

By: Schwertner

S.B. No. 219

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the provision of health and human services in this
3 state, including the powers and duties of the Health and Human
4 Services Commission and other state agencies, and the licensing of
5 certain health professionals; clarifying certain statutory
6 provisions; authorizing the imposition of fees.

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

ARTICLE 1. FAMILY CODE

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

11 CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS

12 OR INTELLECTUAL DISABILITY [MENTAL RETARDATION]

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

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

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

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

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

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

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

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

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

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

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

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

1 proceed as a result of mental illness or an intellectual disability
2 [~~mental retardation~~]. In making its determination, the court may:
3 (1) consider the motion, supporting documents,
4 professional statements of counsel, and witness testimony; and
5 (2) make its own observation of the child.

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

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

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

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

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

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

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

2 (1) stay the juvenile court proceedings for as long as

3 that incapacity endures; and

4 (2) proceed under Section 55.33.

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

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

13 Sec. 55.33. PROCEEDINGS FOLLOWING FINDING OF UNFITNESS TO
14 PROCEED. (a) If the juvenile court or jury determines under
15 Section 55.32 that a child is unfit to proceed with the juvenile
16 court proceedings for delinquent conduct, the court shall:

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

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

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

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

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

10 (2) if the unfitness to proceed is a result of an
11 intellectual disability:

12 (A) provided that the child meets the commitment
13 criteria under Subtitle C or D, Title 7, Health and Safety Code,
14 order the child placed with the Department of Aging and Disability
15 Services for a period of time of not more than 90 days, which order
16 may not specify a shorter period, for placement in a facility
17 designated by the department; or

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

24 (b) If the court orders a child placed in a private
25 psychiatric inpatient facility under Subsection (a)(1)(B) or
26 (a)(2)(B), the state or a political subdivision of the state may be
27 ordered to pay any costs associated with the child's placement,

1 subject to an express appropriation of funds for the purpose.

2 SECTION 1.009. Section 55.34(a), Family Code, is amended to
3 read as follows:

4 (a) If the court issues a placement order under Section
5 55.33(a)(1)(A) or (B) or (a)(2) [55.33(a)(1)], the court shall
6 order the probation department or sheriff's department to transport
7 the child to the designated facility.

8 SECTION 1.010. Section 55.35(a), Family Code, is amended to
9 read as follows:

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

16 SECTION 1.011. Section 55.40, Family Code, is amended to
17 read as follows:

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

27 (1) initiate proceedings as provided by Section 55.41

1 in the juvenile court for commitment of the child under Subtitle D,
2 Title 7, Health and Safety Code; or

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

7 SECTION 1.012. The heading to Section 55.41, Family Code,
8 is amended to read as follows:

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

11 SECTION 1.013. Section 55.41(c), Family Code, is amended to
12 read as follows:

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

17 SECTION 1.014. The heading to Section 55.42, Family Code,
18 is amended to read as follows:

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

21 SECTION 1.015. Section 55.42(a), Family Code, is amended to
22 read as follows:

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

26 (1) send all papers relating to the child's
27 intellectual disability [mental retardation] to the clerk of the

1 court to which the case is referred;

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

6 (3) if the child is in detention:

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

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

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

15 SECTION 1.016. Section 55.43(a), Family Code, is amended to
16 read as follows:

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

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

22 (2) the child:

23 (A) is not:

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

26 (ii) committed by a court to a residential
27 care facility; or

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

6 SECTION 1.017. Section 55.44(a), Family Code, is amended to
7 read as follows:

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

20 SECTION 1.018. The heading to Subchapter D, Chapter 55,
21 Family Code, is amended to read as follows:

22 SUBCHAPTER D. LACK OF RESPONSIBILITY FOR CONDUCT AS A RESULT OF
23 MENTAL ILLNESS OR INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]

24 SECTION 1.019. Section 55.51, Family Code, is amended to
25 read as follows:

26 Sec. 55.51. LACK OF RESPONSIBILITY FOR CONDUCT
27 DETERMINATION; EXAMINATION. (a) A child alleged by petition to

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

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

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

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

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

27 (f) If the court or jury finds the child is not responsible

1 for the child's conduct as a result of mental illness or an
2 intellectual disability [~~mental retardation~~], the court shall
3 proceed under Section 55.52.

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

9 SECTION 1.020. Section 55.52, Family Code, is amended to
10 read as follows:

11 Sec. 55.52. PROCEEDINGS FOLLOWING FINDING OF LACK OF
12 RESPONSIBILITY FOR CONDUCT. (a) If the court or jury finds that a
13 child is not responsible for the child's conduct under Section
14 55.51, the court shall:

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

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

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

1 facility; or

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

8 (2) if the lack of responsibility is a result of an
9 intellectual disability:

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

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

22 (b) If the court orders a child placed in a private
23 psychiatric inpatient facility under Subsection (a)(1)(B) or
24 (a)(2)(B), the state or a political subdivision of the state may be
25 ordered to pay any costs associated with the child's placement,
26 subject to an express appropriation of funds for the purpose.

27 SECTION 1.021. Sections 55.54(a) and (b), Family Code, are

1 amended to read as follows:

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

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

12 (1) describes the treatment of the child provided by
13 the facility or center; and

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

17 SECTION 1.022. Section 55.55, Family Code, is amended to
18 read as follows:

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

25 (1) an adjudication hearing was conducted concerning
26 conduct that included a violation of a penal law listed in Section
27 53.045(a) and a petition was approved by a grand jury under Section

1 53.045; and

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

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

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

16 (d) If, after a hearing, the court finds that the child does
17 not have a mental illness or an intellectual disability [~~mental~~
18 ~~retardation~~] and that the child does not meet the commitment
19 criteria under Subtitle C or D, Title 7, Health and Safety Code, the
20 court shall discharge the child.

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

26 SECTION 1.023. Section 55.59, Family Code, is amended to
27 read as follows:

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

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

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

17 SECTION 1.024. The heading to Section 55.60, Family Code,
18 is amended to read as follows:

19 Sec. 55.60. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR
20 CHILDREN WITH INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~].

21 SECTION 1.025. Section 55.60(c), Family Code, is amended to
22 read as follows:

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

27 SECTION 1.026. The heading to Section 55.61, Family Code,

1 is amended to read as follows:

2 Sec. 55.61. REFERRAL FOR COMMITMENT PROCEEDINGS FOR
3 CHILDREN WITH INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~].

4 SECTION 1.027. Section 55.61(a), Family Code, is amended to
5 read as follows:

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

9 (1) send all papers relating to the child's
10 intellectual disability [~~mental retardation~~] to the clerk of the
11 court to which the case is referred;

12 (2) send to the office of the appropriate county
13 attorney or, if a county attorney is not available, to the office of
14 the appropriate district attorney, copies of all papers sent to the
15 clerk of the court under Subdivision (1); and

16 (3) if the child is in detention:

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

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

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

25 SECTION 1.028. Section 101.0021, Family Code, is
26 redesignated as Section 101.036, Family Code, and amended to read
27 as follows:

1 Sec. 101.036 [101.0021]. [BUREAU OF] VITAL STATISTICS
2 UNIT. "Vital [Bureau of vital] statistics unit" means the [bureau
3 ~~of~~] vital statistics unit of the [Texas] Department of State Health
4 Services.

5 SECTION 1.029. Section 101.017, Family Code, is amended to
6 read as follows:

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

15 SECTION 1.030. Section 102.003(a), Family Code, is amended
16 to read as follows:

17 (a) An original suit may be filed at any time by:
18 (1) a parent of the child;
19 (2) the child through a representative authorized by
20 the court;
21 (3) a custodian or person having the right of
22 visitation with or access to the child appointed by an order of a
23 court of another state or country;
24 (4) a guardian of the person or of the estate of the
25 child;
26 (5) a governmental entity;
27 (6) the Department of Family and Protective Services

1 [an authorized agency];

2 (7) a licensed child placing agency;

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

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

10 (10) a person designated as the managing conservator
11 in a revoked or unrevoked affidavit of relinquishment under Chapter
12 161 or to whom consent to adoption has been given in writing under
13 Chapter 162;

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

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

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

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

6 SECTION 1.031. Section [102.011](#)(b), Family Code, is amended
7 to read as follows:

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

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

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

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

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

21 (5) the person resided in this state and provided
22 prenatal expenses or support for the child;

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

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

27 (A) registered with the paternity registry

1 maintained by the [bureau of] vital statistics unit; or
2 (B) signed an acknowledgment of paternity of a
3 child born in this state; or
4 (8) there is any basis consistent with the
5 constitutions of this state and the United States for the exercise
6 of the personal jurisdiction.

7 SECTION 1.032. Section 107.001(5), Family Code, is amended
8 to read as follows:

17 (C) an adult having the competence, training, and
18 expertise determined by the court to be sufficient to represent the
19 best interests of the child; or

20 (D) an attorney ad litem appointed to serve in
21 the dual role.

22 SECTION 1.033. Section 107.002(c), Family Code, is amended
23 to read as follows:

24 (c) A guardian ad litem appointed for the child under this
25 chapter is entitled to

1 appointed;

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

3 (3) participate in case staffings by the Department of

4 Family and Protective Services [an authorized agency] concerning

5 the child;

6 (4) attend all legal proceedings in the case but may

7 not call or question a witness or otherwise provide legal services

8 unless the guardian ad litem is a licensed attorney who has been

9 appointed in the dual role;

10 (5) review and sign, or decline to sign, an agreed

11 order affecting the child; and

12 (6) explain the basis for the guardian ad litem's

13 opposition to the agreed order if the guardian ad litem does not

14 agree to the terms of a proposed order.

15 SECTION 1.034. Section 107.003(a), Family Code, is amended

16 to read as follows:

17 (a) An attorney ad litem appointed to represent a child or

18 an amicus attorney appointed to assist the court:

19 (1) shall:

20 (A) subject to Rules 4.02, 4.03, and 4.04, Texas

21 Disciplinary Rules of Professional Conduct, and within a reasonable

22 time after the appointment, interview:

23 (i) the child in a developmentally

24 appropriate manner, if the child is four years of age or older;

25 (ii) each person who has significant

26 knowledge of the child's history and condition, including any

27 foster parent of the child; and

1 (C) consent or refuse to consent to an interview
2 of the child by another attorney;
3 (D) receive a copy of each pleading or other
4 paper filed with the court;
5 (E) receive notice of each hearing in the suit;
6 (F) participate in any case staffing concerning
7 the child conducted by the Department of Family and Protective
8 Services [~~an authorized agency~~]; and
9 (G) attend all legal proceedings in the suit.

10 SECTION 1.035. Section 108.001, Family Code, is amended to
11 read as follows:

12 Sec. 108.001. TRANSMITTAL OF RECORDS OF SUIT BY CLERK. (a)
13 Except as provided by this chapter, the clerk of the court shall
14 transmit to the [~~bureau of~~] vital statistics unit a certified
15 record of the order rendered in a suit, together with the name and
16 all prior names, birth date, and place of birth of the child on a
17 form provided by the unit [~~bureau~~]. The form shall be completed by
18 the petitioner and submitted to the clerk at the time the order is
19 filed for record.

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

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

27 (d) In a Title IV-D case, the Title IV-D agency may transmit

1 the record and information specified by Subsection (a) to the
2 [bureau of] vital statistics unit, with a copy to the clerk of the
3 court on request by the clerk. The record and information are not
4 required to be certified if transmitted by the Title IV-D agency
5 under this subsection.

6 SECTION 1.036. Section 108.003, Family Code, is amended to
7 read as follows:

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

14 (1) the name of the adopted child after adoption as
15 shown in the adoption order;

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

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

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

19 (5) the date of the adoption order;

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

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

26 (8) the identity, address, and telephone number of the
27 registry through which the adopted child may register as an

1 adoptee.

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

11 (c) If the [bureau of] vital statistics unit determines that
12 a report filed with the unit [bureau] under this section requires
13 correction, the unit [bureau] shall mail the report directly to an
14 attorney of record with respect to the adoption. The attorney shall
15 return the corrected report to the unit [bureau]. If there is no
16 attorney of record, the unit [bureau] shall mail the report to the
17 clerk of the court for correction.

18 SECTION 1.037. Section 108.004, Family Code, is amended to
19 read as follows:

20 Sec. 108.004. TRANSMITTAL OF FILES ON LOSS OF JURISDICTION.
21 On the loss of jurisdiction of a court under Chapter 155, 159, or
22 262, the clerk of the court shall transmit to the central registry
23 of the [bureau of] vital statistics unit a certified record, on a
24 form provided by the unit [bureau], stating that jurisdiction has
25 been lost, the reason for the loss of jurisdiction, and the name and
26 all previous names, date of birth, and place of birth of the child.

27 SECTION 1.038. The heading to Section 108.005, Family Code,

1 is amended to read as follows:

2 Sec. 108.005. ADOPTION RECORDS RECEIVED BY [BUREAU OF]
3 VITAL STATISTICS UNIT.

4 SECTION 1.039. Section 108.005(a), Family Code, is amended
5 to read as follows:

6 (a) When the [bureau of] vital statistics unit receives a
7 record from the district clerk showing that continuing, exclusive
8 jurisdiction of a child has been lost due to the adoption of the
9 child, the unit [bureau] shall close the records concerning that
10 child.

11 SECTION 1.040. Sections 108.006(a), (c), and (d), Family
12 Code, are amended to read as follows:

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

17 (c) The clerk shall send the fees collected under Subsection
18 (b) to the Department of State Health Services [bureau of vital
19 statistics] for deposit in a special fund in the state treasury from
20 which the legislature may appropriate money only to operate and
21 maintain the central file and central registry of the vital
22 statistics unit [bureau].

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

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1 SECTION 1.041. Section 108.007, Family Code, is amended to
2 read as follows:

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

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

9 SECTION 1.042. Section 108.008(a), Family Code, is amended
10 to read as follows:

11 (a) On a determination of paternity, the petitioner shall
12 provide the clerk of the court in which the order was rendered the
13 information necessary to prepare the report of determination of
14 paternity. The clerk shall:

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

17 (2) complete the report immediately after the order
18 becomes final.

19 SECTION 1.043. Section 108.110, Family Code, is amended to
20 read as follows:

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

25 (1) adoption information as necessary for the
26 department to comply with federal law or regulations regarding the
27 compilation or reporting of adoption information to federal

1 officials; and

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

4 (b) The unit [~~bureau~~] may release otherwise confidential
5 information from the unit's [~~bureau's~~] central record files to
6 another governmental entity that has a specific need for the
7 information and maintains appropriate safeguards to prevent
8 further dissemination of the information.

9 SECTION 1.044. Section 153.005(b), Family Code, is amended
10 to read as follows:

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

14 SECTION 1.045. Section 153.371, Family Code, is amended to
15 read as follows:

16 Sec. 153.371. RIGHTS AND DUTIES OF NONPARENT APPOINTED AS
17 SOLE MANAGING CONSERVATOR. Unless limited by court order or other
18 provisions of this chapter, a nonparent, a licensed child-placing
19 agency, or the Department of Family and Protective Services
20 [~~authorized agency~~] appointed as a managing conservator of the
21 child has the following rights and duties:

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

24 (2) the duty of care, control, protection, and
25 reasonable discipline of the child;

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

1 (4) the right to consent for the child to medical,
2 psychiatric, psychological, dental, and surgical treatment and to
3 have access to the child's medical records;

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

7 (6) the right to the services and earnings of the
8 child;

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

11 (8) the right to represent the child in legal action
12 and to make other decisions of substantial legal significance
13 concerning the child;

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

19 (10) the right to designate the primary residence of
20 the child and to make decisions regarding the child's education;
21 and

22 (11) if the parent-child relationship has been
23 terminated with respect to the parents, or only living parent, or if
24 there is no living parent, the right to consent to the adoption of
25 the child and to make any other decision concerning the child that a
26 parent could make.

27 SECTION 1.046. Section 153.372(a), Family Code, is amended

1 to read as follows:

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

7 SECTION 1.047. Section 153.373, Family Code, is amended to
8 read as follows:

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

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

19 (2) the appointment of the nonparent, [or] agency, or
20 Department of Family and Protective Services as managing
21 conservator is in the best interest of the child.

22 SECTION 1.048. Section 153.374, Family Code, is amended to
23 read as follows:

24 Sec. 153.374. DESIGNATION OF MANAGING CONSERVATOR IN
25 AFFIDAVIT OF RELINQUISHMENT. (a) A parent may designate a
26 competent person, the Department of Family and Protective Services
27 [authorized agency], or a licensed child-placing agency to serve as

1 managing conservator of the child in an unrevoked or irrevocable
2 affidavit of relinquishment of parental rights executed as provided
3 by Chapter 161.

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

8 SECTION 1.049. Section 153.376(a), Family Code, is amended
9 to read as follows:

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

15 (1) the duty of care, control, protection, and
16 reasonable discipline of the child;

17 (2) the duty to provide the child with clothing, food,
18 and shelter; and

19 (3) the right to consent to medical, dental, and
20 surgical treatment during an emergency involving an immediate
21 danger to the health and safety of the child.

22 SECTION 1.050. Section 153.434, Family Code, is amended to
23 read as follows:

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

27 (1) each of the biological parents of the grandchild

1 has:

2 (A) died;

3 (B) had the person's parental rights terminated;

4 or

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

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

14 SECTION 1.051. Section 155.004(a), Family Code, is amended
15 to read as follows:

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

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

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

26 (3) another court assumed jurisdiction over a suit and
27 rendered a final order based on incorrect information received from

1 the [bureau of] vital statistics unit that there was no court of
2 continuing, exclusive jurisdiction.

3 SECTION 1.052. Sections 155.101(a), (b), and (d), Family
4 Code, are amended to read as follows:

5 (a) The petitioner or the court shall request from the
6 [bureau of] vital statistics unit identification of the court that
7 last had continuing, exclusive jurisdiction of the child in a suit
8 unless:

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

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

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

18 (1) identify the court that last had continuing,
19 exclusive jurisdiction of the child in a suit and give the docket
20 number of the suit; or

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

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

26 SECTION 1.053. Section 155.103, Family Code, is amended to
27 read as follows:

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

7 (b) If the [bureau of] vital statistics unit notifies the
8 court that the unit [bureau] has furnished incorrect information
9 regarding the existence of another court with continuing, exclusive
10 jurisdiction before the rendition of a final order, the provisions
11 of this chapter apply.

12 SECTION 1.054. Section 155.104, Family Code, is amended to
13 read as follows:

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

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

24 SECTION 1.055. Section 159.201(a), Family Code, is amended
25 to read as follows:

26 (a) In a proceeding to establish or enforce a support order
27 or to determine parentage, a tribunal of this state may exercise

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

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

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

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

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

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

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

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

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

24 SECTION 1.056. Section 160.204(a), Family Code, is amended
25 to read as follows:

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

27 (1) he is married to the mother of the child and the

1 child is born during the marriage;

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

6 (3) he married the mother of the child before the birth
7 of the child in apparent compliance with law, even if the attempted
8 marriage is or could be declared invalid, and the child is born
9 during the invalid marriage or before the 301st day after the date
10 the marriage is terminated by death, annulment, declaration of
11 invalidity, or divorce;

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

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

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

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

22 (5) during the first two years of the child's life, he
23 continuously resided in the household in which the child resided
24 and he represented to others that the child was his own.

25 SECTION 1.057. Section 160.302(b), Family Code, is amended
26 to read as follows:

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

1 (1) states that another man is a presumed father of the
2 child, unless a denial of paternity signed or otherwise
3 authenticated by the presumed father is filed with the [bureau of]
4 vital statistics unit;

5 (2) states that another man is an acknowledged or
6 adjudicated father of the child; or

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

9 SECTION 1.058. Section 160.304(c), Family Code, is amended
10 to read as follows:

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

15 SECTION 1.059. Section 160.305, Family Code, is amended to
16 read as follows:

17 Sec. 160.305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF
18 PATERNITY. (a) Except as provided by Sections 160.307 and 160.308,
19 a valid acknowledgment of paternity filed with the [bureau of]
20 vital statistics unit is the equivalent of an adjudication of the
21 paternity of a child and confers on the acknowledged father all
22 rights and duties of a parent.

23 (b) Except as provided by Sections 160.307 and 160.308, a
24 valid denial of paternity filed with the [bureau of] vital
25 statistics unit in conjunction with a valid acknowledgment of
26 paternity is the equivalent of an adjudication of the nonpaternity
27 of the presumed father and discharges the presumed father from all

1 rights and duties of a parent.

2 SECTION 1.060. Section 160.306, Family Code, is amended to
3 read as follows:

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

- 7 (1) an acknowledgment of paternity;
8 (2) a denial of paternity; or
9 (3) a rescission of an acknowledgment of paternity or
10 denial of paternity.

11 SECTION 1.061. Sections 160.307(b) and (c), Family Code,
12 are amended to read as follows:

13 (b) A signatory seeking to rescind an acknowledgment of
14 paternity or denial of paternity must file with the [~~bureau of~~]
15 vital statistics unit a completed rescission, on the form
16 prescribed under Section 160.312, in which the signatory declares
17 under penalty of perjury that:

18 (1) as of the date the rescission is filed, a
19 proceeding has not been held affecting the child identified in the
20 acknowledgment of paternity or denial of paternity, including a
21 proceeding to establish child support;

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

24 (A) if the rescission is of an acknowledgment of
25 paternity, the other signatory of the acknowledgment of paternity
26 and the signatory of any related denial of paternity; or

27 (B) if the rescission is of a denial of

1 paternity, the signatories of the related acknowledgment of
2 paternity; and

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

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

11 SECTION 1.062. Sections 160.309(b) and (e), Family Code,
12 are amended to read as follows:

13 (b) For purposes of a challenge to an acknowledgment of
14 paternity or denial of paternity, a signatory submits to the
15 personal jurisdiction of this state by signing the acknowledgment
16 or denial. The jurisdiction is effective on the filing of the
17 document with the [bureau of] vital statistics unit.

18 (e) At the conclusion of a proceeding to challenge an
19 acknowledgment of paternity or a denial of paternity, the court
20 shall order the [bureau of] vital statistics unit to amend the birth
21 record of the child, if appropriate.

22 SECTION 1.063. Section 160.312(a), Family Code, is amended
23 to read as follows:

24 (a) To facilitate compliance with this subchapter, the
25 [bureau of] vital statistics unit shall prescribe forms for the:

26 (1) acknowledgment of paternity;
27 (2) denial of paternity; and

1 (3) rescission of an acknowledgment or denial of
2 paternity.

3 SECTION 1.064. Section 160.313, Family Code, is amended to
4 read as follows:

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

10 SECTION 1.065. Section 160.314, Family Code, is amended to
11 read as follows:

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

16 SECTION 1.066. Section 160.315, Family Code, is amended to
17 read as follows:

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

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

25 SECTION 1.067. Section 160.401, Family Code, is amended to
26 read as follows:

27 Sec. 160.401. ESTABLISHMENT OF REGISTRY. A registry of

1 paternity is established in the [bureau of] vital statistics unit.

2 SECTION 1.068. Section 160.402(c), Family Code, is amended
3 to read as follows:

4 (c) A registrant shall promptly notify the registry in a
5 record of any change in the information provided by the registrant.
6 The [bureau of] vital statistics unit shall incorporate all new
7 information received into its records but is not required to
8 affirmatively seek to obtain current information for incorporation
9 in the registry.

10 SECTION 1.069. Section 160.404, Family Code, is amended to
11 read as follows:

12 Sec. 160.404. TERMINATION OF PARENTAL RIGHTS: FAILURE TO
13 REGISTER. The parental rights of a man alleged to be the father of a
14 child may be terminated without notice as provided by Section
15 161.002 if the man:

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

18 (2) is not entitled to notice under Section 160.402 or
19 161.002.

20 SECTION 1.070. Section 160.411, Family Code, is amended to
21 read as follows:

22 Sec. 160.411. REQUIRED FORM. The [bureau of] vital
23 statistics unit shall adopt a form for registering with the
24 registry. The form must require the signature of the registrant.
25 The form must state that:

26 (1) the form is signed under penalty of perjury;
27 (2) a timely registration entitles the registrant to

1 notice of a proceeding for adoption of the child or for termination
2 of the registrant's parental rights;

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

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

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

9 (6) the registrant should also register in another
10 state if the conception or birth of the child occurred in the other
11 state;

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

14 (8) procedures exist to rescind the registration of a
15 claim of paternity.

16 SECTION 1.071. Section 160.412(a), Family Code, is amended
17 to read as follows:

18 (a) The [bureau of] vital statistics unit is not required to
19 attempt to locate the mother of a child who is the subject of a
20 registration. The [bureau of] vital statistics unit shall send a
21 copy of the notice of the registration to a mother who has provided
22 an address.

23 SECTION 1.072. Section 160.415, Family Code, is amended to
24 read as follows:

25 Sec. 160.415. UNTIMELY REGISTRATION. If a man registers
26 later than the 31st day after the date of the birth of the child, the
27 [bureau of] vital statistics unit shall notify the registrant that

1 the registration was not timely filed.

2 SECTION 1.073. Section 160.416(b), Family Code, is amended
3 to read as follows:

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

7 SECTION 1.074. Section 160.421(a), Family Code, is amended
8 to read as follows:

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

19 SECTION 1.075. Sections 160.422(a) and (b), Family Code,
20 are amended to read as follows:

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

24 (b) The certificate of the results of a search must be
25 signed on behalf of the unit [bureau] and state that:

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

27 (2) a registration containing the information

1 required to identify the registrant:

2 (A) has been found and is attached to the

3 certificate; or

4 (B) has not been found.

5 SECTION 1.076. Section 160.636(f), Family Code, is amended

6 to read as follows:

7 (f) If the order of the court is at variance with the child's
8 birth certificate, the court shall order the [bureau of] vital
9 statistics unit to issue an amended birth record.

10 SECTION 1.077. Section 160.760(b), Family Code, is amended

11 to read as follows:

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

14 (1) confirms that the intended parents are the child's
15 parents;

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

18 (3) requires the [bureau of] vital statistics unit to
19 issue a birth certificate naming the intended parents as the
20 child's parents.

21 SECTION 1.078. Section 160.763, Family Code, is amended to
22 read as follows:

23 Sec. 160.763. HEALTH CARE FACILITY REPORTING REQUIREMENT.

24 (a) The executive commissioner of the Health and Human Services
25 Commission [~~Texas Department of Health~~] by rule shall develop and
26 implement a confidential reporting system that requires each health
27 care facility in this state at which assisted reproduction

1 procedures are performed under gestational agreements to report
2 statistics related to those procedures.

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

6 (1) the number of assisted reproduction procedures
7 under a gestational agreement performed at the facility during the
8 preceding year; and

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

12 SECTION 1.079. Section 161.001, Family Code, is amended to
13 read as follows:

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

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

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

23 (A) experiences observable withdrawal from the
24 alcohol or controlled substance;

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

27 (C) exhibits the demonstrable presence of

1 alcohol or a controlled substance in the child's bodily fluids.

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

4 (1) that the parent has:

5 (A) voluntarily left the child alone or in the
6 possession of another not the parent and expressed an intent not to
7 return;

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

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

15 (D) knowingly placed or knowingly allowed the
16 child to remain in conditions or surroundings which endanger the
17 physical or emotional well-being of the child;

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

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

24 (G) abandoned the child without identifying the
25 child or furnishing means of identification, and the child's
26 identity cannot be ascertained by the exercise of reasonable
27 diligence;

1 (H) voluntarily, and with knowledge of the
2 pregnancy, abandoned the mother of the child beginning at a time
3 during her pregnancy with the child and continuing through the
4 birth, failed to provide adequate support or medical care for the
5 mother during the period of abandonment before the birth of the
6 child, and remained apart from the child or failed to support the
7 child since the birth;

8 (I) contumaciously refused to submit to a
9 reasonable and lawful order of a court under Subchapter D, Chapter
10 261;

11 (J) been the major cause of:

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

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

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

20 (L) been convicted or has been placed on
21 community supervision, including deferred adjudication community
22 supervision, for being criminally responsible for the death or
23 serious injury of a child under the following sections of the Penal
24 Code or adjudicated under Title 3 for conduct that caused the death
25 or serious injury of a child and that would constitute a violation
26 of one of the following Penal Code sections:

27 (i) Section 19.02 (murder);

1 (ii) Section 19.03 (capital murder);
2 (iii) Section 19.04 (manslaughter);
3 (iv) Section 21.11 (indecency with a
4 child);
5 (v) Section 22.01 (assault);
6 (vi) Section 22.011 (sexual assault);
7 (vii) Section 22.02 (aggravated assault);
8 (viii) Section 22.021 (aggravated sexual
9 assault);
10 (ix) Section 22.04 (injury to a child,
11 elderly individual, or disabled individual);
12 (x) Section 22.041 (abandoning or
13 endangering child);
14 (xi) Section 25.02 (prohibited sexual
15 conduct);
16 (xii) Section 43.25 (sexual performance by
17 a child);
18 (xiii) Section 43.26 (possession or
19 promotion of child pornography);
20 (xiv) Section 21.02 (continuous sexual
21 abuse of young child or children);
22 (xv) Section 20A.02(a)(7) or (8)
23 (trafficking of persons); and
24 (xvi) Section 43.05(a)(2) (compelling
25 prostitution);
26 (M) had his or her parent-child relationship
27 terminated with respect to another child based on a finding that the

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1 parent's conduct was in violation of Paragraph (D) or (E) or
2 substantially equivalent provisions of the law of another state;

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

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

13 (O) failed to comply with the provisions of a
14 court order that specifically established the actions necessary for
15 the parent to obtain the return of the child who has been in the
16 permanent or temporary managing conservatorship of the Department
17 of Family and Protective Services for not less than nine months as a
18 result of the child's removal from the parent under Chapter 262 for
19 the abuse or neglect of the child;

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

23 (i) failed to complete a court-ordered
24 substance abuse treatment program; or

25 (ii) after completion of a court-ordered
26 substance abuse treatment program, continued to abuse a controlled
27 substance:

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7 (R) been the cause of the child being born
8 addicted to alcohol or a controlled substance, other than a
9 controlled substance legally obtained by prescription[~~, as defined~~
10 ~~by Section 261.001~~];

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

14 (T) been convicted of:

(iii) criminal solicitation under Section

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1 15.03, Penal Code, or under a law of another state, federal law, the
2 law of a foreign country, or the Uniform Code of Military Justice
3 that contains elements that are substantially similar to the
4 elements of an offense under Section 15.03, Penal Code, of the
5 offense described by Subparagraph (i); and

8 SECTION 1.080. Section 161.002(e), Family Code, is amended
9 to read as follows:

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

16 SECTION 1.081. Section 161.003(a), Family Code, is amended
17 to read as follows:

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

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9 SECTION 1.082. Section 161.005(b), Family Code, is amended
10 to read as follows:

11 (b) If the petition designates the Department of Family and
12 Protective ~~and Regulatory~~ Services as managing conservator, the
13 department shall be given service of citation. The court shall
14 notify the department if the court appoints the department as the
15 managing conservator of the child.

16 SECTION 1.083. Sections 161.103(c) and (e), Family Code,
17 are amended to read as follows:

18 (c) The affidavit may contain:

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

25 (e) The relinquishment in an affidavit that designates the
26 Department of Family and Protective [and ~~Regulatory~~] Services or a
27 licensed child-placing agency to serve as the managing conservator

1 is irrevocable. A relinquishment in any other affidavit of
2 relinquishment is revocable unless it expressly provides that it is
3 irrevocable for a stated period of time not to exceed 60 days after
4 the date of its execution.

5 SECTION 1.084. Section 161.104, Family Code, is amended to
6 read as follows:

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

18 SECTION 1.085. Section 161.106(e), Family Code, is amended
19 to read as follows:

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

26 SECTION 1.086. Section 161.108(a), Family Code, is amended
27 to read as follows:

1 (a) Before or at the time an affidavit of relinquishment of
2 parental rights under Section 161.103 is executed, the mother of a
3 newborn child may authorize the release of the child from the
4 hospital or birthing center to a licensed child-placing agency, the
5 Department of Family and Protective [and Regulatory] Services, or
6 another designated person.

7 SECTION 1.087. Section 161.109, Family Code, is amended to
8 read as follows:

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

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

1 SECTION 1.088. Section 161.2061(a), Family Code, is amended
2 to read as follows:

3 (a) If the court finds it to be in the best interest of the
4 child, the court may provide in an order terminating the
5 parent-child relationship that the biological parent who filed an
6 affidavit of voluntary relinquishment of parental rights under
7 Section 161.103 shall have limited post-termination contact with
8 the child as provided by Subsection (b) on the agreement of the
9 biological parent and the Department of Family and Protective [and
10 ~~Regulatory~~] Services.

11 SECTION 1.089. Section 161.207(a), Family Code, is amended
12 to read as follows:

13 (a) If the court terminates the parent-child relationship
14 with respect to both parents or to the only living parent, the court
15 shall appoint a suitable, competent adult, the Department of Family
16 and Protective [and Regulatory] Services, or a licensed
17 child-placing agency[, ~~or an authorized agency~~] as managing
18 conservator of the child. An agency designated managing
19 conservator in an unrevoked or irrevocable affidavit of
20 relinquishment shall be appointed managing conservator.

21 SECTION 1.090. Section 161.208, Family Code, is amended to
22 read as follows:

23 Sec. 161.208. APPOINTMENT OF DEPARTMENT OF FAMILY AND
24 PROTECTIVE [AND REGULATORY] SERVICES AS MANAGING CONSERVATOR. If a
25 parent of the child has not been personally served in a suit in
26 which the Department of Family and Protective [and Regulatory]
27 Services seeks termination, the court that terminates a

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1 parent-child relationship may not appoint the Department of Family
2 and Protective [~~and Regulatory~~] Services as permanent managing
3 conservator of the child unless the court determines that:

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

7 (2) a relative located by the department has had a
8 reasonable opportunity to request appointment as managing
9 conservator of the child or the department has not been able to
10 locate the missing parent or a relative of the missing parent.

11 SECTION 1.091. Section 162.001(c), Family Code, is amended
12 to read as follows:

13 (c) If an affidavit of relinquishment of parental rights
14 contains a consent for the Department of Family and Protective [and
15 ~~Regulatory~~] Services or a licensed child-placing agency to place
16 the child for adoption and appoints the department or agency
17 managing conservator of the child, further consent by the parent is
18 not required and the adoption order shall terminate all rights of
19 the parent without further termination proceedings.

20 SECTION 1.092. Section 162.005(b), Family Code, is amended
21 to read as follows:

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

27 SECTION 1.093. Section 162.006(a), Family Code, is amended

1 to read as follows:

2 (a) The Department of Family and Protective Services
3 [department], licensed child-placing agency, or other person
4 placing a child for adoption shall inform the prospective adoptive
5 parents of their right to examine the records and other information
6 relating to the history of the child. The department, licensed
7 child-placing agency, or other person placing the child for
8 adoption shall edit the records and information to protect the
9 identity of the biological parents and any other person whose
10 identity is confidential.

11 SECTION 1.094. Section 162.0065, Family Code, is amended to
12 read as follows:

13 Sec. 162.0065. EDITING ADOPTION RECORDS IN DEPARTMENT
14 PLACEMENT. Notwithstanding any other provision of this chapter, in
15 an adoption in which a child is placed for adoption by the
16 Department of Family and Protective [~~and Regulatory~~] Services, the
17 department is not required to edit records to protect the identity
18 of birth parents and other persons whose identity is confidential
19 if the department determines that information is already known to
20 the adoptive parents or is readily available through other sources,
21 including the court records of a suit to terminate the parent-child
22 relationship under Chapter 161.

23 SECTION 1.095. Section 162.008(b), Family Code, is amended
24 to read as follows:

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

27 (1) a copy of the health, social, educational, and

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

6 SECTION 1.096. Section 162.0085(a), Family Code, is amended
7 to read as follows:

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

18 SECTION 1.097. Sections 162.018(a) and (d), Family Code,
19 are amended to read as follows:

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

25 (d) At the time an adoption order is rendered, the court
26 shall provide to the parents of an adopted child information
27 provided by the [~~bureau of~~] vital statistics unit that describes

1 the functions of the voluntary adoption registry under Subchapter
2 E. The licensed child-placing agency shall provide to each of the
3 child's biological parents known to the agency, the information
4 when the parent signs an affidavit of relinquishment of parental
5 rights or affidavit of waiver of interest in a child. The
6 information shall include the right of the child or biological
7 parent to refuse to participate in the registry. If the adopted
8 child is 14 years old or older the court shall provide the
9 information to the child.

10 SECTION 1.098. Section 162.021(b), Family Code, is amended
11 to read as follows:

12 (b) Rendition of the order does not relieve the clerk from
13 the duty to send information regarding adoption to the [bureau of]
14 vital statistics unit as required by this subchapter and Chapter
15 108.

16 SECTION 1.099. Sections 162.101(1) and (2), Family Code,
17 are amended to read as follows:

18 (1) "Appropriate public authorities," with reference
19 to this state, means the commissioner of the Department of Family
20 and Protective Services [executive director].

