745-60 persons or [disabled] persons with disabilities; and

745-61 (2) practices that can reduce the incidences of abuse,
 745-62 neglect, and exploitation of elderly persons or [disabled] persons
 745-63 with disabilities in this state.

745-64 SECTION 4.202. Section 40.059, Human Resources Code, is
 745-65 amended to read as follows:

745-66 Sec. 40.059. FEES. The executive commissioner by rule
 745-67 [department] may set and the department may collect [charge]
 745-68 appropriate fees in the administration and delivery of services.

745-69 SECTION 4.203. Section 40.060, Human Resources Code, is

746-1 amended to read as follows:

746-2 Sec. 40.060. INDEMNIFICATION FOR LEGAL EXPENSES. If a
 746-3 present or former employee of the department who is or was involved
 746-4 in activities relating to the protection of children or elderly
 746-5 persons or [disabled] persons with disabilities is criminally
 746-6 prosecuted for conduct involving the person's misfeasance or
 746-7 nonfeasance in the course and scope of the person's employment and
 746-8 is found not guilty after a trial or appeal or if the complaint or
 746-9 indictment is dismissed without a plea of guilty or nolo contendere
 746-10 being entered, the department may indemnify the person or the
 746-11 person's estate for the reasonable attorney's fees incurred in
 746-12 defense of the prosecution up to a maximum of \$10,000.

746-13 SECTION 4.204. Section 40.062, Human Resources Code, is
 746-14 amended to read as follows:

746-15 Sec. 40.062. EXEMPTION FROM CERTAIN COSTS AND FEES. The
 746-16 department is not required to pay any cost or fee otherwise imposed
 746-17 for court proceedings or other services, including a:

- 746-18 (1) filing fee or fee for issuance or service of
 process imposed by Section 110.002, Family Code, or by Section
 746-20 51.317, 51.318(b)(2), or 51.319, Government Code;
- 746-21 (2) transfer fee imposed by Section 110.002 or
 110.005, Family Code;
- 746-22 (3) court reporter fee imposed by Section 51.601,
 Government Code;
- 746-23 (4) judicial fund fee imposed by Section [Sections
 51.701 and] 51.702, Government Code;
- 746-24 (5) judge's fee imposed by Section 25.0008 or 25.0029,
 Government Code;
- 746-25 (6) cost or security fee imposed by Section 53.051,
 53.052, 1053.051, [12] or 1053.052, Estates [622, Probate] Code; or
- 746-26 (7) fee imposed by a county officer under Section
 118.011 or 118.052, Local Government Code.

746-27 SECTION 4.205. Section 40.065(b), Human Resources Code, is
 746-28 amended to read as follows:

746-29 (b) The department shall develop and implement a
 746-30 communication plan to ensure statewide public and government
 746-31 awareness of child abuse or neglect investigated by the department.
 746-32 The plan shall include information detailing the procedure followed
 746-33 by the department during the investigation and the responsibilities
 746-34 of the department in child abuse cases. In implementing the plan,
 746-35 the department shall establish a process for expediting the
 746-36 reporting of child abuse or neglect to the department. The
 746-37 executive commissioner [department] shall adopt rules to implement
 746-38 this subsection.

746-39 SECTION 4.206. Section 40.066(b), Human Resources Code, is
 746-40 amended to read as follows:

746-41 (b) The memorandum of understanding shall require the chief
 746-42 administrative law judge, the department, and the commissioner
 746-43 [executive director] to cooperate in connection with a contested
 746-44 case hearing and may authorize the State Office of Administrative
 746-45 Hearings to perform any administrative act, including the giving of
 746-46 notice, that is required to be performed by the department or
 746-47 commissioner [executive director].

746-48 SECTION 4.207. Section 40.068(c), Human Resources Code, is
 746-49 amended to read as follows:

746-50 (c) The department shall spend funds in a guardianship of a
 746-51 client's estate in compliance with Title 3, Estates Code [Chapter
 746-52 XIII, Texas Probate Code].

746-53 SECTION 4.208. Sections 40.101(2) and (3), Human Resources
 746-54 Code, are amended to read as follows:

746-55 (2) "Primary prevention" means services and
 746-56 activities available to the community at large or to families to
 746-57 prevent child abuse and neglect before it occurs. The term includes
 746-58 infant mortality prevention education programs.

746-59 (3) "Operating fund" means the Department of Family
 746-60 and Protective [and Regulatory] Services child abuse and neglect
 746-61 prevention operating fund account.

746-62 SECTION 4.209. Sections 40.105(a) and (e), Human Resources
 746-63 Code, are amended to read as follows:

(a) The child abuse and neglect prevention trust fund account is an account in the general revenue fund. Money in the trust fund is dedicated to child abuse and neglect primary prevention programs.

(e) All marriage license fees and other fees collected for and deposited in the trust fund and interest earned on the trust fund balance shall be appropriated each biennium only to the operating fund for primary child abuse and neglect prevention programs.

SECTION 4.210. Section 40.106(a), Human Resources Code, is amended to read as follows:

(a) The [Department of Protective and Regulatory Services child abuse and neglect prevention] operating fund [account] is an account in the general revenue fund.

SECTION 4.211. Sections 42.041(d) and (e), Human Resources Code, are amended to read as follows:

(d) A facility exempt from the provisions of Subsection (a) [of this section] that desires to receive or participate in federal or state funding shall be required to comply with all other provisions of this chapter and with all regulations promulgated under this chapter.

(e) The exemptions provided by Subsection (b) [of this section] do not affect the authority of local, regional, or state health department officials, the state fire marshal, or local fire prevention officials to inspect child-care facilities.

SECTION 4.212. Sections 42.042(a), (b), (e), (f), (g), (g-1), (h), (i), (l), (n), and (p), Human Resources Code, are amended to read as follows:

(a) The executive commissioner [department] shall adopt [make] rules to carry out the provisions of this chapter.

(b) The department shall conduct a comprehensive review of

all rules and standards at least every six years. For purposes of this subsection, the six-year period begins on the latest of the date of:

(1) the conclusion of the review of the rules and standards;

(2) a decision by the department not to revise the

(2) a decision by the department not to revise the rules and standards;

(3) a decision by the executive commissioner [board] not to revise the rules and standards; or

(4) executive commissioner [board] action adopting new standards.

and that will:

- (1) promote the health, safety, and welfare of children attending a facility or registered family home;
- (2) promote safe, comfortable, and healthy physical facilities and registered family homes for children;

facilities and registered family homes for children;
(3) ensure adequate supervision of children by capable, qualified, and healthy personnel;

- (4) ensure adequate and healthy food service where food service is offered;
- (5) prohibit racial discrimination by child-care facilities.

facilities and registered family homes;

(6) require procedures for parental and guardian consultation in the formulation of children's educational and

(8) ensure that a child-care facility or registered family home:

(A) follows the directions of a child's physician

or other health care provider in providing specialized medical assistance required by the child; and

(B) maintains for a reasonable time a copy of any directions from the physician or provider that the parent provides to the facility or home.

(f) In promulgating minimum standards for the provision of child-care services, the executive commissioner [department] shall recognize the various categories of services, including services for specialized care, the various categories of children and their particular needs, and the differences in the organization and operation of child-care facilities and general residential operations. Standards for general residential operations must require an intake study before a child is placed in an operation. The intake study may be conducted at a community mental health and intellectual disability [mental retardation] center.

(g) In promulgating minimum standards the executive
commissioner [department] may recognize and treat differently the
types of services provided by the following:

- (1) registered family homes;
 - (2) child-care facilities, including general residential operations, foster group homes, foster homes, group day-care homes, and day-care centers;
 - (3) child-placing agencies;
 - (4) agency foster homes;
 - (5) agency foster group homes;
 - (6) before-school or after-school programs; and
 - (7) school-age programs.

(g-1) The executive commissioner in adopting [In determining] and the department in enforcing minimum standards for a school-age program[, the department] shall consider commonly accepted training methods for the development of a skill, talent, ability, expertise, or proficiency that are implemented with the consent of the parent or guardian of the participant and that are fundamental to the core purpose of the program.

(h) The executive commissioner [department] shall promulgate minimum standards for child-placing agencies.

(i) Before the executive commissioner adopts [adopting] minimum standards, the department shall:

(1) convene a temporary work group to advise the executive commissioner [department] regarding the proposed standards, composed of at least six members who represent the diverse geographic regions of this state, including:

- (A) a department official designated by the commissioner to facilitate the work group's activities;
- (B) a person with demonstrated expertise or knowledge regarding the different types and classifications of child-care facilities, homes, agencies, or programs that will be covered by the proposed standards;

(C) a parent with experience related to one of the different types or classifications of child-care facilities, homes, agencies, or programs that will be covered by the proposed standards; and

(D) a representative of a nonprofit entity licensed under this chapter; and

(2) send a copy of the proposed standards to each licensee covered by the proposed standards at least 60 days before the standards take effect to provide the licensee an opportunity to review and to send written suggestions to the department.

(1) In promulgating minimum standards for the regulation of family homes that register with the department, the executive commissioner [department] must address the minimum qualifications, education, and training required of a person who operates a family home registered with the department.

(n) Not later than the 60th day before the date the executive commissioner [board] adopts a revision to the minimum standards for child-care facilities, the executive commissioner [department] shall present the revision to the appropriate legislative oversight committees that have jurisdiction over child-care facilities for review and comment.

(p) The executive commissioner [department] by rule shall prescribe minimum training standards for an employee of a regulated child-care facility, including the time required for completing the training. The executive commissioner [department] may not require an employee to repeat required training if the employee has

749-1 completed the training within the time prescribed by department
 749-2 rule. The department's local offices shall make available at the
 749-3 local office locations a copy of the rules regarding minimum
 749-4 training standards, information enabling the owner or operator of a
 749-5 regulated facility to apply for training funds from other agencies
 749-6 to lower facility costs, and any other materials the department may
 749-7 develop to assist the owner or operator or other entity in providing
 749-8 the training.

749-9 SECTION 4.213. Sections 42.0421(a), (b), (c), (e), (f), and
 749-10 (h), Human Resources Code, are amended to read as follow:

749-11 (a) The minimum training standards prescribed by the
 749-12 executive commissioner [department] under Section 42.042(p) for an
 749-13 employee, director, or operator of a day-care center, group
 749-14 day-care home, or registered family home must include:

749-15 (1) 24 hours of initial training that must be
 749-16 completed not later than the 90th day after the employee's first day
 749-17 of employment for an employee of a day-care center who has no
 749-18 previous training or less than two years of employment experience
 749-19 in a regulated child-care facility, eight hours of which must be
 749-20 completed before the employee is given responsibility for a group
 749-21 of children;

749-22 (2) 24 hours of annual training for each employee of a
 749-23 day-care center or group day-care home, excluding the director,
 749-24 which must include at least six hours of training in one or more of
 749-25 the following areas:

- 749-26 (A) child growth and development;
- 749-27 (B) guidance and discipline;
- 749-28 (C) age-appropriate curriculum; and
- 749-29 (D) teacher-child interaction; and

749-30 (3) 30 hours of annual training for each director of a
 749-31 day-care center or group day-care home, or operator of a registered
 749-32 family home, which must include at least six hours of training in
 749-33 one or more of the following areas:

- 749-34 (A) child growth and development;
- 749-35 (B) guidance and discipline;
- 749-36 (C) age-appropriate curriculum; and
- 749-37 (D) teacher-child interaction.

749-38 (b) The minimum training standards prescribed by the
 749-39 executive commissioner [department] under Section 42.042(p) must
 749-40 require an employee of a licensed day-care center or group day-care
 749-41 home who provides care for children younger than 24 months of age to
 749-42 receive special training regarding the care of those children. The
 749-43 special training must be included as a component of the initial
 749-44 training required by Subsection (a)(1) and as a one-hour component
 749-45 of the annual training required by Subsections (a)(2) and (a)(3).
 749-46 The special training must include information on:

- 749-47 (1) recognizing and preventing shaken baby syndrome;
- 749-48 (2) preventing sudden infant death syndrome; and
- 749-49 (3) understanding early childhood brain development.

749-50 (c) The executive commissioner [department] by rule shall
 749-51 require an operator of a registered family home who provides care
 749-52 for a child younger than 24 months of age to complete one hour of
 749-53 annual training on:

- 749-54 (1) recognizing and preventing shaken baby syndrome;
- 749-55 (2) preventing sudden infant death syndrome; and
- 749-56 (3) understanding early childhood brain development.

749-57 (e) In addition to other training required by this section,
 749-58 the executive commissioner [department] by rule shall require an
 749-59 owner, operator, or employee of a day-care center, group day-care
 749-60 home, registered family home, general residential operation
 749-61 [child-care institution], foster group home, or agency foster group
 749-62 home who transports a child under the care of the facility whose
 749-63 chronological or developmental age is younger than nine years of
 749-64 age to complete at least two hours of annual training on
 749-65 transportation safety.

749-66 (f) The training required by this section must be
 749-67 appropriately targeted and relevant to the age of the children who
 749-68 will receive care from the individual receiving training and must
 749-69 be provided by a person who:

(1) is a training provider registered with the Texas Early Childhood Professional [Care and Education Career] Development System's Texas Trainer Registry that is maintained by the Texas Head Start State Collaboration Office;

(2) is an instructor at a public or private secondary school, an institution of higher education, as defined by Section **61.003**, Education Code, or a private college or university accredited by a recognized accrediting agency who teaches early childhood development or another relevant course, as determined by rules adopted by the commissioner of education and the commissioner of higher education;

(3) is an employee of a state agency with relevant expertise;

(4) is a physician, psychologist, licensed professional counselor, social worker, or registered nurse;

(5) holds a generally recognized credential or possesses documented knowledge relevant to the training the person will provide;

(6) is a registered family home care provider or director of a day-care center or group day-care home in good standing with the department, if applicable, and who:

(A) has demonstrated core knowledge in child development and caregiving; and

(B) is only providing training at the home or center in which the provider or director and the person receiving training are employed; or

(7) has at least two years of experience working in child development, a child development program, early childhood education, a childhood education program, or a Head Start or Early Head Start program and:

(A) has been awarded a Child Development Associate (CDA) credential; or

(B) holds at least an associate's degree in child development, early childhood education, or a related field.

(h) In adopting the minimum training standards under

Section 42.042(p), the executive commissioner [department] may not require more training hours than the number of hours prescribed by Subsection (a) for a day-care center, group day-care home, or [a] registered family home.

SECTION 4.214. Section 42.0422, Human Resources Code, is amended to read as follows:

Sec. 42.0422. RESTRAINT AND SECLUSION. A person providing services to a resident of a general residential operation, including a state-operated facility that is a residential treatment center or a general residential operation serving children with intellectual disabilities [mental retardation], shall comply with Chapter 322, Health and Safety Code, and the rules adopted under that chapter.

SECTION 4.215. Section 42.0423(h), Human Resources Code, is amended to read as follows:

(h) The executive commissioner [of the Health and Human Services Commission] shall adopt rules and forms necessary to implement this section.

SECTION 4.216. Section 42.0424(d), Human Resources Code, is amended to read as follows:

(d) The executive commissioner [department] shall adopt rules to implement this section.

SECTION 4.217. Sections 42.0425(a) and (b), Human Resources Code, are amended to read as follows:

(a) The executive commissioner [department] by rule shall regulate assessment services provided by child-care facilities or child-placing agencies. A child-care facility or child-placing agency may not provide assessment services unless specifically authorized by [the] department rule.

(b) The executive commissioner [department] by rule shall establish minimum standards for assessment services. The standards must provide that consideration is given to the individual needs of a child, the appropriate place for provision of services, and the factors listed in Section 42.042(e).

751-1 SECTION 4.218. Sections 42.043(a), (c), and (f), Human
751-2 Resources Code, are amended to read as follows:

751-3 (a) The executive commissioner [department] shall adopt
751-4 [make] rules for the immunization of children in facilities
751-5 regulated under this chapter.

751-6 (c) The executive commissioner [~~Texas Department of~~
751-7 ~~Health~~] shall adopt [make] rules for the provisional admission of
751-8 children to facilities regulated under this chapter and may modify
751-9 or delete any of the immunizations listed in Subsection (b) [~~of this~~
751-10 ~~section~~] or require additional immunizations as a requirement for
751-11 admission to a facility.

751-12 (f) The [~~Texas~~] Department of State Health Services shall
751-13 provide the immunizations required by this section to children in
751-14 areas where there is no local provision of these services.

751-15 SECTION 4.219. Section 42.0431, Human Resources Code, is
751-16 amended to read as follows:

751-17 Sec. 42.0431. ENFORCEMENT OF SCREENING REQUIREMENTS
751-18 RELATING TO VISION, HEARING, AND OTHER SPECIAL SENSES AND
751-19 COMMUNICATION DISORDERS. (a) The executive commissioner
751-20 [department], after consultation with the [~~Texas~~] Department of
751-21 State Health Services, shall adopt rules necessary to ensure that
751-22 children receiving care at a day-care center or group day-care home
751-23 licensed under this chapter are screened for vision, hearing, and
751-24 any other special senses or communication disorders in compliance
751-25 with rules adopted [~~by the Texas Board of Health~~] under Section
751-26 36.004, Health and Safety Code.

751-27 (b) Each day-care center or group day-care home licensed
751-28 under this chapter shall maintain individual screening records for
751-29 children attending the facility who are required to be screened,
751-30 and the department may inspect those records at any reasonable
751-31 time. The department shall coordinate the monitoring inspections
751-32 in compliance with protocol agreements adopted between the
751-33 department and the [~~Texas~~] Department of State Health Services
751-34 pursuant to Section 42.0442.

751-35 SECTION 4.220. Section 42.0442(b), Human Resources Code, is
751-36 amended to read as follows:

751-37 (b) The department shall form an interagency task force with
751-38 the [~~Texas~~] Department of State Health Services, the [~~Texas~~]
751-39 Department of Aging and Disability [~~Human~~] Services, and the Texas
751-40 Workforce Commission to develop an inspection protocol that will
751-41 coordinate inspections by those agencies. The protocol must assign
751-42 the required items for inspection by each agency and facilitate the
751-43 sharing of inspection data and compliance history.

751-44 SECTION 4.221. Section 42.04425(b), Human Resources Code,
751-45 is amended to read as follows:

751-46 (b) The department shall make the data collected by the
751-47 department available to another state agency or political
751-48 subdivision of the state for the purpose of administering programs
751-49 or enforcing laws within the jurisdiction of that agency or
751-50 subdivision. If feasible using available information systems, the
751-51 department shall make the data directly available to the [~~Texas~~]
751-52 Department of State Health Services, the [~~Texas~~] Department of
751-53 Aging and Disability [~~Human~~] Services, and the Texas Workforce
751-54 Commission through electronic information systems. The
751-55 department, the [~~Texas~~] Department of State Health Services, the
751-56 [~~Texas~~] Department of Aging and Disability [~~Human~~] Services, and
751-57 the Texas Workforce Commission shall jointly plan the development
751-58 of child-care inspection databases that, to the extent feasible,
751-59 are similar in their design and architecture to promote the sharing
751-60 of data.

751-61 SECTION 4.222. Section 42.0443(e), Human Resources Code, is
751-62 amended to read as follows:

751-63 (e) The executive commissioner [department] shall adopt
751-64 rules necessary to implement this section.

751-65 SECTION 4.223. Section 42.0445(b), Human Resources Code, is
751-66 amended to read as follows:

751-67 (b) The executive commissioner [department] may adopt rules
751-68 to implement this section.

751-69 SECTION 4.224. Section 42.045(c), Human Resources Code, is

752-1 amended to read as follows:

752-2 (c) If a child-placing agency terminates operation as a
 752-3 child-placing agency, it shall, after giving notice to the
 752-4 department, transfer its files and records concerning adopted
 752-5 children, their biological families, and their adoptive families to
 752-6 the vital statistics unit of the Department of State Health
 752-7 Services [Bureau of Vital Statistics] or, after giving notice to
 752-8 the vital statistics unit [Bureau of Vital Statistics], to a
 752-9 facility licensed by the department to place children for adoption.

752-10 SECTION 4.225. Section 42.048(b), Human Resources Code, is
 752-11 amended to read as follows:

752-12 (b) When issuing a license, the department may impose
 752-13 restrictions on a facility, including [but not limited to] the
 752-14 number of children to be served and the type of children to be
 752-15 served.

752-16 SECTION 4.226. Section 42.050(a), Human Resources Code, is
 752-17 amended to read as follows:

752-18 (a) A license holder may apply for a new license in
 752-19 compliance with the requirements of this chapter and department
 752-20 [the] rules [promulgated by the department].

752-21 SECTION 4.227. Sections 42.052(g) and (i), Human Resources
 752-22 Code, are amended to read as follows:

752-23 (g) The certification requirements of this section do not
 752-24 apply to a Texas Juvenile Justice Department [Youth Commission
 752-25 facility, a Texas Juvenile Probation Commission] facility, or a
 752-26 facility providing services solely for the Texas Juvenile Justice
 752-27 Department [Youth Commission].

752-28 (i) The department shall provide to a listed family home a
 752-29 copy of the listing. A listing must contain a provision that
 752-30 states: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR
 752-31 REGISTERED WITH THE DEPARTMENT OF FAMILY AND PROTECTIVE [AND
 752-32 REGULATORY] SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE
 752-33 INSPECTED." The operator of a listed home is not required to
 752-34 display the listing in a prominent place at the home but shall make
 752-35 the listing available for examination. The executive commissioner
 752-36 [department] by rule shall provide for a sufficient period to allow
 752-37 operators of family homes to comply with the listing requirement of
 752-38 this section.

752-39 SECTION 4.228. Section 42.0522, Human Resources Code, is
 752-40 amended to read as follows:

752-41 Sec. 42.0522. PUBLIC ADVERTISING OF FAMILY HOMES. (a) A
 752-42 family home may not place a public advertisement that uses the title
 752-43 "registered family home" or any variation of that phrase unless the
 752-44 home is registered under this chapter. Any public advertisement
 752-45 for a registered family home that uses the title "registered family
 752-46 home" must contain a provision in bold type stating: "THIS HOME IS
 752-47 REGISTERED WITH THE DEPARTMENT OF FAMILY AND PROTECTIVE [AND
 752-48 REGULATORY] SERVICES BUT IS NOT LICENSED OR REGULARLY INSPECTED."

752-49 (b) A family home may not place a public advertisement that
 752-50 uses the title "listed family home" or any variation of that phrase
 752-51 unless the home is listed as provided by this chapter. Any public
 752-52 advertisement for a listed family home that uses the title "listed
 752-53 family home" must contain a provision in bold type stating: "THIS
 752-54 HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH
 752-55 THE DEPARTMENT OF FAMILY AND PROTECTIVE [AND REGULATORY] SERVICES.
 752-56 IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED."

752-57 SECTION 4.229. Section 42.053(d), Human Resources Code, is
 752-58 amended to read as follows:

752-59 (d) The department shall revoke or suspend the license of a
 752-60 child-placing agency if an agency foster home or agency foster
 752-61 group home operated by the licensed agency fails to comply with
 752-62 Subsection (c) [of this section].

752-63 SECTION 4.230. Section 42.0535(e), Human Resources Code, is
 752-64 amended to read as follows:

752-65 (e) The executive commissioner [department], by rule[7]
 752-66 shall develop a process by which a child-placing agency shall
 752-67 report to the department:

752-68 (1) the name of any verified foster home or foster
 752-69 group home that has been closed for any reason, including a

753-1 voluntary closure;

753-2 (2) information regarding the reasons for the closure
753-3 of the foster home or foster group home; and

753-4 (3) the name and other contact information of a person
753-5 who may be contacted by another child-placing agency to obtain the
753-6 records relating to the closed foster home or foster group home that
753-7 are required to be maintained and made available under this
753-8 section.

753-9 SECTION 4.231. Section 42.054(g), Human Resources Code, is
753-10 amended to read as follows:

753-11 (g) The provisions of Subsections (b) through (f) [~~of this~~
753-12 ~~section~~] do not apply to:

753-13 (1) licensed foster homes and licensed foster group
753-14 homes;

753-15 (2) nonprofit facilities regulated under this chapter
753-16 that provided 24-hour care for children in the managing
753-17 conservatorship of the department during the 12-month period
753-18 immediately preceding the anniversary date of the facility's
753-19 license;

753-20 (3) facilities operated by a nonprofit corporation or
753-21 foundation that provides 24-hour residential care and does not
753-22 charge for the care provided; or

753-23 (4) a family home listed under Section 42.0523 in
753-24 which the relative child-care provider cares for the child in the
753-25 child's own home.

753-26 SECTION 4.232. Section 42.055(b), Human Resources Code, is
753-27 amended to read as follows:

753-28 (b) The executive commissioner [~~department~~] by rule shall
753-29 determine the design, size, and wording of the sign.

753-30 SECTION 4.233. Section 42.056(c), Human Resources Code, is
753-31 amended to read as follows:

753-32 (c) The executive commissioner [~~department~~] by rule shall
753-33 require a child-care facility, child-placing agency, or registered
753-34 family home to pay to the department a fee in an amount not to exceed
753-35 the administrative costs the department incurs in conducting a
753-36 background and criminal history check under this section.

753-37 SECTION 4.234. Section 42.058, Human Resources Code, is
753-38 amended to read as follows:

753-39 Sec. 42.058. COMPETITIVE BIDDING OR ADVERTISING RULES. (a) The executive commissioner [~~board~~] may not adopt rules restricting
753-40 competitive bidding or advertising by a license holder or
753-41 registration holder except to prohibit false, misleading, or
753-42 deceptive practices or to prevent a violation of this chapter.

753-43 (b) Rules [~~In its rules~~] to prohibit false, misleading, or
753-44 deceptive practices [~~, the board~~] may not include a rule that:

753-45 (1) restricts the use of any medium for advertising;
753-46 (2) restricts the use of a license holder's or
753-47 registration holder's personal appearance or voice in an
753-48 advertisement;

753-49 (3) relates to the size or duration of an
753-50 advertisement by the license holder or registration holder; or
753-51 (4) restricts the license holder's or registration
753-52 holder's advertisement under a trade name.

753-53 SECTION 4.235. Section 42.060(c), Human Resources Code, is
753-55 amended to read as follows:

753-56 (c) The executive commissioner [~~department~~] by rule shall
753-57 prescribe requirements regarding the placement, installation, and
753-58 number of carbon monoxide detectors and maintenance procedures for
753-59 those detectors.

753-60 SECTION 4.236. Section 42.0705, Human Resources Code, is
753-61 amended to read as follows:

753-62 Sec. 42.0705. RANGE OF PENALTIES. The department shall
753-63 revoke or suspend a license or registration, place on probation a
753-64 person whose license or registration has been suspended, or
753-65 reprimand a license holder or registration holder for a violation
753-66 of this chapter or a department rule [~~of the board~~]. If a license
753-67 or registration suspension is probated, the department may require
753-68 the license holder or registration holder to:

753-69 (1) report regularly to the department on matters that

754-1 are the basis of the probation;

754-2 (2) limit services to the areas prescribed by the
754-3 department;

754-4 (3) continue or review professional education until
754-5 the license holder or registration holder attains a degree of skill
754-6 satisfactory to the department in those areas that are the basis of
754-7 the probation; or

754-8 (4) take corrective action relating to the violation
754-9 on which the probation is based.

754-10 SECTION 4.237. Sections [42.072\(a\), \(b\), \(d\), \(e\), and \(f\)](#),
754-11 Human Resources Code, are amended to read as follows:

754-12 (a) The department may suspend, deny, revoke, or refuse to
754-13 renew the license, listing, registration, or certification of
754-14 approval of a facility or family home that does not comply with the
754-15 requirements of this chapter, department [~~the~~] standards and rules
754-16 [~~of the department~~], or the specific terms of the license, listing,
754-17 registration, or certification. The department may revoke the
754-18 probation of a person whose license, listing, or registration is
754-19 suspended if the person violates a term of the conditions of
754-20 probation.

754-21 (b) If the department proposes to take an action under
754-22 Subsection (a), the person is entitled to a hearing conducted by the
754-23 State Office of Administrative Hearings. Proceedings for a
754-24 disciplinary action are governed by the administrative procedure
754-25 law, Chapter 2001, Government Code. An action under this section,
754-26 including a revocation of a person's license, is a contested case as
754-27 defined by Chapter 2001, Government Code, and is subject to
754-28 judicial review under the substantial evidence rule in accordance
754-29 with that chapter. Rules of practice adopted by the executive
754-30 commissioner [~~board~~] under Section [2001.004](#), Government Code,
754-31 applicable to the proceedings for a disciplinary action may not
754-32 conflict with rules adopted by the State Office of Administrative
754-33 Hearings.

754-34 (d) The executive commissioner [~~department~~] by rule may
754-35 provide for denial of an application or renewal for a licensed
754-36 facility or for listing or registering a family home or may revoke a
754-37 facility's license or a family home's listing or registration based
754-38 on findings of background or criminal history as a result of a
754-39 background or criminal history check.

754-40 (e) A person may continue to operate a facility or family
754-41 home during an appeal of a license, listing, or registration
754-42 revocation unless the operation of the facility or family home
754-43 poses a risk to the health or safety of children. The executive
754-44 commissioner shall by rule establish the criteria for determining
754-45 whether the operation of a facility or family home poses a risk to
754-46 the health or safety of children. The department shall notify the
754-47 facility or family home of the criteria the department used to
754-48 determine that the operation of the facility or family home poses a
754-49 risk to health or safety and that the facility or family home may
754-50 not operate. A person who has been notified by the department that
754-51 the facility or home may not operate under this section may seek
754-52 injunctive relief from a district court in Travis County or in the
754-53 county in which the facility or home is located to allow operation
754-54 during the pendency of an appeal. The court may grant injunctive
754-55 relief against the department's [~~agency's~~] action only if the court
754-56 finds that the child-care operation does not pose a health or safety
754-57 risk to children. A court granting injunctive relief under this
754-58 subsection shall have no other jurisdiction over an appeal of final
754-59 department [~~agency~~] action unless conferred by Chapter 2001,
754-60 Government Code.

754-61 (f) The department shall deny an application or renewal for
754-62 listing or registering a family home or shall revoke a family home's
754-63 listing or registration if the results of a background or criminal
754-64 history check conducted by the department under Section [42.056](#) show
754-65 that a person has been convicted of an offense under Title 5[~~T~~] or
754-66 6, Penal Code, or Chapter 43, Penal Code.

754-67 SECTION 4.238. Section [42.077\(b\)](#), Human Resources Code, is
754-68 amended to read as follows:

754-69 (b) If a person who operates a facility or family home that

755-1 has had its license, listing, or registration revoked or suspended
755-2 later applies for a new license, listing, or registration to
755-3 operate the same facility or family home, the department shall
755-4 charge the person an application fee set by the executive
755-5 commissioner by rule in an amount necessary to reimburse the
755-6 department for the cost of the notice relating to that facility or
755-7 family home.

755-8 SECTION 4.239. Section 42.078(d), Human Resources Code, is
755-9 amended to read as follows:

755-10 (d) Monetary penalties may [shall] not be assessed for
755-11 violations that are the result of clerical errors.

755-12 SECTION 4.240. Section 42.152(b), Human Resources Code, is
755-13 amended to read as follows:

755-14 (b) A small employer is not required to obtain a permit to
755-15 operate an employer-based day-care facility under this subchapter
755-16 if the employer holds a license to operate a child-care facility
755-17 that is issued by the department under Subchapter C. An employer
755-18 that holds that license must comply with the applicable provisions
755-19 of Subchapter C, the applicable department rules [~~of the~~
755-20 ~~department~~], and any specific terms of the license.

755-21 SECTION 4.241. Section 42.153(c), Human Resources Code, is
755-22 amended to read as follows:

755-23 (c) The department may charge an applicant an
755-24 administrative fee set by the executive commissioner by rule in a
755-25 reasonable amount that is sufficient to cover the costs of the
755-26 department in processing the application.

755-27 SECTION 4.242. Section 42.159(e), Human Resources Code, is
755-28 amended to read as follows:

755-29 (e) The department shall require the small employer to pay
755-30 to the department a fee set by the executive commissioner by rule in
755-31 an amount not to exceed the administrative costs the department
755-32 incurs in conducting a background and criminal history check under
755-33 this section.

755-34 SECTION 4.243. Section 42.162(c), Human Resources Code, is
755-35 amended to read as follows:

755-36 (c) The department may charge a small employer issued a
755-37 permit under this subchapter a reasonable fee set by the executive
755-38 commissioner by rule for the cost of services provided by the
755-39 department in formulating, monitoring, and implementing a
755-40 corrective action plan under this section.

755-41 SECTION 4.244. Section 42.202(b), Human Resources Code, is
755-42 amended to read as follows:

755-43 (b) A shelter is not required to obtain a permit to provide
755-44 shelter care under this subchapter if the shelter holds a license to
755-45 operate a child-care facility that is issued by the department
755-46 under Subchapter C. A shelter that holds that license must comply
755-47 with the applicable provisions of Subchapter C, the applicable
755-48 department rules [~~of the department~~], and any specific terms of the
755-49 license.

755-50 SECTION 4.245. Section 42.203(c), Human Resources Code, is
755-51 amended to read as follows:

755-52 (c) The department may charge an applicant an
755-53 administrative fee set by the executive commissioner by rule in a
755-54 reasonable amount that is sufficient to cover the costs of the
755-55 department in processing the application.

755-56 SECTION 4.246. Section 42.206(e), Human Resources Code, is
755-57 amended to read as follows:

755-58 (e) The department shall require the shelter to pay to the
755-59 department a fee set by the executive commissioner by rule in an
755-60 amount not to exceed the administrative costs the department incurs
755-61 in conducting a background and criminal history check under this
755-62 section.

755-63 SECTION 4.247. Section 42.209(c), Human Resources Code, is
755-64 amended to read as follows:

755-65 (c) The department may charge a shelter issued a permit
755-66 under this subchapter a reasonable fee set by the executive
755-67 commissioner by rule for the cost of services provided by the
755-68 department in formulating, monitoring, and implementing a
755-69 corrective action plan under this section.

756-1 SECTION 4.248. Section 43.005, Human Resources Code, is
 756-2 amended to read as follows:

756-3 Sec. 43.005. RULES. The executive commissioner [board] may
 756-4 adopt [make] rules to administer the provisions of this chapter.

756-5 SECTION 4.249. Section 43.0055, Human Resources Code, is
 756-6 amended to read as follows:

756-7 Sec. 43.0055. COMPETITIVE BIDDING OR ADVERTISING RULES.

756-8 (a) The executive commissioner [department] may not adopt rules
 756-9 restricting competitive bidding or advertising by a license holder
 756-10 except to prohibit false, misleading, or deceptive practices.

756-11 (b) Rules [In its rules] to prohibit false, misleading, or
 756-12 deceptive practices[, the department] may not include a rule that:

756-13 (1) restricts the use of any medium for advertising;

756-14 (2) restricts the use of a license holder's personal
 756-15 appearance or voice in an advertisement;

756-16 (3) relates to the size or duration of an
 756-17 advertisement by the license holder; or

756-18 (4) restricts the license holder's advertisement under
 756-19 a trade name.

756-20 SECTION 4.250. Section 43.006, Human Resources Code, is
 756-21 amended to read as follows:

756-22 Sec. 43.006. FEES. The executive commissioner by rule
 756-23 [board] may set and the department may collect [charge] fees for
 756-24 administering an examination and issuing an initial license,
 756-25 renewal license, or provisional license in amounts necessary to
 756-26 cover the costs of administering this chapter.

756-27 SECTION 4.251. Section 43.009(b), Human Resources Code, is
 756-28 amended to read as follows:

756-29 (b) The department [board] shall recognize, prepare, or
 756-30 administer continuing education programs for license holders. The
 756-31 continuing education requirement may be fulfilled by studies in the
 756-32 areas of legal aspects of child care, concepts related to the field
 756-33 of social work, or other subjects approved by the department.

756-34 SECTION 4.252. Chapter 44, Human Resources Code, is amended
 756-35 to read as follows:

756-36 CHAPTER 44. ADMINISTRATION OF FEDERAL AND STATE DAY-CARE PROGRAMS

756-37 SUBCHAPTER A. FEDERALLY ESTABLISHED DAY-CARE PROGRAMS

756-38 Sec. 44.001. DESIGNATED AGENCY. The Texas Workforce
 756-39 Commission is the state agency designated to administer a day-care
 756-40 program established by federal law and financed partially or
 756-41 totally by federal funds.

756-42 Sec. 44.002. ADMINISTRATIVE RULES. (a) The Texas
 756-43 Workforce Commission shall promulgate rules to carry out the
 756-44 administrative provisions of the program consistent with federal
 756-45 law and regulations.

756-46 (b) The rules must include procedures to allow operators of
 756-47 day-care centers to review and comment on proposed rules and
 756-48 policies.

756-49 Sec. 44.003. ADMINISTRATION OF FEDERAL-LOCAL PROGRAM. (a)
 756-50 If the program is to be funded through political subdivisions of the
 756-51 state or local agencies approved by the Texas Workforce Commission
 756-52 [commission] matching federal grants, the Texas Workforce
 756-53 Commission [commission] shall promulgate procedures for effective
 756-54 delivery of services consistent with this section and with federal
 756-55 law and regulations.

756-56 (b) If the services are provided through contracting with
 756-57 operators of day-care programs on request from political
 756-58 subdivisions or local agencies, the Texas Workforce Commission
 756-59 [commission] may not promulgate standards for selection of the type
 756-60 of programs more restrictive than required by federal law or
 756-61 regulations.

756-62 (c) The executive director of the Texas Workforce
 756-63 Commission [commission] shall establish an accounting system
 756-64 consistent with federal law and regulations which will provide that
 756-65 an operator of a day-care program contracting with the Texas
 756-66 Workforce Commission [commission]:

756-67 (1) shall receive prepayment in accordance with
 756-68 policies and procedures mutually agreed on by the comptroller and
 756-69 the Texas Workforce Commission [commission]; and

(2) shall be paid on the basis of legitimate and reasonable expenses, insofar as possible, given federal regulations and department policy, instead of being paid on the basis of the number of children attending or the number of children enrolled in the program, provided that on being monitored by the Texas Workforce Commission [commission], the contracting operator can substantiate that there were sufficient preparations in the development of the services offered.

(d) The executive director of the Texas Workforce Commission [commission] shall establish procedures for hearing complaints by operators of day-care programs contracting with the Texas Workforce Commission [commission] relating to the failure of the Texas Workforce Commission [commission] to comply with Subsection (c).

SUBCHAPTER B. DAY-CARE CENTERS

Sec. 44.031. ESTABLISHMENT. (a) The Texas Workforce Commission [~~commission~~] may establish day-care centers for all children who qualify for services under Section 44.032. Where in the opinion of the executive director of the Texas Workforce Commission [~~commission~~] it appears feasible for the furtherance of the objectives of this legislation, the Texas Workforce Commission [~~commission~~] may establish cooperative agreements with other state agencies.

(b) The Texas Workforce Commission [commission] is not required to establish a day-care center or to provide services under this subchapter unless funds are appropriated for that purpose.

Sec. 44.032. ELIGIBILITY. (a) Except as provided by Subsection (b), to be eligible for admission to a day-care center authorized under this subchapter, a child must be at least six weeks of age and:

(1) the child must be eligible for state assistance under the aid to families with dependent children program and the child's caretaker must be employed, enrolled in a job training program authorized by the Texas Workforce Commission, registered to work by the Texas Workforce Commission [~~that commission~~], or permanently and totally disabled; or

(2) the child must be from a family eligible under federal law or regulations to participate in a partially or totally federally funded welfare or social services program.

(b) Additional children of the same age group may also be admitted to a center under additional standards established by the Texas Workforce Commission [commission].

(c) To reduce rapid turnover of children in care and to ensure maximum stability for the child to the extent possible within federal guidelines, once a child meets the initial eligibility standards and is enrolled in a child-care program, the child remains eligible for not less than one year after the date of enrollment.

Sec. 44.033. FEES. (a) A fee for services rendered by the day-care center may not be charged for a child who is eligible for state assistance under the aid to families with dependent children program.

(b) A fee that is scaled to family income for services rendered by the day-care program may be charged for a child who is not eligible for state assistance under the aid to families with dependent children program.

Sec. 44.034. STANDARDS; RECOMMENDATIONS. (a) If the Texas Workforce Commission establishes day-care centers under this subchapter, the department shall prescribe standards of operation and performance for the centers that will ensure proper nutrition, social adjustment, health services, and appropriate growth and development for children admitted.

(b) The executive director of the Texas Workforce Commission [~~commission~~] shall prescribe procedures for receiving recommendations relating to the operation of the centers from parents, guardians, or custodians of children admitted to the centers, operators of the centers, and other interested persons.

Sec. 44.035. CONTRACTS. (a) The executive director of the

Texas Workforce Commission may contract for services authorized under this subchapter with an individual, organization, association, or corporation meeting the standards established under Section 44.034 and the standards for child-care facilities licensed by the ~~department [Department of Protective and Regulatory Services]~~.

(b) The fees paid to the center under the contract may not exceed the amount it would cost the state to provide the same services.

(c) The executive director of the Texas Workforce Commission [~~commission~~] shall terminate a contract with a day-care center that fails to maintain the department's standards.

(d) When the executive director of the Texas Workforce Commission [~~commission~~] intends to cancel a contract with a day-care center, the executive director shall give the center reasonable notice and an opportunity for a hearing if one is requested. The Texas Workforce Commission [~~commission~~] shall adopt rules consistent with Chapter 2001, Government Code, to implement this section. Hearings under this section are contested cases under that chapter.

Sec. 44.036. ANNUAL EVALUATION OF DAY-CARE CENTERS. If the Texas Workforce Commission [~~commission~~] establishes day-care centers or provides services under this subchapter, the Texas Workforce Commission [~~commission~~], with the assistance of the department, shall evaluate the performance of the centers each state fiscal year. This evaluation shall be sent to the governor and to the Legislative Budget Board not later than the 100th day after the last day of the state fiscal year covered by the evaluation.

SECTION 4.253. The heading to Chapter 48, Human Resources Code, is amended to read as follows:

CHAPTER 48. INVESTIGATIONS AND PROTECTIVE SERVICES FOR ELDERLY PERSONS AND ~~[DISABLED]~~ PERSONS WITH DISABILITIES

SECTION 4.254. Section 48.001, Human Resources Code, is amended to read as follows:

Sec. 48.001. PURPOSE. The purpose of this chapter is to provide for the authority to investigate the abuse, neglect, or exploitation of an elderly [~~or disabled~~] person or person with a disability and to provide protective services to that person.

SECTION 4.255. Sections 48.002(a)(2), (3), (5), (6), and (8), Human Resources Code, are amended to read as follows:

(2) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly [~~or disabled~~] person or person with a disability by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or

(B) sexual abuse of an elderly [~~or disabled~~] person or person with a disability, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(3) "Exploitation" means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with an elderly [~~or disabled~~] person or person with a disability that involves using, or attempting to use, the resources of the elderly [~~or disabled~~] person or person with a disability, including the person's social security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the [~~elderly or disabled~~] person.

(5) "Protective services" means the services furnished by the department or by another [~~a~~] protective services agency to an elderly [~~or disabled~~] person or person with a disability who has been determined to be in a state of abuse, neglect, or exploitation or to a relative or caretaker of an elderly

759-1 [or disabled] person or person with a disability if the department
 759-2 determines the services are necessary to prevent the elderly [or
 759-3 disabled] person or person with a disability from returning to a
 759-4 state of abuse, neglect, or exploitation. These services may
 759-5 include social casework, case management, and arranging for
 759-6 psychiatric and health evaluation, home care, day care, social
 759-7 services, health care, respite services, and other services
 759-8 consistent with this chapter. The term does not include the
 759-9 services of the department or another protective services agency in
 759-10 conducting an investigation regarding alleged abuse, neglect, or
 759-11 exploitation of an elderly [or disabled] person or person with a
 759-12 disability.

759-13 (6) "Protective services agency" means a public or
 759-14 private agency, corporation, board, or organization that provides
 759-15 protective services to elderly [or disabled] persons or persons
 759-16 with disabilities in the state of abuse, neglect, or exploitation.

759-17 (8) "Person with a disability [Disabled person]" means
 759-18 a person with a mental, physical, or intellectual or developmental
 759-19 disability that substantially impairs the person's ability to
 759-20 provide adequately for the person's care or protection and who is:

- 759-21 (A) 18 years of age or older; or
- 759-22 (B) under 18 years of age and who has had the

759-23 disabilities of minority removed.

759-24 SECTION 4.256. Section 48.002(b), Human Resources Code, is
 759-25 amended to read as follows:

759-26 (b) The definitions of "abuse," "neglect," and
 759-27 "exploitation" adopted by the executive commissioner [department]
 759-28 as prescribed by Section 48.251 apply to an investigation of abuse,
 759-29 neglect, or exploitation under Subchapter [in a facility subject to
 759-30 Subchapters] F or [and] H.

759-31 SECTION 4.257. Section 48.004, Human Resources Code, is
 759-32 amended to read as follows:

759-33 Sec. 48.004. RISK ASSESSMENT. The executive commissioner
 759-34 by rule shall develop and maintain risk assessment criteria for use
 759-35 by department personnel in determining whether an elderly [or
 759-36 disabled] person or person with a disability is in imminent risk of
 759-37 abuse, neglect, or exploitation or in a state of abuse, neglect, or
 759-38 exploitation and needs protective services. The criteria must:

759-39 (1) provide for a comprehensive assessment of the
 759-40 person's:

759-41 (A) environmental, physical, medical, mental
 759-42 health, and financial condition;

759-43 (B) social interaction and support; and

759-44 (C) need for legal intervention; and

759-45 (2) specify the circumstances under which a caseworker
 759-46 must consult with a supervisor regarding a case.

759-47 SECTION 4.258. Section 48.007, Human Resources Code, is
 759-48 amended to read as follows:

759-49 Sec. 48.007. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN
 759-50 ABUSE, NEGLECT, OR EXPLOITATION INVESTIGATIONS. The commission
 759-51 [Health and Human Services Commission], the department, the
 759-52 Department of Aging and Disability Services, the office of
 759-53 independent ombudsman for state supported living centers, and the
 759-54 commission's [Health and Human Services Commission's] office of
 759-55 inspector general shall enter into a memorandum of understanding
 759-56 regarding investigations of alleged abuse, neglect, or
 759-57 exploitation of residents or clients of state supported living
 759-58 centers or the ICF-IID [ICF-MR] component of the Rio Grande State
 759-59 Center that delineates the responsibilities of each agency and
 759-60 office under this chapter, Chapter 261, Family Code, and Chapter
 759-61 555, Health and Safety Code, and amend the memorandum of
 759-62 understanding as necessary to reflect changes in those
 759-63 responsibilities. During the negotiation of the memorandum of
 759-64 understanding, the agencies and offices shall jointly determine
 759-65 whether the forensic training received by relevant staff of the
 759-66 Department of Family and Protective Services is adequate.
 759-67 Specifically, the agencies and offices shall assess and, if
 759-68 necessary, develop a plan to enhance the ability of department
 759-69 staff to identify and report incidences that constitute a potential

760-1 criminal offense. The commission [~~Health and Human Services~~
 760-2 ~~Commission~~] is the final arbiter of any dispute regarding the
 760-3 memorandum of understanding under this section.

760-4 SECTION 4.259. Sections 48.051(a), (b), and (d), Human
 760-5 Resources Code, are amended to read as follows:

760-6 (a) Except as prescribed by Subsection (b), a person having
 760-7 cause to believe that an elderly [or disabled] person or person with
 760-8 a disability is in the state of abuse, neglect, or exploitation,
 760-9 including a [disabled] person with a disability who is receiving
 760-10 services as described by Section 48.252, shall report the
 760-11 information required by Subsection (d) immediately to the
 760-12 department.

760-13 (b) If a person has cause to believe that an elderly [or
 760-14 disabled] person or person with a disability, other than a
 760-15 [disabled] person with a disability receiving services as described
 760-16 by Section 48.252, has been abused, neglected, or exploited in a
 760-17 facility operated, licensed, certified, or registered by a state
 760-18 agency, the person shall report the information to the state agency
 760-19 that operates, licenses, certifies, or registers the facility for
 760-20 investigation by that agency.

760-21 (d) The report may be made orally or in writing. It shall
 760-22 include:

760-23 (1) the name, age, and address of the elderly [or
 760-24 disabled] person or person with a disability;
 760-25 (2) the name and address of any person responsible for
 760-26 the care of the elderly person or person with a disability [disabled
 760-27 person's care];
 760-28 (3) the nature and extent of the condition of the
 760-29 elderly person or person with a disability [disabled person's
 760-30 condition];
 760-31 (4) the basis of the reporter's knowledge; and
 760-32 (5) any other relevant information.

760-33 SECTION 4.260. Section 48.052(a), Human Resources Code, is
 760-34 amended to read as follows:

760-35 (a) A person commits an offense if the person has cause to
 760-36 believe that an elderly [or disabled] person or person with a
 760-37 disability has been abused, neglected, or exploited or is in the
 760-38 state of abuse, neglect, or exploitation and knowingly fails to
 760-39 report in accordance with this chapter. An offense under this
 760-40 subsection is a Class A misdemeanor, except that the offense is a
 760-41 state jail felony if it is shown on the trial of the offense that the
 760-42 abused, neglected, or exploited [disabled] person is [was] a person
 760-43 with an intellectual disability [mental retardation] who resided in
 760-44 a state supported living center, the ICF-IID [ICF-MR] component of
 760-45 the Rio Grande State Center, or a facility licensed under Chapter
 760-46 252, Health and Safety Code, and the actor knew that the [disabled]
 760-47 person had suffered serious bodily injury as a result of the abuse,
 760-48 neglect, or exploitation.

760-49 SECTION 4.261. Section 48.101(f), Human Resources Code, is
 760-50 amended to read as follows:

760-51 (f) The department or investigating state agency may
 760-52 establish procedures to exchange with another state agency or
 760-53 governmental entity information that is necessary for the
 760-54 department, state agency, or entity to properly execute its
 760-55 respective duties and responsibilities to provide services to
 760-56 elderly [or disabled] persons or persons with disabilities under
 760-57 this chapter or other law. An exchange of information under this
 760-58 subsection does not affect whether the information is subject to
 760-59 disclosure under Chapter 552, Government Code.

760-60 SECTION 4.262. Sections 48.102(a) and (d), Human Resources
 760-61 Code, are amended to read as follows:

760-62 (a) The department shall send a written report of the
 760-63 department's investigation of alleged abuse, neglect, or
 760-64 exploitation of an [a disabled] adult with a disability at a school,
 760-65 as appropriate, to the Texas Education Agency, the agency
 760-66 responsible for teacher certification, the local school board or
 760-67 the school's governing body, and the school principal or director,
 760-68 unless the principal or director is alleged to have committed the
 760-69 abuse, neglect, or exploitation. The entity to which the report is

761-1 sent shall take appropriate action.

761-2 (d) The executive commissioner [department] shall adopt
761-3 rules necessary to implement this section.

761-4 SECTION 4.263. Section 48.103(a), Human Resources Code, is
761-5 amended to read as follows:

761-6 (a) On determining after an investigation that an elderly
761-7 [~~or disabled~~] person or person with a disability has been abused,
761-8 exploited, or neglected by an employee of a home and community
761-9 support services agency licensed under Chapter 142, Health and
761-10 Safety Code, the department shall:

761-11 (1) notify the state agency responsible for licensing
761-12 the home and community support services agency of the department's
761-13 determination;

761-14 (2) notify any health and human services agency, as
761-15 defined by Section 531.001, Government Code, that contracts with
761-16 the home and community support services agency for the delivery of
761-17 health care services of the department's determination; and

761-18 (3) provide to the licensing state agency and any
761-19 contracting health and human services agency access to the
761-20 department's records or documents relating to the department's
761-21 investigation.

761-22 SECTION 4.264. Sections 48.151(b) and (c), Human Resources
761-23 Code, are amended to read as follows:

761-24 (b) The executive commissioner [department] shall adopt
761-25 rules for conducting investigations under this chapter.

761-26 (c) The executive commissioner [department] by rule may
761-27 assign priorities and prescribe investigative procedures for
761-28 conducting investigations according to the degree of severity and
761-29 immediacy of the alleged harm to the individual. Notwithstanding
761-30 Subsection (a), the [department's] priorities and procedures may
761-31 provide that an investigation is not required to be initiated
761-32 within 24 hours in all cases.

761-33 SECTION 4.265. Section 48.152(a), Human Resources Code, is
761-34 amended to read as follows:

761-35 (a) An investigation by the department or a state agency
761-36 shall include an interview with the elderly [~~or disabled~~] person or
761-37 person with a disability, if appropriate, and with persons thought
761-38 to have knowledge of the circumstances. If the elderly [~~or~~
761-39 ~~disabled~~] person or person with a disability refuses to be
761-40 interviewed or cannot be interviewed because of a physical or
761-41 mental impairment, the department shall continue the investigation
761-42 by interviewing other persons thought to have knowledge relevant to
761-43 the investigation.

761-44 SECTION 4.266. Section 48.1522, Human Resources Code, is
761-45 amended to read as follows:

761-46 Sec. 48.1522. REPORTS OF CRIMINAL CONDUCT TO LAW
761-47 ENFORCEMENT AGENCY. (a) Except as provided by Subsection (b), if
761-48 during the course of the department's or another state agency's
761-49 investigation of reported abuse, neglect, or exploitation a
761-50 caseworker of the department or other state agency, as applicable,
761-51 or the caseworker's supervisor has cause to believe that the
761-52 elderly [~~or disabled~~] person or person with a disability has been
761-53 abused, neglected, or exploited by another person in a manner that
761-54 constitutes a criminal offense under any law, including Section
761-55 22.04, Penal Code, the caseworker or supervisor shall:

761-56 (1) immediately notify an appropriate law enforcement
761-57 agency, unless the law enforcement agency reported the alleged
761-58 abuse, neglect, or exploitation to the department; and

761-59 (2) provide the law enforcement agency with a copy of
761-60 the investigation report of the department or other state agency,
761-61 as applicable, in a timely manner.

761-62 (b) If during the course of the department's investigation
761-63 of reported abuse, neglect, or exploitation a caseworker of the
761-64 department or the caseworker's supervisor has cause to believe that
761-65 a [~~disabled~~] person with a disability who is a resident or client of
761-66 a state supported living center or the ICF-IID [~~ICF-MR~~] component
761-67 of the Rio Grande State Center has been abused, neglected, or
761-68 exploited by another person in a manner that constitutes a criminal
761-69 offense under any law, including Section 22.04, Penal Code, in

762-1 addition to the report to the appropriate law enforcement agency
 762-2 required by Subsection (a), the caseworker shall immediately notify
 762-3 the commission's office of inspector general and promptly provide
 762-4 the commission's office of inspector general with a copy of the
 762-5 department's investigation report.

762-6 SECTION 4.267. Section 48.153(a), Human Resources Code, is
 762-7 amended to read as follows:

762-8 (a) To implement an investigation of reported abuse,
 762-9 neglect, or exploitation, the probate court, or the county court
 762-10 when no probate court exists, may authorize entry of the place of
 762-11 residence of the elderly [or disabled] person or person with a
 762-12 disability.

762-13 SECTION 4.268. Section 48.154(a), Human Resources Code, is
 762-14 amended to read as follows:

762-15 (a) The department or another state agency, as appropriate,
 762-16 shall have access to any records or documents, including
 762-17 client-identifying information, financial records, and medical and
 762-18 psychological records, necessary to the performance of the
 762-19 department's or state agency's duties under this chapter. The
 762-20 duties include but are not limited to the investigation of abuse,
 762-21 neglect, or exploitation or the provisions of services to an
 762-22 elderly [or disabled] person or person with a disability. A person,
 762-23 agency, or institution that has a record or document that the
 762-24 department or state agency needs to perform its duties under this
 762-25 chapter shall, without unnecessary delay, make the record or
 762-26 document available to the department or state agency that requested
 762-27 the record or document.

762-28 SECTION 4.269. Section 48.155, Human Resources Code, is
 762-29 amended to read as follows:

762-30 Sec. 48.155. INTERFERENCE WITH INVESTIGATION OR SERVICES
 762-31 PROHIBITED. (a) A person, including a guardian and
 762-32 notwithstanding Section 1151.001 [675], Estates [Texas Probate]
 762-33 Code, may not interfere with:

762-34 (1) an investigation by the department or by another
 762-35 [a] protective services agency of alleged abuse, neglect, or
 762-36 exploitation of an elderly [or disabled] person or person with a
 762-37 disability; or

762-38 (2) the provision of protective services to an elderly
 762-39 [or disabled] person or person with a disability.

762-40 (b) The department or another [a] protective services
 762-41 agency may petition the appropriate court to enjoin any
 762-42 interference with:

762-43 (1) an investigation of alleged abuse, neglect, or
 762-44 exploitation; or

762-45 (2) the provision of protective services such as
 762-46 removal of the elderly [or disabled] person or person with a
 762-47 disability to safer surroundings or safeguarding the person's
 762-48 resources from exploitation.

762-49 SECTION 4.270. Section 48.201, Human Resources Code, is
 762-50 amended to read as follows:

762-51 Sec. 48.201. APPLICATION OF SUBCHAPTER. Except as
 762-52 otherwise provided, this subchapter does not apply to an [a Texas
 762-53 Department of Mental Health and Mental Retardation] investigation
 762-54 under Subchapter F or H.

762-55 SECTION 4.271. Section 48.202, Human Resources Code, is
 762-56 amended to read as follows:

762-57 Sec. 48.202. SERVICE DETERMINATION BY DEPARTMENT OR AGENCY.

762-58 (a) In an investigation the department or state agency, as
 762-59 appropriate, shall determine:

762-60 (1) whether the person needs protective services from
 762-61 the department;

762-62 (2) what services are needed;

762-63 (3) whether services are available from the
 762-64 department, from the state agency, or in the community and how they
 762-65 can be provided;

762-66 (4) whether the person, acting alone, would be capable
 762-67 of obtaining needed services and could bear the cost or would be
 762-68 eligible for services from the department or state agency;

762-69 (5) whether a caretaker would be willing to provide

763-1 services or would agree to their provision;

763-2 (6) whether the elderly [or disabled] person or person
763-3 with a disability desires the services;

763-4 (7) whether the person needs legal intervention to
763-5 resolve the person's abuse, neglect, or exploitation and, if so,
763-6 what type of intervention is needed; and

763-7 (8) other pertinent data.

763-8 (b) If the department or state agency, as appropriate,
763-9 determines under Subsection (a)(1) that a person needs protective
763-10 services, the department or agency shall, in determining how those
763-11 services can be provided as required by Subsection (a)(3),
763-12 determine whether the person may be [is] eligible for
763-13 community-based long-term [care] services and supports and whether
763-14 those services and supports are available. If the person is
763-15 eligible for those services and supports, but the services and
763-16 supports are not immediately available, the department or state
763-17 agency shall ensure that the person is placed on an appropriate
763-18 waiting list for the services and supports and that the person's
763-19 abuse, neglect, or exploitation is resolved before the department
763-20 closes the case.

763-21 SECTION 4.272. Section 48.203, Human Resources Code, is
763-22 amended to read as follows:

763-23 Sec. 48.203. VOLUNTARY PROTECTIVE SERVICES. (a) An
763-24 elderly [or disabled] person or person with a disability may
763-25 receive voluntary protective services if the person requests or
763-26 consents to receive those services.

763-27 (b) The elderly [or disabled] person or person with a
763-28 disability who receives protective services shall participate in
763-29 all decisions regarding the person's [his or her] welfare, if able
763-30 to do so.

763-31 (c) The least restrictive alternatives should be made
763-32 available to the elderly [or disabled] person or person with a
763-33 disability who receives protective services.

763-34 (d) Except as provided by Section 48.208, if an elderly [or
763-35 disabled] person or person with a disability withdraws from or
763-36 refuses consent to voluntary protective services, the services may
763-37 not be provided.

763-38 SECTION 4.273. Section 48.204, Human Resources Code, is
763-39 amended to read as follows:

763-40 Sec. 48.204. AGENCY POWERS. A protective services agency
763-41 may furnish protective services to an elderly [or disabled] person
763-42 or person with a disability with the person's consent or to a
763-43 relative or caretaker of the [an elderly or disabled] person on
763-44 behalf of the [elderly or disabled] person with the relative's or
763-45 caregiver's consent or, if the elderly [or disabled] person or
763-46 person with a disability lacks the capacity to consent, without
763-47 that person's consent as provided by this chapter.

763-48 SECTION 4.274. Sections 48.205(b) and (d), Human Resources
763-49 Code, are amended to read as follows:

763-50 (b) The department shall use existing resources and
763-51 services of public and private agencies in providing protective
763-52 services. If the department does not have existing resources to
763-53 provide direct protective services to elderly [or disabled] persons
763-54 or persons with disabilities, the department, subject to the
763-55 availability of funds, shall contract with protective services
763-56 agencies for the provision of those services, especially to
763-57 [elderly or disabled] persons residing in rural or remote areas of
763-58 this state or not previously served by the department.

763-59 (d) The responsibilities prescribed by this chapter are
763-60 exclusive of those designated to other state or federal agencies
763-61 authorized or required by law to provide protective services to
763-62 elderly [or disabled] persons or persons with disabilities
763-63 determined to be in the state of abuse, neglect, or exploitation.

763-64 SECTION 4.275. Section 48.206, Human Resources Code, is
763-65 amended to read as follows:

763-66 Sec. 48.206. COST OF SERVICES. If the elderly [or disabled]
763-67 person or person with a disability receiving the protective
763-68 services is determined to be financially able to contribute to the
763-69 payments for those services, the provider shall receive a

764-1 reasonable reimbursement from the person's assets.

764-2 SECTION 4.276. Sections 48.208(b), (c), (c-1), (c-2),
 764-3 (c-3), (c-4), (c-5), (d), (d-1), (e-1), (f), (g), and (h), Human
 764-4 Resources Code, are amended to read as follows:

764-5 (b) If the department determines that an elderly [or disabled]
 764-6 person or person with a disability is suffering from
 764-7 abuse, neglect, or exploitation presenting a threat to life or
 764-8 physical safety, that the person lacks capacity to consent to
 764-9 receive protective services, and that no consent can be obtained,
 764-10 the department may petition the probate or statutory or
 764-11 constitutional county court that has probate jurisdiction in the
 764-12 county in which the [elderly or disabled] person resides for an
 764-13 emergency order authorizing protective services.