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

24 SECTION 1.100. Section 162.103, Family Code, is amended to
25 read as follows:

26 Sec. 162.103. FINANCIAL RESPONSIBILITY FOR CHILD. (a)
27 Financial responsibility for a child placed as provided in the

1 compact is determined, in the first instance, as provided in
2 Article V of the compact. After partial or complete default of
3 performance under the provisions of Article V assigning financial
4 responsibility, the commissioner of the Department of Family and
5 Protective Services [~~executive director~~] may bring suit under
6 Chapter 154 and may file a complaint with the appropriate
7 prosecuting attorney, claiming a violation of Section 25.05, Penal
8 Code.

9 (b) After default, if the commissioner of the Department of
10 Family and Protective Services [~~executive director~~] determines
11 that financial responsibility is unlikely to be assumed by the
12 sending agency or the child's parents, the commissioner [~~executive~~
13 ~~director~~] may cause the child to be returned to the sending agency.

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

18 SECTION 1.101. Section 162.104, Family Code, is amended to
19 read as follows:

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

26 SECTION 1.102. Section 162.106, Family Code, is amended to
27 read as follows:

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

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

9 SECTION 1.103. Section 162.107(b), Family Code, is amended
10 to read as follows:

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

21 SECTION 1.104. Section 162.201, Family Code, is amended to
22 read as follows:

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

27 INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

ARTICLE I. FINDINGS

The legislature finds that:

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

ARTICLE II. PURPOSES

The purposes of the compact are to:

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

ARTICLE III. DEFINITIONS

In this compact:

(b) "Residence state" means the state in which the

1 child resides by virtue of the residence of the adoptive parents.

2 (c) "State" means a state of the United States, the
3 District of Columbia, the Commonwealth of Puerto Rico, the Virgin
4 Islands, Guam, the Commonwealth of the Northern Mariana Islands, or
5 a territory or possession of or a territory or possession
6 administered by the United States.

7 ARTICLE IV. COMPACTS AUTHORIZED

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

15 ARTICLE V. CONTENTS OF COMPACTS

16 A compact entered into under the authority conferred by this
17 compact shall contain:

18 (1) a provision making the compact available for
19 joinder by all states;

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

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

1 place of abode;

2 (4) a requirement that each case of adoption
3 assistance to which the compact applies be covered by a written
4 adoption assistance agreement between the adoptive parents and the
5 state child welfare agency of the state that provides the adoption
6 assistance and that the agreement be expressly for the benefit of
7 the adopted child and enforceable by the adoptive parents and the
8 state agency providing the adoption assistance; and

9 (5) other provisions that are appropriate for the
10 proper administration of the compact.

11 ARTICLE VI. OPTIONAL CONTENTS OF COMPACTS

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

15 (1) provisions establishing procedures and
16 entitlement to medical, developmental, child-care, or other social
17 services for the child in accordance with applicable laws, even if
18 the child and the adoptive parents are in a state other than the one
19 responsible for or providing the services or the funds to defray
20 part or all of the costs thereof; and

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

23 ARTICLE VII. MEDICAL ASSISTANCE

24 (a) A child with special needs who resides in this state and
25 who is the subject of an adoption assistance agreement with another
26 state is entitled to receive a medical assistance identification
27 from this state on the filing in the state medical assistance agency

1 of a certified copy of the adoption assistance agreement obtained
2 from the adoption assistance state. In accordance with rules of the
3 state medical assistance agency, the adoptive parents, at least
4 annually, shall show that the agreement is still in effect or has
5 been renewed.

6 (b) The state medical assistance agency shall consider the
7 holder of a medical assistance identification under this article as
8 any other holder of a medical assistance identification under the
9 laws of this state and shall process and make payment on claims on
10 the holder's account in the same manner and under the same
11 conditions and procedures as for other recipients of medical
12 assistance.

13 (c) The state medical assistance agency shall provide
14 coverage and benefits for a child who is in another state and who is
15 covered by an adoption assistance agreement made by the Department
16 of Family and Protective [~~and Regulatory~~] Services for the coverage
17 or benefits, if any, not provided by the residence state. The
18 adoptive parents acting for the child may submit evidence of
19 payment for services or benefit amounts not payable in the
20 residence state and shall be reimbursed for those amounts.
21 Services or benefit amounts covered under any insurance or other
22 third-party medical contract or arrangement held by the child or
23 the adoptive parents may not be reimbursed. The state medical
24 assistance agency shall adopt rules implementing this subsection.
25 The additional coverage and benefit amounts provided under this
26 subsection are for services for which there is no federal
27 contribution or services that, if federally aided, are not provided

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1 by the residence state. The rules shall include procedures for
2 obtaining prior approval for services in cases in which prior
3 approval is required for the assistance.

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

16 (e) This article applies only to medical assistance for
17 children under adoption assistance agreements with states that have
18 entered into a compact with this state under which the other state
19 provides medical assistance to children with special needs under
20 adoption assistance agreements made by this state. All other
21 children entitled to medical assistance under adoption assistance
22 agreements entered into by this state are eligible to receive the
23 medical assistance in accordance with the laws and procedures that
24 apply to the agreement.

ARTICLE VIII. FEDERAL PARTICIPATION

26 Consistent with federal law, the Department of Family and
27 Protective [and Regulatory] Services and the Health and Human

1 Services Commission, in connection with the administration of this
2 compact or a compact authorized by this compact, shall include the
3 provision of adoption assistance and medical assistance for which
4 the federal government pays some or all of the cost in any state
5 plan made under the Adoption Assistance and Child Welfare Act of
6 1980 (Pub. L. No. 96-272), Titles IV-E and XIX of the Social
7 Security Act, and other applicable federal laws. The Department of
8 Family and Protective [~~and Regulatory~~] Services and the Health and
9 Human Services Commission shall apply for and administer all
10 relevant federal aid in accordance with law.

11 SECTION 1.105. Section 162.202, Family Code, is amended to
12 read as follows:

13 Sec. 162.202. AUTHORITY OF DEPARTMENT OF FAMILY AND
14 PROTECTIVE [~~AND REGULATORY~~] SERVICES. The Department of Family and
15 Protective [~~and Regulatory~~] Services, with the concurrence of the
16 Health and Human Services Commission, may develop, participate in
17 the development of, negotiate, and enter into one or more
18 interstate compacts on behalf of this state with other states to
19 implement one or more of the purposes of this subchapter. An
20 interstate compact authorized by this subchapter [~~article~~] has the
21 force and effect of law.

22 SECTION 1.106. Section 162.203, Family Code, is amended to
23 read as follows:

24 Sec. 162.203. COMPACT ADMINISTRATION. The commissioner
25 [~~executive director~~] of the Department of Family and Protective
26 [~~and Regulatory~~] Services shall serve as the compact administrator.
27 The administrator shall cooperate with all departments, agencies,

1 and officers of this state and its subdivisions in facilitating the
2 proper administration of the compact and any supplemental
3 agreements entered into by this state. The commissioner of the
4 Department of Family and Protective Services [~~executive director~~] and the executive commissioner of the Health and Human Services
5 Commission [~~human services~~] shall designate deputy compact
6 administrators to represent adoption assistance services and
7 medical assistance services provided under Title XIX of the Social
8 Security Act.

10 SECTION 1.107. The heading to Subchapter D, Chapter 162, Family Code, is amended to read as follows:

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

14 SECTION 1.108. Sections 162.301(1) and (3), Family Code, are amended to read as follows:

16 (1) "Adoption assistance agreement" means a written
17 agreement, binding on the parties to the agreement, between the
18 Department of Family and Protective Services [~~department~~] and the
19 prospective adoptive parents that specifies the nature and amount
20 of any payment, services, or assistance to be provided under the
21 agreement and stipulates that the agreement will remain in effect
22 without regard to the state in which the prospective adoptive
23 parents reside at any particular time.

24 (3) "Department" means the Department of Family and
25 Protective [~~and Regulatory~~] Services.

26 SECTION 1.109. Section 162.302(c), Family Code, is amended
27 to read as follows:

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

4 SECTION 1.110. Sections [162.309](#)(b) and (i), Family Code,
5 are amended to read as follows:

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

13 (i) On receiving the committee's recommendations, the
14 department may [~~adopt rules to~~] implement a program or project
15 recommended under this section. The executive commissioner of the
16 Health and Human Services Commission may adopt rules necessary for
17 the implementation of a program or project by the department. The
18 department may solicit, accept, and use gifts and donations to
19 implement a program or project recommended by the committee.

20 SECTION 1.111. Sections [162.402](#)(7), (11), (12), and (14),
21 Family Code, are amended to read as follows:

22 (7) "Authorized agency" means a public agency
23 authorized to care for or to place children for adoption or a
24 private entity approved for that purpose by the department through
25 a license, certification, or other means. The term includes a
26 licensed child-placing agency or a previously licensed
27 child-placing agency that has ceased operations and has transferred

1 its adoption records to the vital statistics unit [bureau] or an
2 agency authorized by the department to place children for adoption
3 and a licensed child-placing agency that has been acquired by,
4 merged with, or otherwise succeeded by an agency authorized by the
5 department to place children for adoption.

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

9 (12) "Department" means the Department of Family and
10 Protective [and Regulatory] Services.

11 (14) "Vital statistics unit" [~~Bureau~~] means the
12 [bureau of] vital statistics unit of the Department of State Health
13 Services.

14 SECTION 1.112. Sections 162.403(a) and (c), Family Code,
15 are amended to read as follows:

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

18 (c) An authorized agency that did not directly or by
19 contract provide registry services as required by this subchapter
20 on January 1, 1984, may not provide its own registry service. The
21 vital statistics unit [bureau] shall operate through the central
22 registry those services for agencies not permitted to provide a
23 registry under this section.

24 SECTION 1.113. Section 162.407(b), Family Code, is amended
25 to read as follows:

26 (b) An adoptee adopted or placed through an authorized
27 agency may register through the registry maintained by that agency

1 or the registry to which the agency has delegated registry services
2 or through the central registry maintained by the vital statistics
3 unit [bureau].

4 SECTION 1.114. Section 162.408, Family Code, is amended to
5 read as follows:

6 Sec. 162.408. PROOF OF IDENTITY. The rules and minimum
7 standards of the Department [~~Texas Board~~] of State Health Services
8 for the vital statistics unit [bureau] must provide for proof of
9 identity in order to facilitate the purposes of this subchapter and
10 to protect the privacy rights of adoptees, adoptive parents, birth
11 parents, biological siblings, and their families.

12 SECTION 1.115. Section 162.411(d), Family Code, is amended
13 to read as follows:

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

18 SECTION 1.116. Section 162.414(c), Family Code, is amended
19 to read as follows:

20 (c) To establish or corroborate a match, the administrator
21 shall request confirmation of a possible match from the vital
22 statistics unit [bureau]. If the agency operating the registry has
23 in its own records sufficient information through which the match
24 may be confirmed, the administrator may, but is not required to,
25 request confirmation from the vital statistics unit [bureau]. The
26 vital statistics unit [bureau] may confirm or deny the match
27 without breaching the duty of confidentiality to the adoptee,

1 adoptive parents, birth parents, or biological siblings and without
2 a court order.

3 SECTION 1.117. Section 162.420, Family Code, is amended to
4 read as follows:

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

9 (1) administer the provisions of this subchapter; and
10 (2) ensure that each registry respects the right to
11 privacy and confidentiality of an adoptee, birth parent, and
12 biological sibling who does not desire to disclose the person's
13 identity.

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

17 (c) In order to provide the administrators an opportunity to
18 review proposed rules and standards and send written suggestions to
19 the executive commissioner of the Health and Human Services
20 Commission [~~Texas Board of Health~~], the executive commissioner
21 [~~board~~] shall, before adopting rules and minimum standards, send a
22 copy of the proposed rules and standards not less than 60 days
23 before the date they take effect to:

24 (1) the administrator of each registry established
25 under this subchapter; and

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

1 SECTION 1.118. Section 162.421(a), Family Code, is amended
2 to read as follows:

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

6 SECTION 1.119. Sections 162.422(a) and (b), Family Code,
7 are amended to read as follows:

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

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

19 SECTION 1.120. Section 162.601(a), Family Code, is amended
20 to read as follows:

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

25 (1) of a child, as defined by Section 162.301,
26 receiving or entitled to receive foster care at department expense;
27 and

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

2 SECTION 1.121. Section 261.001(7), Family Code, is amended
3 to read as follows:

4 (7) "Executive commissioner" [~~Board~~] means the
5 executive commissioner of the Health and Human Services Commission
6 [~~Board of Protective and Regulatory Services~~].

7 SECTION 1.122. Sections 261.002(a) and (b), Family Code,
8 are amended to read as follows:

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

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

18 SECTION 1.123. Section 261.101(b-1), Family Code, is
19 amended to read as follows:

20 (b-1) In addition to the duty to make a report under
21 Subsection (a) or (b), a person or professional shall make a report
22 in the manner required by Subsection (a) or (b), as applicable, if
23 the person or professional has cause to believe that an adult was a
24 victim of abuse or neglect as a child and the person or professional
25 determines in good faith that disclosure of the information is
26 necessary to protect the health and safety of:

27 (1) another child; or

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

3 SECTION 1.124. Section 261.103(a), Family Code, is amended
4 to read as follows:

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

7 (1) any local or state law enforcement agency;

8 (2) the department; or

9 (3) the state agency that operates, licenses,
10 certifies, or registers the facility in which the alleged abuse or
11 neglect occurred[+ or]

12 [+4) the agency designated by the court to be
13 responsible for the protection of children].

14 SECTION 1.125. Sections 261.105(a), (b), and (c-1), Family
15 Code, are amended to read as follows:

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

20 (b) The department [~~or designated agency~~] shall immediately
21 notify the appropriate state or local law enforcement agency of any
22 report it receives, other than a report from a law enforcement
23 agency, that concerns the suspected abuse or neglect of a child or
24 death of a child from abuse or neglect.

25 (c-1) Notwithstanding Subsections (b) and (c), if a report
26 under this section relates to a child with an intellectual
27 disability [~~mental retardation~~] receiving services in a state

1 supported living center as defined by Section [531.002](#), Health and
2 Safety Code, or the ICF-IID [~~ICF-MR~~] component of the Rio Grande
3 State Center, the department shall proceed with the investigation
4 of the report as provided by Section [261.404](#).

5 SECTION 1.126. Section [261.1055](#), Family Code, is amended to
6 read as follows:

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

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

18 SECTION 1.127. Section [261.109\(b\)](#), Family Code, is amended
19 to read as follows:

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

1 injury as a result of the abuse or neglect.

2 SECTION 1.128. Section 261.111, Family Code, is amended to
3 read as follows:

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

8 ~~(1) used in the diagnosis, treatment, or prevention
9 of a disease or as a component of a medication; and~~

10 ~~(2) intended to have an altering effect on
11 perception, emotion, or behavior].~~

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

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

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

22 SECTION 1.129. Section 261.201(e), Family Code, is amended
23 to read as follows:

24 (e) Before placing a child who was the subject of an
25 investigation, the department shall notify the prospective
26 adoptive parents of their right to examine any report, record,
27 working paper, or other information in the possession, custody, or

1 control of the department [~~state~~] that pertains to the history of
2 the child.

3 SECTION 1.130. Sections 261.301(a), (d), and (e), Family
4 Code, are amended to read as follows:

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

12 (d) The executive commissioner [~~department~~] shall by rule
13 assign priorities and prescribe investigative procedures for
14 investigations based on the severity and immediacy of the alleged
15 harm to the child. The primary purpose of the investigation shall
16 be the protection of the child. The rules must require the
17 department, subject to the availability of funds, to:

18 (1) immediately respond to a report of abuse and
19 neglect that involves circumstances in which the death of the child
20 or substantial bodily harm to the child would result unless the
21 department immediately intervenes;

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

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

27 (e) As necessary to provide for the protection of the child,

1 the department [~~or designated agency~~] shall determine:

2 (1) the nature, extent, and cause of the abuse or
3 neglect;

4 (2) the identity of the person responsible for the
5 abuse or neglect;

6 (3) the names and conditions of the other children in
7 the home;

8 (4) an evaluation of the parents or persons
9 responsible for the care of the child;

10 (5) the adequacy of the home environment;

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

13 (7) all other pertinent data.

14 SECTION 1.131. The heading to Section [261.3015](#), Family
15 Code, is amended to read as follows:

16 Sec. 261.3015. ALTERNATIVE [~~flexible~~] RESPONSE SYSTEM.

17 SECTION 1.132. Sections [261.3015](#)(a) and (d), Family Code,
18 are amended to read as follows:

19 (a) In assigning priorities and prescribing investigative
20 procedures based on the severity and immediacy of the alleged harm
21 to a child under Section [261.301](#)(d), the department shall establish
22 an alternative [~~a flexible~~] response system to allow the department
23 to make the most effective use of resources to investigate and
24 respond to reported cases of abuse and neglect.

25 (d) In determining how to classify a reported case of abuse
26 or neglect under the alternative [~~flexible~~] response system, the
27 child's safety is the primary concern. The classification of a case

1 may be changed as warranted by the circumstances.

2 SECTION 1.133. Section 261.302(b), Family Code, is amended
3 to read as follows:

4 (b) The interview with and examination of the child may:

5 (1) be conducted at any reasonable time and place,
6 including the child's home or the child's school;

7 (2) include the presence of persons the department [~~or~~
8 ~~designated agency~~] determines are necessary; and

9 (3) include transporting the child for purposes
10 relating to the interview or investigation.

11 SECTION 1.134. Sections 261.303(a), (c), and (d), Family
12 Code, are amended to read as follows:

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

16 (c) If a parent or person responsible for the child's care
17 does not consent to release of the child's prior medical,
18 psychological, or psychiatric records or to a medical,
19 psychological, or psychiatric examination of the child that is
20 requested by the department [~~or designated agency~~], the court
21 having family law jurisdiction shall, for good cause shown, order
22 the records to be released or the examination to be made at the
23 times and places designated by the court.

24 (d) A person, including a medical facility, that makes a
25 report under Subchapter B shall release to the department [~~or~~
26 ~~designated agency~~], as part of the required report under Section
27 261.103, records that directly relate to the suspected abuse or

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

8 SECTION 1.135. Section 261.3031(a), Family Code, is amended
9 to read as follows:

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

18 SECTION 1.136. Sections 261.305(b) and (d), Family Code,
19 are amended to read as follows:

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

27 (d) A parent or person responsible for the child's care is

1 entitled to notice and a hearing when the department [~~or designated~~
2 ~~agency~~] seeks a court order to allow a medical, psychological, or
3 psychiatric examination or access to medical or mental health
4 records.

5 SECTION 1.137. Section 261.306, Family Code, is amended to
6 read as follows:

7 Sec. 261.306. REMOVAL OF CHILD FROM STATE. (a) If the
8 department [~~or designated agency~~] has reason to believe that a
9 person responsible for the care, custody, or welfare of the child
10 may remove the child from the state before the investigation is
11 completed, the department [~~or designated agency~~] may file an
12 application for a temporary restraining order in a district court
13 without regard to continuing jurisdiction of the child as provided
14 in Chapter 155.

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

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

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

22 SECTION 1.138. Sections 261.308(a), (b), and (c), Family
23 Code, are amended to read as follows:

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

26 (b) If sufficient grounds for filing a suit exist, the
27 department [~~or designated agency~~] shall submit the report, together

1 with recommendations, to the court, the district attorney, and the
2 appropriate law enforcement agency.

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

6 SECTION 1.139. Section 261.309(a), Family Code, is amended
7 to read as follows:

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

12 SECTION 1.140. Section 261.310(a), Family Code, is amended
13 to read as follows:

14 (a) The executive commissioner [~~department~~] shall by rule
15 develop and adopt standards for persons who investigate suspected
16 child abuse or neglect at the state or local level. The standards
17 shall encourage professionalism and consistency in the
18 investigation of suspected child abuse or neglect.

19 SECTION 1.141. Sections 261.311(a) and (b), Family Code,
20 are amended to read as follows:

21 (a) When during an investigation of a report of suspected
22 child abuse or neglect a representative of the department [~~or the~~
23 ~~designated agency~~] conducts an interview with or an examination of
24 a child, the department [~~or designated agency~~] shall make a
25 reasonable effort before 24 hours after the time of the interview or
26 examination to notify each parent of the child and the child's legal
27 guardian, if one has been appointed, of the nature of the allegation

1 and of the fact that the interview or examination was conducted.

2 (b) If a report of suspected child abuse or neglect is
3 administratively closed by the department [~~or designated agency~~] as
4 a result of a preliminary investigation that did not include an
5 interview or examination of the child, the department [~~or~~
6 ~~designated agency~~] shall make a reasonable effort before the
7 expiration of 24 hours after the time the investigation is closed to
8 notify each parent and legal guardian of the child of the
9 disposition of the investigation.

10 SECTION 1.142. Section 261.312(b), Family Code, is amended
11 to read as follows:

12 (b) A review team consists of at least five members who
13 serve staggered two-year terms. Review team members are appointed
14 by the commissioner [~~director~~] of the department and consist of
15 volunteers who live in and are broadly representative of the region
16 in which the review team is established and have expertise in the
17 prevention and treatment of child abuse and neglect. At least two
18 members of a review team must be parents who have not been convicted
19 of or indicted for an offense involving child abuse or neglect, have
20 not been determined by the department to have engaged in child abuse
21 or neglect, and are not under investigation by the department for
22 child abuse or neglect. A member of a review team is a department
23 volunteer for the purposes of Section 411.114, Government Code.

24 SECTION 1.143. Section 261.315(c), Family Code, is amended
25 to read as follows:

26 (c) The executive commissioner [~~board~~] shall adopt rules
27 necessary to administer this section.

1 SECTION 1.144. Sections 261.401(c) and (d), Family Code,
2 are amended to read as follows:

3 (c) A state agency shall adopt rules relating to the
4 investigation and resolution of reports received as provided by
5 this subchapter. The executive commissioner [~~Health and Human~~
6 ~~Services Commission~~] shall review and approve the rules of agencies
7 other than the Texas Department of Criminal Justice or the [–] Texas
8 Juvenile Justice Department [~~Youth Commission, or Texas Juvenile~~
9 ~~Probation Commission~~] to ensure that those agencies implement
10 appropriate standards for the conduct of investigations and that
11 uniformity exists among agencies in the investigation and
12 resolution of reports.

13 (d) The Texas School for the Blind and Visually Impaired and
14 the Texas School for the Deaf shall adopt policies relating to the
15 investigation and resolution of reports received as provided by
16 this subchapter. The executive commissioner [~~Health and Human~~
17 ~~Services Commission~~] shall review and approve the policies to
18 ensure that the Texas School for the Blind and Visually Impaired and
19 the Texas School for the Deaf adopt those policies in a manner
20 consistent with the minimum standards adopted by the executive
21 commissioner [~~Health and Human Services Commission~~] under Section
22 261.407.

23 SECTION 1.145. Section 261.402(c), Family Code, is amended
24 to read as follows:

25 (c) A state agency that licenses, certifies, or registers a
26 facility in which children are located shall compile, maintain, and
27 make available statistics on the incidence in the facility of child

1 abuse, neglect, and exploitation that is investigated by the agency
2 [~~in the facility~~].

3 SECTION 1.146. Section 261.403, Family Code, is amended to
4 read as follows:

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

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

16 SECTION 1.147. Section 261.404, Family Code, is amended to
17 read as follows:

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

22 (1) in a facility operated by the Department of Aging
23 and Disability Services or a mental health facility operated by the
24 Department of State Health Services;

25 (2) in or from a community center, a local mental
26 health authority, or a local intellectual and developmental
27 disability [~~mental retardation~~] authority;

1 (3) through a program providing services to that child
2 by contract with a facility operated by the Department of Aging and
3 Disability Services, a mental health facility operated by the
4 Department of State Health Services, a community center, a local
5 mental health authority, or a local intellectual and developmental
6 disability [~~mental retardation~~] authority;

7 (4) from a provider of home and community-based
8 services who contracts with the Department of Aging and Disability
9 Services; or

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

12 (b) The department shall investigate the report under rules
13 developed by the executive commissioner [~~of the Health and Human~~
14 ~~Services Commission~~] with the advice and assistance of the
15 department, the Department of Aging and Disability Services, and
16 the Department of State Health Services.

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

23 (d) If during the course of the department's investigation
24 of reported abuse, neglect, or exploitation a caseworker of the
25 department or the caseworker's supervisor has cause to believe that
26 a child with an intellectual disability [~~mental retardation~~]
27 described by Subsection (c) has been abused, neglected, or

1 exploited by another person in a manner that constitutes a criminal
2 offense under any law, including Section 22.04, Penal Code, the
3 caseworker shall immediately notify the Health and Human Services
4 Commission's office of inspector general and promptly provide the
5 commission's office of inspector general with a copy of the
6 department's investigation report.

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

10 (f) In this section:

11 (1) "Community center," "local mental health
12 authority," "local intellectual and developmental disability
13 [~~mental retardation~~] authority," and "state supported living
14 center" have the meanings assigned by Section 531.002, Health and
15 Safety Code.

16 (2) "Provider" has the meaning assigned by Section
17 48.351, Human Resources Code.

18 SECTION 1.148. Section 261.405(a)(1), Family Code, is
19 amended to read as follows:

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

25 (A) a public or private juvenile
26 pre-adjudication secure detention facility, including a holdover
27 facility;

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1 (B) a public or private juvenile
2 post-adjudication secure correctional facility except for a
3 facility operated solely for children committed to the Texas
4 Juvenile Justice Department [Youth Commission]; and

5 (C) a public or private non-secure juvenile
6 post-adjudication residential treatment facility that is not
7 licensed by the Department of Family and Protective [and
8 Regulatory] Services or the Department of State Health Services
9 [Texas Commission on Alcohol and Drug Abuse].

10 SECTION 1.149. Section 261.406(d), Family Code, is amended
11 to read as follows:

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

15 SECTION 1.150. Section 261.407, Family Code, is amended to
16 read as follows:

17 Sec. 261.407. MINIMUM STANDARDS. (a) The executive
18 commissioner [Health and Human Services Commission] by rule shall
19 adopt minimum standards for the investigation under Section 261.401
20 of suspected child abuse, neglect, or exploitation in a facility.

21 (b) A rule or policy adopted by a state agency or
22 institution under Section [261.401](#) must be consistent with the
23 minimum standards adopted by the executive commissioner [~~Health and~~
24 ~~Human Services Commission~~].

25 (c) This section does not apply to a facility under the
26 jurisdiction of the Texas Department of Criminal Justice or the[~~T~~]
27 Texas Juvenile Justice Department [~~Youth Commission, or Texas~~

1 ~~Juvenile Probation Commission~~].

2 SECTION 1.151. Sections 261.408(a) and (c), Family Code,
3 are amended to read as follows:

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

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

12 SECTION 1.152. Section 262.006(a), Family Code, is amended
13 to read as follows:

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

18 SECTION 1.153. Section 262.007(c), Family Code, is amended
19 to read as follows:

20 (c) If a person entitled to possession of the child is not
21 immediately available to take possession of the child, the law
22 enforcement officer shall deliver the child to the Department of
23 Family and Protective [~~and Regulatory~~] Services. Until a person
24 entitled to possession of the child takes possession of the child,
25 the department may, without a court order, retain possession of the
26 child not longer than five days after the date the child is
27 delivered to the department. While the department retains

1 possession of a child under this subsection, the department may
2 place the child in foster [home] care. If a parent or other person
3 entitled to possession of the child does not take possession of the
4 child before the sixth day after the date the child is delivered to
5 the department, the department shall proceed under this chapter as
6 if the law enforcement officer took possession of the child under
7 Section 262.104.

8 SECTION 1.154. Section 262.008(a), Family Code, is amended
9 to read as follows:

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

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

15 (2) whose identity cannot be ascertained by the
16 exercise of reasonable diligence.

17 SECTION 1.155. Section 262.1015(a), Family Code, is amended
18 to read as follows:

19 (a) If the Department of Family and Protective Services
20 [~~department~~] determines after an investigation that child abuse has
21 occurred and that the child would be protected in the child's home
22 by the removal of the alleged perpetrator of the abuse, the
23 department shall file a petition for the removal of the alleged
24 perpetrator from the residence of the child rather than attempt to
25 remove the child from the residence.

26 SECTION 1.156. Sections 262.102(a), (c), and (d), Family
27 Code, are amended to read as follows:

1 (a) Before a court may, without prior notice and a hearing,
2 issue an appropriate [~~a~~] temporary [~~restraining~~] order under
3 Chapter 105 [~~or attachment of a child~~] in a suit brought by a
4 governmental entity, the court must find that:

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

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

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

15 (c) If, based on the recommendation of or a request by the
16 Department of Family and Protective Services [~~department~~], the
17 court finds that child abuse or neglect has occurred and that the
18 child requires protection from family violence by a member of the
19 child's family or household, the court shall render a temporary
20 order under Title 4 [~~Chapter 71~~] for the protection of the child.
21 In this subsection, "family violence" has the meaning assigned by
22 Section 71.004.

23 (d) The temporary [~~restraining~~] order [~~or attachment of a~~
24 ~~child~~] rendered by the court must contain the following statement
25 prominently displayed in boldface type, capital letters, or
26 underlined:

27 "YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY. IF YOU

1 ARE INDIGENT AND UNABLE TO AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO
2 REQUEST THE APPOINTMENT OF AN ATTORNEY BY CONTACTING THE COURT AT
3 [ADDRESS], [TELEPHONE NUMBER]. IF YOU APPEAR IN OPPOSITION TO THE
4 SUIT, CLAIM INDIGENCE, AND REQUEST THE APPOINTMENT OF AN ATTORNEY,
5 THE COURT WILL REQUIRE YOU TO SIGN AN AFFIDAVIT OF INDIGENCE AND THE
6 COURT MAY HEAR EVIDENCE TO DETERMINE IF YOU ARE INDIGENT. IF THE
7 COURT DETERMINES YOU ARE INDIGENT AND ELIGIBLE FOR APPOINTMENT OF
8 AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT YOU."

9 SECTION 1.157. Section 262.103, Family Code, is amended to
10 read as follows:

11 Sec. 262.103. DURATION OF TEMPORARY [RESTRANDING] ORDER
12 [AND ATTACHMENT]. A temporary [restraining] order [or attachment
13 of the child] issued under this chapter expires not later than 14
14 days after the date it is issued unless it is extended as provided
15 by the Texas Rules of Civil Procedure or Section 262.201(a-3).

16 SECTION 1.158. Section 262.104(a), Family Code, is amended
17 to read as follows:

18 (a) If there is no time to obtain a temporary [restraining]
19 order [or attachment] before taking possession of a child
20 consistent with the health and safety of that child, an authorized
21 representative of the Department of Family and Protective Services,
22 a law enforcement officer, or a juvenile probation officer may take
23 possession of a child without a court order under the following
24 conditions, only:

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

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

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

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

13 (5) on information furnished by another that has been
14 corroborated by personal knowledge of facts and all of which taken
15 together would lead a person of ordinary prudence and caution to
16 believe that the parent or person who has possession of the child is
17 currently using a controlled substance as defined by Chapter 481,
18 Health and Safety Code, and the use constitutes an immediate danger
19 to the physical health or safety of the child.

20 SECTION 1.159. Section 262.105(b), Family Code, is amended
21 to read as follows:

22 (b) If the Department of Family and Protective [and
23 ~~Regulatory~~] Services files a suit affecting the parent-child
24 relationship required under Subsection (a)(1) seeking termination
25 of the parent-child relationship, the department shall file the
26 suit not later than the 45th day after the date the department
27 assumes the care, control, and custody of a child under Section

1 262.303.

2 SECTION 1.160. Section 262.106(d), Family Code, is amended
3 to read as follows:

4 (d) For the purpose of determining under Subsection (a) the
5 first working day after the date the child is taken into possession,
6 the child is considered to have been taken into possession by the
7 Department of Family and Protective [~~and Regulatory~~] Services on
8 the expiration of the five-day period permitted under Section
9 262.007(c) or 262.110(b), as appropriate.

10 SECTION 1.161. Section 262.109(a), Family Code, is amended
11 to read as follows:

12 (a) The Department of Family and Protective Services
13 [~~department~~] or other agency must give written notice as prescribed
14 by this section to each parent of the child or to the child's
15 conservator or legal guardian when a representative of the
16 department [~~Department of Protective and Regulatory Services~~] or
17 other agency takes possession of a child under this chapter.

18 SECTION 1.162. Section 262.110(a), Family Code, is amended
19 to read as follows:

20 (a) An authorized representative of the Department of
21 Family and Protective [~~and Regulatory~~] Services, a law enforcement
22 officer, or a juvenile probation officer may take temporary
23 possession of a child without a court order on discovery of a child
24 in a situation of danger to the child's physical health or safety
25 when the sole purpose is to deliver the child without unnecessary
26 delay to the parent, managing conservator, possessory conservator,
27 guardian, caretaker, or custodian who is presently entitled to

1 possession of the child.

2 SECTION 1.163. Section 262.112(a), Family Code, is amended
3 to read as follows:

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

10 SECTION 1.164. Sections 262.201(a-3) and (g), Family Code,
11 are amended to read as follows:

12 (a-3) The court may, for good cause shown, postpone the full
13 adversary hearing for not more than seven days from the date of the
14 attorney's appointment to provide the attorney time to respond to
15 the petition and prepare for the hearing. The court may shorten or
16 lengthen the extension granted under this subsection if the parent
17 and the appointed attorney agree in writing. If the court postpones
18 the full adversary hearing, the court shall extend a temporary
19 [~~restraining~~] order issued by the court for the protection of the
20 child until the date of the rescheduled full adversary hearing.

21 (g) For the purpose of determining under Subsection (a) the
22 14th day after the date the child is taken into possession, a child
23 is considered to have been taken into possession by the Department
24 of Family and Protective Services [~~Department~~] on the expiration of
25 the five-day period permitted under Section 262.007(c) or
26 262.110(b), as appropriate.

27 SECTION 1.165. Sections 262.2015(a), (b), and (d), Family

1 Code, are amended to read as follows:

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

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

11 (1) the parent abandoned the child without
12 identification or a means for identifying the child;

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

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

19 (A) Section 19.02 (murder);

20 (B) Section 19.03 (capital murder);

21 (C) Section 19.04 (manslaughter);

22 (D) Section 21.11 (indecency with a child);

23 (E) Section 22.011 (sexual assault);

24 (F) Section 22.02 (aggravated assault);

25 (G) Section 22.021 (aggravated sexual assault);

26 (H) Section 22.04 (injury to a child, elderly
27 individual, or disabled individual);

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13 (d) The Department of Family and Protective [and
14 ~~Regulatory~~] Services shall make reasonable efforts to finalize the
15 permanent placement of a child for whom the court has made the
16 finding described by Subsection (c). The court shall set the suit
17 for trial on the merits as required by Subchapter D, Chapter 263, in
18 order to facilitate final placement of the child.

19 SECTION 1.166. Section 262.301(1), Family Code, is amended
20 to read as follows:

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

9 SECTION 1.167. Section 262.303(a), Family Code, is amended
10 to read as follows:

11 (a) Not later than the close of the first business day after
12 the date on which a designated emergency infant care provider takes
13 possession of a child under Section [262.302](#), the provider shall
14 notify the Department of Family and Protective [~~and Regulatory~~]
15 Services that the provider has taken possession of the child.

16 SECTION 1.168. Section 262.304, Family Code, is amended to
17 read as follows:

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

24 SECTION 1.169. Section 262.305(a), Family Code, is amended
25 to read as follows:

26 (a) Immediately after assuming care, control, and custody
27 of a child under Section 262-303, the Department of Family and

1 Protective [and Regulatory] Services shall report the child to
2 appropriate state and local law enforcement agencies as a potential
3 missing child.

4 SECTION 1.170. Section 262.307, Family Code, is amended to
5 read as follows:

6 Sec. 262.307. REIMBURSEMENT FOR CARE OF ABANDONED CHILD.
7 The Department of Family and Protective Services [~~department~~] shall
8 reimburse a designated emergency infant care provider that takes
9 possession of a child under Section 262.302 for the cost to the
10 provider of assuming the care, control, and custody of the child.

11 SECTION 1.171. Section 263.001(a)(4), Family Code, is
12 amended to read as follows:

13 (4) "Substitute care" means the placement of a child
14 who is in the conservatorship of the department [~~or an authorized~~
15 ~~agency~~] in care outside the child's home. The term includes foster
16 care, institutional care, adoption, placement with a relative of
17 the child, or commitment to the Texas Juvenile Justice Department
18 [~~Youth Commission~~].

19 SECTION 1.172. Section 263.002, Family Code, is amended to
20 read as follows:

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

27 (1) the conservatorship appointment and substitute

1 care; and

2 (2) for a child committed to the Texas Juvenile
3 Justice Department [~~Youth Commission~~], the child's commitment in
4 the Texas Juvenile Justice Department [~~Youth Commission~~] or release
5 under supervision by the Texas Juvenile Justice Department [~~Youth~~
6 ~~Commission~~].

7 SECTION 1.173. Section 263.008(a)(2), Family Code, is
8 amended to read as follows:

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

15 SECTION 1.174. Section 263.101, Family Code, is amended to
16 read as follows:

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

22 SECTION 1.175. Section 263.102(a), Family Code, is amended
23 to read as follows:

24 (a) The service plan must:

25 (1) be specific;

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

- 1 (3) be prepared by the department [~~or other agency~~] in
- 2 conference with the child's parents;
- 3 (4) state appropriate deadlines;
- 4 (5) state whether the goal of the plan is:
 - 5 (A) return of the child to the child's parents;
 - 6 (B) termination of parental rights and placement
 - 7 of the child for adoption; or
 - 8 (C) because of the child's special needs or
 - 9 exceptional circumstances, continuation of the child's care out of
 - 10 the child's home;
- 11 (6) state steps that are necessary to:
 - 12 (A) return the child to the child's home if the
 - 13 placement is in foster care;
 - 14 (B) enable the child to remain in the child's
 - 15 home with the assistance of a service plan if the placement is in
 - 16 the home under the department's [~~or other agency's~~] supervision; or
 - 17 (C) otherwise provide a permanent safe placement
 - 18 for the child;
- 19 (7) state the actions and responsibilities that are
- 20 necessary for the child's parents to take to achieve the plan goal
- 21 during the period of the service plan and the assistance to be
- 22 provided to the parents by the department or other [~~authorized~~]
- 23 agency toward meeting that goal;
- 24 (8) state any specific skills or knowledge that the
- 25 child's parents must acquire or learn, as well as any behavioral
- 26 changes the parents must exhibit, to achieve the plan goal;
- 27 (9) state the actions and responsibilities that are

1 necessary for the child's parents to take to ensure that the child
2 attends school and maintains or improves the child's academic
3 compliance;

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

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

11 SECTION 1.176. Sections 263.103(a), (a-1), (c), and (d),
12 Family Code, are amended to read as follows:

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

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

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

1 (d) The original service plan takes effect when:
2 (1) the child's parents and the appropriate
3 representative of the department [~~or other authorized agency~~] sign
4 the plan; or
5 (2) the court issues an order giving effect to the plan
6 without the parents' signatures.

7 SECTION 1.177. Section 263.104(b), Family Code, is amended
8 to read as follows:

9 (b) The amended service plan supersedes the previously
10 filed service plan and takes effect when:
11 (1) the child's parents and the appropriate
12 representative of the department [~~or other authorized agency~~] sign
13 the plan; or
14 (2) the department [~~or other authorized agency~~]
15 determines that the child's parents are unable or unwilling to sign
16 the amended plan and files it without the parents' signatures.

17 SECTION 1.178. Sections 263.202(a) and (b), Family Code,
18 are amended to read as follows:

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

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

27 (2) the child and each parent, alleged father, or

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

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

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

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

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

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

27 SECTION 1.179. Section 263.301(c), Family Code, is amended

1 to read as follows:

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

8 SECTION 1.180. Section 263.303, Family Code, is amended to
9 read as follows:

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

18 (b) The permanency progress report must:

19 (1) recommend that the suit be dismissed; or
20 (2) recommend that the suit continue, and:

21 (A) identify the date for dismissal of the suit
22 under this chapter;

23 (B) provide:

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

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

1 citation; and

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

5 (C) evaluate the parties' compliance with
6 temporary orders and with the service plan;

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

10 (E) describe the permanency plan for the child
11 and recommend actions necessary to ensure that a final order
12 consistent with that permanency plan, including the concurrent
13 permanency goals contained in that plan, is rendered before the
14 date for dismissal of the suit under this chapter;

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

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

22 (i) evaluate whether the child's needs for
23 treatment and education are being met;

24 (ii) describe, using information provided
25 by the Texas Juvenile Justice Department [~~Youth Commission~~], the
26 child's progress in any rehabilitation program administered by the
27 Texas Juvenile Justice Department [~~Youth Commission~~]; and

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(iii) recommend other plans or services to meet the child's needs.

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

9 SECTION 1.181. Section 263.306(a), Family Code, as amended
10 by Chapters 191 (S.B. 352), 204 (H.B. 915), and 688 (H.B. 2619),
11 Acts of the 83rd Legislature, Regular Session, 2013, is reenacted
12 and amended to read as follows:

13 (a) At each permanency hearing the court shall:

14 (1) identify all persons or parties present at the
15 hearing or those given notice but failing to appear:

16 (2) review the efforts of the department [~~or another~~
17 agency] in:

(A) attempting to locate all necessary persons;

(B) requesting service of citation; and

20 (C) obtaining the assistance of a parent in
21 providing information necessary to locate an absent parent, alleged
22 father, or relative of the child;

(4) review any visitation plan or amended plan

1 required under Section [263.107](#) and render any orders for visitation
2 the court determines necessary;

3 (5) return the child to the parent or parents if the
4 child's parent or parents are willing and able to provide the child
5 with a safe environment and the return of the child is in the
6 child's best interest;

7 (6) place the child with a person or entity, other than
8 a parent, entitled to service under Chapter 102 if the person or
9 entity is willing and able to provide the child with a safe
10 environment and the placement of the child is in the child's best
11 interest;

12 (7) evaluate the department's efforts to identify
13 relatives who could provide the child with a safe environment, if
14 the child is not returned to a parent or another person or entity
15 entitled to service under Chapter 102;

16 (8) evaluate the parties' compliance with temporary
17 orders and the service plan;

18 (9) identify an education decision-maker for the child
19 if one has not previously been identified;

20 (10) review the medical care provided to the child as
21 required by Section [266.007](#);

22 (11) [~~9~~] ensure the child has been provided the
23 opportunity, in a developmentally appropriate manner, to express
24 the child's opinion on the medical care provided;

25 (12) [~~10~~] for a child receiving psychotropic
26 medication, determine whether the child:

27 (A) has been provided appropriate psychosocial

therapies, behavior strategies, and other non-pharmacological interventions; and

3 (B) has been seen by the prescribing physician,
4 physician assistant, or advanced practice nurse at least once every
5 90 days for purposes of the review required by Section [266.011](#);

(13) [~~(11)~~] determine whether:

7 (A) the child continues to need substitute care;

(C) other plans or services are needed to meet
the child's special needs or circumstances;

14 (14) [(-12)] if the child is placed in institutional
15 care, determine whether efforts have been made to ensure placement
16 of the child in the least restrictive environment consistent with
17 the best interest and special needs of the child;

18 (15) [(-13)] if the child is 16 years of age or older,
19 order services that are needed to assist the child in making the
20 transition from substitute care to independent living if the
21 services are available in the community:

22 (16) [14] determine plans, services, and further
23 temporary orders necessary to ensure that a final order is rendered
24 before the date for dismissal of the suit under this chapter:

25 (17) [(15)] if the child is committed to the Texas
26 Juvenile Justice Department or released under supervision by the
27 Texas Juvenile Justice Department, determine whether the child's

1 needs for treatment, rehabilitation, and education are being met;
2 and

3 (18) [16] determine the date for dismissal of the
4 suit under this chapter and give notice in open court to all parties
5 of:

- 6 (A) the dismissal date;
7 (B) the date of the next permanency hearing; and
8 (C) the date the suit is set for trial.

9 SECTION 1.182. Section 263.307(b), Family Code, is amended
10 to read as follows:

11 (b) The following factors should be considered by the court
12 and [7] the department[, and other authorized agencies] in
13 determining whether the child's parents are willing and able to
14 provide the child with a safe environment:

15 (1) the child's age and physical and mental
16 vulnerabilities;

17 (2) the frequency and nature of out-of-home
18 placements;

19 (3) the magnitude, frequency, and circumstances of the
20 harm to the child;

21 (4) whether the child has been the victim of repeated
22 harm after the initial report and intervention by the department
23 [or other agency];

24 (5) whether the child is fearful of living in or
25 returning to the child's home;

26 (6) the results of psychiatric, psychological, or
27 developmental evaluations of the child, the child's parents, other

1 family members, or others who have access to the child's home;

2 (7) whether there is a history of abusive or

3 assaultive conduct by the child's family or others who have access

4 to the child's home;

5 (8) whether there is a history of substance abuse by

6 the child's family or others who have access to the child's home;

7 (9) whether the perpetrator of the harm to the child is

8 identified;

9 (10) the willingness and ability of the child's family

10 to seek out, accept, and complete counseling services and to

11 cooperate with and facilitate an appropriate agency's close

12 supervision;

13 (11) the willingness and ability of the child's family

14 to effect positive environmental and personal changes within a

15 reasonable period of time;

16 (12) whether the child's family demonstrates adequate

17 parenting skills, including providing the child and other children

18 under the family's care with:

19 (A) minimally adequate health and nutritional

20 care;

21 (B) care, nurturance, and appropriate discipline

22 consistent with the child's physical and psychological

23 development;

24 (C) guidance and supervision consistent with the

25 child's safety;

26 (D) a safe physical home environment;

27 (E) protection from repeated exposure to

1 violence even though the violence may not be directed at the child;
2 and

3 (F) an understanding of the child's needs and
4 capabilities; and

5 (13) whether an adequate social support system
6 consisting of an extended family and friends is available to the
7 child.

8 SECTION 1.183. Sections [263.502\(a\)](#) and (c), Family Code,
9 are amended to read as follows:

10 (a) Not later than the 10th day before the date set for a
11 placement review hearing, the department [~~or other authorized~~
12 ~~agency~~] shall file a placement review report with the court and
13 provide a copy to each person entitled to notice under Section
14 [263.501\(d\)](#).

15 (c) The placement review report must identify the
16 department's permanency goal for the child and must:

17 (1) evaluate whether the child's current placement is
18 appropriate for meeting the child's needs;

19 (2) evaluate whether efforts have been made to ensure
20 placement of the child in the least restrictive environment
21 consistent with the best interest and special needs of the child if
22 the child is placed in institutional care;

23 (3) contain a transition plan for a child who is at
24 least 16 years of age that identifies the services and specific
25 tasks that are needed to assist the child in making the transition
26 from substitute care to adult living and describes the services
27 that are being provided through the Transitional Living Services

1 Program operated by the department;

2 (4) evaluate whether the child's current educational

3 placement is appropriate for meeting the child's academic needs;

4 (5) identify other plans or services that are needed

5 to meet the child's special needs or circumstances;

6 (6) describe the efforts of the department [~~or~~

7 ~~authorized agency~~] to place the child for adoption if parental

8 rights to the child have been terminated and the child is eligible

9 for adoption, including efforts to provide adoption promotion and

10 support services as defined by 42 U.S.C. Section 629a and other

11 efforts consistent with the federal Adoption and Safe Families Act

12 of 1997 (Pub. L. No. 105-89);

13 (7) for a child for whom the department has been named

14 managing conservator in a final order that does not include

15 termination of parental rights, describe the efforts of the

16 department to find a permanent placement for the child, including

17 efforts to:

18 (A) work with the caregiver with whom the child

19 is placed to determine whether that caregiver is willing to become a

20 permanent placement for the child;

21 (B) locate a relative or other suitable

22 individual to serve as permanent managing conservator of the child;

23 and

24 (C) evaluate any change in a parent's

25 circumstances to determine whether:

26 (i) the child can be returned to the parent;

27 or

5 (A) evaluate whether the child's needs for
6 treatment and education are being met;

11 (C) recommend other plans or services to meet the
12 child's needs; and

13 (9) identify any placement changes that have occurred
14 since the most recent court hearing concerning the child and
15 describe any barriers to sustaining the child's placement,
16 including any reason for which a substitute care provider has
17 requested a placement change.

18 SECTION 1.184. Section 263.503(a), Family Code, as amended
19 by Chapters 204 (H.B. 915) and 688 (H.B. 2619), Acts of the 83rd
20 Legislature, Regular Session, 2013, is reenacted and amended to
21 read as follows:

22 (a) At each placement review hearing, the court shall
23 determine whether:

1 the child;

2 (2) efforts have been made to ensure placement of the
3 child in the least restrictive environment consistent with the best
4 interest and special needs of the child if the child is placed in
5 institutional care;

6 (3) the services that are needed to assist a child who
7 is at least 16 years of age in making the transition from substitute
8 care to independent living are available in the community;

9 (4) the child is receiving appropriate medical care;

10 (5) the child has been provided the opportunity, in a
11 developmentally appropriate manner, to express the child's opinion
12 on the medical care provided;

13 (6) for a child who is receiving psychotropic
14 medication, the child:

15 (A) has been provided appropriate psychosocial
16 therapies, behavior strategies, and other non-pharmacological
17 interventions; and

18 (B) has been seen by the prescribing physician,
19 physician assistant, or advanced practice nurse at least once every
20 90 days for purposes of the review required by Section [266.011](#);

21 (7) other plans or services are needed to meet the
22 child's special needs or circumstances;

23 (8) the department [or authorized agency] has
24 exercised due diligence in attempting to place the child for
25 adoption if parental rights to the child have been terminated and
26 the child is eligible for adoption;

27 (9) for a child for whom the department has been named

1 managing conservator in a final order that does not include
2 termination of parental rights, a permanent placement, including
3 appointing a relative as permanent managing conservator or
4 returning the child to a parent, is appropriate for the child;

5 (10) for a child whose permanency goal is another
6 planned, permanent living arrangement, the department has:

7 (A) documented a compelling reason why adoption,
8 permanent managing conservatorship with a relative or other
9 suitable individual, or returning the child to a parent is not in
10 the child's best interest; and

11 (B) identified a family or other caring adult who
12 has made a permanent commitment to the child;

13 (11) the department [~~or authorized agency~~] has made
14 reasonable efforts to finalize the permanency plan that is in
15 effect for the child; [~~and~~]

16 (12) if the child is committed to the Texas Juvenile
17 Justice Department or released under supervision by the Texas
18 Juvenile Justice Department, the child's needs for treatment,
19 rehabilitation, and education are being met;

20 (13) [~~(10)~~] an education decision-maker for the child
21 has been identified; and

22 (14) [~~(11)~~] the child's education needs and goals have
23 been identified and addressed.

24 SECTION 1.185. Section 264.0091, Family Code, is amended to
25 read as follows:

26 Sec. 264.0091. USE OF TELECONFERENCE AND
27 VIDEOCONFERENCE TECHNOLOGY. Subject to the availability of

1 funds, the department, in cooperation with district and county
2 courts, shall expand the use of teleconferencing and
3 videoconferencing to facilitate participation by medical experts,
4 children, and other individuals in court proceedings, including
5 children for whom the department [~~, an authorized agency,~~] or a
6 licensed child-placing agency has been appointed managing
7 conservator and who are committed to the Texas Juvenile Justice
8 Department [~~Youth Commission~~].

9 SECTION 1.186. Section 264.010(d), Family Code, is amended
10 to read as follows:

11 (d) A child abuse prevention and protection plan must:
12 (1) specify the manner of communication between
13 entities who are parties to the plan, including the department, the
14 commission [~~Texas Department of Human Services~~], local law
15 enforcement agencies, the county and district attorneys, members of
16 the medical and social service community, foster parents, and child
17 advocacy groups; and

18 (2) provide other information concerning the
19 prevention and investigation of child abuse in the area for which
20 the plan is adopted.

21 SECTION 1.187. Section 264.0111(e), Family Code, is amended
22 to read as follows:

23 (e) The executive commissioner [~~department~~] may adopt rules
24 to implement this section.

25 SECTION 1.188. Section 264.0145(b), Family Code, is amended
26 to read as follows:

27 (b) The executive commissioner [~~department~~] by rule shall

1 establish guidelines that prioritize requests to release case
2 records, including those made by an adult previously in the
3 department's managing conservatorship.

4 SECTION 1.189. Sections [264.101](#)(b) and (d), Family Code,
5 are amended to read as follows:

6 (b) The department may not pay the cost of protective foster
7 care for a child for whom the department has been named managing
8 conservator under an order rendered solely under Section
9 [161.001\(b\)\(1\)\(J\)](#) [~~161.001(1)(J)~~].

10 (d) The executive commissioner [~~of the Health and Human~~
11 ~~Services Commission~~] may adopt rules that establish criteria and
12 guidelines for the payment of foster care, including medical care,
13 for a child and for providing care for a child after the child
14 becomes 18 years of age if the child meets the requirements for
15 continued foster care under Subsection (a-1).

16 SECTION 1.190. Sections [264.107](#)(a) and (b), Family Code,
17 are amended to read as follows:

18 (a) The department shall use a system for the placement of
19 children in contract residential care, including foster care, that
20 conforms to the levels of care adopted [~~and maintained~~] by the
21 executive commissioner [~~Health and Human Services Commission~~].

22 (b) The department shall use the standard application
23 provided by the Health and Human Services Commission for the
24 placement of children in contract residential care [~~as adopted and~~
25 ~~maintained by the Health and Human Services Commission~~].

26 SECTION 1.191. Section [264.1075](#)(b), Family Code, is amended
27 to read as follows:

1 (b) As soon as possible after a child begins receiving
2 foster care under this subchapter, the department shall assess
3 whether the child has a developmental or intellectual disability
4 [~~or mental retardation~~]. The commission shall establish the
5 procedures that the department must use in making an assessment
6 under this subsection. The procedures may include screening or
7 participation by:

8 (1) a person who has experience in childhood
9 developmental or intellectual disabilities [~~or mental~~
10 ~~retardation~~];
11 (2) a local intellectual and developmental disability
12 [~~mental retardation~~] authority; or
13 (3) a provider in a county with a local child welfare
14 board.

15 SECTION 1.192. Section 264.108(f), Family Code, is amended
16 to read as follows:

17 (f) The executive commissioner [~~department~~] by rule shall
18 define what constitutes a delay under Subsections (b) and (d).

19 SECTION 1.193. Sections 264.110(b) and (g), Family Code,
20 are amended to read as follows:

21 (b) A person registered under this section must satisfy
22 requirements adopted by rule by the executive commissioner
23 [~~department~~].

24 (g) The department may refuse to place a child with a person
25 registered under this section only for a reason permitted under
26 criteria adopted by the executive commissioner by [~~department~~]
27 rule.

1 SECTION 1.194. Section 264.112(a), Family Code, is amended
2 to read as follows:

3 (a) The department shall report the status for children in
4 substitute care to the executive commissioner [Board of Protective
5 and Regulatory Services] at least once every 12 months.

6 SECTION 1.195. Section 264.121(a), Family Code, is amended
7 to read as follows:

8 (a) The department shall address the unique challenges
9 facing foster children in the conservatorship of the department who
10 must transition to independent living by:

11 (1) expanding efforts to improve transition planning
12 and increasing the availability of transitional family group
13 decision-making to all youth age 14 or older in the department's
14 permanent managing conservatorship, including enrolling the youth
15 in the Preparation for Adult Living Program before the age of 16;

16 (2) coordinating with the commission [Health and Human
17 Services Commission] to obtain authority, to the extent allowed by
18 federal law, the state Medicaid plan, the Title IV-E state plan, and
19 any waiver or amendment to either plan, necessary to:

20 (A) extend foster care eligibility and
21 transition services for youth up to age 21 and develop policy to
22 permit eligible youth to return to foster care as necessary to
23 achieve the goals of the Transitional Living Services Program; and

24 (B) extend Medicaid coverage for foster care
25 youth and former foster care youth up to age 21 with a single
26 application at the time the youth leaves foster care; and

27 (3) entering into cooperative agreements with the

1 Texas Workforce Commission and local workforce development boards
2 to further the objectives of the Preparation for Adult Living
3 Program. The department, the Texas Workforce Commission, and the
4 local workforce development boards shall ensure that services are
5 prioritized and targeted to meet the needs of foster care and former
6 foster care children and that such services will include, where
7 feasible, referrals for short-term stays for youth needing housing.

8 SECTION 1.196. Section 264.124(b), Family Code, as added by
9 Chapter 423 (S.B. 430), Acts of the 83rd Legislature, Regular
10 Session, 2013, is amended to read as follows:

11 (b) The department, in accordance with department rules
12 [~~executive commissioner rule~~], shall implement a process to verify
13 that each foster parent who is seeking monetary assistance from the
14 department for day care for a foster child has attempted to find
15 appropriate day-care services for the foster child through
16 community services, including Head Start programs, prekindergarten
17 classes, and early education programs offered in public schools.
18 The department shall specify the documentation the foster parent
19 must provide to the department to demonstrate compliance with the
20 requirements established under this subsection.

21 SECTION 1.197. Section 264.205(b), Family Code, is amended
22 to read as follows:

23 (b) A swift adoption team shall consist of department
24 personnel who shall operate under policies adopted by rule by the
25 executive commissioner [~~department~~]. The department shall set
26 priorities for the allocation of department resources to enable a
27 swift adoption team to operate successfully under the policies

1 adopted under this subsection.

2 SECTION 1.198. Section 264.506(b), Family Code, is amended
3 to read as follows:

4 (b) To achieve its purpose, a review team shall:

5 (1) adapt and implement, according to local needs and
6 resources, the model protocols developed by the department and the
7 committee;

8 (2) meet on a regular basis to review child fatality
9 cases and recommend methods to improve coordination of services and
10 investigations between agencies that are represented on the team;

11 (3) collect and maintain data as required by the
12 committee; and

13 (4) submit to the [bureau of] vital statistics unit
14 data reports on deaths reviewed as specified by the committee.

15 SECTION 1.199. Section 264.507, Family Code, is amended to
16 read as follows:

17 Sec. 264.507. DUTIES OF PRESIDING OFFICER. The presiding
18 officer of a review team shall:

19 (1) send notices to the review team members of a
20 meeting to review a child fatality;

21 (2) provide a list to the review team members of each
22 child fatality to be reviewed at the meeting;

23 (3) submit data reports to the [bureau of] vital
24 statistics unit not later than the 30th day after the date on which
25 the review took place; and

26 (4) ensure that the review team operates according to
27 the protocols developed by the department and the committee, as

1 adapted by the review team.

2 SECTION 1.200. Section 264.514(a), Family Code, is amended
3 to read as follows:

4 (a) A medical examiner or justice of the peace notified of a
5 death of a child under Section 264.513 shall hold an inquest under
6 Chapter 49, Code of Criminal Procedure, to determine whether the
7 death is unexpected or the result of abuse or neglect. An inquest
8 is not required under this subchapter if the child's death is
9 expected and is due to a congenital or neoplastic disease. A death
10 caused by an infectious disease may be considered an expected death
11 if:

12 (1) the disease was not acquired as a result of trauma
13 or poisoning;

14 (2) the infectious organism is identified using
15 standard medical procedures; and

16 (3) the death is not reportable to the [Texas]
17 Department of State Health Services under Chapter 81, Health and
18 Safety Code.

19 SECTION 1.201. Section 264.614(d), Family Code, is amended
20 to read as follows:

21 (d) The executive commissioner [~~of the Health and Human~~
22 ~~Services Commission~~] shall adopt rules necessary to implement this
23 section.

24 SECTION 1.202. Section 264.753, Family Code, is amended to
25 read as follows:

26 Sec. 264.753. EXPEDITED PLACEMENT. The department [~~or~~
27 ~~other authorized entity~~] shall expedite the completion of the

1 background and criminal history check, the home study, and any
2 other administrative procedure to ensure that the child is placed
3 with a qualified relative or caregiver as soon as possible after the
4 date the caregiver is identified.

5 SECTION 1.203. Section [264.755\(d\)](#), Family Code, is amended
6 to read as follows:

7 (d) The department, in accordance with department rules
8 [~~executive commissioner rule~~], shall implement a process to verify
9 that each relative and designated caregiver who is seeking monetary
10 assistance or additional support services from the department for
11 day care as defined by Section [264.124](#) for a child under this
12 section has attempted to find appropriate day-care services for the
13 child through community services, including Head Start programs,
14 prekindergarten classes, and early education programs offered in
15 public schools. The department shall specify the documentation the
16 relative or designated caregiver must provide to the department to
17 demonstrate compliance with the requirements established under
18 this subsection. The department may not provide monetary
19 assistance or additional support services to the relative or
20 designated caregiver for the day care unless the department
21 receives the required verification.

22 SECTION 1.204. The following provisions of the Family Code
23 are repealed:

- 24 (1) Section [101.002](#);
25 (2) Section [161.002\(c\)](#);
26 (3) Section [162.305](#);
27 (4) Sections [261.001\(3\)](#) and [\(8\)](#);

- 1 (5) Section 262.008(c);
- 2 (6) Section 263.1015;
- 3 (7) Section 264.007;
- 4 (8) Section 264.105;
- 5 (9) Section 264.106;
- 6 (10) Section 264.1063;
- 7 (11) Section 264.107(f);
- 8 (12) Section 264.206;
- 9 (13) Sections 264.501(2) and (5); and
- 10 (14) Subchapter H, Chapter 264.

11 ARTICLE 2. GOVERNMENT CODE

12 SECTION 2.001. Section 403.1066(c), Government Code, is
13 amended to read as follows:

14 (c) The available earnings of the fund may be appropriated
15 to the [Texas] Department of State Health Services for the purpose
16 of providing services at a public health hospital as defined by
17 Section 13.033, Health and Safety Code, [the Texas Center for
18 Infectious Disease] and grants, loans, or loan guarantees to public
19 or nonprofit community hospitals with 125 beds or fewer located in
20 an urban area of the state.

21 SECTION 2.002. Section 411.110(a), Government Code, is
22 amended to read as follows:

23 (a) The Department of State Health Services is entitled to
24 obtain from the department criminal history record information
25 maintained by the department that relates to:

- 26 (1) a person who is:
 - 27 (A) an applicant for a license or certificate

1 under the Emergency Health Care [~~Medical Services~~] Act (Chapter
2 773, Health and Safety Code);

3 (B) an owner or manager of an applicant for an
4 emergency medical services provider license under that Act; or
5 (C) the holder of a license or certificate under
6 that Act;

7 (2) an applicant for a license or a license holder
8 under Subchapter N, Chapter 431, Health and Safety Code;

9 (3) an applicant for a license, the owner or manager of
10 an applicant for a massage establishment license, or a license
11 holder under Chapter 455, Occupations Code;

12 (4) an applicant for employment at or current employee
13 of:

14 (A) a public health hospital as defined by
15 Section 13.033, Health and Safety Code [~~the Texas Center for~~
16 ~~Infectious Disease~~]; or

17 (B) the South Texas Health Care System; or
18 (5) an applicant for employment at, current employee
19 of, or person who contracts or may contract to provide goods or
20 services with:

21 (A) the vital statistics unit of the Department
22 of State Health Services; or

23 (B) the Council on Sex Offender Treatment or
24 other division or component of the Department of State Health
25 Services that monitors sexually violent predators as described by
26 Section 841.003(a), Health and Safety Code.

27 SECTION 2.003. Section 411.1131, Government Code, is

1 amended to read as follows:

2 Sec. 411.1131. ACCESS TO CRIMINAL HISTORY RECORD
3 INFORMATION: DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES
4 [~~TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING~~]. (a) The
5 Department of Assistive and Rehabilitative Services [~~Texas~~
6 ~~Commission for the Deaf and Hard of Hearing~~] is entitled to obtain
7 from the department criminal history record information maintained
8 by the department that relates to a person who is an applicant for a
9 staff position at an outdoor training program for children who are
10 deaf or hard of hearing conducted by a private entity through a
11 contract with the Department of Assistive and Rehabilitative
12 Services [~~commission~~] in accordance with Section 81.013, Human
13 Resources Code.

14 (b) Criminal history record information obtained by the
15 Department of Assistive and Rehabilitative Services [~~Texas~~
16 ~~Commission for the Deaf and Hard of Hearing~~] under Subsection (a)
17 may be used only to evaluate an applicant for a staff position at an
18 outdoor training program for children who are deaf or hard of
19 hearing. The Department of Assistive and Rehabilitative Services
20 [~~Texas Commission for the Deaf and Hard of Hearing~~] may release or
21 disclose the information to a private entity described by
22 Subsection (a) for that purpose.

23 (c) The Department of Assistive and Rehabilitative Services
24 [~~Texas Commission for the Deaf and Hard of Hearing~~] may not release
25 or disclose information obtained under Subsection (a), except on
26 court order or with the consent of the person who is the subject of
27 the criminal history record information, and shall destroy all

1 criminal history record information obtained under Subsection (a)
2 after the information is used for its authorized purpose.

3 SECTION 2.004. Section [411.114\(a\)\(3\)](#), Government Code, is
4 amended to read as follows:

5 (3) The Department of Family and Protective Services
6 is entitled to obtain from the department criminal history record
7 information maintained by the department that relates to a person
8 who is:

9 (A) a volunteer or applicant volunteer with a
10 local affiliate in this state of Big Brothers/Big Sisters of
11 America;

12 (B) a volunteer or applicant volunteer with the
13 "I Have a Dream/Houston" program;

14 (C) a volunteer or applicant volunteer with an
15 organization that provides court-appointed special advocates for
16 abused or neglected children;

17 (D) a person providing, at the request of the
18 child's parent, in-home care for a child who is the subject of a
19 report alleging the child has been abused or neglected;

20 (E) a volunteer or applicant volunteer with a
21 Texas chapter of the Make-a-Wish Foundation of America;

22 (F) a person providing, at the request of the
23 child's parent, in-home care for a child only if the person gives
24 written consent to the release and disclosure of the information;

25 (G) a child who is related to the caretaker, as
26 determined under Section [42.002](#), Human Resources Code, and who
27 resides in or is present in a child-care facility or family home,

1 other than a child described by Subdivision (2)(C), or any other
2 person who has unsupervised access to a child in the care of a
3 child-care facility or family home;

4 (H) an applicant for a position with the
5 Department of Family and Protective Services, other than a position
6 described by Subdivision (2)(D), regardless of the duties of the
7 position;

8 (I) a volunteer or applicant volunteer with the
9 Department of Family and Protective Services, other than a
10 registered volunteer, regardless of the duties to be performed;

11 (J) a person providing or applying to provide
12 in-home, adoptive, or foster care for children to the extent
13 necessary to comply with Subchapter B, Chapter 162, Family Code;

14 (K) a Department of Family and Protective
15 Services employee, other than an employee described by Subdivision
16 (2)(H), regardless of the duties of the employee's position;

17 (L) a relative of a child in the care of the
18 Department of Family and Protective Services, to the extent
19 necessary to comply with Section 162.007, Family Code;

20 (M) a person, other than an alleged perpetrator
21 in a report described in Subdivision (2)(I), living in the
22 residence in which the alleged victim of the report resides;

23 (N) [a contractor or an employee of a contractor
24 who delivers services to a ward of the Department of Family and
25 Protective Services under a contract with the estate of the ward;

26 [(O) a person who seeks unsupervised visits with
27 a ward of the Department of Family and Protective Services,

1 ~~including a relative of the ward;~~

2 ~~(P)~~] an employee, volunteer, or applicant
3 volunteer of a children's advocacy center under Subchapter E,
4 Chapter 264, Family Code, including a member of the governing board
5 of a center;

6 ~~(O)~~ ~~(Q)~~] an employee of, an applicant for
7 employment with, or a volunteer or an applicant volunteer with an
8 entity or person that contracts with the Department of Family and
9 Protective Services and has access to confidential information in
10 the department's records, if the employee, applicant, volunteer, or
11 applicant volunteer has or will have access to that confidential
12 information;

13 ~~(P)~~ ~~(R)~~] an employee of or volunteer at, or an
14 applicant for employment with or to be a volunteer at, an entity
15 that provides supervised independent living services to a young
16 adult receiving extended foster care services from the Department
17 of Family and Protective Services;

18 ~~(Q)~~ ~~(S)~~] a person 14 years of age or older who
19 will be regularly or frequently working or staying in a host home
20 that is providing supervised independent living services to a young
21 adult receiving extended foster care services from the Department
22 of Family and Protective Services; or

23 ~~(R)~~ ~~(T)~~] a person who volunteers to supervise
24 visitation under Subchapter B, Chapter 263, Family Code.

25 SECTION 2.005. Sections [411.1386\(a-1\)](#) and (a-3),
26 Government Code, are amended to read as follows:

27 (a-1) The Department of Aging and Disability Services shall

1 obtain from the Department of Public Safety criminal history record
2 information maintained by the Department of Public Safety that
3 relates to each individual who is or will be providing guardianship
4 services to a ward of or referred by the Department of Aging and
5 Disability Services, including:

6 (1) an employee of or an applicant selected for an
7 employment position with the Department of Aging and Disability
8 Services;

9 (2) a volunteer or an applicant selected to volunteer
10 with the Department of Aging and Disability Services;

11 (3) an employee of or an applicant selected for an
12 employment position with a business entity or other person that
13 contracts with the Department of Aging and Disability Services to
14 provide guardianship services to a ward referred by the department;
15 [and]

16 (4) a volunteer or an applicant selected to volunteer
17 with a business entity or person described by Subdivision (3); and

18 (5) a contractor or an employee of a contractor who
19 provides services to a ward of the Department of Aging and
20 Disability Services under a contract with the estate of the ward.

21 (a-3) The information in Subsection (a-1) regarding
22 employees, contractors, or volunteers providing guardianship
23 services must be obtained annually.

24 SECTION 2.006. Section 411.13861, Government Code, is
25 amended by amending Subsection (a) and adding Subsection (e) to
26 read as follows:

27 (a) The Department of Aging and Disability Services is

1 entitled to obtain from the Department of Public Safety criminal
2 history record information maintained by the Department of Public
3 Safety that relates to a person:

4 (1) required to undergo a background and criminal
5 history check under Chapter 248A, Health and Safety Code; or

6 (2) who seeks unsupervised visits with a ward of the
7 department, including a relative of the ward.

8 (e) In this section, "ward" has the meaning assigned by
9 Section 1002.030, Estates Code.

10 SECTION 2.007. Section 531.001, Government Code, is amended
11 by amending Subdivisions (4-a) and (6) and adding Subdivision (4-b)
12 to read as follows:

13 (4-a) "Home telemonitoring service" means a health
14 service that requires scheduled remote monitoring of data related
15 to a patient's health and transmission of the data to a licensed
16 home and community support services [health] agency or a hospital,
17 as those terms are defined by Section 531.02164(a).

18 (4-b) "Medicaid" means the medical assistance program
19 established under Chapter 32, Human Resources Code.

20 (6) "Section 1915(c) waiver program" means a federally
21 funded [Medicaid] program of the state under Medicaid that is
22 authorized under Section 1915(c) of the federal Social Security Act
23 (42 U.S.C. Section 1396n(c)).

24 SECTION 2.008. Section 531.0055(b), Government Code, is
25 amended to read as follows:

26 (b) The commission shall:

27 (1) supervise the administration and operation of

1 [the] Medicaid [program], including the administration and
2 operation of the Medicaid managed care system in accordance with
3 Section 531.021;

4 (2) perform information systems planning and
5 management for health and human services agencies under Section
6 531.0273, with:

7 (A) the provision of information technology
8 services at health and human services agencies considered to be a
9 centralized administrative support service either performed by
10 commission personnel or performed under a contract with the
11 commission; and

12 (B) an emphasis on research and implementation on
13 a demonstration or pilot basis of appropriate and efficient uses of
14 new and existing technology to improve the operation of health and
15 human services agencies and delivery of health and human services;

16 (3) monitor and ensure the effective use of all
17 federal funds received by a health and human services agency in
18 accordance with Section 531.028 and the General Appropriations Act;

19 (4) implement Texas Integrated Enrollment Services as
20 required by Subchapter F, except that notwithstanding Subchapter F,
21 determining eligibility for benefits under the following programs
22 is the responsibility of and must be centralized by the commission:

23 (A) the child health plan program;

24 (B) the financial assistance program under
25 Chapter 31, Human Resources Code;

26 (C) Medicaid [~~the medical assistance program~~
27 ~~under Chapter 32, Human Resources Code~~];

1 (D) the supplemental nutrition [~~nutritional~~]
2 assistance program [~~programs~~] under Chapter 33, Human Resources
3 Code;

4 (E) long-term care services, as defined by
5 Section 22.0011, Human Resources Code;

6 (F) community-based support services identified
7 or provided in accordance with Section 531.02481; and

8 (G) other health and human services programs, as
9 appropriate; and

10 (5) implement programs intended to prevent family
11 violence and provide services to victims of family violence.

12 SECTION 2.009. Subchapter A, Chapter 531, Government Code,
13 is amended by adding Section 531.00551 to read as follows:

14 Sec. 531.00551. PROCEDURES FOR ADOPTING RULES AND POLICIES.
15 (a) The executive commissioner shall develop procedures for
16 adopting rules for the health and human services agencies. The
17 procedures must specify the manner in which the health and human
18 services agencies may participate in the rulemaking process.

19 (b) A health and human services agency shall assist the
20 executive commissioner in the development of policies and
21 guidelines needed for the administration of the agency's functions
22 and shall submit any proposed policies and guidelines to the
23 executive commissioner. The agency may implement a proposed policy
24 or guideline only if the executive commissioner approves the policy
25 or guideline.

26 SECTION 2.010. Section 531.006, Government Code, is amended
27 to read as follows:

1 Sec. 531.006. ELIGIBILITY. (a) A person is not eligible
2 for appointment as executive commissioner if the person or the
3 person's spouse is an employee, officer, or paid consultant of a
4 trade association in a field under the commission's jurisdiction.

5 (b) A person who is required to register as a lobbyist under
6 Chapter 305 because of the person's activities for compensation in
7 or on behalf of a profession related to a field under the
8 commission's jurisdiction may not serve as executive commissioner.