764-14 (c) The petition shall be verified and shall include:

764-15 (1) the name, age, and address of the elderly [or disabled]
 764-16 person or person with a disability who needs protective
 764-17 services;

764-18 (2) the nature of the abuse, neglect, or exploitation;

764-19 (3) the services needed; and

764-20 (4) a medical report signed by a physician stating
 764-21 that the person is suffering from abuse, neglect, or exploitation
 764-22 presenting a threat to life or physical safety and stating that the
 764-23 person is physically or mentally incapable of consenting to
 764-24 services unless the court finds that an immediate danger to the
 764-25 person's health or safety [of the elderly or disabled person]
 764-26 exists and there is not sufficient time to obtain the medical
 764-27 report.

764-28 (c-1) Notwithstanding Subsection (c)(4), in lieu of a
 764-29 medical report described by Subsection (c)(4), the petition may
 764-30 include an assessment of the [elderly or disabled person's] health
 764-31 status of the elderly person or person with a disability as
 764-32 described by Subsection (c-2) or psychological status as described
 764-33 by Subsection (c-3), or a medical opinion of the [elderly or
 764-34 disabled] person's health status as described by Subsection (c-4),
 764-35 if the department determines, after making a good faith effort,
 764-36 that a physician from whom the department may obtain the medical
 764-37 report is unavailable. The department shall ensure that the person
 764-38 who performs an assessment of the [elderly or disabled person's]
 764-39 health or psychological status of the elderly person or person with
 764-40 a disability has training and experience in performing the
 764-41 applicable assessment.

764-42 (c-2) Except as provided by Subsection (c-4), an assessment
 764-43 of the [elderly or disabled person's] health status of the elderly
 764-44 person or person with a disability must be performed by a physician
 764-45 assistant or advanced practice nurse. The person performing the
 764-46 assessment shall sign a report stating:

764-47 (1) that the elderly [or disabled] person or person
 764-48 with a disability is reported to be suffering from abuse, neglect,
 764-49 or exploitation, which may present a threat to the person's life or
 764-50 physical safety;

764-51 (2) whether the elderly [or disabled] person or person
 764-52 with a disability has provided the person's medical history to the
 764-53 physician assistant or advanced practice nurse, as applicable; and

764-54 (3) that in the professional opinion of the physician
 764-55 assistant or advanced practice nurse, as applicable, the issuance
 764-56 of an emergency order authorizing protective services without the
 764-57 [elderly or disabled person's] consent of the elderly person or
 764-58 person with a disability is necessary under the circumstances.

764-59 (c-3) An assessment of the [elderly or disabled person's]
 764-60 psychological status of the elderly person or person with a
 764-61 disability must be performed by a licensed professional counselor,
 764-62 licensed psychologist, or master social worker who has training and
 764-63 expertise in issues related to abuse, neglect, and exploitation.
 764-64 The person performing the assessment shall sign a report stating:

764-65 (1) that the elderly [or disabled] person or person
 764-66 with a disability is reported to be suffering from abuse, neglect,
 764-67 or exploitation, which may present a threat to the person's life or
 764-68 physical safety; and

764-69 (2) that in the professional opinion of the licensed

765-1 professional counselor, licensed psychologist, or master social
765-2 worker, as applicable, the issuance of an emergency order
765-3 authorizing protective services without the ~~elderly or disabled~~
765-4 person's] consent of the elderly person or person with a disability
765-5 is necessary under the circumstances.

765-6 (c-4) A registered nurse may perform a nursing assessment of
765-7 the ~~elderly or disabled person's~~ health status of the elderly
765-8 person or person with a disability. If the registered nurse, based
765-9 on the registered nurse's professional nursing judgment,
765-10 determines that the ~~elderly or disabled~~ person is likely to be
765-11 suffering from abuse, neglect, or exploitation, which may present a
765-12 threat to the person's life or physical safety, the registered
765-13 nurse shall report that assessment to a physician. After the
765-14 registered nurse reports the assessment, the physician shall sign a
765-15 written opinion stating whether:

765-16 (1) the elderly ~~or disabled~~ person or person with a
765-17 disability is reported to be suffering from abuse, neglect, or
765-18 exploitation, which may present a threat to the person's life or
765-19 physical safety; and

765-20 (2) the issuance of an emergency order authorizing
765-21 protective services without the ~~elderly or disabled person's~~
765-22 consent of the elderly person or person with a disability is
765-23 necessary under the circumstances.

765-24 (c-5) The physician may use the registered nurse's
765-25 assessment of the ~~elderly or disabled person's~~ health status of
765-26 the elderly person or person with a disability as the basis of the
765-27 physician's professional opinion under Subsection (c-4).

765-28 (d) On finding that there is reasonable cause to believe
765-29 that abuse, neglect, or exploitation presents a threat to life or
765-30 physical safety for the elderly ~~or disabled~~ person or person with
765-31 a disability and that the ~~elderly or disabled~~ person lacks
765-32 capacity to consent to services, the court may:

765-33 (1) order removal of the ~~elderly or disabled~~ person
765-34 to safer surroundings;

765-35 (2) order medical services; and

765-36 (3) order other available services necessary to remove
765-37 conditions creating the threat to life or physical safety,
765-38 including the services of law enforcement officers or emergency
765-39 medical services personnel.

765-40 (d-1) If the court renders an order that is based on a
765-41 petition including an assessment under Subsection (c-2) or (c-3) or
765-42 a medical opinion under Subsection (c-4), the court shall order
765-43 that the elderly ~~or disabled~~ person or person with a disability be
765-44 examined by a physician not later than 72 hours after the time the
765-45 provision of protective services begins. After performing the
765-46 examination, the physician shall sign and submit to the court a
765-47 medical report stating the physician's opinion whether the ~~elderly~~
765-48 ~~or disabled~~ person is:

765-49 (1) suffering from abuse, neglect, or exploitation
765-50 presenting a threat to life or physical safety; and

765-51 (2) physically or mentally incapable of consenting to
765-52 services.

765-53 (e-1) An emergency order that was rendered based on a
765-54 petition that included an assessment under Subsection (c-2) or
765-55 (c-3) or a medical opinion under Subsection (c-4) immediately
765-56 terminates if the medical report issued under Subsection (d-1)
765-57 states the physician's opinion that the elderly ~~or disabled~~
765-58 person or person with a disability:

765-59 (1) is not suffering from abuse, neglect, or
765-60 exploitation presenting a threat to life or physical safety; or

765-61 (2) is physically or mentally capable of consenting to
765-62 services.

765-63 (f) Any medical facility, emergency medical services
765-64 provider, or physician who provides treatment to or who transports
765-65 an elderly ~~or disabled~~ person or person with a disability
765-66 pursuant to an emergency order under Subsection (d) or an emergency
765-67 authorization under Subsection (h) is not liable for any damages
765-68 arising from the treatment or transportation, except those damages
765-69 resulting from the negligence of the facility, provider, or

766-1 physician.

766-2 (g) The court shall appoint an attorney ad litem to
 766-3 represent the elderly [or disabled] person or person with a
 766-4 disability in any proceeding brought by the department under this
 766-5 section. A reasonable fee, as determined by the court, shall be
 766-6 paid to the attorney ad litem from the general fund of the county.

766-7 (h) If the department cannot obtain an emergency order under
 766-8 this section because the court is closed on a Saturday, Sunday, or
 766-9 legal holiday or after 5 p.m., the department may remove or
 766-10 authorize an appropriate transportation service, including an
 766-11 emergency medical services provider, to remove the elderly [or
 766-12 disabled] person or person with a disability to safer surroundings,
 766-13 authorize medical treatment, or authorize or provide other
 766-14 available services necessary to remove conditions creating the
 766-15 threat to life or physical safety. The department must obtain an
 766-16 emergency order under this section not later than 4 p.m. on the
 766-17 first succeeding business day after the date on which protective
 766-18 services are provided. If the department does not obtain an
 766-19 emergency order, the department shall cease providing protective
 766-20 services and, if necessary, make arrangements for the immediate
 766-21 return of the person to the place from which the person was removed,
 766-22 to the person's place of residence in the state, or to another
 766-23 suitable place.

766-24 SECTION 4.277. Sections 48.209(a) and (d), Human Resources
 766-25 Code, are amended to read as follows:

766-26 (a) The department shall refer an individual to the
 766-27 Department of Aging and Disability Services for guardianship
 766-28 services under Subchapter E, Chapter 161, if the individual is:

766-29 (1) a minor in the conservatorship of the department
 766-30 who:

766-31 (A) is 16 years of age or older; and

766-32 (B) the department has reason to believe will,
 766-33 because of a physical or mental condition, be substantially unable
 766-34 to provide for the individual's own food, clothing, or shelter, to
 766-35 care for the individual's own physical health, or to manage the
 766-36 individual's own financial affairs when the individual becomes an
 766-37 adult; or

766-38 (2) an elderly [or disabled] person or person with a
 766-39 disability who:

766-40 (A) has been found by the department to be in a
 766-41 state of abuse, neglect, or exploitation; and

766-42 (B) the department has reason to believe is an
 766-43 incapacitated person as defined by Section 1002.017(2)
 766-44 [601(14)(B)], Estates [Texas Probate] Code.

766-45 (d) Nothing in this section shall prohibit the department
 766-46 from also making a referral of an individual to a court having
 766-47 probate jurisdiction in the county where the individual is
 766-48 domiciled or found, if the court has requested the department to
 766-49 notify the court of any individuals who may be appropriate for a
 766-50 court-initiated guardianship proceeding under Chapter 1102
 766-51 [Section 683], Estates [Texas Probate] Code. In making a referral
 766-52 under this subsection and if requested by the court, the department
 766-53 shall, to the extent allowed by law, provide the court with all
 766-54 relevant information in the department's records relating to the
 766-55 individual. The court, as part of this process, may not require the
 766-56 department to:

766-57 (1) perform the duties of a guardian ad litem or court
 766-58 investigator as prescribed by Chapter 1102 [Section 683], Estates
 766-59 [Texas Probate] Code; or

766-60 (2) gather additional information not contained in the
 766-61 department's records.

766-62 SECTION 4.278. Section 48.211, Human Resources Code, is
 766-63 amended to read as follows:

766-64 Sec. 48.211. REPORT TO GUARDIANSHIP COURT. If the elderly
 766-65 [or disabled] person or person with a disability has a guardian, a
 766-66 written notification of the findings of the investigation shall be
 766-67 sent to the court to which the guardian is accountable.

766-68 SECTION 4.279. The heading to Subchapter F, Chapter 48,
 766-69 Human Resources Code, is amended to read as follows:

767-1 SUBCHAPTER F. INVESTIGATIONS IN CERTAIN FACILITIES, COMMUNITY
 767-2 CENTERS, AND LOCAL MENTAL HEALTH AND INTELLECTUAL AND DEVELOPMENTAL
 767-3 DISABILITY [MENTAL RETARDATION] AUTHORITIES

767-4 SECTION 4.280. Section 48.251, Human Resources Code, is
 767-5 amended to read as follows:

767-6 Sec. 48.251. DEFINITIONS. The executive commissioner
 767-7 ~~[department]~~ by rule shall adopt definitions of "abuse," "neglect,"
 767-8 and "exploitation" to govern investigations ~~[an investigation]~~
 767-9 under this subchapter and Subchapter H.

767-10 SECTION 4.281. Section 48.252, Human Resources Code, is
 767-11 amended to read as follows:

767-12 Sec. 48.252. INVESTIGATION OF REPORTS IN CERTAIN FACILITIES
 767-13 AND IN COMMUNITY CENTERS. (a) The department shall receive and
 767-14 investigate reports of the abuse, neglect, or exploitation of an
 767-15 individual with a disability receiving services:

767-16 (1) in:

767-17 (A) a mental health facility operated by the
 767-18 Department of State Health Services; or
 767-19 (B) a facility licensed under Chapter 252, Health
 767-20 and Safety Code;

767-21 (2) in or from a community center, a local mental
 767-22 health authority, or a local intellectual and developmental
 767-23 ~~disability [mental retardation]~~ authority; or

767-24 (3) through a program providing services to that
 767-25 person by contract with a mental health facility operated by the
 767-26 Department of State Health Services, a community center, a local
 767-27 mental health authority, or a local intellectual and developmental
 767-28 ~~disability [mental retardation]~~ authority.

767-29 (b) The department shall receive and shall investigate
 767-30 reports of the abuse, neglect, or exploitation of an individual
 767-31 with a disability receiving services:

767-32 (1) in a state supported living center or the ICF-IID
 767-33 ~~[ICF-MR]~~ component of the Rio Grande State Center; or

767-34 (2) through a program providing services to that
 767-35 person by contract with a state supported living center or the
 767-36 ICF-IID ~~[ICF-MR]~~ component of the Rio Grande State Center.

767-37 (c) The executive commissioner ~~[department]~~ by rule shall
 767-38 define who is "an individual with a disability receiving services."

767-39 (d) In this section, "community center," "local mental
 767-40 health authority," and "local intellectual and developmental
 767-41 ~~disability [mental retardation]~~ authority" have the meanings
 767-42 assigned by Section 531.002, Health and Safety Code.

767-43 SECTION 4.282. Section 48.254, Human Resources Code, is
 767-44 amended to read as follows:

767-45 Sec. 48.254. FORWARDING OF CERTAIN REPORTS. In accordance
 767-46 with department rules, the department shall forward a copy of the
 767-47 initial intake report and a copy of the completed investigation
 767-48 report relating to alleged or suspected abuse, neglect, or
 767-49 exploitation to the appropriate facility, community center, local
 767-50 mental health authority, local intellectual and developmental
 767-51 ~~disability [mental retardation]~~ authority, or program providing
 767-52 mental health or intellectual disability ~~[mental retardation]~~
 767-53 services under contract with the facility, community center, or
 767-54 authority.

767-55 SECTION 4.283. Sections 48.255(a), (b), (c), (d), (e), and
 767-56 (f), Human Resources Code, are amended to read as follows:

767-57 (a) The department, the Department of Aging and Disability
 767-58 Services, and the Department of State Health Services shall develop
 767-59 ~~[joint]~~ rules to facilitate investigations in state mental health
 767-60 facilities and state supported living centers.

767-61 (b) The executive commissioner ~~[department, the Department~~
 767-62 ~~of Aging and Disability Services, and the Department of State~~
 767-63 ~~Health Services]~~ by rule ~~[joint rules]~~ shall establish procedures
 767-64 for resolving disagreements between the department and the
 767-65 Department of Aging and Disability Services or the Department of
 767-66 State Health Services concerning the department's investigation
 767-67 findings.

767-68 (c) The department, the Department of Aging and Disability
 767-69 Services, and the Department of State Health Services shall develop

768-1 and propose to the executive commissioner [joint] rules to
 768-2 facilitate investigations in community centers, local mental
 768-3 health authorities, and local intellectual and developmental
 768-4 disability [mental retardation] authorities.

768-5 (d) A confirmed investigation finding by the department may
 768-6 not be changed by a superintendent of a state mental health
 768-7 facility, by a director of a state supported living center, by a
 768-8 director of a community center, or by a local mental health
 768-9 authority or local intellectual and developmental disability
 768-10 [mental retardation] authority.

768-11 (e) The executive commissioner [department] shall provide
 768-12 by rule for an appeals process by the alleged victim of abuse,
 768-13 neglect, or exploitation under this section.

768-14 (f) The executive commissioner [department] by rule may
 768-15 assign priorities to an investigation conducted by the department
 768-16 under this section. The primary criterion used by the executive
 768-17 commissioner [department] in assigning a priority must be the risk
 768-18 that a delay in the investigation will impede the collection of
 768-19 evidence.

768-20 SECTION 4.284. Section 48.256(a), Human Resources Code, is
 768-21 amended to read as follows:

768-22 (a) The department, the Department of Aging and Disability
 768-23 Services, and the Department of State Health Services shall, at the
 768-24 direction of the executive commissioner, jointly develop and
 768-25 implement a single system to track reports and investigations under
 768-26 this subchapter.

768-27 SECTION 4.285. Sections 48.301(a), (b), (c), (e), (f), and
 768-28 (g), Human Resources Code, are amended to read as follows:

768-29 (a) If the department receives a report of suspected abuse,
 768-30 neglect, or exploitation of an elderly [or disabled] person or
 768-31 person with a disability, other than a [disabled] person with a
 768-32 disability who is receiving services as described by Section
 768-33 48.252, in a facility operated, licensed, certified, or registered
 768-34 by a state agency, the department shall refer the report to that
 768-35 agency.

768-36 (b) A state agency that receives a report under this section
 768-37 shall make a thorough investigation promptly after receiving a
 768-38 report that an elderly [or disabled] person or person with a
 768-39 disability has been or may be abused, neglected, or exploited in a
 768-40 facility operated, licensed, certified, or registered by the
 768-41 agency. The primary purpose of the investigation is the protection
 768-42 of the elderly [or disabled] person or person with a disability.

768-43 (c) Each state agency that may receive reports under this
 768-44 section, or the person responsible for adopting rules for that
 768-45 state agency, shall adopt rules relating to the investigation and
 768-46 resolution of reports received under this section.

768-47 (e) A state agency that receives a complaint relating to an
 768-48 investigation conducted under this section shall refer the
 768-49 complaint to its governing board, if applicable, or other person or
 768-50 entity designated to receive such complaints for review and
 768-51 appropriate action.

768-52 (f) The executive commissioner [Health and Human Services
 768-53 Commission] by rule shall adopt minimum standards for the
 768-54 investigation of suspected abuse, neglect, or exploitation of an
 768-55 elderly [or disabled] person or person with a disability under this
 768-56 section.

768-57 (g) A rule or policy adopted by or for a state agency [or
 768-58 institution] under Subsection (c) must be consistent with the
 768-59 minimum standards adopted by the executive commissioner [Health and
 768-60 Human Services Commission].

768-61 SECTION 4.286. Section 48.302, Human Resources Code, is
 768-62 amended to read as follows:

768-63 Sec. 48.302. APPROVAL OF RULES. The executive commissioner
 768-64 [Health and Human Services Commission] shall review and approve the
 768-65 rules required by Section 48.301(c) to ensure that all agencies
 768-66 implement appropriate standards for the conduct of investigations
 768-67 and that uniformity exists among agencies in the investigation and
 768-68 resolution of reports.

768-69 SECTION 4.287. Section 48.303(a), Human Resources Code, is

769-1 amended to read as follows:

769-2 (a) The department shall enter into [~~adopt~~] a memorandum of
 769-3 understanding with each state agency that operates, licenses,
 769-4 certifies, or registers a facility in which elderly [~~or disabled~~]
 769-5 persons or persons with disabilities are located that clarifies
 769-6 each agency's responsibility under this chapter.

769-7 SECTION 4.288. Section 48.304, Human Resources Code, is
 769-8 amended to read as follows:

769-9 Sec. 48.304. STATISTICS. (a) A [Each] state agency[, other
 769-10 than the Texas Department of Mental Health and Mental Retardation,]
 769-11 that operates, licenses, certifies, or registers a facility in
 769-12 which elderly [~~or disabled~~] persons or persons with disabilities
 769-13 are located shall compile and maintain statistics on the incidence
 769-14 of abuse, neglect, or exploitation of elderly [~~or disabled~~] persons
 769-15 or persons with disabilities that occurs in the facilities. A state
 769-16 agency is not required to compile and maintain statistics on the
 769-17 incidence of abuse, neglect, or exploitation of an individual with
 769-18 a disability described under Section 48.252.

769-19 (b) The agency shall make the statistics available to the
 769-20 commission [~~Health and Human Services Commission~~] on request.

769-21 SECTION 4.289. Section 48.402, Human Resources Code, is
 769-22 amended to read as follows:

769-23 Sec. 48.402. RULES RELATING TO REPORTABLE CONDUCT. The
 769-24 executive commissioner [~~department~~] may adopt rules to further
 769-25 define reportable conduct.

769-26 SECTION 4.290. Section 51.0021, Human Resources Code, is
 769-27 amended to read as follows:

769-28 Sec. 51.0021. FAMILY VIOLENCE SERVICES PLAN. (a) The
 769-29 commission [~~department~~] shall develop and maintain a plan for
 769-30 delivering family violence services in this state.

769-31 (b) In developing the plan under this section, the
 769-32 commission [~~department~~] shall consider the geographic distribution
 769-33 of services and the need for services, including the need for
 769-34 increasing services for underserved populations.

769-35 SECTION 4.291. Section 51.003, Human Resources Code, is
 769-36 amended to read as follows:

769-37 Sec. 51.003. CONTRACTS. (a) The commission [~~department~~]
 769-38 shall contract for services with family violence centers with
 769-39 consideration given to the plan for family violence services under
 769-40 Section 51.0021. These contracts are to expand existing family
 769-41 violence center services and may not result in reducing financial
 769-42 support a family violence center receives from another source. The
 769-43 contracts shall not provide for more than 75 percent of the cost of
 769-44 the family violence center program. The commission [~~department~~]
 769-45 shall develop a declining scale of state financial support for
 769-46 family violence centers, declining over a six-year period from the
 769-47 initiation of each individual contract, with no more than 50
 769-48 percent of a family violence center program's funding to be
 769-49 provided by the state after the sixth year. The balance each year
 769-50 shall be provided from other sources. The executive commissioner
 769-51 [~~department~~] may adopt rules which will allow exceptions to the
 769-52 above scale in individual instances when a family violence center
 769-53 shall demonstrate that exigent circumstances require such a waiver.

769-54 (b) The commission [~~department~~] may contract with family
 769-55 violence special projects for services. The commission
 769-56 [~~department~~] shall consider the plan for family violence services
 769-57 under Section 51.0021 in contracting with family violence special
 769-58 projects.

769-59 (c) The commission [~~department~~] shall contract statewide
 769-60 for activities that support and advance the work of family violence
 769-61 centers. Activities contracted for under this subsection must
 769-62 include the provision of technical assistance and training for
 769-63 family violence centers. The commission [~~department~~] may contract
 769-64 for the provision of public education, consultation to the
 769-65 commission [~~department~~], research, evaluation, and liaison and
 769-66 training for other professionals who work with victims of family
 769-67 violence, including professionals in the criminal justice,
 769-68 medical, and social services fields, and for community or civic
 769-69 groups.

770-1 (d) The commission [department] shall award all contracts
770-2 made under Subsection (c) through a competitive bidding process
770-3 unless that process would not be cost-effective.

770-4 SECTION 4.292. Section 51.004, Human Resources Code, is
770-5 amended to read as follows:

770-6 Sec. 51.004. CONTRACT BIDS. (a) To be eligible for a
770-7 contract under Section 51.003(a), a family violence shelter center
770-8 must:

770-9 (1) provide temporary lodging and direct delivery of
770-10 services for adults and their dependents;

770-11 (2) have been in actual operation offering shelter
770-12 services 24 hours a day with a capacity for not less than five
770-13 persons for at least one year before the date on which the contract
770-14 is awarded;

770-15 (3) demonstrate that the center, through the services
770-16 it provides, is addressing a need in the community consistent with
770-17 the plan for family violence services under Section 51.0021; and

770-18 (4) submit a contract application on forms prescribed
770-19 by the commission [department].

770-20 (b) To be eligible for a contract under Section 51.003(a), a
770-21 family violence nonresidential center must:

770-22 (1) provide, as its primary purpose, direct delivery
770-23 of services to adult victims of family violence;

770-24 (2) demonstrate a system of referring victims of
770-25 family violence to at least one family violence shelter center or
770-26 other safe temporary lodging;

770-27 (3) have been operating and providing comprehensive
770-28 services, including the services described by Section
770-29 51.005(b)(3), to victims of family violence for at least one year
770-30 before the date on which the contract is awarded;

770-31 (4) demonstrate that the center, through the services
770-32 it provides, is addressing a need in the community consistent with
770-33 the plan for family violence services under Section 51.0021; and

770-34 (5) submit a contract application on forms prescribed
770-35 by the commission [department].

770-36 (c) The commission [department] shall consider the
770-37 following factors in awarding contracts under Section 51.003(a):

770-38 (1) the family violence center's eligibility for and
770-39 use of funds from the federal government, philanthropic
770-40 organizations, and voluntary sources;

770-41 (2) community support for the family violence center,
770-42 as evidenced by financial contributions from civic organizations,
770-43 local governments, and individuals;

770-44 (3) evidence that the family violence center provides
770-45 services that encourage self-sufficiency and effectively uses
770-46 community resources;

770-47 (4) evidence of involvement with local law enforcement
770-48 officials; and

770-49 (5) support for the family violence center through
770-50 volunteer work, especially volunteer effort by persons who have
770-51 been victims of family violence.

770-52 (d) To be eligible for a contract under Section 51.003(b), a
770-53 family violence special project must:

770-54 (1) provide:
770-55 (A) community education relating to family
770-56 violence; or

770-57 (B) direct delivery of services for adult victims
770-58 of family violence or their children;

770-59 (2) demonstrate a system of referring victims of
770-60 family violence to at least one family violence shelter center or
770-61 other safe temporary lodging;

770-62 (3) demonstrate that the project, through the services
770-63 it provides, is addressing a need in the community consistent with
770-64 the plan for family violence services under Section 51.0021;

770-65 (4) demonstrate that the underserved or special
770-66 population to be served by the project is involved in the project's
770-67 design and implementation, if applicable; and

770-68 (5) submit a contract application on forms prescribed
770-69 by the commission [department].

(e) The commission [department] shall use a noncompetitive procurement procedure if the commission [department] determines that there is no competition between eligible family violence centers for a service area. If the commission [department] determines that there is competition between eligible family violence centers for a service area, the commission [department] shall award a contract through a competitive procurement procedure.

SECTION 4.293. Section 51.005, Human Resources Code, is amended to read as follows:

Sec. 51.005. CONTRACT SPECIFICATIONS. (a) The commission [department] shall contract only with public or private nonprofit organizations that fulfill the requirements of this chapter.

(b) The contracts shall require the persons operating a family violence center to:

family violence center to:

- (1) make a quarterly and an annual financial report on a form prescribed by the commission [department];
- (2) cooperate with inspections the commission [department] makes to ensure services standards and fiscal responsibility; and
- (3) provide, as its primary purpose, services to victims of family violence that include:

(A) 24-hour-a-day shelter, except that a family violence nonresidential center may provide access to a 24-hour-a-day shelter;

(B) a 24-hour-a-day crisis hotline, except that a family violence nonresidential center may provide access to a 24-hour-a-day crisis hotline operated by another organization located in the nonresidential center's service area;

- (C) access to emergency medical care;
- (D) intervention services, including safety planning, understanding and support, information, education, referrals, and other resource assistance;

(E) access to emergency transportation;
(F) legal assistance in the civil and criminal justice systems, including:

- (i) identifying individual needs, legal rights, and legal options; and
- (ii) providing support and accompaniment in pursuing those options;

for children; (G) information about educational arrangements
employment; (H) information about training for and seeking
(I) information about medical treatment received

services; and

- (I) cooperation with criminal justice officials;
- (J) community education;
- (K) a referral system to existing community
- (L) a volunteer recruitment and training program.

(c) The contracts may require the persons operating a family violence center to use intake and case study forms. Forms required shall be developed by the commission [department] with consultation as outlined in Section 51.008.

SECTION 4.294. Section 51.0051, Human Resources Code, is amended to read as follows:

Sec. 51.0051. MAXIMIZING FEDERAL FUNDING FOR PROGRAMS TO BENEFIT VICTIMS OF FAMILY VIOLENCE. To maximize the state's receipt of federal matching funds for emergency assistance under Part A, Title IV, Social Security Act (42 U.S.C. Section 601 et seq.):

(1) [7] the commission [department] shall:

(A) [(1)] ensure that a contract made under Section 51.003 includes provisions necessary to maximize federal funding for services for victims of family violence; and

(B) [(2)] file amendments to the state's plan for aid and services to needy families with children under Part A, Title IV, Social Security Act (42 U.S.C. Section 601 et seq.), that are necessary to maximize federal funding; and

(2) the executive commissioner shall [§ 3] establish

772-1 by rule any reporting procedures that federal law requires as a
772-2 condition of receiving federal matching funds.

772-3 SECTION 4.295. Section 51.006, Human Resources Code, is
772-4 amended to read as follows:

772-5 Sec. 51.006. REPORT. (a) Not later than November 1 of each
772-6 even-numbered year, the commission [~~department~~] shall publish a
772-7 report that summarizes reports from family violence centers under
772-8 contract with the commission [~~department~~] and that analyzes the
772-9 effectiveness of the contracts authorized by this chapter. The
772-10 reports must include information on the expenditure of funds
772-11 authorized under this chapter, the services provided, the number of
772-12 persons for whom a service was provided, and any other information
772-13 relating to the provision of family violence services. [The report
772-14 may be combined with the report required by Section 21.011.] Copies
772-15 of the report shall be submitted to the governor, the lieutenant
772-16 governor, the speaker of the house of representatives, the
772-17 Legislative Budget Board, and the standing committees of the senate
772-18 and house of representatives having primary jurisdiction over the
772-19 commission [~~department~~].

772-20 (b) The report required under Subsection (a) may be
772-21 published electronically on the commission's [~~department's~~] Internet
772-22 website. The commission [~~department~~] shall notify each
772-23 agency entitled to receive a copy of the report that the report is
772-24 available on the commission's [~~department's~~] Internet website on or
772-25 before the date the report is due.

772-26 SECTION 4.296. Section 51.007, Human Resources Code, is
772-27 amended to read as follows:

772-28 Sec. 51.007. CONFIDENTIALITY. The commission [~~department~~]
772-29 may not disclose any information that would identify:

772-30 (1) a particular family violence center location;
772-31 (2) a board member of a family violence center or
772-32 family violence special project; or
772-33 (3) a person working at or receiving services through
772-34 a family violence center or family violence special project.

772-35 SECTION 4.297. Section 51.008, Human Resources Code, is
772-36 amended to read as follows:

772-37 Sec. 51.008. CONSULTATIONS. In implementing this chapter,
772-38 the commission [~~department~~] shall consult with individuals and
772-39 groups having knowledge of and experience in the problems of family
772-40 violence.

772-41 SECTION 4.298. Section 51.009, Human Resources Code, is
772-42 amended to read as follows:

772-43 Sec. 51.009. GRANTS AND FUNDS. The commission [~~department~~]
772-44 may seek other funds that may be available for the contracts
772-45 authorized by this chapter.

772-46 SECTION 4.299. Section 51.010, Human Resources Code, is
772-47 amended to read as follows:

772-48 Sec. 51.010. RULES. The executive commissioner
772-49 [~~department~~] may adopt rules necessary to implement this chapter.

772-50 SECTION 4.300. Section 51.011, Human Resources Code, is
772-51 amended to read as follows:

772-52 Sec. 51.011. FUNDING. (a) In order to finance the program
772-53 created by this chapter, the commission [~~department~~] is authorized
772-54 to solicit and receive grants of money from either private or public
772-55 sources, including appropriation by the legislature from the
772-56 general revenue fund of the State of Texas, and in that regard it is
772-57 hereby declared that the need for and importance of this program
772-58 require priority and preferential consideration in appropriation.

772-59 (b) The commission [~~department~~] may use not more than six
772-60 percent of the annual legislative appropriation to the family
772-61 violence program for administration of this chapter and not more
772-62 than six percent annually for the contracts described in Section
772-63 51.003(c).

772-64 SECTION 4.301. Section 51.012, Human Resources Code, is
772-65 amended to read as follows:

772-66 Sec. 51.012. COORDINATION OF SERVICES. The commission
772-67 [~~department~~] and the Department of Family and Protective [~~and~~
772-68 ~~Regulatory~~] Services shall coordinate the provision of violence
772-69 prevention services for children.

773-1 SECTION 4.302. Chapter 54, Human Resources Code, is amended
 773-2 to read as follows:

773-3 CHAPTER 54. PROTECTIVE ORDERS SOUGHT BY DEPARTMENT OF FAMILY AND
 773-4 PROTECTIVE [AND REGULATORY] SERVICES

773-5 Sec. 54.001. PROTECTIVE ORDERS. The executive commissioner
 773-6 [~~Department of Protective and Regulatory Services~~] shall adopt
 773-7 rules to provide procedures for the filing of protective orders by
 773-8 the Department of Family and Protective Services for the protection
 773-9 of a member of a family or household as provided by Title 4 [Section
 773-10 71.04], Family Code.

773-11 Sec. 54.002. NOTICE TO NONABUSIVE PARENT OR HOUSEHOLD
 773-12 MEMBER. The Department of Family and Protective [and Regulatory]
 773-13 Services shall provide prior notice to a nonabusive parent or adult
 773-14 member of a household of the department's intent to file an
 773-15 application for a protective order for a child or older person and
 773-16 shall request the assistance of the person receiving the notice in
 773-17 developing a safety plan for household members and the child or
 773-18 older person for whom the order is sought. The department shall
 773-19 exercise reasonable safety precautions to protect a nonabusive
 773-20 parent or other member of a household while providing notice and
 773-21 requesting assistance under this section.

773-22 SECTION 4.303. The heading to Chapter 73, Human Resources
 773-23 Code, is amended to read as follows:

773-24 CHAPTER 73. [~~INTERAGENCY COUNCIL ON~~] EARLY CHILDHOOD INTERVENTION
 773-25 SERVICES

773-26 SECTION 4.304. Section 73.001, Human Resources Code, is
 773-27 amended by amending Subdivisions (1) and (2) and adding Subdivision
 773-28 (4) to read as follows:

773-29 (1) "Commission" means the Health and Human Services
 773-30 Commission [~~"Board"~~ means the board of the ~~Interagency Council on~~
 773-31 ~~Early Childhood Intervention~~].

773-32 (2) "Department" means the Department of Assistive and
 773-33 Rehabilitative Services [~~"Council"~~ means the ~~Interagency Council~~
 773-34 ~~on Early Childhood Intervention~~].

773-35 (4) "Executive commissioner" means the executive
 773-36 commissioner of the Health and Human Services Commission.

773-37 SECTION 4.305. Section 73.003, Human Resources Code, is
 773-38 amended to read as follows:

773-39 Sec. 73.003. STRATEGIC PLAN. The department [~~council~~]
 773-40 shall develop and implement a strategic plan for a statewide system
 773-41 of early childhood intervention services, as required by Part C
 773-42 [~~Subchapter VIII~~], Individuals with Disabilities Education Act
 773-43 (IDEA) (20 U.S.C. Section 1431 [~~1471~~] et seq.), and its subsequent
 773-44 amendments, to ensure that the provisions of this chapter are
 773-45 properly implemented by the agencies affected.

773-46 SECTION 4.306. Section 73.004, Human Resources Code, is
 773-47 amended to read as follows:

773-48 Sec. 73.004. ADVISORY COMMITTEE. (a) The governor shall
 773-49 appoint an advisory committee to assist the department [~~council~~]
 773-50 in the performance of its duties under this chapter. The executive
 773-51 commissioner [~~council~~] shall establish the size and composition of
 773-52 the committee by rule, consistent with federal regulations and
 773-53 state rules. The commissioner of assistive and rehabilitative
 773-54 services [~~governor or the council~~] may also appoint ex officio
 773-55 members to serve for specific purposes to assist the department
 773-56 [~~council~~] in the performance of its duties under this chapter.

773-57 (b) The committee shall meet and serve in accordance with
 773-58 department [under the] rules [of the board], but the committee
 773-59 shall elect its own presiding officer. The committee may be divided
 773-60 into regional committees to assist the department [~~council~~] in
 773-61 community-level program planning and implementation under this
 773-62 chapter.

773-63 (c) The advisory committee is not subject to Chapter 2110,
 773-64 Government Code [~~Article 6252-33, Revised Statutes~~].

773-65 SECTION 4.307. Section 73.0041, Human Resources Code, is
 773-66 amended to read as follows:

773-67 Sec. 73.0041. ADVISORY COMMITTEE DUTIES. The advisory
 773-68 committee established under Section 73.004 shall perform the duties
 773-69 and responsibilities required of an advisory committee under 20

774-1 U.S.C. Section 1441 [Subchapter VIII, Individuals with
 774-2 Disabilities Education Act (IDEA) (20 U.S.C. Section 1471 et
 774-3 seq.)] and its subsequent amendments.

774-4 SECTION 4.308. Section 73.0045, Human Resources Code, is
 774-5 amended to read as follows:

774-6 Sec. 73.0045. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
 774-7 CONFLICT WITH OTHER LAW [OF COMMISSIONER OF HEALTH AND HUMAN
 774-8 SERVICES]. [The commissioner of health and human services has the
 774-9 powers and duties relating to the board and the executive director
 774-10 of the board as provided by Section 531.0055, Government Code.] To
 774-11 the extent a power or duty given to the commissioner of assistive
 774-12 and rehabilitative services [board or executive director] by this
 774-13 chapter or another law conflicts with Section 531.0055, Government
 774-14 Code, Section 531.0055 controls.

774-15 SECTION 4.309. Section 73.005, Human Resources Code, is
 774-16 amended to read as follows:

774-17 Sec. 73.005. ISSUES RELATED TO INTERVENTION SERVICES;
 774-18 LEGISLATIVE PROPOSALS [BOARD POWERS AND DUTIES]. (a) The
 774-19 executive commissioner [board] with the advice of the advisory
 774-20 committee shall address contemporary issues affecting intervention
 774-21 services in the state including:

- 774-22 (1) successful intervention strategies;
- 774-23 (2) personnel preparation and continuing education;
- 774-24 (3) screening services;
- 774-25 (4) day or respite care services;
- 774-26 (5) public awareness; and
- 774-27 (6) contemporary research.

774-28 (b) The executive commissioner [board] with the advice of
 774-29 the advisory committee shall advise the legislature on legislation
 774-30 that is needed to maintain a statewide system of quality
 774-31 intervention services for children with developmental delay who are
 774-32 under three years of age and the families of those children. The
 774-33 department [council] may develop and submit legislation to the
 774-34 legislature or comment on pending legislation that affects this
 774-35 population.

774-36 SECTION 4.310. Section 73.0051, Human Resources Code, is
 774-37 amended to read as follows:

774-38 Sec. 73.0051. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
 774-39 AND DEPARTMENT UNDER CHAPTER [COUNCIL]. (a) The department
 774-40 [council] is the lead agency designated by the governor under Part C
 774-41 [Subchapter VIII], Individuals with Disabilities Education Act
 774-42 (IDEA) (20 U.S.C. Section 1431 [1471] et seq.), and its subsequent
 774-43 amendments, for the administration, supervision, and monitoring of
 774-44 a statewide comprehensive system of early intervention services
 774-45 that will ensure that all infants and toddlers in this state who are
 774-46 below the age of three and have developmental needs or are at risk
 774-47 of developmental delay receive services that are provided in
 774-48 partnership with their families and in the context of their local
 774-49 community.

774-50 (b) The executive commissioner [council] by rule shall:

774-51 (1) provide for compliance with the terms and
 774-52 provisions of applicable federal and state laws in the
 774-53 administration of programs and the delivery of services under this
 774-54 chapter;

774-55 (2) establish a program to monitor fiscal and program
 774-56 implementation under this chapter; and

774-57 (3) establish appropriate sanctions for providers who
 774-58 fail to comply with statutory and regulatory fiscal and program
 774-59 requirements under this chapter.

774-60 (c) The department [council] may enter into, administer,
 774-61 and monitor contracts with providers for programs and projects
 774-62 authorized under this chapter.

774-63 (d) The department [council] shall periodically monitor
 774-64 program activities and fiscal performance of the entities funded
 774-65 under this chapter to:

774-66 (1) determine compliance with federal and state
 774-67 requirements;

774-68 (2) assess the performance of the entities in
 774-69 identifying children under three years of age with developmental

delay in populations at risk of developmental delay; and

(3) issue reports regarding program monitoring.

(e) The department [~~council~~] may apply for and accept gifts, grants, and donations from public and private sources for use in programs authorized under this chapter. The department [~~council~~] shall deposit money received under this section into the state treasury.

(f) The department [council] shall:

(1) cooperate with the commission [Health and Human Commission] and other local, state, and federal agencies in strategic planning, funding, delivery, and monitoring of programs authorized under this chapter; and

(2) jointly with the Department of Family and Protective [and Regulatory] Services develop and implement policies applicable to providers of services authorized under this chapter in situations involving service recipients who are vulnerable to abuse or neglect.

(g) The department [~~council~~] shall make periodic reports relating to the department's functions under this chapter as required by law to other agencies, the legislature, appropriate committees, the governor, and the [Secretary of the] United States secretary of education [~~Department of Education~~].

(h) The department [~~council~~] shall ensure that all programs and department [~~council~~] functions under this chapter are conducted in a nondiscriminatory manner.

(i) The department [~~council~~] shall include parents when deciding the appropriate treatment for the needs of their child or children under this chapter. After establishing an initial and ongoing treatment plan for a child, the department [~~council~~] shall ensure that the child's parents continue to be included in all decisions relating to the services provided to the child, including the determination of the most appropriate setting for the child to receive services. The department [~~council~~] shall ensure that a child's parents receive written notification of the progress toward meeting the child's treatment plan. The notification must include details to assist parents in meeting the child's treatment goals.

(j) The department [council] shall provide [not limit] services under this chapter in the child's [to solely] natural environments but must [shall also] make alternatives available when early intervention cannot be achieved satisfactorily in a natural environment.

(k) The department [council] shall cooperate with the commission [Health and Human Services Commission] to select an appropriate automated system or systems currently used by a state agency to plan, manage, and maintain records of client services under this chapter. If cost-effective, the department [council] may use the automated system or systems to carry out other appropriate department [council] administrative functions under this chapter.

(1) The executive commissioner [council] by rule may establish a system of payments by families of children receiving services under this chapter, including a schedule of sliding fees, in a manner consistent with 34 C.F.R. Sections 303.13(a)(3) [303.12(a)(3)(iv)], 303.520, and 303.521.

SECTION 4.311. Section 73.006(b), Human Resources Code, is amended to read as follows:

(b) The [lay] members of the [board and] advisory committee are entitled to reimbursement for reasonable and necessary expenses incurred in the performance of [board or] advisory committee duties, including reimbursement for child care.

SECTION 4.312. Section 73.007, Human Resources Code, is amended to read as follows:

Sec. 73.007. PUBLIC AWARENESS AND TRAINING. The department [council] shall develop and implement:

- (1) a general public awareness strategy focusing on the importance of prenatal care and early identification of infants and toddlers with developmental delay and the availability of resources to meet their needs; and
- (2) a statewide plan for conducting training and

(2) a statewide plan for conducting training and

776-1 technical assistance for service providers, primary referral
 776-2 sources, and families with children under three years of age with
 776-3 developmental delay.

776-4 SECTION 4.313. Section 73.008(a), Human Resources Code, is
 776-5 amended to read as follows:

776-6 (a) The department [council] shall develop and implement a
 776-7 statewide strategy for:

776-8 (1) the early identification of children under three
 776-9 years of age with developmental delay;

776-10 (2) improving the early identification of children under three
 776-11 years of age with developmental delay in populations at
 776-12 risk of developmental delay, through measures such as:

776-13 (A) targeting at-risk populations and
 776-14 appropriate geographical regions; and

776-15 (B) monitoring the performance of providers of
 776-16 services authorized under this chapter in identifying those
 776-17 children; and

776-18 (3) the coordination of programs with other agencies
 776-19 serving children with developmental delay, including the
 776-20 coordination of policy issues that affect children with
 776-21 developmental delay who are three years of age or older.

776-22 SECTION 4.314. Sections 73.009(a) and (b), Human Resources
 776-23 Code, are amended to read as follows:

776-24 (a) The department shall develop and the executive
 776-25 commissioner [council] shall establish policies concerning
 776-26 services described by this section. A child under three years of
 776-27 age and the child's family may be referred for services described by
 776-28 this section if the child is:

776-29 (1) identified as having a developmental delay
 776-30 [developmentally delayed];

776-31 (2) suspected of having a developmental delay [being
 776-32 developmentally delayed]; or

776-33 (3) considered at risk of developmental delay.

776-34 (b) For each child referred, the department [council] shall
 776-35 ensure the performance of [+]

776-36 [(1) seek] appropriate medical or developmental
 776-37 screening or evaluation, and if such screening services or
 776-38 evaluation services are not available, the department [council]
 776-39 shall ensure that [provide those services either directly or by
 776-40 contract; and

776-41 [(2) refer] the child is referred to a public or
 776-42 private program that can meet the child's needs.

776-43 SECTION 4.315. Section 73.011, Human Resources Code, is
 776-44 amended to read as follows:

776-45 Sec. 73.011. PROVIDER SELECTION. (a) The department
 776-46 [council] shall select providers of services authorized under this
 776-47 chapter on a best value basis in a manner that:

776-48 (1) maximizes federal, private, and local sources of
 776-49 funding; and

776-50 (2) promotes competition when possible.

776-51 (b) The department [council] shall determine best value as
 776-52 required by Subsection (a) when the department [council] initially
 776-53 awards a contract to a provider and when the department [council]
 776-54 considers renewal of a provider's contract.

776-55 (c) In determining whether a provider will provide best
 776-56 value to the department [council], the department [council] shall
 776-57 consider:

776-58 (1) the past performance of the provider;

776-59 (2) the quality of the provider's services;

776-60 (3) the cost of the provider's services;

776-61 (4) the ability of the provider to maximize federal,
 776-62 private, and local sources of funding;

776-63 (5) the ability of the provider to comply with state
 776-64 and federal program requirements;

776-65 (6) the availability of the provider to deliver
 776-66 required services; and

776-67 (7) any other relevant factor.

776-68 SECTION 4.316. Section 73.022, Human Resources Code, is
 776-69 amended by amending Subsections (a) and (b) and adding Subsection

777-1 (a-1) to read as follows:

777-2 (a) The executive commissioner [~~council~~] shall:

777-3 (1) ensure compliance with requirements necessary to
777-4 obtain federal funds in the maximum amount and the most
777-5 advantageous proportions possible for programs funded under this
777-6 chapter; and

777-7 (2) seek funding in a manner that maximizes the total
777-8 amount of money available from federal, private, and local sources
777-9 for programs funded under this chapter. [+]

777-10 (a-1) The department shall:

777-11 (1) [~~(3)~~] apply for, receive, administer, and spend
777-12 federal and state funds for Part C [~~Subchapter III~~], Individuals
777-13 with Disabilities Education Act (IDEA) (20 U.S.C. Section 1431 et
777-14 seq.), and its subsequent amendments, dealing with infants and
777-15 toddlers from birth to age three with developmental delay and their
777-16 families; and

777-17 (2) [~~(4)~~] authorize and account for the
777-18 classification and spending of maintenance of effort and carryover
777-19 funds from all sources in carrying out the programs funded under
777-20 this chapter.

777-21 (b) All money paid to the department [~~council~~] under this
777-22 chapter shall be deposited in the state treasury and may be used
777-23 only for the administration of this chapter.

777-24 SECTION 4.317. Section 73.024, Human Resources Code, is
777-25 amended to read as follows:

777-26 Sec. 73.024. APPLICATION OF OPEN MEETINGS LAW, [+] OPEN
777-27 RECORDS LAW, AND [+] ADMINISTRATIVE PROCEDURE LAW TO ADVISORY
777-28 COMMITTEE. The [~~board, council, and~~] advisory committee is [~~are~~]
777-29 subject to the requirements of the open meetings law, Chapter 551,
777-30 Government Code, the open records law, Chapter 552, Government
777-31 Code, and Chapter 2001, Government Code.

777-32 SECTION 4.318. The heading to Title 4, Human Resources
777-33 Code, is amended to read as follows:

777-34 TITLE 4. SERVICES FOR PERSONS WHO ARE [THE] DEAF OR HARD OF HEARING

777-35 SECTION 4.319. The heading to Chapter 81, Human Resources
777-36 Code, is amended to read as follows:

777-37 CHAPTER 81. FUNCTIONS OF DEPARTMENT OF ASSISTIVE AND
777-38 REHABILITATIVE SERVICES RELATING TO PERSONS WHO ARE [TEXAS
777-39 COMMISSION FOR THE] DEAF OR [AND] HARD OF HEARING

777-40 SECTION 4.320. Section 81.001, Human Resources Code, is
777-41 amended by adding Subdivisions (2-a) and (5) to read as follows:

777-42 (2-a) "Department" means the Department of Assistive
777-43 and Rehabilitative Services.

777-44 (5) "Executive commissioner" means the executive
777-45 commissioner of the Health and Human Services Commission.

777-46 SECTION 4.321. Section 81.0055, Human Resources Code, is
777-47 amended to read as follows:

777-48 Sec. 81.0055. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
777-49 CONFLICT WITH OTHER LAW [OF COMMISSIONER OF HEALTH AND HUMAN
777-50 SERVICES]. [The commissioner of health and human services has the
777-51 powers and duties relating to the commission and the executive
777-52 director of the commission as provided by Section 531.0055,
777-53 Government Code.] To the extent a power or duty given to the
777-54 commissioner of assistive and rehabilitative services [~~commission~~
777-55 ~~or executive director~~] by this chapter, or another law relating to
777-56 services for persons who are deaf or hard of hearing, conflicts with
777-57 Section 531.0055, Government Code, Section 531.0055 controls.

777-58 SECTION 4.322. Section 81.006, Human Resources Code, is
777-59 amended to read as follows:

777-60 Sec. 81.006. DUTIES AND POWERS OF DEPARTMENT AND EXECUTIVE
777-61 COMMISSIONER UNDER CHAPTER. (a) The department [~~commission~~]
777-62 shall:

777-63 (1) develop and implement a statewide program of
777-64 advocacy and education to ensure continuity of services to persons
777-65 who are deaf, deaf-blind, or hard of hearing;

777-66 (2) provide direct services to persons who are deaf or
777-67 hard of hearing, including communication access, information and
777-68 referral services, advocacy services, services to elderly persons
777-69 who are deaf or hard of hearing, and training in accessing basic

778-1 life skills;

778-2 (3) work to ensure more effective coordination and
 778-3 cooperation among public and nonprofit organizations providing
 778-4 social and educational services to individuals who are deaf or hard
 778-5 of hearing;

778-6 (4) maintain a registry of available qualified
 778-7 interpreters for persons who are deaf or hard of hearing by updating
 778-8 the registry at least quarterly and making the registry available
 778-9 to interested persons at cost;

778-10 (5) establish a system to approve and provide courses
 778-11 and workshops for the instruction and continuing education of
 778-12 interpreters for persons who are deaf or hard of hearing;

778-13 (6) assist institutions of higher education that have
 778-14 or are [in] initiating training programs for interpreters for
 778-15 persons who are deaf or hard of hearing [and develop guidelines for
 778-16 instruction to promote uniformity of signs taught within those
 778-17 programs];

778-18 (6-a) develop guidelines for the curricula for the
 778-19 programs described by Subdivision (6) to promote uniformity of the
 778-20 skills taught within those programs;

778-21 (7) with the assistance of the Texas Higher Education
 778-22 Coordinating Board, develop standards for evaluation of the
 778-23 programs described by Subdivision (6); and

778-24 (8) develop guidelines to clarify the circumstances
 778-25 under which interpreters certified by the department [commission]
 778-26 are qualified to interpret effectively, accurately, and
 778-27 impartially, both receptively and expressively, using any
 778-28 necessary specialized vocabulary.

778-29 (b) The department [commission] may:

778-30 (1) appoint one or more advisory committees to consult
 778-31 with and advise the department under this chapter [commission];

778-32 (2) [establish and] collect training fees and accept
 778-33 gifts, grants, and donations of money, personal property, or real
 778-34 property for use in expanding and improving services to persons of
 778-35 this state who are deaf or hard of hearing;

778-36 (3) [adopt rules necessary to implement this chapter,
 778-37 [4)] contract with or provide grants to agencies,
 778-38 organizations, or individuals as necessary to implement this
 778-39 chapter;

778-40 (4) collect [5) establish] a reasonable fee from
 778-41 [and charge] interpreters for training to defray the cost of
 778-42 conducting the training;

778-43 (5) [6) develop guidelines for trilingual
 778-44 interpreter services; and

778-45 (6) [7)] provide training programs for persons who
 778-46 provide trilingual interpreter services.

778-47 (c) The executive commissioner shall establish the fees
 778-48 described by Subsections (b)(2) and (4).

778-49 (d) The executive commissioner may adopt rules necessary to
 778-50 implement this chapter, including rules adopting standards and
 778-51 guidelines under this section.

778-52 [(e) The commission shall develop and implement policies
 778-53 that clearly define the respective responsibilities of the
 778-54 governing body of the commission and the staff of the commission.]

778-55 (f) The executive commissioner [commission] shall establish
 778-56 and the department shall collect [charge] reasonable fees for some
 778-57 or all department [commission] publications to cover the
 778-58 department's [commission's] publication costs. However, the
 778-59 department [commission] shall waive the fee if a person who is deaf
 778-60 or hard of hearing is financially unable to pay for the publication,
 778-61 and may waive the fees for publications provided to certain
 778-62 entities. The executive commissioner [commission] shall adopt
 778-63 rules to implement this subsection. The rules must specify the
 778-64 standards used for determining ability to pay for a publication and
 778-65 must specify the types of entities for which the fees will be
 778-66 waived.

778-67 SECTION 4.323. Section 81.007, Human Resources Code, is
 778-68 amended to read as follows:

778-69 Sec. 81.007. BOARD FOR EVALUATION OF INTERPRETERS. (a) The

779-1 department [commission] may establish a program in accordance with
 779-2 this section for the certification of interpreters who have reached
 779-3 varying levels of proficiency in communication skills necessary to
 779-4 facilitate communication between persons who are deaf or hard of
 779-5 hearing and persons who are not deaf or hard of hearing.

779-6 (b) The department [commission] shall appoint an advisory
 779-7 board of seven persons to assist in administering the interpreter
 779-8 certification program. A board member may not receive
 779-9 compensation, but is entitled to reimbursement of the travel
 779-10 expenses incurred by the member while conducting the business of
 779-11 the board, as provided in the General Appropriations Act.

779-12 (c) The [Subject to approval of the commission, the] board
 779-13 shall develop, subject to the department's approval, and the
 779-14 executive commissioner shall adopt [prescribe] qualifications for
 779-15 each of several levels of certification based on proficiency. The
 779-16 board [and] shall evaluate and certify interpreters using these
 779-17 qualifications.

779-18 (d) A qualified board member may serve as an evaluator under
 779-19 Subsection (c), and the department [commission] shall compensate
 779-20 the board member for services performed as an evaluator.

779-21 (e) The executive commissioner by rule shall set and the
 779-22 department [commission] shall collect [charge] fees for written and
 779-23 performance examinations, for annual certificate renewal, and for
 779-24 recertification. The fees must be in an amount sufficient to
 779-25 recover the costs of the certification program.

779-26 (f) The department [commission] may waive any prerequisite
 779-27 to obtaining a certificate for an applicant after reviewing the
 779-28 applicant's credentials and determining that the applicant holds a
 779-29 certificate issued by another jurisdiction that has certification
 779-30 requirements substantially equivalent to those of this state.

779-31 (g) The executive commissioner [commission] by rule may
 779-32 adopt a system under which certificates are valid for a five-year
 779-33 period, subject to the certificate holder's payment of an annual
 779-34 certificate renewal fee. After expiration of the five-year period,
 779-35 an interpreter must be recertified by the department [commission].
 779-36 The department [commission] may recertify an interpreter who:

779-37 (1) receives specified continuing education credits;
 779-38 or

779-39 (2) achieves an adequate score on a specified
 779-40 examination.

779-41 (h) The executive commissioner [commission] shall adopt
 779-42 rules specifying the grounds for denying, suspending, or revoking
 779-43 an interpreter's certificate.

779-44 (i) The department [commission] shall determine the
 779-45 frequency for conducting the interpreter examinations. The
 779-46 department [commission] shall conduct the interpreter
 779-47 examinations:

779-48 (1) in a space that can be obtained free of charge; or
 779-49 (2) at a facility selected in compliance with Section
 779-50 2113.106, Government Code.

779-51 (k) The department [commission] shall compensate an
 779-52 evaluator based on a fee schedule as determined by department
 779-53 [commission] rule.

779-54 (l) The department [commission] shall recognize, prepare,
 779-55 or administer continuing education programs for its certificate
 779-56 holders. A certificate holder must participate in the programs to
 779-57 the extent required by the department [commission] to keep the
 779-58 person's certificate.

779-59 SECTION 4.324. Section 81.0071, Human Resources Code, is
 779-60 amended to read as follows:

779-61 Sec. 81.0071. EXAMINATION RESULTS. (a) Not later than the
 779-62 60th day after the date on which a certification examination is
 779-63 administered under this chapter, the department [commission] shall
 779-64 notify each examinee of the results of the examination. However, if
 779-65 an examination is graded or reviewed by a national testing service,
 779-66 the department [commission] shall notify examinees of the results
 779-67 of the examination not later than the 14th day after the date on
 779-68 which the department [commission] receives the results from the
 779-69 testing service. If the notice of the examination results will be

780-1 delayed for longer than 90 days after the examination date, the
 780-2 department [~~commission~~] shall notify each examinee of the reason
 780-3 for the delay before the 90th day.

780-4 (c) The department [~~commission~~] may require a testing
 780-5 service to notify a person of the results of the person's
 780-6 examination.

780-7 SECTION 4.325. Section 81.0072, Human Resources Code, is
 780-8 amended to read as follows:

780-9 Sec. 81.0072. REVOCATION OR SUSPENSION OF CERTIFICATE. (a)
 780-10 The department [~~commission~~], based on the recommendation of the
 780-11 Board for Evaluation of Interpreters, may revoke or suspend a
 780-12 certificate or place a certificate holder on probation for a
 780-13 violation of a statute, rule, or policy of the department
 780-14 [~~commission~~]. If a certificate holder is placed on probation, the
 780-15 department [~~commission~~] may require the practitioner:

780-16 (1) to report regularly to the department [~~commission~~]
 780-17 on matters that are the basis of the probation;

780-18 (2) to limit practice to those areas prescribed by the
 780-19 department [~~commission~~]; or

780-20 (3) to continue or renew professional education until
 780-21 a satisfactory degree of skill has been attained in those areas that
 780-22 are the basis of the probation.

780-23 (b) If the department [~~commission~~] proposes to suspend or
 780-24 revoke a certificate or place a certificate holder on probation,
 780-25 the certificate holder is entitled to a hearing before the
 780-26 department [~~commission~~] or a hearings officer appointed by the
 780-27 department [~~commission~~]. All final decisions to suspend or revoke
 780-28 a certificate or place a certificate holder on probation shall be
 780-29 made by the department [~~commission~~].

780-30 SECTION 4.326. Sections 81.0073(a), (b), (c), (e), and (f),
 780-31 Human Resources Code, are amended to read as follows:

780-32 (a) A person who is otherwise eligible to renew a
 780-33 certificate may renew an unexpired certificate by paying the
 780-34 required renewal fee to the department [~~commission~~] before the
 780-35 expiration date of the certificate. A person whose certificate has
 780-36 expired may not engage in activities that require a certificate
 780-37 until the certificate has been renewed.

780-38 (b) A person whose certificate has been expired for 90 days
 780-39 or less may renew the certificate by paying to the department
 780-40 [~~commission~~] a renewal fee that is equal to 1-1/2 times the normally
 780-41 required renewal fee.

780-42 (c) A person whose certificate has been expired for more
 780-43 than 90 days but less than one year may renew the certificate by
 780-44 paying to the department [~~commission~~] a renewal fee that is equal to
 780-45 two times the normally required renewal fee.

780-46 (e) A person who was certified in this state, moved to
 780-47 another state, and is currently certified and has been in practice
 780-48 in the other state for the two years preceding the date of
 780-49 application may obtain a new certificate without reexamination.
 780-50 The person must pay to the department [~~commission~~] a fee that is
 780-51 equal to two times the normally required renewal fee for the
 780-52 certificate.

780-53 (f) Not later than the 30th day before the date a person's
 780-54 certificate is scheduled to expire, the department [~~commission~~]
 780-55 shall send written notice of the impending expiration to the person
 780-56 at the person's last known address according to the records of the
 780-57 department [~~commission~~].

780-58 SECTION 4.327. Section 81.0074, Human Resources Code, is
 780-59 amended to read as follows:

780-60 Sec. 81.0074. PROVISIONAL CERTIFICATE. (a) The department
 780-61 [~~commission~~] may issue a provisional certificate to an applicant
 780-62 currently certified in another jurisdiction who seeks a certificate
 780-63 in this state and who:

780-64 (1) has been certified in good standing as an
 780-65 interpreter for at least two years in another jurisdiction,
 780-66 including a foreign country, that has certification requirements
 780-67 substantially equivalent to the requirements of this chapter;

780-68 (2) has passed a national or other examination
 780-69 recognized by the department [~~commission~~] relating to the practice

781-1 of interpretation for people who are deaf or hard of hearing; and
 781-2 (3) is sponsored by a person certified by the
 781-3 department [commission] under this chapter with whom the
 781-4 provisional certificate holder will practice during the time the
 781-5 person holds a provisional certificate.

781-6 (b) The department [commission] may waive the requirement
 781-7 of Subsection (a)(3) for an applicant if the department
 781-8 [commission] determines that compliance with that subdivision
 781-9 [subsection] would be a hardship to the applicant.

781-10 (c) A provisional certificate is valid until the date the department
 781-11 [commission] approves or denies the provisional
 781-12 certificate holder's application for a certificate. The department
 781-13 [commission] shall issue a certificate under this chapter to the
 781-14 provisional certificate holder if:

781-15 (1) the provisional certificate holder is eligible to
 781-16 be certified under Section 81.007(f); or

781-17 (2) the provisional certificate holder passes the part
 781-18 of the examination under this chapter that relates to the
 781-19 applicant's knowledge and understanding of the laws and rules
 781-20 relating to the practice of interpretation for people who are deaf
 781-21 or hard of hearing in this state, and:

781-22 (A) the department [commission] verifies that
 781-23 the provisional certificate holder meets the academic and
 781-24 experience requirements for a certificate under this chapter; and

781-25 (B) the provisional certificate holder satisfies
 781-26 any other certification requirements under this chapter.

781-27 (d) The department [commission] must approve or deny a
 781-28 provisional certificate holder's application for a certificate not
 781-29 later than the 180th day after the date the provisional certificate
 781-30 is issued. The department [commission] may extend the 180-day
 781-31 period if the results of an examination have not been received by
 781-32 the department [commission] before the end of that period.