9 (c) A person is not eligible for appointment as executive
10 commissioner if the person has a financial interest in a
11 corporation, organization, or association under contract with:

12 (1) the [Texas] Department of State Health Services,
13 if the contract involves mental health services;

14 (2) the Department of Aging and Disability Services
15 ~~[Mental Health and Mental Retardation]~~, if the contract involves
16 intellectual and developmental disability services;

17 (3) a local mental health or intellectual and
18 developmental disability ~~[mental retardation]~~ authority;[~~r~~] or

19 (4) a community center.

20 SECTION 2.011. Section 531.007, Government Code, is amended
21 to read as follows:

22 Sec. 531.007. TERM. The executive commissioner serves a
23 two-year term expiring February 1 of each odd-numbered year.

24 SECTION 2.012. Section 531.008(c), Government Code, is
25 amended to read as follows:

26 (c) The executive commissioner shall establish the
27 following divisions and offices within the commission:

1 (1) the eligibility services division to make
2 eligibility determinations for services provided through the
3 commission or a health and human services agency related to:

4 (A) the child health plan program;

5 (B) the financial assistance program under
6 Chapter 31, Human Resources Code;

7 (C) Medicaid [~~the medical assistance program~~
8 ~~under Chapter 32, Human Resources Code~~];

9 (D) the supplemental nutrition [~~nutritional~~]
10 assistance program [~~programs~~] under Chapter 33, Human Resources
11 Code;

12 (E) long-term care services, as defined by
13 Section 22.0011, Human Resources Code;

14 (F) community-based support services identified
15 or provided in accordance with Section 531.02481; and

16 (G) other health and human services programs, as
17 appropriate;

18 (2) the office of inspector general to perform fraud
19 and abuse investigation and enforcement functions as provided by
20 Subchapter C and other law;

21 (3) the office of the ombudsman to:

22 (A) provide dispute resolution services for the
23 commission and the health and human services agencies; and

24 (B) perform consumer protection functions
25 related to health and human services;

26 (4) a purchasing division as provided by Section
27 531.017; and

1 (5) an internal audit division to conduct a program of
2 internal auditing in accordance with [Government Code,] Chapter
3 2102.

4 SECTION 2.013. Section 531.0081, Government Code, is
5 amended to read as follows:

6 Sec. 531.0081. [OFFICE OF] MEDICAL TECHNOLOGY. [(a) In
7 this section, "office" means the office of medical technology.]

8 (b) The commission shall [establish the office of medical
9 technology within the commission. The office shall] explore and
10 evaluate new developments in medical technology and propose
11 implementing the technology in Medicaid [the medical assistance
12 program under Chapter 32, Human Resources Code], if appropriate and
13 cost-effective.

14 (c) Commission [Office] staff implementing this section
15 must have skills and experience in research regarding health care
16 technology.

17 SECTION 2.014. Section 531.0082(d), Government Code, is
18 amended to read as follows:

19 (d) Not later than the 30th day following the end of each
20 calendar quarter, the data analysis unit shall provide an update on
21 the unit's activities and findings to the governor, the lieutenant
22 governor, the speaker of the house of representatives, the chair of
23 the Senate Finance Committee, the chair of the House Appropriations
24 Committee, and the chairs of the standing committees of the senate
25 and house of representatives having jurisdiction over [the]
26 Medicaid [program].

27 SECTION 2.015. Sections 531.009(a), (b), (c), (d), (e), and

1 (g), Government Code, are amended to read as follows:

2 (a) The executive commissioner shall employ a medical
3 director to provide medical expertise to the executive commissioner
4 and the commission and may employ other personnel necessary to
5 administer the commission's duties.

6 (b) The executive commissioner [~~or the commissioner's~~
7 ~~designated representative~~] shall develop an intra-agency career
8 ladder program, one part of which must require the intra-agency
9 posting of all non-entry-level positions concurrently with any
10 public posting.

11 (c) The executive commissioner [~~or the commissioner's~~
12 ~~designated representative~~] shall develop a system of annual
13 performance evaluations based on measurable job tasks. All merit
14 pay for commission employees must be based on the system
15 established under this subsection.

16 (d) The executive commissioner shall provide to commission
17 employees as often as is necessary information regarding their
18 qualifications under this chapter and their responsibilities under
19 applicable laws relating to standards of conduct for state
20 employees.

21 (e) The executive commissioner [~~or the commissioner's~~
22 ~~designated representative~~] shall prepare and maintain a written
23 policy statement that implements a program of equal employment
24 opportunity to ensure that all personnel transactions are made
25 without regard to race, color, disability, sex, religion, age, or
26 national origin.

27 (g) The policy statement described by Subsection (e) must:

1 (1) be updated annually;
2 (2) be reviewed by the Texas Workforce Commission
3 civil rights division [~~state Commission on Human Rights~~] for
4 compliance with Subsection (f)(1); and
5 (3) be filed with the governor's office.

6 SECTION 2.016. Section 531.011(d), Government Code, is
7 amended to read as follows:

8 (d) The executive commissioner by rule shall establish
9 methods by which the public, consumers, and service recipients can
10 be notified of the mailing addresses and telephone numbers of
11 appropriate agency personnel for the purpose of directing
12 complaints to the commission. The commission may provide for that
13 notification:

14 (1) on each registration form, application, or written
15 contract for services of a person regulated by the commission;
16 (2) on a sign prominently displayed in the place of
17 business of each person regulated by the commission; or
18 (3) in a bill for service provided by a person
19 regulated by the commission.

20 SECTION 2.017. Section 531.012, Government Code, is amended
21 to read as follows:

22 Sec. 531.012. ADVISORY COMMITTEES. The executive
23 commissioner may appoint advisory committees as needed.

24 SECTION 2.018. Section 531.020, Government Code, is amended
25 to read as follows:

26 Sec. 531.020. OFFICE OF COMMUNITY ACCESS AND SERVICES
27 [~~COLLABORATION~~]. The executive commissioner shall establish

1 within the commission an office of community access and services
2 [collaboration]. The office is responsible for:

3 (1) collaborating with community, state, and federal
4 stakeholders to improve the elements of the health care system that
5 are involved in the delivery of Medicaid services; and

6 (2) sharing with Medicaid providers, including
7 hospitals, any best practices, resources, or other information
8 regarding improvements to the health care system.

9 SECTION 2.019. Section 531.021, Government Code, is amended
10 to read as follows:

11 Sec. 531.021. ADMINISTRATION OF MEDICAID [PROGRAM]. (a)
12 The commission is the state agency designated to administer federal
13 Medicaid [~~medical assistance~~] funds.

14 (b) The commission shall:

15 (1) plan and direct [~~the~~] Medicaid [~~program~~] in each
16 agency that operates a portion of [~~the~~] Medicaid [~~program~~],
17 including the management of the Medicaid managed care system and
18 the development, procurement, management, and monitoring of
19 contracts necessary to implement the Medicaid managed care system;
20 and

21 (2) [~~adopt reasonable rules and standards governing~~
22 ~~the determination of fees, charges, and rates for medical~~
23 ~~assistance payments under Chapter 32, Human Resources Code, in~~
24 ~~consultation with the agencies that operate the Medicaid program,~~
25 and

26 [~~(3)~~] establish requirements for and define the scope
27 of the ongoing evaluation of the Medicaid managed care system

1 conducted in conjunction with the Department of State Health
2 Services [~~Texas Health Care Information Council~~] under Section
3 108.0065, Health and Safety Code.

4 **(b-1) The executive commissioner shall adopt reasonable**
5 rules and standards governing the determination of fees, charges,
6 and rates for Medicaid payments.

7 **(c) The executive commissioner [commission] in the [its]**
8 adoption of reasonable rules and standards under Subsection (b-1)
9 [~~(b)(2)~~] shall include financial performance standards that, in the
10 event of a proposed rate reduction, provide private ICF-IID
11 [~~ICF-MR~~] facilities and home and community-based services
12 providers with flexibility in determining how to use Medicaid
13 [~~medical assistance~~] payments to provide services in the most
14 cost-effective manner while continuing to meet the state and
15 federal requirements of [the] Medicaid [~~program~~].

16 **(d) In adopting rules and standards required by Subsection**
17 **(b-1) [~~(b)(2)~~], the executive commissioner [commission]** may
18 provide for payment of fees, charges, and rates in accordance with:

19 **(1) formulas, procedures, or methodologies prescribed**
20 by the commission's rules;

21 **(2) applicable state or federal law, policies, rules,**
22 regulations, or guidelines;

23 **(3) economic conditions that substantially and**
24 materially affect provider participation in [the] Medicaid
25 [~~program~~], as determined by the executive commissioner; or

26 **(4) available levels of appropriated state and federal**
27 funds.

1 (e) Notwithstanding any other provision of Chapter 32,
2 Human Resources Code, Chapter 533, or this chapter, the commission
3 may adjust the fees, charges, and rates paid to Medicaid providers
4 as necessary to achieve the objectives of [~~the~~] Medicaid [~~program~~]
5 in a manner consistent with the considerations described by
6 Subsection (d).

7 (f) In adopting rates for Medicaid [~~medical assistance~~]
8 payments under Subsection (b-1) [~~(b)(2)~~], the executive
9 commissioner may adopt reimbursement rates for appropriate nursing
10 services provided to recipients with certain health conditions if
11 those services are determined to provide a cost-effective
12 alternative to hospitalization. A physician must certify that the
13 nursing services are medically appropriate for the recipient for
14 those services to qualify for reimbursement under this subsection.

15 (g) In adopting rates for Medicaid [~~medical assistance~~]
16 payments under Subsection (b-1) [~~(b)(2)~~], the executive
17 commissioner may adopt cost-effective reimbursement rates for
18 group appointments with Medicaid [~~medical assistance~~] providers
19 for certain diseases and medical conditions specified by rules of
20 the executive commissioner.

21 SECTION 2.020. Sections 531.0211(a) and (c), Government
22 Code, are amended to read as follows:

23 (a) In adopting rules to implement a managed care Medicaid
24 program, the executive commissioner [~~commissioner~~] shall establish
25 guidelines for, and require managed care organizations to provide,
26 education programs for providers and clients using a variety of
27 techniques and mediums.

1 (c) A client education program must present information in a
2 manner that is easy to understand. A program must include
3 information on:

4 (1) a client's rights and responsibilities under the
5 bill of rights and the bill of responsibilities prescribed by
6 Section 531.0212;

7 (2) how to access health care services;

8 (3) how to access complaint procedures and the
9 client's right to bypass the managed care organization's internal
10 complaint system and use the notice and appeal procedures otherwise
11 required by [the] Medicaid [program];

12 (4) Medicaid policies, procedures, eligibility
13 standards, and benefits;

14 (5) the policies and procedures of the managed care
15 organization; and

16 (6) the importance of prevention, early intervention,
17 and appropriate use of services.

18 SECTION 2.021. Sections 531.0211(a) and (b), Government
19 Code, are amended to read as follows:

20 (a) The commission shall prepare a biennial Medicaid
21 financial report covering each state agency that operates
22 [~~administers~~] any part of [the state] Medicaid [program] and each
23 component of [the] Medicaid [programs] operated [~~or administered~~]
24 by those agencies.

25 (b) The report must include:

26 (1) for each state agency described by Subsection (a):

27 (A) a description of each of the components of

1 Medicaid [programs administered or] operated by the agency; and
2 (B) an accounting of all funds related to [~~the~~
3 ~~state~~] Medicaid [program] received and disbursed by the agency
4 during the period covered by the report, including:

5 (i) the amount of any federal Medicaid
6 [~~medical assistance~~] funds allocated to the agency for the support
7 of each of the Medicaid components [program] operated [~~or~~
8 ~~administered~~] by the agency;

9 (ii) the amount of any funds appropriated
10 by the legislature to the agency for each of those components
11 [program]; and

12 (iii) the amount of Medicaid [~~medical~~
13 ~~assistance~~] payments and related expenditures made by or in
14 connection with each of those components [program]; and

15 (2) for each Medicaid component [program] identified
16 in the report:

17 (A) the amount and source of funds or other
18 revenue received by or made available to the agency for the
19 component [program]; and

20 (B) the information required by Section
21 [531.02112\(b\)](#).

22 SECTION 2.022. Sections [531.02112\(a\)](#) and (b), Government
23 Code, are amended to read as follows:

24 (a) The commission shall prepare a report, on a quarterly
25 basis, regarding the Medicaid expenditures of each state agency
26 that [~~administers or~~] operates a component of Medicaid [program].

27 (b) The report must identify each agency's expenditures by

1 Medicaid component [program] and must include for each component
2 [program]:

3 (1) the amount spent on each type of service or benefit
4 provided by or under the component [program];

5 (2) the amount spent on [program] operations for that
6 component, including eligibility determination, claims processing,
7 and case management; and

8 (3) the amount spent on any other administrative
9 costs.

10 SECTION 2.023. Sections 531.02115(a) and (c), Government
11 Code, are amended to read as follows:

12 (a) A provider participating in [~~the~~] Medicaid or the child
13 health plan program, including a provider participating in the
14 network of a managed care organization that contracts with the
15 commission to provide services under [~~the~~] Medicaid or the child
16 health plan program, may not engage in any marketing activity,
17 including any dissemination of material or other attempt to
18 communicate, that:

19 (1) involves unsolicited personal contact, including
20 by door-to-door solicitation, solicitation at a child-care
21 facility or other type of facility, direct mail, or telephone, with
22 a Medicaid client or a parent whose child is enrolled in [~~the~~]
23 Medicaid or the child health plan program;

24 (2) is directed at the client or parent solely because
25 the client or the parent's child is receiving benefits under [~~the~~]
26 Medicaid or the child health plan program; and

27 (3) is intended to influence the client's or parent's

1 choice of provider.

2 (c) Nothing in this section prohibits:

3 (1) a provider participating in [the] Medicaid or the
4 child health plan program from:

5 (A) engaging in a marketing activity, including
6 any dissemination of material or other attempt to communicate, that
7 is intended to influence the choice of provider by a Medicaid client
8 or a parent whose child is enrolled in [the] Medicaid or the child
9 health plan program, if the marketing activity:

10 (i) is conducted at a community-sponsored
11 educational event, health fair, outreach activity, or other similar
12 community or nonprofit event in which the provider participates and
13 does not involve unsolicited personal contact or promotion of the
14 provider's practice; or

15 (ii) involves only the general
16 dissemination of information, including by television, radio,
17 newspaper, or billboard advertisement, and does not involve
18 unsolicited personal contact;

19 (B) as permitted under the provider's contract,
20 engaging in the dissemination of material or another attempt to
21 communicate with a Medicaid client or a parent whose child is
22 enrolled in [the] Medicaid or the child health plan program,
23 including communication in person or by direct mail or telephone,
24 for the purpose of:

25 (i) providing an appointment reminder;

26 (ii) distributing promotional health
27 materials;

(iv) coordinating patient care; or

(C) engaging in a marketing activity that has been submitted for review and obtained a notice of prior authorization from the commission under Subsection (d); or

13 SECTION 2.024. Sections 531.0212(a) and (c), Government
14 Code, are amended to read as follows:

15 (a) The executive commissioner [commission] by rule shall
16 adopt a bill of rights and a bill of responsibilities for each
17 person enrolled in [the] Medicaid [program].

18 (c) The bill of responsibilities must address a client's
19 responsibility to:

20 (1) learn and understand each right the client has
21 under [the] Medicaid [program].

(4) actively participate in decisions relating to

1 service and treatment options, make personal choices, and take
2 action to maintain the client's health.

3 SECTION 2.025. Section 531.0213(d), Government Code, is
4 amended to read as follows:

5 (d) As a part of the support and information services
6 required by this section, the commission or nonprofit organization
7 shall:

8 (1) operate a statewide toll-free assistance
9 telephone number that includes TDD lines and assistance for persons
10 who speak Spanish;

11 (2) intervene promptly with the state Medicaid office,
12 managed care organizations and providers, [the Texas Department of
13 Health,] and any other appropriate entity on behalf of a person who
14 has an urgent need for medical services;

15 (3) assist a person who is experiencing barriers in
16 the Medicaid application and enrollment process and refer the
17 person for further assistance if appropriate;

18 (4) educate persons so that they:

19 (A) understand the concept of managed care;

20 (B) understand their rights under [the] Medicaid
21 [program], including grievance and appeal procedures; and

22 (C) are able to advocate for themselves;

23 (5) collect and maintain statistical information on a
24 regional basis regarding calls received by the assistance lines and
25 publish quarterly reports that:

26 (A) list the number of calls received by region;

27 (B) identify trends in delivery and access

1 problems;

2 (C) identify recurring barriers in the Medicaid
3 system; and

4 (D) indicate other problems identified with
5 Medicaid managed care; and

6 (6) assist the state Medicaid office and[~~T~~] managed
7 care organizations and providers[~~, and the Texas Department of~~
8 ~~Health~~] in identifying and correcting problems, including site
9 visits to affected regions if necessary.

10 SECTION 2.026. Sections [531.0214\(a\), \(c\), and \(e\)](#),
11 Government Code, are amended to read as follows:

12 (a) The commission and each health and human services agency
13 that administers a part of [~~the state~~] Medicaid [~~program~~] shall
14 jointly develop a system to coordinate and integrate state Medicaid
15 databases to:

16 (1) facilitate the comprehensive analysis of Medicaid
17 data; and

18 (2) detect fraud perpetrated by a program provider or
19 client.

20 (c) On the request of the executive commissioner, a state
21 agency that administers any part of [~~the state~~] Medicaid [~~program~~]
22 shall assist the commission in developing the system required by
23 this section.

24 (e) The commission shall ensure that the database system is
25 used each month to match [~~bureau of~~] vital statistics unit death
26 records with a list of persons eligible for Medicaid [~~medical~~
27 ~~assistance under Chapter 32, Human Resources Code~~], and that each

1 person who is deceased is promptly removed from the list of persons
2 eligible for Medicaid [~~medical assistance~~].

3 SECTION 2.027. Section 531.02141(a), Government Code, is
4 amended to read as follows:

5 (a) The commission shall make every effort to improve data
6 analysis and integrate available information associated with [~~the~~]
7 Medicaid [~~program~~]. The commission shall use the decision support
8 system in the commission's center for strategic decision support
9 for this purpose and shall modify or redesign the system to allow
10 for the data collected by [~~the~~] Medicaid [~~program~~] to be used more
11 systematically and effectively for Medicaid [~~program~~] evaluation
12 and policy development. The commission shall develop or redesign
13 the system as necessary to ensure that the system:

14 (1) incorporates program enrollment, utilization, and
15 provider data that are currently collected;

16 (2) allows data manipulation and quick analysis to
17 address a large variety of questions concerning enrollment and
18 utilization patterns and trends within the program;

19 (3) is able to obtain consistent and accurate answers
20 to questions;

21 (4) allows for analysis of multiple issues within the
22 program to determine whether any programmatic or policy issues
23 overlap or are in conflict;

24 (5) includes predefined data reports on utilization of
25 high-cost services that allow program management to analyze and
26 determine the reasons for an increase or decrease in utilization
27 and immediately proceed with policy changes, if appropriate;

1 (6) includes any encounter data with respect to
2 recipients that a managed care organization that contracts with the
3 commission under Chapter 533 receives from a health care provider
4 under the organization's provider network; and

5 (7) links Medicaid and non-Medicaid data sets,
6 including data sets related to [the] Medicaid [program], the
7 Temporary Assistance for Needy Families program, the Special
8 Supplemental Nutrition Program for Women, Infants, and Children,
9 vital statistics, and other public health programs.

10 SECTION 2.028. Section 531.0215, Government Code, is
11 amended to read as follows:

12 Sec. 531.0215. COMPIILATION OF STATISTICS RELATING TO FRAUD.
13 The commission and each health and human services agency that
14 administers a part of [the state] Medicaid [program] shall maintain
15 statistics on the number, type, and disposition of fraudulent
16 claims for benefits submitted under the part of the program the
17 agency administers.

18 SECTION 2.029. Sections 531.0216(a), (d), and (f),
19 Government Code, are amended to read as follows:

20 (a) The executive commissioner [commission] by rule shall
21 develop and implement a system to reimburse providers of services
22 under [the state] Medicaid [program] for services performed using
23 telemedicine medical services or telehealth services.

24 (d) Subject to Section 153.004, Occupations Code, the
25 executive commissioner [commission] may adopt rules as necessary to
26 implement this section. In the rules adopted under this section,
27 the executive commissioner [commission] shall:

1 (1) refer to the site where the patient is physically
2 located as the patient site; and

3 (2) refer to the site where the physician or health
4 professional providing the telemedicine medical service or
5 telehealth service is physically located as the distant site.

6 (f) Not later than December 1 of each even-numbered year,
7 the commission shall report to the speaker of the house of
8 representatives and the lieutenant governor on the effects of
9 telemedicine medical services, telehealth services, and home
10 telemonitoring services on [~~the~~] Medicaid [~~program~~] in the state,
11 including the number of physicians, health professionals, and
12 licensed health care facilities using telemedicine medical
13 services, telehealth services, or home telemonitoring services,
14 the geographic and demographic disposition of the physicians and
15 health professionals, the number of patients receiving
16 telemedicine medical services, telehealth services, and home
17 telemonitoring services, the types of services being provided, and
18 the cost of utilization of telemedicine medical services,
19 telehealth services, and home telemonitoring services to Medicaid
20 [~~the program~~].

21 SECTION 2.030. Section 531.02161, Government Code, is
22 amended to read as follows:

23 Sec. 531.02161. TELEMEDICINE, TELEHEALTH, AND HOME
24 TELEMONITORING TECHNOLOGY STANDARDS. (b) The executive
25 commissioner [~~commission and the Telecommunications Infrastructure~~
26 ~~Fund Board~~] by [~~joint~~] rule shall establish and adopt minimum
27 standards for an operating system used in the provision of

1 telemedicine medical services, telehealth services, or home
2 telemonitoring services by a health care facility participating in
3 [~~the state~~] Medicaid [~~program~~], including standards for electronic
4 transmission, software, and hardware.

5 (c) In developing standards under this section, the
6 executive commissioner [~~commission and the Telecommunications~~
7 ~~Infrastructure Fund Board~~] shall address:

8 (1) authentication and authorization of users;
9 (2) authentication of the origin of information;
10 (3) the prevention of unauthorized access to the
11 system or information;

12 (4) system security, including the integrity of
13 information that is collected, program integrity, and system
14 integrity;

15 (5) maintenance of documentation about system and
16 information usage;

17 (6) information storage, maintenance, and
18 transmission; and

19 (7) synchronization and verification of patient
20 profile data.

21 SECTION 2.031. Section 531.02162(b), Government Code, is
22 amended to read as follows:

23 (b) The executive commissioner [~~commission~~] by rule shall
24 establish policies that permit reimbursement under [~~the state~~]
25 Medicaid and the child [~~children's~~] health plan [~~insurance~~] program
26 for services provided through telemedicine medical services and
27 telehealth services to children with special health care needs.

1 SECTION 2.032. Sections 531.02163(a), (c), and (d),
2 Government Code, are amended to read as follows:

3 (a) In this section, "health professional" means an
4 individual who:

5 (1) is licensed or certified in this state to perform
6 health care services; and

7 (2) is not a physician, registered nurse, advanced
8 practice registered nurse, or physician assistant.

9 (c) Notwithstanding Section 531.0217, the commission may
10 provide reimbursement under [~~the state~~] Medicaid [~~program~~] for a
11 telemedicine medical service initiated by a trained health
12 professional who complies with the minimum standards adopted under
13 this section.

14 (d) The commission shall provide reimbursement under [~~the~~
15 ~~state~~] Medicaid [~~program~~] to a physician for overseeing a
16 telemedicine consultation at a telemedicine distant site if the
17 telepresenter at the patient site is another physician or is an
18 advanced practice registered nurse, registered nurse, or physician
19 assistant acting under physician delegation and supervision
20 throughout the consultation.

21 SECTION 2.033. Section 531.02164, Government Code, is
22 amended to read as follows:

23 Sec. 531.02164. MEDICAID SERVICES PROVIDED THROUGH HOME
24 TELEMONITORING SERVICES. (a) In this section:

25 (1) "Home and community support services [~~health~~]
26 agency" means a person [~~facility~~] licensed under Chapter 142,
27 Health and Safety Code, to provide home health, hospice, or

1 personal assistance services as defined by Section [142.001](#), Health
2 and Safety Code.

3 (2) "Hospital" means a hospital licensed under Chapter
4 241, Health and Safety Code.

5 (b) If the commission determines that establishing a
6 statewide program that permits reimbursement under [~~the state~~]
7 Medicaid [~~program~~] for home telemonitoring services would be
8 cost-effective and feasible, the executive commissioner by rule
9 shall establish the program as provided under this section.

10 (c) The program required under this section must:

11 (1) provide that home telemonitoring services are
12 available only to persons who:

13 (A) are diagnosed with one or more of the
14 following conditions:

15 (i) pregnancy;
16 (ii) diabetes;
17 (iii) heart disease;
18 (iv) cancer;
19 (v) chronic obstructive pulmonary disease;
20 (vi) hypertension;
21 (vii) congestive heart failure;
22 (viii) mental illness or serious emotional
23 disturbance;

24 (ix) asthma;
25 (x) myocardial infarction; or
26 (xi) stroke; and

27 (B) exhibit two or more of the following risk

1 factors:

2 (i) two or more hospitalizations in the
3 prior 12-month period;

4 (ii) frequent or recurrent emergency room
5 admissions;

6 (iii) a documented history of poor
7 adherence to ordered medication regimens;

8 (iv) a documented history of falls in the
9 prior six-month period;

10 (v) limited or absent informal support
11 systems;

12 (vi) living alone or being home alone for
13 extended periods of time; and

14 (vii) a documented history of care access
15 challenges;

16 (2) ensure that clinical information gathered by a
17 home and community support services [health] agency or hospital
18 while providing home telemonitoring services is shared with the
19 patient's physician; and

20 (3) ensure that the program does not duplicate disease
21 management program services provided under Section [32.057](#), Human
22 Resources Code.

23 (d) If, after implementation, the commission determines
24 that the program established under this section is not
25 cost-effective, the commission may discontinue the program and stop
26 providing reimbursement under [~~the state~~] Medicaid [~~program~~] for
27 home telemonitoring services, notwithstanding Section [531.0216](#) or

1 any other law.

2 (e) The commission shall determine whether the provision of
3 home telemonitoring services to persons who are eligible to receive
4 benefits under both ~~the~~ Medicaid and the Medicare program
5 ~~program~~ achieves cost savings for the Medicare program.

6 SECTION 2.034. Sections 531.0217(b), (c-1), (c-3), (d),
7 (h), (i), (i-1), and (j), Government Code, are amended to read as
8 follows:

9 (b) The executive commissioner ~~commission~~ by rule shall
10 require each health and human services agency that administers a
11 part of ~~the~~ Medicaid ~~program~~ to provide Medicaid reimbursement
12 for a telemedicine medical service initiated or provided by a
13 physician.

14 (c-1) Notwithstanding Subsection (b) or (c), the commission
15 shall provide for reimbursement under ~~the~~ Medicaid ~~program~~ for
16 an office visit provided through telemedicine by a physician who is
17 assessing and evaluating the patient from a distant site if:

18 (1) a health professional acting under the delegation
19 and supervision of that physician is present with the patient at the
20 time of the visit; and

21 (2) the medical condition, illness, or injury for
22 which the patient is receiving the service is not likely, within a
23 reasonable degree of medical certainty, to undergo material
24 deterioration within the 30-day period following the date of the
25 visit.

26 (c-3) In adopting rules developed under Subsection (c-2),
27 the executive commissioner ~~commission~~ shall confer with the

1 Centers for Medicare and Medicaid Services on the legality of
2 allocating reimbursement or establishing a facility fee as
3 described in that subsection. Rules adopted by the executive
4 commissioner [~~commission~~] under this subsection or Subsection
5 (c-2) must reflect a policy to build capacity in medically
6 underserved areas of this state.

7 (d) The commission shall require reimbursement for a
8 telemedicine medical service at the same rate as [~~the~~] Medicaid
9 [~~program~~] reimburses for a comparable in-person medical service. A
10 request for reimbursement may not be denied solely because an
11 in-person medical service between a physician and a patient did not
12 occur.

13 (h) The commission in consultation with the Texas Medical
14 Board [~~State Board of Medical Examiners~~] shall monitor and regulate
15 the use of telemedicine medical services to ensure compliance with
16 this section. In addition to any other method of enforcement, the
17 commission may use a corrective action plan to ensure compliance
18 with this section.

19 (i) The Texas Medical Board [~~State Board of Medical~~
20 ~~Examiners~~], in consultation with the commission, as appropriate,
21 may adopt rules as necessary to:

22 (1) ensure that appropriate care, including quality of
23 care, is provided to patients who receive telemedicine medical
24 services;

25 (2) prevent abuse and fraud through the use of
26 telemedicine medical services, including rules relating to filing
27 of claims and records required to be maintained in connection with

1 telemedicine; and

2 (3) define those situations when a face-to-face
3 consultation with a physician is required after a telemedicine
4 medical service.

5 (i-1) The Texas Medical Board [~~State Board of Medical~~
6 ~~Examiners~~], in consultation with the commission and the Department
7 of State Health Services, as appropriate, shall adopt rules to
8 establish supervisory requirements for a physician delegating a
9 service to be performed by an individual who is not a physician,
10 registered nurse, advanced practice registered nurse, or physician
11 assistant, including a health professional who is authorized to be
12 a telepresenter under Section 531.02163. This section may not be
13 construed as authorizing the Texas Medical Board [~~State Board of~~
14 ~~Medical Examiners~~] to regulate another licensed or certified health
15 care provider.

16 (j) The executive commissioner shall establish an advisory
17 committee to coordinate state telemedicine efforts and assist the
18 commission in:

19 (1) evaluating policies for telemedicine medical
20 services under Section 531.0216 and this section;

21 (2) monitoring the types of programs receiving
22 reimbursement under this section; and

23 (3) coordinating the activities of state agencies
24 interested in the use of telemedicine medical services.

25 SECTION 2.035. Sections 531.02172(b) and (c), Government
26 Code, are amended to read as follows:

27 (b) The advisory committee must include:

1 (1) representatives of health and human services
2 agencies and other state agencies concerned with the use of
3 telemedical and telehealth consultations and home telemonitoring
4 services in [the] Medicaid [program] and the state child health
5 plan program, including representatives of:
6 (A) the commission;
7 (B) the Department of State Health Services;
8 (C) the Office [~~Texas Department~~] of Rural
9 Affairs;
10 (D) the Texas Department of Insurance;
11 (E) the Texas Medical Board;
12 (F) the Texas Board of Nursing; and
13 (G) the Texas State Board of Pharmacy;
14 (2) representatives of health science centers in this
15 state;
16 (3) experts on telemedicine, telemedical
17 consultation, and telemedicine medical services or telehealth
18 services;
19 (4) representatives of consumers of health services
20 provided through telemedical consultations and telemedicine
21 medical services or telehealth services; and
22 (5) representatives of providers of telemedicine
23 medical services, telehealth services, and home telemonitoring
24 services.
25 (c) A member of the advisory committee serves at the will of
26 the executive commissioner.

27 SECTION 2.036. Section 531.02173, Government Code, is

1 amended to read as follows:

2 Sec. 531.02173. ALIGNMENT OF MEDICAID TELEMEDICINE
3 REIMBURSEMENT POLICIES WITH MEDICARE REIMBURSEMENT POLICIES. (a)
4 The commission shall periodically review policies regarding
5 reimbursement under [~~the~~] Medicaid [~~program~~] for telemedicine
6 medical services to identify variations between permissible
7 reimbursement under that program and reimbursement available to
8 providers under the Medicare program.

9 (b) To the extent practicable, and notwithstanding any
10 other state law, after [~~conducting~~] a review conducted under
11 Subsection (a) the executive commissioner [~~commission~~] may modify
12 rules and procedures applicable to reimbursement under [~~the~~]
13 Medicaid [~~program~~] for telemedicine medical services as necessary
14 to provide for a reimbursement system that is comparable to the
15 reimbursement system for those services under the Medicare program.

16 (c) The commission and executive commissioner shall perform
17 the [~~its~~] duties under this section with assistance from the
18 telemedicine and telehealth advisory committee established under
19 Section 531.02172.

20 SECTION 2.037. Section 531.02174, Government Code, is
21 amended to read as follows:

22 Sec. 531.02174. ADDITIONAL AUTHORITY REGARDING
23 TELEMEDICINE MEDICAL SERVICES. (a) In addition to the authority
24 granted by other law regarding telemedicine medical services, the
25 executive commissioner [~~commission~~] may review rules and
26 procedures applicable to reimbursement of telemedicine medical
27 services provided through any government-funded health program

1 subject to the commission's oversight.

2 (b) The executive commissioner [commission] may modify
3 rules and procedures described by Subsection (a) as necessary to
4 ensure that reimbursement for telemedicine medical services is
5 provided in a cost-effective manner and only in circumstances in
6 which the provision of those services is clinically effective.

7 (c) This section does not affect the commission's authority
8 or duties under other law regarding reimbursement of telemedicine
9 medical services under [the] Medicaid [program].

10 SECTION 2.038. Sections 531.02175(b) and (c), Government
11 Code, are amended to read as follows:

12 (b) Subject to the requirements of this subsection, the
13 executive commissioner by rule may require the commission and each
14 health and human services agency that administers a part of [the]
15 Medicaid [program] to provide Medicaid reimbursement for a medical
16 consultation that is provided by a physician or other health care
17 professional using the Internet as a cost-effective alternative to
18 an in-person consultation. The executive commissioner may require
19 the commission or a health and human services agency to provide the
20 reimbursement described by this subsection only if the Centers for
21 Medicare and Medicaid Services develop an appropriate Current
22 Procedural Terminology code for medical services provided using the
23 Internet.

24 (c) The executive commissioner may develop and implement a
25 pilot program in one or more sites chosen by the executive
26 commissioner under which Medicaid reimbursements are paid for
27 medical consultations provided by physicians or other health care

1 professionals using the Internet. The pilot program must be
2 designed to test whether an Internet medical consultation is a
3 cost-effective alternative to an in-person consultation under
4 [~~the~~] Medicaid [~~program~~]. The executive commissioner may modify
5 the pilot program as necessary throughout its implementation to
6 maximize the potential cost-effectiveness of Internet medical
7 consultations. If the executive commissioner determines from the
8 pilot program that Internet medical consultations are
9 cost-effective, the executive commissioner may expand the pilot
10 program to additional sites or may implement Medicaid
11 reimbursements for Internet medical consultations statewide.

12 SECTION 2.039. Section [531.02176](#), Government Code, is
13 amended to read as follows:

14 Sec. 531.02176. EXPIRATION OF MEDICAID REIMBURSEMENT FOR
15 PROVISION OF HOME TELEMONITORING SERVICES. Notwithstanding any
16 other law, the commission may not reimburse providers under [~~the~~]
17 Medicaid [~~program~~] for the provision of home telemonitoring
18 services on or after September 1, 2015.

19 SECTION 2.040. Section [531.0218\(b\)](#), Government Code, is
20 amended to read as follows:

21 (b) Subsection (a) does not apply to functions of a Section
22 1915(c) waiver program that is operated in conjunction with a
23 federally funded [~~Medicaid~~] program of the state under Medicaid
24 that is authorized under Section 1915(b) of the federal Social
25 Security Act (42 U.S.C. Section 1396n(b)).

26 SECTION 2.041. Sections [531.022\(a\), \(b\), \(d\), and \(e\)](#),
27 Government Code, are amended to read as follows:

1 (a) The executive commissioner shall develop a coordinated,
2 six-year strategic plan for health and human services in this state
3 and shall update the plan biennially.

4 (b) The executive commissioner shall submit each biennial
5 update of the plan to the governor, the lieutenant governor, and the
6 speaker of the house of representatives not later than October 1 of
7 each even-numbered year.

8 (d) In developing a plan and plan updates under this
9 section, the executive commissioner shall consider:

10 (1) existing strategic plans of health and human
11 services agencies;

12 (2) health and human services priorities and plans
13 submitted by governmental entities under Subsection (e);

14 (3) facilitation of pending reorganizations or
15 consolidations of health and human services agencies and programs;

16 (4) public comment, including comment documented
17 through public hearings conducted under Section [531.036](#); and

18 (5) budgetary issues, including projected agency
19 needs and projected availability of funds.

20 (e) The executive commissioner shall identify the
21 governmental entities that coordinate the delivery of health and
22 human services in regions, counties, and municipalities and request
23 that each entity:

24 (1) identify the health and human services priorities
25 in the entity's jurisdiction and the most effective ways to deliver
26 and coordinate services in that jurisdiction;

27 (2) develop a coordinated plan for the delivery of

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1 health and human services in the jurisdiction, including transition
2 services that prepare special education students for adulthood; and
3 (3) make the information requested under Subdivisions
4 (1) and (2) available to the commission.

5 SECTION 2.042. Sections 531.0223(b), (e), and (o),
6 Government Code, are amended to read as follows:

7 (b) The executive commissioner shall appoint an advisory
8 committee to develop a strategic plan for eliminating the
9 disparities between the Texas-Mexico border region and other areas
10 of the state in:

21 (e) The executive commissioner shall appoint nine members
22 to the advisory committee in a manner that ensures that the
23 committee:

24 (1) represents the spectrum of geographic areas
25 included in the Texas-Mexico border region;

1 child health plan program; and

6 (o) The commission shall:

12 (2) determine:

15 (B) if funding available and used for changes in
16 rates and expenditures was sufficient to produce measurable
17 effects;

23 SECTION 2.043. Section 531.0224, Government Code, is
24 amended to read as follows:

25 Sec. 531.0224. PLANNING AND POLICY DIRECTION OF TEMPORARY
26 ASSISTANCE FOR NEEDY FAMILIES PROGRAM. (a) The commission shall

1 under Chapter 31, Human Resources Code, including the procurement,
2 management, and monitoring of contracts necessary to implement the
3 program; and

4 (2) ~~[adopt rules and standards governing the financial assistance program under Chapter 31, Human Resources Code; and]~~

5 [~~(3)~~] establish requirements for and define the scope
6 of the ongoing evaluation of the financial assistance program under
7 Chapter 31, Human Resources Code.

8 (b) The executive commissioner shall adopt rules and standards governing the financial assistance program under Chapter 31, Human Resources Code.

9 SECTION 2.044. Section 531.0226(a), Government Code, is
10 amended to read as follows:

11 (a) If feasible and cost-effective, the commission may
12 apply for a waiver from the federal Centers for Medicare and
13 Medicaid Services or another appropriate federal agency to more
14 efficiently leverage the use of state and local funds in order to
15 maximize the receipt of federal Medicaid matching funds by
16 providing benefits under [~~the~~] Medicaid [~~program~~] to individuals
17 who:

18 (1) meet established income and other eligibility
19 criteria; and

20 (2) are eligible to receive services through the
21 county for chronic health conditions.

22 SECTION 2.045. Sections 531.0235(a) and (c), Government
23 Code, are amended to read as follows:

24 (a) The executive commissioner shall direct and require the

1 Texas [Planning] Council for Developmental Disabilities and the
2 Office for the Prevention of Developmental Disabilities to prepare
3 a joint biennial report on the state of services to persons with
4 disabilities in this state. The Texas [Planning] Council for
5 Developmental Disabilities will serve as the lead agency in
6 convening working meetings and in coordinating and completing the
7 report. Not later than December 1 of each even-numbered year, the
8 agencies shall submit the report to the executive commissioner,
9 governor, lieutenant governor, and speaker of the house of
10 representatives.

11 (c) The commission[~~, Texas Department of Human Services,~~] and other health and human services agencies shall cooperate with
12 the agencies required to prepare the report under Subsection (a).

14 SECTION 2.046. Section 531.024(a-1), Government Code, is
15 amended to read as follows:

16 (a-1) To the extent permitted under applicable federal law
17 and notwithstanding any provision of Chapter 191 or 192, Health and
18 Safety Code, the commission and other health and human services
19 agencies shall share data to facilitate patient care coordination,
20 quality improvement, and cost savings in [~~the~~] Medicaid [~~program~~],
21 the child health plan program, and other health and human services
22 programs funded using money appropriated from the general revenue
23 fund.

24 SECTION 2.047. Section 531.0241, Government Code, is
25 amended to read as follows:

26 Sec. 531.0241. STREAMLINING DELIVERY OF SERVICES. To
27 integrate and streamline service delivery and facilitate access to

1 services, the executive commissioner may request a health and human
2 services agency to take a specific action and may recommend the
3 manner in which the streamlining is to be accomplished, including
4 requesting each health and human services agency to:

- 5 (1) simplify agency procedures;
- 6 (2) automate agency procedures;
- 7 (3) coordinate service planning and management tasks
8 between and among health and human services agencies;
- 9 (4) reallocate staff resources;
- 10 (5) [adopt rules,]
11 [~~(6) amend,~~] waive[~~, or repeal~~] existing rules; or
12 (6) [~~(7)~~] take other necessary actions.

13 SECTION 2.048. Section 531.02411, Government Code, is
14 amended to read as follows:

15 Sec. 531.02411. STREAMLINING ADMINISTRATIVE PROCESSES.
16 The commission shall make every effort using the commission's
17 existing resources to reduce the paperwork and other administrative
18 burdens placed on Medicaid recipients and providers and other
19 participants in [the] Medicaid [program] and shall use technology
20 and efficient business practices to decrease those burdens. In
21 addition, the commission shall make every effort to improve the
22 business practices associated with the administration of [the]
23 Medicaid [program] by any method the commission determines is
24 cost-effective, including:

- 25 (1) expanding the utilization of the electronic claims
26 payment system;
- 27 (2) developing an Internet portal system for prior

1 authorization requests;

2 (3) encouraging Medicaid providers to submit their

3 program participation applications electronically;

4 (4) ensuring that the Medicaid provider application is

5 easy to locate on the Internet so that providers may conveniently

6 apply to the program;

7 (5) working with federal partners to take advantage of

8 every opportunity to maximize additional federal funding for

9 technology in [the] Medicaid [program]; and

10 (6) encouraging the increased use of medical

11 technology by providers, including increasing their use of:

12 (A) electronic communications between patients

13 and their physicians or other health care providers;

14 (B) electronic prescribing tools that provide

15 up-to-date payer formulary information at the time a physician or

16 other health care practitioner writes a prescription and that

17 support the electronic transmission of a prescription;

18 (C) ambulatory computerized order entry systems

19 that facilitate physician and other health care practitioner orders

20 at the point of care for medications and laboratory and

21 radiological tests;

22 (D) inpatient computerized order entry systems

23 to reduce errors, improve health care quality, and lower costs in a

24 hospital setting;

25 (E) regional data-sharing to coordinate patient

26 care across a community for patients who are treated by multiple

27 providers; and

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(F) electronic intensive care unit technology to allow physicians to fully monitor hospital patients remotely.

3 SECTION 2.049. Section 531.024115, Government Code, is
4 amended to read as follows:

5 Sec. 531.024115. SERVICE DELIVERY AREA
6 ALIGNMENT. Notwithstanding Section 533.0025(e) or any other law,
7 to the extent possible, the commission shall align service delivery
8 areas under [the] Medicaid and the child health plan program
9 [programs].

10 SECTION 2.050. Section 531.02412, Government Code, is
11 amended to read as follows:

12 Sec. 531.02412. SERVICE DELIVERY AUDIT MECHANISMS. (a)
13 The commission shall make every effort to ensure the integrity of
14 [the] Medicaid [program]. To ensure that integrity, the commission
15 shall:

23 (4) evaluate [the] Medicaid [program] with respect to
24 use of the metrics developed through the Texas Health Steps
25 performance improvement plan to guide changes and improvements to
26 the program.

27 SECTION 2.051. Sections 531.02413(a-1) and (b), Government

1 Code, are amended to read as follows:

2 (a-1) If cost-effective and feasible, the commission shall
3 contract to expand the Medicaid billing coordination system
4 described by Subsection (a) to process claims for all other health
5 care services provided through [the] Medicaid [program] in the
6 manner claims for acute care services are processed by the system
7 under Subsection (a). This subsection does not apply to claims for
8 health care services provided through [the] Medicaid [program] if,
9 before September 1, 2009, those claims were being processed by an
10 alternative billing coordination system.

11 (b) If cost-effective, the executive commissioner shall
12 adopt rules for the purpose of enabling the system described by
13 Subsection (a) to identify an entity with primary responsibility
14 for paying a claim that is processed by the system under Subsection
15 (a) and establish reporting requirements for any entity that may
16 have a contractual responsibility to pay for the types of services
17 that are provided under [the] Medicaid [program] and the claims for
18 which are processed by the system under Subsection (a).

19 SECTION 2.052. Section 531.024131(a), Government Code, is
20 amended to read as follows:

21 (a) If cost-effective, the commission may:

22 (1) contract to expand all or part of the billing
23 coordination system established under Section 531.02413 to process
24 claims for services provided through other benefits programs
25 administered by the commission or a health and human services
26 agency;

27 (2) expand any other billing coordination tools and

1 resources used to process claims for health care services provided
2 through [the] Medicaid [program] to process claims for services
3 provided through other benefits programs administered by the
4 commission or a health and human services agency; and

5 (3) expand the scope of persons about whom information
6 is collected under Section 32.042, Human Resources Code, to include
7 recipients of services provided through other benefits programs
8 administered by the commission or a health and human services
9 agency.

10 SECTION 2.053. Section 531.02414(a)(1), Government Code,
11 is amended to read as follows:

12 (1) "Medical transportation program" means the
13 program that provides nonemergency transportation services to and
14 from covered health care services, based on medical necessity, to
15 recipients under [the] Medicaid [program], the children with
16 special health care needs program, and the transportation for
17 indigent cancer patients program, who have no other means of
18 transportation.

19 SECTION 2.054. The heading to Section 531.024161,
20 Government Code, is amended to read as follows:

21 Sec. 531.024161. REIMBURSEMENT CLAIMS FOR CERTAIN MEDICAID
22 OR CHILD HEALTH PLAN [CHIP] SERVICES INVOLVING SUPERVISED
23 PROVIDERS.

24 SECTION 2.055. Section 531.024161(a), Government Code, is
25 amended to read as follows:

26 (a) If a provider, including a nurse practitioner or
27 physician assistant, under [the] Medicaid or the child health plan

1 program provides a referral for or orders health care services for a
2 recipient or enrollee, as applicable, at the direction or under the
3 supervision of another provider, and the referral or order is based
4 on the supervised provider's evaluation of the recipient or
5 enrollee, the names and associated national provider identifier
6 numbers of the supervised provider and the supervising provider
7 must be included on any claim for reimbursement submitted by a
8 provider based on the referral or order. For purposes of this
9 section, "national provider identifier" means the national
10 provider identifier required under Section 1128J(e), Social
11 Security Act (42 U.S.C. Section 1320a-7k(e)).

12 SECTION 2.056. Section [531.02418](#), Government Code, is
13 amended to read as follows:

14 Sec. 531.02418. MEDICAID AND CHILD HEALTH PLAN PROGRAM
15 ELIGIBILITY DETERMINATIONS FOR CERTAIN INDIVIDUALS. (a) The
16 commission shall enter into a memorandum of understanding with the
17 Texas Juvenile Justice Department [~~Youth Commission~~] to ensure that
18 each individual who is committed, placed, or detained under Title
19 3, Family Code, is assessed by the commission for eligibility for
20 Medicaid [~~the medical assistance program under Chapter 32, Human~~
21 ~~Resources Code,~~] and the child health plan program before that
22 individual's release from commitment, [–]

23 [(b) The commission shall enter into a memorandum of
24 understanding with the Texas Juvenile Probation Commission to
25 ensure that each individual who is placed or detained under Title 3,
26 Family Code, is assessed by the commission for eligibility for the
27 medical assistance program under Chapter 32, Human Resources Code,

1 and the child health plan program before the individual's release
2 from] placement, or detention. Local juvenile probation
3 departments are subject to the requirements of the memorandum.

4 (c) The [Each] memorandum of understanding entered into as
5 required by this section must specify:

6 (1) the information that must be provided to the
7 commission;

8 (2) the process by which and time frame within which
9 the information must be provided; and

10 (3) the roles and responsibilities of all parties to
11 the memorandum, which must include a requirement that the
12 commission pursue the actions needed to complete eligibility
13 applications as necessary.

14 (d) The [Each] memorandum of understanding required by
15 Subsection (a) [or (b)] must be tailored to achieve the goal of
16 ensuring that an individual described by Subsection (a) [or (b)]
17 who is determined eligible by the commission for coverage under
18 Medicaid [~~the medical assistance program under Chapter 32, Human~~
19 ~~Resources Code,~~] or the child health plan program[~~r~~] is enrolled in
20 the program for which the individual is eligible and may begin
21 receiving services through the program as soon as possible after
22 the eligibility determination is made and, if possible, to achieve
23 the goal of ensuring that the individual may begin receiving those
24 services on the date of the individual's release from placement,
25 detention, or commitment.

26 (e) The executive commissioner may adopt rules as necessary
27 to implement this section.

1 SECTION 2.057. Section 531.024181(a), Government Code, is
2 amended to read as follows:

3 (a) This section applies only with respect to the following
4 benefits programs:

5 (1) the child health plan program under Chapter 62,
6 Health and Safety Code;

7 (2) the financial assistance program under Chapter 31,
8 Human Resources Code;

9 (3) Medicaid [~~the medical assistance program under~~
10 ~~Chapter 32, Human Resources Code~~]; and

11 (4) the supplemental nutrition [~~nutritional~~]
12 assistance program under Chapter 33, Human Resources Code.

13 SECTION 2.058. Section 531.024182(b), Government Code, is
14 amended to read as follows:

15 (b) If, at the time of application for benefits, a person
16 stated that the person is a sponsored alien, the commission may, to
17 the extent allowed by federal law, verify information relating to
18 the sponsorship, using an automated system or systems where
19 available, after the person is determined eligible for and begins
20 receiving benefits under any of the following benefits programs:

21 (1) the child health plan program under Chapter 62,
22 Health and Safety Code;

23 (2) the financial assistance program under Chapter 31,
24 Human Resources Code;

25 (3) Medicaid [~~the medical assistance program under~~
26 ~~Chapter 32, Human Resources Code~~]; or

27 (4) the supplemental nutrition [~~nutritional~~]

1 assistance program under Chapter 33, Human Resources Code.

2 SECTION 2.059. Sections [531.0244](#)(c) and (g), Government
3 Code, are amended to read as follows:

4 (c) For purposes of developing the strategies required by
5 Subsection (b)(4), a person with a mental illness who is admitted to
6 a facility of the [Texas] Department of State Health Services
7 [~~Mental Health and Mental Retardation~~] for inpatient mental health
8 services three or more times during a 180-day period is presumed to
9 be in imminent risk of requiring placement in an institution. The
10 strategies must be developed in a manner that presumes the person's
11 eligibility for and the appropriateness of intensive
12 community-based services and support.

13 (g) Not later than December 1 of each even-numbered year,
14 the executive commissioner shall submit to the governor and the
15 legislature a report on the status of the implementation of the plan
16 required by Subsection (a). The report must include
17 recommendations on any statutory or other action necessary to
18 implement the plan.

19 SECTION 2.060. Sections [531.02441](#)(a), (b), (c), (d), (e),
20 (g), and (i), Government Code, are amended to read as follows:

21 (a) The executive commissioner shall establish an
22 interagency task force to assist the commission and appropriate
23 health and human services agencies in developing a comprehensive,
24 effectively working plan to ensure appropriate care settings for
25 persons with disabilities.

26 (b) The executive commissioner shall determine the number
27 of members of the task force. The executive commissioner shall

1 appoint as members of the task force:

2 (1) representatives of appropriate health and human
3 services agencies, including the [Texas] Department of Aging and
4 Disability [Human] Services and the [Texas] Department of State
5 Health Services [~~Mental Health and Mental Retardation~~];

6 (2) representatives of related work groups, including
7 representatives of the work group [~~groups~~] established under
8 Section [~~Sections 22.034 and~~] 22.035, Human Resources Code;

9 (3) representatives of consumer and family advocacy
10 groups; and

11 (4) representatives of service providers for persons
12 with disabilities.

13 (c) The executive commissioner shall designate a member of
14 the task force to serve as presiding officer. The members of the
15 task force shall elect any other necessary officers.

16 (d) The task force shall meet at the call of the executive
17 commissioner.

18 (e) A member of the task force serves at the will of the
19 executive commissioner.

20 (g) The task force shall study and make recommendations to
21 the commission on[+]

22 [+] developing the comprehensive, effectively
23 working plan required by Section 531.0244(a) to ensure appropriate
24 care settings for persons with disabilities[+ and]

25 [+] identifying appropriate components of the pilot
26 program established under Section 22.037, Human Resources Code, for
27 coordination and integration among the Texas Department of Human

1 Services, the Texas Department of Mental Health and Mental
2 Retardation, and the Department of Protective and Regulatory
3 Services].

4 (i) Not later than September 1 of each year, the task force
5 shall submit a report to the executive commissioner on its findings
6 and recommendations required by Subsection (g).

7 SECTION 2.061. Section 531.02442, Government Code, is
8 amended to read as follows:

9 Sec. 531.02442. COMMUNITY LIVING OPTIONS INFORMATION
10 PROCESS FOR CERTAIN PERSONS WITH AN INTELLECTUAL DISABILITY [MENTAL
11 RETARDATION]. (a) In this section:

12 (1) "Department" means the Department of Aging and
13 Disability Services.

14 (1-a) "Institution" means:

15 (A) a residential care facility operated or
16 maintained by the department [Texas Department of Mental Health and
17 Mental Retardation] to provide 24-hour services, including
18 residential services, to persons with an intellectual disability
19 [mental retardation]; or

20 (B) an ICF-IID [ICF-MR], as defined by Section
21 531.002, Health and Safety Code.

22 (2) "Legally authorized representative" has the
23 meaning assigned by Section 241.151, Health and Safety Code.

24 (3) "Local intellectual and developmental disability
25 [mental retardation] authority" has the meaning assigned by Section
26 531.002, Health and Safety Code.

27 (b) In addition to providing information regarding care and

1 support options as required by Section 531.042, the department
2 [~~Texas Department of Mental Health and Mental Retardation~~] shall
3 implement a community living options information process in each
4 institution to inform persons with an intellectual disability
5 [~~mental retardation~~] who reside in the institution and their
6 legally authorized representatives of alternative community living
7 options.

8 (c) The department shall provide the information required
9 by Subsection (b) through the community living options information
10 process at least annually. The department shall also provide the
11 information at any other time on request by a person with an
12 intellectual disability [~~mental retardation~~] who resides in an
13 institution or the person's legally authorized representative.

14 (d) If a person with an intellectual disability [~~mental~~
15 ~~retardation~~] residing in an institution or the person's legally
16 authorized representative indicates a desire to pursue an
17 alternative community living option after receiving the
18 information provided under this section, the department shall refer
19 the person or the person's legally authorized representative to the
20 local intellectual and developmental disability [~~mental~~
21 ~~retardation~~] authority. The local intellectual and developmental
22 disability [~~mental retardation~~] authority shall place the person in
23 an alternative community living option, subject to the availability
24 of funds, or on a waiting list for those options if the options are
25 not available to the person for any reason on or before the 30th day
26 after the date the person or the person's legally authorized
27 representative is referred to the local intellectual and

1 developmental disability [~~mental retardation~~] authority.

2 (e) The department shall document in the records of each
3 person with an intellectual disability [~~mental retardation~~] who
4 resides in an institution the information provided to the person or
5 the person's legally authorized representative through the
6 community living options information process and the results of
7 that process.

8 SECTION 2.062. Section [531.02443](#), Government Code, is
9 amended to read as follows:

10 Sec. 531.02443. IMPLEMENTATION OF COMMUNITY LIVING OPTIONS
11 INFORMATION PROCESS AT STATE INSTITUTIONS FOR CERTAIN ADULT
12 RESIDENTS. (a) In this section:

13 (1) "Adult resident" means a person with an
14 intellectual disability [~~mental retardation~~] who:

15 (A) is at least 22 years of age; and
16 (B) resides in a state supported living center
17 [~~school~~].

18 (2) "Department" means the Department of Aging and
19 Disability Services.

20 (3) "Legally authorized representative" has the
21 meaning assigned by Section [241.151](#), Health and Safety Code.

22 (4) "Local intellectual and developmental disability
23 [~~mental retardation~~] authority" has the meaning assigned by Section
24 [531.002](#), Health and Safety Code.

25 (5) "State supported living center [~~school~~]" has the
26 meaning assigned by Section [531.002](#), Health and Safety Code.

27 (b) This section applies only to the community living

1 options information process for an adult resident.

2 (c) The department shall contract with local intellectual
3 and developmental disability [~~mental retardation~~] authorities to
4 implement the community living options information process
5 required by Section 531.02442 for an adult resident.

6 (d) The contract with the local intellectual and
7 developmental disability [~~mental retardation~~] authority must:

8 (1) delegate to the local intellectual and
9 developmental disability [~~mental retardation~~] authority the
10 department's duties under Section 531.02442 with regard to the
11 implementation of the community living options information process
12 at a state supported living center [~~school~~];

13 (2) include performance measures designed to assist
14 the department in evaluating the effectiveness of a local
15 intellectual and developmental disability [~~mental retardation~~]
16 authority in implementing the community living options information
17 process; and

18 (3) ensure that the local intellectual and
19 developmental disability [~~mental retardation~~] authority provides
20 service coordination and relocation services to an adult resident
21 who chooses, is eligible for, and is recommended by the
22 interdisciplinary team for a community living option to facilitate
23 a timely, appropriate, and successful transition from the state
24 supported living center [~~school~~] to the community living option.

25 (e) The department, with the advice and assistance of the
26 interagency task force on ensuring appropriate care settings for
27 persons with disabilities and representatives of family members or

1 legally authorized representatives of adult residents, persons
2 with an intellectual disability [~~mental retardation~~], state
3 supported living centers [~~schools~~], and local intellectual and
4 developmental disability [~~mental retardation~~] authorities, shall:

5 (1) develop an effective community living options
6 information process;

7 (2) create uniform procedures for the implementation
8 of the community living options information process; and

9 (3) minimize any potential conflict of interest
10 regarding the community living options information process between
11 a state supported living center [~~school~~] and an adult resident, an
12 adult resident's legally authorized representative, or a local
13 intellectual and developmental disability [~~mental retardation~~]
14 authority.

15 (f) A state supported living center [~~school~~] shall:

16 (1) allow a local intellectual and developmental
17 disability [~~mental retardation~~] authority to participate in the
18 interdisciplinary planning process involving the consideration of
19 community living options for an adult resident;

20 (2) to the extent not otherwise prohibited by state or
21 federal confidentiality laws, provide a local intellectual and
22 developmental disability [~~mental retardation~~] authority with
23 access to an adult resident and an adult resident's records to
24 assist the authority in implementing the community living options
25 information process; and

26 (3) provide the adult resident or the adult resident's
27 legally authorized representative with accurate information

1 regarding the risks of moving the adult resident to a community
2 living option.

3 SECTION 2.063. Section [531.02444](#), Government Code, as
4 amended by Chapter 34 (S.B. 187), Acts of the 81st Legislature,
5 Regular Session, 2009, is reenacted and amended to read as follows:

6 Sec. 531.02444. MEDICAID BUY-IN PROGRAMS FOR CERTAIN
7 PERSONS WITH DISABILITIES. (a) The executive commissioner shall
8 develop and implement:

9 (1) a Medicaid buy-in program for persons with
10 disabilities as authorized by the Ticket to Work and Work
11 Incentives Improvement Act of 1999 (Pub. L. No. 106-170) or the
12 Balanced Budget Act of 1997 (Pub. L. No. 105-33); and

13 (2) as authorized by the Deficit Reduction Act of 2005
14 (Pub. L. No. 109-171), a Medicaid buy-in program for [disabled]
15 children with disabilities that is described by 42 U.S.C. Section
16 1396a(cc)(1) whose family incomes do not exceed 300 percent of the
17 applicable federal poverty level.

18 (b) The executive commissioner shall adopt rules in
19 accordance with federal law that provide for:

20 (1) eligibility requirements for each program
21 described by Subsection (a); and

22 (2) requirements for participants in the program to
23 pay premiums or cost-sharing payments, subject to Subsection (c).

24 (c) Rules adopted by the executive commissioner under
25 Subsection (b) with respect to the program for [disabled] children
26 with disabilities described by Subsection (a)(2) must require a
27 participant to pay monthly premiums according to a sliding scale

1 that is based on family income, subject to the requirements of 42
2 U.S.C. Sections 1396o(i)(2) and (3).

3 SECTION 2.064. Section [531.0246](#), Government Code, is
4 amended to read as follows:

5 Sec. 531.0246. REGIONAL MANAGEMENT OF HEALTH AND HUMAN
6 SERVICES AGENCIES. (a) ~~The [Subject to Section 531.0055(c), the]~~
7 commission may require a health and human services agency, under
8 the direction of the commission, to:

9 (1) ~~Locate all or a portion of the agency's employees~~
10 ~~and programs in the same building as another health and human~~
11 ~~services agency or at a location near or adjacent to the location of~~
12 ~~another health and human services agency;~~

13 ~~[(-2)]~~ ensure that the agency's location is accessible
14 to ~~disabled~~ employees with disabilities and agency clients with
15 disabilities; and

16 (2) ~~[(-3)]~~ consolidate agency support services,
17 including clerical and administrative support services and
18 information resources support services, with support services
19 provided to or by another health and human services agency.

20 (b) The executive commissioner may require a health and
21 human services agency, under the direction of the executive
22 commissioner, to locate all or a portion of the agency's employees
23 and programs in the same building as another health and human
24 services agency or at a location near or adjacent to the location of
25 another health and human services agency.

26 SECTION 2.065. Section [531.0247](#), Government Code, is
27 amended to read as follows:

1 Sec. 531.0247. ANNUAL BUSINESS PLAN. The [Subject to
2 ~~Section 531.0055(c), the]~~ commission shall develop and implement an
3 annual business services plan for each health and human services
4 region that establishes performance objectives for all health and
5 human services agencies providing services in the region and
6 measures agency effectiveness and efficiency in achieving those
7 objectives.

8 SECTION 2.066. Section 531.0248(d), Government Code, is
9 amended to read as follows:

10 (d) In implementing this section, the commission shall
11 consider models used in other service delivery systems, including
12 the mental health and intellectual disability [~~mental retardation~~]
13 service delivery systems [~~system~~].

14 SECTION 2.067. Sections 531.02481(a), (e), and (f),
15 Government Code, are amended to read as follows:

16 (a) The commission[~~, the Texas Department of Human~~
17 ~~Services,~~] and the Department of Aging and Disability Services
18 [~~Texas Department on Aging~~] shall assist communities in this state
19 in developing comprehensive, community-based support and service
20 delivery systems for long-term care services. At the request of a
21 community-based organization or combination of community-based
22 organizations, the commission may provide a grant to the
23 organization or combination of organizations in accordance with
24 Subsection (g). At the request of a community, the commission shall
25 provide resources and assistance to the community to enable the
26 community to:

27 (1) identify and overcome institutional barriers to

1 developing more comprehensive community support systems, including
2 barriers that result from the policies and procedures of state
3 health and human services agencies;

4 (2) develop a system of blended funds, consistent with
5 the requirements of federal law and the General Appropriations Act,
6 to allow the community to customize services to fit individual
7 community needs; and

8 (3) develop a local system of access and assistance to
9 aid clients in accessing the full range of long-term care services.

10 (e) The executive commissioner shall assure the maintenance
11 of no fewer than 28 area agencies on aging in order to assure the
12 continuation of a local system of access and assistance that is
13 sensitive to the aging population.

14 (f) A community-based organization or a combination of
15 organizations may make a proposal under this section. A
16 community-based organization includes:

17 (1) an area agency on aging;
18 (2) an independent living center;
19 (3) a municipality, county, or other local government;
20 (4) a nonprofit or for-profit organization; or
21 (5) a community mental health and intellectual
22 disability [~~mental retardation~~] center.

23 SECTION 2.068. Section 531.02491, Government Code, is
24 amended to read as follows:

25 Sec. 531.02491. JOINT TRAINING FOR CERTAIN CASEWORKERS.

26 (a) The executive commissioner shall provide for joint training
27 for health and human services caseworkers whose clients are

1 children, including caseworkers employed by:

2 (1) the commission [~~Texas Department of Health~~];

3 (2) the [~~Texas~~] Department of Aging and Disability
4 [Human] Services; [and]

5 (3) the [~~Texas~~] Department of State Health Services;

6 (4) [~~Mental Health and Mental Retardation,~~] a local
7 mental health authority; and [~~, or~~]

8 (5) a local intellectual and developmental disability
9 [~~mental retardation~~] authority.

10 (b) Training provided under this section must be designed to
11 increase a caseworker's knowledge and awareness of the services
12 available to children at each health and human services agency or
13 local mental health or intellectual and developmental disability
14 [~~mental retardation~~] authority, including long-term care programs
15 and services available under a Section 1915(c) waiver program.

16 SECTION 2.069. Section 531.02492, Government Code, is
17 amended to read as follows:

18 Sec. 531.02492. DELIVERY OF HEALTH AND HUMAN SERVICES TO
19 YOUNG TEXANS. [(a) ~~The executive head of each health and human~~
20 ~~services agency shall report annually to the governing body of that~~
21 ~~agency on that agency's efforts to provide health and human~~
22 ~~services to children younger than six years of age, including the~~
23 ~~development of any new programs or the enhancement of existing~~
24 ~~programs. The agency shall submit a copy of the report to the~~
25 ~~commission.~~]

26 (b) The commission shall electronically publish on the
27 commission's Internet website a biennial report and, on or before

1 the date the report is due, shall notify the governor, the
2 lieutenant governor, the speaker of the house of representatives,
3 the comptroller, the Legislative Budget Board, and the appropriate
4 legislative committees that the report is available on the
5 commission's Internet website. The report must address the efforts
6 of the health and human services agencies to provide health and
7 human services to children younger than six years of age. The
8 report may contain recommendations by the commission to better
9 coordinate state agency programs relating to the delivery of health
10 and human services to children younger than six years of age and may
11 propose joint agency collaborative programs.

12 [(c) ~~The commissioner shall adopt rules relating to the~~
13 ~~reports required by Subsection (a), including rules specifying when~~
14 ~~and in what manner a health and human services agency must report~~
15 ~~and the information to be included in the report. Each agency shall~~
16 ~~follow the rules adopted by the commissioner under this section.]~~

17 SECTION 2.070. Section 531.0271, Government Code, is
18 amended to read as follows:

19 Sec. 531.0271. HEALTH AND HUMAN SERVICES AGENCIES OPERATING
20 BUDGETS. The commission may, within the limits established by and
21 subject to the General Appropriations Act, transfer amounts
22 appropriated to health and human services agencies among the
23 agencies to:

24 (1) enhance the receipt of federal money under the
25 federal money [~~funds~~] management system established under Section
26 531.028;

27 (2) achieve efficiencies in the administrative

1 support functions of the agencies; and

2 (3) perform the functions assigned to the executive
3 commissioner under Section 531.0055.

4 SECTION 2.071. Section 531.0273, Government Code, is
5 amended to read as follows:

6 Sec. 531.0273. INFORMATION RESOURCES PLANNING AND
7 MANAGEMENT [~~, ADVISORY COMMITTEE~~]. (a) The commission is
8 responsible for strategic planning for information resources at
9 each health and human services agency and shall direct the
10 management of information resources at each health and human
11 services agency. The commission shall:

12 (1) develop a coordinated strategic plan for
13 information resources management that:

14 (A) covers a five-year period;
15 (B) defines objectives for information resources
16 management at each health and human services agency;

17 (C) prioritizes information resources projects
18 and implementation of new technology for all health and human
19 services agencies;

20 (D) integrates planning and development of each
21 information resources system used by a health and human services
22 agency into a coordinated information resources management
23 planning and development system established by the commission;

24 (E) establishes standards for information
25 resources system security and that promotes the ability of
26 information resources systems to operate with each other;

27 (F) achieves economies of scale and related

1 benefits in purchasing for health and human services information
2 resources systems; and

3 (G) is consistent with the state strategic plan
4 for information resources developed under Chapter 2054;

5 (2) establish information resources management
6 policies, procedures, and technical standards and ensure
7 compliance with those policies, procedures, and standards; and

8 (3) review and approve the information resources
9 deployment review and biennial operating plan of each health and
10 human services agency.

11 (c) A health and human services agency may not submit its
12 plans to the Department of Information Resources or the Legislative
13 Budget Board under Subchapter E, Chapter 2054, until those plans
14 are approved by the commission.

15 ~~(d) The commission shall appoint an advisory committee
16 composed of:~~

17 ~~(1) information resources managers for state
18 agencies and for private employers; and~~

19 ~~(2) the directors, executive directors, and
20 commissioners of health and human services agencies.~~

21 ~~(e) The advisory committee appointed under Subsection (d)
22 shall advise the commission with respect to the implementation of
23 the commission's duties under Subsection (a)(1) and:~~

24 ~~(1) shall advise the commission about:~~

25 ~~(A) overall goals and objectives for
26 information resources management for all health and human services
27 agencies;~~

- 1 [(B) coordination of agency information
2 ~~resources management plans;~~
3 [(C) development of short-term and long-term
4 ~~strategies for:~~
5 [(i) implementing information resources
6 ~~management policies, procedures, and technical standards; and~~
7 [(ii) ensuring compatibility of
8 ~~information resources systems across health and human services~~
9 ~~agencies as technology changes;~~
10 [(D) information resources training and skill
11 ~~development for health and human services agency employees and~~
12 ~~policies to facilitate recruitment and retention of trained~~
13 ~~employees;~~
14 [(E) standards for determining:
15 [(i) the circumstances in which obtaining
16 ~~information resources services under contract is appropriate;~~
17 [(ii) the information resources services
18 ~~functions that must be performed by health and human services~~
19 ~~agency information resources services employees; and~~
20 [(iii) the information resources services
21 ~~skills that must be maintained by health and human services agency~~
22 ~~information resources services employees;~~
23 [(F) optimization of the use of information
24 ~~resources technology that is in place at health and human services~~
25 ~~agencies; and~~
26 [(G) existing and potential future information
27 ~~resources technologies and practices and the usefulness of those~~

1 ~~technologies and practices to health and human services agencies,~~
2 ~~and~~

3 ~~[(2) shall review and make recommendations to the~~
4 ~~commission relating to the consolidation and improved efficiency of~~
5 ~~information resources management functions, including:~~

6 ~~[(A) cooperative leasing of information~~
7 ~~resources systems equipment;~~

8 ~~[(B) consolidation of data centers;~~

9 ~~[(C) improved network operations;~~

10 ~~[(D) technical support functions, including help~~
11 ~~desk services, call centers, and data warehouses;~~

12 ~~[(E) administrative applications;~~

13 ~~[(F) purchases of standard software;~~

14 ~~[(G) joint training efforts;~~

15 ~~[(H) recruitment and retention of trained agency~~
16 ~~employees;~~

17 ~~[(I) video conferencing; and~~

18 ~~[(J) other related opportunities for improved~~
19 ~~efficiency.~~

20 ~~[(f) A member of the advisory committee may not receive~~
21 ~~compensation, but is entitled to reimbursement of the travel~~
22 ~~expenses incurred by the member while conducting the business of~~
23 ~~the committee, as provided by the General Appropriations Act.~~

24 ~~[(g) The advisory committee is not subject to Chapter 2110.]~~

25 SECTION 2.072. Section 531.028(b), Government Code, is
26 amended to read as follows:

27 (b) The executive commissioner shall establish a federal

1 money management system to coordinate and monitor the use of
2 federal money that is received by health and human services
3 agencies to ensure that the money is spent in the most efficient
4 manner and shall:

5 (1) establish priorities for use of federal money by
6 all health and human services agencies, in coordination with the
7 coordinated strategic plan established under Section [531.022](#) and
8 the budget prepared under Section [531.026](#);

9 (2) coordinate and monitor the use of federal money
10 for health and human services to ensure that the money is spent in
11 the most cost-effective manner throughout the health and human
12 services system;

13 (3) review and approve all federal funding plans for
14 health and human services in this state;

15 (4) estimate available federal money, including
16 earned federal money, and monitor unspent money;

17 (5) ensure that the state meets federal requirements
18 relating to receipt of federal money for health and human services,
19 including requirements relating to state matching money and
20 maintenance of effort;

21 (6) transfer appropriated amounts as described by
22 Section [531.0271](#); and

23 (7) ensure that each governmental entity identified
24 under Section [531.022\(e\)](#) has access to complete and timely
25 information about all sources of federal money for health and human
26 services programs and that technical assistance is available to
27 governmental entities seeking grants of federal money to provide

1 health and human services.

2 SECTION 2.073. Section 531.031, Government Code, is amended
3 to read as follows:

4 Sec. 531.031. MANAGEMENT INFORMATION AND COST ACCOUNTING
5 SYSTEM. The executive commissioner shall establish a management
6 information system and a cost accounting system for all health and
7 human services that is compatible with and meets the requirements
8 of the uniform statewide accounting project.

9 SECTION 2.074. (a) Section 531.0312(b), Government Code, as
10 amended by Chapters 50 (S.B. 397) and 1460 (H.B. 2641), Acts of the
11 76th Legislature, Regular Session, 1999, and Chapter 937 (H.B.
12 3560), Acts of the 80th Legislature, Regular Session, 2007, is
13 reenacted to read as follows:

14 (b) The commission shall cooperate with the Records
15 Management Interagency Coordinating Council and the comptroller to
16 establish a single method of categorizing information about health
17 and human services to be used by the Records Management Interagency
18 Coordinating Council and the Texas Information and Referral
19 Network. The network, in cooperation with the council and the
20 comptroller, shall ensure that:

21 (1) information relating to health and human services
22 is included in each residential telephone directory published by a
23 for-profit publisher and distributed to the public at minimal or no
24 cost; and

25 (2) the single method of categorizing information
26 about health and human services is used in a residential telephone
27 directory described by Subdivision (1).