781-33 (e) The executive commissioner by rule [commission] may
 781-34 establish a fee for provisional certificates in an amount
 781-35 reasonable and necessary to cover the cost of issuing the
 781-36 certificate.

781-37 SECTION 4.328. Section 81.013, Human Resources Code, is
 781-38 amended to read as follows:

781-39 Sec. 81.013. PRIVATE OUTDOOR TRAINING PROGRAMS FOR CHILDREN
 781-40 WHO ARE DEAF OR HARD OF HEARING. (a) The department [commission]
 781-41 may contract with private entities to provide for the participation
 781-42 of children who are deaf or hard of hearing at outdoor recreational
 781-43 programs operated for the purpose of providing skill training and
 781-44 recreational experiences for children who are deaf or hard of
 781-45 hearing. Outdoor training programs under this section may also
 781-46 provide for participation by the parents of children who are deaf or
 781-47 hard of hearing.

781-48 (b) In selecting children to attend programs under this
 781-49 section, the department [commission] shall select qualified
 781-50 children from across the state that [the commission thinks] will
 781-51 benefit from the program.

781-52 (c) The department [commission] may request criminal
 781-53 history record information on any person who applies for a staff
 781-54 position in an outdoor training program from the Department of
 781-55 Public Safety in accordance with Section 411.1131, Government Code.

781-56 SECTION 4.329. Section 81.015, Human Resources Code, is
 781-57 amended to read as follows:

781-58 Sec. 81.015. ADVERTISEMENT. (a) The executive commissioner
 781-59 [commission] may not adopt rules restricting competitive bidding or
 781-60 advertising by a person regulated by the department under this
 781-61 chapter [commission] except to prohibit false, misleading, or
 781-62 deceptive practices by the person.

781-63 (b) The executive commissioner [commission] may not include
 781-64 in department [its] rules to prohibit false, misleading, or
 781-65 deceptive practices by a person regulated by the department under
 781-66 this chapter [commission] a rule that:

781-67 (1) restricts the person's use of any medium for
 781-68 advertising;

781-69 (2) restricts the person's personal appearance or use

782-1 of the person's [his] voice in an advertisement;
 782-2 (3) relates to the size or duration of an
 782-3 advertisement by the person; or
 782-4 (4) restricts the person's advertisement under a trade
 782-5 name.

782-6 (c) The department [commission] may advertise to promote
 782-7 awareness and use of the programs, services, and activities
 782-8 conducted by the department under this chapter [commission]. The
 782-9 department [commission] may not use money derived from state tax
 782-10 revenue to pay for advertisements under this subsection.

782-11 SECTION 4.330. Section 81.016, Human Resources Code, is
 782-12 amended to read as follows:

782-13 Sec. 81.016. CONTRACTS FOR SERVICES. (a) Before the
 782-14 department [commission] contracts with or provides grant funding to
 782-15 an agency, organization, or individual to provide direct services
 782-16 to persons who are deaf or hard of hearing, the department
 782-17 [commission] shall make reasonable efforts to notify all potential
 782-18 service providers of the availability and purpose of the contract
 782-19 or grant.

782-20 (b) The notice shall include a request that all interested
 782-21 service providers submit within a specified period a contract or
 782-22 grant proposal for the department's [commission's] consideration.
 782-23 The notice must also clearly state the criteria that the department
 782-24 [commission] will consider in determining which applicant will be
 782-25 awarded the contract or grant.

782-26 (c) The department [commission] shall review all proposals
 782-27 submitted under this section and shall award the contract or grant
 782-28 to the applicant that the department [commission] determines is
 782-29 best able to provide the needed services. The department
 782-30 [commission] may not award contracts or grants to a former employee
 782-31 of the department's Office for Deaf and Hard of Hearing Services
 782-32 [commission] within two years after the person's employment with
 782-33 that office [the commission] ceased.

782-34 (d) To ensure an equitable distribution of contract or grant
 782-35 funds, the department [commission] shall develop a formula, based
 782-36 on population and region, to allocate those funds among the
 782-37 agencies, organizations, or individuals that are awarded the
 782-38 contracts or grants.

782-39 (e) The executive commissioner [commission] shall adopt
 782-40 rules to implement this section.

782-41 SECTION 4.331. Sections 81.017(a) and (c), Human Resources
 782-42 Code, are amended to read as follows:

782-43 (a) The department [commission] and each of the following
 782-44 agencies shall adopt a memorandum of understanding to coordinate
 782-45 the delivery of services to persons who are deaf or hard of hearing
 782-46 and to reduce duplication of services:

- 782-47 (1) the Department of Aging and Disability Services;
- 782-48 (2) the Department of State Health Services;
- 782-49 (3) the Texas Workforce Commission;
- 782-50 (4) the Health and Human Services Commission;
- 782-51 (5) the Texas Higher Education Coordinating Board;
- 782-52 (6) the Texas Education Agency;
- 782-53 (7) [the Department of Assistive and Rehabilitative
 782-54 Services,

782-55 [8] the Texas School for the Deaf;
 782-56 [8] [9] the Texas Department of Criminal Justice;

782-57 and

782-58 (9) [10] any other state agency that provides or is
 782-59 required by law to provide services to persons who are deaf or hard
 782-60 of hearing.

782-61 (c) Not later than the last month of each state fiscal year,
 782-62 the department [commission] and the other agencies shall review
 782-63 their respective memorandums.

782-64 SECTION 4.332. Section 81.019, Human Resources Code, is
 782-65 amended to read as follows:

782-66 Sec. 81.019. SYMBOLS OR OTHER FORMS OF IDENTIFICATION FOR
 782-67 PERSONS WITH HEARING IMPAIRMENTS [IMPAIRED PERSONS]. (a) The
 782-68 department [commission] shall design and provide for the issuance
 782-69 of a symbol or other form of identification that may be attached to

783-1 a motor vehicle regularly operated by a person who is deaf or hard
 783-2 of hearing.

783-3 (b) A person who is deaf or hard of hearing may apply to the
 783-4 department [commission] for the symbol or other form of
 783-5 identification. The department [commission] may require acceptable
 783-6 medical proof that a person is deaf or hard of hearing and may
 783-7 collect [set] a fee for each symbol or other form of identification
 783-8 to defray the costs of administering this section. The executive
 783-9 commissioner shall establish the fee.

783-10 (c) The department [commission] may contract with a state or
 783-11 local agency for the distribution of the symbol or other form of
 783-12 identification.

783-13 SECTION 4.333. Section 81.020, Human Resources Code, is
 783-14 amended to read as follows:

783-15 Sec. 81.020. ASSISTANCE REGARDING TELECOMMUNICATIONS
 783-16 DEVICES. The department [commission] may not advertise,
 783-17 distribute, or publish the name or address or other related
 783-18 information received by the department [commission] about an
 783-19 individual who applies for assistance regarding telecommunications
 783-20 devices.

783-21 SECTION 4.334. Section 81.021, Human Resources Code, is
 783-22 amended to read as follows:

783-23 Sec. 81.021. SPECIALIZED LICENSE PLATE PROGRAM. The
 783-24 department [commission] shall develop and the executive
 783-25 commissioner shall adopt rules and guidelines for the use of funds
 783-26 collected from the sale of specialized license plates under Section
 783-27 504.619 [502.2722], Transportation Code, that are deposited in
 783-28 accordance with Section 504.6012, Transportation Code, and
 783-29 appropriated to the department [commission in accordance with that
 783-30 section] for direct services programs, training, and education.

783-31 SECTION 4.335. Section 82.001(1), Human Resources Code, is
 783-32 amended to read as follows:

783-33 (1) "Qualified interpreter" means a person employed as
 783-34 an interpreter who holds a current certification issued by the
 783-35 Board for Evaluation of Interpreters, or another current
 783-36 certificate that the Department of Assistive and Rehabilitative
 783-37 Services [Texas Commission for the Deaf and Hard of Hearing]
 783-38 determines is comparable or appropriate and approves.

783-39 SECTION 4.336. The heading to Title 5, Human Resources
 783-40 Code, is amended to read as follows:

783-41 TITLE 5. SERVICES FOR THE BLIND AND PERSONS WITH VISUAL
 783-42 DISABILITIES [VISUALLY HANDICAPPED]

783-43 SECTION 4.337. The heading to Chapter 91, Human Resources
 783-44 Code, is amended to read as follows:

783-45 CHAPTER 91. FUNCTIONS OF DEPARTMENT OF ASSISTIVE AND REHABILITATIVE
 783-46 SERVICES RELATING TO [TEXAS COMMISSION FOR] THE BLIND AND PERSONS
 783-47 WITH VISUAL DISABILITIES

783-48 SECTION 4.338. Section 91.002, Human Resources Code, is
 783-49 amended by amending Subdivisions (3) and (4) and adding
 783-50 Subdivisions (3-a), (3-b), and (3-c) to read as follows:

783-51 (3) "Child with visual impairments" means a child who
 783-52 is blind or visually impaired or who has a visual condition that
 783-53 requires treatment, psychological assistance counseling, or other
 783-54 assistance that the department [commission] can provide.

783-55 (3-a) "Commissioner" means the commissioner of
 783-56 assistive and rehabilitative services.

783-57 (3-b) "Department" means the Department of Assistive
 783-58 and Rehabilitative Services.

783-59 (3-c) "Executive commissioner" means the executive
 783-60 commissioner of the Health and Human Services Commission.

783-61 (4) "Visual disability [handicap]" includes
 783-62 blindness, an eye condition for which there is a medical prognosis
 783-63 indicating that the condition is of a progressive nature and may
 783-64 deteriorate either to blindness or to a substantial loss of vision,
 783-65 and physical or psychological disabilities [handicaps] that
 783-66 accompany or complement a disorder or imperfection of the eye.

783-67 SECTION 4.339. The heading to Section 91.012, Human
 783-68 Resources Code, is amended to read as follows:

783-69 Sec. 91.012. AUTHORITY OF COMMISSIONER [EXECUTIVE

784-1 ~~DIRECTOR~~.

784-2 SECTION 4.340. Section 91.012(d), Human Resources Code, is
784-3 amended to read as follows:

784-4 (d) The ~~commissioner~~ may ~~executive director~~:

784-5 (1) ~~shall appoint personnel necessary to efficiently~~
784-6 ~~accomplish commission purposes;~~

784-7 (2) ~~may~~ delegate to an employee a power of the
784-8 ~~commissioner under this chapter or Subchapter E, Chapter 117,~~
784-9 ~~executive director~~ except the power to ~~adopt rules or~~ appoint
784-10 personnel;

784-11 (2) ~~(3) shall establish appropriate administrative~~
784-12 ~~units within commission programs;~~

784-13 (4) ~~may~~ accept and use gifts and grants to the
784-14 department ~~commission~~ to carry out the purposes of this title or
784-15 Subchapter E, Chapter 117, if the ~~commissioner~~ ~~commission~~
784-16 determines that the conditions of the gift or grant are consistent
784-17 with this title or Subchapter E, Chapter 117; and

784-18 (3) ~~(5) may~~ take other actions that the
784-19 ~~commissioner~~ ~~executive director~~ considers necessary or
784-20 appropriate to carry out the department's ~~commission~~ purposes
784-21 under this chapter or Subchapter E, Chapter 117.

784-22 SECTION 4.341. Section 91.014(a), Human Resources Code, is
784-23 amended to read as follows:

784-24 (a) All sums of money paid to the department ~~commission~~
784-25 under this title or Subchapter E, Chapter 117, shall be deposited in
784-26 the state treasury ~~State Treasury~~ and may be used only for the
784-27 administration of this title].

784-28 SECTION 4.342. The heading to Section 91.016, Human
784-29 Resources Code, is amended to read as follows:

784-30 Sec. 91.016. COMPENSATION OF CERTAIN EMPLOYEES ~~PERSONNEL~~
784-31 ~~POLICIES~~.

784-32 SECTION 4.343. Section 91.016(e), Human Resources Code, is
784-33 amended to read as follows:

784-34 (e) The ~~executive commissioner~~ ~~commission~~ by rule may
784-35 develop and the department may implement policies allowing shift
784-36 differentials to be paid to employees in the vocational
784-37 rehabilitation program under Subchapter E, Chapter 117.

784-38 SECTION 4.344. The heading to Section 91.018, Human
784-39 Resources Code, is amended to read as follows:

784-40 Sec. 91.018. COMPLAINTS ~~RELATIONS WITH PUBLIC~~.

784-41 SECTION 4.345. Section 91.018(c), Human Resources Code, is
784-42 amended to read as follows:

784-43 (c) Except as required by federal regulations for resolving
784-44 complaints received from people who are receiving service from the
784-45 department, under this chapter or Subchapter E, Chapter 117
784-46 ~~commission~~, the department ~~commission~~ shall maintain a file in
784-47 the manner prescribed by Section 117.072(a) on each written
784-48 complaint filed with the department ~~commission~~. [The file must
784-49 include:

784-50 (1) the name of the person who filed the complaint;
784-51 (2) the date the complaint is received by the
784-52 ~~commission~~;

784-53 (3) the subject matter of the complaint;
784-54 (4) the name of each person contacted in relation to
784-55 the complaint;

784-56 (5) a summary of the results of the review or
784-57 investigation of the complaint; and

784-58 (6) an explanation of the reason the file was closed
784-59 if the agency closed the file without taking action other than to
784-60 investigate the complaint.]

784-61 SECTION 4.346. The heading to Subchapter C, Chapter 91,
784-62 Human Resources Code, is amended to read as follows:

784-63 SUBCHAPTER C. GENERAL POWERS AND DUTIES ~~[OF THE COMMISSION]~~

784-64 SECTION 4.347. Section 91.0205, Human Resources Code, is
784-65 amended to read as follows:

784-66 Sec. 91.0205. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
784-67 CONFLICT WITH OTHER LAW ~~[OF COMMISSIONER OF HEALTH AND HUMAN~~
784-68 ~~SERVICES]~~. [The commissioner of health and human services has the
784-69 powers and duties relating to the commission and executive director

785-1 as provided by Section 531.0055, Government Code.] To the extent a
 785-2 power or duty given to the commissioner [commission or executive
 785-3 director] by this chapter, or another law relating to services for
 785-4 the blind or persons with visual disabilities, conflicts with
 785-5 Section 531.0055, Government Code, Section 531.0055 controls.

785-6 SECTION 4.348. Section 91.021, Human Resources Code, is
 785-7 amended to read as follows:

785-8 Sec. 91.021. RESPONSIBILITY FOR [VISUALLY HANDICAPPED]
 785-9 PERSONS WITH VISUAL DISABILITIES. (a) The department [commission]
 785-10 has primary responsibility for providing all services to [visually
 785-11 handicapped] persons with visual disabilities except welfare
 785-12 services and services for children provided by regularly
 785-13 established educational agencies and state authorities.

785-14 (b) The department [commission] shall negotiate interagency
 785-15 agreements with other state agencies to provide services for
 785-16 individuals who have both a visual disability [handicap] and
 785-17 another disability [handicapping condition] so that those
 785-18 [multiply handicapped] individuals with multiple disabilities may
 785-19 be provided the most beneficial services with the greatest possible
 785-20 economy.

785-21 (c) The department [commission] and other concerned state
 785-22 agencies may not refuse to enter into an interagency agreement
 785-23 developed to advance the state's policies regarding the
 785-24 rehabilitation or education of the blind and persons with visual
 785-25 disabilities [visually handicapped]. In negotiating the
 785-26 agreements the agencies shall seek to extend and improve the
 785-27 regular services provided by the agencies and to effectively use
 785-28 all specialty and fiscal resources that are available. The
 785-29 agencies shall give careful consideration to avoiding unnecessary
 785-30 duplication or overlap of their respective efforts.

785-31 (d) The department [commission] shall enter into agreements
 785-32 with the federal government to implement federal legislation
 785-33 authorizing the provision of services to persons with visual
 785-34 disabilities [the visually handicapped]. The department
 785-35 [commission] shall use [adopt] methods of administration required
 785-36 by the federal government for the proper and efficient
 785-37 implementation of the agreements, and shall comply with other
 785-38 federal requirements necessary to secure the full benefits of the
 785-39 federal legislation.

785-40 (e) The department [commission] and other concerned state
 785-41 agencies may not refuse to enter into interagency agreements
 785-42 designed to secure the full benefits of federal legislation
 785-43 authorizing services for persons with visual disabilities [the
 785-44 visually handicapped].

785-45 (f) The department [commission] shall:
 785-46 (1) serve as an information center and referral
 785-47 resource for persons with visual disabilities [the visually
 785-48 handicapped]; and

785-49 (2) develop mechanisms and procedures that tend to
 785-50 assist [visually handicapped] individuals with visual disabilities
 785-51 in bridging gaps between educational, institutional,
 785-52 rehabilitative, vocational, and related types of services operated
 785-53 by public and private nonprofit organizations throughout the state.

785-54 SECTION 4.349. Section 91.022, Human Resources Code, is
 785-55 amended to read as follows:

785-56 Sec. 91.022. SERVICE DELIVERY. (a) The department
 785-57 [commission] shall establish and maintain, in accordance with
 785-58 department rules [by rule], guidelines for the delivery of services
 785-59 by the department under this chapter and Subchapter E, Chapter 117
 785-60 [commission]. The guidelines must be consistent with state and
 785-61 federal law and regulations and must include guidelines [rules]
 785-62 relating to:

785-63 (1) oversight and monitoring of the service delivery;
 785-64 (2) guidance to counselors on the service delivery
 785-65 procedures;

785-66 (3) case management benchmarks establishing
 785-67 reasonable time frames for the service delivery; and
 785-68 (4) financial planning information for the department
 785-69 relating to the service delivery [commission].

(b) The department [~~commission~~] shall establish written procedures relating to the evaluation of services delivered by the department under this chapter and Subchapter E, Chapter 117, [~~commission~~] to provide guidance to counselors and department [~~commission~~] employees. These procedures must include methods to evaluate:

- (1) client progress;
 - (2) service delivery effectiveness; and
 - (3) counselor performance.

SECTION 4.350. Section 91.023, Human Resources Code, is amended to read as follows:

Sec. 91.023. ASSISTANCE WITH REHABILITATION SERVICES. The department [commission] may furnish materials, tools, books, and other necessary apparatus and assistance for use in rehabilitating the blind and [visually handicapped] persons with visual disabilities.

SECTION 4.351. Sections 91.027(a) and (c), Human Resources Code, are amended to read as follows:

- (a) To the extent that funds are available under Sections 521.421(j) and 521.422(b), Transportation Code, the department [commission] shall operate a Blindness Education, Screening, and Treatment Program to provide:

(1) blindness prevention education and screening and treatment to prevent blindness for residents who are not covered under an adequate health benefit plan; and

- (2) transition services to [blind disabled] individuals with visual disabilities eligible for vocational rehabilitation services under Section 117.102 [91.052].

(c) The executive commissioner [commission] by rule shall prescribe eligibility requirements for the program.

SECTION 4.352. Sections 91.028(a), (b), (c), (d), (e), and (g), Human Resources Code, are amended to read as follows:

(a) The department [~~commission~~] may provide services to children with visual impairments to supplement the services provided by other state agencies if the department [~~commission~~] determines that the provision of the services is appropriate and that the services will assist the children in achieving financial self-sufficiency and a fuller and richer life. It is the intention of the legislature that all state agencies concerned with children with visual impairments cooperate fully to achieve this purpose.

(b) The executive commissioner [commission] shall establish, by rule, the income level at which the Medicaid eligibility of a client applying for services under Subsection (a) shall be verified.

(c) The department [commission] shall verify the Medicaid eligibility of a client applying for services under Subsection (a) whose income level is equal to or less than the income level established by the executive commissioner [commission] under Subsection (b).

(d) The department [commission] shall verify the Medicaid eligibility of a client who is required by the department [commission] to apply for Medicaid not later than the 90th day after the date the application for services from the department under Subsection (a) [commission] is made.

(e) In verifying Medicaid eligibility, an employee of the department [commission] shall:

- (1) examine appropriate state or private Medicaid eligibility databases; and
 - (2) record on each client's case records [~~application for services~~] whether Medicaid eligibility was verified, the source of the verification, and the date of the verification.

(g) A person may use the information provided under Subsection (f) in accordance with department [commission] rules[~~T~~] only for purposes directly connected with the administration of the children's program and for the investigation of a complaint filed against an agency, employee, or contracted provider of services.

SECTION 4.353. Section 91.0301, Human Resources Code, is amended to read as follows:

Sec. 91.0301. LOANS FOR VISUAL AIDS. (a) The department

787-1 [commission] may establish a program to make loans to finance the
 787-2 purchase of technological aids for [visually handicapped] persons
 787-3 with visual disabilities. Interest on the loans may not exceed 10
 787-4 percent a year.

787-5 (b) The executive commissioner [director] may promulgate
 787-6 rules to administer the loan program[, subject to approval of the
 787-7 commission].

787-8 SECTION 4.354. Section 91.031, Human Resources Code, is
 787-9 amended to read as follows:

787-10 Sec. 91.031. CONTRACTS FOR SERVICE. (a) The department
 787-11 [~~commission~~] shall include in its contracts with service providers
 787-12 under this chapter or Subchapter E, Chapter 117, provisions
 787-13 relating to:

787-14 (1) clearly defined and measurable program
 787-15 performance standards that directly relate to the service provided;

787-16 (2) clearly defined penalties for nonperformance of a
 787-17 contract term; and

787-18 (3) clearly specified accounting, reporting, and
 787-19 auditing requirements applicable to money received under the
 787-20 contract.

787-21 (b) The department [~~commission~~] shall monitor a service
 787-22 provider's performance under a contract for service under this
 787-23 chapter or Subchapter E, Chapter 117. In monitoring performance,
 787-24 the department [~~commission~~] shall:

787-25 (1) use a risk-assessment methodology to institute
 787-26 statewide monitoring of contract compliance of service providers;
 787-27 and

787-28 (2) evaluate service providers based on clearly
 787-29 defined and measurable program performance objectives.

787-30 SECTION 4.355. Section 91.032, Human Resources Code, is
 787-31 amended to read as follows:

787-32 Sec. 91.032. CONTRACTS FOR ASSISTIVE [~~ADAPTIVE~~]
 787-33 TECHNOLOGY. The department [~~commission~~] shall include in a
 787-34 contract under this chapter or Subchapter E, Chapter 117, with a
 787-35 supplier of assistive [~~adaptive~~] technology equipment provisions
 787-36 that require the supplier to provide training for clients receiving
 787-37 the assistive [~~adaptive~~] technology equipment.

787-38 SECTION 4.356. Subchapter D, Chapter 91, Human Resources
 787-39 Code, is transferred to Chapter 117, Human Resources Code,
 787-40 redesignated as Subchapter E, Chapter 117, Human Resources Code,
 787-41 and amended to read as follows:

787-42 SUBCHAPTER E [D]. VOCATIONAL REHABILITATION OF INDIVIDUALS WITH
 787-43 VISUAL IMPAIRMENTS [~~THE BLIND~~]

787-44 Sec. 117.101 [91.051]. DEFINITIONS. In this subchapter:

787-45 (1) "Program" means the vocational rehabilitation
 787-46 program authorized in this subchapter.

787-47 (2) "Substantial impediment to employment"
 787-48 [~~(3) Employment handicap~~] means a physical or mental condition
 787-49 that obstructs or impairs, or if not corrected will probably
 787-50 obstruct or impair, an individual's performance in an occupation.

787-51 (4) "Disabled individual" means a person who has a
 787-52 substantial employment handicap.]

787-53 (3) "Individual with a visual impairment"
 787-54 [~~(5) Blind disabled individual~~] means a person who is blind or
 787-55 who has a visual condition for which medical prognosis indicates a
 787-56 progressive deterioration that may result in a substantial
 787-57 impediment to employment [~~vocational handicap~~].

787-58 (4) [~~(6)~~] "Vocational rehabilitation" or "vocational
 787-59 rehabilitation services" means services that are provided directly
 787-60 by the department [~~commission~~] or through a public or private
 787-61 agency and that the department [~~director~~] determines are necessary
 787-62 to compensate an [~~a blind disabled~~] individual with a visual
 787-63 impairment for a substantial impediment to [~~an~~] employment
 787-64 [~~handicap~~] so that the individual may engage in a remunerative
 787-65 occupation. The terms include, but are not limited to, medical and
 787-66 vocational diagnosis; vocational guidance, counseling, and
 787-67 placement; rehabilitation training; physical restoration;
 787-68 transportation; occupational licenses; customary occupational
 787-69 tools and equipment; maintenance; training books and materials;

788-1 and other goods and services for which the department [~~commission~~]
 788-2 receives financial support under federal law.

788-3 (5) [~~7~~] "Rehabilitation training" means all
 788-4 necessary training provided to an [~~a blind disabled~~] individual
 788-5 with a visual impairment to compensate for a substantial impediment
 788-6 to [an] employment [handicap]. The term includes, but is not
 788-7 limited to, manual, preconditioning, prevocational, vocational,
 788-8 and supplementary training and training to achieve broader and more
 788-9 lucrative skills and capacities.

788-10 (6) [~~8~~] "Physical restoration" means medical,
 788-11 surgical, or therapeutic treatment necessary to correct or
 788-12 substantially reduce a substantial impediment to [blind disabled
 788-13 individual's] employment of an individual with a visual impairment
 788-14 [handicap] within a reasonable period of time. The term includes,
 788-15 but is not limited to, medical, surgical, dental, and psychiatric
 788-16 treatment, nursing services, hospital care, convalescent home
 788-17 care, drugs, medical and surgical supplies, and prosthetic
 788-18 appliances. The term excludes treatment to cure acute or
 788-19 transitory conditions.

788-20 (7) [~~9~~] "Prosthetic appliance" means an artificial
 788-21 device necessary to support or replace a part of the body or to
 788-22 increase the acuity of a sensory organ.

788-23 (8) [~~10~~] "Occupational license" means a license,
 788-24 permit, or other written authorization required by a governmental
 788-25 unit as a condition for engaging in an occupation.

788-26 (9) [~~11~~] "Maintenance" means money payments not
 788-27 exceeding the estimated cost of subsistence during vocational
 788-28 rehabilitation.

788-29 (10) "Blind" has the meaning assigned by Section
 788-30 91.002.

788-31 Sec. 117.102 [91.052]. VOCATIONAL REHABILITATION PROGRAM
 788-32 FOR INDIVIDUALS WITH VISUAL IMPAIRMENTS [~~THE BLIND~~]. (a) The
 788-33 department [~~commission~~] shall conduct a program to provide
 788-34 vocational rehabilitation services to eligible [~~blind disabled~~]
 788-35 individuals with visual impairments.

788-36 (b) To achieve the purposes of the program, the department
 788-37 [~~commission~~] may:

788-38 (1) cooperate with other public and private agencies
 788-39 in studying the problems involved in providing vocational
 788-40 rehabilitation and in establishing, developing, and providing
 788-41 necessary or desirable facilities and services;

788-42 (2) enter into reciprocal agreements with other states
 788-43 to provide vocational rehabilitation for the residents of the
 788-44 states concerned; and

788-45 (3) conduct research and compile statistics relating
 788-46 to the vocational rehabilitation of [~~blind disabled~~] individuals
 788-47 with visual impairments.

788-48 Sec. 117.103 [91.053]. COOPERATION WITH FEDERAL
 788-49 GOVERNMENT. (a) The department [~~commission~~] shall cooperate with
 788-50 the federal government to accomplish the purposes of federal laws
 788-51 relating to vocational rehabilitation and closely related
 788-52 activities.

788-53 (b) The department [~~commission~~] shall negotiate agreements
 788-54 or plans with the federal government and shall use [~~adopt~~]
 788-55 efficient methods of administration and comply with other
 788-56 conditions required to secure the full benefits of the federal
 788-57 laws. If the department [~~commission~~] determines that a provision
 788-58 of state law precludes conformity with a federal requirement and
 788-59 limits federal financial support, the department [~~commission~~].

788-60 [~~1~~] may waive or modify the state law to the extent
 788-61 necessary to obtain the full benefits of the federal law[, and]

788-62 [~~2~~] shall include in the report required by Section
 788-63 91.019 a description of the manner in which state law conflicts with
 788-64 federal law].

788-65 Sec. 117.104 [91.055]. ELIGIBILITY FOR VOCATIONAL
 788-66 REHABILITATION SERVICES. The department [~~commission~~] shall
 788-67 provide vocational rehabilitation services to an [~~a blind disabled~~]
 788-68 individual with a visual impairment eligible for those services
 788-69 under federal law.

789-1 Sec. 117.105 [91.056]. RECEIPT AND DISBURSEMENT OF FUNDS.
 789-2 (a) The comptroller is custodian of federal funds received by the
 789-3 state to implement federal law relating to vocational
 789-4 rehabilitation.

789-5 (b) The commissioner [executive director] shall certify for
 789-6 disbursement funds available for the vocational rehabilitation
 789-7 program in accordance with regulations.

789-8 (c) The comptroller shall disburse state and federal
 789-9 vocational rehabilitation funds on certification by the
 789-10 commissioner [executive director].

789-11 Sec. 117.106 [91.058]. HEARINGS. An applicant for or
 789-12 recipient of vocational rehabilitation services who is aggrieved by
 789-13 an action or inaction under the program is entitled to a hearing by
 789-14 the department [commission] in accordance with law.

789-15 Sec. 117.107 [91.059]. MISUSE OF INFORMATION. Except for
 789-16 purposes directly connected with the administration of the
 789-17 vocational rehabilitation program and according to department
 789-18 [commission] rules, no person may solicit, disclose, receive, use,
 789-19 or knowingly permit the use of records or other information
 789-20 concerning an applicant for or recipient of vocational
 789-21 rehabilitation services that is directly or indirectly acquired by
 789-22 an officer or employee of the state or its political subdivisions in
 789-23 the course of his or her official duties.

789-24 SECTION 4.357. Section 91.081(a), Human Resources Code, is
 789-25 amended to read as follows:

789-26 (a) The purpose of this subchapter is to establish a
 789-27 comprehensive central state depository for braille, large print,
 789-28 slow speed records and machines, tape recordings and tape players,
 789-29 and related forms of media that will enable the Texas State Library
 789-30 and Archives Commission, the Texas Education Agency, the department
 789-31 [Texas Commission for the Blind], volunteer organizations involved
 789-32 in the production of braille or recorded materials for the blind,
 789-33 the Library of Congress, and related types of organizations to work
 789-34 together more closely and effectively.

789-35 SECTION 4.358. Section 91.082, Human Resources Code, is
 789-36 amended to read as follows:

789-37 Sec. 91.082. ESTABLISHMENT OF CENTRAL MEDIA DEPOSITORY.
 789-38 (a) The Texas State Library and Archives Commission shall
 789-39 generally supervise the establishment and operation of a central
 789-40 media depository in Austin to house materials and devices required
 789-41 by the blind and [visually handicapped] individuals with visual
 789-42 disabilities or by other individuals who are unable to use ordinary
 789-43 printed materials.

789-44 (b) With the approval of the Texas State Library and
 789-45 Archives Commission [library and archives commission], the
 789-46 agencies and organizations maintaining and operating the central
 789-47 media depository shall develop and periodically evaluate and modify
 789-48 specific arrangements for administrative support, sharing of staff
 789-49 and equipment, and related matters involved in the operation of the
 789-50 program.

789-51 SECTION 4.359. Section 91.083, Human Resources Code, is
 789-52 amended to read as follows:

789-53 Sec. 91.083. ANCILLARY SERVICES. The Texas State Library
 789-54 and Archives Commission [library and archives commission] shall
 789-55 allow the central media depository to be used for the repair of
 789-56 special media and equipment required by individuals who are unable
 789-57 to use ordinary print and for research and demonstration, training,
 789-58 and the production of materials in special media by volunteer
 789-59 organizations.

789-60 SECTION 4.360. Chapter 94, Human Resources Code, is amended
 789-61 to read as follows:

789-62 CHAPTER 94. VENDING FACILITIES OPERATED BY BLIND PERSONS

789-63 Sec. 94.001. DEFINITIONS. In this chapter:

789-64 (1) "Blind person" means a person having not more than
 789-65 20/200 visual acuity in the better eye with correcting lenses or
 789-66 visual acuity greater than 20/200 but with a limitation in the field
 789-67 of vision such that the widest diameter of the visual field subtends
 789-68 an angle no greater than 20 degrees.

789-69 (1-a) "Department" means the Department of Assistive

790-1 and Rehabilitative Services.

790-2 (1-b) "Executive commissioner" means the executive
790-3 commissioner of the Health and Human Services Commission.

790-4 (2) "Vending facility" means a facility in which food,
790-5 drinks, drugs, novelties, souvenirs, tobacco products, notions, or
790-6 related items are sold regularly. The term excludes facilities
790-7 consisting solely of vending machines that do not compete directly
790-8 or indirectly with a facility that is or could be operated by a
790-9 [vocationally handicapped] person with a disability.

790-10 (3) "State property" means land and buildings owned,
790-11 leased, or otherwise controlled by the state.

790-12 (4) "Agency" means the state agency in charge of state
790-13 property.

790-14 (5) "Disability" ["Handicapped"] means a physical or
790-15 mental condition that the department [commission or rehabilitation
790-16 commission] determines to constitute a substantial vocational
790-17 disadvantage.

790-18 (6) "Commission" means the Texas Commission for the
790-19 Blind.

790-20 (7) "Rehabilitation commission" means the Texas
790-21 Rehabilitation Commission.]

790-22 Sec. 94.002. LICENSE OR PERMIT REQUIRED. (a) No person may
790-23 operate a vending facility or a facility with vending machines or
790-24 other coin-operated devices on state property unless the person is
790-25 licensed to do so by the department [commission] or is authorized to
790-26 do so by an agency granted a permit to arrange for vending
790-27 facilities.

790-28 (b) Subsection (a) [of this section] does not apply to a
790-29 building in which the Texas Facilities [State Purchasing and
790-30 General Services] Commission leases space to a private tenant under
790-31 Subchapter E, Chapter 2165, Government Code.

790-32 Sec. 94.003. LICENSING PROCEDURE. (a) On its own
790-33 initiative or at the request of an agency that controls state
790-34 property, the department [commission] shall survey the property, or
790-35 blueprints and other available information concerning the
790-36 property, to determine whether the installation of a vending
790-37 facility is feasible and consonant with the department's
790-38 [commission's] vocational rehabilitation objectives.

790-39 (b) If the installation of the facility is feasible, the
790-40 department [commission] shall either license a blind person to
790-41 operate a facility to be installed by the department [commission]
790-42 or [allow the rehabilitation commission to] install a facility to
790-43 be operated by a [handicapped] person with a disability who is not
790-44 blind according to rules and procedures [comparable to those]
790-45 adopted by the executive commissioner [commission]. The commission
790-46 and the rehabilitation commission may enter into agreements
790-47 relating to management services and related forms of necessary
790-48 assistance].

790-49 Sec. 94.004. LOCATION OF VENDING FACILITIES. (a) With the
790-50 concurrence of the agency in charge of state property, the
790-51 department [commission] shall designate the location of vending
790-52 facilities that have been requested by the agency.

790-53 (b) The agency responsible for state property shall alter
790-54 the property to make it suitable for the proper operation of the
790-55 vending facilities. To this end, the agency in charge of
790-56 constructing new state property shall consult with the department
790-57 [commission] during the planning stage on the construction.

790-58 Sec. 94.005. ISSUANCE OF LICENSES; ELIGIBILITY. (a) The
790-59 department [commission] may issue a license to operate its vending
790-60 facilities on state property to blind citizens of the state who are
790-61 capable of operating the facilities in a manner that is reasonably
790-62 satisfactory to all parties concerned.

790-63 (b) Before issuing a license to a person, the department
790-64 [commission] shall determine whether the person has the physical,
790-65 psychological, and personal traits and abilities required to
790-66 operate a vending facility in a satisfactory manner.

790-67 (c) The department [commission] shall maintain a roster of
790-68 the names of each person who has been certified as suitable for
790-69 licensing. If two or more equally qualified persons are listed on

791-1 the roster and apply for a license to operate an available vending
791-2 facility, the department [commission] shall issue the license to
791-3 the person who is most in need of employment.

791-4 (d) The granting of a license does not vest the licensee
791-5 with property or other rights which may constitute the basis of a
791-6 cause of action, at law or in equity, against the state or its
791-7 officers or employees.

791-8 Sec. 94.006. EXPIRATION, RENEWAL, AND REVOCATION OF
791-9 LICENSES. (a) A license or general permit to operate a vending
791-10 facility on state property is valid for a period of three years from
791-11 the date it is issued.

791-12 (b) The department [commission] shall review each license
791-13 or permit prior to its expiration and shall issue a new or different
791-14 license or permit as the circumstances warrant.

791-15 (c) The department [commission] and the agency may consent
791-16 mutually to revoke a general permit prior to its expiration if
791-17 changed circumstances warrant that action.

791-18 (d) A blind person's wilful failure to comply with the
791-19 department's [commission's] rules or the provisions of this chapter
791-20 constitutes grounds for the automatic revocation of the person's
791-21 license.

791-22 (e) The executive commissioner [commission] shall adopt
791-23 substantive and procedural rules governing the revocation of
791-24 licenses.

791-25 Sec. 94.007. OPERATION OF VENDING FACILITIES BY CERTAIN
791-26 PERSONS WHO ARE NOT BLIND [UNDER THE REHABILITATION COMMISSION].

791-27 [(a)] If the department [commission] determines that a blind
791-28 person could not properly operate a vending facility at a
791-29 particular location, the department [rehabilitation commission]
791-30 may survey the property to determine whether a [handicapped] person
791-31 with a [whose] disability that is not of a visual nature could
791-32 operate the facility in a proper manner.

791-33 [(b)] The commission and the rehabilitation commission may
791-34 develop procedures and methods of exchanging information necessary
791-35 to implement cooperative activities.

791-36 [(c)] The installation and operation of a vending facility by
791-37 the rehabilitation commission must conform to the provisions of
791-38 this chapter applicable to vending facilities installed by the
791-39 commission.]

791-40 Sec. 94.008. CLOSING CERTAIN FACILITIES PROHIBITED.
791-41 Neither a vending facility operated by an [a blind or otherwise
791-42 vocationally handicapped] individual with a disability, nor a
791-43 vending facility location surveyed by the department, [commission]
791-44 may be closed as a result of the transfer of state property from one
791-45 agency to another, the alteration of a state building, or the
791-46 reorganization of a state agency unless the department [commission
791-47 or the rehabilitation commission] agrees to the closing.

791-48 Sec. 94.009. EMPLOYMENT OF ASSISTANTS. (a) If an
791-49 individual licensed to operate a vending facility on state property
791-50 requires an assistant, a qualified [visually handicapped] person
791-51 with a disability of a visual nature must be given preference for
791-52 employment. If the department [commission] determines that a
791-53 [visually handicapped] person with a disability of a visual nature
791-54 could not perform the labor for which an assistant is required, or
791-55 if a [visually handicapped] person with a disability of a visual
791-56 nature is not available, a [handicapped] person with a [whose]
791-57 disability that is not of a visual nature must be given preference
791-58 for employment. If no [handicapped] person with a disability is
791-59 available for the job, preference must be given to a person who is
791-60 socially, culturally, economically, or educationally
791-61 disadvantaged.

791-62 (b) An assistant employed by a blind person licensed by the
791-63 department [commission] must be approved by the department
791-64 [commission], and the deliberate refusal of a blind licensee to
791-65 comply with this section constitutes grounds for the revocation of
791-66 his or her license.

791-67 Sec. 94.010. COMPETING VENDING MACHINES. (a) If the
791-68 department [commission] and an agency agree to the installation and
791-69 operation of an additional vending facility or vending machine on

792-1 property that already has a department-sponsored
 792-2 [~~commission-sponsored~~] vending facility, no additional permit or
 792-3 license is required. However, the installation of a competing
 792-4 vending facility consisting of vending machines or other
 792-5 coin-operated devices must be authorized by the department
 792-6 [~~commission~~]. The department's [~~commission's~~] authorization must
 792-7 be made with a view toward providing the greatest economic benefits
 792-8 for blind persons consonant with supplying the additional services
 792-9 required at the building.

792-10 (b) State agencies shall cooperate and negotiate in good
 792-11 faith to accomplish the purposes of this chapter.

792-12 (c) Individuals with disabilities [~~Vocationally~~
 792-13 ~~handicapped individuals~~] who operate vending facilities on state
 792-14 property are entitled to receive all commissions from vending
 792-15 machines installed on the same property. If two or more vending
 792-16 facilities are operated by individuals with disabilities
 792-17 [~~vocationally handicapped persons~~] in a building in which vending
 792-18 machines are installed, the department [~~commission~~] shall divide
 792-19 the commissions from the vending machines among the [~~handicapped~~
 792-20 operators with disabilities in a manner that will achieve equity
 792-21 and equality in the incomes of those [~~the handicapped~~] operators.
 792-22 If the department has [~~commission and the rehabilitation commission~~
 792-23 have] decided not to locate a vending facility in a building, the
 792-24 agency to whom a general permit has been issued shall determine the
 792-25 assignment of the commissions from vending machines installed in
 792-26 the building.

792-27 Sec. 94.011. VENDING FACILITY EQUIPMENT AND STOCK. (a) The
 792-28 department [~~commission~~] may supply a blind vending facility
 792-29 operator with equipment and initial stock necessary for the
 792-30 operator to begin business.

792-31 (b) The department [~~commission~~] shall collect and set aside
 792-32 from the proceeds of the operation of its vending facilities enough
 792-33 money:

792-34 (1) to insure a sufficient amount of initial stock for
 792-35 the facilities and for their proper maintenance;
 792-36 (2) to pay the costs of supervision and other expenses
 792-37 incidental to the operation of the facilities; and
 792-38 (3) to pay other program costs to the extent necessary
 792-39 to assure fair and equal treatment of the blind persons licensed to
 792-40 operate the facilities and to the extent allowed under federal
 792-41 programs that provide financial support to the department
 792-42 [~~commission~~].

792-43 (c) Except for purchasing and installing original
 792-44 equipment, the operation of department-sponsored
 792-45 [~~commission-sponsored~~] vending facilities must be as
 792-46 self-supporting and self-sustaining as possible. To achieve this
 792-47 end, the department [~~commission~~] shall periodically review and,
 792-48 when necessary, revise its schedules for collecting and setting
 792-49 aside money from the proceeds of its vending facilities.

792-50 Sec. 94.012. DUTIES AND PRIVILEGES OF PARTIES. (a) The
 792-51 executive commissioner [~~commission~~] may promulgate rules and the
 792-52 department may initiate procedures necessary to implement this
 792-53 chapter.

792-54 (b) A blind person licensed to operate a vending facility on
 792-55 state property shall operate the facility in accordance with law
 792-56 and the department's [~~commission's~~] rules and policies.

792-57 (c) The agency in charge of state property shall cooperate
 792-58 with the department [~~commission~~] and its blind licensees to
 792-59 accomplish the purposes of this chapter. The agency shall also
 792-60 furnish all necessary utility service, including connections and
 792-61 outlets required for the installation of the facility, janitorial
 792-62 and garbage disposal services where feasible, and other related
 792-63 assistance.

792-64 Sec. 94.013. TRAINING PROGRAMS. The department
 792-65 [~~commission~~] may establish training or experimentation locations
 792-66 necessary to train blind persons who desire to be licensed to
 792-67 operate vending facilities and to develop techniques which will
 792-68 allow blind persons to operate the facilities or related types of
 792-69 small businesses more efficiently and productively.

793-1 Sec. 94.014. CONFORMITY WITH FEDERAL STATUTES. (a) This
 793-2 chapter shall be construed in a manner consistent with the
 793-3 requirements of federal programs that provide financial assistance
 793-4 to the department [commission].

793-5 (b) If a provision of this chapter conflicts with a federal
 793-6 program requirement, the department [commission] may waive or
 793-7 modify the provision to the extent necessary to secure the full
 793-8 benefits of the federal program.

793-9 Sec. 94.015. APPLICATION OF CHAPTER. (a) This chapter does
 793-10 not apply to:

793-11 (1) property over which the federal government
 793-12 maintains partial or complete control;

793-13 (2) property maintained and operated by
 793-14 state-supported institutions of higher education; provided,
 793-15 however, that the department [commission] may enter into agreements
 793-16 with state institutions of higher education concerning the use of
 793-17 blind labor in vending facilities at the institutions; or

793-18 (3) property purchased by the state or an agency of the
 793-19 state, property to which title is transferred from one state agency
 793-20 to another, or property control of which is transferred from one
 793-21 state agency to another, if:

793-22 (A) at the time of purchase or transfer of title
 793-23 or control, a vending facility is being operated on the property
 793-24 under lease, license, or contract; and

793-25 (B) prior to the time of purchase or transfer of
 793-26 title or control, the provisions of this chapter were rendered
 793-27 inapplicable to such property by this section or other law.

793-28 (b) This chapter does not apply to vending facilities
 793-29 operated by an institution for persons with mental illness or
 793-30 intellectual disabilities that is under the control of the
793-31 Department of State Health Services, the Department of Aging and
793-32 Disability Services, or a successor to one of those departments
793-33 [Texas Department of Mental Health and Mental Retardation, or its
793-34 successor], if the vending facilities are operated without profit
793-35 for the benefit of the patients at the institution.

793-36 (c) This chapter does not prohibit the department
 793-37 [commission] from selecting blind persons to operate other suitable
 793-38 types of vending facilities or business enterprises, and the
 793-39 chapter does not prohibit the installation of automated vending
 793-40 facilities serviced by blind persons.

793-41 Sec. 94.016. BUSINESS ENTERPRISES PROGRAM. (a) The
 793-42 department [commission] is authorized to administer the Business
 793-43 Enterprises Program in accordance with the provisions of the
 793-44 Randolph-Sheppard Act (20 U.S.C. Section 107 et seq.).

793-45 (b) The department [commission] is authorized to administer
 793-46 a retirement program for individuals licensed to operate vending
 793-47 facilities in accordance with applicable state and federal laws.

793-48 (c) A trust fund for a retirement program for individuals
 793-49 licensed to operate vending facilities under the Business
 793-50 Enterprises Program is established with the comptroller [of public
 793-51 accounts]. This trust fund will be set up in the state treasury.

793-52 (d) All federal vending machine income shall be credited to
 793-53 this Business Enterprises Program trust fund. Vending machine
 793-54 income, as defined by 34 C.F.R. Section 395.1(z), means receipts
 793-55 (other than those of a blind vendor) from vending machine
 793-56 operations on federal property, after deducting the cost of goods
 793-57 sold (including reasonable service and maintenance costs) in
 793-58 accordance with customary business practices of commercial vending
 793-59 concerns, where the machines are operated, serviced, or maintained
 793-60 by, or with the approval of, a department, agency, or
 793-61 instrumentality of the United States, or commissions paid (other
 793-62 than to a blind vendor) by a commercial vending concern which
 793-63 operates, services, and maintains vending machines on federal
 793-64 property for, or with the approval of, a department, agency, or
 793-65 instrumentality of the United States.

793-66 (e) All expenditures authorized by the Randolph-Sheppard
 793-67 Act from federal vending revenue funds shall be paid from the
 793-68 Business Enterprises Program trust fund.

793-69 (f) The department [commission] may contract with a

794-1 professional management service to administer the Business
 794-2 Enterprises Program trust fund. In administering the trust fund,
 794-3 the professional management service may acquire, exchange, sell, or
 794-4 retain any kind of investment that a prudent investor, exercising
 794-5 reasonable care, skill, and caution, would acquire, exchange, sell,
 794-6 or retain under the circumstances, taking into consideration the
 794-7 investment of all the assets of the trust fund.

794-8 (g) With the approval of the comptroller, the department
 794-9 [~~commission~~] may select a commercial bank, depository trust
 794-10 company, or other entity to serve as a custodian of the Business
 794-11 Enterprises Program trust fund's securities, and money realized
 794-12 from those securities, pending completion of an investment
 794-13 transaction. Money realized from those securities must be:

794-14 (1) reinvested not later than one business day after
 794-15 the date it is received; or

794-16 (2) deposited in the treasury not later than the fifth
 794-17 business day after the date it is received.

794-18 SECTION 4.361. Title 6, Human Resources Code, is amended to
 794-19 conform to Chapter 101, Human Resources Code, as it existed on
 794-20 August 31, 2006, and to Section 1.20(a)(1), Chapter 198 (H.B.
 794-21 2292), Acts of the 78th Legislature, Regular Session, 2003, by
 794-22 adding Chapter 101A to read as follows:

794-23 CHAPTER 101A. STATE SERVICES FOR THE AGING

794-24 SUBCHAPTER A. GENERAL PROVISIONS

794-25 Sec. 101A.001. DEFINITIONS. In this chapter:

794-26 (1) "Commissioner" means the commissioner of aging and
 794-27 disability services.

794-28 (2) "Department" means the Department of Aging and
 794-29 Disability Services.

794-30 (3) "Executive commissioner" means the executive
 794-31 commissioner of the Health and Human Services Commission.

794-32 Sec. 101A.002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
 794-33 CONFLICT WITH OTHER LAW. To the extent a power or duty given to the
 794-34 commissioner by this chapter or another law relating to state
 794-35 services for the aging conflicts with Section 531.0055, Government
 794-36 Code, Section 531.0055 controls.

794-37 Sec. 101A.003. COOPERATION WITH FEDERAL AND STATE AGENCIES.

794-38 (a) The department is the state agency designated to handle federal
 794-39 programs relating to the aging that require action within the state
 794-40 and that are not the specific responsibility of another state
 794-41 agency under federal or state law.

794-42 (b) The department is not intended to supplant or to take
 794-43 over from the counties and municipalities of this state or from
 794-44 other state agencies or facilities any of the specific
 794-45 responsibilities relating to services for the aging that they hold.
 794-46 The department shall cooperate with federal and state agencies,
 794-47 counties, and municipalities and private agencies or facilities in
 794-48 the state in accomplishing the purposes of this chapter.

794-49 SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND EXECUTIVE
 794-50 COMMISSIONER

794-51 Sec. 101A.051. RULES. The executive commissioner shall
 794-52 adopt rules governing the functions of the department under this
 794-53 chapter, including rules that prescribe the policies and procedures
 794-54 followed by the department in the administration of any local
 794-55 services programs, employment programs for the aged, volunteer
 794-56 programs for the aged, or other programs.

794-57 Sec. 101A.052. GENERAL FUNCTIONS OF DEPARTMENT RELATED TO
 794-58 AGING SERVICES. (a) The department shall provide expertise and
 794-59 advice to state agencies and the legislature and other elected
 794-60 officials on aging issues, including recommendations to meet the
 794-61 needs of this state's elderly population.

794-62 (b) The department shall develop and strengthen the
 794-63 services available for the aged in the state by coordinating
 794-64 services provided by governmental and private agencies and
 794-65 facilities.

794-66 (c) The department shall extend and expand services for the
 794-67 aged by coordinating the interest and efforts of local communities
 794-68 in studying the problems of the aged citizens of this state.

794-69 (d) The department shall encourage, promote, and aid in the

establishment of area agencies on aging for the development of programs and services on a local level that improve the living conditions of the aged by enabling them to more fully enjoy and participate in family and community life.

(e) The department shall sponsor voluntary community rehabilitation and recreational facilities to improve the general welfare of the aged.

(f) The department shall cooperate with state and federal agencies and other organizations in conducting studies and surveys on the special problems of the aged in matters such as mental and physical health, housing, family relationships, employment, income, vocational rehabilitation, recreation, transportation, insurance, legal rights, and education. The department shall make appropriate reports and recommendations to the governor and to state and federal agencies.

(g) The department shall conduct research and long-range planning regarding long-term care, community care, and other issues that affect elderly individuals.

(h) The department shall make recommendations to the governor, the legislature, and state agencies regarding:

(1) opportunities to coordinate programs for elderly individuals;

(2) unnecessary duplication in providing services to elderly individuals; and

(3) gaps in services to elderly individuals.

(i) The department shall:

(1) cooperate with the Texas Department of Housing and Community Affairs to provide affordable housing for elderly individuals and for families in which an elderly individual is head of the household;

(2) assess the need for housing for elderly individuals and for families in which an elderly individual is head of the household in different localities;

(3) set standards relating to the design and construction of housing for elderly individuals;

(4) provide planning assistance to builders; and

(5) publicize the availability of the housing program to potential developers and residents.

Sec. 101A.053. OLDER AMERICANS ACT; STATE PLAN. (a) The department shall develop this state's plan on aging, as required by the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.).

(b) The department shall conduct a statewide needs assessment for long-term care and other services for older individuals and their caregivers. The assessment shall include input from:

(1) area agencies on aging;

(2) regional and local state agency staff; and

(3) community-based organizations.

SUBCHAPTER C. PROGRAMS AND SERVICES

Sec. 101A.101. COMMUNITY SENIOR CITIZENS EMPLOYMENT PROGRAMS. (a) In this section, "suitable employment" means employment that is commensurate with the individual's skills and ability and for which compensation is paid equal to the federal minimum wage rate.

(b) The Texas Workforce Commission may administer a community program for persons 55 years of age or older who lack suitable employment and have family incomes under federal poverty guidelines.

(c) The Texas Workforce Commission may contract with a public agency or a private, nonprofit organization with experience in managing similar programs to employ persons under this program in providing recreation, beautification, conservation, or restoration services, or public service employment positions for state, county, city, or regional governments or school districts. The Texas Workforce Commission may not contract with an organization that is not a subscriber under the state workers' compensation law or that does not pay the federal minimum wage rate or the prevailing wage rate for the particular job, whichever is greater.

796-1 (d) The state shall finance 80 percent of the cost of the
796-2 program, and the governments receiving the services shall finance
796-3 20 percent of the cost.

796-4 Sec. 101A.102. VOLUNTARY COMMUNITY SERVICES PROGRAMS. (a)
796-5 The department shall ensure that state funds appropriated to the
796-6 department for programs to recruit elderly persons to perform
796-7 voluntary community services or for programs under Senior Corps are
796-8 disbursed to local public agencies or private, nonprofit
796-9 corporations that operate those programs.

796-10 (b) A public agency or private, nonprofit corporation may
796-11 not receive state money under this section if it is not able to
796-12 qualify for federal matching money for the same purpose.

796-13 (c) The executive commissioner by rule shall establish
796-14 guidelines or formulas to determine the proportion of state money
796-15 distributed to each public agency or private, nonprofit corporation
796-16 under this section. The executive commissioner by rule may
796-17 establish additional qualifications to receive the state money.

796-18 (d) State funds disbursed under this section may not be used
796-19 to pay compensation to volunteer workers, except for participants
796-20 in the Foster Grandparent and Senior Companion Programs of Senior
796-21 Corps, or for purposes other than financing the operation or
796-22 administration of the volunteer programs, but it may be used to
796-23 defray expenses incurred by volunteers in the performance of
796-24 volunteer work. The executive commissioner by rule may further
796-25 limit the purposes for which the state money may be spent.

796-26 Sec. 101A.103. TEXAS CARES PROGRAM. (a) The executive
796-27 commissioner by rule may establish and the department may operate a
796-28 Texas Cares program to provide persons eligible for discount drug
796-29 price programs offered by pharmaceutical companies with:

796-30 (1) information regarding the availability of those
796-31 programs; and

796-32 (2) in appropriate circumstances, assistance in
796-33 enrolling in those programs.

796-34 (b) The department may solicit and accept gifts, grants, and
796-35 donations from any source to use in funding the Texas Cares program.

796-36 (c) The executive commissioner shall design the Texas Cares
796-37 program to meet the primary goal of increasing awareness in
796-38 appropriate populations of the availability of discount drug price
796-39 programs offered by pharmaceutical companies. To the extent that
796-40 adequate resources are available, the department shall:

796-41 (1) make information regarding discount drug price
796-42 programs readily available on the department's Internet site;

796-43 (2) maintain a toll-free telephone number through
796-44 which a person may obtain information regarding discount drug price
796-45 programs; and

796-46 (3) make brochures or other written informational
796-47 materials regarding discount drug price programs available on
796-48 request by a pharmacist, physician, representative of an
796-49 organization serving senior citizens, or other interested person.

796-50 (d) The department may:

796-51 (1) conduct community outreach and education
796-52 activities to increase awareness of the availability of discount
796-53 drug price programs offered by pharmaceutical companies;

796-54 (2) solicit and train volunteers to perform functions
796-55 associated with the Texas Cares program, including:

796-56 (A) providing assistance to eligible persons in
796-57 enrolling in discount drug price programs offered by pharmaceutical
796-58 companies; and

796-59 (B) conducting community outreach and education
796-60 activities; and

796-61 (3) coordinate operation of the Texas Cares program
796-62 with the activities of area agencies on aging.

796-63 Sec. 101A.104. PUBLIC INFORMATION ON COST OF LONG-TERM
796-64 CARE. The department shall develop programs to provide information
796-65 to the public relating to:

796-66 (1) the cost of long-term care;

796-67 (2) the limits on Medicaid eligibility;

796-68 (3) the adequacy or inadequacy of other financing
796-69 options, including Medicare; and

(4) possible methods of financing long-term care, including group insurance policies and other methods designed to assist individuals.

Sec. 101A.105. SERVICES OF OTHER AGENCIES. The department may accept services performed by other agencies to accomplish the purposes of this chapter.

Sec. 101A.106. REVIEW OF ADMINISTRATIVE COSTS AND PROGRAMS.

(a) The executive commissioner by rule shall define "administrative costs" as used in this section. However, if a standard definition of administrative costs is required by law to be used by state agencies, the executive commissioner shall use that definition.

(b) To determine the administrative costs incurred by an entity, including an area agency on aging and including an entity that spends money distributed by the department under Section 101A.101 or 101A.102 in engaging in a program that is funded in any part by money derived from the department under this chapter, the department shall request appropriate information from the entity.

(c) The executive commissioner shall establish the maximum amount of administrative costs that may be incurred by the entity in engaging in the program.

(d) The department periodically shall review the actions of entities receiving funds from the department under this chapter and shall document its review. The review of an entity that spends money distributed under Section 101A.102 must include on-site evaluations of the entity and must include the review of documentation, which shall be required by the department, of the services performed by the aged in programs under Section 101A.102.

Sec. 101A.107. REPORT ON UNIT COSTS. The department shall file with the Legislative Budget Board and the Governor's Office of Budget, Planning, and Policy a report that clearly identifies the unit cost of each service, other than services related to community service volunteering and subsidized employment services, provided by an area agency on aging. The report must be filed twice each year on or before the date specified by the Legislative Budget Board. The report must be in the form required by the Legislative Budget Board.

SUBCHAPTER D. OPTIONS FOR INDEPENDENT LIVING PROGRAM

Sec. 101A.151. DEFINITIONS. In this subchapter:

(1) "Case management" means the process of assessing service needs, developing a plan of care, and arranging for and monitoring delivery of care to an elderly person under this subchapter.

(2) "Case management unit" is an entity that coordinates and administers case management.

(3) "Elderly person" means a person who is 60 years of age or older.

(4) "Service area" means a geographical area of the state designated for purposes of planning, development, and overall administration of services provided under this subchapter.

Sec. 101A.152. OPTIONS FOR INDEPENDENT LIVING PROGRAM. (a) The department shall establish a statewide Options for Independent Living program to help elderly persons remain at home despite limited self-care capacities and to prevent institutionalization. (b) The Options for Independent Living program shall

(b) The Options for Independent Living program shall provide short-term support services to elderly persons for the purposes of:

(1) restoring functional capacities after illness or hospitalization; and

(2) educating and preparing elderly persons and their caregivers to provide self-care.

caregivers to provide self-care.

Sec. 101A.153. PERSONS TO BE SERVED. (a) The Options for Independent Living program shall give priority to an elderly person who:

person who:

(1) has recently suffered a major illness or health care crisis or has recently been hospitalized;

(2) lives in a rural area:

- (2) lives in a rural area;
- (3) has insufficient caregiver support;
- (4) has a mild to moderate impairment or a temporary

798-1 severe impairment; and

798-2 (5) is in great economic or social need, with
798-3 particular attention to low-income minority older persons.

798-4 (b) In awarding funding under this subchapter, the
798-5 department shall serve priority populations consistent with the
798-6 Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.).

798-7 Sec. 101A.154. PROVISION OF SERVICES. (a) Support services
798-8 shall include:

798-9 (1) case management;

798-10 (2) homemaking assistance, including personal care;

798-11 (3) residential repair and modification;

798-12 (4) benefits counseling;

798-13 (5) respite care;

798-14 (6) emergency response;

798-15 (7) education and training for caregivers;

798-16 (8) home-delivered meals;

798-17 (9) transportation; and

798-18 (10) other appropriate services identified by the case
798-19 manager and client through the assessment and care planning
798-20 process.

798-21 (b) A case manager shall conduct an individual assessment of
798-22 an elderly person's needs and shall, in consultation with the
798-23 elderly person and the elderly person's family, create a plan of
798-24 care that specifies the type, amount, frequency, and duration of
798-25 support services the elderly person needs.

798-26 (c) A plan of care must coordinate the available public and
798-27 private services and resources that are most appropriate to meet
798-28 the elderly person's needs.

798-29 (d) An area agency on aging may not directly provide
798-30 homemaker, home health, residential repair, respite, meal
798-31 delivery, or transportation service unless the area agency:

798-32 (1) receives no response to a request for proposals
798-33 that meets department standards; and
798-34 (2) has exhausted all other procurement options
798-35 available under department rules.

798-36 (e) An area agency on aging that wants to provide directly a
798-37 service not available through a local public or private entity must
798-38 obtain approval from the department in accordance with department
798-39 rules governing the granting of such approval.

798-40 Sec. 101A.155. CASE MANAGEMENT UNITS. (a) The department
798-41 shall designate one or more case management units for each service
798-42 area to provide case management services according to department
798-43 rules and standards.

798-44 (b) The department shall designate an area agency on aging
798-45 as a case management unit for a service area. The area agency on
798-46 aging may act as the case management unit, after obtaining approval
798-47 from the department in accordance with department rules governing
798-48 the granting of such approval, or the area agency on aging may
798-49 subcontract with a local service agency or hospital to act as the
798-50 case management unit.

798-51 (c) A case manager must be an employee of a case management
798-52 unit.

798-53 (d) The department shall periodically review a case
798-54 management unit.

798-55 Sec. 101A.156. ADMINISTRATION OF PROGRAM. (a) The
798-56 department shall administer the Options for Independent Living
798-57 program through grants to area agencies on aging.

798-58 (b) Area agencies on aging shall maintain their service
798-59 provision levels in effect on September 1, 1989, independent of the
798-60 Options for Independent Living program. Funds made available under
798-61 this program may not be used to supplant service funds for services
798-62 provided on September 1, 1989.

798-63 (c) An area agency on aging that receives funds under this
798-64 section shall ensure the availability of the services for which the
798-65 funds were granted.

798-66 Sec. 101A.157. FEES. (a) The executive commissioner by
798-67 rule shall establish a copayment system using a sliding scale that
798-68 is based on an elderly person's income.

798-69 (b) An elderly person whose income exceeds the basic income

799-1 and resources requirements for eligibility for the community care
 799-2 for aged and disabled program of the department, but whose income is
 799-3 less than 200 percent of that level, shall pay a portion of the cost
 799-4 of support services provided to the person by a case management unit
 799-5 according to the fee scale.

799-6 (c) An elderly person whose income exceeds 200 percent of
 799-7 the level established by the department for the community care for
 799-8 aged and disabled program shall pay the full cost of support
 799-9 services provided by a case management unit.

799-10 (d) A local case management unit shall collect and account
 799-11 for all fees imposed for services provided by the case management
 799-12 unit and shall submit reports to the department as prescribed by
 799-13 department rules.

799-14 (e) Fees collected shall be used to defray program costs and
 799-15 to expand the Options for Independent Living program.

799-16 Sec. 101A.158. ANNUAL REPORT. (a) The department shall
 799-17 annually report on the Options for Independent Living program to
 799-18 the governor and the presiding officer of each house of the
 799-19 legislature.

799-20 (b) The report must include information concerning the
 799-21 manner in which the department has provided services under the
 799-22 Options for Independent Living program to elderly persons entitled
 799-23 to priority under Section 101A.153(a).

799-24 (c) The report must be submitted not later than November 1
 799-25 of each even-numbered year.

SUBCHAPTER E. FUNDING

799-26 Sec. 101A.201. AUTHORITY TO ACCEPT, EXPEND, AND TRANSFER
 799-27 FUNDS. The department may accept, expend, and transfer federal and
 799-29 state funds appropriated for programs authorized by federal and
 799-30 state law and administered by the department under this chapter.
 799-31 The department may accept, expend, and transfer funds received in
 799-32 relation to this chapter from any source, including a county,
 799-33 municipality, or public or private agency. The funds shall be
 799-34 deposited in the state treasury and may be used for the purposes of
 799-35 this chapter, subject to any conditions attached to the funds.

799-36 Sec. 101A.202. CONTRIBUTIONS TO LOCAL ORGANIZATIONS:
 799-37 CERTAIN COUNTIES. (a) This section applies only to counties having
 799-38 a population of not less than 22,140 and not more than 22,340 and to
 799-39 cities and towns within those counties.

799-40 (b) Each county and each city or town to which this section
 799-41 applies may cooperate with the department in carrying out the
 799-42 department's purposes under this chapter on a local level by
 799-43 contributing funds to any local organization the functions of which
 799-44 are to cooperate with the department in carrying out those
 799-45 purposes. The organization must operate with the approval and
 799-46 sanction of the department.

799-47 (c) The operation of buildings, facilities, services, and
 799-48 programs by an organization for other community services or
 799-49 benefits does not prohibit the contribution of the funds under this
 799-50 section for the part of the organization's program for the aging if
 799-51 that part of the program is approved by the department.

799-52 Sec. 101A.203. FUNDING TO AREA AGENCIES ON AGING. (a) The
 799-53 executive commissioner by rule shall adopt a formula that meets the
 799-54 intent of the Older Americans Act of 1965 (42 U.S.C. Section 3001 et
 799-55 seq.) for allocating among area agencies on aging funds that the
 799-56 department receives under the Act.

799-57 (b) The formula must provide for the allocation of the funds
 799-58 among the area agencies on aging according to the most recent
 799-59 population estimates available from the Health and Human Services
 799-60 Commission.

799-61 (c) The executive commissioner shall update the formula
 799-62 biennially and the department shall include the formula and
 799-63 population estimates in each state plan on aging.

799-64 (d) Unless otherwise provided for by department rules
 799-65 regarding the carryover of unexpended funds allocated under this
 799-66 section, at the end of a fiscal year excess unexpended funds of an
 799-67 area agency on aging's allocations for that fiscal year shall be
 799-68 deducted from the allocation for the new fiscal year and that same
 799-69 amount of new fiscal year funds shall be reallocated. The executive

commissioner by rule shall adopt a reallocation formula that includes performance as a criterion, in addition to other criteria adopted by the executive commissioner.

(e) The funds that the department receives under the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) shall be allocated and reallocated to area agencies on aging under the formulas adopted under this section.

Sec. 101A.204. TRUSTS FOR CERTAIN RECIPIENTS OF MEDICAL ASSISTANCE. (a) An area agency on aging may contract with one or more private attorneys to establish trusts described by 42 U.S.C. Section 1396p(d)(4)(B) for the benefit of recipients of medical assistance under Chapter 32 who, without the establishment of these trusts, would become ineligible for medical assistance.

(b) The department shall allocate available state funds to the area agencies on aging for use in contracting for the establishment of trusts under Subsection (a).

SUBCHAPTER F. OFFICE OF STATE LONG-TERM CARE OMBUDSMAN

Sec. 101A.251. DEFINITIONS. In this subchapter:

(1) "Elderly resident" means a resident of a long-term care facility who is 60 years of age or older.

(2) "Long-term care facility" means a facility that serves persons who are 60 years of age or older and that is licensed or regulated or that is required to be licensed or regulated by the department under Chapter 242 or 247, Health and Safety Code.

(3) "Office" means the office of the state long-term care ombudsman.

(4) "Representative" means an employee or volunteer specifically designated by the office as a representative of the office.

(5) "State ombudsman" means the chief administrator of the office.

Sec. 101A.252. OPERATION OF OFFICE. (a) The department shall operate the office of the state long-term care ombudsman.

(b) The department may operate the office directly or by contract or memorandum of agreement with a public agency or other appropriate private nonprofit organization. The department may not use an agency or organization that is:

(1) responsible for licensing or certifying long-term care services; or

(2) an association of long-term care facilities or of any other residential facility that serves persons who are 60 years of age or older, or an affiliate of such an association.

(c) The department shall consider the views of elderly persons, provider organizations, advocacy groups, and area agencies on aging in planning and operating the office.

(d) The department shall ensure that a person involved in designating the state ombudsman or in designating an employee or representative of the office does not have a conflict of interest.

Sec. 101A.253. ROLE OF OFFICE. The office and the ombudsman program shall operate in cooperation with any regulatory agency funded and mandated by the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and state statute.

Sec. 101A.254. POWERS AND DUTIES OF STATE OMBUDSMAN AND OFFICE. (a) The state ombudsman and the office have the powers and duties required by state and federal law.

(b) The office may use appropriate administrative, legal, and other remedies to assist elderly residents as provided by department rules.

Sec. 101A.255. OMBUDSMEN. (a) The office shall recruit volunteers and citizen organizations to participate in the ombudsman program. A paid staff member of an area agency on aging network or a nonprofit social service agency may be an ombudsman. An ombudsman is a representative of the office.

(b) The office shall provide training to ombudsmen as required by this subchapter and federal law.

(c) The office shall coordinate ombudsman services with the protection and advocacy systems that exist for persons with developmental disabilities or mental illness.

Sec. 101A.256. LEGAL ASSISTANCE. The department shall

ensure that the office receives adequate legal advice and representation. The attorney general shall represent the ombudsman or a representative if a suit or other legal action is brought or threatened to be brought against that person in connection with the person's performance of the official duties of the office.

Sec. 101A.257. INVESTIGATIONS. (a) The office shall have access to elderly residents and shall investigate and resolve complaints made by or on behalf of elderly residents.

(b) The department shall ensure that each ombudsman who investigates complaints has received proper training and has been approved by the office as qualified to investigate complaints.

Sec. 101A.258. ACCESS TO RECORDS AND CONFIDENTIALITY. (a) The state ombudsman or the state ombudsman's designee, specifically identified by the commissioner, shall have access to patient care records of elderly residents of long-term care facilities as provided by Subsection (a-1). The executive commissioner by rule shall establish procedures for obtaining access to the records. All records and information to which the state ombudsman or the state ombudsman's designee obtains access remain confidential.

(a-1) The state ombudsman or the state ombudsman's designee, specifically identified by the commissioner, shall have access to patient care records of elderly residents of long-term care facilities if:

(1) the resident or the resident's legal representative consents to the access;

(2) the resident is unable to consent to the access and the resident has no legal representative; or

(3) access to the records is necessary to investigate a complaint and:

(A) a legal guardian of the resident refuses to consent to the access;

(B) the state ombudsman or the state ombudsman's designee has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

(C) the state ombudsman approves the access.

(b) The office shall ensure that the identity of a complainant or any facility resident may be disclosed only with the written consent of the person or the person's legal representative or on court order.

(c) The information in files maintained by the office may be disclosed only by the ombudsman who has authority over the disposition of the files.

Sec. 101A.259. REPORTING SYSTEM. The office shall maintain a statewide ombudsman uniform reporting system to collect and analyze information relating to complaints and conditions in long-term care facilities as long as such system does not duplicate other state reporting systems. The office shall provide the information to the department and the Health and Human Services Commission.

Sec. 101A.260. ANALYSIS OF LAWS. The office shall analyze and monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies relating to long-term care facilities and services and shall recommend any changes the office considers necessary.

Sec. 101A.261. PUBLIC INFORMATION. The office shall provide information to public agencies, legislators, and others that relates to the problems and concerns of elderly residents.

Sec. 101A.262. ANNUAL REPORT. (a) The office shall prepare an annual report that contains:

(1) information and findings relating to the problems and complaints of elderly residents; and

(2) policy, regulatory, and legislative recommendations to solve the problems, resolve the complaints, and improve the quality of the elderly residents' care and lives.

(b) The report must be submitted to the governor and the presiding officer of each house of the legislature not later than November 1 of each even-numbered year.

Sec. 101A.263. LIMITATION OF LIABILITY. An ombudsman or a representative is not liable for civil damages or subject to

802-1 criminal prosecution for performing official duties unless the
 802-2 ombudsman or representative acts in bad faith or with a malicious
 802-3 purpose.

802-4 Sec. 101A.264. CRIMINAL PENALTY. (a) A person commits an
 802-5 offense if the person:

802-6 (1) intentionally interferes with an ombudsman
 802-7 attempting to perform official duties; or
 802-8 (2) commits or attempts to commit an act of
 802-9 retaliation or reprisal against any resident or employee of a
 802-10 long-term care facility for filing a complaint or providing
 802-11 information to an ombudsman.

802-12 (b) An offense under this section is a Class B misdemeanor.

802-13 (c) The department shall assure that criminal sanctions
 802-14 will be initiated only after all administrative procedures are
 802-15 exhausted.

802-16 SECTION 4.362. Section 102.001(1), Human Resources Code, is
 802-17 amended to read as follows:

802-18 (1) "Convalescent and nursing home" means an
 802-19 institution licensed by the [Texas] Department of Aging and
 802-20 Disability [Human] Services under Chapter 242, Health and Safety
 802-21 Code.

802-22 SECTION 4.363. Sections 102.003(d), (i), and (t), Human
 802-23 Resources Code, are amended to read as follows:

802-24 (d) An [A mentally retarded] elderly individual with an
 802-25 intellectual disability who has a court-appointed guardian of the
 802-26 person may participate in a behavior modification program involving
 802-27 use of restraints or adverse stimuli only with the informed consent
 802-28 of the guardian.

802-29 (i) An elderly individual may manage the individual's
 802-30 personal financial affairs. The elderly individual may authorize
 802-31 in writing another person to manage the individual's financial
 802-32 affairs [money]. The elderly individual may choose the manner of
 802-33 financial management, which may include management through or under
 802-34 [in which the individual's money is managed, including] a money
 802-35 management program, a representative payee program, a financial
 802-36 power of attorney, a trust, or a similar method, and the individual
 802-37 may choose the least restrictive of these methods. A person
 802-38 designated to manage an elderly individual's financial affairs
 802-39 [money] shall do so in accordance with each applicable program
 802-40 policy, law, or rule. On request of the elderly individual or the
 802-41 individual's representative, the person designated to manage the
 802-42 elderly individual's financial affairs [money] shall make
 802-43 available the related financial records and provide an accounting
 802-44 relating to the financial management [of the money]. An elderly
 802-45 individual's designation of another person to manage the
 802-46 individual's financial affairs [money] does not affect the
 802-47 individual's ability to exercise another right described by this
 802-48 chapter. If an elderly individual is unable to designate another
 802-49 person to manage the individual's financial affairs and a guardian
 802-50 is designated by a court, the guardian shall manage the
 802-51 individual's financial affairs [money] in accordance with the
 802-52 Estates [Probate] Code and other applicable laws.

802-53 (t) An elderly individual may:

802-54 (1) make a living will by executing a directive under
 802-55 Subchapter B, Chapter 166 [the Natural Death Act (Chapter 672)],
 802-56 Health and Safety Code[+];

802-57 (2) execute a medical [durable] power of attorney [for
 802-58 health care] under Subchapter D, Chapter 166, Health and Safety
 802-59 [135, Civil Practice and Remedies] Code; or

802-60 (3) designate a guardian in advance of need to make
 802-61 decisions regarding the individual's health care should the
 802-62 individual become incapacitated.

802-63 SECTION 4.364. Section 103.001, Human Resources Code, is
 802-64 amended to read as follows:

802-65 Sec. 103.001. PURPOSE. It is the purpose of this chapter to
 802-66 establish programs of quality adult day care and day health care
 802-67 that will enable persons with disabilities who have medical or
 802-68 functional impairments and elderly [and handicapped] persons [with
 802-69 medical or functional impairments] to maintain maximum

independence and to prevent premature or inappropriate institutionalization. It is the purpose of this chapter to provide adequately regulated supervision for elderly persons and [handicapped] persons with disabilities while enabling them to remain in a family environment and affording the family a measure of normality in its daily activities. The legislature intends to provide for the development of policies and programs that will:

(1) provide alternatives to institutionalization;

(2) establish facilities for adult day care and day

health care throughout the state that offer services and are accessible to economically disadvantaged persons; and

(3) prevent inappropriate institutionalization.

SECTION 4.365. Section 103.003, Human Resources Code, is amended by amending Subdivisions (1), (3), and (5) and adding Subdivision (4-a) to read as follows:

(1) "Adult day-care facility" means a facility that provides services under an adult day-care program on a daily or regular basis but not overnight to four or more elderly persons or [handicapped] persons with disabilities who are not related by blood, marriage, or adoption to the owner of the facility.

(3) "Department" means the [Texas] Department of Aging and Disability [Human] Services.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Person with a disability" ["Handicapped person"] means a person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

SECTION 4.366. The heading to Section 103.004, Human Resources Code, is amended to read as follows:

Sec. 103.004. DEPARTMENT AND EXECUTIVE COMMISSIONER DUTIES.

SECTION 4.367. Sections 103.004(a) and (b), Human Resources Code, are amended to read as follows:

(a) The executive commissioner [department] shall adopt rules for implementing this chapter.

(b) The executive commissioner [department] shall set standards for:

(1) the health and welfare of persons attending a facility;

(2) the eligibility of persons to attend a facility;

(3) the scope of services provided by a facility;

(4) adequate supervision for persons attending a facility;

(5) the professional staff and other personnel at a facility;

(6) adequate and healthful food service, where it may be offered;

(7) procedures for consultation with family members, case workers, or other persons responsible for the welfare of a person attending a facility; and

(8) prohibiting racial discrimination.

SECTION 4.368. Section 103.005, Human Resources Code, is amended to read as follows:

Sec. 103.005. LICENSING DUTIES. The executive commissioner [department] shall:

(1) adopt rules for the licensing procedures for a licensed facility; and

(2) set standards for the safety and sanitation requirements for a licensed facility.

SECTION 4.369. Section 103.006(b), Human Resources Code, is amended to read as follows:

(b) The license expires two years from the date of its issuance. The executive commissioner [of the Health and Human Services Commission] by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, the department shall prorate the license fee on a monthly basis. Each

804-1 license holder shall pay only that portion of the license fee
 804-2 allocable to the number of months for which the license is valid. A
 804-3 license holder shall pay the total license renewal fee at the time
 804-4 of renewal.

804-5 SECTION 4.370. Sections [103.0075\(a\)](#) and (c), Human
 804-6 Resources Code, are amended to read as follows:

804-7 (a) The executive commissioner [department] by rule shall
 804-8 adopt a procedure under which a person proposing to construct or
 804-9 modify an adult day-care facility may submit building plans to the
 804-10 department for review for compliance with the department's
 804-11 architectural requirements before beginning construction or
 804-12 modification. In adopting the procedure, the executive
 804-13 commissioner [department] shall set reasonable deadlines by which
 804-14 the department must complete review of submitted plans.

804-15 (c) The department may charge a reasonable fee adopted by
 804-16 the executive commissioner by rule for conducting a review under
 804-17 this section.

804-18 SECTION 4.371. Section [103.012\(d\)](#), Human Resources Code, is
 804-19 amended to read as follows:

804-20 (d) The executive commissioner [department] shall establish
 804-21 gradations of penalties in accordance with the relative seriousness
 804-22 of the violation.

804-23 SECTION 4.372. Sections [103.014\(g\)](#), (h), and (i), Human
 804-24 Resources Code, are amended to read as follows:

804-25 (g) Not later than the 20th day after the date on which a
 804-26 notice under Subsection (f)(2) is received, the person charged with
 804-27 the violation may:

804-28 (1) give to the department written notice that the
 804-29 person agrees with the department's report and consents to the
 804-30 recommended penalty; or
 804-31 (2) make a written request for a hearing as provided
 804-32 under department rules.

804-33 (h) If the person charged with the violation consents to the
 804-34 penalty recommended by the department or does not timely respond to
 804-35 a notice sent under Subsection (c) or (f)(2), the department
 804-36 [department's commissioner or the commissioner's designee] shall
 804-37 assess the recommended penalty [recommended by the department].

804-38 (i) If the department [department's commissioner or the
 804-39 commissioner's designee] assesses the recommended penalty, the
 804-40 department shall give written notice of the decision to the person
 804-41 charged with the violation and the person shall pay the penalty.

804-42 SECTION 4.373. Section [103.015\(d\)](#), Human Resources Code, is
 804-43 amended to read as follows:

804-44 (d) Based on the findings of fact and conclusions of law,
 804-45 and the recommendation of the administrative law judge, the
 804-46 department [department's commissioner or the commissioner's
 804-47 designee] by order shall find:

804-48 (1) a violation has occurred and assess an
 804-49 administrative penalty; or

804-50 (2) a violation has not occurred.

804-51 SECTION 4.374. Sections [103.016\(a\)](#), (b), (f), and (g),
 804-52 Human Resources Code, are amended to read as follows:

804-53 (a) The department [department's commissioner or the
 804-54 commissioner's designee] shall give notice of the findings made
 804-55 under Section [103.015\(d\)](#) to the person charged with a
 804-56 violation. If the department [commissioner or the commissioner's
 804-57 designee] finds that a violation has occurred, the department
 804-58 [commissioner or the commissioner's designee] shall give to the
 804-59 person charged written notice of:

804-60 (1) the findings;

804-61 (2) the amount of the administrative penalty;

804-62 (3) the rate of interest payable with respect to the
 804-63 penalty and the date on which interest begins to accrue; and

804-64 (4) the person's right to judicial review of the
 804-65 department's order [of the commissioner or the commissioner's
 804-66 designee].

804-67 (b) Not later than the 30th day after the date on which the
 804-68 department's order [of the department's commissioner or the
 804-69 commissioner's designee] is final, the person assessed the penalty

805-1 shall:

805-2 (1) pay the full amount of the penalty; or

805-3 (2) file a petition for judicial review contesting the
805-4 occurrence of the violation, the amount of the penalty, or both the
805-5 occurrence of the violation and the amount of the penalty.

805-6 (f) If the amount of the penalty is reduced or the
805-7 assessment of a penalty is not upheld on judicial review, the
805-8 department [department's commissioner or the commissioner's
805-9 designee] shall:

805-10 (1) remit to the person charged the appropriate amount
805-11 of any penalty payment plus accrued interest; or
805-12 (2) execute a release of the supersedeas bond if one
805-13 has been posted.

805-14 (g) Accrued interest on the amount remitted by the
805-15 department [department's commissioner or the commissioner's
805-16 designee] under Subsection (f)(1) shall be paid:

805-17 (1) at a rate equal to the rate charged on loans to
805-18 depository institutions by the New York Federal Reserve Bank; and

805-19 (2) for the period beginning on the date the penalty is
805-20 paid and ending on the date the penalty is remitted to the person
805-21 charged with the violation.

805-22 SECTION 4.375. The heading to Chapter 105, Human Resources
805-23 Code, is amended to read as follows:

805-24 CHAPTER 105. RESIDENTIAL FACILITIES FOR PERSONS WITH DISABILITIES
805-25 OR WHO ARE [THE] ELDERLY

805-26 SECTION 4.376. Section 105.001(1), Human Resources Code, is
805-27 amended to read as follows:

805-28 (1) "Establishment" means a facility providing
805-29 sleeping accommodations to two or more qualifying adult residents,
805-30 at least 80 percent of whom are 65 years of age or older or are
805-31 persons with disabilities [disabled], and offering, for a fee, one
805-32 or more supportive services through contract with an agency
805-33 licensed under Chapter 142, Health and Safety Code, or with another
805-34 entity.

805-35 SECTION 4.377. The heading to Chapter 111, Human Resources
805-36 Code, is amended to read as follows:

805-37 CHAPTER 111. REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS WITH
805-38 DISABILITIES [TEXAS REHABILITATION COMMISSION]

805-39 SECTION 4.378. Section 111.002, Human Resources Code, is
805-40 amended by amending Subdivisions (2) and (5) and adding
805-41 Subdivisions (2-a) and (2-b) to read as follows:

805-42 (2) "Commissioner" means the commissioner of
805-43 assistive and rehabilitative services [chief administrative
805-44 officer of the commission].

805-45 (2-a) "Department" means the Department of Assistive
805-46 and Rehabilitative Services.

805-47 (2-b) "Executive commissioner" means the executive
805-48 commissioner of the Health and Human Services Commission.

805-49 (5) "Rehabilitation services" means any equipment,
805-50 supplies, goods, or services necessary to enable an individual with
805-51 a disability to engage in a gainful occupation or to achieve maximum
805-52 personal independence. To enable an individual with a disability
805-53 to engage in a gainful occupation or achieve maximum personal
805-54 independence, the department [commission] may engage in or contract
805-55 for activities, including but not limited to:

805-56 (A) evaluation of rehabilitation potential,
805-57 including diagnostic and related services incidental to the
805-58 determination of eligibility for services and the nature and scope
805-59 of services to be provided;

805-60 (B) counseling and guidance;

805-61 (C) physical and mental restoration services
805-62 necessary to correct or substantially modify a physical or mental
805-63 condition that is stable or slowly progressive;

805-64 (D) training;

805-65 (E) maintenance for additional costs incurred
805-66 while participating in rehabilitation services;

805-67 (F) transportation;

805-68 (G) placement in suitable employment;

805-69 (H) postemployment services necessary to

806-1 maintain suitable employment;

806-2 (I) obtaining occupational licenses, including
 806-3 any license, permit, or other written authority required by a
 806-4 state, city, or other governmental unit to be obtained in order to
 806-5 enter an occupation or small business, and providing tools,
 806-6 equipment, initial stocks, goods, and supplies; and

806-7 (J) providing other equipment, supplies,
 806-8 services, or goods that can reasonably be expected to benefit an
 806-9 individual with a disability in terms of employment in a gainful
 806-10 occupation or achievement of maximum personal independence.

806-11 SECTION 4.379. Section [111.016](#), Human Resources Code, is
 806-12 amended to read as follows:

806-13 Sec. 111.016. REHABILITATION COUNCIL OF TEXAS. The
 806-14 Rehabilitation Council of Texas operates [~~is created by this~~
 806-15 ~~section~~] in accordance with the federal Rehabilitation Act
 806-16 Amendments of 1992, Pub. L. 102-569, and the federal Rehabilitation
 806-17 Act Amendments of 1998, Pub. L. 105-220. The executive
 806-18 commissioner [~~board~~] shall adopt rules for the implementation of
 806-19 regulations and the administration of the council.

806-20 SECTION 4.380. Section [111.0161](#), Human Resources Code, is
 806-21 amended to read as follows:

806-22 Sec. 111.0161. ADVICE OF ADVISORY COMMITTEES [~~REPORT TO~~
 806-23 ~~BOARD~~]. (a) Each advisory committee established by law or rule to
 806-24 advise the department under this chapter or Subchapter F, Chapter
 806-25 117, [~~commission~~] shall report to and advise the commissioner and
 806-26 executive commissioner [~~board~~] on the committee's activities and
 806-27 the results of the committee's work. For the purpose of performing
 806-28 its advisory functions, each committee shall work with the
 806-29 commissioner, the department's [~~commission's~~] staff, and the
 806-30 executive commissioner [~~board~~].

806-31 (b) The executive commissioner [~~board~~] shall adopt rules to
 806-32 implement this section.

806-33 SECTION 4.381. The heading to Section [111.018](#), Human
 806-34 Resources Code, is amended to read as follows:

806-35 Sec. 111.018. GENERAL DUTIES OF EXECUTIVE COMMISSIONER AND
 806-36 COMMISSIONER RELATING TO REHABILITATION SERVICES FOR CERTAIN
 806-37 INDIVIDUALS WITH DISABILITIES [~~ADMINISTRATIVE REGULATIONS AND~~
 806-38 ~~POLICIES~~].

806-39 SECTION 4.382. Sections [111.018\(a\)](#) and (b), Human Resources
 806-40 Code, are amended to read as follows:

806-41 (a) The executive commissioner [~~board~~] shall:

806-42 (1) adopt policies and rules to effectively carry out
 806-43 the purposes of this chapter and Subchapter F, Chapter 117; and
 806-44 (2) supervise the commissioner's administration of
 806-45 this chapter and Subchapter F, Chapter 117.

806-46 (b) In carrying out his or her duties under this chapter and
 806-47 Subchapter F, Chapter 117, the commissioner shall, with the
 806-48 approval of the executive commissioner [~~board~~], implement policies
 806-49 addressing personnel standards, the protection of records and
 806-50 confidential information, the manner and form of filing
 806-51 applications, eligibility, investigation, and determination for
 806-52 rehabilitation and other services, procedures for hearings, and
 806-53 other regulations relating to this chapter or Subchapter F, Chapter
 806-54 117, [~~subject to this section~~] as necessary to carry out the
 806-55 purposes of this chapter and Subchapter F, Chapter 117.

806-56 SECTION 4.383. Section [111.019](#), Human Resources Code, is
 806-57 amended to read as follows:

806-58 Sec. 111.019. PLANNING. The commissioner [~~commission~~]
 806-59 shall make long-range and intermediate plans for the scope and
 806-60 development of the program and make decisions regarding the
 806-61 allocation of resources in carrying out the plans.

806-62 SECTION 4.384. Section [111.0205](#), Human Resources Code, is
 806-63 amended to read as follows:

806-64 Sec. 111.0205. WORK INCENTIVES AND SUPPLEMENTAL SECURITY
 806-65 INCOME (SSI). The department [~~commission~~] shall employ staff [~~a~~
 806-66 ~~person~~] at the department's [~~commission's~~] central office to:

806-67 (1) train counselors to understand and use work
 806-68 incentives in relation to services under this chapter or Subchapter
 806-69 F, Chapter 117; and

(2) review cases to ensure that department [commission] clients receiving services under this chapter or Subchapter F, Chapter 117, are informed of the availability of and assisted in obtaining work incentives and Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.).

SECTION 4.385. Section 111.021, Human Resources Code, is amended to read as follows:

Sec. 111.021. REPORTS. (a) The commissioner shall prepare and submit to the executive commissioner [board] annual reports of activities and expenditures under this chapter and Subchapter F, Chapter 117, and, prior to each regular session of the legislature, estimates of funds required for carrying out the purposes of this chapter and Subchapter F, Chapter 117.

(c) The department [~~commission~~] shall post on the Internet in an accessible format the reports required under this section and any other agency performance data relating to this chapter or Subchapter F, Chapter 117, required to be reported to this state or the federal government. If a report or performance data contains confidential information, the department [~~commission~~] shall remove the confidential information before posting the report or performance data.

SECTION 4.386. Section 111.022, Human Resources Code, is amended to read as follows:

Sec. 111.022. DISBURSEMENT OF FUNDS. The department [commission] shall make certification for disbursement, in accordance with regulations, of funds available for carrying out the purposes of this chapter or Subchapter F, Chapter 117.

SECTION 4.387. Section 111.023, Human Resources Code, is amended to read as follows:

Sec. 111.023. OTHER DUTIES. The executive commissioner [board] shall take other action as necessary or appropriate to carry out the purposes of this chapter or Subchapter F, Chapter 117.

SECTION 4-202. The following Schedule is Chapter 111.

SECTION 4.388. The heading to Subchapter C, Chapter 111, Human Resources Code, is amended to read as follows:

SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT [COMMISSION]
SECTION 4-280 Section 111.0505 Human Resources Code

SECTION 4.389. Section 111.0505, Human Resources Code, is amended to read as follows:

Sec. 111.0505. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW [OF COMMISSIONER OF HEALTH AND HUMAN SERVICES]. [The commissioner of health and human services has the powers and duties relating to the commission and commissioner as provided by Section 531.0055, Government Code.] To the extent a power or duty given to the [~~commission or~~] commissioner by this chapter, or another law relating to rehabilitation services for individuals with disabilities, conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

SECTION 4.390. Section 111.051, Human Resources Code, is amended to read as follows:

Sec. 111.051. DEPARTMENT [COMMISSION] AS PRINCIPAL AUTHORITY. The department [Texas Rehabilitation Commission] is the principal authority in the state on rehabilitation of individuals with disabilities[, except for those matters relating to individuals whose disabilities are of a visual nature]. All other state agencies engaged in rehabilitation activities and related services to individuals with [whose] disabilities [are not of a visual nature] shall coordinate those activities and services with the department [commission].

SECTION 4.391. Section 111.052, Human Resources Code, is amended to read as follows:

Sec. 111.052. GENERAL FUNCTIONS OF DEPARTMENT RELATING TO
REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS WITH DISABILITIES.

(a) The department [~~commission~~] shall, to the extent of resources available and priorities established by the executive commissioner [~~board~~], provide rehabilitation services directly or through public or private resources to individuals determined by the department [~~commission~~] to be eligible for the services under a vocational rehabilitation program or other program established to provide rehabilitation [~~rehabilitative~~] services.

(b) In carrying out the purposes of this chapter and

808-1 Subchapter F, Chapter 117, the department [commission] may:

808-2 (1) cooperate with other departments, agencies,
 808-3 political subdivisions, and institutions, both public and private,
 808-4 in providing the services authorized by this chapter and Subchapter
 808-5 F, Chapter 117, to eligible individuals, in studying the problems
 808-6 involved, and in planning, establishing, developing, and providing
 808-7 necessary or desirable programs, facilities, and services,
 808-8 including those jointly administered with state agencies;

808-9 (2) enter into reciprocal agreements with other
 808-10 states;

808-11 (3) establish or construct rehabilitation facilities
 808-12 and workshops, contract with or provide grants to agencies,
 808-13 organizations, or individuals as necessary to implement this
 808-14 chapter and Subchapter F, Chapter 117, make contracts or other
 808-15 arrangements with public and other nonprofit agencies,
 808-16 organizations, or institutions for the establishment of workshops
 808-17 and rehabilitation facilities, and operate facilities for carrying
 808-18 out the purposes of this chapter and Subchapter F, Chapter 117;

808-19 (4) conduct research and compile statistics relating
 808-20 to the provision of services to or the need for services by
 808-21 [disabled] individuals with disabilities;

808-22 (5) provide for the establishment, supervision,
 808-23 management, and control of small business enterprises to be
 808-24 operated by individuals with significant disabilities where their
 808-25 operation will be improved through the management and supervision
 808-26 of the department [commission];

808-27 (6) contract with schools, hospitals, private
 808-28 industrial firms, and other agencies and with doctors, nurses,
 808-29 technicians, and other persons for training, physical restoration,
 808-30 transportation, and other rehabilitation services; and

808-31 (7) assess the statewide need for services necessary
 808-32 to prepare students with disabilities for a successful transition
 808-33 to employment, establish collaborative relationships with each
 808-34 school district with education service centers to the maximum
 808-35 extent possible within available resources, and develop strategies
 808-36 to assist vocational rehabilitation counselors in identifying and
 808-37 reaching students in need of transition planning.

808-38 SECTION 4.392. Sections 111.0525(b) and (c), Human
 808-39 Resources Code, are amended to read as follows:

808-40 (b) The department [commission] shall enter into an
 808-41 agreement with the Department of Aging and Disability Services and
 808-42 the [Texas] Department of State Health Services [Mental Health and
Mental Retardation] to reduce duplication and fragmentation of
 808-43 employment services by defining each agency's role and
 808-44 responsibilities for shared client populations.

808-45 (c) The department [commission] shall establish a formal
 808-46 referral process with the Texas Workforce Commission to ensure that
 808-47 appropriate vocational rehabilitation clients are referred to and
 808-48 receive services provided by the Texas Workforce Commission or
 808-49 local workforce development boards [agencies].

808-50 SECTION 4.393. Section 111.053, Human Resources Code, is
 808-51 amended to read as follows:

808-52 Sec. 111.053. COOPERATION WITH THE FEDERAL GOVERNMENT. (a)
 808-53 The department [commission] shall make agreements, arrangements,
 808-54 or plans to cooperate with the federal government in carrying out
 808-55 the purposes of this chapter and Subchapter F, Chapter 117, or of
 808-56 any federal statutes pertaining to rehabilitation, and to this end
 808-57 may adopt methods of administration that are found by the federal
 808-58 government to be necessary, and that are not contrary to existing
 808-59 state laws, for the proper and efficient operation of the
 808-60 agreements, arrangements, or plans for rehabilitation.

808-61 (b) To the extent resources are made available by the
 808-62 federal government, the department [commission] may make
 808-63 agreements, arrangements, or plans to cooperate with the federal
 808-64 government in carrying out the purposes of any federal statute
 808-65 pertaining to the disability determination function under the
 808-66 Social Security Act and to this end shall adopt methods of
 808-67 administration that are found by the federal government to be
 808-68 necessary to the disability determination function and that are not
 808-69

809-1 contrary to existing state laws.

809-2 SECTION 4.394. Section 111.054, Human Resources Code, is
809-3 amended to read as follows:

809-4 Sec. 111.054. OBTAINING FEDERAL FUNDS. The department
809-5 [commission] may comply with any requirements necessary to obtain
809-6 federal funds relating to this chapter or Subchapter F, Chapter
809-7 117, in the maximum amount and most advantageous proportion
809-8 possible.

809-9 SECTION 4.395. Section 111.055(a), Human Resources Code, is
809-10 amended to read as follows:

809-11 (a) All money paid to the department [commission] under this
809-12 chapter or Subchapter F, Chapter 117, shall be deposited in the
809-13 state treasury [State Treasury and may be used only for the
809-14 administration of this chapter].

809-15 SECTION 4.396. Section 111.0553, Human Resources Code, is
809-16 amended to read as follows:

809-17 Sec. 111.0553. PROCUREMENT METHODS. (a) The executive
809-18 commissioner [commission] shall adopt [develop] and the department
809-19 shall [, following review and approval by the board,] implement in
809-20 relation to this chapter and Subchapter F, Chapter 117, agency-wide
809-21 procurement procedures to:

809-22 (1) ensure compliance with the best-value purchasing
809-23 requirements of Section 2155.144(c), Government Code;

809-24 (2) document that a best-value review of vendors has
809-25 occurred;

809-26 (3) document the reasons for selecting a vendor;
809-27 (4) negotiate price discounts with high-volume
809-28 vendors;

809-29 (5) consolidate purchases with other agencies,
809-30 including the [Texas] Department of State Health Services and the
809-31 comptroller, to achieve best value; and

809-32 (6) provide effective public notification to
809-33 potential vendors of planned department [commission] purchases.

809-34 (b) Nothing in this section shall be construed to limit the
809-35 department's [commission's] ability to procure goods and services
809-36 from persons with disabilities.

809-37 SECTION 4.397. Section 111.056, Human Resources Code, is
809-38 amended to read as follows:

809-39 Sec. 111.056. GIFTS AND DONATIONS [TO THE COMMISSION]. The
809-40 department [commission] may receive and use gifts and donations for
809-41 carrying out the purposes of this chapter and Subchapter F, Chapter
809-42 117. No person may receive payment for solicitation of any funds.

809-43 SECTION 4.398. Sections 111.057(b) and (c), Human Resources
809-44 Code, are amended to read as follows:

809-45 (b) The department [commission] is authorized to provide
809-46 client and other information to and receive client and other
809-47 information from any state agency for the purpose of increasing and
809-48 enhancing services to clients and improving agency operations under
809-49 this chapter and Subchapter F, Chapter 117, except where federal
809-50 law or regulations preclude such sharing.

809-51 (c) The executive commissioner [commission] shall adopt
809-52 rules to carry out the purposes of this section.

809-53 SECTION 4.399. Section 111.059, Human Resources Code, is
809-54 amended to read as follows:

809-55 Sec. 111.059. SUBROGATION. (a) In furnishing a person
809-56 rehabilitation services, including medical care services, under
809-57 this chapter or Subchapter F, Chapter 117, the department
809-58 [commission] is subrogated to the person's right of recovery from:

809-59 (1) personal insurance;
809-60 (2) another person for personal injury caused by the
809-61 other person's negligence or wrongdoing; or
809-62 (3) any other source.

809-63 (b) The department's [commission's] right of subrogation is
809-64 limited to the cost of the services provided.

809-65 (c) The commissioner may totally or partially waive the
809-66 department's [commission's] right of subrogation when the
809-67 commissioner finds that enforcement would tend to defeat the
809-68 purpose of rehabilitation.

809-69 (d) The executive commissioner [commission] may adopt rules

810-1 for the enforcement of the department's [its] right of subrogation.

810-2 SECTION 4.400. Section 111.060, Human Resources Code, is
810-3 amended to read as follows:

810-4 Sec. 111.060. COMPREHENSIVE REHABILITATION ACCOUNT [FUND].
810-5 (a) The comprehensive rehabilitation account [fund] is an account
810-6 [created] in the general revenue fund [state treasury]. Money in
810-7 the account [fund] is derived from court costs collected under
810-8 Section 133.102, Local Government Code [Subchapter D, Chapter 102,
810-9 Code of Criminal Procedure]. Money in the account [fund] may be
810-10 appropriated only to the department [commission] for the purposes
810-11 provided by Section 111.052.

810-12 (b) The comptroller, on requisition by the department
810-13 [commission], shall draw a warrant on the account [fund] for the
810-14 amount specified in that requisition for a use authorized in
810-15 Section 111.052, except that the total of warrants issued during a
810-16 state fiscal year may not exceed the amount appropriated for that
810-17 fiscal year. At the end of each state fiscal year, the comptroller
810-18 shall transfer to the general revenue fund [General Revenue Fund]
810-19 any unexpended balance in the comprehensive rehabilitation account
810-20 [fund] that exceeds \$1.5 million.

810-21 (c) The court costs remitted to the comptroller and
810-22 deposited in the general revenue fund [state treasury] pursuant to
810-23 this section are dedicated to the department [commission].

810-24 SECTION 4.401. Section 111.061, Human Resources Code, is
810-25 amended to read as follows:

810-26 Sec. 111.061. CONTRACT PAYMENT. The department
810-27 [commission] shall base payment under a contract for vocational
810-28 rehabilitation services on outcome-based performance standards
810-29 defined in the contract.

810-30 SECTION 4.402. Subchapter D, Chapter 111, Human Resources
810-31 Code, is transferred to Chapter 117, Human Resources Code,
810-32 redesignated as Subchapter F, Chapter 117, Human Resources Code,
810-33 and amended to read as follows:

810-34 SUBCHAPTER F [D]. VOCATIONAL REHABILITATION SERVICES FOR CERTAIN
810-35 INDIVIDUALS WITH DISABILITIES

810-36 Sec. 117.151. DEFINITIONS. In this subchapter,
810-37 "rehabilitation services" and "vocational rehabilitation program"
810-38 have the meanings assigned by Section 111.002.

810-39 Sec. 117.152 [111.070]. PROVISION OF SERVICES. (a) The
810-40 executive commissioner [board] by rule shall establish and maintain
810-41 guidelines for providing vocational rehabilitation services that
810-42 are consistent with state and federal laws and regulations and that
810-43 include:

810-44 (1) a system of organization for the delivery of
810-45 vocational rehabilitation services statewide;

810-46 (2) eligibility requirements for vocational
810-47 rehabilitation services;

810-48 (3) requirements for the rehabilitation planning
810-49 process;

810-50 (4) the types of services that may be provided to a
810-51 client through a vocational rehabilitation program; and

810-52 (5) requirements for client participation in the costs
810-53 of vocational rehabilitation services, including documentation
810-54 that a client has sought benefits for which the client is eligible
810-55 from sources other than the department [commission] and that may
810-56 assist the client in obtaining vocational rehabilitation goods or
810-57 services.

810-58 (b) The executive commissioner [board] shall annually
810-59 assess the effectiveness of the state's vocational rehabilitation
810-60 program.

810-61 Sec. 117.153 [111.071]. TRAINING AND SUPERVISION OF
810-62 COUNSELORS. (a) The department [commission] shall provide
810-63 specific guidance to vocational rehabilitation counselors under
810-64 this subchapter in:

810-65 (1) selecting vocational objectives according to a
810-66 client's skills, experience, and knowledge;

810-67 (2) documenting a client's impediment to employment;

810-68 (3) selecting rehabilitation services that are
810-69 reasonable and necessary to achieve a client's vocational

811-1 objective;

811-2 (4) measuring client progress toward the vocational
811-3 objective, including the documented, periodic evaluation of the
811-4 client's rehabilitation and participation; and

811-5 (5) determining eligibility of employed and
811-6 unemployed applicants for rehabilitation services using criteria
811-7 defined by department [board] rule to document whether a client is
811-8 substantially underemployed or at risk of losing employment.

811-9 (b) The executive commissioner [board] by rule shall
811-10 require monitoring and oversight of vocational rehabilitation
811-11 counselor performance and decision making in accordance with this
811-12 section.

811-13 Sec. 117.154 [111.072]. CLIENT ORIENTATION MATERIALS.
811-14 The department [commission] shall develop and distribute at intake
811-15 client orientation materials for the vocational rehabilitation
811-16 program that include information on the department's [commission's]
811-17 decision-making criteria.

811-18 SECTION 4.403. Section 112.001(4), Human Resources Code, is
811-19 amended to read as follows:

811-20 (4) "Applicable federal developmental disability
811-21 laws" refers to the various Acts of Congress [congress] providing
811-22 for assistance and services to persons with developmental
811-23 disabilities and codified as 42 U.S.C. Section 15001 [6000] et seq.

811-24 SECTION 4.404. Section 112.014(b), Human Resources Code, is
811-25 amended to read as follows:

811-26 (b) If a position on the council becomes vacant, the chair
811-27 shall provide written notice to the governor[, agency commissioner,
811-28 ~~or executive director, as appropriate,~~] requesting a new
811-29 appointment to fill the remainder of the member's term.

811-30 SECTION 4.405. Section 112.022(a), Human Resources Code, is
811-31 amended to read as follows:

811-32 (a) The council shall hire an executive director in
811-33 accordance with 42 U.S.C. Section 15025 [6024(c)] and its
811-34 subsequent amendments to carry out the policies and activities
811-35 established by the council.

811-36 SECTION 4.406. Section 112.0221(c), Human Resources Code,
811-37 is amended to read as follows:

811-38 (c) The policy statement must:
811-39 (1) be updated annually;
811-40 (2) be reviewed by the Texas Workforce [state]
811-41 Commission civil rights division [on Human Rights] for compliance
811-42 with Subsection (b)(1); and
811-43 (3) be filed with the governor's office.

811-44 SECTION 4.407. Section 112.043, Human Resources Code, is
811-45 amended to read as follows:

811-46 Sec. 112.043. OFFICE FOR THE PREVENTION OF DEVELOPMENTAL
811-47 DISABILITIES; ADMINISTRATIVE ATTACHMENT. (a) The Office for the
811-48 Prevention of Developmental Disabilities is administratively
811-49 attached to the Health and Human Services Commission [Texas
811-50 Department of Mental Health and Mental Retardation].

811-51 (b) The Health and Human Services Commission [Texas
811-52 Department of Mental Health and Mental Retardation] shall:

811-53 (1) provide administrative assistance, services, and
811-54 materials to the office;
811-55 (2) accept, deposit, and disburse money made available
811-56 to the office;

811-57 (3) accept gifts and grants on behalf of the office
811-58 from any public or private entity;

811-59 (4) pay the salaries and benefits of the executive
811-60 director and staff of the office;

811-61 (5) reimburse the travel expenses and other actual and
811-62 necessary expenses of the executive committee, executive director,
811-63 and staff of the office incurred in the performance of a function of
811-64 the office, as provided by the General Appropriations Act;

811-65 (6) apply for and receive on behalf of the office any
811-66 appropriations, gifts, or other money from the state or federal
811-67 government or any other public or private entity, subject to
811-68 limitations and conditions prescribed by legislative
811-69 appropriation;

(7) provide the office with adequate computer equipment and support; and

(8) provide the office with adequate office space and permit the executive committee to meet in facilities of the commission [department].

(c) The executive director and staff of the office are employees of the office and not employees of the Health and Human Services Commission [~~Texas Department of Mental Health and Mental Retardation~~].

SECTION 4.408. Section 112.0472(c), Human Resources Code, is amended to read as follows:

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Texas Workforce [~~state~~] Commission civil rights division [~~on Human Rights~~] for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

SECTION 4.409. Section 115.002(c), Human Resources Code, is amended to read as follows:

(c) The ex officio members are:

(1) the executive director of the Texas Workforce Commission;

(2) the commissioner of assistive and rehabilitative services [~~the Texas Rehabilitation Commission;~~
[(3) the executive director of the Texas Commission

~~for the Blind;~~ [(4) the executive director of the Texas Commission for the Deaf and Hard of Hearing]; and

(3) [+] other officials designated by the governor who serve with other state agencies that provide services to persons with disabilities.

SECTION 4.410. Section 115.009, Human Resources Code, is amended to read as follows:

Sec. 115.009. FUNCTIONS. The committee shall:

(1) serve as a central source of information and education on the abilities, rights, problems, and needs of persons with disabilities and, as necessary, issue reports;

(2) provide information to and advise the governor and the governor's staff on matters relating to the full participation of persons with disabilities in all aspects of life;

(3) before the end of each even-numbered year, submit to the governor and to the legislature a report that includes:

(A) the status of the state's compliance with federal and state laws pertaining to rights and opportunities for persons with disabilities and recommendations to achieve further compliance, if necessary;

- (B) a long-range state plan for persons with disabilities and recommendations to implement that plan; and
- (C) any recommended changes in state laws relating to persons with disabilities;

(4) serve as the state's liaison agency in working with the President's Committee on Employment of Persons with Disabilities and other entities involved in activities or concerns affecting persons with disabilities;

(5) develop and work with a statewide network of volunteer community-level committees to promote dissemination of information about and implementation of federal and state laws addressing rights and opportunities for persons with disabilities;

(6) evaluate the state's compliance with the [federal] Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) [~~Pub. L. No. 101-336~~] and other federal and state statutes relating to rights and opportunities for persons with disabilities;

(7) provide information and technical assistance to public and private agencies and businesses to promote and facilitate implementation of the [federal] Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) [Pub.

Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) [¶] L. No. 101-336] and other federal and state statutes relating to rights and opportunities of persons with disabilities;

(8) collect and evaluate data on employment of persons

813-1 with disabilities by state agencies;

813-2 (9) work with legislative committees and with state
813-3 agencies on the development of laws and policies that affect
813-4 persons with disabilities;

813-5 (10) promote the compilation and publication of state
813-6 laws relating to persons with disabilities; and

813-7 (11) issue awards and other forms of recognition to
813-8 persons and organizations making outstanding contributions to the
813-9 employment of persons with disabilities and to public awareness of
813-10 issues impacting persons with disabilities.

813-11 SECTION 4.411. Section 117.021(b), Human Resources Code, is
813-12 amended to read as follows:

813-13 (b) The council is composed of nine members of the public
813-14 appointed by the governor with the advice and consent of the senate.
813-15 To be eligible for appointment to the council, a person must have
813-16 demonstrated an interest in and knowledge of problems and available
813-17 services related to early childhood intervention services or to
813-18 persons with disabilities, other than intellectual and
813-19 developmental disabilities, [delay and mental retardation] and
813-20 persons who are blind, deaf, or hard of hearing.

813-21 SECTION 4.412. Section 117.051(c), Human Resources Code, is
813-22 amended to read as follows:

813-23 (c) Subject to the control of the executive commissioner,
813-24 the commissioner shall:

813-25 (1) act as the department's chief administrative
813-26 officer;

813-27 (2) in accordance with the procedures prescribed by
813-28 Section 531.00551, Government Code, assist the executive
813-29 commissioner in the development and implementation of policies and
813-30 guidelines needed for the administration of the department's
813-31 functions;

813-32 (3) in accordance with the procedures adopted by the
813-33 executive commissioner under Section 531.00551, Government Code,
813-34 assist the executive commissioner in the development of rules
813-35 relating to the matters within the department's jurisdiction,
813-36 including the delivery of services to persons and the rights and
813-37 duties of persons who are served or regulated by the department; and
813-38 (4) serve as a liaison between the department and
813-39 commission.

813-40 SECTION 4.413. Section 117.056(c), Human Resources Code, is
813-41 amended to read as follows:

813-42 (c) The policy statement must be:

813-43 (1) updated annually;

813-44 (2) reviewed by the Texas Workforce [~~state~~] Commission
813-45 civil rights division [~~on Human Rights~~] for compliance with
813-46 Subsection (b)(1); and

813-47 (3) filed with the governor's office.

813-48 SECTION 4.414. Subchapter D, Chapter 117, Human Resources
813-49 Code, is amended by adding Sections 117.0711 and 117.0712 to read as
813-50 follows:

813-51 Sec. 117.0711. MANAGEMENT AND DIRECTION BY EXECUTIVE
813-52 COMMISSIONER. The department's powers and duties prescribed by
813-53 this chapter and other law, including enforcement activities and
813-54 functions, are subject to the executive commissioner's oversight
813-55 under Chapter 531, Government Code, to manage and direct the
813-56 operations of the department.

813-57 Sec. 117.0712. CONTRACTING AND AUDITING AUTHORITY;
813-58 DELEGATION. (a) The executive commissioner, as authorized by
813-59 Section 531.0055, Government Code, may delegate to the department
813-60 the executive commissioner's authority under that section for
813-61 contracting and auditing relating to the department's powers,
813-62 duties, functions, and activities.

813-63 (b) If the executive commissioner does not make a delegation
813-64 under Subsection (a), a reference in law to the department with
813-65 respect to the department's contracting or auditing authority means
813-66 the executive commissioner. If the executive commissioner makes a
813-67 delegation under Subsection (a), a reference in law to the
813-68 department's contracting or auditing authority means that
813-69 authority the executive commissioner has delegated to the

814-1 department.

814-2 (c) If the executive commissioner revokes all or part of a
 814-3 delegation made under Subsection (a), a reference in law to the
 814-4 department with respect to a function for which the delegation was
 814-5 revoked means the executive commissioner or another entity to which
 814-6 the executive commissioner delegates that authority.

814-7 (d) It is the legislature's intent that the executive
 814-8 commissioner retain the authority over and responsibility for
 814-9 contracting and auditing at each health and human services agency
 814-10 as provided by Section 531.0055, Government Code. A statute
 814-11 enacted on or after January 1, 2015, that references the
 814-12 contracting or auditing authority of the department does not give
 814-13 the department direct contracting or auditing authority unless the
 814-14 statute expressly provides that the contracting or auditing
 814-15 authority:

814-16 (1) is given directly to the department; and
 814-17 (2) is an exception to the exclusive contracting and
 814-18 auditing authority given to the executive commissioner under
 814-19 Section 531.0055, Government Code.

814-20 SECTION 4.415. Section 121.0014(b), Human Resources Code,
 814-21 is amended to read as follows:

814-22 (b) In this section, "health and human services agency"
 814-23 means an agency listed by Section 531.001(4), Government Code
 814-24 [~~Section 19, Article 4413(502)~~, Revised Statutes].

814-25 SECTION 4.416. Section 121.003(a), Human Resources Code, is
 814-26 amended to read as follows:

814-27 (a) Persons with disabilities have the same right as persons
 814-28 without disabilities [~~the able-bodied~~] to the full use and
 814-29 enjoyment of any public facility in the state.

814-30 SECTION 4.417. Section 122.003(i), Human Resources Code, is
 814-31 amended to read as follows:

814-32 (i) If the comptroller [~~executive director of the~~
 814-33 ~~commission~~] has knowledge that a potential ground for removal
 814-34 exists, the comptroller [~~executive director~~] shall notify the
 814-35 presiding officer of the council of the potential ground. If the
 814-36 presiding officer is notified under this section, or if the
 814-37 presiding officer has knowledge that a potential ground for removal
 814-38 exists, the presiding officer shall notify the governor and the
 814-39 attorney general that a potential ground for removal exists. If the
 814-40 potential ground for removal involves the presiding officer, the
 814-41 comptroller [~~executive director~~] shall notify the next highest
 814-42 officer of the council, who shall notify the governor and the
 814-43 attorney general that a potential ground for removal exists.

814-44 SECTION 4.418. Section 122.0057(d), Human Resources Code,
 814-45 is amended to read as follows:

814-46 (d) The council shall make reasonable attempts to have
 814-47 balanced representation on all advisory committees, including
 814-48 attempting to seek representation from:

814-49 (1) the Lighthouse for the Blind and Visually Impaired
 814-50 community rehabilitation programs;

814-51 (2) the Goodwill community rehabilitation programs;

814-52 (3) [~~The Texas Department of Mental Health and Mental~~
 814-53 ~~Retardation~~ community rehabilitation program,

814-54 [~~4~~] other community rehabilitation programs;

814-55 (4) [~~5~~] representatives from central nonprofit
 814-56 agencies;

814-57 (5) [~~6~~] representatives of disability advocacy

814-58 groups;

814-59 (6) [~~7~~] government purchasing agents with knowledge

814-60 of this chapter;

814-61 (7) [~~8~~] private industry representatives with

814-62 knowledge of this chapter; and

814-63 (8) [~~9~~] private citizens with disabilities who
 814-64 [have a disability and] have knowledge of the sale of products and
 814-65 services.

814-66 SECTION 4.419. Sections 122.007(d) and (e), Human Resources
 814-67 Code, are amended to read as follows:

814-68 (d) Before offering for sale products and services
 814-69 manufactured or provided by persons with disabilities to state

815-1 agencies and political subdivisions, the council shall test the
 815-2 goods and services in accordance with Section 2155.069, Government
 815-3 Code, to the extent necessary to ensure quality. The council may
 815-4 enter into a contract with a private or public entity to assist with
 815-5 testing. The comptroller [commission] shall make awards under this
 815-6 section based on proposed goods and services meeting formal state
 815-7 specifications developed by the comptroller [commission] or
 815-8 meeting commercial specifications approved by the comptroller
 815-9 [commission].

815-10 (e) Requisitions for products and services required by
 815-11 state agencies are processed by the comptroller [commission]
 815-12 according to rules established by the comptroller [commission].

815-13 SECTION 4.420. Section 122.009(b), Human Resources Code, is
 815-14 amended to read as follows:

815-15 (b) The comptroller [commission] is the depository for all
 815-16 records concerning the council's operations.

815-17 SECTION 4.421. Sections 122.0095(a), (d), and (e), Human
 815-18 Resources Code, are amended to read as follows:

815-19 (a) Each state agency that purchases products or services
 815-20 through a program under this chapter shall:

815-21 (1) designate an agency employee to ensure that the
 815-22 agency complies with this chapter; and

815-23 (2) report to the comptroller [commission] and the
 815-24 council the purchase of products or services available from a
 815-25 central nonprofit agency or community rehabilitation program under
 815-26 this chapter, but purchased from another business that is not a
 815-27 central nonprofit agency or community rehabilitation program under
 815-28 this chapter.

815-29 (d) The comptroller [commission] shall post the reports
 815-30 required by Subsection (a)(2) on the comptroller's [commission's]
 815-31 website.

815-32 (e) The council shall review the information contained in
 815-33 the reports under this section and Sections 122.012 and 122.016.
 815-34 The comptroller [commission] shall assist the council in reviewing
 815-35 and analyzing the reports in order to improve state agency
 815-36 compliance with this chapter.

815-37 SECTION 4.422. Section 122.012, Human Resources Code, is
 815-38 amended to read as follows:

815-39 Sec. 122.012. DUTIES OF COMPTROLLER [COMMISSION];
 815-40 INTERAGENCY COOPERATION. (a) The comptroller [commission] shall
 815-41 provide legal and other necessary support to the council in
 815-42 accordance with legislative appropriation. The comptroller
 815-43 [commission] shall assign an upper-level management employee to
 815-44 ensure that the comptroller [commission] meets the requirements of
 815-45 this chapter.

815-46 (b) State agencies responsible for the provision of
 815-47 rehabilitation and related services to persons with disabilities
 815-48 shall cooperate with the council in the operation of the program.
 815-49 The Department of Assistive and Rehabilitative Services [Texas
 815-50 Commission for the Blind, the Texas Rehabilitation Commission,]
 815-51 and other state human services agencies responsible for assisting
 815-52 persons with disabilities may, through written agreements or
 815-53 interagency contracts, provide space, storage, logistical support,
 815-54 consultation, expert services, communications services, or
 815-55 financial assistance with respect to any function or responsibility
 815-56 of the council.

815-57 (c) The comptroller [commission] or a state agency may not
 815-58 assume the marketing or fiscal responsibility for the expense of
 815-59 marketing the products and services of persons with disabilities
 815-60 under the program.

815-61 (d) The comptroller [commission] shall include the programs
 815-62 administered under this chapter in the comptroller's [commission's]
 815-63 procurement policy manuals.

815-64 (e) After any audit or review the comptroller [commission]
 815-65 conducts with regard to state agency compliance with purchasing
 815-66 laws and procedures, the comptroller [commission] shall report to
 815-67 the council a state agency that is not complying with this chapter.

815-68 SECTION 4.423. Section 122.013(b), Human Resources Code, is
 815-69 amended to read as follows:

(b) The comptroller [commission] shall provide legal support to assist the council in adopting rules under this section.

SECTION 4.424. Section 122.014, Human Resources Code, is amended to read as follows:

Sec. 122.014. PRODUCT SPECIFICATIONS. Except as otherwise provided by this section, a product manufactured for sale through the comptroller [~~commission~~] to any office, department, institution, or agency of the state under this chapter shall be manufactured or produced according to specifications developed by the comptroller [~~commission~~]. If the comptroller [~~commission~~] has not adopted specifications for a particular product, the production shall be based on commercial or federal specifications in current use by industry for the manufacture of the product for sale to the state.

SECTION 4.425. Section 122.016, Human Resources Code, is amended to read as follows:

Sec. 122.016. EXCEPTIONS. (a) Exceptions from the operation of the mandatory provisions of Section 122.014 may be made in any case where:

(1) under the rules of the comptroller [~~commission~~], the product or service so produced or provided does not meet the reasonable requirements of the office, department, institution, or agency; or

(2) the requisitions made cannot be reasonably complied with through provision of products or services produced by persons with disabilities.

(b) Each month, the comptroller [~~commission~~] shall provide the council with a list of all items purchased under the exception provided by Subsection (a) [~~of this section~~]. The council shall adopt the form in which the list is to be provided and may require the list to include the date of requisition, the type of product or service requested, the reason for purchase under the exception, and any other information that the council considers relevant to a determination of why the product or service was not purchased in accordance with Section **122.014**.

(c) No office, department, institution, or agency may evade the intent of this section by slight variations from standards adopted by the comptroller [~~commission~~], when the products or services produced or provided by persons with disabilities, in accordance with established standards, are reasonably adapted to the actual needs of the office, department, institution, or agency.

SECTION 4.426. Section 122.018, Human Resources Code, is amended to read as follows:

Sec. 122.018. POLITICAL SUBDIVISIONS EXCLUDED. There are excluded from the mandatory application of this chapter the political subdivisions of the state that are not covered by Title V of the federal [Federal] Rehabilitation Act of 1973, as amended (29 U.S.C. [U.S. Code] Sections 791 through 794f [790 through 794]). This chapter does not prohibit a political subdivision from acting as a willing buyer outside a bid system.

SECTION 4.427. Section 122.019(f), Human Resources Code, is amended to read as follows:

(f) A percentage of the management fee described by Subsection (e) shall be paid to the council and is subject to Section 122.023. The percentage shall be set by the council in the amount necessary to reimburse the general revenue fund for direct and reasonable costs incurred by the comptroller [commission], the council, and the council staff in administering the council's duties under this chapter.

SECTION 4.428. Section 122.022(b), Human Resources Code, is amended to read as follows:

(b) As part of the report filed under Subsection (a), the council shall provide:

(1) the number of persons with disabilities, according to their type of disability, who are employed in community rehabilitation programs participating in the programs established by this chapter or who are employed by businesses or workshops that receive supportive employment from community rehabilitation programs;

(2) the amount of annual wages paid to a person participating in the program;

(3) a summary of the sale of products offered by a community rehabilitation program;

(4) a list of products and services offered by a community rehabilitation program;

(5) the geographic distribution of the community rehabilitation programs;

(6) the number of [nondisabled] workers without disabilities who are employed in community rehabilitation programs under this chapter; and

(7) the average and range of weekly earnings for workers with disabilities [disabled] and [nondisabled] workers without disabilities who are employed in community rehabilitation programs under this chapter.