1 (b) Section 531.0312(c), Government Code, as added by
2 Chapter 1460 (H.B. 2641), Acts of the 76th Legislature, Regular
3 Session, 1999, is reenacted to incorporate amendments made to
4 Section 531.0312(b), Government Code, by Chapter 50 (S.B. 397),
5 Acts of the 76th Legislature, Regular Session, 1999, and amended to
6 read as follows:

7 (c) A health and human services agency or a public or
8 private entity receiving state-appropriated funds to provide
9 health and human services shall provide the Texas Information and
10 Referral Network and the Records Management Interagency
11 Coordinating Council with information about the health and human
12 services provided by the agency or entity for inclusion in the
13 statewide information and referral network, residential telephone
14 directories described by Subsection (b), and any other materials
15 produced under the direction of the network or the council. The
16 agency or entity shall provide the information in the format
17 required by the Texas Information and Referral Network or the
18 Records Management Interagency Coordinating Council [a form
19 determined by the commissioner] and shall update the information at
20 least quarterly or as required by the network or the council.

21 (c) Section 531.0312(d), Government Code, is amended to
22 read as follows:

23 (d) The Texas Department of Housing and Community Affairs
24 shall provide the Texas Information and Referral Network with
25 information regarding the department's housing and community
26 affairs programs for inclusion in the statewide information and
27 referral network. The department shall provide the information in

1 a form determined by the commission [commissioner] and shall update
2 the information at least quarterly.

3 SECTION 2.075. Section 531.0317(c), Government Code, is
4 amended to read as follows:

5 (c) The Internet site must:

6 (1) contain information that is:

7 (A) in a concise and easily understandable and
8 accessible format; and

9 (B) organized by the type of service provided
10 rather than by the agency or provider delivering the service;

11 (2) contain eligibility criteria for each agency
12 program;

13 (3) contain application forms for each of the public
14 assistance programs administered by health and human services
15 agencies, including application forms for:

16 (A) financial assistance under Chapter 31, Human
17 Resources Code;

18 (B) Medicaid [~~medical assistance under Chapter~~
19 ~~32, Human Resources Code~~]; and

20 (C) nutritional assistance under Chapter 33,
21 Human Resources Code;

22 (4) to avoid duplication of functions and efforts,
23 provide a link that provides access to a site maintained by the
24 Texas Information and Referral Network under Section 531.0313;

25 (5) contain the telephone number and, to the extent
26 available, the electronic mail address for each health and human
27 services agency and local provider of health and human services;

1 (6) be designed in a manner that allows a member of the
2 public to send questions about each agency's programs or services
3 electronically and receive responses to the questions from the
4 agency electronically; and

5 (7) be updated at least quarterly.

6 SECTION 2.076. Sections [531.0318\(b\)](#) and (c), Government
7 Code, are amended to read as follows:

8 (b) The information for consumers required by this section
9 must:

10 (1) be presented in a manner that is easily accessible
11 to, and understandable by, a consumer; and

12 (2) allow a consumer to make informed choices
13 concerning long-term care services and include:

14 (A) an explanation of the manner in which
15 long-term care service delivery is administered in different
16 counties through different programs operated by the commission and
17 by the Department of Aging and Disability Services, so that an
18 individual can easily understand the service options available in
19 the area in which that individual lives; and

20 (B) for the [Medicaid] Star + Plus Medicaid
21 managed care [pilot] program, information that allows a consumer to
22 evaluate the performance of each participating plan issuer,
23 including for each issuer, in an accessible format such as a table:

24 (i) the enrollment in each county;

25 (ii) additional "value-added" services
26 provided;

27 (iii) a summary of the financial

1 statistical report required under Subchapter A, Chapter 533;
2 (iv) complaint information;
3 (v) any sanction or penalty imposed by any
4 state agency, including a sanction or penalty imposed by the
5 commission or the Texas Department of Insurance;
6 (vi) information concerning consumer
7 satisfaction; and
8 (vii) other data, including relevant data
9 from reports of external quality review organizations, that may be
10 used by the consumer to evaluate the quality of the services
11 provided.

12 (c) In addition to providing the information required by
13 this section through the Internet, the commission or the Department
14 of Aging and Disability Services shall, on request by a consumer
15 without Internet access, provide the consumer with a printed copy
16 of the information from the website. The commission or department
17 may charge a reasonable fee for printing the information. The
18 executive commissioner shall establish the fee by rule.

19 SECTION 2.077. Section 531.033, Government Code, is amended
20 to read as follows:

21 Sec. 531.033. RULES. The executive commissioner shall
22 adopt rules necessary to carry out the commission's duties under
23 this chapter.

24 SECTION 2.078. Section 531.0335(b), Government Code, is
25 amended to read as follows:

26 (b) The executive commissioner by rule shall prohibit a
27 health and human services agency from taking a punitive action

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1 against a person responsible for a child's care, custody, or
2 welfare for failure of the person to ensure that the child receives
3 the immunization series prescribed by Section [161.004](#), Health and
4 Safety Code.

5 SECTION 2.079. Section [531.035](#), Government Code, is amended
6 to read as follows:

7 Sec. 531.035. DISPUTE ARBITRATION. The executive
8 commissioner shall arbitrate and render the final decision on
9 interagency disputes.

10 SECTION 2.080. The heading to Section [531.0381](#), Government
11 Code, is amended to read as follows:

12 Sec. 531.0381. CERTAIN GIFTS AND GRANTS TO HEALTH AND HUMAN
13 SERVICES AGENCIES.

14 SECTION 2.081. Sections [531.0381\(b\)](#) and (c), Government
15 Code, are amended to read as follows:

16 (b) Acceptance of a gift or grant under this section is
17 subject to the written approval of the executive commissioner.
18 Chapter 575 does not apply to a gift or grant under this section.

19 (c) The executive commissioner may adopt rules and
20 procedures to implement this section. The rules must ensure that
21 acceptance of a gift or grant under this section is consistent with
22 any applicable federal law or regulation and does not adversely
23 affect federal financial participation in any state program,
24 including [~~the state~~] Medicaid [~~program~~].

25 SECTION 2.082. Section [531.0392\(a\)](#), Government Code, is
26 amended to read as follows:

27 (a) In this section, "dually eligible individual" means an

1 individual who is eligible to receive health care benefits under
2 both [~~the~~] Medicaid and the Medicare program [~~programs~~].

3 SECTION 2.083. Section 531.041, Government Code, is amended
4 to read as follows:

5 Sec. 531.041. GENERAL POWERS AND DUTIES. The executive
6 commissioner and the commission have [~~has~~] all the powers and
7 duties necessary to administer this chapter.

8 SECTION 2.084. Section 531.042(a), Government Code, is
9 amended to read as follows:

10 (a) The executive commissioner by rule shall require each
11 health and human services agency to provide to each patient or
12 client of the agency and to at least one family member of the
13 patient or client, if possible, information regarding all care and
14 support options available to the patient or client, including
15 community-based services appropriate to the needs of the patient or
16 client, before the agency allows the patient or client to be placed
17 in a care setting, including a nursing facility [~~home~~],
18 intermediate care facility for individuals with an intellectual
19 disability [~~the mentally retarded~~], or general residential
20 operation for children with an intellectual disability that is
21 [~~institution for the mentally retarded~~] licensed [~~or operated~~] by
22 the Department of Family and Protective [~~and Regulatory~~] Services,
23 to receive care or services provided by the agency or by a person
24 under an agreement with the agency.

25 SECTION 2.085. Section 531.043(a), Government Code, is
26 amended to read as follows:

27 (a) In conjunction with the appropriate state agencies, the

1 executive commissioner shall develop a plan for access to
2 individualized long-term care services for persons with functional
3 limitations or medical needs and their families that assists those
4 persons in achieving and maintaining the greatest possible
5 independence, autonomy, and quality of life.

6 SECTION 2.086. Section 531.044, Government Code, is amended
7 to read as follows:

8 Sec. 531.044. FINANCIAL ASSISTANCE [AFDC] RECIPIENTS
9 ELIGIBLE FOR FEDERAL PROGRAMS. [(a)] The commission shall assist
10 recipients of financial assistance under Chapter 31, Human
11 Resources Code, who are eligible for assistance under federal
12 programs to apply for benefits under those federal programs. The
13 commission may delegate this responsibility to a health and human
14 services [service] agency, contract with a unit of local
15 government, or use any other cost-effective method to assist
16 financial assistance recipients who are eligible for federal
17 programs.

18 [(b) The commission shall organize a planning group
19 involving the Texas Department of Human Services, the Texas
20 Education Agency, and the Texas Rehabilitation Commission to:
21
22 [(1) improve workload coordination between those
23 agencies as necessary to administer this section; and
24
25 [(2) provide information and help train employees to
26 correctly screen applicants under this section as requested by the
27 commission.]

26 SECTION 2.087. Sections 531.045(b) and (g), Government
27 Code, are amended to read as follows:

1 (b) The task force is composed of:

2 (1) a representative of:

3 (A) the attorney general's office, appointed by

4 the attorney general;

5 (B) the comptroller's office, appointed by the

6 comptroller;

7 (C) the commission, appointed by the executive

8 commissioner;

9 (D) the [Texas] Department of State Health

10 Services, appointed by the commissioner of state health services

11 [public health];

12 (E) the [Texas] Department of Aging and

13 Disability [Human] Services, appointed by the commissioner of aging

14 and disability [human] services;

15 (F) the Texas Workforce Commission, appointed by

16 the executive director of that agency; and

17 (G) the Department of Assistive and

18 Rehabilitative Services [Texas Rehabilitation Commission],

19 appointed by the commissioner of assistive and rehabilitative

20 services [~~that agency~~]; and

21 (2) two representatives of each of the following

22 groups, appointed by the comptroller:

23 (A) retailers who maintain electronic benefits

24 transfer point-of-sale equipment;

25 (B) banks or owners of automatic teller machines;

26 and

27 (C) consumer or client advocacy organizations.

- 1 (g) The task force shall:
- 2 (1) serve as this state's counterpoint to the federal
- 3 electronic benefits transfer task force;
- 4 (2) identify benefit programs that merit addition to
- 5 this state's electronic benefits transfer system;
- 6 (3) identify and address problems that may occur if a
- 7 program is added;
- 8 (4) pursue state-federal partnerships to facilitate
- 9 the development and expansion of this state's electronic benefits
- 10 transfer system;
- 11 (5) track and distribute federal legislation and
- 12 information from other states that relate to electronic benefits
- 13 transfer systems;
- 14 (6) ensure efficiency and planning coordination in
- 15 relation to this state's electronic benefits transfer system;
- 16 (7) ~~develop a plan using the experience and expertise~~
- 17 ~~of appropriate state agencies for the use of a photograph or other~~
- 18 ~~imaging technology on all electronic benefits transfer cards and,~~
- 19 ~~if proven to be effective in reducing fraud and misuse, begin using~~
- 20 ~~the new cards starting with replacement cards for cards that were~~
- 21 ~~used in the program on June 13, 1995,~~
- 22 ~~[+8]~~ review current and potential fraud problems with
- 23 electronic benefits transfer and propose methods to prevent or
- 24 deter fraud;
- 25 ~~[+9] evaluate the feasibility of adding the Medicaid~~
- 26 ~~program to the state's electronic benefits transfer system,]~~ and
- 27 ~~(8) [+10]~~ develop a plan to assist beneficiaries of

1 public programs to obtain bank accounts.

2 SECTION 2.088. Section 531.047(a), Government Code, is
3 amended to read as follows:

4 (a) The executive commissioner [~~commission~~], after
5 consulting with representatives from the Department of Family and
6 Protective [~~and Regulatory~~] Services, the Texas Juvenile Justice
7 Department [~~Probation Commission~~], the Department of Aging and
8 Disability Services, and the [~~Texas~~] Department of State Health
9 Services [~~Mental Health and Mental Retardation~~], shall by rule
10 adopt result-oriented standards that a provider of substitute care
11 services for children under the care of the state must achieve.

12 SECTION 2.089. Section 531.048, Government Code, is amended
13 to read as follows:

14 Sec. 531.048. CASELOAD STANDARDS. (a) The executive [~~After~~
15 ~~considering the recommendations of the caseload standards advisory~~
16 ~~committees under Section 531.049(e), the]~~ commissioner may
17 establish caseload standards and other standards relating to
18 caseloads for each category of caseworker employed by the [~~Texas~~
19 ~~Department of Human Services or the~~] Department of Family and
20 Protective [~~and Regulatory~~] Services.

21 (b) In establishing standards under this section, the
22 executive commissioner shall:

23 (1) ensure the standards are based on the actual
24 duties of the caseworker;

25 (2) ensure the caseload standards are reasonable and
26 achievable;

27 (3) ensure the standards are consistent with existing

1 professional caseload standards;

2 (4) consider standards developed by other states for
3 caseworkers in similar positions of employment; and

4 (5) ensure the standards are consistent with existing
5 caseload standards of other state agencies.

6 (c) Subject to the availability of funds appropriated by the
7 legislature, [~~the commissioner of human services and~~] the
8 commissioner [~~executive director~~] of the Department of Family and
9 Protective [~~and Regulatory~~] Services shall use the standards
10 established by the executive commissioner under this section to
11 determine the number of personnel to assign as caseworkers for the
12 department [~~their respective agencies~~].

13 (d) Subject to the availability of funds appropriated by the
14 legislature, the [~~Texas Department of Human Services and the~~]
15 Department of Family and Protective [~~and Regulatory~~] Services shall
16 use the standards established by the executive commissioner to
17 assign caseloads to individual caseworkers employed by the
18 department [~~those agencies~~].

19 [(e) ~~The commissioner shall include a recommendation made~~
20 ~~to the commissioner by a caseload standards advisory committee~~
21 ~~under Section 531.049(c) in the strategic plan of the agency that is~~
22 ~~the subject of the recommendation.~~]

23 (f) Nothing in this section may be construed to create a
24 cause of action.

25 [(g) ~~The executive commissioner shall develop and, subject~~
26 ~~to the availability of funds, implement a caseload management~~
27 ~~reduction plan to reduce, not later than January 1, 2011, caseloads~~

1 ~~for caseworkers employed by the adult protective services division~~
2 ~~of the Department of Family and Protective Services to a level that~~
3 ~~does not exceed professional caseload standards by more than five~~
4 ~~cases per caseworker. The plan must provide specific annual~~
5 ~~targets for caseload reduction.]~~

6 SECTION 2.090. Section 531.050, Government Code, is amended
7 to read as follows:

8 Sec. 531.050. MINIMUM COLLECTION GOAL. (a) Before August
9 31 of each year, the executive commissioner [~~commission, after~~
10 ~~consulting with the Texas Department of Human Services,~~] by rule
11 shall set a minimum goal for the commission [~~Texas Department of~~
12 ~~Human Services~~] that specifies the percentage of the amount of
13 benefits granted by the commission [~~department~~] in error under the
14 supplemental nutrition assistance [~~food stamp~~] program or the
15 program of financial assistance under Chapter 31, Human Resources
16 Code, that the commission [~~department~~] should recover. The
17 executive commissioner [~~commission~~] shall set the percentage based
18 on comparable recovery rates reported by other states or other
19 appropriate factors identified by the executive commissioner
20 [~~commission and the department~~].

21 (b) If the commission [~~department~~] fails to meet the goal
22 set under Subsection (a) for the fiscal year, the executive
23 commissioner shall notify the comptroller, and the comptroller
24 shall reduce the commission's [~~department's~~] general revenue
25 appropriation by an amount equal to the difference between the
26 amount of state funds the commission [~~department~~] would have
27 collected had the commission [~~department~~] met the goal and the

1 amount of state funds the commission [department] actually
2 collected.

3 (c) The executive commissioner [~~commission~~], the governor,
4 and the Legislative Budget Board shall monitor the commission's
5 [~~department's~~] performance in meeting the goal set under this
6 section. The commission [~~department~~] shall cooperate by providing
7 to [~~the commission~~] the governor[~~to~~] and the Legislative Budget
8 Board, on request, information concerning the commission's
9 [~~department's~~] collection efforts.

10 SECTION 2.091. Section 531.051(c), Government Code, is
11 amended to read as follows:

12 (c) In adopting rules for the consumer direction models, the
13 executive commissioner [~~commission~~] shall:

14 (1) with assistance from the work group established
15 under Section 531.052, determine which services are appropriate and
16 suitable for delivery through consumer direction;

17 (2) ensure that each consumer direction model is
18 designed to comply with applicable federal and state laws;

19 (3) maintain procedures to ensure that a potential
20 consumer or the consumer's legally authorized representative has
21 adequate and appropriate information, including the
22 responsibilities of a consumer or representative under each service
23 delivery option, to make an informed choice among the types of
24 consumer direction models;

25 (4) require each consumer or the consumer's legally
26 authorized representative to sign a statement acknowledging
27 receipt of the information required by Subdivision (3);

1 (5) maintain procedures to monitor delivery of
2 services through consumer direction to ensure:

3 (A) adherence to existing applicable program
4 standards;

5 (B) appropriate use of funds; and

6 (C) consumer satisfaction with the delivery of
7 services;

8 (6) ensure that authorized program services that are
9 not being delivered to a consumer through consumer direction are
10 provided by a provider agency chosen by the consumer or the
11 consumer's legally authorized representative; and

12 (7) work in conjunction with the work group
13 established under Section 531.052 to set a timetable to complete
14 the implementation of the consumer direction models.

15 SECTION 2.092. Sections 531.055(a) and (e), Government
16 Code, are amended to read as follows:

17 (a) Each health and human services agency, the Texas
18 Correctional Office [Council] on Offenders with Medical or Mental
19 Impairments, the Texas Department of Criminal Justice, the Texas
20 Department of Housing and Community Affairs, the Texas Education
21 Agency, the Texas Workforce Commission, and the Texas Juvenile
22 Justice Department [~~Youth Commission~~] shall enter into [~~adopt~~] a
23 joint memorandum of understanding to promote a system of
24 local-level interagency staffing groups to coordinate services for
25 persons needing multiagency services.

26 (e) The agencies shall ensure that a state-level
27 interagency staffing group provides a biennial report to the

1 administrative head [~~executive director~~] of each agency, the
2 legislature, and the governor that includes:

3 (1) the number of persons served through the
4 local-level interagency staffing groups and the outcomes of the
5 services provided;

6 (2) a description of any barriers identified to the
7 state's ability to provide effective services to persons needing
8 multiagency services; and

9 (3) any other information relevant to improving the
10 delivery of services to persons needing multiagency services.

11 SECTION 2.093. Section 531.056, Government Code, is amended
12 to read as follows:

13 Sec. 531.056. REVIEW OF SURVEY PROCESS IN CERTAIN
14 INSTITUTIONS AND FACILITIES. (a) The commission shall adopt
15 procedures to review:

16 (1) citations or penalties assessed for a violation of
17 a rule or law against an institution or facility licensed under
18 Chapter 242, 247, or 252, Health and Safety Code, or certified to
19 participate in Medicaid administered in accordance with Chapter 32,
20 Human Resources Code, considering:

21 (A) the number of violations by geographic
22 region;

23 (B) the patterns of violations in each region;
24 and

25 (C) the outcomes following the assessment of a
26 penalty or citation; and

27 (2) the performance of duties by employees and agents

1 of a [~~the Texas Department of Human Services or another~~] state
2 agency responsible for licensing, inspecting, surveying, or
3 investigating institutions and facilities licensed under Chapter
4 242, 247, or 252, Health and Safety Code, or certified to
5 participate in Medicaid administered in accordance with Chapter 32,
6 Human Resources Code, related to:

- 7 (A) complaints received by the commission; or
8 (B) any standards or rules violated by an
9 employee or agent of a state agency.

10 SECTION 2.094. Section 531.057, Government Code, is amended
11 to read as follows:

12 Sec. 531.057. VOLUNTEER ADVOCATE PROGRAM FOR THE ELDERLY.

13 (a) In this section:

14 (1) "Designated caregiver" means:

15 (A) a person designated as a caregiver by an
16 elderly individual receiving services from or under the direction
17 of the commission or a health and human services agency; or

18 (B) a court-appointed guardian of an elderly
19 individual receiving services from or under the direction of the
20 commission or a health and human services agency.

21 (2) "Elderly" means individuals who are at least 60
22 years of age.

23 (3) "Program" means the volunteer advocate program
24 created under this section for the elderly receiving services from
25 or under the direction of the commission or a health and human
26 services agency [~~created under this section~~].

27 (4) "Volunteer advocate" means a person who

1 successfully completes the volunteer advocate curriculum described
2 by Subsection (c)(2).

3 ~~[(b) The executive commissioner shall coordinate with the
4 advisory committee established under Section 531.0571 to develop a
5 volunteer advocate program for the elderly receiving services from
6 or under the direction of the commission or a health and human
7 services agency.]~~

8 (c) ~~[In developing the]~~ program~~[, the executive
commissioner and the advisory committee]~~ shall adhere to the
10 following principles:

11 (1) the intent of the program is to evaluate, through
12 operation of pilot projects, whether providing the services of a
13 trained volunteer advocate selected by an elderly individual or the
14 individual's designated caregiver is effective in achieving the
15 following goals:

16 (A) extend the time the elderly individual can
17 remain in an appropriate home setting;

18 (B) maximize the efficiency of services
19 delivered to the elderly individual by focusing on services needed
20 to sustain family caregiving;

21 (C) protect the elderly individual by providing a
22 knowledgeable third party to review the quality of care and
23 services delivered to the individual and the care options available
24 to the individual and the individual's family; and

25 (D) facilitate communication between the elderly
26 individual or the individual's designated caregiver and providers
27 of health care and other services;

1 (2) a volunteer advocate curriculum must be maintained
2 [established] that incorporates best practices as determined and
3 recognized by a professional organization recognized in the elder
4 health care field;

5 (3) the use of pro bono assistance from qualified
6 professionals must be maximized in modifying [developing] the
7 volunteer advocate curriculum and [designing] the program;

8 (4) trainers must be certified on the ability to
9 deliver training;

10 (5) training shall be offered through multiple
11 community-based organizations; and

12 (6) participation in the program is voluntary and must
13 be initiated by the elderly individual or the individual's
14 designated caregiver.

15 (d) The executive commissioner may enter into agreements
16 with appropriate nonprofit organizations for the provision of
17 services under the program. A nonprofit organization is eligible
18 to provide services under the program if the organization:

19 (1) has significant experience in providing services
20 to elderly individuals;

21 (2) has the capacity to provide training and
22 supervision for individuals interested in serving as volunteer
23 advocates; and

24 (3) meets any other criteria prescribed by the
25 executive commissioner.

26 (e) The commission shall fund the program, including the
27 design and evaluation of pilot projects, modification

1 [development] of the volunteer advocate curriculum, and training of
2 volunteers, through existing appropriations to the commission.

3 (f) Notwithstanding Subsection (e), the commission may
4 accept gifts, grants, or donations for the program from any public
5 or private source to:

6 (1) carry out the design of the program;

7 (2) develop criteria for evaluation of any proposed
8 pilot projects operated under the program;

9 (3) modify [develop] a volunteer advocate training
10 curriculum;

11 (4) conduct training for volunteer advocates; and

12 (5) develop a request for offers to conduct any
13 proposed pilot projects under the program.

14 (g) The executive commissioner may adopt rules as necessary
15 to implement the program.

16 SECTION 2.095. Sections 531.0571(a) and (b), Government
17 Code, are amended to read as follows:

18 (a) The executive commissioner shall appoint an advisory
19 committee composed of the following members:

20 (1) a representative of the Department of Aging and
21 Disability Services;

22 (2) a representative of the Department of Assistive
23 and Rehabilitative Services;

24 (3) a representative of the Department of State Health
25 Services;

26 (4) a representative of the Texas Silver-Haired
27 Legislature;

- 1 (5) a representative of an area agency on aging;
- 2 (6) a representative of United Ways of Texas;
- 3 (7) a home health provider;
- 4 (8) an assisted living provider;
- 5 (9) a nursing facility [~~home~~] provider;
- 6 (10) a representative of Texas CASA;
- 7 (11) a licensed gerontologist; and
- 8 (12) a representative of AARP.

9 (b) The advisory committee shall advise the executive
10 commissioner on [~~the development of~~] the volunteer advocate program
11 for the elderly [~~developed~~] under Section [531.057](#), including
12 reviewing and commenting on:

- 13 (1) program design and selection of any pilot sites
14 operated under the program;
- 15 (2) the volunteer advocate training curriculum;
- 16 (3) requests for oversight requirements for any pilot
17 projects operated under the program;
- 18 (4) evaluation of any pilot projects operated under
19 the program;
- 20 (5) requirements for periodic reports to the elderly
21 individual or the individual's designated caregiver and providers
22 of health care or other services; and
- 23 (6) other issues as requested by the executive
24 commissioner.

25 SECTION 2.096. Sections [531.058\(a\)](#), (b), and (d),
26 Government Code, are amended to read as follows:

- 27 (a) The executive commissioner [~~commission~~] by rule shall

1 establish an informal dispute resolution process in accordance with
2 this section. The process must provide for adjudication by an
3 appropriate disinterested person of disputes relating to a proposed
4 enforcement action or related proceeding of the commission [~~Texas~~
5 ~~Department of Human Services~~] under Section 32.021(d), Human
6 Resources Code, or the Department of Aging and Disability Services
7 under Chapter 242, 247, or 252, Health and Safety Code. The
8 informal dispute resolution process must require:

9 (1) an institution or facility to request informal
10 dispute resolution not later than the 10th calendar day after
11 notification by the commission or department, as applicable, of the
12 violation of a standard or standards; and

13 (2) the commission to complete the process not later
14 than:

15 (A) the 30th calendar day after receipt of a
16 request from an institution or facility, other than an assisted
17 living facility, for informal dispute resolution; or

18 (B) the 90th calendar day after receipt of a
19 request from an assisted living facility for informal dispute
20 resolution.

21 (b) The executive commissioner [~~commission~~] shall adopt
22 rules to adjudicate claims in contested cases.

23 (d) The executive commissioner [~~commission~~] shall use a
24 negotiated rulemaking process and engage a qualified impartial
25 third party as provided by Section 2009.053, with the goal of the
26 executive commissioner adopting rules that are fair and impartial
27 to all parties not later than January 1, 2015. This subsection

1 expires September 1, 2015.

2 SECTION 2.097. Section 531.059, Government Code, is amended
3 to read as follows:

4 Sec. 531.059. VOUCHER PROGRAM FOR TRANSITIONAL LIVING
5 ASSISTANCE FOR PERSONS WITH DISABILITIES. (a) In this section:

6 (1) "Institutional housing" means:

7 (A) an ICF-IID [~~ICF-MR~~], as defined by Section
8 531.002, Health and Safety Code;

9 (B) a nursing facility;

10 (C) a state hospital, state supported living
11 center [~~school~~], or state center maintained and managed by the
12 [~~Texas~~] Department of State Health Services or the Department of
13 Aging and Disability Services [~~Mental Health and Mental~~
14 ~~Retardation~~];

15 (D) a general residential operation for children
16 with an intellectual disability that is [~~an institution for the~~
17 ~~mentally retarded~~] licensed [~~or operated~~] by the Department of
18 Family and Protective Services; or

19 (E) a general residential operation, as defined
20 by Section 42.002, Human Resources Code.

21 (2) "Integrated housing" means housing in which a
22 person with a disability resides or may reside that is found in the
23 community but that is not exclusively occupied by persons with
24 disabilities and their care providers.

25 (b) Subject to the availability of funds, the commission
26 shall coordinate with the [~~Texas Department of Human Services, the~~]
27 Texas Department of Housing and Community Affairs, the Department

1 of State Health Services, and the [Texas] Department of Aging and
2 Disability Services [~~Mental Health and Mental Retardation~~] to
3 develop a housing assistance program to assist persons with
4 disabilities in moving from institutional housing to integrated
5 housing. In developing the program, the agencies shall address:

6 (1) eligibility requirements for assistance;
7 (2) the period during which a person with a disability
8 may receive assistance;
9 (3) the types of housing expenses to be covered under
10 the program; and

11 (4) the locations at which the program will be
12 operated.

13 (c) Subject to the availability of funds, the Department of
14 Aging and Disability Services [~~commission~~] shall [~~require the Texas~~
15 ~~Department of Human Services to implement and~~] administer the
16 housing assistance program under this section. The department
17 shall coordinate with the Texas Department of Housing and Community
18 Affairs in [~~implementing and~~] administering the program,
19 determining the availability of funding from the United States
20 Department of Housing and Urban Development, and obtaining those
21 funds.

22 (d) The [~~Texas Department of Human Services and the~~] Texas
23 Department of Housing and Community Affairs and the Department of
24 Aging and Disability Services shall provide information to the
25 commission as necessary to facilitate the administration
26 [~~development and implementation~~] of the housing assistance
27 program.

1 SECTION 2.098. Sections 531.060(c)(3) and (4), Government
2 Code, are amended to read as follows:

3 (3) "Institution" means any congregate care facility,
4 including:

5 (A) a nursing facility [~~home~~];
6 (B) an ICF-IID [~~ICF-MR facility~~], as defined by
7 Section 531.002, Health and Safety Code;

8 (C) a group home operated by the [~~Texas~~]
9 Department of Aging and Disability Services [~~Mental Health and~~
10 ~~Mental Retardation~~]; and

11 (D) a general residential operation for children
12 with an intellectual disability that is [~~an institution for the~~
13 ~~mentally retarded~~] licensed by the Department of Family and
14 Protective [~~and Regulatory~~] Services.

15 (4) "Waiver services" means services provided under:

16 (A) the Medically Dependent Children Program
17 (MDCP);

18 (B) the Community Living Assistance and Support
19 Services (CLASS) waiver program [~~Program~~];

20 (C) the Home and Community-based [~~Waiver~~]
21 Services (HCS) waiver program [~~Program, including the HCS-OBRA~~
22 ~~Program~~];

23 (D) [~~the Mental Retardation-Local Authority~~
24 ~~Pilot Project (MRLA)~~];

25 [(E)] the Deaf Blind with Multiple Disabilities
26 (DBMD) waiver program [~~Deaf, Blind, and Multiply Disabled Program~~];
27 and

1 (E) [~~(F)~~] any other Section 1915(c) waiver
2 program that provides long-term care services for children.

3 SECTION 2.099. Sections 531.062(a) and (b), Government
4 Code, are amended to read as follows:

5 (a) Notwithstanding any other law, the commission may
6 establish one or more pilot projects through which reimbursement
7 under Medicaid [~~the medical assistance program under Chapter 32,~~
8 ~~Human Resources Code,~~] is made to demonstrate the applications of
9 technology in providing services under that program.

10 (b) A pilot project established under this section may
11 relate to providing rehabilitation services, services for the aging
12 or persons with disabilities [~~disabled~~], or long-term care
13 services, including community care services and support.

14 SECTION 2.100. Sections 531.063(a) and (i), Government
15 Code, are amended to read as follows:

16 (a) The executive commissioner [~~commissioner~~] by rule[~~-~~]
17 shall establish at least one but not more than four call centers for
18 purposes of determining and certifying or recertifying a person's
19 eligibility and need for services related to the programs listed
20 under Section 531.008(c), if cost-effective. [~~The commission must~~
21 ~~conduct a public hearing before establishing the initial call~~
22 ~~center.~~]

23 (i) Notwithstanding Subsection (a), the executive
24 commissioner shall develop and implement policies that provide an
25 applicant for services related to the programs listed under Section
26 531.008(c) with an opportunity to appear in person to establish
27 initial eligibility or to comply with periodic eligibility

1 recertification requirements if the applicant requests a personal
2 interview. In implementing the policies, the commission shall
3 maintain offices to serve applicants who request a personal
4 interview. This subsection does not affect a law or rule that
5 requires an applicant to appear in person to establish initial
6 eligibility or to comply with periodic eligibility recertification
7 requirements.

8 SECTION 2.101. Section 531.064(a), Government Code, is
9 amended to read as follows:

10 (a) In this section, "vaccines for children program" means
11 the program operated by the [Texas] Department of State Health
12 Services under authority of 42 U.S.C. Section 1396s, as amended.

13 SECTION 2.102. Sections 531.067(a), (b), (d), and (g),
14 Government Code, are amended to read as follows:

15 (a) The commission shall appoint a Public Assistance Health
16 Benefit Review and Design Committee. The committee consists of
17 nine representatives of health care providers participating in
18 [the] Medicaid [program] or the child health plan program, or both.
19 The committee membership must include at least three
20 representatives from each program.

21 (b) The executive commissioner shall designate one member
22 to serve as presiding officer for a term of two years.

23 (d) The committee shall review and provide recommendations
24 to the commission regarding health benefits and coverages provided
25 under [the state] Medicaid [program], the child health plan
26 program, and any other income-based health care program
27 administered by the commission or a health and human services

1 agency. In performing its duties under this subsection, the
2 committee must:

3 (1) review benefits provided under each of the
4 programs; and

5 (2) review procedures for addressing high utilization
6 of benefits by recipients.

7 (g) In performing the duties under this section, the
8 commission may design and implement a program to improve and
9 monitor clinical and functional outcomes of a recipient of services
10 under Medicaid or the state child health plan [~~or medical~~
~~assistance~~] program. The program may use financial, clinical, and
12 other criteria based on pharmacy, medical services, and other
13 claims data related to Medicaid or the child health plan [~~or the~~
~~state medical assistance~~] program. The commission must report to
15 the committee on the fiscal impact, including any savings
16 associated with the strategies utilized under this section.

17 SECTION 2.103. Section 531.068, Government Code, is amended
18 to read as follows:

19 Sec. 531.068. MEDICAID OR OTHER HEALTH BENEFIT COVERAGE.
20 In adopting rules or standards governing [~~the state~~] Medicaid
21 [~~program~~] or rules or standards for the development or
22 implementation of health benefit coverage for a program
23 administered by the commission or a health and human services
24 agency, the executive commissioner [~~commission and each health and~~
~~human services agency, as appropriate,~~] may take into consideration
26 any recommendation made with respect to health benefits provided
27 under [~~their respective programs or the state~~] Medicaid or another

1 of those programs [~~program~~] by the Public Assistance Health Benefit
2 Review and Design Committee established under Section [531.067](#).

3 SECTION 2.104. Section [531.0691](#)(a)(1), Government Code, is
4 amended to read as follows:

5 (1) "Medicaid Drug Utilization Review Program" means
6 the program operated by the vendor drug program to improve the
7 quality of pharmaceutical care under [~~the~~] Medicaid [~~program~~].

8 SECTION 2.105. Section [531.0693](#)(a), Government Code, is
9 amended to read as follows:

10 (a) The commission shall monitor and analyze prescription
11 drug use and expenditure patterns in [~~the~~] Medicaid [~~program~~]. The
12 commission shall identify the therapeutic prescription drug
13 classes and individual prescription drugs that are most often
14 prescribed to patients or that represent the greatest expenditures.

15 SECTION 2.106. Section [531.0694](#), Government Code, is
16 amended to read as follows:

17 Sec. 531.0694. PERIOD OF VALIDITY FOR PRESCRIPTION. In the
18 [~~its~~] rules and standards governing the vendor drug program, the
19 executive commissioner [~~commission~~], to the extent allowed by
20 federal law and laws regulating the writing and dispensing of
21 prescription medications, shall ensure that a prescription written
22 by an authorized health care provider under [~~the~~] Medicaid
23 [~~program~~] is valid for the lesser of the period for which the
24 prescription is written or one year. This section does not apply to
25 a prescription for a controlled substance, as defined by Chapter
26 481, Health and Safety Code.

27 SECTION 2.107. Section [531.0697](#)(a), Government Code, is

1 amended to read as follows:

2 (a) This section applies to:

3 (1) the vendor drug program for [the] Medicaid and the
4 child health plan program [programs];

5 (2) the kidney health care program;

6 (3) the children with special health care needs
7 program; and

8 (4) any other state program administered by the
9 commission that provides prescription drug benefits.

10 SECTION 2.108. Sections 531.070(b), (c), and (m),
11 Government Code, are amended to read as follows:

12 (b) For purposes of this section, the term "supplemental
13 rebates" means cash rebates paid by a manufacturer to the state on
14 the basis of appropriate quarterly health and human services
15 program utilization data relating to the manufacturer's products,
16 pursuant to a state supplemental rebate agreement negotiated with
17 the manufacturer and, if necessary, approved by the federal
18 government under Section 1927 of the federal Social Security Act
19 (42 U.S.C. Section 1396r-8).

20 (c) The commission may enter into a written agreement with a
21 manufacturer to accept certain program benefits in lieu of
22 supplemental rebates, as defined by this section, only if:

23 (1) the program benefit yields savings that are at
24 least equal to the amount the manufacturer would have provided
25 under a state supplemental rebate agreement during the current
26 biennium as determined by the written agreement;

27 (2) the manufacturer posts a performance bond

1 guaranteeing savings to the state, and agrees that if the savings
2 are not achieved in accordance with the written agreement, the
3 manufacturer will forfeit the bond to the state less any savings
4 that were achieved; and

5 (3) the program benefit is in addition to other
6 program benefits currently offered by the manufacturer to
7 recipients of Medicaid [~~medical assistance~~] or related programs.