SECTION 4.429. The heading to Chapter 123, Human Resources Code, is amended to read as follows:

CHAPTER 123. COMMUNITY HOMES FOR [DISABLED] PERSONS WITH
DISABILITIES [LOCATION ACT]

SECTION 4.430. Section 123.001, Human Resources Code, is amended to read as follows:

Sec. 123.001. SHORT TITLE. This chapter may be cited as the Community Homes for [Disabled] Persons With Disabilities [Location] Act.

SECTION 4.431. Section 123.002, Human Resources Code, is amended to read as follows:

Sec. 123.002. DEFINITION. In this chapter, "person with a disability" means a person whose ability to care for himself or herself, perform manual tasks, learn, work, walk, see, hear, speak, or breathe is substantially limited because the person has:

(1) an orthopedic, visual, speech, or hearing impairment;

(2) Alzheimer's disease;

- (2) Alzheimer's disease;
 - (3) pre-senile dementia;
 - (4) cerebral palsy;
 - (5) epilepsy;
 - (6) muscular dystrophy;
 - (7) multiple sclerosis;
 - (8) cancer;
 - (9) heart disease;
 - (10) diabetes;
 - (11) an intellectual disability [~~mental retardation~~];
 - (12) autism; or
 - (13) mental [~~emotional~~] illness.

SECTION 4.432. Section 123.004, Human Resources Code, is amended to read as follows:

Sec. 123.004. QUALIFICATION AS COMMUNITY HOME. To qualify as a community home, an entity must comply with Sections [123.005](#) through [123.008](#) and be:

(1) a community-based residential home operated by:
(A) the [Texas] Department of Aging and
Disability Services [~~Mental Health and Mental Retardation~~];
(B) a community center organized under

(B) a community center organized under Subchapter A, Chapter 534, Health and Safety Code, that provides services to persons with disabilities;

(C) an entity subject to the Texas Nonprofit [Non-Profit] Corporation Law as described by Section 1.008(d), Business Organizations Code [Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes)]; or

(D) an entity certified by the [Texas] Department of Aging and Disability [Human] Services as a provider under the ICF-IID medical assistance program [serving persons in intermediate care facilities for persons with mental retardation]; or

(2) an assisted living facility licensed under Chapter 247, Health and Safety Code, provided that the exterior structure retains compatibility with the surrounding residential dwellings.

Sec. 123.010. ENSURING [THE] SAFETY OF RESIDENTS. The [Texas] Department of Aging and Disability Services [Mental Health and Mental Retardation] shall make every reasonable effort to ensure the safety of [community home] residents of a community home operated by or under the regulatory jurisdiction of the department and the residents of a neighborhood that is affected by the location of the [a] community home.

SECTION 4.434. Chapter 132, Human Resources Code, is amended to read as follows:

CHAPTER 132. FACILITATION OF DELIVERY OF HEALTH AND HUMAN SERVICES

Sec. 132.001. GOVERNOR'S AGENDA. (a) The governor shall establish an agenda that addresses needed adjustments in federal legislation, agency rules and regulations, programs, and policies that affect:

- (1) health and human services delivery;
- (2) client and provider eligibility;
- (3) administration; and
- (4) funding.

(b) The governor shall develop and amend the agenda in conjunction and cooperation with federal and state elected officials, state agency staff, the executive commissioner of the Health and Human Services Commission, and the executive director [directors] of the Texas Workforce Commission [state agencies providing health and human services programs].

(c) The agenda must include:

- (1) a list of specific issues of federal law or policy identified and ranked by health and human services agencies;
- (2) impact statements concerning the needed adjustments to federal law or policy;
- (3) a discussion of fiscal matters concerning each ranked issue; and
- (4) specific recommendations for changes in federal law or policy.

(d) The governor shall submit the agenda to the Texas congressional delegation and to the Office of State-Federal Relations and shall annually amend the agenda and rank agenda items. The agenda must identify issues of federal law, rules and regulations, or programs of common concern to different state agencies and programs.

Sec. 132.002. EXPANSION OF CLIENT ELIGIBILITY SCREENING AND DETERMINATION. (a) Based on a cost-benefit analysis, the Health and Human Services Commission [Texas Department of Human Services], where feasible, shall relocate an employee with the ability to certify eligibility for financial and medical programs to an office or facility that would enhance client access.

(b) Based on a cost-benefit analysis, the Health and Human Services Commission shall coordinate the expansion and use of integrated eligibility screening instruments and the relocation of state employees on a timetable determined by the commission.

Sec. 132.003. LOCATION OF OFFICES AND FACILITIES. (a) As leases on office space expire, the Health and Human Services Commission shall determine the needs for space and the location of offices of the health and human services agencies to enable the commission to achieve a cost-effective, one-stop or service center method of service delivery.

(b) In this section, "health and human services agencies" includes the:

- (1) Department of Aging and Disability Services [Interagency Council on Early Childhood Intervention Services];
- (2) Department of State Health Services [Texas Department on Aging];
- (3) Department of Family and Protective Services [Texas Commission on Alcohol and Drug Abuse];
- (4) Department of Assistive and Rehabilitative Services [Texas Commission for the Blind]; and
- (5) Health and Human Services Commission [Texas Commission for the Deaf and Hard of Hearing;
- [6) Texas Department of Health;
- [7) Texas Department of Human Services;

819-1 [+] (8) Texas Department of Mental Health and Mental
 819-2 ~~Retardation;~~
 819-3 [+] (9) Texas Rehabilitation Commission; and
 819-4 [+] (10) Department of Protective and Regulatory
 819-5 Services].

819-6 SECTION 4.435. The heading to Chapter 136, Human Resources
 819-7 Code, is amended to read as follows:

819-8 CHAPTER 136. TEXAS COMMUNITY HEALTH CENTER REVOLVING LOAN
 819-9 PROGRAM [FUND]

819-10 SECTION 4.436. Section 136.002, Human Resources Code, is
 819-11 amended by adding Subdivision (3-a) to read as follows:

819-12 (3-a) "Executive commissioner" means the executive
 819-13 commissioner of the Health and Human Services Commission.

819-14 SECTION 4.437. Section 136.003, Human Resources Code, is
 819-15 amended to read as follows:

819-16 Sec. 136.003. GIFTS AND GRANTS [TRUST FUND]. [(a) The
 819-17 community health center revolving loan fund is a trust fund outside
 819-18 the state treasury held by a financial institution and administered
 819-19 by the commission as trustee on behalf of community health centers
 819-20 in this state.]

819-21 [(b) The fund is composed of:]

819-22 [(1) money appropriated to the fund by the
 819-23 legislature;]

819-24 [(2) gifts or grants received from public or private
 819-25 sources; and]

819-26 [(3) income from other money in the fund.]

819-27 [(c)] The commission may accept [on behalf of the fund] gifts and grants for the use and benefit of the program.

819-28 SECTION 4.438. Section 136.007, Human Resources Code, is
 819-29 amended to read as follows:

819-30 Sec. 136.007. SELF-FUNDING. The commission shall develop
 819-31 the [fund] program as a revolving loan program [fund] that will
 819-32 become self-funding over the life of the program.

819-33 SECTION 4.439. Section 136.009, Human Resources Code, is
 819-34 amended to read as follows:

819-35 Sec. 136.009. RULES. (a) The executive commissioner
 819-36 [commission] shall adopt rules to administer this chapter,
 819-37 including rules that require:

819-38 (1) the commission to review the lending and servicing
 819-39 practices of a development corporation to ensure the practices
 819-40 conform to generally accepted accounting principles;

819-41 (2) an eligible community health center to enter into
 819-42 an agreement with the development corporation that states the terms
 819-43 of the loan made to the center;

819-44 (3) the development corporation to provide to the
 819-45 commission semiannual reports giving details of the status of each
 819-46 loan made under the program;

819-47 (4) the development corporation to require annual
 819-48 audits of community health centers receiving loans under the
 819-49 program; and

819-50 (5) the commission to provide oversight of the
 819-51 development corporation as necessary to qualify the development
 819-52 corporation for loan guarantees from federal and state programs.

819-53 (b) Under rules adopted by the executive commissioner
 819-54 [commission], the development corporation may:

819-55 (1) make grants to eligible community health centers
 819-56 from money other than money [that is received from the fund and]
 819-57 that was derived from a legislative appropriation; or

819-58 (2) seek money [funds] from state or federal agencies
 819-59 or private sources to supplement and complement the money [funds]
 819-60 received under the program.

819-61 (c) The executive commissioner [commission] may adopt other
 819-62 rules as necessary to accomplish the purposes of this chapter.

819-63 SECTION 4.440. Section 161.003, Human Resources Code, is
 819-64 amended to read as follows:

819-65 Sec. 161.003. SUNSET PROVISION. The department
 819-66 [Department of Aging and Disability Services] is subject to Chapter
 819-67 325, Government Code (Texas Sunset Act). Unless continued in
 819-68 existence as provided by that chapter, the department is abolished

820-1 and this chapter expires September 1, 2015.

820-2 SECTION 4.441. Section 161.021(b), Human Resources Code, is
820-3 amended to read as follows:

820-4 (b) The council is composed of nine members of the public
820-5 appointed by the governor with the advice and consent of the senate.
820-6 To be eligible for appointment to the council, a person must have
820-7 demonstrated an interest in and knowledge of issues and available
820-8 services related to the aging and persons with developmental
820-9 disabilities or an intellectual disability [mental retardation].

820-10 SECTION 4.442. Section 161.030, Human Resources Code, is
820-11 amended to read as follows:

820-12 Sec. 161.030. POLICYMAKING AND MANAGEMENT
820-13 RESPONSIBILITIES. The [executive] commissioner, with the advice of
820-14 the council and subject to the approval of the executive
820-15 commissioner, shall develop and the department shall implement
820-16 policies that clearly delineate the policymaking responsibilities
820-17 of the executive commissioner from the management responsibilities
820-18 of the commission, the commissioner, and the staff of the
820-19 department.

820-20 SECTION 4.443. Section 161.051(c), Human Resources Code, is
820-21 amended to read as follows:

820-22 (c) Subject to the control of the executive commissioner,
820-23 the commissioner shall:

820-24 (1) act as the department's chief administrative
820-25 officer;

820-26 (2) in accordance with the procedures prescribed by
820-27 Section 531.00551, Government Code, assist the executive
820-28 commissioner in the development and implementation of policies and
820-29 guidelines needed for the administration of the department's
820-30 functions;

820-31 (3) in accordance with the procedures adopted by the
820-32 executive commissioner under Section 531.00551, Government Code,
820-33 assist the executive commissioner in the development of rules
820-34 relating to the matters within the department's jurisdiction,
820-35 including the delivery of services to persons and the rights and
820-36 duties of persons who are served or regulated by the department; and

820-37 (4) serve as a liaison between the department and
820-38 commission.

820-39 SECTION 4.444. The heading to Section 161.0515, Human
820-40 Resources Code, is amended to read as follows:

820-41 Sec. 161.0515. ASSISTANT COMMISSIONER FOR [OF] STATE
820-42 SUPPORTED LIVING CENTERS.

820-43 SECTION 4.445. Sections 161.0515(a), (d), and (e), Human
820-44 Resources Code, are amended to read as follows:

820-45 (a) The commissioner shall employ an assistant commissioner
820-46 for [of] state supported living centers. The assistant
820-47 commissioner must be selected based on education, training,
820-48 experience, and demonstrated ability.

820-49 (d) The assistant commissioner shall coordinate with the
820-50 appropriate staff of the Department of State Health Services to
820-51 ensure that the ICF-IID [ICF-MR] component of the Rio Grande State
820-52 Center implements and enforces state law and rules that apply to the
820-53 operation of state supported living centers.

820-54 (e) The assistant commissioner shall consult with the
820-55 appropriate staff at the Department of State Health Services to
820-56 ensure that an individual with a dual diagnosis of mental illness
820-57 and an intellectual disability [mental retardation] who is a
820-58 resident of a state supported living center or the ICF-IID [ICF-MR]
820-59 component of the Rio Grande State Center is provided with
820-60 appropriate care and treatment.

820-61 SECTION 4.446. Section 161.056(c), Human Resources Code, is
820-62 amended to read as follows:

820-63 (c) The policy statement must be:
820-64 (1) updated annually;
820-65 (2) reviewed by the Texas Workforce [state] Commission
820-66 civil rights division [on Human Rights] for compliance with
820-67 Subsection (b)(1); and
820-68 (3) filed with the governor's office.

820-69 SECTION 4.447. Section 161.071, Human Resources Code, is

821-1 amended to read as follows:

821-2 Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The
 821-3 department is responsible for administering human services
 821-4 programs for the aging and persons with disabilities [disabled],
 821-5 including:

821-6 (1) administering and coordinating programs to
 821-7 provide community-based care and support services to promote
 821-8 independent living for populations that would otherwise be
 821-9 institutionalized;

821-10 (2) providing institutional care services, including
 821-11 services through convalescent and nursing homes and related
 821-12 institutions under Chapter 242, Health and Safety Code;

821-13 (3) providing and coordinating programs and services
 821-14 for persons with disabilities, including programs for the
 821-15 treatment, rehabilitation, or benefit of persons with
 821-16 developmental disabilities or an intellectual disability [mental
 821-17 retardation];

821-18 (4) operating state facilities for the housing,
 821-19 treatment, rehabilitation, or benefit of persons with
 821-20 disabilities, including state supported living centers [state
 821-21 schools] for persons with an intellectual disability [mental
 821-22 retardation];

821-23 (5) serving as the state unit on aging required by the
 821-24 federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.)
 821-25 and its subsequent amendments, including performing the general
 821-26 functions under Section 101A.052 [101.022] to ensure:

821-27 (A) implementation of the federal Older
 821-28 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its
 821-29 subsequent amendments, including implementation of services and
 821-30 volunteer opportunities under that Act for older residents of this
 821-31 state through area agencies on aging;

821-32 (B) advocacy for residents of nursing facilities
 821-33 through the office of the state long-term care ombudsman;

821-34 (C) fostering of the state and community
 821-35 infrastructure and capacity to serve older residents of this state;
 821-36 and

821-37 (D) availability of a comprehensive resource for
 821-38 state government and the public on trends related to and services
 821-39 and programs for an aging population;

821-40 (6) performing all licensing and enforcement
 821-41 activities and functions related to long-term care facilities,
 821-42 including licensing and enforcement activities related to
 821-43 convalescent and nursing homes and related institutions under
 821-44 Chapter 242, Health and Safety Code;

821-45 (7) performing all licensing and enforcement
 821-46 activities related to assisted living facilities under Chapter 247,
 821-47 Health and Safety Code;

821-48 (8) performing all licensing and enforcement
 821-49 activities related to intermediate care facilities for persons with
 821-50 an intellectual disability [mental retardation] under Chapter 252,
 821-51 Health and Safety Code;

821-52 (9) performing all licensing and enforcement
 821-53 activities and functions related to home and community support
 821-54 services agencies under Chapter 142, Health and Safety Code; and

821-55 (10) serving as guardian of the person or estate, or
 821-56 both, for an incapacitated individual as provided by Subchapter E
 821-57 of this chapter and Title 3, Estates [Chapter XIII, Texas Probate]
 821-58 Code.

821-59 SECTION 4.448. Subchapter D, Chapter 161, Human Resources
 821-60 Code, is amended by adding Sections 161.0711 and 161.0712 to read as
 821-61 follows:

821-62 Sec. 161.0711. CONTRACTING AND AUDITING AUTHORITY;
 821-63 DELEGATION. (a) The executive commissioner, as authorized by
 821-64 Section 531.0055, Government Code, may delegate to the department
 821-65 the executive commissioner's authority under that section for
 821-66 contracting and auditing relating to the department's powers,
 821-67 duties, functions, and activities.

821-68 (b) If the executive commissioner does not make a delegation
 821-69 under Subsection (a), a reference in law to the department with

822-1 respect to the department's contracting or auditing authority means
 822-2 the executive commissioner. If the executive commissioner makes a
 822-3 delegation under Subsection (a), a reference in law to the
 822-4 department's contracting or auditing authority means that
 822-5 authority the executive commissioner has delegated to the
 822-6 department.

822-7 (c) If the executive commissioner revokes all or part of a
 822-8 delegation made under Subsection (a), a reference in law to the
 822-9 department with respect to a function for which the delegation was
 822-10 revoked means the executive commissioner or another entity to which
 822-11 the executive commissioner delegates that authority.

822-12 (d) It is the legislature's intent that the executive
 822-13 commissioner retain the authority over and responsibility for
 822-14 contracting and auditing at each health and human services agency
 822-15 as provided by Section 531.0055, Government Code. A statute
 822-16 enacted on or after January 1, 2015, that references the
 822-17 contracting or auditing authority of the department does not give
 822-18 the department direct contracting or auditing authority unless the
 822-19 statute expressly provides that the contracting or auditing
 822-20 authority:

822-21 (1) is given directly to the department; and
 822-22 (2) is an exception to the exclusive contracting and
 822-23 auditing authority given to the executive commissioner under
 822-24 Section 531.0055, Government Code.

822-25 Sec. 161.0712. MANAGEMENT AND DIRECTION BY EXECUTIVE
 822-26 COMMISSIONER. The department's powers and duties prescribed by
 822-27 this chapter and other law, including enforcement activities and
 822-28 functions, are subject to the executive commissioner's oversight
 822-29 under Chapter 531, Government Code, to manage and direct the
 822-30 operations of the department.

822-31 SECTION 4.449. Sections 161.075(a)(1) and (2), Human
 822-32 Resources Code, are amended to read as follows:

822-33 (1) "Area agency on aging" means an agency described
 822-34 by 42 U.S.C. Section 3002(6) [3002(17)] and through which the
 822-35 department ensures the implementation of services and volunteer
 822-36 opportunities for older persons in this state as provided by
 822-37 Section 161.071(5)(A).

822-38 (2) "Texas nonprofit organization" means a nonprofit
 822-39 corporation:

822-40 (A) that is organized under the Texas Nonprofit
 822-41 Corporation Law as described by Section 1.008(d), Business
 822-42 Organizations Code [Non-Profit Corporation Act (Article 1396-1.01
 822-43 et seq., Vernon's Texas Civil Statutes)]; and

822-44 (B) the funding of which is managed by an
 822-45 organization that is exempt from federal income tax under Section
 822-46 501(a) of the Internal Revenue Code of 1986 by being listed as an
 822-47 exempt organization in Section 501(c)(3) of that code.

822-48 SECTION 4.450. Section 161.077(a), Human Resources Code, is
 822-49 amended to read as follows:

822-50 (a) The department, in consultation with the Department of
 822-51 Family and Protective Services, shall develop and maintain an
 822-52 electronic database to collect and analyze information regarding
 822-53 the investigation and prevention of abuse, neglect, and
 822-54 exploitation of individuals with an intellectual disability
 822-55 [mental retardation] who reside in a publicly or privately operated
 822-56 intermediate care facility for persons with an intellectual
 822-57 disability [mental retardation] or in a group home, other than a
 822-58 foster home, at which a Home and Community-based Services (HCS)
 822-59 provider provides services and the results of regulatory
 822-60 investigations or surveys performed by the department regarding
 822-61 those facilities or providers.

822-62 SECTION 4.451. Section 161.078(b), Human Resources Code, is
 822-63 amended to read as follows:

822-64 (b) Subsection (a) does not prevent the department from
 822-65 establishing an age requirement with respect to other programs or
 822-66 services offered to persons who are deaf-blind with [and have]
 822-67 multiple disabilities, including the summer outdoor training
 822-68 program for [deaf-blind multihandicapped] individuals who are
 822-69 deaf-blind with multiple disabilities established under Section

823-1 22.036(c).

823-2 SECTION 4.452. Section 161.079(a)(2), Human Resources
823-3 Code, is amended to read as follows:

823-4 (2) "Local entity" means an area agency on aging or
823-5 other entity that provides services and support for older persons
823-6 or [disabled] persons with disabilities and their caregivers.

823-7 SECTION 4.453. Section 161.080(b), Human Resources Code, is
823-8 amended to read as follows:

823-9 (b) Notwithstanding any other law, a state supported living
823-10 center may provide nonresidential services to support an individual
823-11 if:

823-12 (1) the individual:

823-13 (A) is receiving services in a program funded by
823-14 the department;

823-15 (B) meets the eligibility criteria for the
823-16 intermediate care facility for persons with an intellectual
823-17 disability [disabilities] program; and

823-18 (C) resides in the area in which the
823-19 state supported living center is located; and

823-20 (2) the provision of services to the individual does
823-21 not interfere with the provision of services to a resident of the
823-22 state supported living center.

823-23 SECTION 4.454. Section 161.087(a), Human Resources Code, is
823-24 amended to read as follows:

823-25 (a) The department may accept gifts and grants of money,
823-26 personal property, and real property from public or private sources
823-27 to expand and improve the human services programs for the aging and
823-28 persons with disabilities [disabled] available in this state.

823-29 SECTION 4.455. Section 161.092, Human Resources Code, is
823-30 amended to read as follows:

823-31 Sec. 161.092. APPLICABILITY. This subchapter applies only
823-32 to administration of medication provided to certain persons with
823-33 intellectual and developmental disabilities who are served:

823-34 (1) in a small facility with not less than one and not
823-35 more than eight beds that is licensed or certified under Chapter
823-36 252, Health and Safety Code;

823-37 (2) in a medium facility with not less than 9 [nine]
823-38 and not more than 13 beds that is licensed or certified under
823-39 Chapter 252, Health and Safety Code; or

823-40 (3) by one of the following Section 1915(c) waiver
823-41 programs administered by the department [Department of Aging and
823-42 Disability Services] to serve persons with intellectual and
823-43 developmental disabilities:

823-44 (A) the Home and Community-Based Services waiver
823-45 program; or

823-46 (B) the Texas Home Living waiver program.

823-47 SECTION 4.456. Sections 161.101(a), (b), (c), (c-1), (c-2),
823-48 (d), and (f), Human Resources Code, are amended to read as follows:

823-49 (a) The department shall file an application under Section
823-50 1101.001 or 1251.003, Estates [682 or 875, Texas Probate] Code, to
823-51 be appointed guardian of the person or estate, or both, of a minor
823-52 referred to the department under Section 48.209(a)(1) for
823-53 guardianship services if the department determines:

823-54 (1) that the minor, because of a mental or physical
823-55 condition, will be substantially unable to provide for the minor's
823-56 own food, clothing, or shelter, to care for the minor's own physical
823-57 health, or to manage the individual's own financial affairs when
823-58 the minor becomes an adult; and

823-59 (2) that a less restrictive alternative to
823-60 guardianship is not available for the minor.

823-61 (b) The department shall conduct a thorough assessment of
823-62 the conditions and circumstances of an elderly person or [disabled]
823-63 person with a disability referred to the department under Section
823-64 48.209(a)(2) for guardianship services to determine whether a
823-65 guardianship is appropriate for the individual or whether a less
823-66 restrictive alternative is available for the individual. In
823-67 determining whether a guardianship is appropriate, the department
823-68 may consider the resources and funds available to meet the needs of
823-69 the elderly person or [disabled] person with a disability. The

824-1 executive commissioner shall adopt rules for the administration of
 824-2 this subsection.

824-3 (c) Subject to Subsection (c-1), if after conducting an
 824-4 assessment of an elderly person or [disabled] person with a
 824-5 disability under Subsection (b) the department determines that:

824-6 (1) guardianship is appropriate for the elderly person
 824-7 or [disabled] person with a disability, the department shall:

824-8 (A) file an application under Section 1101.001 or
 824-9 1251.003, Estates [682 or 875, Texas Probate] Code, to be appointed
 824-10 guardian of the person or estate, or both, of the individual; or

824-11 (B) if the department determines that an
 824-12 alternative person or program described by Section 161.102 is
 824-13 available to serve as guardian, refer the individual to that person
 824-14 or program as provided by that section; or

824-15 (2) a less restrictive alternative to guardianship is
 824-16 available for the elderly person or [disabled] person with a
 824-17 disability, the department shall pursue the less restrictive
 824-18 alternative instead of taking an action described by Subdivision
 824-19 (1).

824-20 (c-1) Not later than the 70th day after the date the
 824-21 department receives a referral under Section 48.209(a)(2) for
 824-22 guardianship services, the department shall make the determination
 824-23 required by Subsection (c) and, if the department determines that
 824-24 guardianship is appropriate and that the department should serve as
 824-25 guardian, file the application to be appointed guardian under
 824-26 Section 1101.001 or 1251.003, Estates [682 or 875, Texas Probate]
 824-27 Code. If the department determines that an alternative person or
 824-28 program described by Section 161.102 is available to serve as
 824-29 guardian, the department shall refer the elderly person or
 824-30 [disabled] person with a disability to that alternative person or
 824-31 program in a manner that would allow the alternative person or
 824-32 program sufficient time to file, not later than the 70th day after
 824-33 the date the department received the referral, an application to be
 824-34 appointed guardian.

824-35 (c-2) With the approval of the Department of Family and
 824-36 Protective Services, the department may extend, by not more than 30
 824-37 days, a period prescribed by Subsection (c-1) if the extension is:

824-38 (1) made in good faith, including any extension for a
 824-39 person or program described by Section 161.102 that intends to file
 824-40 an application to be appointed guardian; and

824-41 (2) in the best interest of the elderly person or
 824-42 [disabled] person with a disability.

824-43 (d) The department may not be required by a court to file an
 824-44 application for guardianship, and except as provided by Subsection
 824-45 (f) and Section 1203.108(b), Estates [695(c), Texas Probate] Code,
 824-46 the department may not be appointed as permanent guardian for any
 824-47 individual unless the department files an application to serve or
 824-48 otherwise agrees to serve as the individual's guardian of the
 824-49 person or estate, or both.

824-50 (f) On appointment by a probate court under Section
 824-51 1203.108(b), Estates [695(c), Texas Probate] Code, the department
 824-52 shall serve as the successor guardian of the person or estate, or
 824-53 both, of a ward described by that section.

824-54 SECTION 4.457. Section 161.102(b), Human Resources Code, is
 824-55 amended to read as follows:

824-56 (b) If requested by a court, the department shall notify the
 824-57 court of any referral made to the department by the Department of
 824-58 Family and Protective Services relating to any individual who is
 824-59 domiciled or found in a county where the requesting court has
 824-60 probate jurisdiction and who may be appropriate for a
 824-61 court-initiated guardianship proceeding under Chapter 1102,
 824-62 Estates [Section 683, Texas Probate] Code. In making a referral
 824-63 under this subsection and if requested by the court, the department
 824-64 shall, to the extent allowed by law, provide the court with all
 824-65 relevant information in the department's records relating to the
 824-66 individual. The court, as part of this process, may not require
 824-67 the department to:

824-68 (1) perform the duties of a guardian ad litem or court
 824-69 investigator as prescribed by Chapter 1102, Estates [Section 683,

825-1 ~~Texas Probate~~] Code; or

825-2 (2) gather additional information not contained in the
825-3 department's records.

825-4 SECTION 4.458. Section 161.103, Human Resources Code, is
825-5 amended to read as follows:

825-6 Sec. 161.103. CONTRACT FOR GUARDIANSHIP SERVICES. If
825-7 appropriate, the department may contract with a political
825-8 subdivision of this state, a guardianship program as defined by
825-9 Section 1002.016, Estates [Section 601, ~~Texas Probate~~] Code, a
825-10 private agency, or another state agency for the provision of
825-11 guardianship services under this section.

825-12 SECTION 4.459. Section 161.105, Human Resources Code, is
825-13 amended to read as follows:

825-14 Sec. 161.105. OATH. A representative of the department
825-15 shall take the oath required by the Estates [~~Texas Probate~~] Code on
825-16 behalf of the department if the department is appointed guardian of
825-17 the person or estate, or both, of a ward under Title 3 [Chapter
825-18 XIII] of that code.

825-19 SECTION 4.460. Section 161.106, Human Resources Code, is
825-20 amended to read as follows:

825-21 Sec. 161.106. GUARDIANSHIP POWERS AND DUTIES. In serving
825-22 as guardian of the person or estate, or both, for an incapacitated
825-23 individual, the department has all the powers granted and duties
825-24 prescribed to a guardian under Title 3, Estates [Chapter XIII,
825-25 ~~Texas Probate~~] Code, or any other applicable law.

825-26 SECTION 4.461. Sections 161.107(a), (b), and (d), Human
825-27 Resources Code, are amended to read as follows:

825-28 (a) The department or a political subdivision of this state
825-29 or state agency with which the department contracts under Section
825-30 161.103 is not required to post a bond or pay any cost or fee
825-31 associated with a bond otherwise required by the Estates [~~Texas~~
825-32 ~~Probate~~] Code in guardianship matters.

825-33 (b) The department is not required to pay any cost or fee
825-34 otherwise imposed for court proceedings or other services,
825-35 including:

825-36 (1) a filing fee or fee for issuance of service of
825-37 process imposed by Section 51.317, 51.318(b)(2), or 51.319,
825-38 Government Code;

825-39 (2) a court reporter service fee imposed by Section
825-40 51.601, Government Code;

825-41 (3) a judicial fund fee imposed by Section 51.702,
825-42 Government Code;

825-43 (4) a judge's fee imposed by Section 25.0008 or
825-44 25.0029, Government Code;

825-45 (5) a cost or security fee imposed by Section 53.051,
825-46 53.052, 1053.051, or 1053.052, Estates [12 or 622, ~~Texas Probate~~]
825-47 Code; or

825-48 (6) a fee imposed by a county officer under Section
825-49 118.011 or 118.052, Local Government Code.

825-50 (d) A political subdivision of this state or state agency
825-51 with which the department contracts under Section 161.103 is not
825-52 required to pay any cost or fee otherwise required by the Estates
825-53 [~~Texas Probate~~] Code.

825-54 SECTION 4.462. Section 161.108, Human Resources Code, is
825-55 amended to read as follows:

825-56 Sec. 161.108. SUCCESSOR GUARDIAN. The department shall
825-57 review each of the department's pending guardianship cases at least
825-58 annually to determine whether a more suitable person, including a
825-59 guardianship program or private professional guardian, is willing
825-60 and able to serve as successor guardian for a ward of the
825-61 department. If the department becomes aware of any person's
825-62 willingness and ability to serve as successor guardian, the
825-63 department shall notify the court in which the guardianship is
825-64 pending as required by Section 1203.151, Estates [Section 695A,
825-65 ~~Texas Probate~~] Code.

825-66 SECTION 4.463. Section 161.111(d), Human Resources Code, is
825-67 amended to read as follows:

825-68 (d) The executive commissioner [~~department~~] shall establish
825-69 a policy and procedures for the exchange of information with

another state agency or governmental entity, including a court, with a local guardianship program to which an individual is referred for services, or with any other entity who provides services to a ward of the department, as necessary for the department, state agency, governmental entity, or other entity to properly execute its respective duties and responsibilities to provide guardianship services or other needed services to meet the needs of the ward under this subchapter or other law. An exchange of information under this subsection does not constitute a release for purposes of waiving the confidentiality of the information exchanged.

SECTION 4.464. Section 161.351, Human Resources Code, is amended to read as follows:

Sec. 161.351. LEGISLATIVE FINDINGS. The legislature finds that:

(1) in 2008, 1.14 million older Texans were expected to sustain falls;

(2) the risk factors associated with falling increase with age;

(3) approximately 20 to 30 percent of older adults who fall suffer moderate to severe injuries, resulting in almost 80,000 hospitalizations annually and constituting 40 percent of all nursing facility [home] placements;

(4) according to the Centers for Disease Control and Prevention of the United States Public Health Service, the total direct cost of all fall-related injuries in 2000 for people 65 years of age and older exceeded \$19 billion nationwide; and

(5) research shows that a well-designed fall prevention program that includes risk factor assessments, a focused physical activity program, and improvement of the home environment can reduce the incidence of falls by 30 to 50 percent.

SECTION 4.465. (a) The following provisions of the Human Resources Code are repealed:

- (1) Section 21.001;
- (2) Section 21.002;
- (3) Section 21.003;
- (4) Section 21.0031;
- (5) Section 21.0032;
- (6) Section 21.004;
- (7) Section 21.005;
- (8) Section 21.0051;
- (9) Section 21.0052;
- (10) Section 21.006;
- (11) Section 21.00605;
- (12) Section 21.0061;
- (13) Section 21.008;
- (14) Section 21.009;
- (15) Section 21.010;
- (16) Section 21.014;
- (17) Section 21.015;
- (18) Section 21.016;
- (19) Section 21.018;
- (20) Section 21.019;
- (21) Sections 22.005(a), (b), (c), and (e);
- (22) Section 22.010;
- (23) Section 22.018(e);
- (24) Section 22.0291;
- (25) Section 22.034;
- (26) Section 22.037;
- (27) Section 22.038;
- (28) Section 31.0037;
- (29) Section 31.005(c);
- (30) Section 31.009;
- (31) Section 31.0125;
- (32) Section 31.014;
- (33) Section 31.031(g);
- (34) Sections 31.0355(d), (e), and (f);
- (35) Sections 32.003(2) and (3);
- (36) Sections 32.024(j), (k), and (m);

827-1 (37) Section 32.0246;
 827-2 (38) Section 32.027(b);
 827-3 (39) Section 32.030;
 827-4 (40) Section 32.041;
 827-5 (41) Sections 32.052(e) and (f);
 827-6 (42) Section 32.060;
 827-7 (43) Section 32.101(1);
 827-8 (44) Section 32.201(2);
 827-9 (45) Section 32.251(5);
 827-10 (46) Section 33.007;
 827-11 (47) Section 33.010;
 827-12 (48) Section 33.026(a);
 827-13 (49) Section 33.051;
 827-14 (50) Sections 40.001(2) and (4-a);
 827-15 (51) Section 40.0562;
 827-16 (52) Section 40.0563;
 827-17 (53) Section 40.058(b-1);
 827-18 (54) Section 42.0221;
 827-19 (55) Section 48.002(a)(7);
 827-20 (56) Section 73.002;
 827-21 (57) Section 73.0021;
 827-22 (58) Section 73.0022;
 827-23 (59) Section 73.0023;
 827-24 (60) Section 73.0024;
 827-25 (61) Section 73.0025;
 827-26 (62) Section 73.0052;
 827-27 (63) Sections 73.006(a), (c), and (d);
 827-28 (64) Sections 73.022(c), (d), and (e);
 827-29 (65) Section 73.023;
 827-30 (66) Section 74.006(c);
 827-31 (67) Section 81.001(1);
 827-32 (68) Section 81.002;
 827-33 (69) Section 81.0021;
 827-34 (70) Section 81.0022;
 827-35 (71) Section 81.003;
 827-36 (72) Section 81.004;
 827-37 (73) Section 81.005;
 827-38 (74) Section 81.0051;
 827-39 (75) Section 81.008;
 827-40 (76) Section 81.009;
 827-41 (77) Section 81.014;
 827-42 (78) Section 91.001;
 827-43 (79) Section 91.002(1);
 827-44 (80) Section 91.011;
 827-45 (81) Sections 91.012(a), (b), and (c);
 827-46 (82) Section 91.013;
 827-47 (83) Section 91.014(b);
 827-48 (84) Section 91.015;
 827-49 (85) Sections 91.016(a), (b), (c), and (d);
 827-50 (86) Section 91.017;
 827-51 (87) Sections 91.018(a), (b), (d), (e), (f), and (g);
 827-52 (88) Section 91.020;
 827-53 (89) Chapter 101;
 827-54 (90) Section 103.0075(d);
 827-55 (91) Section 103.010(b);
 827-56 (92) Sections 111.002(1) and (8);
 827-57 (93) Sections 111.011, 111.012, 111.013, 111.0131,
 827-58 111.0132, 111.014, and 111.015;
 827-59 (94) Section 111.017, as amended by Chapters 393 (H.B.
 827-60 1402) and 1460 (H.B. 2641), Acts of the 76th Legislature, Regular
 827-61 Session, 1999;
 827-62 (95) Sections 111.018(c), (d), (e), (f), (g), and (h);
 827-63 (96) Section 111.020;
 827-64 (97) Section 111.024;
 827-65 (98) Section 111.025;
 827-66 (99) Section 111.026;
 827-67 (100) Section 111.055(b);
 827-68 (101) Chapter 116;
 827-69 (102) Section 121.0015;

- (103) Sections [122.0011](#) and [122.002](#)(2);
- (104) Chapter 134; and
- (105) Section [136.002](#)(4).

(b) Section 22.005(d), Human Resources Code, as amended by Chapters 1050 (S.B. 71) and 1083 (S.B. 1179), Acts of the 82nd Legislature, Regular Session, 2011, is repealed.

ARTICLE 5. OCCUPATIONS CODE

SECTION 5.001. Section 110.001(3), Occupations Code, is amended to read as follows:

(3) "Department" means the [Texas] Department of State
Health Services.

SECTION 5.002. Section [110.101](#), Occupations Code, is amended to read as follows:

Sec. 110.101. EXECUTIVE DIRECTOR. The commissioner of state [public] health services shall employ an executive director, chosen with the advice and consent of the council, who is the executive head of the council and performs its administrative duties.

SECTION 5.003. Section [110.158\(a\)](#), Occupations Code, is amended to read as follows:

(a) The council may adopt rules consistent with this chapter. In adopting rules, the council shall:

- (1) consider the rules and procedures of the [board and the] department; and
- (2) adopt procedural rules consistent with similar existing rules and procedures of the [board or the] department.

existing rules and procedures of the [Board of the] department.

SECTION 5.004. The heading to Section 110.159, Occupations Code, is amended to read as follows:

is amended to read as follows:

Sec. 110.159. [COLLECTION OF] FEES.

SECTION 5.005. Section 110.159, Occupations Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding Subsection (a), the council shall set fees for issuing or renewing a license in amounts designed to allow the department and the council to recover from the license holders all of the direct and indirect costs to the department and to the council in administering and enforcing this chapter.

SECTION 5.006. Section 110.202(a), Occupations Code, is amended to read as follows:

(a) The executive head of each of the following agencies or that person's designated representative shall serve as a member of the interagency advisory committee:

(1) Texas Department of Criminal Justice;
(2) Texas Juvenile Justice Department [Probation
Commission];
(3) the department [Texas Department of Mental Health]

~~and Mental Retardation];~~
(4) [Texas Youth Commission;
[~~(5)~~] Sam Houston State University;

~~Regulatory~~ [5] Department of Family and Protective Services; and
~~Regulatory~~ [6] Texas Council of Community ~~Mental Health and Mental Retardation~~ Centers.

SECTION 5.007. Section 110.255(a), Occupations Code, is amended to read as follows:

(a) In an investigation of a complaint filed with the council, the council may request that the commissioner of state [public] health services or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the council may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence in this state. The council may delegate the authority granted under this subsection to the executive director of the council.

SECTION 5.008. Section 110.256(b), Occupations Code, is amended to read as follows:

(b) The information described by Subsection (a) may be disclosed to:

(2) professional sex offender treatment provider

(2) professional sex offender treatment provider

licensing or disciplinary boards in other jurisdictions;
 (3) an approved peer assistance program, as defined by
Section 467.001 [programs approved by the board under Chapter 467],
 Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information is deleted.

SECTION 5.009. Section 110.302(b), Occupations Code, is amended to read as follows:

(b) In developing the rules, the council shall coordinate with the Texas Department of Criminal Justice [~~, the Texas Youth Commission,~~] and the Texas Juvenile Justice Department [~~Probation Commission~~].

SECTION 5.010. Subchapter G, Chapter 110, Occupations Code, is amended by adding Section 110.3045 to read as follows:

Sec. 110.3045. LICENSE TERM. A license issued under this chapter is valid for two years.

SECTION 5.011. Section 203.104(b), Occupations Code, is amended to read as follows:

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Texas Workforce Commission civil rights division [~~on Human Rights~~] for compliance with Subsection (a)(1); and

(4) be filed with the governor.

SECTION 5.012. Section 203.152(a), Occupations Code, is amended to read as follows:

(a) Subject to the approval of the executive commissioner, the midwifery board by rule shall establish reasonable and necessary fees that, in the aggregate, produce sufficient revenue to cover the costs of administering this chapter. Fees for the issuance or renewal of a license under this chapter shall be set in amounts designed to allow the department and the midwifery board to recover from the license holders all of the direct and indirect costs to the department and to the midwifery board in administering and enforcing this chapter.

SECTION 5.013. Section 203.252(c), Occupations Code, is amended to read as follows:

(c) The term of the initial license begins on the date the requirements are met and extends through March 1 [~~December 31~~] of the second year after the year in which the initial license is issued.

SECTION 5.014. Section 203.455, Occupations Code, is amended to read as follows:

Sec. 203.455. HEARING. (a) If the person timely requests a hearing, the midwifery board or its designee shall set a hearing and give written notice of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall hold the hearing. [The midwifery board or its designee may employ a hearings examiner for this purpose.]

(b) The administrative law judge [~~hearings examiner~~] shall make findings of fact and conclusions of law and promptly issue to the midwifery board a proposal for decision as to the occurrence of the violation and the amount of the proposed administrative penalty.

SECTION 5.015. Sections 203.502(b) and (c), Occupations Code, are amended to read as follows:

(b) If the department [~~commissioner~~] or a health authority determines that a person has violated this chapter and that the violation creates an immediate threat to the health and safety of the public, the department, [~~commissioner~~] or the health authority[~~✓~~] with the concurrence of the department [~~commissioner~~], may request the attorney general or a district, county, or city attorney to bring an action in a district court for a restraining order to restrain the violation.

(c) If a person has violated this chapter, the department, [~~commissioner~~] or a health authority[~~✓~~] with the concurrence of the department [~~commissioner~~], may bring an action in a district court

830-1 for an injunction to prohibit the person from continuing the
 830-2 violation.

830-3 SECTION 5.016. Section 352.002, Occupations Code, is
 830-4 amended by amending Subdivisions (3) and (4) and adding Subdivision
 830-5 (5-a) to read as follows:

830-6 (3) "Contact lens prescription" means a written
 830-7 specification from a physician, optometrist, or therapeutic
 830-8 optometrist for therapeutic, corrective, or cosmetic contact
 830-9 lenses that states the refractive power of the product and other
 830-10 information required to be in the specification by the physician,
 830-11 optometrist, therapeutic optometrist, Texas ~~[State Board of]~~
 830-12 Medical Board ~~[Examiners]~~, or Texas Optometry Board.

830-13 (4) "Department" means the ~~Texas~~ Department of State
 830-14 Health Services.

830-15 (5-a) "Executive commissioner" means the executive
 830-16 commissioner of the Health and Human Services Commission.

830-17 SECTION 5.017. Section 352.003(a), Occupations Code, is
 830-18 amended to read as follows:

830-19 (a) This chapter does not:

830-20 (1) authorize a dispensing optician to perform an act
 830-21 on the optician's own authority that the optician is not otherwise
 830-22 authorized to perform, including an act that constitutes the
 830-23 practice of medicine, therapeutic optometry, or optometry;

830-24 (2) prevent or restrict a person licensed in this
 830-25 state under another law from engaging in the profession or
 830-26 occupation for which the person is licensed without being
 830-27 registered under this chapter;

830-28 (3) prevent or restrict an employee of a person
 830-29 licensed in this state from performing an employment duty required
 830-30 by the licensed person without being registered under this chapter;

830-31 (4) prevent or restrict an individual, firm, or
 830-32 corporation from employing a person registered under this chapter
 830-33 or from engaging in spectacle or contact lens dispensing through a
 830-34 person registered under this chapter who is employed at the
 830-35 location at which the dispensing occurs;

830-36 (5) prevent or restrict an individual, firm, or
 830-37 corporation from employing a person as an assistant, trainee, or
 830-38 apprentice to:

830-39 (A) engage in spectacle or contact lens
 830-40 dispensing; or

830-41 (B) provide instruction in the care and handling
 830-42 of contact lenses;

830-43 (6) prohibit the Texas ~~[State Board of]~~ Medical Board
 830-44 ~~[Examiners]~~, the Texas Optometry Board, the attorney general, or
 830-45 another person authorized by law from bringing an appropriate
 830-46 action to enforce a state statute relating to the practice of
 830-47 medicine, therapeutic optometry, or optometry without a license; or

830-48 (7) require that a person be registered:

830-49 (A) under this chapter to sell or dispense
 830-50 contact lenses; or

830-51 (B) as a contact lens dispenser to work in a
 830-52 contact lens manufacturing facility that does not sell its finished
 830-53 product directly to the public.

830-54 SECTION 5.018. The heading to Subchapter B, Chapter 352,
 830-55 Occupations Code, is amended to read as follows:

830-56 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND
 830-57 ~~DEPARTMENT [AND BOARD]~~

830-58 SECTION 5.019. Section 352.053, Occupations Code, is
 830-59 amended to read as follows:

830-60 Sec. 352.053. RULEMAKING. (a) The executive commissioner
 830-61 ~~board~~ shall adopt procedural rules to implement the registration
 830-62 procedures under this chapter.

830-63 (b) The executive commissioner ~~[board]~~ may adopt
 830-64 substantive and procedural rules relating to:

830-65 (1) establishing minimum requirements for the
 830-66 registration of a dispensing optician;

830-67 (2) suspending, denying, or revoking a certificate of
 830-68 registration or placing a certificate holder on probation;

830-69 (3) prescribing fees under this chapter; and

(4) adopting forms required by this chapter.

(c) The executive commissioner [board] may not adopt substantive rules relating to this chapter other than substantive rules described by Subsection (b) of this section, Section 352.055, and Section 352.153.

SECTION 5.020. Section 352.054, Occupations Code, is amended to read as follows:

Sec. 352.054. FEES. (a) The executive commissioner [board] by rule shall prescribe fees in reasonable amounts sufficient to cover the costs of administering this chapter, including fees for:

(1) an initial application for a certificate of registration;

(2) issuance of a certificate of registration;

(3) issuance of a renewal certificate of registration;

and

(4) issuance of a duplicate certificate of registration or duplicate renewal certificate of registration.

(b) The executive commissioner shall set fees for issuing or renewing a certificate of registration in amounts designed to allow the department to recover from the certificate of registration holders all of the department's direct and indirect costs in administering and enforcing this chapter.

SECTION 5.021. Section 352.055, Occupations Code, is amended to read as follows:

Sec. 352.055. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The executive commissioner [board] may not adopt rules restricting advertising or competitive bidding by a registrant except to prohibit false, misleading, or deceptive practices.

(b) In the executive commissioner's [its] rules to prohibit false, misleading, or deceptive practices, the executive commissioner [board] may not include a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the use of a registrant's personal appearance or voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the registrant; or
- (4) restricts the registrant's advertisement under a trade name.

SECTION 5.022. Sections 352.102(a) and (b), Occupations Code, are amended to read as follows:

(a) The department shall issue a certificate of registration to an applicant who:

(1) applies and pays a registration fee;
(2) presents evidence satisfactory to the department
that the applicant has successfully completed the number of
classroom hours of training required by the executive commissioner
[board]; and

(3) passes the appropriate examination required under Section 352.103.

(b) The executive commissioner [board] may not require more than 30 classroom hours of training as a prerequisite to registration.

SECTION 5.023. Section 352.104(a), Occupations Code, is amended to read as follows:

(a) A person issued a certificate of registration shall publicly display the certificate in an appropriate manner specified by department [board] rule.

SECTION 5.024. Sections 352.151(a) and (b), Occupations Code, are amended to read as follows:

(b) The executive commissioner [~~department~~] shall adopt a system under which certificates of registration expire and are

SECTION 5.025. Sections 352.152(a) and (b), Occupations

are amended to read as follows:

832-1 submit an application for renewal in the manner prescribed by the
 832-2 executive commissioner [board].

832-3 (b) The application must be accompanied by evidence that the
 832-4 applicant has successfully completed the continuing education
 832-5 courses required by department [board] rule.

832-6 SECTION 5.026. Section 352.153, Occupations Code, is
 832-7 amended to read as follows:

832-8 Sec. 352.153. CONTINUING EDUCATION. (a) The executive
 832-9 commissioner [board] shall provide for the recognition,
 832-10 preparation, or administration of [recognize, prepare, or
 832-11 administer] continuing education programs for [~~its~~] registrants. A
 832-12 person registered under this chapter must participate in the
 832-13 programs to the extent required by the executive commissioner
 832-14 [~~board~~] to keep the person's certificate of registration.

832-15 (b) The executive commissioner [board] may not require more
 832-16 than 10 classroom hours of continuing education courses each year.

832-17 SECTION 5.027. Section 352.251, Occupations Code, is
 832-18 amended to read as follows:

832-19 Sec. 352.251. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.
 832-20 The department shall deny an application for a certificate of
 832-21 registration, suspend or revoke a certificate of registration, or
 832-22 reprimand a person who is registered under this chapter if the
 832-23 person:

832-24 (1) obtains a certificate of registration by means of
 832-25 fraud, misrepresentation, or concealment of a material fact;

832-26 (2) sells, barters, or offers to sell or barter a
 832-27 certificate of registration;

832-28 (3) violates a department rule [adopted by the board];

832-29 (4) violates Section 352.101; or

832-30 (5) practices medicine, therapeutic optometry, or
 832-31 optometry without a license.

832-32 SECTION 5.028. Section 352.2525, Occupations Code, is
 832-33 amended to read as follows:

832-34 Sec. 352.2525. PROBATION. The department [board] may place
 832-35 on probation a person whose certificate of registration is
 832-36 suspended. If the suspension is probated, the department [board]
 832-37 may require the person to:

832-38 (1) report regularly to the department on matters that
 832-39 are the basis of the probation;

832-40 (2) limit practice to the areas prescribed by the
 832-41 department [board]; or

832-42 (3) continue or review professional education until
 832-43 the person attains a degree of skill satisfactory to the department
 832-44 [~~board~~] in those areas that are the basis of the probation.

832-45 SECTION 5.029. Section 352.304(b), Occupations Code, is
 832-46 amended to read as follows:

832-47 (b) If the person accepts the department's determination,
 832-48 the department [commissioner of public health or the commissioner's
 832-49 designee] by order shall approve the determination and assess the
 832-50 proposed penalty.

832-51 SECTION 5.030. Section 352.305(b), Occupations Code, is
 832-52 amended to read as follows:

832-53 (b) The hearings examiner shall:
 832-54 (1) make findings of fact and conclusions of law; and
 832-55 (2) promptly issue to the department [commissioner of
 832-56 public health or the commissioner's designee] a proposal for
 832-57 decision as to the occurrence of the violation and the amount of any
 832-58 proposed administrative penalty.

832-59 SECTION 5.031. The heading to Section 352.306, Occupations
 832-60 Code, is amended to read as follows:

832-61 Sec. 352.306. DECISION BY DEPARTMENT [~~BOARD~~].

832-62 SECTION 5.032. Section 352.306(a), Occupations Code, is
 832-63 amended to read as follows:

832-64 (a) Based on the findings of fact, conclusions of law, and
 832-65 proposal for decision, the department [commissioner of public
 832-66 health or the commissioner's designee] by order may determine that:

832-67 (1) a violation occurred and assess an administrative
 832-68 penalty; or

832-69 (2) a violation did not occur.

833-1 SECTION 5.033. Section 352.310(c), Occupations Code, is
 833-2 amended to read as follows:

833-3 (c) The department may assess reasonable expenses and costs
 833-4 against a person in an administrative hearing if, as a result of the
 833-5 hearing, an administrative penalty is assessed against the person.
 833-6 The person shall pay expenses and costs assessed under this
 833-7 subsection not later than the 30th day after the date the order of
 833-8 the department [~~commissioner of public health or the commissioner's
 833-9 designee~~] requiring the payment of expenses and costs is final. The
 833-10 department may refer the matter to the attorney general for
 833-11 collection of expenses and costs.

833-12 SECTION 5.034. Section 352.351(a), Occupations Code, is
 833-13 amended to read as follows:

833-14 (a) The department [~~board~~], the attorney general, or the
 833-15 district or county attorney for the county in which an alleged
 833-16 violation of this chapter occurs shall, on receipt of a verified
 833-17 complaint, bring an appropriate administrative or judicial
 833-18 proceeding to enforce this chapter or a rule adopted under this
 833-19 chapter.

833-20 SECTION 5.035. Section 353.002, Occupations Code, is
 833-21 amended by amending Subdivisions (2) and (7) and adding Subdivision
 833-22 (3-a) to read as follows:

833-23 (2) "Department" means the Department of State Health
 833-24 Services [~~or the Health and Human Services Commission, as
 833-25 consistent with the respective duties of those agencies under the
 833-26 laws of this state~~].

833-27 (3-a) "Executive commissioner" means the executive
 833-28 commissioner of the Health and Human Services Commission.

833-29 (7) "Physician" means a person licensed to practice
 833-30 medicine by the Texas [~~State Board of~~] Medical Board [~~Examiners~~].

833-31 SECTION 5.036. Section 353.004, Occupations Code, is
 833-32 amended to read as follows:

833-33 Sec. 353.004. PUBLIC INFORMATION ON PRESCRIPTION RELEASE.
 833-34 (a) The department [~~board~~] and the Texas Optometry Board shall
 833-35 prepare and provide to the public and appropriate state agencies
 833-36 information regarding the release and verification of contact lens
 833-37 prescriptions.

833-38 (b) The executive commissioner [~~board~~] may adopt rules
 833-39 necessary to implement this section.

833-40 SECTION 5.037. Section 353.005, Occupations Code, is
 833-41 amended to read as follows:

833-42 Sec. 353.005. RULES. (a) The executive commissioner [~~of the
 833-43 Health and Human Services Commission~~] shall adopt rules,
 833-44 including rules that require a person dispensing contact lenses to
 833-45 maintain certain information when verifying a prescription under
 833-46 Section 353.1015, as necessary to:

833-47 (1) govern and implement verification procedures
 833-48 under Section 353.1015; and

833-49 (2) enter into interagency and other agreements to
 833-50 implement and enforce this chapter.

833-51 (b) The executive commissioner [~~of the Health and Human
 833-52 Services Commission~~] and the Texas Optometry Board shall each adopt
 833-53 rules relating to contact lens prescriptions and the dispensing of
 833-54 contact lenses, including rules that allow for interagency
 833-55 agreements, as necessary to implement and enforce this chapter.

833-56 (c) In implementing rules under Subsection (b), the
 833-57 executive commissioner [~~of the Health and Human Services
 833-58 Commission~~] and the Texas Optometry Board:

833-59 (1) shall cooperate with one another as necessary to
 833-60 adopt rules that are consistent with the rules adopted by the other
 833-61 agency; and

833-62 (2) may consult with the Texas [~~State Board of~~]
 833-63 Medical Board [~~Examiners~~] and the Texas State Board of Pharmacy.

833-64 SECTION 5.038. Section 353.053, Occupations Code, is
 833-65 amended to read as follows:

833-66 Sec. 353.053. REQUIREMENTS FOR PERMIT ISSUANCE. The
 833-67 department [~~board~~] shall issue a contact lens dispensing permit to
 833-68 an applicant who:

833-69 (1) agrees in writing to comply with state and federal

laws and regulations regarding selling, delivering, or dispensing contact lenses;

(2) has not had a contact lens dispensing permit revoked or canceled for cause during the two-year period preceding the application date;

(3) provides the department [board] with the trade name and address of each location where the applicant intends to conduct business;

(4) provides the department [board] with other information the department [board] reasonably requires; and

(5) pays the required permit fee.

SECTION 5.039. Section 353.054, Occupations Code, is amended to read as follows:

Sec. 353.054. TERM OF PERMIT. (a) A contact lens dispensing permit issued under this subchapter is valid for two years [one year].

(b) The department [board] may temporarily extend or shorten the term of a permit to provide for the staggered renewal of permits or for the [annual] renewal of all permits on the same date. The department [board] shall prorate the permit fee to accomplish that purpose.

SECTION 5.040. Section 353.055, Occupations Code, is amended to read as follows:

Sec. 353.055. PERMIT RENEWAL. (a) To renew a contact lens dispensing permit, a permit holder must apply in the manner prescribed by department [board] rule and pay the permit fee.

(b) The department [board] may not require an applicant for renewal of a permit to provide more information than is required for issuance of an original permit.

SECTION 5.041. Section 353.056, Occupations Code, is amended to read as follows:

Sec. 353.056. [ANNUAL] PERMIT FEE. (a) The executive commissioner by rule shall set fees for the issuance or renewal of permits under this chapter in amounts designed to allow the department to recover from permit holders all of the direct and indirect costs to the department in [board may adopt annual permit fees in amounts reflecting the cost of] administering and enforcing [the provisions of] this chapter [relating to regulating permit holders].

(b) The executive commissioner may set different fees [Until changed by the board, the annual permit fee] for a contact lens dispensing permit issued to [is]:

(1) [\$10 for] an optician who has registered with the department;

(2) [\$25 for] an optician who has not registered with the department; and

(3) [\$100 for] a business entity.

SECTION 5.042. Section 353.152, Occupations Code, is amended to read as follows:

Sec. 353.152. REQUIREMENTS FOR CONTACT LENS PRESCRIPTION.

(a) A contact lens prescription must contain, at a minimum:

(1) the patient's name;

(2) the date the prescription was issued;

(3) the manufacturer of the contact lens to be dispensed, if needed;

(4) the expiration date of the prescription;

(5) the signature of the physician, optometrist, or therapeutic optometrist or a verification of the prescription described by Section 353.1015;

(6) if the prescription is issued by an optometrist, specification information required by Texas Optometry Board rule; and

(7) if the prescription is issued by a physician, specification information required by Texas [State Board of] Medical Board [Examiners] rule.

(b) The Texas Optometry Board and the Texas [State Board of] Medical Board [Examiners] may adopt rules regarding the contents of a prescription for contact lenses.

SECTION 5.043. Section 353.202, Occupations Code, is

835-1 amended to read as follows:

835-2 Sec. 353.202. DISCIPLINARY ACTION. The department [~~board~~]
 835-3 may suspend or revoke a person's contact lens dispensing permit or
 835-4 place the permit holder on probation for a violation of this
 835-5 chapter.

835-6 SECTION 5.044. Sections 353.204(b) and (c), Occupations
 835-7 Code, are amended to read as follows:

835-8 (b) Except as otherwise provided by this section, the
 835-9 department [~~board~~] is responsible for enforcing this chapter.

835-10 (c) The Texas [~~State Board of~~] Medical Board [~~Examiners~~] is
 835-11 responsible for enforcing this chapter with regard to a violation
 835-12 of this chapter by a physician. A violation of this chapter by a
 835-13 physician is considered to be a violation of Subtitle B.

835-14 SECTION 5.045. Section 353.205, Occupations Code, is
 835-15 amended to read as follows:

835-16 Sec. 353.205. ADMINISTRATIVE PENALTY. The department
 835-17 [~~board~~] may impose an administrative penalty of not more than
 835-18 \$1,000 for a violation of this chapter.

835-19 SECTION 5.046. Section 401.204(a), Occupations Code, is
 835-20 amended to read as follows:

835-21 (a) The board by rule shall establish fees in amounts that
 835-22 are reasonable and necessary. The board shall set the fees for
 835-23 issuing or renewing a license in amounts designed to allow the
 835-24 department and the board to recover from the license holders all of
 835-25 the direct and indirect costs to the department and to the board in
 835-26 [so that the fees in the aggregate are sufficient to cover the costs
 835-27 of] administering and enforcing this chapter.

835-28 SECTION 5.047. Section 401.2535(a), Occupations Code, is
 835-29 amended to read as follows:

835-30 (a) In an investigation of a complaint filed with the board,
 835-31 the board may request that the department [~~commissioner of public~~
 835-32 ~~health or the commissioner's designee~~] approve the issuance of a
 835-33 subpoena. If the request is approved, the board may issue a
 835-34 subpoena to compel the attendance of a relevant witness or the
 835-35 production, for inspection or copying, of relevant evidence that is
 835-36 in this state.

835-37 SECTION 5.048. Section 401.351(a), Occupations Code, is
 835-38 amended to read as follows:

835-39 (a) A license issued under this chapter is valid for two
 835-40 years. The board by rule may adopt a system under which licenses
 835-41 expire on various dates during the year.

835-42 SECTION 5.049. Section 401.352(a), Occupations Code, is
 835-43 amended to read as follows:

835-44 (a) Each licensed speech-language pathologist or
 835-45 audiologist must [~~annually~~] pay the nonrefundable fee for license
 835-46 renewal. The board shall allow a 60-day grace period. After
 835-47 expiration of the grace period, the board may renew a license on
 835-48 payment of a penalty set by board rule.

835-49 SECTION 5.050. Section 401.553, Occupations Code, is
 835-50 amended to read as follows:

835-51 Sec. 401.553. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY.
 835-52 [~~a~~] If the department [~~commissioner of public health or the~~
 835-53 ~~commissioner's designee~~] determines that a violation occurred, the
 835-54 department [~~commissioner or the designee may issue to the board a~~
 835-55 ~~report stating:~~

835-56 [~~(1) the facts on which the determination is based,~~
 835-57 ~~and~~

835-58 [~~(2) the commissioner's or the designee's~~
 835-59 ~~recommendation on the imposition of an administrative penalty,~~
 835-60 ~~including a recommendation on the amount of the penalty.~~

835-61 [~~(b) Within 14 days after the date the report is issued, the~~
 835-62 ~~commissioner of public health or the commissioner's designee~~] shall
 835-63 give written notice of the violation [~~report~~] to the person. The
 835-64 notice must:

835-65 (1) include a brief summary of the alleged violation;
 835-66 (2) state the amount of the [~~recommended~~]
 835-67 administrative penalty recommended by the department; and
 835-68 (3) inform the person of the person's right to a
 835-69 hearing on the occurrence of the violation, the amount of the

836-1 penalty, or both.

836-2 SECTION 5.051. Section 401.554, Occupations Code, is
836-3 amended to read as follows:

836-4 Sec. 401.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
836-5 Within 10 days after the date the person receives the notice, the
836-6 person in writing may:

836-7 (1) accept the determination and recommended
836-8 administrative penalty of the department [~~commissioner of public~~
836-9 ~~health or the commissioner's designee~~]; or

836-10 (2) make a request for a hearing on the occurrence of
836-11 the violation, the amount of the penalty, or both.

836-12 (b) If the person accepts the determination and recommended
836-13 penalty of the department [~~commissioner of public health or the~~
836-14 ~~commissioner's designee~~], the board by order shall approve the
836-15 determination and impose the recommended penalty.