8 (m) In negotiating terms for a supplemental rebate, the
9 commission shall use the average manufacturer price (AMP), as
10 defined in 42 U.S.C. Section 1396r-8(k)(1) [~~Section 1396r-8(k)(1)~~
11 ~~of the Omnibus Budget Reconciliation Act of 1990~~], as the cost basis
12 for the product.

13 SECTION 2.109. Section 531.071(a), Government Code, is
14 amended to read as follows:

15 (a) Notwithstanding any other state law, information
16 obtained or maintained by the commission regarding prescription
17 drug rebate negotiations or a supplemental Medicaid [~~medical~~
18 ~~assistance~~] or other rebate agreement, including trade secrets,
19 rebate amount, rebate percentage, and manufacturer or labeler
20 pricing, is confidential and not subject to disclosure under
21 Chapter 552.

22 SECTION 2.110. Sections 531.073(a), (a-1), (c), and (d),
23 Government Code, are amended to read as follows:

24 (a) The executive commissioner [~~commission~~], in the [~~its~~]
25 rules and standards governing the Medicaid vendor drug program and
26 the child health plan program, shall require prior authorization
27 for the reimbursement of a drug that is not included in the

1 appropriate preferred drug list adopted under Section 531.072,
2 except for any drug exempted from prior authorization requirements
3 by federal law. The executive commissioner [commission] may
4 require prior authorization for the reimbursement of a drug
5 provided through any other state program administered by the
6 commission or a state health and human services agency, including a
7 community mental health center and a state mental health hospital
8 if the commission adopts preferred drug lists under Section 531.072
9 that apply to those facilities and the drug is not included in the
10 appropriate list. The executive commissioner [commission] shall
11 require that the prior authorization be obtained by the prescribing
12 physician or prescribing practitioner.

13 (a-1) Until the commission has completed a study evaluating
14 the impact of a requirement of prior authorization on recipients of
15 certain drugs, the executive commissioner [commission] shall delay
16 requiring prior authorization for drugs that are used to treat
17 patients with illnesses that:

- 18 (1) are life-threatening;
19 (2) are chronic; and
20 (3) require complex medical management strategies.

21 (c) The commission shall ensure that a prescription drug
22 prescribed before implementation of a prior authorization
23 requirement for that drug for a recipient under the child health
24 plan program, [the] Medicaid [program], or another state program
25 administered by the commission or a health and human services
26 agency or for a person who becomes eligible under the child health
27 plan program, [the] Medicaid [program], or another state program

1 administered by the commission or a health and human services
2 agency is not subject to any requirement for prior authorization
3 under this section unless the recipient has exhausted all the
4 prescription, including any authorized refills, or a period
5 prescribed by the commission has expired, whichever occurs first.

6 (d) The commission shall implement procedures to ensure
7 that a recipient under the child health plan program, [the]
8 Medicaid [program], or another state program administered by the
9 commission or a person who becomes eligible under the child health
10 plan program, [the] Medicaid [program], or another state program
11 administered by the commission or a health and human services
12 agency receives continuity of care in relation to certain
13 prescriptions identified by the commission.

14 SECTION 2.111. Sections 531.074(b), (c), (f), (i), and
15 (i-1), Government Code, are amended to read as follows:

16 (b) The committee consists of the following members
17 appointed by the governor:

18 (1) six physicians licensed under Subtitle B, Title 3,
19 Occupations Code, and participating in [the] Medicaid [program], at
20 least one of whom is a licensed physician who is actively engaged in
21 mental health providing care and treatment to persons with severe
22 mental illness and who has practice experience in the state
23 Medicaid plan; and

24 (2) five pharmacists licensed under Subtitle J, Title
25 3, Occupations Code, and participating in the Medicaid vendor drug
26 program.

27 (c) In making appointments to the committee under

1 Subsection (b), the governor shall ensure that the committee
2 includes physicians and pharmacists who:

3 (1) represent different specialties and provide
4 services to all segments of the [Medicaid program's] diverse
5 population served by Medicaid;

6 (2) have experience in either developing or practicing
7 under a preferred drug list; and

8 (3) do not have contractual relationships, ownership
9 interests, or other conflicts of interest with a pharmaceutical
10 manufacturer or labeler or with an entity engaged by the commission
11 to assist in the development of the preferred drug lists or the
12 administration of the prior authorization system.

13 (f) The [committee shall meet at least monthly during the
14 six-month period following establishment of the committee to enable
15 the committee to develop recommendations for the initial preferred
16 drug lists. After that period, the] committee shall meet at least
17 quarterly and at other times at the call of the presiding officer or
18 a majority of the committee members.

19 (i) The executive commissioner [commission] shall adopt
20 rules governing the operation of the committee, including rules
21 governing the procedures used by the committee for providing notice
22 of a meeting and rules prohibiting the committee from discussing
23 confidential information described by Section 531.071 in a public
24 meeting. The committee shall comply with the rules adopted under
25 this subsection and Subsection (i-1).

26 (i-1) In addition to the rules under Subsection (i), the
27 executive commissioner [commission] by rule shall require the

1 committee or the committee's designee to present a summary of any
2 clinical efficacy and safety information or analyses regarding a
3 drug under consideration for a preferred drug list that is provided
4 to the committee by a private entity that has contracted with the
5 commission to provide the information. The committee or the
6 committee's designee shall provide the summary in electronic form
7 before the public meeting at which consideration of the drug
8 occurs. Confidential information described by Section 531.071
9 must be omitted from the summary. The summary must be posted on the
10 commission's Internet website.

11 SECTION 2.112. The heading to Section 531.077, Government
12 Code, is amended to read as follows:

13 Sec. 531.077. RECOVERY OF CERTAIN [MEDICAL] ASSISTANCE.

14 SECTION 2.113. Section 531.077(a), Government Code, is
15 amended to read as follows:

16 (a) The executive commissioner shall ensure that [~~the~~
17 ~~state~~] Medicaid [program] implements 42 U.S.C. Section
18 1396p(b)(1).

19 SECTION 2.114. Section 531.078(a), Government Code, is
20 amended to read as follows:

21 (a) In this section, "gross receipts" means money received
22 as compensation for services under an intermediate care facility
23 [~~facilities~~] for individuals with an intellectual disability [~~the~~
24 ~~mentally retarded~~] waiver program such as a home and community
25 services waiver or a community living assistance and support
26 services waiver. The term does not include a charitable
27 contribution, revenues received for services or goods other than

1 waivers, or any money received from consumers or their families as
2 reimbursement for services or goods not normally covered by the
3 waivers.

4 SECTION 2.115. Section 531.079, Government Code, is amended
5 to read as follows:

6 Sec. 531.079. WAIVER PROGRAM QUALITY ASSURANCE FEE ACCOUNT.
7 (a) The waiver program quality assurance fee account is a dedicated
8 account in the general revenue fund. The account is exempt from the
9 application of Section 403.095. [~~Interest earned on money in the~~
10 ~~account shall be credited to the account.~~]

11 (b) The account consists of fees collected under Section
12 531.078 [~~and interest earned on money in the account~~].

13 (c) Subject to legislative appropriation and state and
14 federal law, money in the account may be appropriated only to the
15 Department of Aging and Disability Services to increase
16 reimbursement rates paid under the home and community services
17 waiver program or the community living assistance and support
18 services waiver program or to offset allowable expenses under [~~the~~
19 ~~state~~] Medicaid [~~program~~].

20 SECTION 2.116. Section 531.081, Government Code, is amended
21 to read as follows:

22 Sec. 531.081. INVALIDITY; FEDERAL FUNDS. If any portion of
23 Sections 531.078-531.080 is held invalid by a final order of a court
24 that is not subject to appeal, or if the commission determines that
25 the imposition of the quality assurance fee and the expenditure of
26 the money collected as provided by those sections will not entitle
27 this state to receive additional federal money under [~~the~~] Medicaid

1 [program], the commission shall:

2 (1) stop collection of the quality assurance fee; and
3 (2) not later than the 30th day after the date the
4 collection of the quality assurance fee is stopped, return any
5 money collected under Section 531.078, but not spent under Section
6 531.080, to the persons who paid the fees in proportion to the total
7 amount paid by those persons.

8 SECTION 2.117. Section 531.084(a), Government Code, is
9 amended to read as follows:

10 (a) The commission shall make every effort to achieve cost
11 efficiencies within the Medicaid long-term care program. To
12 achieve those efficiencies, the commission shall:

13 (1) establish a fee schedule for reimbursable incurred
14 medical expenses for dental services controlled in long-term care
15 facilities;

16 (2) implement a fee schedule for reimbursable incurred
17 medical expenses for durable medical equipment in nursing
18 facilities and ICF-IID [~~ICF-MR~~] facilities;

19 (3) implement a durable medical equipment fee schedule
20 action plan;

21 (4) establish a system for private contractors to
22 secure and coordinate the collection of Medicare funds for
23 recipients who are dually eligible for Medicare and Medicaid;

24 (5) create additional partnerships with
25 pharmaceutical companies to obtain discounted prescription drugs
26 for Medicaid recipients; and

27 (6) develop and implement a system for auditing the

1 Medicaid hospice care system that provides services in long-term
2 care facilities to ensure correct billing for pharmaceuticals.

3 SECTION 2.118. Section 531.085, Government Code, is amended
4 to read as follows:

5 Sec. 531.085. HOSPITAL EMERGENCY ROOM USE REDUCTION
6 INITIATIVES. The commission shall develop and implement a
7 comprehensive plan to reduce the use of hospital emergency room
8 services by recipients under Medicaid [~~the medical assistance~~
9 ~~program~~]. The plan may include:

10 (1) a pilot program designed to facilitate program
11 participants in accessing an appropriate level of health care,
12 which may include as components:

13 (A) providing program participants access to
14 bilingual health services providers; and

15 (B) giving program participants information on
16 how to access primary care physicians, advanced practice registered
17 nurses, and local health clinics;

18 (2) a pilot program under which health care providers,
19 other than hospitals, are given financial incentives for treating
20 recipients outside of normal business hours to divert those
21 recipients from hospital emergency rooms;

22 (3) payment of a nominal referral fee to hospital
23 emergency rooms that perform an initial medical evaluation of a
24 recipient and subsequently refer the recipient, if medically
25 stable, to an appropriate level of health care, such as care
26 provided by a primary care physician, advanced practice registered
27 nurse, or local clinic;

1 (4) a program under which the commission or a managed
2 care organization that enters into a contract with the commission
3 under Chapter 533 contacts, by telephone or mail, a recipient who
4 accesses a hospital emergency room three times during a six-month
5 period and provides the recipient with information on ways the
6 recipient may secure a medical home to avoid unnecessary treatment
7 at hospital emergency rooms;

8 (5) a health care literacy program under which the
9 commission develops partnerships with other state agencies and
10 private entities to:

11 (A) assist the commission in developing
12 materials that:

13 (i) contain basic health care information
14 for parents of young children who are recipients under Medicaid
15 [~~the medical assistance program~~] and who are participating in
16 public or private child-care or prekindergarten programs,
17 including federal Head Start programs; and

18 (ii) are written in a language
19 understandable to those parents and specifically tailored to be
20 applicable to the needs of those parents;

21 (B) distribute the materials developed under
22 Paragraph (A) to those parents; and

23 (C) otherwise teach those parents about the
24 health care needs of their children and ways to address those needs;
25 and

26 (6) other initiatives developed and implemented in
27 other states that have shown success in reducing the incidence of

1 unnecessary treatment in hospital emergency rooms.

2 SECTION 2.119. Sections 531.0861(a) and (b), Government
3 Code, are amended to read as follows:

4 (a) If cost-effective, the executive commissioner by rule
5 shall establish a physician incentive program designed to reduce
6 the use of hospital emergency room services for non-emergent
7 conditions by recipients under Medicaid [~~the medical assistance~~
8 ~~program~~].

9 (b) In establishing the physician incentive program under
10 Subsection (a), the executive commissioner may include only the
11 program components identified as cost-effective in the study
12 conducted under former Section 531.086.

13 SECTION 2.120. Section 531.087(a), Government Code, is
14 amended to read as follows:

15 (a) The commission shall ensure that educational materials
16 relating to the federal earned income tax credit are provided in
17 accordance with this section to each person receiving assistance or
18 benefits under:

19 (1) the child health plan program;

20 (2) the financial assistance program under Chapter 31,
21 Human Resources Code;

22 (3) Medicaid [~~the medical assistance program under~~
23 ~~Chapter 32, Human Resources Code~~];

24 (4) the supplemental nutrition assistance [~~food~~
25 ~~stamp~~] program under Chapter 33, Human Resources Code; or

26 (5) another appropriate health and human services
27 program.

1 SECTION 2.121. Section 531.089(b), Government Code, is
2 amended to read as follows:

3 (b) The executive commissioner [of the Health and Human
4 Services Commission] may adopt rules as necessary to implement this
5 section.

6 SECTION 2.122. Section 531.090(a), Government Code, is
7 amended to read as follows:

8 (a) Subject to Subsection (b), the commission and each
9 health and human services agency authorized by the executive
10 commissioner may enter into an agreement with one or more other
11 states for the joint bulk purchasing of prescription drugs and
12 other medications to be used in [the] Medicaid [program], the state
13 child health plan, or another program under the authority of the
14 commission.

15 SECTION 2.123. Section 531.091(b), Government Code, is
16 amended to read as follows:

17 (b) The method may:

18 (1) provide for the use of a single integrated
19 benefits issuance card or multiple cards capable of integrating
20 benefits issuance or other program functions;

21 (2) incorporate a fingerprint image identifier to
22 enable personal identity verification at a point of service and
23 reduce fraud [as permitted by Section 531.1063];

24 (3) enable immediate electronic verification of
25 recipient eligibility; and

26 (4) replace multiple forms, cards, or other methods
27 used for fraud reduction or provision of health and human services

1 benefits, including:

- 2 (A) electronic benefits transfer cards; and
3 (B) smart cards used in [the] Medicaid [program].

4 SECTION 2.124. Section 531.097, Government Code, is amended
5 to read as follows:

6 Sec. 531.097. TAILORED BENEFIT PACKAGES FOR CERTAIN
7 CATEGORIES OF THE MEDICAID POPULATION. (a) The executive
8 commissioner may seek a waiver under Section 1115 of the federal
9 Social Security Act (42 U.S.C. Section 1315) to develop and,
10 subject to Subsection (c), implement tailored benefit packages
11 designed to:

- 12 (1) provide Medicaid benefits that are customized to
13 meet the health care needs of recipients within defined categories
14 of the Medicaid population through a defined system of care;
15 (2) improve health outcomes for those recipients;
16 (3) improve those recipients' access to services;
17 (4) achieve cost containment and efficiency; and
18 (5) reduce the administrative complexity of
19 delivering Medicaid benefits.

20 (b) The commission:

- 21 (1) shall develop a tailored benefit package that is
22 customized to meet the health care needs of Medicaid recipients who
23 are children with special health care needs, subject to approval of
24 the waiver described by Subsection (a); and

- 25 (2) may develop tailored benefit packages that are
26 customized to meet the health care needs of other categories of
27 Medicaid recipients.

1 (c) If the commission develops tailored benefit packages
2 under Subsection (b)(2), the commission shall submit a report to
3 the standing committees of the senate and house of representatives
4 having primary jurisdiction over [the] Medicaid [program] that
5 specifies, in detail, the categories of Medicaid recipients to
6 which each of those packages will apply and the services available
7 under each package. [~~The commission may not implement a package~~
8 ~~developed under Subsection (b)(2) before September 1, 2009.~~]

9 (d) Except as otherwise provided by this section and subject
10 to the terms of the waiver authorized by this section, the
11 commission has broad discretion to develop the tailored benefit
12 packages under this section and determine the respective categories
13 of Medicaid recipients to which the packages apply in a manner that
14 preserves recipients' access to necessary services and is
15 consistent with federal requirements.

16 (e) Each tailored benefit package developed under this
17 section must include:

18 (1) a basic set of benefits that are provided under all
19 tailored benefit packages; and

20 (2) to the extent applicable to the category of
21 Medicaid recipients to which the package applies:

22 (A) a set of benefits customized to meet the
23 health care needs of recipients in that category; and

24 (B) services to integrate the management of a
25 recipient's acute and long-term care needs, to the extent feasible.

26 (f) In addition to the benefits required by Subsection (e),
27 a tailored benefit package developed under this section that

1 applies to Medicaid recipients who are children must provide at
2 least the services required by federal law under the early and
3 periodic screening, diagnosis, and treatment program.

4 (g) A tailored benefit package developed under this section
5 may include any service available under the state Medicaid plan or
6 under any federal Medicaid waiver, including any preventive health
7 or wellness service.

8 (g-1) A tailored benefit package developed under this
9 section must increase the state's flexibility with respect to the
10 state's use of Medicaid funding and may not reduce the benefits
11 available under the Medicaid state plan to any Medicaid recipient
12 population.

13 (h) In developing the tailored benefit packages, the
14 commission shall consider similar benefit packages established in
15 other states as a guide.

16 (i) The executive commissioner, by rule, shall define each
17 category of recipients to which a tailored benefit package applies
18 and a mechanism for appropriately placing recipients in specific
19 categories. Recipient categories must include children with
20 special health care needs and may include:

- 21 (1) persons with disabilities or special health needs;
- 22 (2) elderly persons;
- 23 (3) children without special health care needs; and
- 24 (4) working-age parents and caretaker relatives.

25 [(j) This section does not apply to a tailored benefit
26 package or similar package of benefits if, before September 1,
27 2007.]

1 [~~(1) a federal waiver was requested to implement the~~
2 ~~package of benefits;~~

3 [~~(2) the package of benefits is being developed, as~~
4 ~~directed by the legislature; or~~

5 [~~(3) the package of benefits has been implemented.~~]

6 SECTION 2.125. Sections 531.099(a) and (b), Government
7 Code, are amended to read as follows:

8 (a) The commission shall review forms and requirements
9 under [~~the~~] Medicaid [~~program~~] regarding written orders for
10 diabetic equipment and supplies to identify variations between
11 permissible ordering procedures under that program and ordering
12 procedures available to providers under the Medicare program.

13 (b) To the extent practicable, and in conformity with
14 Chapter 157, Occupations Code, and Chapter 483, Health and Safety
15 Code, after conducting a review under Subsection (a) the commission
16 or executive commissioner, as appropriate, shall modify only forms,
17 rules, and procedures applicable to orders for diabetic equipment
18 and supplies under [~~the~~] Medicaid [~~program~~] to provide for an
19 ordering system that is comparable to the ordering system for
20 diabetic equipment and supplies under the Medicare program. The
21 ordering system must permit a diabetic equipment or supplies
22 supplier to complete the forms by hand or to enter by electronic
23 format medical information or supply orders into any form as
24 necessary to provide the information required to dispense diabetic
25 equipment or supplies.

26 SECTION 2.126. Section 531.0995(a), Government Code, is
27 amended to read as follows:

1 (a) This section applies to individuals receiving benefits
2 under:

3 (1) the financial assistance program under Chapter 31,
4 Human Resources Code;

5 (2) Medicaid [~~the medical assistance program under~~
6 ~~Chapter 32, Human Resources Code~~]; or

7 (3) the supplemental nutrition assistance program
8 under Chapter 33, Human Resources Code.

9 SECTION 2.127. Section 531.0996(a), Government Code, is
10 amended to read as follows:

11 (a) The commission shall develop and implement a pilot
12 program in Harris County to create pregnancy medical homes that
13 provide coordinated evidence-based maternity care management to
14 women who reside in the pilot program area and are recipients of
15 Medicaid [~~medical assistance~~] through a Medicaid managed care model
16 or arrangement under Chapter 533.

17 SECTION 2.128. Section 531.0998(e), Government Code, is
18 amended to read as follows:

19 (e) Not later than October 1 of each year, the commission,
20 the Texas Veterans Commission, the Veterans' Land Board, and the
21 Department of Aging and Disability Services collectively shall
22 submit to the legislature, the governor, and the Legislative Budget
23 Board a report describing:

24 (1) interagency progress in identifying and obtaining
25 United States Department of Veterans Affairs benefits for veterans
26 receiving Medicaid and other public benefit programs;

27 (2) the number of veterans benefits claims awarded,

1 the total dollar amount of veterans benefits claims awarded, and
2 the costs to the state that were avoided as a result of state
3 agencies' use of the system;

4 (3) efforts to expand the use of the system and improve
5 the effectiveness of shifting veterans from Medicaid and other
6 public benefits to United States Department of Veterans Affairs
7 benefits, including any barriers and how state agencies have
8 addressed those barriers; and

9 (4) the extent to which the Texas Veterans Commission
10 has targeted specific populations of veterans, including
11 populations in rural counties and in specific age and
12 service-connected disability categories, in order to maximize
13 benefits for veterans and savings to the state.

14 SECTION 2.129. Sections [531.101\(a\)](#) and (b), Government
15 Code, are amended to read as follows:

16 (a) The commission may grant an award to an individual who
17 reports activity that constitutes fraud or abuse of funds in [~~the~~
18 ~~state~~] Medicaid [~~program~~] or reports overcharges in Medicaid [~~the~~
19 ~~program~~] if the commission determines that the disclosure results
20 in the recovery of an administrative penalty imposed under Section
21 [32.039](#), Human Resources Code. The commission may not grant an award
22 to an individual in connection with a report if the commission or
23 attorney general had independent knowledge of the activity reported
24 by the individual.

25 (b) The commission shall determine the amount of an award.
26 The award may not exceed five percent of the amount of the
27 administrative penalty imposed under Section [32.039](#), Human

1 Resources Code, that resulted from the individual's disclosure. In
2 determining the amount of the award, the commission shall consider
3 how important the disclosure is in ensuring the fiscal integrity of
4 Medicaid [~~the program~~]. The commission may also consider whether
5 the individual participated in the fraud, abuse, or overcharge.

6 SECTION 2.130. Sections [531.1011\(1\), \(6\), \(9\), and \(10\)](#),
7 Government Code, are amended to read as follows:

8 (1) "Abuse" means:

9 (A) a practice by a provider that is inconsistent
10 with sound fiscal, business, or medical practices and that results
11 in:

12 (i) an unnecessary cost to [~~the~~] Medicaid
13 [~~program~~]; or

14 (ii) the reimbursement of services that are
15 not medically necessary or that fail to meet professionally
16 recognized standards for health care; or

17 (B) a practice by a recipient that results in an
18 unnecessary cost to [~~the~~] Medicaid [~~program~~].

19 (6) "Payment hold" means the temporary denial of
20 reimbursement under [~~the~~] Medicaid [~~program~~] for items or services
21 furnished by a specified provider.

22 (9) "Program exclusion" means the suspension of a
23 provider from being authorized under [~~the~~] Medicaid [~~program~~] to
24 request reimbursement of items or services furnished by that
25 specific provider.

26 (10) "Provider" means a person, firm, partnership,
27 corporation, agency, association, institution, or other entity

1 that was or is approved by the commission to:

2 (A) provide Medicaid services [~~medical~~
3 ~~assistance~~] under a contract or provider agreement with the
4 commission; or

5 (B) provide third-party billing vendor services
6 under a contract or provider agreement with the commission.

7 SECTION 2.131. Sections [531.102\(e\)](#), (f), (m), and (n),
8 Government Code, are amended to read as follows:

9 (e) The executive commissioner [~~commission~~], in
10 consultation with the inspector general, by rule shall set specific
11 claims criteria that, when met, require the office to begin an
12 investigation.

13 (f)(1) If the commission receives a complaint or allegation
14 of Medicaid fraud or abuse from any source, the office must conduct
15 a preliminary investigation as provided by Section [531.118\(c\)](#) to
16 determine whether there is a sufficient basis to warrant a full
17 investigation. A preliminary investigation must begin not later
18 than the 30th day after the date the commission receives a complaint
19 or allegation or has reason to believe that fraud or abuse has
20 occurred. A preliminary investigation shall be completed not later
21 than the 90th day after it began.

22 (2) If the findings of a preliminary investigation
23 give the office reason to believe that an incident of fraud or abuse
24 involving possible criminal conduct has occurred in [~~the~~] Medicaid
25 [~~program~~], the office must take the following action, as
26 appropriate, not later than the 30th day after the completion of the
27 preliminary investigation:

1 (A) if a provider is suspected of fraud or abuse
2 involving criminal conduct, the office must refer the case to the
3 state's Medicaid fraud control unit, provided that the criminal
4 referral does not preclude the office from continuing its
5 investigation of the provider, which investigation may lead to the
6 imposition of appropriate administrative or civil sanctions; or

7 (B) if there is reason to believe that a
8 recipient has defrauded [the] Medicaid [program], the office may
9 conduct a full investigation of the suspected fraud, subject to
10 Section 531.118(c).

11 (m) The office shall employ a dental director who is a
12 licensed dentist under Subtitle D, Title 3, Occupations Code, and
13 the rules adopted under that subtitle by the State Board of Dental
14 Examiners, and who preferably has significant knowledge of [the]
15 Medicaid [program]. The dental director shall ensure that any
16 investigative findings based on the necessity of dental services or
17 the quality of dental care have been reviewed by a qualified expert
18 as described by the Texas Rules of Evidence before the office
19 imposes a payment hold or seeks recoupment of an overpayment,
20 damages, or penalties.

21 (n) To the extent permitted under federal law, the executive
22 commissioner, on behalf of the office, ~~[acting through the~~
23 ~~commission]~~ shall adopt rules establishing the criteria for
24 initiating a full-scale fraud or abuse investigation, conducting
25 the investigation, collecting evidence, accepting and approving a
26 provider's request to post a surety bond to secure potential
27 recoupments in lieu of a payment hold or other asset or payment

1 guarantee, and establishing minimum training requirements for
2 Medicaid provider fraud or abuse investigators.

3 SECTION 2.132. Section 531.102(1), Government Code, as
4 added by Chapter 622 (S.B. 1803), Acts of the 83rd Legislature,
5 Regular Session, 2013, is amended to read as follows:

6 (1) The office shall employ a medical director who is a
7 licensed physician under Subtitle B, Title 3, Occupations Code, and
8 the rules adopted under that subtitle by the Texas Medical Board,
9 and who preferably has significant knowledge of [the] Medicaid
10 [program]. The medical director shall ensure that any
11 investigative findings based on medical necessity or the quality of
12 medical care have been reviewed by a qualified expert as described
13 by the Texas Rules of Evidence before the office imposes a payment
14 hold or seeks recoupment of an overpayment, damages, or penalties.

15 SECTION 2.133. Subsection (1), Section 531.102, Government
16 Code, as added by Chapter 1311 (S.B. 8), Acts of the 83rd
17 Legislature, Regular Session, 2013, is redesignated as Subsection
18 (o), Section 531.102, Government Code, to read as follows:

19 (o) [~~(1)~~] Nothing in this section limits the authority of
20 any other state agency or governmental entity.

21 SECTION 2.134. Section 531.1021(a), Government Code, is
22 amended to read as follows:

23 (a) The office of inspector general may request that the
24 executive commissioner or the executive commissioner's designee
25 approve the issuance by the office of a subpoena in connection with
26 an investigation conducted by the office. If the request is
27 approved, the office may issue a subpoena to compel the attendance

1 of a relevant witness or the production, for inspection or copying,
2 of relevant evidence that is in this state.

3 SECTION 2.135. Section 531.1022(a), Government Code, is
4 amended to read as follows:

5 (a) The commission's office of inspector general shall
6 employ and commission not more than five peace officers at any given
7 time for the purpose of assisting the office in carrying out the
8 duties of the office relating to the investigation of fraud, waste,
9 and abuse in [the] Medicaid [program].

10 SECTION 2.136. Sections 531.103(a) and (c), Government
11 Code, are amended to read as follows:

12 (a) The commission, acting through the commission's office
13 of inspector general, and the office of the attorney general shall
14 enter into a memorandum of understanding to develop and implement
15 joint written procedures for processing cases of suspected fraud,
16 waste, or abuse, as those terms are defined by state or federal law,
17 or other violations of state or federal law under [the state]
18 Medicaid [program] or another [other] program administered by the
19 commission or a health and human services agency, including the
20 financial assistance program under Chapter 31, Human Resources
21 Code, the supplemental nutrition [~~a nutritional~~] assistance
22 program under Chapter 33, Human Resources Code, and the child
23 health plan program. The memorandum of understanding shall
24 require:

25 (1) the office of inspector general and the office of
26 the attorney general to set priorities and guidelines for referring
27 cases to appropriate state agencies for investigation,

1 prosecution, or other disposition to enhance deterrence of fraud,
2 waste, abuse, or other violations of state or federal law,
3 including a violation of Chapter 102, Occupations Code, in the
4 programs and maximize the imposition of penalties, the recovery of
5 money, and the successful prosecution of cases;

6 (1-a) the office of inspector general to refer each
7 case of suspected provider fraud, waste, or abuse to the office of
8 the attorney general not later than the 20th business day after the
9 date the office of inspector general determines that the existence
10 of fraud, waste, or abuse is reasonably indicated;

11 (1-b) the office of the attorney general to take
12 appropriate action in response to each case referred to the
13 attorney general, which action may include direct initiation of
14 prosecution, with the consent of the appropriate local district or
15 county attorney, direct initiation of civil litigation, referral to
16 an appropriate United States attorney, a district attorney, or a
17 county attorney, or referral to a collections agency for initiation
18 of civil litigation or other appropriate action;

19 (2) the office of inspector general to keep detailed
20 records for cases processed by that office or the office of the
21 attorney general, including information on the total number of
22 cases processed and, for each case:

23 (A) the agency and division to which the case is
24 referred for investigation;

25 (B) the date on which the case is referred; and

26 (C) the nature of the suspected fraud, waste, or
27 abuse;

1 (3) the office of inspector general to notify each
2 appropriate division of the office of the attorney general of each
3 case referred by the office of inspector general;

4 (4) the office of the attorney general to ensure that
5 information relating to each case investigated by that office is
6 available to each division of the office with responsibility for
7 investigating suspected fraud, waste, or abuse;

8 (5) the office of the attorney general to notify the
9 office of inspector general of each case the attorney general
10 declines to prosecute or prosecutes unsuccessfully;

11 (6) representatives of the office of inspector general
12 and of the office of the attorney general to meet not less than
13 quarterly to share case information and determine the appropriate
14 agency and division to investigate each case; and

15 (7) the office of inspector general and the office of
16 the attorney general to submit information requested by the
17 comptroller about each resolved case for the comptroller's use in
18 improving fraud detection.

19 (c) The commission and the office of the attorney general
20 shall jointly prepare and submit an annual report to the governor,
21 lieutenant governor, and speaker of the house of representatives
22 concerning the activities of those agencies in detecting and
23 preventing fraud, waste, and abuse under [~~the state~~] Medicaid
24 [~~program~~] or another [~~other~~] program administered by the commission
25 or a health and human services agency. The report may be
26 consolidated with any other report relating to the same subject
27 matter the commission or office of the attorney general is required

1 to submit under other law.

2 SECTION 2.137. Section 531.1031(a)(2), Government Code, is
3 amended to read as follows:

4 (2) "Participating agency" means:

5 (A) the Medicaid fraud enforcement divisions of
6 the office of the attorney general;

7 (B) each board or agency with authority to
8 license, register, regulate, or certify a health care professional
9 or managed care organization that may participate in [the state]
10 Medicaid [program]; and

11 (C) the commission's office of inspector
12 general.

13 SECTION 2.138. Section 531.1031(b), Government Code, is
14 amended to read as follows:

15 (b) This section applies only to criminal history record
16 information held by a participating agency that relates to a health
17 care professional and information held by a participating agency
18 that relates to a health care professional or managed care
19 organization that is the subject of an investigation by a
20 participating agency for alleged fraud or abuse under [the state]
21 Medicaid [program].

22 SECTION 2.139. Section 531.105, Government Code, is amended
23 to read as follows:

24 Sec. 531.105. FRAUD DETECTION TRAINING. (a) The
25 commission shall develop and implement a program to provide annual
26 training to contractors who process Medicaid claims and to
27 appropriate staff of the health and human services agencies [Texas

1 ~~Department of Health and the Texas Department of Human Services~~] in
2 identifying potential cases of fraud, waste, or abuse under [~~the~~
3 ~~state~~] Medicaid [program]. The training provided to the
4 contractors and staff must include clear criteria that specify:

5 (1) the circumstances under which a person should
6 refer a potential case to the commission; and
7 (2) the time by which a referral should be made.

8 (b) The health and human services agencies [~~Texas~~
9 ~~Department of Health and the Texas Department of Human Services~~],
10 in cooperation with the commission, shall periodically set a goal
11 of the number of potential cases of fraud, waste, or abuse under
12 [~~the state~~] Medicaid [program] that each agency will attempt to
13 identify and refer to the commission. The commission shall include
14 information on the agencies' goals and the success of each agency in
15 meeting the agency's goal in the report required by Section
16 [531.103\(c\)](#).

17 SECTION 2.140. Sections [531.106\(a\), \(d\), \(f\), and \(g\)](#),
18 Government Code, are amended to read as follows:

19 (a) The commission shall use learning or neural network
20 technology to identify and deter fraud in [~~the~~] Medicaid [program]
21 throughout this state.

22 (d) The commission shall require each health and human
23 services agency that performs any aspect of [~~the state~~] Medicaid
24 [program] to participate in the implementation and use of the
25 technology.

26 (f) The commission shall refer cases identified by the
27 technology to the commission's office of inspector general

1 [investigations and enforcement] or the office of the attorney
2 general, as appropriate.

3 (g) Each month, the learning or neural network technology
4 implemented under this section must match [bureau of] vital
5 statistics unit death records with Medicaid claims filed by a
6 provider. If the commission determines that a provider has filed a
7 claim for services provided to a person after the person's date of
8 death, as determined by the [bureau of] vital statistics unit death
9 records, the commission shall refer the case for investigation to
10 the commission's office of inspector general [investigations and
11 enforcement].

12 SECTION 2.141. Sections 531.1061(a) and (c), Government
13 Code, are amended to read as follows:

14 (a) The commission shall use an automated fraud
15 investigation tracking system through the commission's office of
16 inspector general [investigations and enforcement] to monitor the
17 progress of an investigation of suspected fraud, abuse, or
18 insufficient quality of care under [the state] Medicaid [program].

19 (c) The commission shall require each health and human
20 services agency that performs any aspect of [the state] Medicaid
21 [program] to participate in the implementation and use of the
22 automated fraud investigation tracking system.

23 SECTION 2.142. Section 531.1062(a), Government Code, is
24 amended to read as follows:

25 (a) The commission shall use an automated recovery
26 monitoring system to monitor the collections process for a settled
27 case of fraud, abuse, or insufficient quality of care under [the

1 state] Medicaid [program].

2 SECTION 2.143. Sections 531.107(a), (b), and (f),
3 Government Code, are amended to read as follows:

4 (a) The Medicaid and Public Assistance Fraud Oversight Task
5 Force advises and assists the commission and the commission's
6 office of inspector general [~~investigations and enforcement~~] in
7 improving the efficiency of fraud investigations and collections.

8 (b) The task force is composed of a representative of the:

9 (1) attorney general's office, appointed by the
10 attorney general;

11 (2) comptroller's office, appointed by the
12 comptroller;

13 (3) Department of Public Safety, appointed by the
14 public safety director;

15 (4) state auditor's office, appointed by the state
16 auditor;

17 (5) commission, appointed by the executive
18 commissioner [~~of health and human services~~];

19 (6) [~~Texas~~] Department of Aging and Disability [~~Human~~]
20 Services, appointed by the commissioner of aging and disability
21 [~~human~~] services;

22 (7) Texas Department of Insurance, appointed by the
23 commissioner of insurance; [~~and~~]

24 (8) [~~Texas~~] Department of State Health Services,
25 appointed by the commissioner of state [~~public~~] health services;
26 and

27 (9) commission's office of inspector general,

1 appointed by the executive commissioner.

2 (f) At least once each fiscal quarter, the commission's
3 office of inspector general [~~investigations and enforcement~~] shall
4 provide to the task force:

5 (1) information detailing:

6 (A) the number of fraud referrals made to the
7 office and the origin of each referral;

8 (B) the time spent investigating each case;

9 (C) the number of cases investigated each month,
10 by program and region;

11 (D) the dollar value of each fraud case that
12 results in a criminal conviction; and

13 (E) the number of cases the office rejects and
14 the reason for rejection, by region; and

15 (2) any additional information the task force
16 requires.

17 SECTION 2.144. Sections 531.108(a) and (b), Government
18 Code, are amended to read as follows:

19 (a) The commission's office of inspector general
20 [~~investigations and enforcement~~] shall compile and disseminate
21 accurate information and statistics relating to:

22 (1) fraud prevention; and

23 (2) post-fraud referrals received and accepted or
24 rejected from the commission's case management system or the case
25 management system of a health and human services agency.

26 (b) The commission shall:

27 (1) aggressively publicize successful fraud

1 prosecutions and fraud-prevention programs through all available
2 means, including the use of statewide press releases [~~issued in~~
3 ~~coordination with the Texas Department of Human Services~~]; and

4 (2) ensure that a toll-free hotline for reporting
5 suspected fraud in programs administered by the commission or a
6 health and human services agency is maintained and promoted, either
7 by the commission or by a health and human services agency.