836-16 SECTION 5.052. Section 401.555(a), Occupations Code, is
836-17 amended to read as follows:

836-18 (a) If the person requests a hearing or fails to respond in a
836-19 timely manner to the notice, the department [~~commissioner of public~~
836-20 ~~health or the commissioner's designee~~] shall set a hearing and give
836-21 written notice of the hearing to the person.

836-22 SECTION 5.053. Sections 401.557(b) and (c), Occupations
836-23 Code, are amended to read as follows:

836-24 (b) Within the 30-day period prescribed by Subsection (a), a
836-25 person who files a petition for judicial review may:

836-26 (1) stay enforcement of the penalty by:
836-27 (A) paying the penalty to the court for placement
836-28 in an escrow account; or

836-29 (B) giving the court a supersedeas bond approved
836-30 by the court that:

836-31 (i) is for the amount of the penalty; and
836-32 (ii) is effective until all judicial review
836-33 of the board's order is final; or

836-34 (2) request the court to stay enforcement of the
836-35 penalty by:

836-36 (A) filing with the court a sworn affidavit of
836-37 the person stating that the person is financially unable to pay the
836-38 penalty and is financially unable to give the supersedeas bond; and

836-39 (B) giving a copy of the affidavit to the
836-40 department [~~commissioner of public health or the commissioner's~~
836-41 ~~designee~~] by certified mail.

836-42 (c) If the department [~~commissioner of public health or the~~
836-43 ~~commissioner's designee~~] receives a copy of an affidavit under
836-44 Subsection (b)(2), the department [~~commissioner or the designee~~]
836-45 may file with the court, within five days after the date the copy is
836-46 received, a contest to the affidavit.

836-47 SECTION 5.054. Section 402.001, Occupations Code, is
836-48 amended by adding Subdivision (3-a) to read as follows:

836-49 (3-a) "Executive commissioner" means the executive
836-50 commissioner of the Health and Human Services Commission.

836-51 SECTION 5.055. Section 402.051(a), Occupations Code, is
836-52 amended to read as follows:

836-53 (a) The State Committee of Examiners in the Fitting and
836-54 Dispensing of Hearing Instruments is part of the department and
836-55 consists of nine members appointed by the governor with the advice
836-56 and consent of the senate as follows:

836-57 (1) six members licensed under this chapter who have
836-58 been residents of this state actually engaged in fitting and
836-59 dispensing hearing instruments for at least five years preceding
836-60 appointment, not more than one of whom may be licensed under Chapter
836-61 401;

836-62 (2) one member who is actively practicing as a
836-63 physician licensed by the Texas [~~State Board of~~] Medical Board
836-64 [~~Examiners~~] and who:

836-65 (A) has been a resident of this state for at least
836-66 two years preceding appointment;

836-67 (B) is a citizen of the United States; and

836-68 (C) specializes in the practice of
836-69 otolaryngology; and

(3) two members of the public.

SECTION 5.056. Section 402.056(c), Occupations Code, is amended to read as follows:

(c) If the commissioner of state health services [~~the department~~] has knowledge that a potential ground for removal exists, the commissioner shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the commissioner shall notify the next highest ranking officer of the committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5.057. Section 402.102, Occupations Code, is amended to read as follows:

Sec. 402.102. RULES. (a) Subject to the approval of the executive commissioner [board], the committee may adopt procedural rules as necessary for the performance of the committee's duties.

(b) A license holder under this chapter is subject to the rules adopted by the committee and approved by the executive commissioner [board] under this chapter.

SECTION 5.058. Section 402.106(a), Occupations Code, is amended to read as follows:

(a) The committee by rule shall adopt fees in amounts that are reasonable and necessary. The committee shall set the fees for issuing or renewing a license in amounts designed to allow the department and the committee to recover from the license holders all of the direct and indirect costs to the department and to the committee in [so that the fees, in the aggregate, produce sufficient revenue to cover the costs of] administering and enforcing this chapter.

SECTION 5.059. Sections 402.154(a) and (h), Occupations Code, are amended to read as follows:

(a) In an investigation of a complaint filed with the committee, the committee may request that the department [commissioner of public health or the commissioner's designee] approve the issuance of a subpoena. If the request is approved, the committee may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(h) All information and materials subpoenaed or compiled by the committee in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the committee or its agents or employees who are involved in discipline of the holder of a license, except that this information may be disclosed to:

(1) persons involved with the committee in a disciplinary action against the holder of a license;

(2) professional licensing or disciplinary boards for the fitting and dispensing of hearing instruments in other jurisdictions;

(3) peer assistance programs approved by the executive commissioner [board] under Chapter 467, Health and Safety Code;

(4) law enforcement agencies; and
(5) persons engaged in bona fide research, if all

individual-identifying information has been deleted.

SECTION 5.060. Section 402.451(b), Occupations Code, is amended to read as follows:

(b) A license or permit holder may not:
(1) solicit a potential customer by telephone unless

license or permit holder clearly discloses

and business address and the purpose of the communication;

(2) use or purchase for use a list of names of potential customers compiled by telephone, by a person other than

potential customers compiled by telephone by a person other than the license or permit holder, the license or permit holder's authorized agent, or another license or permit holder; or

(3) perform any act that requires a license from the

838-1 Texas Optometry Board or the Texas [State Board of] Medical Board
 838-2 [Examiners].

838-3 SECTION 5.061. Section 402.452, Occupations Code, is
 838-4 amended to read as follows:

838-5 Sec. 402.452. INVESTIGATION BY DEPARTMENT [BOARD]. The
 838-6 [board, with the aid of the] department [T] shall investigate a
 838-7 person who violates this chapter.

838-8 SECTION 5.062. Section 402.453(a), Occupations Code, is
 838-9 amended to read as follows:

838-10 (a) A license holder may not treat the ear in any manner for
 838-11 any defect or administer any drug or physical treatment unless the
 838-12 license holder is a physician licensed to practice by the Texas
 838-13 [State Board of] Medical Board [Examiners].

838-14 SECTION 5.063. Section 402.501, Occupations Code, is
 838-15 amended to read as follows:

838-16 Sec. 402.501. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY
 838-17 ACTION. The committee may refuse to issue or renew a license,
 838-18 revoke or suspend a license or permit, place on probation a person
 838-19 whose license or permit has been suspended, or reprimand a license
 838-20 or permit holder who:

838-21 (1) makes a material misstatement in furnishing
 838-22 information to the committee or to another state or federal agency;
 838-23 (2) violates this chapter or a rule adopted under this
 838-24 chapter;

838-25 (3) is convicted of a felony or misdemeanor that
 838-26 includes dishonesty as an essential element or of a crime directly
 838-27 related to the practice of fitting and dispensing hearing
 838-28 instruments;

838-29 (4) makes a misrepresentation for the purpose of
 838-30 obtaining or renewing a license, including falsifying the
 838-31 educational requirements under this chapter;

838-32 (5) is professionally incompetent or engages in
 838-33 malpractice or dishonorable, unethical, or unprofessional conduct
 838-34 that is likely to deceive, defraud, or harm the public;

838-35 (6) aids or assists another person in violating this
 838-36 chapter or a rule adopted under this chapter;

838-37 (7) does not provide information in response to a
 838-38 written request made by the department [board] within 60 days;

838-39 (8) directly or indirectly knowingly employs, hires,
 838-40 procures, or induces a person not licensed under this chapter to fit
 838-41 and dispense hearing instruments unless the person is exempt under
 838-42 this chapter;

838-43 (9) aids a person not licensed under this chapter in
 838-44 the fitting or dispensing of hearing instruments unless the person
 838-45 is exempt under this chapter;

838-46 (10) is habitually intoxicated or addicted to a
 838-47 controlled substance;

838-48 (11) directly or indirectly gives to or receives from
 838-49 a person a fee, commission, rebate, or other form of compensation
 838-50 for a service not actually provided;

838-51 (12) violates a term of probation;

838-52 (13) wilfully makes or files a false record or report;

838-53 (14) has a physical illness that results in the
 838-54 inability to practice the profession with reasonable judgment,
 838-55 skill, or safety, including the deterioration or loss of motor
 838-56 skills through aging;

838-57 (15) solicits a service by advertising that is false
 838-58 or misleading;

838-59 (16) participates in subterfuge or misrepresentation
 838-60 in the fitting or dispensing of a hearing instrument;

838-61 (17) knowingly advertises for sale a model or type of
 838-62 hearing instrument that cannot be purchased;

838-63 (18) falsely represents that the service of a licensed
 838-64 physician or other health professional will be used or made
 838-65 available in the fitting, adjustment, maintenance, or repair of a
 838-66 hearing instrument;

838-67 (19) falsely uses the term "doctor," "audiologist,"
 838-68 "clinic," "clinical audiologist," "state licensed," "state
 838-69 certified," "licensed hearing instrument dispenser," "board

839-1 certified hearing instrument specialist," "hearing instrument
 839-2 specialist," or "certified hearing aid audiologist," or uses any
 839-3 other term, abbreviation, or symbol that falsely gives the
 839-4 impression that:

839-5 (A) a service is being provided by a person who is
 839-6 licensed or has been awarded a degree or title; or

839-7 (B) the person providing a service has been
 839-8 recommended by a government agency or health provider;

839-9 (20) advertises a manufacturer's product or uses a
 839-10 manufacturer's name or trademark in a way that implies a
 839-11 relationship between a license or permit holder and a manufacturer
 839-12 that does not exist;

839-13 (21) directly or indirectly gives or offers to give,
 839-14 or permits or causes to be given, money or another thing of value to
 839-15 a person who advises others in a professional capacity as an
 839-16 inducement to influence the person to influence the others to:

839-17 (A) purchase or contract to purchase products
 839-18 sold or offered for sale by the license or permit holder; or

839-19 (B) refrain from purchasing or contracting to
 839-20 purchase products sold or offered for sale by another license or
 839-21 permit holder under this chapter;

839-22 (22) with fraudulent intent fits and dispenses a
 839-23 hearing instrument under any name, including a false name or alias;

839-24 (23) does not adequately provide for the service or
 839-25 repair of a hearing instrument fitted and sold by the license
 839-26 holder; or

839-27 (24) violates a regulation of the federal Food and
 839-28 Drug Administration or the Federal Trade Commission relating to
 839-29 hearing instruments.

839-30 SECTION 5.064. Section 402.551(a), Occupations Code, is
 839-31 amended to read as follows:

839-32 (a) The committee, with the department's [board's]
 839-33 approval, may impose an administrative penalty on a person
 839-34 described in this chapter for a violation of this chapter or a rule
 839-35 adopted under this chapter.

839-36 SECTION 5.065. Subchapter B, Chapter 403, Occupations Code,
 839-37 is amended by adding Section 403.053 to read as follows:

839-38 Sec. 403.053. FEES. The executive commissioner shall set
 839-39 fees for the issuance or renewal of a license under this chapter in
 839-40 amounts designed to allow the department to recover from the
 839-41 license holders all of the direct and indirect costs to the
 839-42 department in administering and enforcing this chapter.

839-43 SECTION 5.066. Subchapter C, Chapter 403, Occupations Code,
 839-44 is amended by adding Section 403.1025 to read as follows:

839-45 Sec. 403.1025. TERM OF LICENSE. A license issued under this
 839-46 chapter is valid for two years.

839-47 SECTION 5.067. Section 403.107(a), Occupations Code, is
 839-48 amended to read as follows:

839-49 (a) To obtain a license, an applicant must:
 839-50 (1) pass a written examination approved by the
 839-51 department under Subsection (b); and
 839-52 (2) pay fees set by the executive commissioner by
 839-53 rule.

839-54 SECTION 5.068. Section 403.202, Occupations Code, is
 839-55 amended to read as follows:

839-56 Sec. 403.202. PROHIBITED ACTIONS. A license holder may
 839-57 not:

839-58 (1) obtain a license by means of fraud,
 839-59 misrepresentation, or concealment of a material fact;
 839-60 (2) sell, barter, or offer to sell or barter a license;
 839-61 or

839-62 (3) engage in unprofessional conduct that endangers or
 839-63 is likely to endanger the health, welfare, or safety of the public
 839-64 as defined by department [executive commissioner] rule.

839-65 SECTION 5.069. Section 403.205(b), Occupations Code, is
 839-66 amended to read as follows:

839-67 (b) The executive commissioner shall prescribe procedures
 839-68 for appealing to the department [commissioner] a decision to
 839-69 revoke, suspend, or refuse to renew a license.

840-1 SECTION 5.070. Section 403.251(a), Occupations Code, is
 840-2 amended to read as follows:

840-3 (a) A person who violates this chapter, a rule adopted by
 840-4 the executive commissioner under this chapter, or an order adopted
 840-5 by the department [commissioner] under this chapter is liable for a
 840-6 civil penalty not to exceed \$500 for each occurrence.

840-7 SECTION 5.071. Section 403.252(a), Occupations Code, is
 840-8 amended to read as follows:

840-9 (a) If it appears to the department [commissioner] that a
 840-10 person who is not licensed under this chapter is violating this
 840-11 chapter or a rule adopted under this chapter, the department
 840-12 [commissioner] after notice and an opportunity for a hearing may
 840-13 issue a cease and desist order prohibiting the person from engaging
 840-14 in the activity.

840-15 SECTION 5.072. Sections 451.001(5) and (6), Occupations
 840-16 Code, are amended to read as follows:

840-17 (5) "Commissioner" means the commissioner of state
 840-18 [public] health services.

840-19 (6) "Department" means the [~~Texas~~] Department of State
 840-20 Health Services.

840-21 SECTION 5.073. Section 451.002, Occupations Code, is
 840-22 amended to read as follows:

840-23 Sec. 451.002. INTERPRETATION; PRACTICE OF MEDICINE. This
 840-24 chapter does not authorize the practice of medicine by a person not
 840-25 licensed by the Texas Medical [~~State~~] Board [~~of Medical Examiners~~].

840-26 SECTION 5.074. Section 451.003, Occupations Code, is
 840-27 amended to read as follows:

840-28 Sec. 451.003. APPLICABILITY. This chapter does not apply
 840-29 to:

840-30 (1) a physician licensed by the Texas Medical [~~State~~]
 840-31 Board [~~of Medical Examiners~~];

840-32 (2) a dentist, licensed under the laws of this state,
 840-33 engaged in the practice of dentistry;

840-34 (3) a licensed optometrist or therapeutic optometrist
 840-35 engaged in the practice of optometry or therapeutic optometry as
 840-36 defined by statute;

840-37 (4) an occupational therapist engaged in the practice
 840-38 of occupational therapy;

840-39 (5) a nurse engaged in the practice of nursing;

840-40 (6) a licensed podiatrist engaged in the practice of
 840-41 podiatry as defined by statute;

840-42 (7) a physical therapist engaged in the practice of
 840-43 physical therapy;

840-44 (8) a registered massage therapist engaged in the
 840-45 practice of massage therapy;

840-46 (9) a commissioned or contract physician, physical
 840-47 therapist, or physical therapist assistant in the United States
 840-48 Army, Navy, Air Force, or Public Health Service; or

840-49 (10) an athletic trainer who does not live in this
 840-50 state, who is licensed, registered, or certified by an authority
 840-51 recognized by the board, and who provides athletic training in this
 840-52 state for a period determined by the board.

840-53 SECTION 5.075. Section 451.106, Occupations Code, is
 840-54 amended to read as follows:

840-55 Sec. 451.106. FEES. After consultation with the
 840-56 [~~commissioner of public health or the~~] department, the board by
 840-57 rule shall set fees under this chapter in amounts reasonable and
 840-58 necessary to cover the cost of administering this chapter. The fees
 840-59 for issuing or renewing a license must be in amounts designed to
 840-60 allow the department and the board to recover from the license
 840-61 holders all of the direct and indirect costs to the department and
 840-62 to the board in administering and enforcing this chapter.

840-63 SECTION 5.076. Section 451.201(a), Occupations Code, is
 840-64 amended to read as follows:

840-65 (a) A license issued under Section 451.156 expires on the
 840-66 second [~~first~~] anniversary of the date of issuance.

840-67 SECTION 5.077. Section 455.057, Occupations Code, is
 840-68 amended to read as follows:

840-69 Sec. 455.057. CONTINUING EDUCATION. The executive

841-1 commissioner shall provide for the recognition, preparation, or
 841-2 administration of [recognize, prepare, or administer] continuing
 841-3 education programs for persons licensed under this chapter. A
 841-4 licensed person must participate in the programs to the extent
 841-5 required by the executive commissioner to keep the person's
 841-6 license.

841-7 SECTION 5.078. Subchapter B, Chapter 455, Occupations Code,
 841-8 is amended by adding Section 455.058 to read as follows:

841-9 Sec. 455.058. FEES. The executive commissioner shall set
 841-10 fees for the issuance or renewal of a license under this chapter in
 841-11 amounts designed to allow the department to recover from the
 841-12 license holders all of the direct and indirect costs to the
 841-13 department in administering and enforcing this chapter.

841-14 SECTION 5.079. Section 455.103(b), Occupations Code, is
 841-15 amended to read as follows:

841-16 (b) A memorandum must:
 841-17 (1) be adopted by the executive commissioner by rule;
 841-18 and

841-19 (2) limit the total amount of the fees charged by the
 841-20 department and the Texas Education Agency for licensing a massage
 841-21 school to an amount equal to the amount of the fees the department
 841-22 would charge for licensing the massage school in the absence of the
 841-23 memorandum.

841-24 SECTION 5.080. Section 455.151(d), Occupations Code, is
 841-25 amended to read as follows:

841-26 (d) The department may issue one or more types of licenses
 841-27 not otherwise provided for by this chapter that authorize the
 841-28 license holder to perform a service described by Subsection (c).
 841-29 The executive commissioner [department] may adopt rules governing a
 841-30 license issued under this subsection.

841-31 SECTION 5.081. Section 455.153, Occupations Code, is
 841-32 amended to read as follows:

841-33 Sec. 455.153. APPLICATION FOR LICENSE. An applicant for a
 841-34 license under this chapter must:

841-35 (1) submit an application on a form provided by the
 841-36 department; and

841-37 (2) include with the application the application fee
 841-38 set by the executive commissioner by rule [department].

841-39 SECTION 5.082. Section 455.1572(e), Occupations Code, is
 841-40 amended to read as follows:

841-41 (e) The executive commissioner by rule [department] may
 841-42 establish a fee for a provisional license [in an amount reasonable
 841-43 and necessary to cover the cost of issuing the license].

841-44 SECTION 5.083. Section 455.158, Occupations Code, is
 841-45 amended to read as follows:

841-46 Sec. 455.158. STUDENT EXEMPTION FROM LICENSING
 841-47 REQUIREMENTS. A student who provides massage therapy as part of an
 841-48 internship program or without compensation is exempt from licensing
 841-49 under this chapter if the student is enrolled in a state-approved
 841-50 course of instruction that consists of at least 500 [300] hours.

841-51 SECTION 5.084. Sections 455.160(a) and (b), Occupations
 841-52 Code, are amended to read as follows:

841-53 (a) A license issued under this chapter is valid for two
 841-54 years [A person licensed under this chapter must periodically renew
 841-55 the person's license]. The license expires unless the license
 841-56 holder submits an application for renewal accompanied by the
 841-57 renewal fee prescribed by the executive commissioner by rule
 841-58 [department] or by the late fee prescribed by this section.

841-59 (b) The executive commissioner [department] shall adopt a
 841-60 system under which licenses expire on various dates during the
 841-61 year. Fees must be prorated so that a licensed person pays only for
 841-62 that part of the renewal period for which the license is issued
 841-63 until the expiration date of the license.

841-64 SECTION 5.085. Sections 455.203(a) and (b), Occupations
 841-65 Code, are amended to read as follows:

841-66 (a) A massage school must meet the minimum standards of
 841-67 operation established by department [executive commissioner] rule.

841-68 (b) An instructor must meet the minimum requirements
 841-69 established by department [executive commissioner] rule.

842-1 SECTION 5.086. Section 455.251(a), Occupations Code, is
 842-2 amended to read as follows:

842-3 (a) The department may refuse to issue a license to a person
 842-4 and shall suspend, revoke, or refuse to renew the license of a
 842-5 person or shall reprimand a person licensed under this chapter if
 842-6 the person:

842-7 (1) obtains a license by fraud, misrepresentation, or
 842-8 concealment of material facts;

842-9 (2) sells, barters, or offers to sell or barter a
 842-10 license;

842-11 (3) violates a rule adopted by the executive
 842-12 commissioner under this chapter;

842-13 (4) engages in unprofessional conduct as defined by
 842-14 department [executive commissioner] rule that endangers or is
 842-15 likely to endanger the health, welfare, or safety of the public;

842-16 (5) violates an order or ordinance adopted by a
 842-17 political subdivision under Chapter 243, Local Government Code; or

842-18 (6) violates this chapter.

842-19 SECTION 5.087. Section 455.304(b), Occupations Code, is
 842-20 amended to read as follows:

842-21 (b) If the person accepts the department's determination,
 842-22 the department [executive commissioner or the commissioner's
 842-23 designee] by order shall approve the determination and require the
 842-24 person to pay the recommended penalty.

842-25 SECTION 5.088. Section 455.305(b), Occupations Code, is
 842-26 amended to read as follows:

842-27 (b) The hearings examiner shall:

842-28 (1) make findings of fact and conclusions of law; and

842-29 (2) promptly issue to the department [executive
 842-30 commissioner or the commissioner's designee] a proposal for
 842-31 decision as to the occurrence of the violation, and, if the examiner
 842-32 determines a penalty is warranted, the amount of the proposed
 842-33 administrative penalty.

842-34 SECTION 5.089. The heading to Section 455.306, Occupations
 842-35 Code, is amended to read as follows:

842-36 Sec. 455.306. DECISION BY DEPARTMENT [~~EXECUTIVE
 842-37 COMMISSIONER~~].

842-38 SECTION 5.090. Section 455.306(a), Occupations Code, is
 842-39 amended to read as follows:

842-40 (a) Based on the findings of fact, conclusions of law, and
 842-41 recommendations of the hearings examiner, the department
 842-42 [executive commissioner or the commissioner's designee] by order
 842-43 may determine that:

842-44 (1) a violation occurred and may impose an
 842-45 administrative penalty; or

842-46 (2) a violation did not occur.

842-47 SECTION 5.091. Section 455.310(b), Occupations Code, is
 842-48 amended to read as follows:

842-49 (b) The department may assess reasonable expenses and costs
 842-50 against a person in an administrative hearing if, as a result of the
 842-51 hearing, an administrative penalty is assessed against the person.
 842-52 The person shall pay expenses and costs assessed under this
 842-53 subsection not later than the 30th day after the date the order of
 842-54 the department [executive commissioner or the commissioner's
 842-55 designee] requiring the payment of expenses and costs is final. The
 842-56 department may refer the matter to the attorney general for
 842-57 collection of expenses and costs.

842-58 SECTION 5.092. Section 502.153(a), Occupations Code, is
 842-59 amended to read as follows:

842-60 (a) The board by rule shall set fees in amounts reasonable
 842-61 and necessary to cover the costs of administering this chapter. The
 842-62 board shall set fees for the issuance or renewal of a license under
 842-63 this chapter in amounts designed to allow the department and the
 842-64 board to recover from the license holders all of the direct and
 842-65 indirect costs to the department and to the board in administering
 842-66 and enforcing this chapter.

842-67 SECTION 5.093. Section 502.2045(a), Occupations Code, is
 842-68 amended to read as follows:

842-69 (a) In an investigation of a complaint filed with the board,

843-1 the board may request that the department [commissioner or the
 843-2 commissioner's designee] approve the issuance of a subpoena. If
 843-3 the request is approved, the board may issue a subpoena to compel
 843-4 the attendance of a relevant witness or the production, for
 843-5 inspection or copying, of relevant evidence that is in this state.

843-6 SECTION 5.094. Section 502.254(b), Occupations Code, is
 843-7 amended to read as follows:

843-8 (b) An applicant for a license as a licensed marriage and
 843-9 family therapist associate under Section 502.252(b) must:

843-10 (1) file an application on a form prescribed by the board
 843-11 not later than the 90th day before the date of the examination; and

843-13 (2) pay the examination fee set by the executive
 843-14 commissioner of the Health and Human Services Commission by rule
 843-15 [~~Texas Board of Health~~].

843-16 SECTION 5.095. Section 502.260(c), Occupations Code, is
 843-17 amended to read as follows:

843-18 (c) A license holder whose license is on inactive status:

843-19 (1) is not required to pay a [~~an annual~~] renewal fee;
 843-20 and

843-21 (2) may not perform an activity regulated under this
 843-22 chapter.

843-23 SECTION 5.096. Section 502.401, Occupations Code, is
 843-24 amended to read as follows:

843-25 Sec. 502.401. IMPOSITION OF PENALTY. The board
 843-26 [~~commissioner~~] may impose an administrative penalty on a person
 843-27 licensed or regulated under this chapter who violates this chapter
 843-28 or a rule or order adopted under this chapter.

843-29 SECTION 5.097. Section 502.403, Occupations Code, is
 843-30 amended to read as follows:

843-31 Sec. 502.403. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY.
 843-32 [~~(a)~~] If the department [~~commissioner~~] determines that a violation
 843-33 has occurred, the department [~~commissioner~~] may issue to the board a
 843-34 report stating:

843-35 [~~(1) the facts on which the determination is based,~~
 843-36 and

843-37 [~~(2) the commissioner's recommendation on the~~
 843-38 ~~imposition of the administrative penalty, including a~~
 843-39 ~~recommendation on the amount of the penalty.~~

843-40 [~~(b) Not later than the 14th day after the date the report is~~
 843-41 ~~issued, the commissioner~~] shall give written notice of the
 843-42 ~~violation~~ [~~report~~] to the person on whom the penalty may be imposed.
 843-43 The notice may be given by certified mail. The notice must:

843-44 (1) include a brief summary of the alleged violation;
 843-45 (2) state the amount of the administrative

843-46 [~~recommended~~] penalty recommended by the department; and
 843-47 (3) inform the person of the person's right to a
 843-48 hearing on the occurrence of the violation, the amount of the
 843-49 penalty, or both.

843-50 SECTION 5.098. Section 502.404, Occupations Code, is
 843-51 amended to read as follows:

843-52 Sec. 502.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
 843-53 Not later than the 20th day after the date the person receives the
 843-54 notice under Section 502.403, the person, in writing, may:

843-55 (1) accept the department's [~~commissioner's~~]
 843-56 determination and recommended administrative penalty; or

843-57 (2) request a hearing on the occurrence of the
 843-58 violation, the amount of the penalty, or both.

843-59 (b) If the person accepts the department's [~~commissioner's~~]
 843-60 determination and recommended administrative penalty, the board by
 843-61 order shall approve the determination and impose the recommended
 843-62 penalty.

843-63 SECTION 5.099. Sections 502.407(b) and (c), Occupations
 843-64 Code, are amended to read as follows:

843-65 (b) Within the 30-day period, a person who acts under
 843-66 Subsection (a)(3) may:

843-67 (1) stay enforcement of the penalty by:
 843-68 (A) paying the penalty to the court for placement
 843-69 in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department [commissioner] by certified mail.

(c) If the department [commissioner] receives a copy of an affidavit under Subsection (b)(2), the department [commissioner] may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

SECTION 5.100. Section 502.408, Occupations Code, is amended to read as follows:

Sec. 502.408. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the department [commissioner] may refer the matter to the attorney general for collection.

SECTION 5.101. Section 503.151, Occupations Code, is amended to read as follows:

Sec. 503.151. EXECUTIVE DIRECTOR. The commissioner of state [public] health services, with the advice and consent of the board, shall appoint an executive director for the board. The executive director must be an employee of the department.

SECTION 5.102. Section 503.202(a), Occupations Code, is amended to read as follows:

(a) The board by rule shall establish fees for the board's services in amounts reasonable and necessary to cover the costs of administering this chapter without accumulating an unnecessary surplus. The board shall set fees for the issuance or renewal of a license under this chapter in amounts designed to allow the department and the board to recover from the license holders all of the direct and indirect costs to the department and to the board in administering and enforcing this chapter.

SECTION 5.103. Section 503.2545(a), Occupations Code, is amended to read as follows:

(a) In an investigation of a complaint filed with the board, the board may request that the department [~~commissioner of public health or the commissioner's designee~~] approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

SECTION 5.104. Section 503.503, Occupations Code, is amended to read as follows:

Sec. 503.503. [REDACTED] NOTICE OF VIOLATION AND PENALTY.
[(a)] If the department [commissioner of public health or the commissioner's designee] determines that a violation occurred, the department [commissioner or the designee may issue to the board a report stating]

[(1) the facts on which the determination is based;

[(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.]

[(b) Within 14 days after the date the report is issued, the commissioner of public health or the commissioner's designee] shall give written notice of the violation [~~report~~] to the person. The notice must:

(1) include a brief summary of the alleged violation;
(2) state the amount of the [recommended] administrative penalty recommended by the department; and
(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

SECTION 5.105. Section 503.504, Occupations Code, is

845-1 amended to read as follows:

845-2 Sec. 503.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
 845-3 Within 10 days after the date the person receives the notice, the
 845-4 person in writing may:

845-5 (1) accept the determination and recommended
 845-6 administrative penalty of the department [~~commissioner of public~~
 845-7 ~~health or the commissioner's designee~~]; or

845-8 (2) make a request for a hearing on the occurrence of
 845-9 the violation, the amount of the penalty, or both.

845-10 (b) If the person accepts the determination and recommended
 845-11 penalty of the department [~~commissioner of public health or the~~
 845-12 ~~commissioner's designee~~], the board by order shall approve the
 845-13 determination and impose the recommended penalty.

845-14 SECTION 5.106. Section 503.505(a), Occupations Code, is
 845-15 amended to read as follows:

845-16 (a) If the person requests a hearing or fails to respond in a
 845-17 timely manner to the notice, the department [~~commissioner of public~~
 845-18 ~~health or the commissioner's designee~~] shall set a hearing and give
 845-19 written notice of the hearing to the person.

845-20 SECTION 5.107. Sections 503.507(b) and (c), Occupations
 845-21 Code, are amended to read as follows:

845-22 (b) Within the 30-day period prescribed by Subsection (a), a
 845-23 person who files a petition for judicial review may:

845-24 (1) stay enforcement of the penalty by:
 845-25 (A) paying the penalty to the court for placement
 845-26 in an escrow account; or

845-27 (B) giving the court a supersedeas bond approved
 845-28 by the court that:

845-29 (i) is for the amount of the penalty; and
 845-30 (ii) is effective until all judicial review

845-31 of the board's order is final; or

845-32 (2) request the court to stay enforcement of the
 845-33 penalty by:

845-34 (A) filing with the court a sworn affidavit of
 845-35 the person stating that the person is financially unable to pay the
 845-36 penalty and is financially unable to give the supersedeas bond; and
 845-37 (B) giving a copy of the affidavit to the
 845-38 department [~~commissioner of public health or the commissioner's~~
 845-39 ~~designee~~] by certified mail.

845-40 (c) If the department [~~commissioner of public health or the~~
 845-41 ~~commissioner's designee~~] receives a copy of an affidavit under
 845-42 Subsection (b)(2), the department [~~commissioner or the designee~~]
 845-43 may file with the court, within five days after the date the copy is
 845-44 received, a contest to the affidavit.

845-45 SECTION 5.108. Section 504.053(a), Occupations Code, is
 845-46 amended to read as follows:

845-47 (a) The executive commissioner by rule shall set
 845-48 application, examination, license renewal, and other fees in
 845-49 amounts sufficient to cover the costs of administering this
 845-50 chapter. The fees for the issuance or renewal of a license under
 845-51 this chapter shall be set in amounts designed to allow the
 845-52 department to recover from the license holders all of the direct and
 845-53 indirect costs to the department in administering and enforcing
 845-54 this chapter. [The amount of the license renewal fee may not exceed
 845-55 \$200.]

845-56 SECTION 5.109. Section 504.055(d), Occupations Code, is
 845-57 amended to read as follows:

845-58 (d) The department may charge a fee in an amount set by the
 845-59 executive commissioner by rule for the roster published under this
 845-60 section.

845-61 SECTION 5.110. Section 504.1521(b), Occupations Code, is
 845-62 amended to read as follows:

845-63 (b) The executive commissioner shall adopt rules necessary
 845-64 to:

845-65 (1) register clinical training institutions that meet
 845-66 the criteria established by the executive commissioner [~~-~~
 845-67 ~~commissioner, or department~~] to protect the safety and welfare of
 845-68 the people of this state; and

845-69 (2) certify clinical supervisors who hold

846-1 certification credentials approved by the department or by a person
 846-2 designated by the department, such as the International
 846-3 Certification and Reciprocity Consortium or another person that
 846-4 meets the criteria established by the executive commissioner [~~or
commissioner, or department~~] to protect the safety and welfare of
 846-5 the people of this state.
 846-6

846-7 SECTION 5.111. Section 504.1525(a), Occupations Code, is
 846-8 amended to read as follows:

846-9 (a) Except as provided by Subsection (b), the department may
 846-10 not issue a license, registration, or certification under this
 846-11 chapter to an applicant who has been:

846-12 (1) convicted or placed on community supervision
 846-13 during the three years preceding the date of application in any
 846-14 jurisdiction for an offense equal to a Class B misdemeanor
 846-15 specified by department [~~executive commissioner~~] rule;

846-16 (2) convicted or placed on community supervision in
 846-17 any jurisdiction for an offense equal to or greater than a Class A
 846-18 misdemeanor specified by department [~~executive commissioner~~] rule;
 846-19 or

846-20 (3) found to be incapacitated by a court on the basis
 846-21 of a mental defect or disease.

846-22 SECTION 5.112. Section 504.158(c), Occupations Code, is
 846-23 amended to read as follows:

846-24 (c) The executive commissioner by rule [~~department~~] may
 846-25 establish a fee for a provisional license [~~in an amount reasonable
and necessary to cover the cost of issuing the license~~].

846-27 SECTION 5.113. Section 504.161(b), Occupations Code, is
 846-28 amended to read as follows:

846-29 (b) The department may charge a person on whom criminal
 846-30 history record information is sought a fee in an amount set by the
 846-31 executive commissioner by rule [~~department~~] as reasonably
 846-32 necessary to cover the costs of administering this section. A fee
 846-33 collected under this subsection may be appropriated only to the
 846-34 department to administer this section.

846-35 SECTION 5.114. Section 504.255(a), Occupations Code, is
 846-36 amended to read as follows:

846-37 (a) A person whose license, registration, or certification
 846-38 application is denied under Section 504.1525, whose license,
 846-39 registration, or certification renewal is refused under Section
 846-40 504.2025, or whose license, registration, or certification is
 846-41 suspended under Section 504.2525 may appeal the denial, refusal to
 846-42 renew, or suspension on the grounds that:

846-43 (1) the sole basis for the department's determination
 846-44 is a conviction or placement on community supervision for an
 846-45 offense described by Section 504.1525; and

846-46 (2) sufficient time, as determined by department
 846-47 [~~executive commissioner~~] rule, has expired since the date of the
 846-48 conviction or placement.

846-49 SECTION 5.115. Section 504.304(b), Occupations Code, is
 846-50 amended to read as follows:

846-51 (b) If the person accepts the department's determination,
 846-52 the department [~~commissioner or the commissioner's designee~~] by
 846-53 order shall approve the determination and assess the proposed
 846-54 penalty.

846-55 SECTION 5.116. Section 504.305(c), Occupations Code, is
 846-56 amended to read as follows:

846-57 (c) The hearings examiner shall:
 846-58 (1) make findings of fact and conclusions of law; and
 846-59 (2) promptly issue to the department [~~commissioner or
the commissioner's designee~~] a proposal for decision as to the
 846-61 occurrence of the violation and the amount of any proposed
 846-62 administrative penalty.

846-63 SECTION 5.117. Section 504.306(a), Occupations Code, is
 846-64 amended to read as follows:

846-65 (a) Based on the findings of fact, conclusions of law, and
 846-66 recommendations of the hearings examiner, the department
 846-67 [~~commissioner or the commissioner's designee~~] by order may
 846-68 determine that:

846-69 (1) a violation occurred and assess an administrative

847-1 penalty; or

847-2 (2) a violation did not occur.

847-3 SECTION 5.118. Section 504.310(c), Occupations Code, is
847-4 amended to read as follows:

847-5 (c) The department may assess reasonable expenses and costs
847-6 against a person in an administrative hearing if, as a result of the
847-7 hearing, an administrative penalty is assessed against the person.
847-8 The person shall pay expenses and costs assessed under this
847-9 subsection not later than the 30th day after the date the order of
847-10 the department [commissioner or the commissioner's designee]
847-11 requiring the payment of expenses and costs is final. The
847-12 department may refer the matter to the attorney general for
847-13 collection of expenses and costs.

847-14 SECTION 5.119. Section 505.201(b), Occupations Code, is
847-15 amended to read as follows:

847-16 (b) In adopting rules under this section, the board shall
847-17 consider the rules and procedures of the [Texas Board of Health and
847-18 the] department. The board shall adopt procedural rules, which may
847-19 not be inconsistent with similar rules and procedures of the [Texas
847-20 Board of Health or the] department.

847-21 SECTION 5.120. Sections 505.203(a) and (c), Occupations
847-22 Code, are amended to read as follows:

847-23 (a) The board by rule shall set fees in amounts reasonable
847-24 and necessary to cover the costs of administering this chapter. The
847-25 board shall set fees for the issuance or renewal of a license under
847-26 this chapter in amounts designed to allow the department and the
847-27 board to recover from the license holders all of the direct and
847-28 indirect costs to the department and to the board in administering
847-29 and enforcing this chapter.

847-30 (c) The [Unless the board determines that the fees would not
847-31 cover the costs associated with administering the renewal of
847-32 licenses and orders of recognition of specialty under this chapter,

847-33 the] board shall set:

847-34 (1) the renewal fee for a license or order of
847-35 recognition of specialty expired for 90 days or less in an amount
847-36 that is 1-1/4 times the amount of the renewal fee for an unexpired
847-37 license or order; and

847-38 (2) the renewal fee for a license or order of
847-39 recognition of specialty expired for more than 90 days but less than
847-40 one year in an amount that is 1-1/2 times the amount of the renewal
847-41 fee for an unexpired license or order.

847-42 SECTION 5.121. Section 505.2545(a), Occupations Code, is
847-43 amended to read as follows:

847-44 (a) In an investigation of a complaint filed with the
847-45 department and referred to the board, the board may request that the
847-46 department [commissioner or the commissioner's designee] approve
847-47 the issuance of a subpoena. If the request is approved, the board
847-48 may issue a subpoena to compel the attendance of a relevant witness
847-49 or the production, for inspection or copying, of relevant evidence
847-50 that is in this state.

847-51 SECTION 5.122. Section 505.401, Occupations Code, is
847-52 amended to read as follows:

847-53 Sec. 505.401. TERM OF LICENSE; STAGGERED EXPIRATION DATES.
847-54 (a) A license issued under this chapter is valid for two years.

847-55 (a-1) The board by rule shall adopt a system under which
847-56 licenses and orders of recognition of specialty expire on various
847-57 dates during the year.

847-58 (b) In the year in which the expiration date of an order of
847-59 recognition of specialty is changed, the total renewal fee is
847-60 payable.

847-61 SECTION 5.123. Section 505.553, Occupations Code, is
847-62 amended to read as follows:

847-63 Sec. 505.553. [REPORT AND] NOTICE OF VIOLATION AND PENALTY.
847-64 [(a)] If the department [executive director] determines that a
847-65 violation occurred, the department [director may issue to the board

847-66 a report stating:

847-67 [(1) the facts on which the determination is based;
847-68 and
847-69 [(2) the director's recommendation on the imposition

848-1 ~~of an administrative penalty, including a recommendation on the~~
 848-2 ~~amount of the penalty.~~

848-3 ~~[b] Within 14 days after the date the report is issued, the~~
 848-4 ~~executive director]~~ shall give written notice of the violation
 848-5 ~~[report]~~ to the person. The notice must:

848-6 (1) include a brief summary of the alleged violation;
 848-7 (2) state the amount of the ~~[recommended]~~
 848-8 administrative penalty recommended by the department; and
 848-9 (3) inform the person of the person's right to a
 848-10 hearing on the occurrence of the violation, the amount of the
 848-11 penalty, or both.

848-12 SECTION 5.124. Section 505.554, Occupations Code, is
 848-13 amended to read as follows:

848-14 Sec. 505.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
 848-15 Within 10 days after the date the person receives the notice, the
 848-16 person in writing may:

848-17 (1) accept the determination and recommended
 848-18 administrative penalty of the department ~~[executive director]~~; or
 848-19 (2) make a request for a hearing on the occurrence of
 848-20 the violation, the amount of the penalty, or both.

848-21 (b) If the person accepts the determination and recommended
 848-22 penalty of the department ~~[executive director]~~, the board by order
 848-23 shall approve the determination and impose the recommended penalty.

848-24 SECTION 5.125. Section 505.555(a), Occupations Code, is
 848-25 amended to read as follows:

848-26 (a) If the person requests a hearing or fails to respond in a
 848-27 timely manner to the notice, the department ~~[executive director]~~
 848-28 shall set a hearing and give written notice of the hearing to the
 848-29 person.

848-30 SECTION 5.126. Sections 505.557(b) and (c), Occupations
 848-31 Code, are amended to read as follows:

848-32 (b) Within the 30-day period prescribed by Subsection (a), a
 848-33 person who files a petition for judicial review may:

848-34 (1) stay enforcement of the penalty by:
 848-35 (A) paying the penalty to the court for placement
 848-36 in an escrow account; or
 848-37 (B) giving the court a supersedeas bond approved
 848-38 by the court that:
 848-39 (i) is for the amount of the penalty; and
 848-40 (ii) is effective until all judicial review

848-41 of the board's order is final; or
 848-42 (2) request the court to stay enforcement of the
 848-43 penalty by:

848-44 (A) filing with the court a sworn affidavit of
 848-45 the person stating that the person is financially unable to pay the
 848-46 penalty and is financially unable to give the supersedeas bond; and
 848-47 (B) giving a copy of the affidavit to the
 848-48 department ~~[executive director]~~ by certified mail.

848-49 (c) If the department ~~[executive director]~~ receives a copy
 848-50 of an affidavit under Subsection (b)(2), the department ~~[director]~~
 848-51 may file with the court, within five days after the date the copy is
 848-52 received, a contest to the affidavit.

848-53 SECTION 5.127. Section 601.002, Occupations Code, is
 848-54 amended to read as follows:

848-55 Sec. 601.002. DEFINITIONS. In this chapter:

848-56 (1) "Authorized person" means a person who meets or
 848-57 exceeds the minimum educational standards of the department ~~[board]~~
 848-58 under Section 601.201.

848-59 (2) ~~"Board"~~ means the Texas Board of Health.
 848-60 ~~(3)~~ "Department" means the ~~Texas~~ Department of
 848-61 State Health Services.

848-62 ~~(3) [4]~~ "Direct supervision" means supervision and
 848-63 control by a medical radiologic technologist or a practitioner who:
 848-64 (A) assumes legal liability for a student
 848-65 employed to perform a radiologic procedure and enrolled in a
 848-66 program that meets the requirements adopted under Section 601.053;
 848-67 and

848-68 (B) is physically present during the performance
 848-69 of the radiologic procedure to provide consultation or direct the

849-1 action of the student.

849-2 (4) [45] "Education program" means clinical training
849-3 or any other program offered by an organization approved by the
849-4 department [board] that:

849-5 (A) has a specified objective;
849-6 (B) includes planned activities for
849-7 participants; and
849-8 (C) uses an approved method for measuring the
849-9 progress of participants.

849-10 (5) "Executive commissioner" means the executive
849-11 commissioner of the Health and Human Services Commission.

849-12 (6) "Medical radiologic technologist" means a person
849-13 certified under this chapter who, under the direction of a
849-14 practitioner, intentionally administers radiation to another for a
849-15 medical purpose. The term does not include a practitioner.

849-16 (7) "Practitioner" means a person who:
849-17 (A) is licensed in this state as a doctor of:
849-18 (i) medicine;
849-19 (ii) osteopathy;
849-20 (iii) podiatry;
849-21 (iv) dentistry; or
849-22 (v) chiropractic; and
849-23 (B) prescribes radiologic procedures for other
849-24 persons.

849-25 (8) "Radiation" means ionizing radiation:
849-26 (A) in amounts beyond normal background levels;
849-27 and
849-28 (B) from a source such as a medical or dental
849-29 radiologic procedure.

849-30 (9) "Radiologic procedure" means a procedure or
849-31 article, including a diagnostic X-ray or a nuclear medicine
849-32 procedure, that:

849-33 (A) is intended for use in:
849-34 (i) the diagnosis of disease or other
849-35 medical or dental conditions in humans; or
849-36 (ii) the cure, mitigation, treatment, or
849-37 prevention of disease in humans; and
849-38 (B) achieves its intended purpose through the
849-39 emission of radiation.

849-40 (10) "Radiologic technology" means the administration
849-41 of radiation to a person for a medical purpose.

849-42 (11) "Registered nurse" means a person licensed by the
849-43 Texas Board of Nursing to practice professional nursing.

849-44 SECTION 5.128. Subchapter B, Chapter 601, Occupations Code,
849-45 is amended to read as follows:

849-46 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER [BOARD]
849-47 AND DEPARTMENT

849-48 Sec. 601.051. CERTIFICATION PROGRAM. The [bureau of
849-49 licensing and compliance of the] department shall administer the
849-50 certification program required by this chapter.

849-51 Sec. 601.052. RULES. The executive commissioner [board]
849-52 may adopt rules necessary to implement this chapter.

849-53 Sec. 601.053. MINIMUM STANDARDS. The executive
849-54 commissioner [board] by rule shall establish minimum standards for:

849-55 (1) issuing, renewing, suspending, or revoking a
849-56 certificate issued under this chapter;

849-57 (2) approving curricula and education programs to
849-58 train individuals, registered nurses, and physician assistants to
849-59 perform radiologic procedures;

849-60 (3) approving instructors to teach approved curricula
849-61 or education programs to train individuals to perform radiologic
849-62 procedures; and

849-63 (4) rescinding an approval described by Subdivision
849-64 (2) or (3).

849-65 Sec. 601.054. APPROVAL AND REVIEW OF CURRICULA AND TRAINING
849-66 PROGRAMS. (a) An applicant for approval of a curriculum or
849-67 training program must apply to the department on a form prescribed
849-68 by the department and under rules adopted by the executive
849-69 commissioner [board].

850-1 (b) The department shall approve a curriculum or training
850-2 program that meets the minimum standards adopted under Section
850-3 **601.053**. The department may review the approval annually.

850-4 (c) The executive commissioner [board] may set a fee for
850-5 approval of a curriculum or training program not to exceed the
850-6 estimated amount that the department projects to be required for
850-7 the evaluation of the curriculum or training program.

850-8 Sec. 601.055. APPROVAL AND REVIEW OF INSTRUCTOR APPROVAL.

850-9 (a) An applicant for approval of an instructor must apply to the
850-10 department on a form prescribed by the department and under rules
850-11 adopted by the executive commissioner [board].

850-12 (b) The department shall approve an instructor who meets the
850-13 minimum standards adopted under Section **601.053**. The department
850-14 may review the approval annually.

850-15 Sec. 601.056. DANGEROUS OR HAZARDOUS PROCEDURES. (a) The
850-16 executive commissioner [board] with the assistance of [other]
850-17 appropriate state agencies shall identify by rule radiologic
850-18 procedures, other than radiologic procedures described by
850-19 Subsection (c), that are dangerous or hazardous and that may be
850-20 performed only by a practitioner or a medical radiologic
850-21 technologist certified under this chapter.

850-22 (b) In adopting rules under Subsection (a), the executive
850-23 commissioner [board] may consider whether the radiologic procedure
850-24 will be performed by a registered nurse or a licensed physician
850-25 assistant.

850-26 (c) Subsection (a) does not apply to a radiologic procedure
850-27 involving a dental X-ray machine, including a panarex or other
850-28 equipment designed and manufactured only for use in dental
850-29 radiography.

850-30 Sec. 601.057. FEES. The executive commissioner [board] may
850-31 set fees for examination, certificate issuance, registration of a
850-32 person under Section **601.202**, and application processing under
850-33 Section **601.203** in amounts that are reasonable to cover the costs of
850-34 administering this chapter without the use of additional general
850-35 revenue. The fees for issuing or renewing a certificate must be in
850-36 amounts designed to allow the department to recover from the
850-37 certificate holders all of the department's direct and indirect
850-38 costs in administering and enforcing this chapter.

850-39 Sec. 601.058. RULES RESTRICTING ADVERTISING OR COMPETITIVE
850-40 BIDDING. (a) The executive commissioner [board] may not adopt
850-41 rules restricting advertising or competitive bidding by a medical
850-42 radiologic technologist except to prohibit false, misleading, or
850-43 deceptive practices.

850-44 (b) In adopting [its] rules to prohibit false, misleading,
850-45 or deceptive practices, the executive commissioner [board] may not
850-46 include a rule that:

850-47 (1) restricts the use of any medium for advertising;
850-48 (2) restricts the use of a medical radiologic
850-49 technologist's personal appearance or voice in an advertisement;
850-50 (3) relates to the size or duration of an
850-51 advertisement by the medical radiologic technologist; or
850-52 (4) restricts the medical radiologic technologist's
850-53 advertisement under a trade name.

850-54 SECTION 5.129. Sections **601.102(a)**, (b), and (c),
850-55 Occupations Code, are amended to read as follows:

850-56 (a) The executive commissioner [board] shall establish
850-57 classes of certificates to include all radiologic procedures used
850-58 in the course and scope of the practice of practitioners licensed in
850-59 this state.

850-60 (b) The department [board] may issue to a person:
850-61 (1) a general certificate to perform radiologic
850-62 procedures; or
850-63 (2) a limited certificate that authorizes the person
850-64 to perform radiologic procedures only on specific parts of the
850-65 human body.

850-66 (c) The department [board] may issue to a person a temporary
850-67 general certificate or a temporary limited certificate that
850-68 authorizes the person to perform radiologic procedures for a period
850-69 not to exceed one year.

851-1 SECTION 5.130. Section 601.103, Occupations Code, is
 851-2 amended to read as follows:

851-3 Sec. 601.103. APPLICATION; APPLICATION FEE. An applicant
 851-4 for a certificate under this chapter must:

851-5 (1) apply to the department on a form prescribed by the
 851-6 department and under rules adopted by the executive commissioner
 851-7 [board]; and

851-8 (2) submit with the application a nonrefundable
 851-9 application fee in an amount determined by the executive
 851-10 commissioner [board].

851-11 SECTION 5.131. Section 601.104, Occupations Code, is
 851-12 amended to read as follows:

851-13 Sec. 601.104. EXAMINATION. The executive commissioner
 851-14 [board] may adopt rules providing for the preparation and
 851-15 administration of [prepare and conduct] an examination for
 851-16 applicants for a certificate.

851-17 SECTION 5.132. The heading to Section 601.105, Occupations
 851-18 Code, is amended to read as follows:

851-19 Sec. 601.105. ISSUANCE OF CERTIFICATE; TERM.

851-20 SECTION 5.133. Section 601.105(b), Occupations Code, is
 851-21 amended to read as follows:

851-22 (b) A certificate is valid for two years from the date of
 851-23 issuance [a period established by the board].

851-24 SECTION 5.134. Section 601.107, Occupations Code, is
 851-25 amended to read as follows:

851-26 Sec. 601.107. CERTIFICATION BY ENDORSEMENT. In adopting
 851-27 minimum standards for certifying medical radiologic technologists,
 851-28 the executive commissioner [board] may establish criteria for
 851-29 issuing a certificate to a person licensed or otherwise registered
 851-30 as a medical radiologic technologist by the American Registry of
 851-31 Radiologic Technologists, the American Registry of Clinical
 851-32 Radiography Technologists, or another state whose requirements for
 851-33 licensure or registration were on the date of licensing or
 851-34 registration substantially equal to the requirements of this
 851-35 chapter.

851-36 SECTION 5.135. Section 601.108, Occupations Code, is
 851-37 amended to read as follows:

851-38 Sec. 601.108. CONTINUING EDUCATION AND OTHER GUIDELINES.

851-39 (a) The executive commissioner [board] may establish guidelines.

851-40 (b) The executive commissioner [board] shall provide for
 851-41 the preparation, recognition, or administration of [prepare,
 851-42 recognize, or administer] continuing education programs for
 851-43 medical radiologic technologists in which participation is
 851-44 required, to the extent required by the department [board], to keep
 851-45 the person's certificate.

851-46 SECTION 5.136. Section 601.109, Occupations Code, is
 851-47 amended to read as follows:

851-48 Sec. 601.109. PROVISIONAL CERTIFICATE. (a) The department
 851-49 [board] may issue a provisional certificate to an applicant
 851-50 currently licensed or certified in another jurisdiction who seeks
 851-51 certification in this state and who:

851-52 (1) has been licensed or certified in good standing as
 851-53 a medical radiologic technologist for at least two years in another
 851-54 jurisdiction, including a foreign country, that has licensing or
 851-55 certification requirements substantially equivalent to the
 851-56 requirements of this chapter;

851-57 (2) has passed a national or other examination
 851-58 recognized by the department [board] relating to the practice of
 851-59 radiologic technology; and

851-60 (3) is sponsored by a medical radiologic technologist
 851-61 certified by the department [board] under this chapter with whom
 851-62 the provisional certificate holder will practice during the time
 851-63 the person holds a provisional certificate.

851-64 (b) The department [board] may waive the requirement of
 851-65 Subsection (a)(3) for an applicant if the department [board]
 851-66 determines that compliance with that subsection would be a hardship
 851-67 to the applicant.

851-68 (c) A provisional certificate is valid until the date the
 851-69 department [board] approves or denies the provisional certificate

holder's application for a certificate. The department [board] shall issue a certificate under this chapter to the provisional certificate holder if:

(1) the provisional certificate holder is eligible to be certified under Section 601.107; or

(2) the provisional certificate holder passes the part of the examination under Section 601.104 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of radiologic technology in this state and:

(A) the department [board] verifies that the provisional certificate holder meets the academic and experience requirements for a certificate under this chapter; and

(B) the provisional certificate holder satisfies any other licensing requirements under this chapter.

(d) The department [board] must approve or deny a provisional certificate holder's application for a certificate not later than the 180th day after the date the provisional certificate is issued. The department [board] may extend the 180-day period if the results of an examination have not been received by the department [board] before the end of that period.

(e) The executive commissioner by rule [board] may establish a fee for a provisional certificate in an amount 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 [reasonable and necessary to cover the cost of issuing the certificate].

SECTION 5.137. Section 601.110(b), Occupations Code, is amended to read as follows:

(b) The executive commissioner [board] by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the certificate expiration date is changed, the department shall prorate certificate fees on a monthly basis so that each certificate holder pays only that portion of the certificate fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

SECTION 5.138. Section 601.154, Occupations Code, is amended to read as follows:

Sec. 601.154. HOSPITAL PROCEDURES. A person is not required to hold a certificate issued under this chapter to perform a radiologic procedure in a hospital if:

(1) the hospital participates in the federal Medicare program or is accredited by the Joint Commission on Accreditation of Hospitals; and

(2) the person has completed a training program approved by the department [board] under Section 601.201.

SECTION 5.139. Section 601.156, Occupations Code, is amended to read as follows:

Sec. 601.156. PROCEDURE PERFORMED AS PART OF CONTINUING EDUCATION PROGRAM. A person is not required to hold a certificate issued under this chapter or to comply with the registration requirements adopted under Section 601.252 if the person is:

(1) licensed or otherwise registered as a medical radiologic technologist by another state, the American Registry of Radiologic Technologists, the American Registry of Clinical Radiography Technologists, or a professional organization or association recognized by the department [board];

(2) enrolled in a continuing education program that meets the requirements adopted under Section 601.108; and

(3) performing a radiologic procedure as part of the continuing education program for not more than 10 days.

SECTION 5.140. Section 601.201, Occupations Code, is amended to read as follows:

Sec. 601.201. MANDATORY TRAINING. (a) The minimum standards of the department [board] for approval of a curriculum or an education program under Section 601.053 must include mandatory training guidelines for a person, other than a practitioner or a

853-1 medical radiologic technologist, who intentionally uses radiologic
 853-2 technology, including a person who does not hold a certificate
 853-3 issued under this chapter and who is performing a radiologic
 853-4 procedure at a hospital or under the direction of a practitioner,
 853-5 other than a dentist.

853-6 (b) The training program approved by the department [board]
 853-7 must contain an appropriate number of hours of education that must
 853-8 be completed before the person may perform a radiologic procedure.

853-9 SECTION 5.141. Section 601.202, Occupations Code, is
 853-10 amended to read as follows:

853-11 Sec. 601.202. REGISTRY. The executive commissioner [board]
 853-12 by rule shall establish a registry of persons required to comply
 853-13 with this subchapter.

853-14 SECTION 5.142. Section 601.302, Occupations Code, is
 853-15 amended to read as follows:

853-16 Sec. 601.302. GROUNDS FOR CERTIFICATE DENIAL OR
 853-17 DISCIPLINARY ACTION. The department may take action under Section
 853-18 601.301 against a person subject to this chapter for:

853-19 (1) obtaining or attempting to obtain a certificate
 853-20 issued under this chapter by bribery or fraud;

853-21 (2) making or filing a false report or record made in
 853-22 the person's capacity as a medical radiologic technologist;

853-23 (3) intentionally or negligently failing to file a
 853-24 report or record required by law;

853-25 (4) intentionally obstructing or inducing another to
 853-26 intentionally obstruct the filing of a report or record required by
 853-27 law;

853-28 (5) engaging in unprofessional conduct, including the
 853-29 violation of the standards of practice of radiologic technology
 853-30 established by the department [board];

853-31 (6) developing an incapacity that prevents the
 853-32 practice of radiologic technology with reasonable skill,
 853-33 competence, and safety to the public as the result of:

853-34 (A) an illness;
 853-35 (B) drug or alcohol dependency; or
 853-36 (C) another physical or mental condition or

853-37 illness;

853-38 (7) failing to report to the department the violation
 853-39 of this chapter by another person;

853-40 (8) employing, for the purpose of applying ionizing
 853-41 radiation to a person, a person who is not certified under or in
 853-42 compliance with this chapter;

853-43 (9) violating this chapter, a rule adopted under this
 853-44 chapter, an order of the department previously entered in a
 853-45 disciplinary proceeding, or an order to comply with a subpoena
 853-46 issued by the department;

853-47 (10) having a certificate revoked, suspended, or
 853-48 otherwise subjected to adverse action or being denied a certificate
 853-49 by another certification authority in another state, territory, or
 853-50 country; or

853-51 (11) being convicted of or pleading nolo contendere to
 853-52 a crime directly related to the practice of radiologic technology.

853-53 SECTION 5.143. Section 601.305(b), Occupations Code, is
 853-54 amended to read as follows:

853-55 (b) The department [board] may not reinstate a certificate
 853-56 to a holder or issue a certificate to an applicant previously denied
 853-57 a certificate unless the department [board] is satisfied that the
 853-58 holder or applicant has complied with requirements set by the
 853-59 department [board] and is capable of engaging in the practice of
 853-60 radiologic technology.

853-61 SECTION 5.144. Section 601.354(b), Occupations Code, is
 853-62 amended to read as follows:

853-63 (b) If the person accepts the department's determination,
 853-64 the department [commissioner of public health or that
 853-65 commissioner's designee] by order shall approve the determination
 853-66 and impose the proposed penalty.

853-67 SECTION 5.145. Section 601.355(b), Occupations Code, is
 853-68 amended to read as follows:

853-69 (b) The hearings examiner shall make findings of fact and

854-1 conclusions of law and promptly issue to the department
854-2 [~~commissioner of public health or that commissioner's designee~~] a
854-3 proposal for decision as to the occurrence of the violation and the
854-4 amount of any proposed administrative penalty.

854-5 SECTION 5.146. The heading to Section **601.356**, Occupations
854-6 Code, is amended to read as follows:

854-7 Sec. 601.356. DECISION BY DEPARTMENT [~~COMMISSIONER~~].

854-8 SECTION 5.147. Section **601.356(a)**, Occupations Code, is
854-9 amended to read as follows:

854-10 (a) Based on the findings of fact and conclusions of law and
854-11 the recommendations of the hearings examiner, the department
854-12 [~~commissioner of public health or the commissioner's designee~~] by
854-13 order may determine that:

854-14 (1) a violation has occurred and may impose an
854-15 administrative penalty; or

854-16 (2) a violation did not occur.

854-17 SECTION 5.148. Section **601.361(b)**, Occupations Code, is
854-18 amended to read as follows:

854-19 (b) The department may assess reasonable expenses and costs
854-20 against a person in an administrative hearing if, as a result of the
854-21 hearing, an administrative penalty is assessed against the person.
854-22 The person shall pay expenses and costs assessed under this
854-23 subsection not later than the 30th day after the date the order of
854-24 the department [~~commissioner of public health or that~~
854-25 ~~commissioner's designee~~] requiring the payment of expenses and
854-26 costs is final. The department may refer the matter to the attorney
854-27 general for collection of the expenses and costs.

854-28 SECTION 5.149. Sections **601.401(a)** and (c), Occupations
854-29 Code, are amended to read as follows:

854-30 (a) If it appears that a person has violated, is violating,
854-31 or is threatening to violate this chapter or a rule adopted under
854-32 this chapter, the [~~board or the~~] department may bring an action to
854-33 enjoin the continued or threatened violation.

854-34 (c) At the request of the [~~board or the~~] department, the
854-35 attorney general shall bring an action in the name of the state for
854-36 the injunctive relief, to recover the civil penalty, or both.

854-37 SECTION 5.150. Section **602.002**, Occupations Code, is
854-38 amended by amending Subdivisions (1) and (2) and adding Subdivision
854-39 (1-a) to read as follows:

854-40 (1) "Board" means the Texas Board of Licensure for
854-41 Professional Medical Physicists [~~in the Texas Department of~~
854-42 ~~Health~~].

854-43 (1-a) "Commissioner" means the commissioner of state
854-44 health services.

854-45 (2) "Department" means the [~~Texas~~] Department of State
854-46 Health Services.

854-47 SECTION 5.151. Section **602.056(c)**, Occupations Code, is
854-48 amended to read as follows:

854-49 (c) If the commissioner [~~of public health~~] has knowledge
854-50 that a potential ground for removal exists, the commissioner shall
854-51 notify the presiding officer of the board of the potential ground.
854-52 The presiding officer shall then notify the governor and the
854-53 attorney general that a potential ground for removal exists. If the
854-54 potential ground for removal involves the presiding officer, the
854-55 commissioner shall notify the next highest ranking officer of the
854-56 board, who shall then notify the governor and the attorney general
854-57 that a potential ground for removal exists.

854-58 SECTION 5.152. Section **602.101**, Occupations Code, is
854-59 amended to read as follows:

854-60 Sec. 602.101. EXECUTIVE SECRETARY. The department
854-61 [~~commissioner of health~~], after consulting with the board, shall
854-62 designate an employee of the department to serve as the board's
854-63 executive secretary.

854-64 SECTION 5.153. Section **602.104**, Occupations Code, is
854-65 amended to read as follows:

854-66 Sec. 602.104. DIVISION OF RESPONSIBILITIES. The board
854-67 shall develop and implement policies that clearly separate the
854-68 policy-making responsibilities of the board and the management
854-69 responsibilities of the commissioner [~~of public health~~], the

855-1 executive secretary, and the staff of the department.

855-2 SECTION 5.154. Section **602.105**, Occupations Code, is
855-3 amended to read as follows:

855-4 Sec. 602.105. QUALIFICATIONS AND STANDARDS OF CONDUCT
855-5 INFORMATION. The commissioner [~~of public health~~] or the
855-6 commissioner's designee shall provide to members of the board, as
855-7 often as necessary, information regarding the requirements for
855-8 office under this chapter, including information regarding a
855-9 person's responsibilities under applicable laws relating to
855-10 standards of conduct for state officers.

855-11 SECTION 5.155. Section **602.151**, Occupations Code, is
855-12 amended to read as follows:

855-13 Sec. 602.151. GENERAL POWERS AND DUTIES. The board shall:

855-14 (1) adopt and revise, with the [~~department's~~] approval
855-15 of the executive commissioner of the Health and Human Services
855-16 Commission, rules reasonably necessary to properly perform its
855-17 duties under this chapter;

855-18 (2) adopt an official seal;

855-19 (3) determine the qualifications and fitness of each
855-20 applicant for a license or license renewal;

855-21 (4) charge a fee[~~, in an amount necessary to cover the~~
855-22 ~~costs incurred by the board in administering this chapter,~~] for
855-23 processing and issuing or renewing a license;

855-24 (5) conduct examinations for licensure;

855-25 (6) issue, deny, renew, revoke, and suspend licenses;

855-26 (7) adopt and publish a code of ethics; and

855-27 (8) conduct hearings on complaints concerning
855-28 violations of this chapter or rules adopted under this chapter.

855-29 SECTION 5.156. Section **602.1525(a)**, Occupations Code, is
855-30 amended to read as follows:

855-31 (a) In an investigation of a complaint filed with the board,
855-32 the board may request that the commissioner [~~of public health~~] or
855-33 the commissioner's designee approve the issuance of a subpoena. If
855-34 the request is approved, the board may issue a subpoena to compel
855-35 the attendance of a relevant witness or the production, for
855-36 inspection or copying, of relevant evidence that is in this state.

855-37 SECTION 5.157. Subchapter D, Chapter 602, Occupations Code,
855-38 is amended by adding Section 602.155 to read as follows:

855-39 Sec. 602.155. FEES. The board shall set fees for the
855-40 issuance or renewal of a license under this chapter in amounts
855-41 designed to allow the department and the board to recover from the
855-42 license holders all of the direct and indirect costs to the
855-43 department and to the board in administering and enforcing this
855-44 chapter.

855-45 SECTION 5.158. Section **602.205**, Occupations Code, is
855-46 amended to read as follows:

855-47 Sec. 602.205. TEMPORARY LICENSE. The board may issue a
855-48 temporary license to an applicant who has satisfied the educational
855-49 requirements for a license but who has not yet completed the
855-50 experience and examination requirements of Section **602.207**. A
855-51 temporary license is valid for one year from the date of issuance.

855-52 SECTION 5.159. Section **602.210(a)**, Occupations Code, is
855-53 amended to read as follows:

855-54 (a) A license is valid for two years [~~one year~~] from the date
855-55 of issuance [~~granted~~] and may be renewed [~~annually~~].

855-56 SECTION 5.160. Section **602.213(e)**, Occupations Code, is
855-57 amended to read as follows:

855-58 (e) The board may establish a fee for provisional licenses
855-59 [~~in an amount reasonable and necessary to cover the cost of issuing~~
855-60 ~~the license~~].

855-61 SECTION 5.161. Section **603.051(a)**, Occupations Code, is
855-62 amended to read as follows:

855-63 (a) The Texas State Perfusionist Advisory Committee
855-64 consists of five members appointed by the commissioner as follows:

855-65 (1) two licensed perfusionist members who have been
855-66 licensed under this chapter for at least three years before the date
855-67 of appointment;

855-68 (2) one physician member licensed by the Texas [~~State~~
855-69 ~~Board of~~] Medical Board [~~Examiners~~] who is certified by that board

856-1 in cardiovascular surgery; and

856-2 (3) two members who represent the public.

856-3 SECTION 5.162. Section **603.102**, Occupations Code, is
856-4 amended to read as follows:

856-5 Sec. 603.102. EXECUTIVE SECRETARY POWERS AND DUTIES. In
856-6 addition to performing other duties prescribed by this chapter and
856-7 by the department, the executive secretary shall:

856-8 (1) administer licensing activity under this chapter
856-9 for the department;

856-10 (2) keep full and accurate minutes of the committee's
856-11 transactions and proceedings;

856-12 (3) serve as custodian of the committee's files and
856-13 other records;

856-14 (4) prepare and recommend to the department plans and
856-15 procedures necessary to implement the objectives of this chapter,
856-16 including rules and proposals on administrative procedure;

856-17 (5) exercise general supervision over persons
856-18 employed by the department in the administration of this chapter;

856-19 (6) investigate complaints and present formal
856-20 complaints made under this chapter;

856-21 (7) attend all committee meetings as a nonvoting
856-22 participant;

856-23 (8) handle the committee's correspondence; and

856-24 (9) obtain, assemble, or prepare reports and other
856-25 information as directed or authorized by the committee.

856-26 SECTION 5.163. Section **603.106**, Occupations Code, is
856-27 amended to read as follows:

856-28 Sec. 603.106. CAREER LADDER PROGRAM; PERFORMANCE
856-29 EVALUATIONS. (a) The department [commissioner] shall develop an
856-30 intra-agency career ladder program. The program must require
856-31 intra-agency posting of all nonentry level positions concurrently
856-32 with any public posting.

856-33 (b) The department [commissioner] shall develop a system of
856-34 annual performance evaluations based on measurable job tasks. All
856-35 merit pay for department employees under this chapter must be based
856-36 on the system established under this subsection.

856-37 SECTION 5.164. Section **603.107**, Occupations Code, is
856-38 amended to read as follows:

856-39 Sec. 603.107. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.
856-40 (a) The department [commissioner] shall prepare and maintain a
856-41 written policy statement to ensure implementation of an equal
856-42 employment opportunity program under which all personnel
856-43 transactions are made without regard to race, color, disability,
856-44 sex, religion, age, or national origin. The policy statement must
856-45 include:

856-46 (1) personnel policies, including policies relating
856-47 to recruitment, evaluation, selection, application, training, and
856-48 promotion, that are in compliance with Chapter 21, Labor Code;

856-49 (2) a comprehensive analysis of the committee
856-50 workforce that meets federal and state guidelines;

856-51 (3) procedures by which a determination can be made of
856-52 significant underuse in the committee workforce of all persons for
856-53 whom federal or state guidelines encourage a more equitable
856-54 balance; and

856-55 (4) reasonable methods to appropriately address those
856-56 areas of underuse.

856-57 (b) A policy statement prepared under Subsection (a) must:

856-58 (1) cover an annual period;

856-59 (2) be updated annually;

856-60 (3) be reviewed by the Texas Workforce Commission
856-61 civil rights division [on Human Rights] for compliance with
856-62 Subsection (a)(1); and

856-63 (4) be filed with the governor.

856-64 SECTION 5.165. Section **603.151**, Occupations Code, is
856-65 amended to read as follows:

856-66 Sec. 603.151. GENERAL POWERS AND DUTIES OF DEPARTMENT
856-67 [COMMISSIONER]. The department [commissioner] shall:

856-68 (1) establish the qualifications and fitness of
856-69 applicants for licenses, including renewed and reciprocal

857-1 licenses;

857-2 (2) revoke, suspend, or deny a license, probate a
 857-3 license suspension, or reprimand a license holder for a violation
 857-4 of this chapter, a rule adopted by the executive commissioner under
 857-5 this chapter, or the code of ethics adopted by the executive
 857-6 commissioner;

857-7 (3) spend money necessary to administer the
 857-8 department's duties;

857-9 (4) request and receive necessary assistance from
 857-10 another state agency, including a state educational institution;

857-11 (5) adopt an official seal; and

857-12 (6) ~~[adopt and]~~ publish the [a] code of ethics adopted
 857-13 by the executive commissioner.

857-14 SECTION 5.166. Section 603.153, Occupations Code, is
 857-15 amended to read as follows:

857-16 Sec. 603.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE
 857-17 BIDDING. (a) The executive commissioner may not adopt a rule
 857-18 restricting advertising or competitive bidding by a person
 857-19 regulated by the department under this chapter except to prohibit a
 857-20 false, misleading, or deceptive practice.

857-21 (b) The executive commissioner may not include in rules to
 857-22 prohibit a false, misleading, or deceptive practice by a person
 857-23 regulated by the department under this chapter a rule that:

857-24 (1) restricts the person's use of any medium for
 857-25 advertising;

857-26 (2) restricts the person's personal appearance or use
 857-27 of the person's voice in an advertisement;

857-28 (3) relates to the size or duration of any
 857-29 advertisement by the person; or

857-30 (4) restricts the use by the person of a trade name in
 857-31 advertising.

857-32 SECTION 5.167. Section 603.1535(b), Occupations Code, is
 857-33 amended to read as follows:

857-34 (b) In rules under this section, the executive commissioner
 857-35 shall list the specific offenses for which a conviction would
 857-36 constitute grounds for the department ~~[commissioner]~~ to take action
 857-37 under Section 53.021.

857-38 SECTION 5.168. Section 603.154, Occupations Code, is
 857-39 amended to read as follows:

857-40 Sec. 603.154. FEES. (a) After consulting the commissioner
 857-41 or the department, the executive commissioner shall set fees in
 857-42 amounts reasonable and necessary to cover the costs of
 857-43 administering this chapter.

857-44 (b) The executive commissioner shall set fees for the
 857-45 issuance or renewal of a license under this chapter in amounts
 857-46 designed to allow the department to recover from the license
 857-47 holders all of the direct and indirect costs to the department in
 857-48 administering and enforcing this chapter.

857-49 SECTION 5.169. Sections 603.159(a) and (c), Occupations
 857-50 Code, are amended to read as follows:

857-51 (a) The executive commissioner shall develop and implement
 857-52 a policy under this chapter to encourage the use of:

857-53 (1) negotiated rulemaking procedures under Chapter
 857-54 2008, Government Code, for the adoption of rules; and

857-55 (2) appropriate alternative dispute resolution
 857-56 procedures under Chapter 2009, Government Code, to assist in the
 857-57 resolution of internal and external disputes under the department's
 857-58 jurisdiction.

857-59 (c) The department ~~[commissioner]~~ shall designate a trained
 857-60 person to:

857-61 (1) coordinate the implementation of the policy
 857-62 adopted under Subsection (a);

857-63 (2) serve as a resource for any training needed to
 857-64 implement the procedures for negotiated rulemaking or alternative
 857-65 dispute resolution; and

857-66 (3) collect data concerning the effectiveness of those
 857-67 procedures, as implemented by the department.

857-68 SECTION 5.170. Section 603.202(a), Occupations Code, is
 857-69 amended to read as follows:

(a) The executive commissioner by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints under this chapter to the department. The department may provide for that notice:

(1) on each license form, application, or written contract for services of a person licensed under this chapter;

(2) on a sign prominently displayed in the place of business of each person licensed under this chapter; or

(3) in a bill for services provided by a person licensed under this chapter.

SECTION 5.171. Section 603.203(a), Occupations Code, is amended to read as follows:

(a) The department shall maintain a system to promptly and efficiently act on complaints filed with the department under this chapter. The department shall maintain

chapter. The department shall maintain:

- (1) information about the parties to the complaint and the subject matter of the complaint;
- (2) a summary of the results of the review or investigation of the complaint; and
- (3) information about the disposition of the complaint.

SECTION 5.172. Sections 603.204(a) and (d), Occupations Code, are amended to read as follows:

(a) The executive commissioner shall adopt rules concerning the investigation of a complaint filed with the department under this chapter. The rules shall:

(1) distinguish among categories of complaints;
(2) ensure that a complaint is not dismissed without appropriate consideration;
(3) require that the department [commissioner] be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the department to obtain the services of a private investigator.

(d) The executive secretary shall notify the department [commissioner] of a complaint that is not resolved within the time prescribed by the department [commissioner] for resolving the complaint so that the department [commissioner] may take necessary action on the complaint.

SECTION 5.173. Sections 603.2041(a), (h), and (i), Occupations Code, are amended to read as follows:

(a) In an investigation of a complaint filed with the department, the department may [request that the commissioner or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the department may] issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(h) All information and materials subpoenaed or compiled by the department in connection with a complaint and investigation under this chapter are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its agents or employees involved in discipline of the holder of a license, except that this information may be disclosed to:

(1) persons involved with the department in a disciplinary action against the holder of a license under this chapter;

chapter, (2) professional perfusionist licensing or disciplinary boards in other jurisdictions;

(3) peer assistance programs approved by the department under Chapter 467, Health and Safety Code;

(4) law enforcement agencies; and
(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the department against a holder of a license under this chapter, the nature of those charges, disciplinary proceedings of the department, and final disciplinary actions, including warnings and reprimands, by the department are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

SECTION 5.174. Section 603.205, Occupations Code, is amended to read as follows:

Sec. 603.205. PUBLIC PARTICIPATION. (a) The department [~~State Health Services Council~~] shall develop and implement policies that provide the public with a reasonable opportunity to appear before the department [~~State Health Services Council~~] and to speak on any issue related to the practice of perfusion.

(b) The department [~~commissioner~~] shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the department's programs under this chapter.

SECTION 5.175. Section 603.252(b), Occupations Code, is amended to read as follows:

(b) The department [~~executive commissioner~~] shall prescribe the application form and the executive commissioner by rule may establish dates by which applications and fees must be received.

SECTION 5.176. Section 603.255(a), Occupations Code, is amended to read as follows:

(a) The department shall notify an applicant in writing of the receipt and investigation of the applicant's application and any other relevant evidence relating to qualifications established by department [an executive commissioner] rule not later than:

(1) the 45th day after the date a properly submitted and timely application is received; and

(2) the 30th day before the next examination date.

SECTION 5.177. Section 603.259(c), Occupations Code, is amended to read as follows:

(c) A provisionally licensed perfusionist must practice under the supervision and direction of a licensed perfusionist while performing perfusion. If the department finds that a licensed perfusionist is not reasonably available to provide supervision and direction and if the department approves an application submitted to the department by the provisionally licensed perfusionist, supervision and direction may be provided by a physician who is licensed by the Texas [State Board of] Medical Board [Examiners] and certified by the American Board of Thoracic Surgery [Surgeons, Inc.] or certified in cardiovascular surgery by the American Osteopathic Board of Surgery.

SECTION 5.178. Section 603.304(a), Occupations Code, is amended to read as follows:

(a) To renew a license under this chapter, a person must submit proof satisfactory to the department that the person has complied with the continuing education requirements prescribed by the executive commissioner [department].

SECTION 5.179. Section 603.402(b), Occupations Code, is amended to read as follows:

(b) The executive commissioner shall prescribe procedures for appealing to the department [commissioner] a decision to revoke, suspend, or refuse to renew a license.

SECTION 5.180. Section 603.4515(a), Occupations Code, is amended to read as follows:

(a) A person who violates this chapter, a rule adopted by the executive commissioner under this chapter, or an order adopted by the department [commissioner] under this chapter is liable for a civil penalty not to exceed \$5,000 a day.

SECTION 5.181. Section 603.453(a), Occupations Code, is amended to read as follows:

(a) If it appears to the department [commissioner] that a person who is not licensed under this chapter is violating this

860-1 chapter, a rule adopted under this chapter, or another state
 860-2 statute or rule relating to the practice of perfusion, the
 860-3 department [commissioner] after notice and an opportunity for a
 860-4 hearing may issue a cease and desist order prohibiting the person
 860-5 from engaging in the activity.

860-6 SECTION 5.182. Section 603.502(c), Occupations Code, is
 860-7 amended to read as follows:

860-8 (c) The executive commissioner by rule shall adopt an
 860-9 administrative penalty schedule based on the criteria listed in
 860-10 Subsection (b) for violations of this chapter or applicable rules
 860-11 to ensure that the amounts of penalties imposed are appropriate to
 860-12 the violation. The department [executive commissioner] shall
 860-13 provide the administrative penalty schedule to the public on
 860-14 request.

860-15 SECTION 5.183. Section 603.503, Occupations Code, is
 860-16 amended to read as follows:

860-17 Sec. 603.503. [REPORT AND] NOTICE OF VIOLATION AND PENALTY.
 860-18 [(a)] If the department [commissioner or the commissioner's
 860-19 designee] determines that a violation occurred, the department
 860-20 [commissioner or the designee may issue to the department a report]
 860-21 stating:

860-22 [(1) the facts on which the determination is based;
 860-23 and]

860-24 [(2) the commissioner's or the designee's
 860-25 recommendation on the imposition of an administrative penalty,
 860-26 including a recommendation on the amount of the penalty.]

860-27 [(b) Within 14 days after the date the report is issued, the
 860-28 commissioner or the commissioner's designee] shall give written
 860-29 notice of the violation [report] to the person. The notice must:

860-30 (1) include a brief summary of the alleged violation;
 860-31 (2) state the amount of the [recommended]
 860-32 administrative penalty recommended by the department; and

860-33 (3) inform the person of the person's right to a
 860-34 hearing on the occurrence of the violation, the amount of the
 860-35 penalty, or both.

860-36 SECTION 5.184. Section 603.504, Occupations Code, is
 860-37 amended to read as follows:

860-38 Sec. 603.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
 860-39 Within 10 days after the date the person receives the notice, the
 860-40 person in writing may:

860-41 (1) accept the determination and recommended
 860-42 administrative penalty of the department [commissioner or the
 860-43 commissioner's designee]; or

860-44 (2) make a request for a hearing on the occurrence of
 860-45 the violation, the amount of the penalty, or both.

860-46 (b) If the person accepts the determination and recommended
 860-47 penalty of the department [commissioner or the commissioner's
 860-48 designee], the department [commissioner] by order shall approve the
 860-49 determination and impose the recommended penalty.

860-50 SECTION 5.185. Sections 603.505(a) and (c), Occupations
 860-51 Code, are amended to read as follows:

860-52 (a) If the person requests a hearing or fails to respond in a
 860-53 timely manner to the notice, the department [commissioner or the
 860-54 commissioner's designee] shall set a hearing and give written
 860-55 notice of the hearing to the person.

860-56 (c) The administrative law judge shall make findings of fact
 860-57 and conclusions of law and promptly issue to the department
 860-58 [commissioner] a proposal for a decision about the occurrence of
 860-59 the violation and the amount of a proposed administrative penalty.

860-60 SECTION 5.186. Section 603.506, Occupations Code, is
 860-61 amended to read as follows:

860-62 Sec. 603.506. DECISION BY DEPARTMENT [COMMISSIONER]. (a)
 860-63 Based on the findings of fact, conclusions of law, and proposal for
 860-64 decision, the department [commissioner] by order may determine
 860-65 that:

860-66 (1) a violation occurred and impose an administrative
 860-67 penalty; or

860-68 (2) a violation did not occur.

860-69 (b) The notice of the department's [commissioner's] order

861-1 given to the person must include a statement of the right of the
 861-2 person to judicial review of the order.

861-3 SECTION 5.187. Sections 603.507(a) through (c),
 861-4 Occupations Code, are amended to read as follows:

861-5 (a) Within 30 days after the date the department's
 861-6 [~~commissioner's~~] order becomes final, the person shall:
 861-7 (1) pay the administrative penalty; or
 861-8 (2) file a petition for judicial review contesting the
 861-9 occurrence of the violation, the amount of the penalty, or both.

861-10 (b) Within the 30-day period prescribed by Subsection (a), a
 861-11 person who files a petition for judicial review may:

861-12 (1) stay enforcement of the penalty by:
 861-13 (A) paying the penalty to the court for placement
 861-14 in an escrow account; or
 861-15 (B) giving the court a supersedeas bond approved
 861-16 by the court that:

861-17 (i) is for the amount of the penalty; and
 861-18 (ii) is effective until all judicial review
 861-19 of the department's [~~commissioner's~~] order is final; or
 861-20 (2) request the court to stay enforcement of the
 861-21 penalty by:

861-22 (A) filing with the court a sworn affidavit of
 861-23 the person stating that the person is financially unable to pay the
 861-24 penalty and is financially unable to give the supersedeas bond; and
 861-25 (B) giving a copy of the affidavit to the
 861-26 department [~~commissioner or the commissioner's designee~~] by
 861-27 certified mail.

861-28 (c) If the department [~~commissioner or the commissioner's~~
 861-29 ~~designee~~] receives a copy of an affidavit under Subsection (b)(2),
 861-30 the department [~~commissioner or the designee~~] may file with the
 861-31 court, within five days after the date the copy is received, a
 861-32 contest to the affidavit.

861-33 SECTION 5.188. Sections 604.001(1) and (2), Occupations
 861-34 Code, are amended to read as follows:

861-35 (1) [~~Board~~ means the Texas Board of Health.
 861-36 (2) "Department" means the [Texas] Department of
 861-37 State Health Services.

861-38 (2) "Executive commissioner" means the executive
 861-39 commissioner of the Health and Human Services Commission.

861-40 SECTION 5.189. The heading to Subchapter B, Chapter 604,
 861-41 Occupations Code, is amended to read as follows:

861-42 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER [~~BOARD
 861-43 AND DEPARTMENT~~

861-44 SECTION 5.190. Section 604.051(a), Occupations Code, is
 861-45 amended to read as follows:

861-46 (a) The department [~~department's bureau of licensing and~~
 861-47 ~~compliance~~] shall administer the certification and permitting
 861-48 program under this chapter.

861-49 SECTION 5.191. Section 604.052, Occupations Code, is
 861-50 amended to read as follows:

861-51 Sec. 604.052. RULES. (a) The executive commissioner
 861-52 [~~board~~] by rule shall establish minimum standards for issuing,
 861-53 denying, renewing, suspending, suspending on an emergency basis, or
 861-54 revoking a certificate or temporary permit under this chapter.

861-55 (b) The executive commissioner [~~board~~] may adopt rules
 861-56 necessary to implement this chapter.

861-57 (c) The executive commissioner [~~board~~] may adopt rules
 861-58 relating to certifying, examining, or disciplining a person under
 861-59 this chapter only if necessary to protect the public health by
 861-60 ensuring that only a qualified person practices respiratory care.

861-61 SECTION 5.192. Section 604.053, Occupations Code, is
 861-62 amended to read as follows:

861-63 Sec. 604.053. FEES. (a) The executive commissioner by rule
 861-64 [~~board~~] shall set fees for an application, examination,
 861-65 certificate, temporary permit, permit and certificate renewal, and
 861-66 certificate reinstatement.

861-67 (b) The executive commissioner by rule [~~board~~] shall set
 861-68 fees in reasonable amounts that are sufficient to cover the costs of
 861-69 administering this chapter. The executive commissioner shall set

862-1 fees for issuing or renewing a certificate or permit in amounts
 862-2 designed to allow the department to recover from the certificate
 862-3 and permit holders all of the department's direct and indirect
 862-4 costs in administering and enforcing this chapter.

862-5 SECTION 5.193. Section 604.055, Occupations Code, is
 862-6 amended to read as follows:

862-7 Sec. 604.055. PEER ASSISTANCE PROGRAM. The department may
 862-8 establish, approve, and fund a peer assistance program in
 862-9 accordance with Section 467.003, Health and Safety Code, and
 862-10 ~~department~~ [board] rules.

862-11 SECTION 5.194. Section 604.057, Occupations Code, is
 862-12 amended to read as follows:

862-13 Sec. 604.057. RULES REGARDING ADVERTISING OR COMPETITIVE
 862-14 BIDDING. (a) The executive commissioner [board] may not adopt
 862-15 rules restricting advertising or competitive bidding by a temporary
 862-16 permit or certificate holder except to prohibit false, misleading,
 862-17 or deceptive practices.

862-18 (b) In adopting [~~its~~] rules to prohibit false, misleading,
 862-19 or deceptive practices, the executive commissioner [board] may not
 862-20 include a rule that:

862-21 (1) restricts the use of any medium for advertising;
 862-22 (2) restricts the use of a temporary permit or
 862-23 certificate holder's personal appearance or voice in an
 862-24 advertisement;

862-25 (3) relates to the size or duration of an
 862-26 advertisement by the temporary permit or certificate holder; or
 862-27 (4) restricts the temporary permit or certificate
 862-28 holder's advertisement under a trade name.

862-29 SECTION 5.195. Section 604.101(b), Occupations Code, is
 862-30 amended to read as follows:

862-31 (b) A person may not practice respiratory care other than
 862-32 under the direction of a qualified medical director or other
 862-33 physician licensed by the Texas [State Board of] Medical Board
 862-34 [~~Examiners~~].

862-35 SECTION 5.196. Section 604.103, Occupations Code, is
 862-36 amended to read as follows:

862-37 Sec. 604.103. APPLICATION; APPLICATION FEE. An applicant
 862-38 for a certificate or temporary permit must:

862-39 (1) apply to the department on a form prescribed by the
 862-40 department and under rules adopted [~~prescribed~~] by the executive
 862-41 commissioner [board]; and

862-42 (2) submit a nonrefundable application fee with the
 862-43 application.

862-44 SECTION 5.197. Section 604.1041, Occupations Code, is
 862-45 amended to read as follows:

862-46 Sec. 604.1041. EXAMINATION. The executive commissioner
 862-47 [board] by rule shall establish examination requirements for a
 862-48 certificate under this chapter. The executive commissioner [board]
 862-49 may use the entry level examination prepared by the National Board
 862-50 for Respiratory Care or an equivalent examination.

862-51 SECTION 5.198. Section 604.108(b), Occupations Code, is
 862-52 amended to read as follows:

862-53 (b) A temporary permit is valid for the period set by
 862-54 department [board] rule. The period may not be less than six months
 862-55 or more than 12 months.

862-56 SECTION 5.199. Section 604.151(b), Occupations Code, is
 862-57 amended to read as follows:

862-58 (b) The executive commissioner [board] by rule may adopt a
 862-59 system under which certificates expire on various dates during the
 862-60 year. For the year in which the certificate expiration date is
 862-61 changed, the department shall prorate certificate fees on a monthly
 862-62 basis so that each certificate holder pays only that portion of the
 862-63 certificate fee that is allocable to the number of months during
 862-64 which the certificate is valid. On renewal of the certificate on
 862-65 the new expiration date, the total certificate renewal fee is
 862-66 payable.

862-67 SECTION 5.200. Section 604.154, Occupations Code, is
 862-68 amended to read as follows:

862-69 Sec. 604.154. CONTINUING EDUCATION REQUIREMENTS. (a) The

863-1 executive commissioner [board] shall establish for the renewal of a
 863-2 certificate uniform continuing education requirements of not less
 863-3 than 12 or more than 24 continuing education hours for each renewal
 863-4 period.

863-5 (b) The executive commissioner [board] may adopt rules
 863-6 relating to meeting the continuing education requirements in a
 863-7 hardship situation.

863-8 SECTION 5.201. Section 604.156(b), Occupations Code, is
 863-9 amended to read as follows:

863-10 (b) To resume the practice of respiratory care, the
 863-11 practitioner must:

863-12 (1) notify the department;
 863-13 (2) satisfy requirements adopted by the executive
 863-14 commissioner [board]; and

863-15 (3) pay the reinstatement fee and the renewal fee for
 863-16 the renewal period in which the practitioner will resume practice.

863-17 SECTION 5.202. Section 604.157(b), Occupations Code, is
 863-18 amended to read as follows:

863-19 (b) The department may renew a temporary permit for not more
 863-20 than one additional period, pending compliance with this chapter
 863-21 and department [board] rules. The additional period may not be less
 863-22 than six months or more than 12 months.

863-23 SECTION 5.203. Section 604.203, Occupations Code, is
 863-24 amended to read as follows:

863-25 Sec. 604.203. DISCIPLINARY PROCEDURE. The procedure by
 863-26 which the department takes a disciplinary action and the procedure
 863-27 by which a disciplinary action is appealed are governed by:

863-28 (1) department [board] rules for a contested case
 863-29 hearing; and

863-30 (2) Chapter 2001, Government Code.

863-31 SECTION 5.204. Section 604.304(b), Occupations Code, is
 863-32 amended to read as follows:

863-33 (b) If the person accepts the department's determination,
 863-34 the department [commissioner of public health or the commissioner's
 863-35 designee] by order shall approve the determination and assess the
 863-36 proposed penalty.

863-37 SECTION 5.205. Section 604.305, Occupations Code, is
 863-38 amended to read as follows:

863-39 Sec. 604.305. HEARING. (a) If the person requests a
 863-40 hearing in a timely manner, the department shall:

863-41 (1) set a hearing; and
 863-42 (2) give written notice of the hearing to the person [+
 863-43 and

863-44 [+(3) designate a hearings examiner to conduct the
 863-45 hearing].

863-46 (b) The hearings examiner shall:
 863-47 (1) make findings of fact and conclusions of law; and
 863-48 (2) promptly issue to the department [commissioner of
 863-49 public health or the commissioner's designee] a proposal for
 863-50 decision as to the occurrence of the violation and the amount of any
 863-51 proposed administrative penalty.

863-52 SECTION 5.206. The heading to Section 604.306, Occupations
 863-53 Code, is amended to read as follows:

863-54 Sec. 604.306. DECISION BY DEPARTMENT [COMMISSIONER OR
DESIGNEE].

863-56 SECTION 5.207. Section 604.306(a), Occupations Code, is
 863-57 amended to read as follows:

863-58 (a) Based on the findings of fact, conclusions of law, and
 863-59 proposal for decision, the department [commissioner of public
 863-60 health or the commissioner's designee] by order may determine that:

863-61 (1) a violation occurred and impose an administrative
 863-62 penalty; or

863-63 (2) a violation did not occur.

863-64 SECTION 5.208. Section 604.311(b), Occupations Code, is
 863-65 amended to read as follows:

863-66 (b) The department may assess reasonable expenses and costs
 863-67 against a person in an administrative hearing if, as a result of the
 863-68 hearing, an administrative penalty is assessed against the person.
 863-69 The person shall pay expenses and costs assessed under this

subsection not later than the 30th day after the date the order of the department [commissioner of public health or the commissioner's designee] requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

SECTION 5.209. Section 605.002(5), Occupations Code, is amended to read as follows:

(5) "Department" means the [Texas] Department of State Health Services.

SECTION 5.210. Section 605.101, Occupations Code, is amended to read as follows:

Sec. 605.101. EXECUTIVE DIRECTOR. With the advice of the board, the department [commissioner] shall appoint an executive director to administer this chapter.

SECTION 5.211. Section 605.105(b), Occupations Code, is amended to read as follows:

(b) A policy statement prepared under Subsection (a) must:

- (1) cover an annual period;
- (2) be updated annually;
- (3) be reviewed by the Texas Workforce Commission civil rights division [on Human Rights] for compliance with Subsection (a)(1); and
- (4) be filed with the governor.

SECTION 5.212. Section 605.152(b), Occupations Code, is amended to read as follows:

(b) If the General Appropriations Act does not set the amount of the fees, the board shall set the fees in amounts reasonable and necessary for the administration of this chapter. The fees for issuing or renewing a license must be in amounts designed to allow the department and the board to recover from the license holders all of the direct and indirect costs to the department and to the board in administering and enforcing this chapter.

SECTION 5.213. Section 605.2021(a), Occupations Code, is amended to read as follows:

(a) In an investigation of a complaint filed with the board, the board may request that the department [commissioner or the commissioner's designee] approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

SECTION 5.214. Section 605.403, Occupations Code, is amended to read as follows:

Sec. 605.403. [REPORT AND] NOTICE OF VIOLATION AND PENALTY. [a] If the department [commissioner or the commissioner's designee] determines that a violation occurred, the department [commissioner or the designee may issue to the board a report stating:

[1] the facts on which the determination is based, and

[2] the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

[b] Within 14 days after the date the report is issued, the commissioner or the commissioner's designee] shall give written notice of the violation [report] to the person. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the [recommended] administrative penalty recommended by the department; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

SECTION 5.215. Section 605.404, Occupations Code, is amended to read as follows:

Sec. 605.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the department [commissioner or the

865-1 ~~commissioner's designee~~; or

865-2 (2) make a request for a hearing on the occurrence of
865-3 the violation, the amount of the penalty, or both.

865-4 (b) If the person accepts the determination and recommended
865-5 penalty of the department [~~commissioner or the commissioner's~~
865-6 ~~designee~~], the board by order shall approve the determination and
865-7 impose the recommended penalty.

865-8 SECTION 5.216. Section 605.405(a), Occupations Code, is
865-9 amended to read as follows:

865-10 (a) If the person requests a hearing or fails to respond in a
865-11 timely manner to the notice, the department [~~commissioner or the~~
865-12 ~~commissioner's designee~~] shall set a hearing and give written
865-13 notice of the hearing to the person.

865-14 SECTION 5.217. Sections 605.407(b) and (c), Occupations
865-15 Code, are amended to read as follows:

865-16 (b) Within the 30-day period prescribed by Subsection (a), a
865-17 person who files a petition for judicial review may:

865-18 (1) stay enforcement of the penalty by:
865-19 (A) paying the penalty to the court for placement
865-20 in an escrow account; or
865-21 (B) giving the court a supersedeas bond approved
865-22 by the court that:

865-23 (i) is for the amount of the penalty; and
865-24 (ii) is effective until all judicial review
865-25 of the board's order is final; or

865-26 (2) request the court to stay enforcement of the
865-27 penalty by:

865-28 (A) filing with the court a sworn affidavit of
865-29 the person stating that the person is financially unable to pay the
865-30 penalty and is financially unable to give the supersedeas bond; and
865-31 (B) giving a copy of the affidavit to the
865-32 department [~~commissioner or the commissioner's designee~~] by
865-33 certified mail.

865-34 (c) If the department [~~commissioner or the commissioner's~~
865-35 ~~designee~~] receives a copy of an affidavit under Subsection (b)(2),
865-36 the department [~~commissioner or the designee~~] may file with the
865-37 court, within five days after the date the copy is received, a
865-38 contest to the affidavit.

865-39 SECTION 5.218. Section 701.106(b), Occupations Code, is
865-40 amended to read as follows:

865-41 (b) A policy statement prepared under Subsection (a) must:
865-42 (1) cover an annual period;
865-43 (2) be updated annually;
865-44 (3) be reviewed by the Texas Workforce Commission
865-45 civil rights division [~~on Human Rights~~] for compliance with
865-46 Subsection (a)(1); and
865-47 (4) be filed with the governor.

865-48 SECTION 5.219. Section 701.152(b), Occupations Code, is
865-49 amended to read as follows:

865-50 (b) In adopting rules, the dietitians board shall consider
865-51 the rules and procedures of the [~~Texas Board of Health and the~~]
865-52 department and shall adopt procedural rules not inconsistent with
865-53 similar rules and procedures of the department [~~these entities~~].

865-54 SECTION 5.220. Section 701.154(a), Occupations Code, is
865-55 amended to read as follows:

865-56 (a) After consulting the [~~commissioner or the~~] department,
865-57 the dietitians board by rule shall set fees in amounts reasonable
865-58 and necessary to cover the cost of administering this chapter. The
865-59 fees for issuing or renewing a license must be in amounts designed
865-60 to allow the department and the dietitians board to recover from the
865-61 license holders all of the direct and indirect costs to the
865-62 department and to the dietitians board in administering and
865-63 enforcing this chapter.

865-64 SECTION 5.221. Section 701.157, Occupations Code, is
865-65 amended to read as follows:

865-66 Sec. 701.157. POWERS AND DUTIES OF DEPARTMENT [~~TEXAS BOARD~~
865-67 ~~OF HEALTH~~]. To implement this chapter, the department [~~Texas Board~~
865-68 ~~of Health~~]:

865-69 (1) shall request and receive any necessary assistance

866-1 from state educational institutions or other state agencies;
 866-2 (2) shall prepare information of consumer interest
 866-3 describing the regulatory functions of the dietitians board, the
 866-4 procedures by which consumer complaints are filed and resolved, and
 866-5 the profession of dietetics;

866-6 (3) shall prepare a registry of licensed dietitians
 866-7 and provisional licensed dietitians and make the registry available
 866-8 to the public, license holders, and appropriate state agencies; and
 866-9 (4) may request the attorney general or the
 866-10 appropriate county or district attorney to institute a suit to
 866-11 enjoin a violation of this chapter in addition to any other action,
 866-12 proceeding, or remedy authorized by law.

866-13 SECTION 5.222. Section 701.301(b), Occupations Code, is
 866-14 amended to read as follows:

866-15 (b) The dietitians board [~~Texas Board of Health~~] by rule may
 866-16 adopt a system under which licenses expire on various dates during
 866-17 the year. For the year in which the license expiration date is
 866-18 changed, a license fee payable on the original expiration date
 866-19 shall be prorated on a monthly basis so that the license holder pays
 866-20 only that portion of the fee allocable to the number of months the
 866-21 license is valid. The license holder shall pay the total license
 866-22 renewal fee on renewal of the license on the new expiration date.

866-23 SECTION 5.223. Section 701.503, Occupations Code, is
 866-24 amended to read as follows:

866-25 Sec. 701.503. REPORT AND NOTICE OF VIOLATION AND PENALTY.
 866-26 (a) If the department [~~commissioner or the commissioner's~~
 866-27 ~~designee~~] determines that a violation occurred, the department
 866-28 [~~commissioner or the designee~~] may issue to the dietitians board a
 866-29 report stating:

866-30 (1) the facts on which the determination is based; and
 866-31 (2) the department's [~~commissioner's or the~~
 866-32 ~~designee's~~] recommendation on the imposition of an administrative
 866-33 penalty, including a recommendation on the amount of the penalty.

866-34 (b) Within 14 days after the date the report is issued, the
 866-35 department [~~commissioner or the commissioner's designee~~] shall
 866-36 give written notice of the report to the person. The notice must:

866-37 (1) include a brief summary of the alleged violation;
 866-38 (2) state the amount of the recommended administrative
 866-39 penalty; and

866-40 (3) inform the person of the person's right to a
 866-41 hearing on the occurrence of the violation, the amount of the
 866-42 penalty, or both.

866-43 SECTION 5.224. Section 701.504, Occupations Code, is
 866-44 amended to read as follows:

866-45 Sec. 701.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
 866-46 Within 10 days after the date the person receives the notice, the
 866-47 person in writing may:

866-48 (1) accept the determination and recommended
 866-49 administrative penalty of the department [~~commissioner or the~~
 866-50 ~~commissioner's designee~~]; or

866-51 (2) make a request for a hearing on the occurrence of
 866-52 the violation, the amount of the penalty, or both.

866-53 (b) If the person accepts the determination and recommended
 866-54 penalty of the department [~~commissioner or the commissioner's~~
 866-55 ~~designee~~], the dietitians board by order shall approve the
 866-56 determination and impose the recommended penalty.

866-57 SECTION 5.225. Section 701.505(a), Occupations Code, is
 866-58 amended to read as follows:

866-59 (a) If the person requests a hearing or fails to respond in a
 866-60 timely manner to the notice, the department [~~commissioner or the~~
 866-61 ~~commissioner's designee~~] shall set a hearing and give written
 866-62 notice of the hearing to the person.

866-63 SECTION 5.226. Sections 701.507(b) and (c), Occupations
 866-64 Code, are amended to read as follows:

866-65 (b) Within the 30-day period prescribed by Subsection (a), a
 866-66 person who files a petition for judicial review may:

866-67 (1) stay enforcement of the penalty by:
 866-68 (A) paying the penalty to the court for placement
 866-69 in an escrow account; or

867-1 (B) giving the court a supersedeas bond approved
 867-2 by the court that:

867-3 (i) is for the amount of the penalty; and
 867-4 (ii) is effective until all judicial review
 867-5 of the dietitians board's order is final; or
 867-6 (2) request the court to stay enforcement of the
 867-7 penalty by:

867-8 (A) filing with the court a sworn affidavit of
 867-9 the person stating that the person is financially unable to pay the
 867-10 penalty and is financially unable to give the supersedeas bond; and
 867-11 (B) giving a copy of the affidavit to the
 867-12 ~~department [commissioner or the commissioner's designee]~~ by
 867-13 certified mail.

867-14 (c) If the ~~department [commissioner or the commissioner's~~
 867-15 ~~designee]~~ receives a copy of an affidavit under Subsection (b)(2),
 867-16 the ~~department [commissioner or the designee]~~ may file with the
 867-17 court, within five days after the date the copy is received, a
 867-18 contest to the affidavit.

867-19 SECTION 5.227. Section 1952.001, Occupations Code, is
 867-20 amended to read as follows:

867-21 Sec. 1952.001. DEFINITIONS. In this chapter:

867-22 (1) ~~"Board"~~ means the Texas Board of Health.
 867-23 [2] "Code enforcement" means the inspection of
 867-24 public or private premises for the purpose of:
 867-25 (A) identifying environmental hazards,
 867-26 including:

867-27 (i) fire or health hazards;
 867-28 (ii) nuisance violations;
 867-29 (iii) unsafe building conditions; and
 867-30 (iv) violations of any fire, health, or
 867-31 building regulation, statute, or ordinance; and
 867-32 (B) improving and rehabilitating those premises
 867-33 with regard to those hazards.

867-34 (2) [3] "Code enforcement officer" means an agent of
 867-35 this state or a political subdivision of this state who engages in
 867-36 code enforcement.

867-37 (3) [4] "Department" means the ~~Texas~~ Department
 867-38 of State Health Services.

867-39 (4) "Executive commissioner" means the executive
 867-40 commissioner of the Health and Human Services Commission.

867-41 SECTION 5.228. The heading to Subchapter B, Chapter 1952,
 867-42 Occupations Code, is amended to read as follows:

867-43 SUBCHAPTER B. ~~BOARD~~ POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
 867-44 AND DEPARTMENT

867-45 SECTION 5.229. Section 1952.051, Occupations Code, is
 867-46 amended to read as follows:

867-47 Sec. 1952.051. RULES. The executive commissioner ~~board~~
 867-48 by rule shall:

867-49 (1) adopt standards and education requirements
 867-50 consistent with those established under Chapter 654, Government
 867-51 Code, for the registration of:

867-52 (A) code enforcement officers; and
 867-53 (B) code enforcement officers in training; and
 867-54 (2) prescribe application forms for original and
 867-55 renewal certificates of registration.

867-56 SECTION 5.230. Section 1952.052, Occupations Code, is
 867-57 amended to read as follows:

867-58 Sec. 1952.052. FEES. (a) The executive commissioner
 867-59 ~~board~~ shall set fees in amounts that are reasonable and necessary
 867-60 to cover the cost of administering this chapter.

867-61 (b) The executive commissioner shall set fees for issuing or
 867-62 renewing a certificate of registration in amounts designed to allow
 867-63 the department to recover from the certificate of registration
 867-64 holders all of the department's direct and indirect costs in
 867-65 administering and enforcing this chapter.

867-66 SECTION 5.231. Section 1952.053(b), Occupations Code, is
 867-67 amended to read as follows:

867-68 (b) The register must include:

867-69 (1) the name, residence, date of birth, and social

868-1 security number of the applicant;
 868-2 (2) the name and address of the employer or business of
 868-3 the applicant;
 868-4 (3) the date of the application;
 868-5 (4) the education and experience qualifications of the
 868-6 applicant;
 868-7 (5) the action taken by the department regarding the
 868-8 application and the date of the action;
 868-9 (6) the serial number of any certificate of
 868-10 registration issued to the applicant; and
 868-11 (7) any other information required by department
 868-12 [board] rule.

868-13 SECTION 5.232. Section 1952.102, Occupations Code, is
 868-14 amended to read as follows:

868-15 Sec. 1952.102. ELIGIBILITY TO REGISTER AS CODE ENFORCEMENT
 868-16 OFFICER. To be eligible to receive a certificate of registration as
 868-17 a code enforcement officer, a person must:

- 868-18 (1) have at least one year of full-time experience in
 868-19 the field of code enforcement;
- 868-20 (2) pass the examination conducted by the department
 868-21 or the department's designee;
- 868-22 (3) pay the application, examination, and
 868-23 registration fees; and
- 868-24 (4) meet any other requirements prescribed by this
 868-25 chapter or by department [board] rule.

868-26 SECTION 5.233. Section 1952.105, Occupations Code, is
 868-27 amended to read as follows:

868-28 Sec. 1952.105. RENEWAL OR REINSTATEMENT OF CERTIFICATE.
 868-29 (a) A certificate of registration issued under this chapter
 868-30 expires on the second [~~first~~] anniversary of the date of issuance
 868-31 and may be renewed biennially [~~annually~~] on payment of the required
 868-32 renewal fee and on completion of the [~~annual~~] continuing education
 868-33 requirements prescribed by department rule [~~the board~~].

868-34 (b) The department may reinstate as provided by department
 868-35 [board] rule a certificate of registration that was revoked for
 868-36 failure to pay the renewal fee.

868-37 SECTION 5.234. Section 1952.1051, Occupations Code, is
 868-38 amended to read as follows:

868-39 Sec. 1952.1051. CONTINUING EDUCATION. The executive
 868-40 commissioner [board] by rule shall prescribe [~~annual~~] continuing
 868-41 education requirements for code enforcement officers and code
 868-42 enforcement officers in training that:

- 868-43 (1) establish the number of hours of continuing
 868-44 education required for renewal of a certificate of registration;
- 868-45 (2) establish an approved curriculum that includes
 868-46 material regarding changes in applicable law; and
- 868-47 (3) provide that the approved curriculum may be taught
 868-48 by suitable public agencies and by private entities approved by the
 868-49 department.

868-50 SECTION 5.235. Section 1952.152, Occupations Code, is
 868-51 amended to read as follows:

868-52 Sec. 1952.152. PROCEDURE. The denial, suspension, or
 868-53 revocation of a certificate of registration under this chapter is
 868-54 governed by:

868-55 (1) department [~~the board's~~] rules for a contested
 868-56 case hearing; and

868-57 (2) Chapter 2001, Government Code.

868-58 SECTION 5.236. Section 1952.253, Occupations Code, is
 868-59 amended to read as follows:

868-60 Sec. 1952.253. [~~REPORT AND~~] NOTICE OF VIOLATION AND
 868-61 PENALTY. [(a)] If the department [~~commissioner of public health or~~
 868-62 ~~the commissioner's designee~~] determines that a violation occurred,
 868-63 the department [~~commissioner or the designee may issue to the~~
 868-64 ~~department a report stating:~~

868-65 [(1) the facts on which the determination is based;
 868-66 and]

868-67 [(2) the commissioner's or the designee's
 868-68 recommendation on the imposition of an administrative penalty,
 868-69 including a recommendation on the amount of the penalty.]

869-1 [((b) Within 14 days after the date the report is issued, the
 869-2 ~~commissioner of public health or the commissioner's designee~~ shall
 869-3 give written notice of the violation ~~report~~ to the person. The
 869-4 notice must:

869-5 (1) include a brief summary of the alleged violation;
 869-6 (2) state the amount of the ~~[recommended]~~
 869-7 administrative penalty recommended by the department; and
 869-8 (3) inform the person of the person's right to a
 869-9 hearing on the occurrence of the violation, the amount of the
 869-10 penalty, or both.

869-11 SECTION 5.237. Section 1952.254, Occupations Code, is
 869-12 amended to read as follows:

869-13 Sec. 1952.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
 869-14 Within 10 days after the date the person receives the notice, the
 869-15 person in writing may:

869-16 (1) accept the determination and recommended
 869-17 administrative penalty of the department ~~[commissioner of public~~
 869-18 ~~health or the commissioner's designee~~; or

869-19 (2) make a request for a hearing on the occurrence of
 869-20 the violation, the amount of the penalty, or both.

869-21 (b) If the person accepts the determination and recommended
 869-22 penalty of the department ~~[commissioner of public health or the~~
 869-23 ~~commissioner's designee~~, the department by order shall approve the
 869-24 determination and impose the recommended penalty.

869-25 SECTION 5.238. Section 1952.255(a), Occupations Code, is
 869-26 amended to read as follows:

869-27 (a) If the person requests a hearing or fails to respond in a
 869-28 timely manner to the notice, the department ~~[commissioner of public~~
 869-29 ~~health or the commissioner's designee~~ shall set a hearing and give
 869-30 written notice of the hearing to the person.

869-31 SECTION 5.239. Sections 1952.257(b) and (c), Occupations
 869-32 Code, are amended to read as follows:

869-33 (b) Within the 30-day period prescribed by Subsection (a), a
 869-34 person who files a petition for judicial review may:

869-35 (1) stay enforcement of the penalty by:
 869-36 (A) paying the penalty to the court for placement
 869-37 in an escrow account; or
 869-38 (B) giving the court a supersedeas bond approved
 869-39 by the court that:

869-40 (i) is for the amount of the penalty; and
 869-41 (ii) is effective until all judicial review
 869-42 of the department's order is final; or

869-43 (2) request the court to stay enforcement of the
 869-44 penalty by:

869-45 (A) filing with the court a sworn affidavit of
 869-46 the person stating that the person is financially unable to pay the
 869-47 penalty and is financially unable to give the supersedeas bond; and

869-48 (B) giving a copy of the affidavit to the
 869-49 department ~~[commissioner of public health or the commissioner's~~
 869-50 ~~designee~~ by certified mail.

869-51 (c) If the department ~~[commissioner of public health or the~~
 869-52 ~~commissioner's designee~~ receives a copy of an affidavit under
 869-53 Subsection (b)(2), the department ~~[commissioner or the designee]~~
 869-54 may file with the court, within five days after the date the copy is
 869-55 received, a contest to the affidavit.

869-56 SECTION 5.240. Section 1953.001, Occupations Code, is
 869-57 amended to read as follows:

869-58 Sec. 1953.001. DEFINITIONS. In this chapter:

869-59 (1) "Department" [~~Board~~] means the Department
 869-60 ~~[Texas Board]~~ of State Health Services.

869-61 (2) "Executive commissioner" means the executive
 869-62 commissioner of the Health and Human Services Commission.

869-63 (3) "Sanitarian" means a person trained in sanitary
 869-64 science to perform duties relating to education and inspections in
 869-65 environmental sanitation.

869-66 (4) [~~(3)~~] "Sanitation" means the study, art, and
 869-67 technique of applying scientific knowledge to improve the human
 869-68 environment for the purpose of promoting public health and welfare.

869-69 SECTION 5.241. Section 1953.003, Occupations Code, is

870-1 amended to read as follows:

870-2 Sec. 1953.003. EXEMPTIONS. This chapter does not apply to a
 870-3 person, including a physician, dentist, engineer, or veterinarian,
 870-4 who is licensed by an agency of this state other than the department
 870-5 [board] and who, by nature of the person's employment or duties,
 870-6 might be construed as being subject to this chapter.

870-7 SECTION 5.242. Subchapter B, Chapter 1953, Occupations
 870-8 Code, is amended to read as follows:

870-9 SUBCHAPTER B. [BOARD] POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
 870-10 AND DEPARTMENT

870-11 Sec. 1953.051. GENERAL DUTIES OF DEPARTMENT [BOARD]. The
 870-12 department [board] shall:

870-13 (1) ~~adopt rules to administer and enforce this~~
 870-14 ~~chapter,~~

870-15 (2) [~~2~~] administer continuing education requirements;
 870-16 and

870-17 (2) [~~3~~] prescribe necessary forms.

870-18 Sec. 1953.0511. RULES. The executive commissioner shall
 870-19 adopt rules to administer and enforce this chapter.

870-20 Sec. 1953.052. FEES; PAYMENT OF ADMINISTRATIVE COSTS. (a)
 870-21 The executive commissioner by rule [board] shall prescribe fees
 870-22 under this chapter.

870-23 (b) General revenue of the state may not be used to pay the
 870-24 costs of administering this chapter in an amount that exceeds the
 870-25 amount of fees received under this chapter.

870-26 (c) If the fees are inadequate to pay the costs of
 870-27 administering this chapter, the executive commissioner [board] may
 870-28 increase the fees to an amount sufficient to pay those costs.

870-29 (d) The executive commissioner shall set fees for issuing or
 870-30 renewing a certificate of registration in amounts designed to allow
 870-31 the department to recover from the certificate of registration
 870-32 holders all of the department's direct and indirect costs in
 870-33 administering and enforcing this chapter.

870-34 Sec. 1953.053. REGISTER OF APPLICATIONS. (a) The
 870-35 department [board] shall keep a register of each application for a
 870-36 certificate of registration under this chapter.

870-37 (b) The register must include:

870-38 (1) the name, age, and place of residence of the
 870-39 applicant;

870-40 (2) the name and address of the employer or business
 870-41 connection of the applicant;

870-42 (3) the date of the application;

870-43 (4) complete information regarding the applicant's
 870-44 education and experience qualifications;

870-45 (5) the date the department [board] reviewed and acted
 870-46 on the application;

870-47 (6) a description of the department's [board's] action
 870-48 on the application;

870-49 (7) the serial number of any certificate of
 870-50 registration issued to the applicant; and

870-51 (8) any other information the department [board]
 870-52 determines necessary.

870-53 Sec. 1953.054. RECORD OF PROCEEDINGS. The department
 870-54 [board] shall keep a record of proceedings under this chapter.

870-55 Sec. 1953.055. REPORTS. The department [board] shall
 870-56 maintain a copy of each annual report and each report prepared by
 870-57 the state auditor issued in connection with this chapter.

870-58 SECTION 5.243. Sections 1953.102, 1953.103, and 1953.104,
 870-59 Occupations Code, are amended to read as follows:

870-60 Sec. 1953.102. ELIGIBILITY REQUIREMENTS. (a) To be
 870-61 eligible to receive a certificate of registration as a professional
 870-62 sanitarian, a person must:

870-63 (1) hold at least a bachelor's degree from an
 870-64 accredited college or university that includes at least 30 semester
 870-65 hours in basic or applied science;

870-66 (2) complete any additional training in the basic
 870-67 sciences or public health the executive commissioner [board]
 870-68 determines necessary to effectively serve as a professional
 870-69 sanitarian; and

(3) have at least two years of full-time experience in sanitation.

(b) The executive commissioner [board] by rule may establish other qualifications for registration.

Sec. 1953.103. RECIPROCAL REGISTRATION. The department
[board] under rules adopted by the executive commissioner [board]
may enter into an agreement with another state to provide for
reciprocal registration if the other state provides by statute for
the registration of sanitarians.

Sec. 1953.104. ISSUANCE OF CERTIFICATE: PROFESSIONAL SANITARIAN; TERM. (a) The department [board] shall issue a certificate of registration as a professional sanitarian to a person who:

(1) applies on the form prescribed by the department
[board];

(2) pays the registration fee set by the executive commissioner by rule [board];

(3) meets the eligibility requirements prescribed by Section 1953.102; and

(4) passes an examination under Subchapter D.
(b) A certificate of registration is valid for two years.

(b) A certificate of registration is valid for two years.

SECTION 5.244. Section 1953.105(a), Occupations Code, is amended to read as follows:

(a) The department [On approval by the board, the board] shall issue a certificate of registration as a sanitarian in training to a person who:

(1) is employed in sanitation;
(2) meets the eligibility requirements prescribed by
Section 1953.102 other than the requirements relating to

(3) pays a registration fee prescribed by the

executive commissioner by rule [board] for a sanitarian in training; and

(4) passes an examination under Subchapter D.

SECTION 3.243. Section 1953.106, Occupations Code, is amended to read as follows:

(a) To renew a certificate of registration under this chapter, a professional sanitarian must:

(1) pay to the department [board] a renewal fee

prescribed by the executive commissioner by rule [board]; and
(2) provide proof of completion of continuing education contact hours as prescribed by the executive commissioner [board].
(b) The department [board] may reinstate a certificate of registration as provided by department [board] rules that was

SECTION 5.246. Subchapters D and E, Chapter 1953,

e amended to read as follow
CHAPTER D—EXAMINATION

SUBCHAPTER D. EXAMINATION

Sec. 1953.151. EXAMINATION. (a) To obtain a certificate of registration under this chapter, an applicant must pass a written examination prescribed by the department [board] that provides evidence satisfactory to the department [board] that the applicant is qualified for registration under this chapter.

(b) An applicant for a certificate of registration may not take the examination unless the applicant pays the examination fee prescribed by the executive commissioner by rule [board].

(c) In evaluating an applicant's performance on the examination, the department [board] shall carefully consider the applicant's knowledge and understanding of the principles of sanitation and the physical, biological, and social sciences.

Sec. 1953.152. EXAMINATION RESULTS. (a) Not later than the 30th day after the examination date, the department [board] shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the department [board] shall notify each examinee of the results of the examination not later than the 14th day after the date the department [board] receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a national testing service will not be given before the 91st day after the examination date, the department [board] shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination, the department [board] shall provide to the person an analysis of the person's performance on the examination.

SUBCHAPTER E. CERTIFICATE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1953.201. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.

(a) The department [board] may deny a person's application for a certificate of registration if:

(1) the person's certificate or license to engage in a profession in this state or elsewhere has been revoked for unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of the profession; or

(2) satisfactory proof is presented to the department
~~[board]~~ establishing that the person has been found guilty of
unprofessional conduct, fraud, deceit, negligence, or misconduct
in the practice of a profession.

(b) The department [board] may suspend or revoke a certificate of registration if the certificate holder:

(1) practiced fraud or deceit in obtaining the certificate; or
(2) acted in a manner constituting gross negligence,

incompetency, or misconduct in the practice of sanitation.

Sec. 1953.202. HEARING. The department [~~board~~] may not deny an application for a certificate of registration or suspend or revoke a person's certificate until a hearing is held and the person is given the opportunity to answer any charges filed with the department [~~board~~].

SECTION 5.247. Section 1953.301, Occupations Code, is amended to read as follows:

Sec. 1953.301. IMPOSITION OF ADMINISTRATIVE PENALTY. The department [board] may impose an administrative penalty on a person registered under this chapter who violates this chapter or a rule or order adopted under this chapter.

SECTION 5.248. Sections 1953.303 and 1953.304, Occupations Code, are amended to read as follows:

Sec. 1953.303. [REPORT AND] NOTICE OF VIOLATION AND PENALTY. [(a)] If the department [commissioner of public health or the commissioner's designee] determines that a violation occurred, the department [commissioner or the designee may issue to the board a report stating:

[(1) the facts on which the determination is based;

[(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.]

[(b) Within 14 days after the date the report is issued, the

[b] Within 14 days after the date the report is issued, the commissioner of public health or the commissioner's designee] shall give written notice of the violation [~~report~~] to the person. The notice must:

(1) include a brief summary of the alleged violation;
(2) state the amount of the [recommended] administrative penalty recommended by the department; and
(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 1953.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty [of the commissioner of public health or the commissioner's designee]; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty [of the commissioner of public health or the commissioner's

873-1 ~~designee~~, the department [board] by order shall approve the
 873-2 determination and impose the recommended penalty.

873-3 SECTION 5.249. Sections 1953.305(a) and (c), Occupations
 873-4 Code, are amended to read as follows:

873-5 (a) If the person requests a hearing or fails to respond in a
 873-6 timely manner to the notice, the department [~~commissioner of public~~
 873-7 ~~health or the commissioner's designee~~] shall set a hearing and give
 873-8 written notice of the hearing to the person.

873-9 (c) The administrative law judge shall make findings of fact
 873-10 and conclusions of law and promptly issue to the department [board]
 873-11 a proposal for a decision about the occurrence of the violation and
 873-12 the amount of a proposed administrative penalty.

873-13 SECTION 5.250. Section 1953.306, Occupations Code, is
 873-14 amended to read as follows:

873-15 Sec. 1953.306. DECISION BY DEPARTMENT [BOARD]. (a) Based
 873-16 on the findings of fact, conclusions of law, and proposal for
 873-17 decision, the department [board] by order may determine that:

873-18 (1) a violation occurred and impose an administrative
 873-19 penalty; or

873-20 (2) a violation did not occur.

873-21 (b) The notice of the department's [board's] order given to
 873-22 the person must include a statement of the right of the person to
 873-23 judicial review of the order.

873-24 SECTION 5.251. Sections 1953.307(a), (b), and (c),
 873-25 Occupations Code, are amended to read as follows:

873-26 (a) Within 30 days after the date the department's [board's]
 873-27 order becomes final, the person shall:

873-28 (1) pay the administrative penalty; or

873-29 (2) file a petition for judicial review contesting the
 873-30 occurrence of the violation, the amount of the penalty, or both.

873-31 (b) Within the 30-day period prescribed by Subsection (a), a
 873-32 person who files a petition for judicial review may:

873-33 (1) stay enforcement of the penalty by:

873-34 (A) paying the penalty to the court for placement
 873-35 in an escrow account; or

873-36 (B) giving the court a supersedeas bond approved
 873-37 by the court that:

873-38 (i) is for the amount of the penalty; and

873-39 (ii) is effective until all judicial review
 873-40 of the department's [board's] order is final; or

873-41 (2) request the court to stay enforcement of the
 873-42 penalty by:

873-43 (A) filing with the court a sworn affidavit of
 873-44 the person stating that the person is financially unable to pay the
 873-45 penalty and is financially unable to give the supersedeas bond; and

873-46 (B) giving a copy of the affidavit to the
 873-47 department [~~commissioner of public health or the commissioner's~~
 873-48 ~~designee~~] by certified mail.

873-49 (c) If the department [~~commissioner of public health or the~~
 873-50 ~~commissioner's designee~~] receives a copy of an affidavit under
 873-51 Subsection (b)(2), the department [~~commissioner or the designee~~]
 873-52 may file with the court, within five days after the date the copy is
 873-53 received, a contest to the affidavit.

873-54 SECTION 5.252. Section 1954.002, Occupations Code, is
 873-55 amended by amending Subdivisions (7) and (8) and adding Subdivision
 873-56 (10-a) to read as follows:

873-57 (7) "Commissioner" means the commissioner of state
 873-58 [~~public~~] health services.

873-59 (8) "Department" means the [~~Texas~~] Department of State
 873-60 Health Services.

873-61 (10-a) "Executive commissioner" means the executive
 873-62 commissioner of the Health and Human Services Commission.

873-63 SECTION 5.253. The heading to Subchapter B, Chapter 1954,
 873-64 Occupations Code, is amended to read as follows:

873-65 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER [BOARD]
 873-66 AND DEPARTMENT

873-67 SECTION 5.254. Section 1954.051, Occupations Code, is
 873-68 amended to read as follows:

873-69 Sec. 1954.051. GENERAL RULEMAKING AUTHORITY. The executive

874-1 commissioner [board] shall adopt substantive and procedural rules
 874-2 as necessary or desirable for the executive commissioner [board],
 874-3 the department, and the commissioner to discharge their powers and
 874-4 duties under this chapter.

874-5 SECTION 5.255. Section 1954.052, Occupations Code, is
 874-6 amended to read as follows:

874-7 Sec. 1954.052. RULES REGARDING ASBESTOS CONCENTRATION
 874-8 LEVELS. (a) The executive commissioner [board] may adopt rules
 874-9 defining the maximum airborne asbestos concentrations that are:

874-10 (1) permissible outside of a regulated containment
 874-11 area during an abatement activity; and
 874-12 (2) acceptable for final clearance.

874-13 (b) The executive commissioner [board] may not by rule
 874-14 identify any level of asbestos concentration as a safe exposure
 874-15 level because any exposure to airborne asbestos is considered to
 874-16 involve some risk.

874-17 SECTION 5.256. Section 1954.053, Occupations Code, is
 874-18 amended to read as follows:

874-19 Sec. 1954.053. RULES REGARDING PERFORMANCE STANDARDS AND
 874-20 WORK PRACTICES. The executive commissioner [board] may adopt rules
 874-21 specifying:

874-22 (1) performance standards at least as stringent as
 874-23 applicable federal standards; and

874-24 (2) work practices that affect asbestos removal or
 874-25 encapsulation in a public building.

874-26 SECTION 5.257. Section 1954.054, Occupations Code, is
 874-27 amended to read as follows:

874-28 Sec. 1954.054. RULES RESTRICTING ADVERTISING OR
 874-29 COMPETITIVE BIDDING. (a) The executive commissioner [board] may
 874-30 not adopt a rule restricting advertising or competitive bidding by
 874-31 a person licensed or registered under this chapter except to
 874-32 prohibit a false, misleading, or deceptive practice.

874-33 (b) In adopting [its] rules to prohibit a false, misleading,
 874-34 or deceptive practice, the executive commissioner [board] may not
 874-35 include a rule that:

874-36 (1) restricts the use of any medium for advertising;
 874-37 (2) restricts the use of the personal appearance or
 874-38 voice of the person in an advertisement;
 874-39 (3) relates to the size or duration of an
 874-40 advertisement by the person; or
 874-41 (4) restricts the person's advertisement under a trade
 874-42 name.

874-43 SECTION 5.258. Section 1954.055, Occupations Code, is
 874-44 amended to read as follows:

874-45 Sec. 1954.055. RECIPROCITY AGREEMENT. The executive
 874-46 commissioner [department] may adopt rules under this chapter to
 874-47 effect reciprocity agreements with other states.

874-48 SECTION 5.259. Section 1954.056(a), Occupations Code, is
 874-49 amended to read as follows:

874-50 (a) The executive commissioner [board] shall set [adopt a
 874-51 schedule of the] fees under [that are provided by] this chapter in
 874-52 amounts that are [and any other fee that is] reasonable and
 874-53 necessary. The executive commissioner shall set fees for issuing
 874-54 or renewing a license in amounts designed to allow the department to
 874-55 recover from the license holders all of the department's direct and
 874-56 indirect costs in administering and enforcing this chapter.

874-57 SECTION 5.260. Section 1954.059(a), Occupations Code, is
 874-58 amended to read as follows:

874-59 (a) The department shall inspect:
 874-60 (1) an asbestos abatement contractor during an
 874-61 abatement project at least annually; and
 874-62 (2) other licensed organizations in accordance with
 874-63 department [board] rules.

874-64 SECTION 5.261. Sections 1954.060(a) and (c), Occupations
 874-65 Code, are amended to read as follows:

874-66 (a) The executive commissioner [board] may adopt and the
 874-67 department may enforce rules regarding demolition and renovation
 874-68 activities to protect the public from asbestos emissions. At a
 874-69 minimum, the rules must be sufficient to permit the department to

875-1 obtain authority from the United States Environmental Protection
 875-2 Agency to implement and enforce in this state the provisions of 40
 875-3 C.F.R. Part 61, Subpart M, that establish the requirements
 875-4 applicable to the demolition and renovation of a facility,
 875-5 including the disposal of asbestos-containing waste materials.

875-6 (c) The department [board] may exempt a demolition or
 875-7 renovation project from the rules relating to demolition and
 875-8 renovation activities adopted under Subsection (a) if:

875-9 (1) the project has received an exemption from the
 875-10 United States Environmental Protection Agency exempting the
 875-11 project from federal regulations; or

875-12 (2) the department [board] determines that:

875-13 (A) the project will use methods for the
 875-14 abatement or removal of asbestos that provide protection for the
 875-15 public health and safety at least equivalent to the protection
 875-16 provided by the procedures required under department [board] rule
 875-17 for the abatement or removal of asbestos; and

875-18 (B) the project does not violate federal law.

875-19 SECTION 5.262. Section 1954.061, Occupations Code, is
 875-20 amended to read as follows:

875-21 Sec. 1954.061. MEMORANDUM OF UNDERSTANDING REGARDING
 875-22 CERTAIN SOLID WASTE FACILITIES. The executive commissioner [board]
 875-23 and the Texas Natural Resource Conservation Commission on
 875-24 Environmental Quality by rule shall adopt a joint memorandum of
 875-25 understanding regarding the inspection of solid waste facilities
 875-26 that receive asbestos.

875-27 SECTION 5.263. Section 1954.101(b), Occupations Code, is
 875-28 amended to read as follows:

875-29 (b) In accordance with a schedule established by department
 875-30 [board] rules, a person may not sponsor or certify an asbestos
 875-31 training course required for licensing or registration under this
 875-32 chapter unless the person is licensed as a training sponsor.

875-33 SECTION 5.264. Sections 1954.102(a) and (c), Occupations
 875-34 Code, are amended to read as follows:

875-35 (a) The executive commissioner [board] shall determine and
 875-36 specify the scope, purpose, eligibility, qualifications, and
 875-37 compliance requirements for each class of license and any other
 875-38 license necessary for the executive commissioner and department
 875-39 [board] to carry out their [its] duties under this chapter.

875-40 (c) A laboratory may be licensed as an asbestos laboratory
 875-41 only if the laboratory:

875-42 (1) is accredited by the National Voluntary Laboratory
 875-43 and Analytical Proficiency Accreditation or is enrolled in the EPA
 875-44 Proficiency Analytical Testing rounds, as appropriate; or
 875-45 (2) has similar qualifications as required by the
 875-46 executive commissioner [board].

875-47 SECTION 5.265. Section 1954.105(a), Occupations Code, is
 875-48 amended to read as follows:

875-49 (a) An applicant for a license to engage in asbestos
 875-50 abatement or in another asbestos-related activity for which a
 875-51 license is required under this chapter must:

875-52 (1) submit an application to the department on a form
 875-53 prescribed by the department; and

875-54 (2) pay to the department a nonrefundable application
 875-55 fee in the amount set by the executive commissioner by rule [board].

875-56 SECTION 5.266. Section 1954.106(a), Occupations Code, is
 875-57 amended to read as follows:

875-58 (a) To qualify for a license under this chapter, an
 875-59 applicant must meet the requirements of this section and any other
 875-60 requirements established by the executive commissioner [board],
 875-61 including asbestos-related education or experience requirements.

875-62 SECTION 5.267. Section 1954.107(a), Occupations Code, is
 875-63 amended to read as follows:

875-64 (a) An individual may apply for a restricted license as an
 875-65 asbestos abatement supervisor without the experience the executive
 875-66 commissioner [board] by rule may require to be licensed as an
 875-67 asbestos abatement supervisor if the individual:

875-68 (1) is an employee of a building owner or manager; and
 875-69 (2) meets all other qualifications or requirements for

876-1 a license.

876-2 SECTION 5.268. Sections 1954.108(a) and (b), Occupations
876-3 Code, are amended to read as follows:

876-4 (a) An application for registration or the renewal of
876-5 registration as an asbestos abatement worker must be made on a form
876-6 provided by the department. An application for registration must
876-7 be accompanied by a nonrefundable fee set by the executive
876-8 commissioner by rule [board in an amount not to exceed \$50].

876-9 (b) The executive commissioner [board] shall determine the
876-10 criteria for registration or the renewal of registration as an
876-11 asbestos abatement worker.

876-12 SECTION 5.269. Section 1954.109, Occupations Code, is
876-13 amended to read as follows:

876-14 Sec. 1954.109. EXAMINATIONS. The executive commissioner
876-15 [board] may:

876-16 (1) require or authorize the use of standardized
876-17 examinations for licensing or registration under this chapter; and
876-18 (2) set fees [in amounts not to exceed \$200] for the
876-19 administration of the examinations.

876-20 SECTION 5.270. Section 1954.151(a), Occupations Code, is
876-21 amended to read as follows:

876-22 (a) The department may grant a provisional license or
876-23 registration to an applicant for a license or registration in this
876-24 state who:

876-25 (1) has been licensed or registered in good standing
876-26 to perform the relevant asbestos-related activity for at least two
876-27 years in another jurisdiction, including a foreign country, that
876-28 has licensing or registration requirements substantially
876-29 equivalent to the requirements of this chapter;

876-30 (2) is currently licensed or registered in that
876-31 jurisdiction;

876-32 (3) has passed a national or other examination
876-33 recognized by the executive commissioner [board] relating to the
876-34 relevant asbestos-related activity, if the executive commissioner
876-35 [board] requires an examination under Section 1954.109 to obtain
876-36 the license or registration required to perform that activity; and

876-37 (4) is sponsored by a person licensed under this
876-38 chapter with whom the provisional license or registration holder
876-39 will practice during the time the person holds the provisional
876-40 license or registration.

876-41 SECTION 5.271. Section 1954.153, Occupations Code, is
876-42 amended to read as follows:

876-43 Sec. 1954.153. ELIGIBILITY FOR LICENSE OR REGISTRATION.
876-44 The department shall issue a license or registration under
876-45 Subchapter C to a provisional license or registration holder who is
876-46 eligible to be licensed or registered under rules adopted under
876-47 Section 1954.055 or who:

876-48 (1) passes the part of the examination under Section
876-49 1954.109 that relates to the applicant's knowledge and
876-50 understanding of the laws and rules relating to the performance of
876-51 the relevant asbestos-related activity in this state, if the
876-52 executive commissioner [board] requires an examination under
876-53 Section 1954.109 to obtain the license or registration required to
876-54 perform that activity;

876-55 (2) meets the relevant academic and experience
876-56 requirements for the license or registration, as verified by the
876-57 department; and

876-58 (3) satisfies any other applicable license or
876-59 registration requirement under this chapter.

876-60 SECTION 5.272. Section 1954.201, Occupations Code, is
876-61 amended to read as follows:

876-62 Sec. 1954.201. [ANNUAL] LICENSE EXPIRATION AND RENEWAL
876-63 [REQUIRED]. (a) A license issued under this chapter expires on the
876-64 second [first] anniversary of its effective date and may be [,
876-65 unless the license is] renewed [for a one-year term] as provided by
876-66 this subchapter. A person whose license has expired may not engage
876-67 in an activity for which a license is required until the license is
876-68 renewed.

876-69 (b) The executive commissioner [board] by rule may adopt a

877-1 system under which licenses expire on various dates during the
 877-2 year. For a year in which the license expiration date is changed,
 877-3 the department shall prorate license fees on a monthly basis so that
 877-4 each license holder pays only that portion of the license fee that
 877-5 is allocable to the number of months during which the license is
 877-6 valid. On renewal of the license on the new expiration date, the
 877-7 total renewal fee is payable.

877-8 SECTION 5.273. Section 1954.203(a), Occupations Code, is
 877-9 amended to read as follows:

877-10 (a) A person may renew an unexpired license for an
 877-11 additional two-year [~~one-year~~] term if the person:
 877-12 (1) is otherwise entitled to be licensed;
 877-13 (2) submits to the department a renewal application on
 877-14 the form required by the department;
 877-15 (3) pays to the department a nonrefundable renewal fee
 877-16 [~~in an amount not to exceed the amount of the application fee~~
 877-17 ~~required under Section 1954.105(a)~~];
 877-18 (4) has successfully completed:
 877-19 (A) the requirements for renewal; and
 877-20 (B) a current physical examination; and
 877-21 (5) has complied with any final order resulting from a
 877-22 violation of this chapter.

877-23 SECTION 5.274. Section 1954.205(a), Occupations Code, is
 877-24 amended to read as follows:

877-25 (a) The executive commissioner [~~board~~] shall set the term of
 877-26 registration of an asbestos abatement worker.

877-27 SECTION 5.275. Sections 1954.256(a), (b), and (d),
 877-28 Occupations Code, are amended to read as follows:

877-29 (a) The executive commissioner [~~board~~] shall adopt an
 877-30 asbestos training approval plan to approve the training required
 877-31 for a person to be licensed or registered under this chapter. In
 877-32 adopting the plan, the executive commissioner [~~board~~] shall adopt
 877-33 by reference the Model Accreditation Plan developed by the United
 877-34 States Environmental Protection Agency.

877-35 (b) The executive commissioner [~~board~~] may establish other
 877-36 requirements or change the number, design, or content of the plan
 877-37 adopted under Subsection (a) as the executive commissioner [~~board~~]
 877-38 determines desirable, provided that the plan is at least as
 877-39 comprehensive and stringent as the Model Accreditation Plan.

877-40 (d) A licensed training sponsor shall provide to the
 877-41 department in accordance with department [~~board~~] rules a record of
 877-42 the persons who attend an asbestos training course for licensing or
 877-43 registration under this chapter.

877-44 SECTION 5.276. Section 1954.258, Occupations Code, is
 877-45 amended to read as follows:

877-46 Sec. 1954.258. COMPLIANCE WITH [~~BOARD~~] STANDARDS NOT A
 877-47 DEFENSE TO CIVIL LIABILITY. Compliance with any minimum standards
 877-48 adopted by the executive commissioner [~~board~~] under this chapter
 877-49 does not constitute a defense to a civil action for damages arising
 877-50 from a work activity affecting asbestos.

877-51 SECTION 5.277. Section 1954.301(d), Occupations Code, is
 877-52 amended to read as follows:

877-53 (d) The department may place on probation a person whose
 877-54 license or registration is suspended. If a suspension is probated,
 877-55 the department may require the person to:

877-56 (1) report regularly to the department on matters that
 877-57 are the basis of the probation;

877-58 (2) limit practice to the areas prescribed by the
 877-59 department [~~board~~]; or

877-60 (3) continue or review professional education until
 877-61 the person attains a degree of skill satisfactory to the department
 877-62 [~~board~~] in those areas that are the basis of the probation.

877-63 SECTION 5.278. Section 1954.302, Occupations Code, is
 877-64 amended to read as follows:

877-65 Sec. 1954.302. GROUNDS FOR DISCIPLINE OF LICENSE HOLDER.
 877-66 The executive commissioner [~~board~~] by rule shall adopt the criteria
 877-67 for the department to take disciplinary action against a license
 877-68 holder under Section 1954.301. At a minimum, the criteria must
 877-69 require disciplinary action against a license holder who:

- (1) commits fraud or deception in obtaining or attempting to obtain a license or a contract to perform an asbestos-related activity;
- (2) fails at any time to meet the qualifications for a license;
- (3) violates a rule adopted under this chapter;
- (4) violates an applicable federal or state standard for asbestos-related activities; or
- (5) falsifies or fails to maintain a record of an asbestos-related activity required by a federal agency or by the department.

SECTION 5.279. Section 1954.303, Occupations Code, is amended to read as follows:

Sec. 1954.303. GROUNDS FOR DISCIPLINE OF REGISTERED PERSON.
The department shall take disciplinary action under Section
[1954.301](#) against a person registered under this chapter who:

(1) fraudulently or deceptively assigns, obtains, or attempts to assign or obtain a registration or the renewal of a registration; or

(2) violates:
(1) 5

(A) a federal, state, or local asbestos law or rule; or

(B) an order issued by the executive commissioner
[board] or department.

SECTION 5.280. Section 1954.306, Occupations Code, is amended to read as follows:

Sec. 1954.306. ADMINISTRATIVE PROCEDURE. A notice and hearing required under this subchapter and judicial review of a final administrative decision issued under this subchapter are governed by Chapter 2001, Government Code, and the department [board] rules for contested case hearings.

SECTION 5.281. Section 1954.307, Occupations Code, is amended to read as follows:

Sec. 1954.307. REAPPLICATION FOLLOWING LICENSE REVOCATION OR SUSPENSION. A person whose license is revoked or suspended may not reapply for a license until after the period stated in a schedule established by department [board] rule.

SECTION 5.282. Subchapter H, Chapter 1954, Occupations Code, is amended to read as follows:

SUBCHAPTER H. ADMINISTRATIVE PENALTY

Sec. 1954.351. IMPOSITION OF ADMINISTRATIVE PENALTY. The department [commissioner] may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter.

Sec. 1954.352. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of imposing a penalty.

(b) In determining the amount of the penalty, the department [commissioner] shall consider:

(1) the seriousness of the violation;
(2) any hazard created to the health and safety of the public;

(2) the non-enforcement history of previous violations; and

(3) the person's history of previous violations; and
(4) any other matter that justice may require.

Sec. 1954.353. OPPORTUNITY FOR HEARING; ORDER. (a) The department [commissioner] may impose an administrative penalty under this subchapter only after the person charged with a violation is given the opportunity for a hearing.

(b) If a hearing is held, the department [~~commissioner~~] shall make findings of fact and issue a written decision as to:

shall make findings of fact and issue a written decision as to:

- (1) the occurrence of the violation; and
- (2) the amount of any penalty that is warranted.

(c) If the person charged with a violation fails to exercise the opportunity for a hearing, the department [~~commissioner~~], after determining that a violation occurred and the amount of the penalty that is warranted, may impose a penalty and shall issue an order requiring the person to pay any penalty imposed.

(d) Not later than the 30th day after the date an order is

879-1 issued after determining that a violation occurred, the department
 879-2 [commissioner] shall inform the person charged with the violation
 879-3 of the amount of any penalty imposed.

879-4 (e) The department [commissioner] may consolidate a hearing
 879-5 under this section with another proceeding.

879-6 Sec. 1954.354. OPTIONS FOLLOWING DECISION [+] PAY OR
 879-7 APPEAL. (a) Not later than the 30th day after the date the
 879-8 department's [commissioner's] decision or order becomes final as
 879-9 provided by Section 2001.144, Government Code, the person shall:

879-10 (1) pay the administrative penalty; or

879-11 (2) file a petition for judicial review contesting the
 879-12 fact of the violation, the amount of the penalty, or both.

879-13 (b) Within the 30-day period, a person who acts under
 879-14 Subsection (a)(2) may:

879-15 (1) stay enforcement of the penalty by:

879-16 (A) [(1)] paying the penalty to the court
 879-17 [commissioner] for placement in an escrow account; or
 879-18 (B) posting with the court [(2)] giving the
 879-19 commissioner a supersedeas bond in a form approved by the court
 879-20 [commissioner] that [+]

879-21 [(A)] is for the amount of the penalty [+] and
 879-22 [(B)] is effective until judicial review of the
 879-23 department's [commissioner's] decision or order is final; or
 879-24 (2) request that the department stay enforcement of
 879-25 the penalty by:

879-26 (A) filing with the court a sworn affidavit of
 879-27 the person stating that the person is financially unable to pay the
 879-28 penalty and is financially unable to give the supersedeas bond; and
 879-29 (B) sending a copy of the affidavit to the
 879-30 department.

879-31 (c) If the department receives a copy of an affidavit under
 879-32 Subsection (b)(2), the department may file with the court, within
 879-33 five days after the date the copy is received, a contest to the
 879-34 affidavit. The court shall hold a hearing on the facts alleged in
 879-35 the affidavit as soon as practicable and shall stay the enforcement
 879-36 of the penalty on finding that the alleged facts are true. The
 879-37 person who files an affidavit has the burden of proving that the
 879-38 person is financially unable to pay the penalty or to give a
 879-39 supersedeas bond.

879-40 Sec. 1954.355. COLLECTION OF PENALTY. At the request of the
 879-41 department [commissioner], the attorney general may bring a civil
 879-42 action to recover an administrative penalty imposed under this
 879-43 subchapter.

879-44 Sec. 1954.356. JUDICIAL REVIEW. Judicial review of a
 879-45 decision or order of the department [commissioner] imposing a
 879-46 penalty under this subchapter is instituted by filing a petition
 879-47 with a district court in Travis County and is under the substantial
 879-48 evidence rule as provided by Subchapter G, Chapter 2001, Government
 879-49 Code.

879-50 Sec. 1954.357. REMITTANCE OF PENALTY AND INTEREST OR
 879-51 RELEASE OF BOND. If after judicial review the administrative
 879-52 penalty is reduced or is not upheld by the court, the department
 879-53 [commissioner] shall:

879-54 (1) remit the appropriate amount, plus accrued
 879-55 interest, to the person not later than the 30th day after the date
 879-56 of the determination, if the person paid the penalty; or

879-57 (2) execute a release of the bond, if the person gave a
 879-58 bond.

879-59 SECTION 5.283. Sections 1955.001(1), (2), and (3),
 879-60 Occupations Code, are amended to read as follows:

879-61 (1) ["Board" means the Texas Board of Health.
 879-62 [(2)] "Child-occupied facility" means a building or
 879-63 part of a building constructed before 1978, including a day-care
 879-64 center, preschool, or kindergarten classroom, that is visited
 879-65 regularly by the same child, six years of age or younger, at least
 879-66 two days in any calendar week if the visits are for at least:

879-67 (A) three hours each day; and

879-68 (B) 60 hours each year.

879-69 (2) [(3)] "Department" means the [Texas] Department

880-1 of State Health Services.

880-2 (3) "Executive commissioner" means the executive
880-3 commissioner of the Health and Human Services Commission.

880-4 SECTION 5.284. Section 1955.002, Occupations Code, is
880-5 amended to read as follows:

880-6 Sec. 1955.002. RULES RESTRICTING ADVERTISING OR
880-7 COMPETITIVE BIDDING. (a) The executive commissioner [board] may
880-8 not adopt rules restricting advertising or competitive bidding by a
880-9 certified or accredited person except to prohibit false,
880-10 misleading, or deceptive practices.

880-11 (b) The executive commissioner [board] may not include in
880-12 the [its] rules to prohibit false, misleading, or deceptive
880-13 practices a rule that:

880-14 (1) restricts the use of any advertising medium;
880-15 (2) restricts the use of a certified or accredited
880-16 person's personal appearance or voice in an advertisement;
880-17 (3) relates to the size or duration of an
880-18 advertisement by the certified or accredited person; or
880-19 (4) restricts the certified or accredited person's
880-20 advertisement under a trade name.

880-21 SECTION 5.285. Section 1955.051(d), Occupations Code, is
880-22 amended to read as follows:

880-23 (d) Rules adopted by the executive commissioner under this
880-24 section must:

880-25 (1) set minimum training requirements for use by
880-26 accredited training providers;
880-27 (2) set standards for the reliability, effectiveness,
880-28 and safety of lead-based paint activities in target housing;
880-29 (3) set standards for accrediting training providers;
880-30 (4) require the use of certified and accredited
880-31 personnel in a lead-based paint activity in target housing or in a
880-32 child-occupied facility;

880-33 (5) be revised as necessary to:

880-34 (A) comply with federal law and rules; and
880-35 (B) maintain eligibility for federal funding;
880-36 (6) facilitate reciprocity and communication with
880-37 other states having a certification and accreditation program;
880-38 (7) provide for the revocation of the certification or
880-39 accreditation of a person certified or accredited by the
880-40 department; and
880-41 (8) provide for financial assurance for a person
880-42 certified or accredited by the department.

880-43 SECTION 5.286. Section 1955.052(a), Occupations Code, is
880-44 amended to read as follows:

880-45 (a) The executive commissioner [board] by rule may require a
880-46 person involved in a lead-based paint activity in target housing or
880-47 a public area that the department determines creates a public
880-48 health hazard to be certified. The department shall delay
880-49 implementation of the certification requirement for six months
880-50 after the date the rule is adopted.

880-51 SECTION 5.287. Section 1955.053, Occupations Code, is
880-52 amended to read as follows:

880-53 Sec. 1955.053. FEES. The executive commissioner by rule
880-54 [department] may impose a fee to cover the cost of administering the
880-55 program. The executive commissioner shall set fees for issuing or
880-56 renewing a certification or accreditation in amounts designed to
880-57 allow the department to recover from the certification and
880-58 accreditation holders all of the department's direct and indirect
880-59 costs in administering and enforcing this chapter.

880-60 SECTION 5.288. Section 1955.055, Occupations Code, is
880-61 amended to read as follows:

880-62 Sec. 1955.055. TERM OF CERTIFICATION OR ACCREDITATION;
880-63 EXPIRATION. (a) A certification or accreditation is valid for two
880-64 years.

880-65 (b) The executive commissioner [board] by rule may adopt a
880-66 system under which certifications or accreditations expire on
880-67 various dates during the year. For the year in which the expiration
880-68 date is changed, the department shall prorate certification or
880-69 accreditation fees on a monthly basis so that each certified or

881-1 accredited person pays only that portion of the certification or
 881-2 accreditation fee that is allocable to the number of months during
 881-3 which the certification or accreditation is valid. On renewal of
 881-4 the certification or accreditation on the new expiration date, the
 881-5 total certification or accreditation renewal fee is payable.

881-6 (c) [b] A person whose certification or accreditation has
 881-7 expired may not engage in activities that require certification or
 881-8 accreditation until the certification or accreditation has been
 881-9 renewed.

881-10 SECTION 5.289. Section 1955.101, Occupations Code, is
 881-11 amended to read as follows:

881-12 Sec. 1955.101. DISCIPLINARY ACTION BY DEPARTMENT. The
 881-13 department shall revoke, suspend, or refuse to renew a
 881-14 certification or accreditation or shall reprimand a certified or
 881-15 accredited person for a violation of this chapter or a department
 881-16 [board] rule.

881-17 SECTION 5.290. Section 1955.102, Occupations Code, is
 881-18 amended to read as follows:

881-19 Sec. 1955.102. PROBATION. (a) The department [board] may
 881-20 place on probation a person whose certification or accreditation is
 881-21 suspended.

881-22 (b) The department [board] may require a person whose
 881-23 certification or accreditation suspension is probated to:

881-24 (1) report regularly to the department on matters that
 881-25 are the basis of the probation;

881-26 (2) limit practice to the areas prescribed by the
 881-27 department [board]; or

881-28 (3) continue or review professional education until
 881-29 the person attains a degree of skill satisfactory to the department
 881-30 [board] in those areas that are the basis of the probation.

881-31 SECTION 5.291. Section 1955.103(b), Occupations Code, is
 881-32 amended to read as follows:

881-33 (b) The executive commissioner [board] shall adopt rules
 881-34 relating to the imposition and collection of an administrative
 881-35 penalty.

881-36 SECTION 5.292. Section 1958.001, Occupations Code, is
 881-37 amended to read as follows:

881-38 Sec. 1958.001. DEFINITIONS. In this chapter:

881-39 (1) "Board" means the Texas Board of Health.
 881-40 (2) "Commissioner" means the commissioner of public
 881-41 health.

881-42 (3) "Department" means the Texas Department of
 881-43 State Health Services.

881-44 (2) "Executive commissioner" means the executive
 881-45 commissioner of the Health and Human Services Commission.

881-46 (3) (4) "License" means a license issued under this
 881-47 chapter.

881-48 (4) (5) "Mold" means any living or dead fungi or
 881-49 related products or parts, including spores, hyphae, and
 881-50 mycotoxins.

881-51 (5) (6) "Mold assessment" means:

881-52 (A) an inspection, investigation, or survey of a
 881-53 dwelling or other structure to provide the owner or occupant with
 881-54 information regarding the presence, identification, or evaluation
 881-55 of mold;

881-56 (B) the development of a mold management plan or
 881-57 remediation protocol; or

881-58 (C) the collection or analysis of a mold sample.

881-59 (6) (7) "Mold remediation" means the removal,
 881-60 cleaning, sanitizing, demolition, or other treatment, including
 881-61 preventive activities, of mold or mold-contaminated matter that was
 881-62 not purposely grown at that location.

881-63 SECTION 5.293. Section 1958.053, Occupations Code, is
 881-64 amended to read as follows:

881-65 Sec. 1958.053. GENERAL RULEMAKING AUTHORITY. The executive
 881-66 commissioner [board] shall adopt substantive and procedural rules
 881-67 as necessary or desirable for the [board], department [and
 881-68 commissioner] to discharge its [their] powers and duties under this
 881-69 chapter.

882-1 SECTION 5.294. Section 1958.054, Occupations Code, is
 882-2 amended to read as follows:

882-3 Sec. 1958.054. RULES REGARDING PERFORMANCE STANDARDS AND
 882-4 WORK PRACTICES. The executive commissioner [board] by rule shall
 882-5 establish minimum performance standards and work practices for
 882-6 conducting a mold assessment or mold remediation in this state.

882-7 SECTION 5.295. Section 1958.055(a), Occupations Code, is
 882-8 amended to read as follows:

882-9 (a) The executive commissioner [board] shall establish
 882-10 reasonable and necessary fees to administer this chapter, including
 882-11 fees for licenses, registrations, and examinations, [. The board
 882-12 shall set the fees] in amounts [an amount] sufficient to recover the
 882-13 costs of administering this chapter [, not to exceed the caps
 882-14 established under Subsection (b)]. The executive commissioner
 882-15 shall set fees for issuing or renewing a license in amounts designed
 882-16 to allow the department to recover from the license holders all of
 882-17 the department's direct and indirect costs in administering and
 882-18 enforcing this chapter.

882-19 SECTION 5.296. Section 1958.056(b), Occupations Code, is
 882-20 amended to read as follows:

882-21 (b) The executive commissioner [board] shall adopt rules
 882-22 regarding compliance investigations.

882-23 SECTION 5.297. Section 1958.058, Occupations Code, is
 882-24 amended to read as follows:

882-25 Sec. 1958.058. SAFETY STANDARDS. The executive
 882-26 commissioner by rule [board] may develop and establish mold safety
 882-27 standards for license holders if appropriate scientific
 882-28 information exists regarding the effect of mold.

882-29 SECTION 5.298. Section 1958.059, Occupations Code, is
 882-30 amended to read as follows:

882-31 Sec. 1958.059. CODE OF ETHICS. The executive commissioner
 882-32 [board] by rule shall adopt a code of ethics for license holders
 882-33 that promotes the education of mold assessors and mold remediatros
 882-34 concerning the ethical, legal, and business principles that should
 882-35 govern their conduct.

882-36 SECTION 5.299. Section 1958.101(b), Occupations Code, is
 882-37 amended to read as follows:

882-38 (b) The executive commissioner [board] shall adopt rules
 882-39 regarding:

882-40 (1) the scope of mold-related work for which a license
 882-41 is required, including the supervision of employees or other
 882-42 persons by license holders; and

882-43 (2) renewal requirements for a license issued under
 882-44 this chapter.

882-45 SECTION 5.300. Subchapter C, Chapter 1958, Occupations
 882-46 Code, is amended by adding Section 1958.1011 to read as follows:

882-47 Sec. 1958.1011. TERM OF LICENSE. A license issued under
 882-48 this chapter is valid for two years.

882-49 SECTION 5.301. Section 1958.103, Occupations Code, is
 882-50 amended to read as follows:

882-51 Sec. 1958.103. REGISTRATION REQUIREMENTS FOR EMPLOYEES.
 882-52 The executive commissioner [board] may adopt rules to require the
 882-53 registration of employees supervised by license holders.

882-54 SECTION 5.302. Section 1958.104, Occupations Code, is
 882-55 amended to read as follows:

882-56 Sec. 1958.104. RULES REGARDING LICENSE APPLICATION. The
 882-57 executive commissioner [board] shall adopt rules regarding a
 882-58 license application. The executive commissioner [board] shall
 882-59 adopt rules that establish minimum requirements for a license,
 882-60 including:

882-61 (1) the type of license;

882-62 (2) [~~the term of the license,~~

882-63 [+] the qualifications for the license, including
 882-64 any previous training required under Section 1958.106;

882-65 (3) [+4] renewal requirements for the license,
 882-66 including ongoing continuing education required under Section
 882-67 1958.106; and

882-68 (4) [+5] liability insurance requirements for the
 882-69 license.

883-1 SECTION 5.303. Section 1958.106(a), Occupations Code, is
883-2 amended to read as follows:

883-3 (a) The executive commissioner [board] shall adopt rules
883-4 regarding training required under this chapter and continuing
883-5 education required for a license holder under this chapter.

883-6 SECTION 5.304. Section 1958.107, Occupations Code, is
883-7 amended to read as follows:

883-8 Sec. 1958.107. RECIPROCITY. The executive commissioner
883-9 [board] may adopt rules that facilitate reciprocity and
883-10 communication with other states that have a similar licensing
883-11 program.

883-12 SECTION 5.305. Section 1958.153(c), Occupations Code, is
883-13 amended to read as follows:

883-14 (c) The executive commissioner [board] shall adopt rules to
883-15 implement this section, including rules:

883-16 (1) describing the information that must be provided
883-17 in the notice; and

883-18 (2) authorizing verbal notification to the department
883-19 in an emergency.

883-20 SECTION 5.306. Section 1958.154(c), Occupations Code, is
883-21 amended to read as follows:

883-22 (c) The executive commissioner [board] shall adopt rules to
883-23 implement this section, other than rules described by Subsection
883-24 (d).

883-25 SECTION 5.307. Section 1958.155(c), Occupations Code, is
883-26 amended to read as follows:

883-27 (c) A license holder who is not an individual shall disclose
883-28 to the department the name, address, and occupation of each person
883-29 that has an ownership interest in the license holder. The license
883-30 holder shall report any changes in ownership to the department. The
883-31 executive commissioner [board] shall adopt rules to implement this
883-32 section, including rules regarding the form of the disclosure and
883-33 the time required to make disclosures or to report a change in
883-34 ownership.

883-35 SECTION 5.308. Section 1958.251, Occupations Code, is
883-36 amended to read as follows:

883-37 Sec. 1958.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The
883-38 department [commissioner] may impose an administrative penalty on a
883-39 person who violates this chapter or a rule adopted or order issued
883-40 under this chapter.

883-41 SECTION 5.309. Section 1958.252(b), Occupations Code, is
883-42 amended to read as follows:

883-43 (b) In determining the amount of the penalty, the department
883-44 [commissioner] shall consider:

883-45 (1) whether the violation was committed knowingly,
883-46 intentionally, or fraudulently;

883-47 (2) the seriousness of the violation;
883-48 (3) any hazard created to the health and safety of the
883-49 public;

883-50 (4) the person's history of previous violations; and
883-51 (5) any other matter that justice may require.

883-52 SECTION 5.310. Section 1958.253(a), Occupations Code, is
883-53 amended to read as follows:

883-54 (a) The department [commissioner] may choose not to impose
883-55 an administrative penalty under this subchapter if, not later than
883-56 the 10th day after the date of written notice of the violation under
883-57 Section 1958.254, the person provides conclusive evidence that the
883-58 circumstances giving rise to the violation have been corrected and
883-59 all actual damages are paid.

883-60 SECTION 5.311. Sections 1958.254(a), (c), (d), (e), and
883-61 (f), Occupations Code, are amended to read as follows:

883-62 (a) The department [commissioner] may impose an
883-63 administrative penalty under this subchapter only after the person
883-64 charged with a violation is given a written notice and the
883-65 opportunity for a hearing.

883-66 (c) If a hearing is held, the department [commissioner]
883-67 shall make findings of fact and issue a written decision as to:

883-68 (1) the occurrence of the violation; and
883-69 (2) the amount of any penalty that is warranted.

(d) If the person charged with a violation fails to exercise the opportunity for a hearing, the department [~~commissioner~~], after determining that a violation occurred and the amount of the penalty that is warranted, may impose a penalty and shall issue an order requiring the person to pay any penalty imposed.

(e) Not later than the 30th day after the date the department [commissioner] issues an order after determining that a violation occurred, the department [commissioner] shall inform the person charged with the violation of the amount of any penalty imposed.

(f) The department [commissioner] may consolidate a hearing under this section with another proceeding.

SECTION 5.312. Section 1958.255, Occupations Code, is amended to read as follows:

Sec. 1958.255. OPTIONS FOLLOWING DECISION [~~PAY OR APPEAL~~].
(a) Not later than the 30th day after the date the department's
[commissioner's] decision or order becomes final as provided by
Section [2001.144](#), Government Code, the person shall:

- (1) pay the administrative penalty; or
- (2) file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(2) may:

(1) stay enforcement of the penalty by:
(A) [+] paying the penalty to the court
[commissioner] for placement in an escrow account; or
(B) posting with the court [(2) giving the
commissioner] a supersedeas bond in a form approved by the court
[commissioner] that [+]

[(A)] is for the amount of the penalty[+] and
[(B)] is effective until judicial review of the
department's [commissioner's] decision or order is final; or
(2) request that the department stay enforcement of
the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

SECTION 5.313. Section 1958.256, Occupations Code, is amended to read as follows:

Sec. 1958.256. COLLECTION OF PENALTY. At the request of the department [commissioner], the attorney general may bring a civil action to recover an administrative penalty imposed under this subchapter.

SECTION 5.314. Section 1958.257, Occupations Code, is amended to read as follows:

Sec. 1958.257. JUDICIAL REVIEW. Judicial review of a decision or order of the department [commissioner] imposing a penalty under this subchapter is instituted by filing a petition with a district court in Travis County and is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code.

SECTION 5.315. Section 1958.258, Occupations Code, is amended to read as follows:

Sec. 1958.258. REMITTANCE OF PENALTY AND INTEREST OR RELEASE OF BOND. If after judicial review the administrative penalty is reduced or is not upheld by the court, the department [commissioner] shall:

(1) remit the appropriate amount, plus accrued

885-1 interest, to the person not later than the 30th day after the date
 885-2 of the determination, if the person paid the penalty; or
 885-3 (2) execute a release of the bond, if the person gave a
 885-4 bond.

885-5 SECTION 5.316. Section 1958.301(b), Occupations Code, is
 885-6 amended to read as follows:

885-7 (b) The department [commissioner] may request the attorney
 885-8 general or the district, county, or city attorney having
 885-9 jurisdiction to bring an action to collect a civil penalty under
 885-10 this section.

885-11 SECTION 5.317. Section 1958.302, Occupations Code, is
 885-12 amended to read as follows:

885-13 Sec. 1958.302. INJUNCTIVE RELIEF. The department
 885-14 [commissioner] may request the attorney general or the district,
 885-15 county, or city attorney having jurisdiction to bring an action for
 885-16 a restraining order, injunction, or other relief the court
 885-17 determines is appropriate if it appears to the department that a
 885-18 person is violating or has violated this chapter or a rule adopted
 885-19 under this chapter.

885-20 SECTION 5.318. The following provisions of the Occupations
 885-21 Code are repealed:

- 885-22 (1) Section 110.001(1);
- 885-23 (2) Section 352.002(1);
- 885-24 (3) Section 353.002(1);
- 885-25 (4) Section 402.001(1);
- 885-26 (5) Section 403.001(1);
- 885-27 (6) Section 503.002(1-a);
- 885-28 (7) Section 503.206;
- 885-29 (8) Section 505.002(2-a);
- 885-30 (9) Section 603.2041(e);
- 885-31 (10) Section 605.002(2);
- 885-32 (11) Section 1954.002(6);
- 885-33 (12) Sections 1954.056(b), (c), and (d);
- 885-34 (13) Section 1958.055(b); and
- 885-35 (14) Chapter 2152.

ARTICLE 6. CHANGES AFFECTING OTHER CODES

885-37 SECTION 6.001. Section 15.001, Agriculture Code, is amended
 885-38 to read as follows:

885-39 Sec. 15.001. DEFINITIONS. In this chapter [subchapter]:

885-40 (1) "Farmers market" means a location at which a group
 885-41 of two or more farmers that are certified under the department's
 885-42 farmers market certification program offer produce for retail sale.

885-43 (2) "Food coupon" means any redemptive coupon issued
 885-44 by the [Texas] Department of State Health Services under this
 885-45 chapter [subchapter] that is exchangeable only for produce at a
 885-46 farmers market.

885-47 (3) "Produce" means fresh fruits or vegetables.

885-48 (4) "W.I.C. program" means the federal special
 885-49 supplemental food program for women, infants, and children
 885-50 administered by the [Texas] Department of State Health Services.

885-51 SECTION 6.002. Section 15.002, Agriculture Code, is amended
 885-52 to read as follows:

885-53 Sec. 15.002. ESTABLISHMENT OF SPECIAL NUTRITION PROGRAM.
 885-54 The [Texas] Department of State Health Services may establish a
 885-55 special nutrition program to distribute to certain participants of
 885-56 the W.I.C. program food coupons that are redeemable only at farmers
 885-57 markets located in areas in which the program is implemented.

885-58 SECTION 6.003. Section 15.003, Agriculture Code, is amended
 885-59 to read as follows:

885-60 Sec. 15.003. ELIGIBILITY; AMOUNT OF ALLOTMENT. (a) A
 885-61 person is eligible to participate in the special nutrition program
 885-62 if the person is enrolled in the W.I.C. program and resides in an
 885-63 area in which the special nutrition program is implemented. The
 885-64 [Texas] Department of State Health Services shall determine the
 885-65 eligibility of potential participants.

885-66 (b) Only the [Texas] Department of State Health Services may
 885-67 determine the dollar amount of each participant's monthly allotment
 885-68 of food coupons.

885-69 SECTION 6.004. Section 15.005, Agriculture Code, is amended

886-1 to read as follows:

886-2 Sec. 15.005. RULES. The executive commissioner of the
 886-3 Health and Human Services Commission [Texas Board of Health] shall
 886-4 adopt rules under this chapter [subchapter] that provide for:

886-5 (1) the design, printing, and denominations of the
 886-6 food coupons;

886-7 (2) the procedure for the delivery of the food coupons
 886-8 to participants;

886-9 (3) the procedure for the redemption of food coupons
 886-10 by the sellers of the produce; and

886-11 (4) other rules necessary for carrying out the
 886-12 purposes of this chapter [subchapter].

886-13 SECTION 6.005. Section 15.007, Agriculture Code, is amended
 886-14 to read as follows:

886-15 Sec. 15.007. PROGRAM FUNDS. The Texas Department of
 886-16 State Health Services may accept gifts and grants from the federal
 886-17 government, the state, and private sources as well as legislative
 886-18 appropriations for the program authorized by this chapter
 886-19 [subchapter]. The use of gifts and grants other than legislative
 886-20 appropriations is subject, after their appropriation, only to
 886-21 limitations contained in the gift or grant.

886-22 SECTION 6.006. Article 46B.001, Code of Criminal Procedure,
 886-23 is amended to read as follows:

886-24 Art. 46B.001. DEFINITIONS. In this chapter:

886-25 (1) "Department" means the Department of State Health
 886-26 Services.

886-27 (2) "Inpatient mental health facility" has the
 886-28 meaning assigned by Section 571.003, Health and Safety Code.

886-29 (2) "Intellectual disability" has the meaning
 886-30 assigned by Section 591.003, Health and Safety Code.

886-31 (3) "Local mental health authority" has the meaning
 886-32 assigned by Section 571.003, Health and Safety Code.

886-33 (4) "Local intellectual and developmental disability
 886-34 [mental retardation] authority" has the meaning assigned by Section
 886-35 531.002, Health and Safety Code.

886-36 (5) "Mental health facility" has the meaning assigned
 886-37 by Section 571.003, Health and Safety Code.

886-38 (6) "Mental illness" has the meaning assigned by
 886-39 Section 571.003, Health and Safety Code.

886-40 (7) "Mental retardation" has the meaning assigned by
 886-41 Section 591.003, Health and Safety Code.

886-42 (8) "Residential care facility" has the meaning
 886-43 assigned by Section 591.003, Health and Safety Code.

886-44 (8) (9) "Electronic broadcast system" means a
 886-45 two-way electronic communication of image and sound between the
 886-46 defendant and the court and includes secure Internet
 886-47 videoconferencing.

886-48 SECTION 6.007. Article 46B.021(e), Code of Criminal
 886-49 Procedure, is amended to read as follows:

886-50 (e) The court may appoint as experts under this chapter
 886-51 qualified psychiatrists or psychologists employed by the local
 886-52 mental health authority or local intellectual and developmental
 886-53 disability [mental retardation] authority. The local mental health
 886-54 authority or local intellectual and developmental disability
 886-55 [mental retardation] authority is entitled to compensation and
 886-56 reimbursement as provided by Article 46B.027.

886-57 SECTION 6.008. Article 46B.024, Code of Criminal Procedure,
 886-58 is amended to read as follows:

886-59 Art. 46B.024. FACTORS CONSIDERED IN EXAMINATION. During an
 886-60 examination under this subchapter and in any report based on that
 886-61 examination, an expert shall consider, in addition to other issues
 886-62 determined relevant by the expert, the following:

886-63 (1) the capacity of the defendant during criminal
 886-64 proceedings to:

886-65 (A) rationally understand the charges against
 886-66 the defendant and the potential consequences of the pending
 886-67 criminal proceedings;

886-68 (B) disclose to counsel pertinent facts, events,
 886-69 and states of mind;

(C) engage in a reasoned choice of legal strategies and options;

(D) understand the adversarial nature of criminal proceedings;

(E) exhibit appropriate courtroom behavior; and

(F) testify;

(2) as supported by current indications and the defendant's personal history, whether the defendant:

(A) is a person with [has a] mental illness; or

(B) is a person with an intellectual disability

~~mental retardation~~; (3) whether

(3) whether the identified condition has lasted or is expected to last continuously for at least one year;

(4) the degree of impairment resulting from the mental illness or intellectual disability [mental retardation], if existent, and the specific impact on the defendant's capacity to

existent, and the specific impact on the defendant's capacity to engage with counsel in a reasonable and rational manner; and

(5) if the defendant is taking psychoactive or other medication:

(A) whether the medication is necessary to maintain the defendant's competency; and

(B) the effect, if any, of the medication on the defendant's appearance, demeanor or ability to participate in the

defendant's appearance, demeanor, or ability to participate in the proceedings.

SECTION 6.009. Article 46B.025(b), Code of Criminal Procedure, is amended to read as follows:

(b) If in the opinion of an expert appointed under Article 46B.021 the defendant is incompetent to proceed, the expert shall state in the report:

(1) the symptoms, exact nature, severity, and expected duration of the deficits resulting from the defendant's mental illness or intellectual disability [mental retardation], if any, and the impact of the identified condition on the factors listed in Article 46B.024:

(2) an estimate of the period needed to restore the defendant's competency, including whether the defendant is likely to be restored to competency in the foreseeable future; and

(3) prospective treatment options, if any, appropriate for the defendant.

SECTION 6.010. Article 46B.027, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.027. COMPENSATION OF EXPERTS; REIMBURSEMENT OF FACILITIES. (a) For any appointment under this chapter, the county in which the indictment was returned or information was filed shall pay for services described by Articles 46B.021(a)(1) and (2). If those services are provided by an expert who is an employee of the local mental health authority or local intellectual and developmental disability [mental retardation] authority, the county shall pay the authority for the services.

(b) The county in which the indictment was returned or information was filed shall reimburse a facility that accepts a defendant for examination under this chapter for expenses incurred that are [determined by the department to be] reasonably necessary and incidental to the proper examination of the defendant.

SECTION 6.011. Articles 46B.073(c), (d), and (e), Code of Criminal Procedure, are amended to read as follows:

(c) If the defendant is charged with an offense listed in Article 17.032(a), other than an offense listed in Article 17.032(a)(6), or the indictment alleges an affirmative finding under Section 3g(a)(2), Article 42.12, the court shall enter an order committing the defendant to the maximum security unit of any facility designated by the Department of State Health Services [department], to an agency of the United States operating a mental hospital, or to a Department of Veterans Affairs hospital.

(d) If the defendant is not charged with an offense described by Subsection (c) and the indictment does not allege an affirmative finding under Section 3g(a)(2), Article 42.12, the court shall enter an order committing the defendant to a mental health facility or residential care facility determined to be

appropriate by the local mental health authority or local intellectual and developmental disability [~~mental retardation~~] authority.

(e) Notwithstanding Subsections (b), (c), and (d) and notwithstanding the contents of the applicable order of commitment, in a county in which the Department of State Health Services [~~department~~] operates a jail-based restoration of competency pilot program under Article **46B.090**, a defendant for whom an order is issued under this article committing the defendant to a mental health facility or residential care facility shall be provided competency restoration services at the jail under the pilot program if the service provider at the jail determines the defendant will immediately begin to receive services. If the service provider at the jail determines the defendant will not immediately begin to receive competency restoration services, the defendant shall be transferred to the appropriate mental health facility or residential care facility as provided by the court order. This subsection expires September 1, 2017.

SECTION 6.012. Article **46B.076**(a), Code of Criminal Procedure, is amended to read as follows:

(a) If the defendant is found incompetent to stand trial, not later than the date of the order of commitment or of release on bail, as applicable, the court shall send a copy of the order to the facility [~~of the department~~] to which the defendant is committed or the outpatient treatment program to which the defendant is released. The court shall also provide to the facility or outpatient treatment program copies of the following made available to the court during the incompetency trial:

- (1) reports of each expert;
- (2) psychiatric, psychological, or social work reports that relate to the mental condition of the defendant;
- (3) documents provided by the attorney representing the state or the attorney representing the defendant that relate to the defendant's current or past mental condition;
- (4) copies of the indictment or information and any supporting documents used to establish probable cause in the case;
- (5) the defendant's criminal history record; and
- (6) the addresses of the attorney representing the state and the attorney representing the defendant.

SECTION 6.013. Article **46B.077**(a), Code of Criminal Procedure, is amended to read as follows:

(a) The facility to which the defendant is committed or the outpatient treatment program to which the defendant is released on bail shall:

- (1) develop an individual program of treatment;
- (2) assess and evaluate whether the defendant is likely to be restored to competency in the foreseeable future; and
- (3) report to the court and to the local mental health authority or to the local intellectual and developmental disability [~~mental retardation~~] authority on the defendant's progress toward achieving competency.

SECTION 6.014. Article **46B.082**(b), Code of Criminal Procedure, is amended to read as follows:

(b) If before the 15th day after the date on which the court received notification under Article **46B.079** a defendant committed to a facility [~~of the department~~] or ordered to participate in an outpatient treatment program has not been transported to the court that issued the order under Article **46B.072** or **46B.073**, as applicable, the head of the facility to which the defendant is committed or the provider of the outpatient treatment program in which the defendant is participating shall cause the defendant to be promptly transported to the court and placed in the custody of the sheriff of the county in which the court is located. The county in which the court is located shall reimburse the Department of State Health Services or the Department of Aging and Disability Services, as appropriate, [~~department~~] for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with rates provided in the General Appropriations Act for state employees.

889-1 SECTION 6.015. Article **46B.083(b)**, Code of Criminal
 889-2 Procedure, is amended to read as follows:

889-3 (b) If the head of the facility or the outpatient treatment
 889-4 program provider believes that the defendant is a person with an
 889-5 intellectual disability [mental retardation], the head of the
 889-6 facility or the outpatient treatment program provider shall have
 889-7 submitted to the court an affidavit stating the conclusions reached
 889-8 as a result of the examination.

889-9 SECTION 6.016. Article **46B.090**, Code of Criminal Procedure,
 889-10 is amended by amending Subsection (a) and adding Subsection (a-1)
 889-11 to read as follows:

889-12 (a) In this article, "department" means the Department of
 889-13 State Health Services.

889-14 (a-1) If the legislature appropriates to the department the
 889-15 funding necessary for the department to operate a jail-based
 889-16 restoration of competency pilot program as described by this
 889-17 article, the department shall develop and implement the pilot
 889-18 program in one or two counties in this state that choose to
 889-19 participate in the pilot program. In developing the pilot program,
 889-20 the department shall coordinate and allow for input from each
 889-21 participating county.

889-22 SECTION 6.017. The heading to Article **46B.103**, Code of
 889-23 Criminal Procedure, is amended to read as follows:

889-24 Art. 46B.103. CIVIL COMMITMENT HEARING: INTELLECTUAL
 889-25 DISABILITY [MENTAL RETARDATION].

889-26 SECTION 6.018. Articles **46B.103(a)** and (d), Code of
 889-27 Criminal Procedure, are amended to read as follows:

889-28 (a) If it appears to the court that the defendant may be a
 889-29 person with an intellectual disability [mental retardation], the
 889-30 court shall hold a hearing to determine whether the defendant is a
 889-31 person with an intellectual disability [mental retardation].

889-32 (d) In the proceedings conducted under this subchapter for a
 889-33 defendant described by Subsection (a):

889-34 (1) an application to have the defendant declared a
 889-35 person with an intellectual disability [mental retardation] may not
 889-36 be required;

889-37 (2) the provisions of Subtitle D, Title 7, Health and
 889-38 Safety Code, relating to notice of hearing do not apply; and

889-39 (3) appeals from the criminal court proceedings are to
 889-40 the court of appeals as in the proceedings for commitment to a
 889-41 residential care facility under Subtitle D, Title 7, Health and
 889-42 Safety Code.

889-43 SECTION 6.019. Article **46B.104**, Code of Criminal Procedure,
 889-44 is amended to read as follows:

889-45 Art. 46B.104. CIVIL COMMITMENT PLACEMENT: FINDING OF
 889-46 VIOLENCE. A defendant committed to a facility as a result of
 889-47 proceedings initiated under this chapter shall be committed to the
 889-48 maximum security unit of any facility designated by the Department
 889-49 of State Health Services [department] if:

889-50 (1) the defendant is charged with an offense listed in
 889-51 Article **17.032(a)**, other than an offense listed in Article
 889-52 **17.032(a)(6)**; or

889-53 (2) the indictment charging the offense alleges an
 889-54 affirmative finding under Section 3g(a)(2), Article **42.12**.

889-55 SECTION 6.020. Articles **46B.105(a)**, (b), and (e), Code of
 889-56 Criminal Procedure, are amended to read as follows:

889-57 (a) Unless a defendant is determined to be manifestly
 889-58 dangerous by a [department] review board established under
 889-59 Subsection (b), not later than the 60th day after the date the
 889-60 defendant arrives at the maximum security unit, the defendant shall
 889-61 be transferred to:

889-62 (1) a unit of an inpatient mental health facility
 889-63 other than a maximum security unit;

889-64 (2) a residential care facility; or

889-65 (3) a program designated by a local mental health
 889-66 authority or a local intellectual and developmental disability
 889-67 [mental retardation] authority.

889-68 (b) The commissioner of state health services [mental
 889-69 health and mental retardation] shall appoint a review board of five

890-1 members, including one psychiatrist licensed to practice medicine
 890-2 in this state and two persons who work directly with persons with
 890-3 mental illness or an intellectual disability [mental retardation],
 890-4 to determine whether the defendant is manifestly dangerous and, as
 890-5 a result of the danger the defendant presents, requires continued
 890-6 placement in a maximum security unit.

890-7 (e) If the superintendent of the facility at which the
 890-8 maximum security unit is located disagrees with the determination,
 890-9 the matter shall be referred to the commissioner of state health
 890-10 services [mental health and mental retardation]. The commissioner
 890-11 shall decide whether the defendant is manifestly dangerous.

890-12 SECTION 6.021. Article 46B.106(a), Code of Criminal
 890-13 Procedure, is amended to read as follows:

890-14 (a) A defendant committed to a facility as a result of the
 890-15 proceedings initiated under this chapter, other than a defendant
 890-16 described by Article 46B.104, shall be committed to:

890-17 (1) a facility designated by the Department of State
 890-18 Health Services or the Department of Aging and Disability Services,
 890-19 as appropriate [department]; or

890-20 (2) an outpatient treatment program.

890-21 SECTION 6.022. Article 46B.107(a), Code of Criminal
 890-22 Procedure, is amended to read as follows:

890-23 (a) The release of a defendant committed under this chapter
 890-24 from the Department of State Health Services, the Department of
 890-25 Aging and Disability Services [department], an outpatient
 890-26 treatment program, or another [a] facility [of a defendant
 890-27 committed under this chapter] is subject to disapproval by the
 890-28 committing court if the court or the attorney representing the
 890-29 state has notified the head of the facility or outpatient treatment
 890-30 provider, as applicable, to which the defendant has been committed
 890-31 that a criminal charge remains pending against the defendant.

890-32 SECTION 6.023. Articles 46B.151(a), (b), and (c), Code of
 890-33 Criminal Procedure, are amended to read as follows:

890-34 (a) If a court is required by Article 46B.084(f) or by its
 890-35 appropriate determination under Article 46B.071 to proceed under
 890-36 this subchapter, or if the court is permitted by Article 46B.004(e)
 890-37 to proceed under this subchapter, the court shall determine whether
 890-38 there is evidence to support a finding that the defendant is either
 890-39 a person with mental illness or a person with an intellectual
 890-40 disability [mental retardation].

890-41 (b) If it appears to the court that there is evidence to
 890-42 support a finding of mental illness or an intellectual disability
 890-43 [mental retardation], the court shall enter an order transferring
 890-44 the defendant to the appropriate court for civil commitment
 890-45 proceedings and stating that all charges pending against the
 890-46 defendant in that court have been dismissed. The court may order
 890-47 the defendant:

890-48 (1) detained in jail or any other suitable place
 890-49 pending the prompt initiation and prosecution by the attorney for
 890-50 the state or other person designated by the court of appropriate
 890-51 civil proceedings to determine whether the defendant will be
 890-52 committed to a mental health facility or residential care facility;
 890-53 or

890-54 (2) placed in the care of a responsible person on
 890-55 satisfactory security being given for the defendant's proper care
 890-56 and protection.

890-57 (c) Notwithstanding Subsection (b), a defendant placed in a
 890-58 facility of the Department of State Health Services or the
 890-59 Department of Aging and Disability Services [department] pending
 890-60 civil hearing under this article may be detained in that facility
 890-61 only with the consent of the head of the facility and pursuant to an
 890-62 order of protective custody issued under Subtitle C, Title 7,
 890-63 Health and Safety Code.

890-64 SECTION 6.024. Sections 51.933(b), (c), and (e), Education
 890-65 Code, are amended to read as follows:

890-66 (b) The executive commissioner of the Health and Human
 890-67 Services Commission [Texas Board of Health] may require
 890-68 immunizations against the diseases listed in Subsection (a) and
 890-69 additional diseases for students at any institution of higher

891-1 education who are pursuing a course of study in a human or animal
 891-2 health profession, and the executive commissioner [board] may
 891-3 require those immunizations for any students in times of an
 891-4 emergency or epidemic in a county where the commissioner of state
 891-5 [public] health services has declared such an emergency or
 891-6 epidemic.

891-7 (c) An institution of higher education, in conjunction with
 891-8 the [Texas] Department of State Health Services, should provide
 891-9 individual notice to each student applying for admission regarding:

- 891-10 (1) the consequences of not being current on
 891-11 immunization for certain diseases;
- 891-12 (2) the age groups most vulnerable to these vaccine
 891-13 preventable diseases; and
- 891-14 (3) local providers of immunization services.

891-15 (e) The exception provided by Subsection (d)(1)(B) does not
 891-16 apply in a time of emergency or epidemic declared by the
 891-17 commissioner of state [public] health services.

891-18 SECTION 6.025. Sections [1104.406\(a\)](#) and (c), Estates Code,
 891-19 are amended to read as follows:

891-20 (a) The department shall obtain criminal history record
 891-21 information that is maintained by the Department of Public Safety
 891-22 or the Federal Bureau of Investigation identification division
 891-23 relating to each individual who is or will be providing
 891-24 guardianship services to a ward of or referred by the department,
 891-25 including:

891-26 (1) an employee of or an applicant selected for an
 891-27 employment position with the department;

891-28 (2) a volunteer or an applicant selected to volunteer
 891-29 with the department;

891-30 (3) an employee of or an applicant selected for an
 891-31 employment position with a business entity or other person who
 891-32 contracts with the department to provide guardianship services to a
 891-33 ward referred by the department; [and]

891-34 (4) a volunteer or an applicant selected to volunteer
 891-35 with a business entity or other person described by Subdivision
 891-36 (3); and

891-37 (5) a contractor or an employee of a contractor who
 891-38 provides services to a ward of the Department of Aging and
 891-39 Disability Services under a contract with the estate of the ward.

891-40 (c) The department must annually obtain the information in
 891-41 Subsection (a) regarding employees, contractors, or volunteers
 891-42 providing guardianship services.

891-43 SECTION 6.026. The following provisions are repealed:

891-44 (1) the heading to Subchapter A, Chapter 15,
 891-45 Agriculture Code; and

891-46 (2) Section 1, Chapter 112 (H.B. 434), Acts of the 55th
 891-47 Legislature, Regular Session, 1957 (Article [12691-2](#), Vernon's
 891-48 Texas Civil Statutes).

ARTICLE 7. EFFECTIVE DATE

891-50 SECTION 7.001. This Act takes effect immediately if it
 891-51 receives a vote of two-thirds of all the members elected to each
 891-52 house, as provided by Section 39, Article III, Texas Constitution.
 891-53 If this Act does not receive the vote necessary for immediate
 891-54 effect, this Act takes effect September 1, 2015.