8 SECTION 2.145. Section 531.109(a), Government Code, is
9 amended to read as follows:

10 (a) The commission shall annually select and review a
11 random, statistically valid sample of all claims for reimbursement
12 under [~~the state~~] Medicaid [~~program~~], including under the vendor
13 drug program, for potential cases of fraud, waste, or abuse.

14 SECTION 2.146. Sections 531.110(a), (b), (c), and (e),
15 Government Code, are amended to read as follows:

16 (a) The commission shall conduct electronic data matches
17 for a Medicaid recipient [~~of assistance under the state Medicaid~~
18 ~~program~~] at least quarterly to verify the identity, income,
19 employment status, and other factors that affect the eligibility of
20 the recipient.

21 (b) To verify eligibility of a recipient for [~~assistance~~
22 ~~under the state~~] Medicaid [~~program~~], the electronic data matching
23 must match information provided by the recipient with information
24 contained in databases maintained by appropriate federal and state
25 agencies.

26 (c) The health and human services agencies [~~Texas~~
27 ~~Department of Human Services~~] shall cooperate with the commission

1 by providing data or any other assistance necessary to conduct the
2 electronic data matches required by this section.

3 (e) The executive commissioner shall establish procedures
4 by which the commission, or a health and human services agency
5 designated by the commission, verifies [~~by rule shall establish~~
6 ~~procedures to verify~~] the electronic data matches conducted by the
7 commission under this section. Not later than the 20th day after
8 the date the electronic data match is verified, the commission
9 [~~Texas Department of Human Services~~] shall remove from eligibility
10 a recipient who is determined to be ineligible for [~~assistance~~
11 ~~under the state~~] Medicaid [~~program~~].

12 SECTION 2.147. Section 531.111, Government Code, is amended
13 to read as follows:

14 Sec. 531.111. FRAUD DETECTION TECHNOLOGY. The commission
15 may contract with a contractor who specializes in developing
16 technology capable of identifying patterns of fraud exhibited by
17 Medicaid recipients to:

18 (1) develop and implement the fraud detection
19 technology; and

20 (2) determine if a pattern of fraud by Medicaid
21 recipients is present in the recipients' eligibility files
22 maintained by the commission [~~Texas Department of Human Services~~].

23 SECTION 2.148. Section 531.1112(a), Government Code, is
24 amended to read as follows:

25 (a) The commission and the commission's office of inspector
26 general shall jointly study the feasibility of increasing the use
27 of technology to strengthen the detection and deterrence of fraud

1 in [~~the state~~] Medicaid [~~program~~]. The study must include the
2 determination of the feasibility of using technology to verify a
3 person's citizenship and eligibility for coverage.

4 SECTION 2.149. Section 531.112(a)(1), Government Code, is
5 amended to read as follows:

6 (1) "Chemical dependency" has the meaning assigned by
7 Section 461A.002 [461.002], Health and Safety Code.

8 SECTION 2.150. Section 531.112(b), Government Code, is
9 amended to read as follows:

10 (b) Following the final conviction of a chemical dependency
11 treatment provider for an offense, an element of which involves
12 submitting a fraudulent claim for reimbursement for services under
13 [~~the state~~] Medicaid [~~program~~], the commission or other health and
14 human services agency that operates a portion of [~~the state~~]
15 Medicaid [~~program~~] shall expunge or provide for the expunction of a
16 diagnosis of chemical dependency in a child that has been made by
17 the treatment provider and entered in any:

18 (1) appropriate official record of the commission or
19 agency;

20 (2) applicable medical record that is in the
21 commission's or agency's custody; and

22 (3) applicable record of a company that the commission
23 contracts with for the processing and payment of claims under [~~the~~
24 ~~state~~] Medicaid [~~program~~].

25 SECTION 2.151. Sections 531.113(a) and (e), Government
26 Code, are amended to read as follows:

27 (a) Each managed care organization that provides or

1 arranges for the provision of health care services to an individual
2 under a government-funded program, including [~~the~~] Medicaid
3 [~~program~~] and the child health plan program, shall:

4 (1) establish and maintain a special investigative
5 unit within the managed care organization to investigate fraudulent
6 claims and other types of program abuse by recipients and service
7 providers; or

8 (2) contract with another entity for the investigation
9 of fraudulent claims and other types of program abuse by recipients
10 and service providers.

11 (e) The executive commissioner shall adopt rules as
12 necessary to accomplish the purposes of this section.

13 SECTION 2.152. Section 531.1131(a), Government Code, is
14 amended to read as follows:

15 (a) If a managed care organization's special investigative
16 unit under Section 531.113(a)(1) or the entity with which the
17 managed care organization contracts under Section 531.113(a)(2)
18 discovers fraud or abuse in [~~the~~] Medicaid [~~program~~] or the child
19 health plan program, the unit or entity shall:

20 (1) immediately and contemporaneously notify the
21 commission's office of inspector general and the office of the
22 attorney general;

23 (2) subject to Subsection (b), begin payment recovery
24 efforts; and

25 (3) ensure that any payment recovery efforts in which
26 the organization engages are in accordance with applicable rules
27 adopted by the executive commissioner.

1 SECTION 2.153. Section 531.114(g), Government Code, is
2 amended to read as follows:

3 (g) The executive commissioner [commission] shall adopt
4 rules as necessary to implement this section.

5 SECTION 2.154. Section 531.116, Government Code, is amended
6 to read as follows:

7 Sec. 531.116. COMPLIANCE WITH LAW PROHIBITING
8 SOLICITATION. A provider who furnishes services under [the]
9 Medicaid [program] or the child health plan program is subject to
10 Chapter 102, Occupations Code, and the provider's compliance with
11 that chapter is a condition of the provider's eligibility to
12 participate as a provider under those programs.

13 SECTION 2.155. Section 531.117, Government Code, is amended
14 to read as follows:

15 Sec. 531.117. RECOVERY AUDIT CONTRACTORS. To the extent
16 required under Section 1902(a)(42), Social Security Act (42 U.S.C.
17 Section 1396a(a)(42)), the commission shall establish a program
18 under which the commission contracts with one or more recovery
19 audit contractors for purposes of identifying underpayments and
20 overpayments under [the] Medicaid [program] and recovering the
21 overpayments.

22 SECTION 2.156. Sections 531.121(2), (4), and (6),
23 Government Code, are amended to read as follows:

24 (2) "Guardian" has the meaning assigned by Section
25 1002.012, Estates [601, Texas Probate] Code.

26 (4) "Incapacitated individual" means an incapacitated
27 person as defined by Section 1002.017, Estates [601, Texas Probate]

1 Code.

2 (6) "Statutory probate court" has the meaning assigned
3 by Section 1002.008(b), Estates [601, ~~Texas Probate~~] Code.

4 SECTION 2.157. Sections 531.122(c) and (f), Government
5 Code, are amended to read as follows:

6 (c) To be eligible for an appointment under this section, an
7 individual must have demonstrated experience working with:

8 (1) a guardianship program;

9 (2) an organization that advocates on behalf of or in
10 the interest of elderly individuals or individuals with mental
11 illness or an intellectual disability [~~mental retardation~~]; or

12 (3) incapacitated individuals.

13 (f) Sections 2110.002 and 2110.008 [2 and 8, Article
14 ~~6252-33, Revised Statutes~~] do not apply to the advisory board.

15 SECTION 2.158. Section 531.125(a), Government Code, is
16 amended to read as follows:

17 (a) The commission in accordance with commission rules [~~by~~
18 ~~rule~~] may award grants to:

19 (1) a local guardianship program, subject to the
20 requirements of this section; and

21 (2) a local legal guardianship program to enable
22 low-income family members and friends to have legal representation
23 in court if they are willing and able to be appointed guardians of
24 proposed wards who are indigent.

25 SECTION 2.159. Section 531.151(3), Government Code, is
26 amended to read as follows:

27 (3) "Institution" means:

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(B) a group home operated under the authority of
the [Texas] Department of Aging and Disability Services [Mental
Health and Mental Retardation], including a residential service
provider under a Medicaid waiver program authorized under Section
1915(c) of the federal Social Security Act (42 U.S.C. Section
1396n), as amended, that provides services at a residence other
than the child's home or foster home;

10 (C) a foster group home or an agency foster group
11 home as defined by Section [42.002](#), Human Resources Code;

12 (D) a nursing facility;

13 (E) a general residential operation for children
14 with an intellectual disability that is [an institution for the
15 mentally retarded] licensed by the Department of Family and
16 Protective [and Regulatory] Services; or

17 (F) another residential arrangement other than a
18 foster home as defined by Section [42.002](#), Human Resources Code,
19 that provides care to four or more children who are unrelated to
20 each other.

21 SECTION 2.160. Sections 531.1521(a) and (b), Government
22 Code, are amended to read as follows:

23 (a) The executive commissioner by rule shall develop and
24 implement a system by which the Department of Aging and Disability
25 Services ensures that, for each child with respect to whom the
26 department or a local intellectual and developmental disability
27 [~~mental retardation~~] authority is notified of a request for

1 placement in an institution, the child's parent or guardian is
2 fully informed before the child is placed in the institution of all
3 community-based services and any other service and support options
4 for which the child may be eligible. The system must be designed to
5 ensure that the department provides the information through:

6 (1) a local intellectual and developmental disability
7 [mental retardation] authority;

8 (2) any private entity that has knowledge and
9 expertise regarding the needs of and full spectrum of care options
10 available to children with disabilities as well as the philosophy
11 and purpose of permanency planning; or

12 (3) a department employee.

13 (b) An institution in which a child's parent or guardian is
14 considering placing the child may provide information required
15 under Subsection (a), but the information must also be provided by a
16 local intellectual and developmental disability [mental
17 retardation] authority, private entity, or employee of the
18 Department of Aging and Disability Services as required by
19 Subsection (a).

20 SECTION 2.161. Sections 531.153(b), (d), (d-1), and (e),
21 Government Code, are amended to read as follows:

22 (b) The Department of Family and Protective [and
23 ~~Regulatory~~] Services shall develop a permanency plan as required by
24 this subchapter for each child who resides in an institution in this
25 state for whom the department has been appointed permanent managing
26 conservator. The department is not required to develop a
27 permanency plan under this subchapter for a child for whom the

1 department has been appointed temporary managing conservator, but
2 may incorporate the requirements of this subchapter in a permanency
3 plan developed for the child under Section [263.3025](#), Family Code.

4 (d) In implementing permanency planning procedures under
5 Subsection (a) to develop a permanency plan for each child, the
6 Department of Aging and Disability Services shall:

7 (1) delegate the department's duty to develop a
8 permanency plan to a local intellectual and developmental
9 disability [~~mental retardation~~] authority, as defined by Section
10 [531.002](#), Health and Safety Code, or enter into a memorandum of
11 understanding with the local intellectual and developmental
12 disability [~~mental retardation~~] authority to develop the
13 permanency plan for each child who resides in an institution in this
14 state or with respect to whom the department is notified in advance
15 that institutional care is sought;

16 (2) contract with a private entity, other than an
17 entity that provides long-term institutional care, to develop a
18 permanency plan for a child who resides in an institution in this
19 state or with respect to whom the department is notified in advance
20 that institutional care is sought; or

21 (3) perform the department's duties regarding
22 permanency planning procedures using department personnel.

23 (d-1) A contract or memorandum of understanding under
24 Subsection (d) must include performance measures by which the
25 Department of Aging and Disability Services may evaluate the
26 effectiveness of a local intellectual and developmental disability
27 [~~mental retardation~~] authority's or private entity's permanency

1 planning efforts.

2 (e) The commission, the Department of Aging and Disability
3 Services, [~~Texas Department of Human Services, the Texas Department~~
4 ~~of Mental Health and Mental Retardation,~~] and the Department of
5 Family and Protective [~~and Regulatory~~] Services may solicit and
6 accept gifts, grants, and donations to support the development of
7 permanency plans for children residing in institutions by
8 individuals or organizations not employed by or affiliated with
9 those institutions.

10 SECTION 2.162. Section 531.1531, Government Code, is
11 amended to read as follows:

12 Sec. 531.1531. ASSISTANCE WITH PERMANENCY PLANNING
13 EFFORTS. An institution in which a child resides shall assist with
14 providing effective permanency planning for the child by:

15 (1) cooperating with the health and human services
16 agency, local intellectual and developmental disability [~~mental~~
17 ~~retardation~~] authority, or private entity responsible for
18 developing the child's permanency plan; and

19 (2) participating in meetings to review the child's
20 permanency plan as requested by a health and human services agency,
21 local intellectual and developmental disability [~~mental~~
22 ~~retardation~~] authority, or private entity responsible for
23 developing the child's permanency plan.

24 SECTION 2.163. Section 531.154, Government Code, is amended
25 to read as follows:

26 Sec. 531.154. NOTIFICATION REQUIRED. (a) Not later than
27 the third day after the date a child is initially placed in an

1 institution, the institution shall notify:

2 (1) the Department of Aging and Disability Services
3 [~~Texas Department of Human Services~~], if the child is placed in a
4 nursing facility [~~home~~];

5 (2) the local intellectual and developmental
6 disability [~~mental retardation~~] authority, as defined by Section
7 531.002, Health and Safety Code, where the institution is located,
8 if the child:

9 (A) is placed in an ICF-IID [~~ICF-MR~~], as defined
10 by Section 531.002, Health and Safety Code; or

11 (B) is placed by a [~~state or local~~] child
12 protective services agency in a general residential operation for
13 children with an intellectual disability that is [~~an institution~~
14 ~~for the mentally retarded~~] licensed by the Department of Family and
15 Protective [~~and Regulatory~~] Services;

16 (3) the community resource coordination group in the
17 county of residence of a parent or guardian of the child;

18 (4) if the child is at least three years of age, the
19 school district for the area in which the institution is located;
20 and

21 (5) if the child is less than three years of age, the
22 local early childhood intervention program for the area in which
23 the institution is located.

24 (b) The [~~Texas~~] Department of Aging and Disability [~~Human~~]
25 Services shall notify the local intellectual and developmental
26 disability [~~mental retardation~~] authority, as defined by Section
27 531.002, Health and Safety Code, of a child's placement in a nursing

1 facility [~~home~~] if the child is known or suspected to have an
2 intellectual disability [~~suffer from mental retardation~~] or
3 another disability for which the child may receive services through
4 the [~~Texas~~] Department of Aging and Disability Services [~~Mental~~
5 ~~Health and Mental Retardation~~].

6 SECTION 2.164. Section 531.156, Government Code, is amended
7 to read as follows:

8 Sec. 531.156. DESIGNATION OF ADVOCATE. (a) The Department
9 of Aging and Disability Services [~~Except as provided by Subsection~~
10 **(b)**, ~~the Texas Department of Human Services~~] shall designate a
11 person, including a member of a community-based organization, to
12 serve as a volunteer advocate for a child residing in an institution
13 to assist in developing a permanency plan for the child if:

14 (1) the child's parent or guardian requests the
15 assistance of an advocate; [~~or~~]

16 (2) the institution in which the child is placed
17 cannot locate the child's parent or guardian; or [~~or~~]

18 (3) [~~(b) The Texas Department of Mental Health and~~
19 ~~Mental Retardation shall designate the person to serve as a~~
20 ~~volunteer advocate for a child in accordance with Subsection (a)~~
21 ~~if~~] the child resides in an institution operated by the department.

22 (b) [~~(e)~~] The person designated [~~by the Texas Department of~~
23 ~~Human Services or the Texas Department of Mental Health and Mental~~
24 ~~Retardation~~] to serve as the child's volunteer advocate under this
25 section may be:

26 (1) a person selected by the child's parent or
27 guardian, except that the person may not be employed by or under a

1 contract with the institution in which the child resides;

2 (2) an adult relative of the child; or

3 (3) a representative of a child advocacy group.

4 (c) [(d)] The [Texas Department of Human Services or the

5 Texas] Department of Aging and Disability Services [Mental Health

6 and Mental Retardation, as appropriate,] shall provide to each

7 person designated to serve as a child's volunteer advocate

8 information regarding permanency planning under this subchapter.

9 SECTION 2.165. Sections 531.159(b), (c), (d), (e), and (f),
10 Government Code, are amended to read as follows:

(b) The chief executive officer of each appropriate health and human services agency or the officer's designee must approve the placement of a child in an institution. The initial placement of the child in the institution is temporary and may not exceed six months unless the appropriate chief executive officer or the officer's designee approves an extension of an additional six months after conducting a review of documented permanency planning efforts to unite the child with a family in a permanent living arrangement. After the initial six-month extension of a child's placement in an institution approved under this subsection, the chief executive officer or the officer's designee shall conduct a review of the child's placement in the institution at least semiannually to determine whether a continuation of that placement is warranted. If, based on the review, the chief executive officer or the officer's designee determines that an additional extension is warranted, the officer or the officer's designee shall recommend to the executive commissioner that the child continue residing in

1 the institution.

2 (c) On receipt of a recommendation made under Subsection (b)
3 for an extension of a child's placement, the executive
4 commissioner, the executive commissioner's designee, or another
5 person with whom the commission contracts shall conduct a review of
6 the child's placement. Based on the results of the review, the
7 executive commissioner or the executive commissioner's designee
8 may approve a six-month extension of the child's placement if the
9 extension is appropriate.

10 (d) The child may continue residing in the institution after
11 the six-month extension approved under Subsection (c) only if the
12 chief executive officer of the appropriate health and human
13 services agency or the officer's designee makes subsequent
14 recommendations as provided by Subsection (b) for each additional
15 six-month extension and the executive commissioner or the executive
16 commissioner's designee approves each extension as provided by
17 Subsection (c).

18 (e) The executive commissioner or the executive
19 commissioner's designee shall conduct a semiannual review of data
20 received from health and human services agencies regarding all
21 children who reside in institutions in this state. The executive
22 commissioner, the executive commissioner's designee, or a person
23 with whom the commission contracts shall also review the
24 recommendations of the chief executive officers of each appropriate
25 health and human services agency or the officer's designee if the
26 officer or the officer's designee repeatedly recommends that
27 children continue residing in an institution.

1 (f) The executive commissioner [commission] by rule shall
2 develop procedures by which to conduct the reviews required by
3 Subsections (c), (d), and (e). In developing the procedures, the
4 commission may seek input from the work group on children's
5 long-term services, health services, and mental health services
6 established under Section [22.035](#), Human Resources Code.

7 SECTION 2.166. Section [531.160](#), Government Code, is amended
8 to read as follows:

9 Sec. 531.160. INSPECTIONS. As part of each inspection,
10 survey, or investigation of an institution, including a nursing
11 facility [home], general residential operation for children with an
12 intellectual disability that is [institution for the mentally
13 retarded] licensed by the Department of Family and Protective [and
14 Regulatory] Services, or ICF-IID [ICF-MR], as defined by Section
15 [531.002](#), Health and Safety Code, in which a child resides, the
16 agency or the agency's designee shall determine the extent to which
17 the nursing facility [home], general residential operation
18 [institution], or ICF-IID [ICF-MR] is complying with the permanency
19 planning requirements under this subchapter.

20 SECTION 2.167. Section [531.161](#), Government Code, is amended
21 to read as follows:

22 Sec. 531.161. ACCESS TO RECORDS. Each institution in which
23 a child resides shall allow the following to have access to the
24 child's records to assist in complying with the requirements of
25 this subchapter:

- 26 (1) the commission;
27 (2) appropriate health and human services agencies;

1 and

2 (3) to the extent not otherwise prohibited by state or
3 federal confidentiality laws, a local intellectual and
4 developmental disability [~~mental retardation~~] authority or private
5 entity that enters into a contract or memorandum of understanding
6 under Section 531.153(d) to develop a permanency plan for the
7 child.

8 SECTION 2.168. Section 531.162(b), Government Code, is
9 amended to read as follows:

10 (b) The executive commissioner shall submit a semiannual
11 report to the governor and the committees of each house of the
12 legislature that have primary oversight jurisdiction over health
13 and human services agencies regarding:

14 (1) the number of children residing in institutions in
15 this state and, of those children, the number for whom a
16 recommendation has been made for a transition to a community-based
17 residence but who have not yet made that transition;

18 (2) the circumstances of each child described by
19 Subdivision (1), including the type of institution and name of the
20 institution in which the child resides, the child's age, the
21 residence of the child's parents or guardians, and the length of
22 time in which the child has resided in the institution;

23 (3) the number of permanency plans developed for
24 children residing in institutions in this state, the progress
25 achieved in implementing those plans, and barriers to implementing
26 those plans;

27 (4) the number of children who previously resided in

1 an institution in this state and have made the transition to a
2 community-based residence;

3 (5) the number of children who previously resided in
4 an institution in this state and have been reunited with their
5 families or placed with alternate families;

6 (6) the community supports that resulted in the
7 successful placement of children described by Subdivision (5) with
8 alternate families; and

9 (7) the community supports that are unavailable but
10 necessary to address the needs of children who continue to reside in
11 an institution in this state after being recommended to make a
12 transition from the institution to an alternate family or
13 community-based residence.

14 SECTION 2.169. Sections [531.164](#)(b), (e), (f), (g), and (h),
15 Government Code, are amended to read as follows:

16 (b) An institution described by Section [531.151](#)(3)(A) or
17 (B) shall notify the local intellectual and developmental
18 disability [~~mental retardation~~] authority for the region in which
19 the institution is located of a request for placement of a child in
20 the institution. An institution described by Section [531.151](#)(3)(D)
21 shall notify the Department of Aging and Disability Services of a
22 request for placement of a child in the institution.

23 (e) Except as otherwise provided by Subsection (f):

24 (1) an ICF-IID [~~ICF-MR~~] must:

25 (A) attempt to notify the parent or guardian of a
26 child who resides in the ICF-IID [~~ICF-MR~~] in writing of a periodic
27 permanency planning meeting or annual service plan review and

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1 reauthorization meeting not later than the 21st day before the date
2 the meeting is scheduled to be held; and

3 (B) request a response from the parent or
4 guardian; and

5 (2) a nursing facility must:

10 (B) request a response from the parent or
11 guardian.

12 (f) If an emergency situation involving a child residing in
13 an ICF-IID [ICF-MR] or nursing facility occurs, the ICF-IID
14 [ICF-MR] or nursing facility as applicable must:

(2) request a response from the parent or guardian.

18 (g) If a child's parent or guardian does not respond to a
19 notice under Subsection (e) or (f), the ICF-IID [~~ICF-MR~~] or nursing
20 facility, as applicable, must attempt to locate the parent or
21 guardian by contacting another person whose information was
22 provided by the parent or guardian under Section 531.1533(1)(B).

23 (h) Not later than the 30th day after the date an ICF-IID
24 [ICF-MR] or nursing facility determines that it is unable to locate
25 a child's parent or guardian for participation in activities listed
26 under Subsection (e)(1) or (2), the ICF-IID [ICF-MR] or nursing
27 facility must notify the Department of Aging and Disability

1 Services of that determination and request that the department
2 initiate a search for the child's parent or guardian.

3 SECTION 2.170. Section 531.171, Government Code, is amended
4 to read as follows:

5 Sec. 531.171. COMMITTEE DUTIES. (a) The standing or other
6 committees of the house of representatives and the senate that have
7 jurisdiction over the commission [Health and Human Services
8 Commission] and other agencies relating to implementation of this
9 chapter, as identified by the speaker of the house of
10 representatives and the lieutenant governor, shall:

11 (1) monitor the commission's implementation of Section
12 531.0055 and the commission's other duties in consolidating and
13 integrating health and human services to ensure implementation
14 consistent with law;

15 (2) recommend, as needed, adjustments to the
16 implementation of Section 531.0055 and the commission's other
17 duties in consolidating and integrating health and human services;
18 and

19 (3) review the rulemaking process used by the
20 commission, including the commission's plan for obtaining public
21 input.

22 (b) The commission shall provide copies of all required
23 reports to the committees and shall provide the committees with
24 copies of proposed rules before the rules are published in the Texas
25 Register. At the request of a committee or the executive
26 commissioner, a health and human services agency shall provide
27 other information to the committee, including information relating

1 to the health and human services system, and shall report on agency
2 progress in implementing statutory directives identified by the
3 committee and the directives of the commission.

4 SECTION 2.171. Section 531.191(a), Government Code, is
5 amended to read as follows:

6 (a) The commission, subject to the approval of the governor
7 and the Legislative Budget Board, shall develop and implement a
8 plan for the integration of services and functions relating to
9 eligibility determination and service delivery by health and human
10 services agencies, the Texas Workforce Commission, and other
11 agencies. The plan must include a reengineering of eligibility
12 determination business processes, streamlined service delivery, a
13 unified and integrated process for the transition from welfare to
14 work, and improved access to benefits and services for clients. In
15 developing and implementing the plan, the commission:

16 (1) shall give priority to the design and development
17 of computer hardware and software for and provide technical support
18 relating to the integrated eligibility determination system;

19 (2) shall consult with agencies whose programs are
20 included in the plan, including the [Texas] Department of Aging and
21 Disability [Human] Services, the Department of State Health
22 Services [~~Texas Department of Health~~], and the Texas Workforce
23 Commission;

24 (3) may contract for appropriate professional and
25 technical assistance; and

26 (4) may use the staff and resources of agencies whose
27 programs are included in the plan.

1 SECTION 2.172. Sections 531.251(a-1) and (a-2), Government
2 Code, are amended to read as follows:

3 (a-1) The consortium must include:

4 (1) representatives of the Department of State Health
5 Services, Department of Family and Protective Services,
6 commission's [~~Health and Human Services Commission's~~] Medicaid
7 program, Texas Education Agency, Texas Juvenile Justice
8 Department, and Texas Correctional Office on Offenders with Medical
9 or Mental Impairments; and

10 (2) one member who is:

11 (A) a youth or young adult who has a serious
12 emotional disturbance and has received mental health services and
13 supports; or

14 (B) [~~(3)~~] a family member of a youth or young
15 adult described by Paragraph (A) [~~Subdivision (2)~~].

16 (a-2) The consortium may coordinate with the Children's
17 Policy Council for the purposes of including the representation
18 required by Subsection [~~Subsections~~] (a-1)(2) [~~and (3)~~].

19 SECTION 2.173. The heading to Subchapter H, Chapter 531,
20 Government Code, is amended to read as follows:

21 SUBCHAPTER H. OFFICE OF HEALTH [~~EARLY CHILDHOOD~~] COORDINATION AND
22 CONSUMER SERVICES

23 SECTION 2.174. Section 531.281, Government Code, is amended
24 to read as follows:

25 Sec. 531.281. DEFINITION [~~DEFINITIONS~~]. In this chapter,
26 "office" [+

27 [(1) "Office"]] means the Office of Health [~~Early~~

1 ~~Childhood~~] Coordination and Consumer Services.

2 [+(2) "Advisory committee" means the Office of Early
3 ~~Childhood Coordination Advisory Committee.]~~

4 SECTION 2.175. Sections 531.282(a) and (b), Government
5 Code, are amended to read as follows:

6 (a) The Office of Health ~~Early Childhood~~ Coordination and
7 Consumer Services is an office within the commission.

8 (b) The executive commissioner shall employ staff as needed
9 to carry out the duties of the office.

10 SECTION 2.176. Section 531.284(b), Government Code, is
11 amended to read as follows:

12 (b) In developing the statewide strategic plan, the office
13 shall:

14 (1) consider existing programs and models to serve
15 children younger than six years of age, including:

16 (A) community resource coordination groups;

17 (B) the Texas System of Care [~~Integrated Funding~~
18 ~~Initiative~~];

19 (C) the Texas Information and Referral Network;
20 and

21 (D) efforts to create a 2-1-1 telephone number
22 for access to human services;

23 (2) attempt to maximize federal funds and local
24 existing infrastructure and funds; and

25 (3) provide for local participation to the greatest
26 extent possible.

27 SECTION 2.177. Section 531.285(a), Government Code, is

1 amended to read as follows:

2 (a) The office shall identify:

3 (1) gaps in early childhood services by functional
4 area and geographical area;

5 (2) state policies, rules, and service procedures that
6 prevent or inhibit children younger than six years of age from
7 accessing available services;

8 (3) sources of funds for early childhood services,
9 including federal, state, and private-public ventures;

10 (4) opportunities for collaboration between the Texas
11 Education Agency and health and human services agencies to better
12 serve the needs of children younger than six years of age;

13 (5) methods for coordinating the provision of early
14 childhood services provided by the Texas Head Start State
15 [~~Start-State~~] Collaboration Office [~~Project~~], the Texas Education
16 Agency, and the Texas Workforce Commission;

17 (6) quantifiable benchmarks for success within early
18 childhood service delivery; and

19 (7) national best practices in early care and
20 educational delivery models.

21 SECTION 2.178. Sections 531.301(a) and (b), Government
22 Code, are amended to read as follows:

23 (a) The commission shall develop and implement a state
24 prescription drug program that operates in the same manner as the
25 vendor drug program operates in providing prescription drug
26 benefits to Medicaid recipients [~~of medical assistance under~~
27 ~~Chapter 32, Human Resources Code~~].

1 (b) A person is eligible for prescription drug benefits
2 under the state program if the person is:

3 (1) a qualified Medicare beneficiary, as defined by 42
4 U.S.C. Section 1396d(p)(1), as amended;

5 (2) a specified low-income Medicare beneficiary who is
6 eligible for [medical] assistance under Medicaid for Medicare
7 cost-sharing payments under 42 U.S.C. Section
8 1396a(a)(10)(E)(iii), as amended;

9 (3) a qualified disabled and working individual, as
10 defined by 42 U.S.C. Section 1396d(s), as amended; or

11 (4) a qualifying individual who is eligible for that
12 assistance under 42 U.S.C. Section 1396a(a)(10)(E)(iv)
13 [1396a(a)(10)(E)(iv)(I), as amended; or

14 [(5) a qualifying individual who is eligible for that
15 assistance under 42 U.S.C. Section 1396a(a)(10)(E)(iv)(II), as
16 amended].

17 SECTION 2.179. Section 531.302, Government Code, is amended
18 to read as follows:

19 Sec. 531.302. RULES. (a) The executive commissioner
20 [~~commission~~] shall adopt all rules necessary for implementation of
21 the state prescription drug program.

22 (b) In adopting rules for the state prescription drug
23 program, the executive commissioner [~~commission~~] may:

24 (1) require a person who is eligible for prescription
25 drug benefits to pay a cost-sharing payment;

26 (2) authorize the use of a prescription drug formulary
27 to specify which prescription drugs the state program will cover;

1 (3) to the extent possible, require clinically
2 appropriate prior authorization for prescription drug benefits in
3 the same manner as prior authorization is required under the vendor
4 drug program; and

5 (4) establish a drug utilization review program to
6 ensure the appropriate use of prescription drugs under the state
7 program.

8 (c) In adopting rules for the state prescription drug
9 program, the executive commissioner [~~commission~~] shall consult
10 with an advisory panel composed of an equal number of physicians,
11 pharmacists, and pharmacologists appointed by the executive
12 commissioner.

13 SECTION 2.180. Section 531.303, Government Code, is amended
14 to read as follows:

15 Sec. 531.303. GENERIC EQUIVALENT AUTHORIZED. In adopting
16 rules under the state program, the executive commissioner
17 [~~commission~~] may require that, unless the practitioner's signature
18 on a prescription clearly indicates that the prescription must be
19 dispensed as written, the pharmacist may select a generic
20 equivalent of the prescribed drug.

21 SECTION 2.181. Section 531.304, Government Code, is amended
22 to read as follows:

23 Sec. 531.304. PROGRAM FUNDING PRIORITIES. If money
24 available for the state prescription drug program is insufficient
25 to provide prescription drug benefits to all persons who are
26 eligible under Section 531.301(b), the commission shall limit the
27 number of enrollees based on available funding and shall provide

1 the prescription drug benefits to eligible persons in the following
2 order of priority:

- 3 (1) persons eligible under Section 531.301(b)(1);
4 (2) persons eligible under Section 531.301(b)(2); and
5 (3) persons eligible under Sections 531.301(b)(3) and
6 [7] (4) [, and (5)].

7 SECTION 2.182. Section 531.402(b), Government Code, is
8 amended to read as follows:

9 (b) The council is composed of nine members of the public
10 appointed by the governor with the advice and consent of the senate.
11 To be eligible for appointment to the council, a person must have
12 demonstrated an interest in and knowledge of problems and available
13 services related to Medicaid, the child health plan program, the
14 financial assistance program under Chapter 31, Human Resources
15 Code, [the medical assistance program under Chapter 32, Human
16 Resources Code,] or the supplemental nutrition assistance program
17 [nutritional assistance programs] under Chapter 33, Human
18 Resources Code.

19 SECTION 2.183. Sections 531.421(1), (2), and (3),
20 Government Code, are amended to read as follows:

21 (1) "Children with severe emotional disturbances"
22 includes:
23 (A) children who are at risk of incarceration or
24 placement in a residential mental health facility;
25 (B) children for whom a court may appoint the
26 Department of Family and Protective [and Regulatory] Services as
27 managing conservator;

1 (C) children who are students in a special
2 education program under Subchapter A, Chapter 29, Education Code;
3 and

4 (D) children who have a substance abuse disorder
5 or a developmental disability.

6 (2) "Community resource coordination group" means a
7 coordination group established under a memorandum of understanding
8 adopted under Section 531.055[~~, as added by Chapter 114, Acts of the~~
~~77th Legislature, Regular Session, 2001~~].

10 (3) "Consortium" means the Texas System of Care
11 Consortium established under Subchapter G-1 [~~consortium that~~
12 ~~oversees the Texas Integrated Funding Initiative under Subchapter~~
13 ~~G, Chapter 531, as added by Chapter 446, Acts of the 76th~~
14 ~~Legislature, Regular Session, 1999~~].

15 SECTION 2.184. The heading to Section 531.423, Government
16 Code, is amended to read as follows:

17 Sec. 531.423. SUMMARY REPORT BY [~~TEXAS INTEGRATED FUNDING~~
18 ~~INITIATIVE~~] CONSORTIUM.

19 SECTION 2.185. Section 531.423(c), Government Code, is
20 amended to read as follows:

21 (c) The consortium may include in the report created under
22 this section recommendations for the statewide expansion of sites
23 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
26 integration of services provided at those sites with services
27 provided by community resource coordination groups.

1 SECTION 2.186. Section 531.424, Government Code, is amended
2 to read as follows:

3 Sec. 531.424. AGENCY IMPLEMENTATION OF RECOMMENDATIONS. As
4 appropriate, the person or entity responsible for adopting rules
5 for an [An] agency described by Section 531.423(a) shall[, as
6 appropriate,] adopt rules, and the agency shall implement policy
7 changes[‐] and enter into memoranda of understanding with other
8 agencies, to implement the recommendations in the report created
9 under Section 531.423.

10 SECTION 2.187. Section 531.551(a), Government Code, is
11 amended to read as follows:

12 (a) The executive commissioner shall adopt rules providing
13 for:

14 (1) a standard definition of "uncompensated hospital
15 care";

16 (2) a methodology to be used by hospitals in this state
17 to compute the cost of that care that incorporates a [the] standard
18 set of adjustments to a hospital's initial computation of the cost
19 of uncompensated hospital care that account for all funding streams
20 that:

21 (A) are not patient-specific; and

22 (B) are used to offset the hospital's initially
23 computed amount of uncompensated care [described by Section
24 531.552(g)(4)]; and

25 (3) procedures to be used by those hospitals to report
26 the cost of that care to the commission and to analyze that cost.

27 SECTION 2.188. The heading to Section 531.652, Government

1 Code, is amended to read as follows:

2 Sec. 531.652. OPERATION [~~ESTABLISHMENT~~] OF NURSE-FAMILY
3 PARTNERSHIP COMPETITIVE GRANT PROGRAM.

4 SECTION 2.189. Section 531.652(a), Government Code, is
5 amended to read as follows:

6 (a) The commission shall operate [~~establish~~] a nurse-family
7 partnership competitive grant program through which the commission
8 will award grants for the implementation of nurse-family
9 partnership programs, or the expansion of existing programs, and
10 for the operation of those programs for a period of not less than
11 two years.

12 SECTION 2.190. Section 531.659(a), Government Code, is
13 amended to read as follows:

14 (a) The commission, with the assistance of the Nurse-Family
15 Partnership National Service Office, shall:

16 (1) adopt performance indicators that are designed to
17 measure a grant recipient's performance with respect to the
18 partnership program standards adopted by the executive
19 commissioner [~~commission~~] under Section 531.656;

20 (2) use the performance indicators to continuously
21 monitor and formally evaluate on an annual basis the performance of
22 each grant recipient; and

23 (3) prepare and submit an annual report, not later
24 than December 1 of each year, to the Senate Health and Human
25 Services Committee, or its successor, and the House Human Services
26 Committee, or its successor, regarding the performance of each
27 grant recipient during the preceding state fiscal year with respect

1 to providing partnership program services.

2 SECTION 2.191. Section 531.706(c), Government Code, is
3 amended to read as follows:

4 (c) The advisory committee shall:

5 (1) develop strategies for implementing the
6 regulation of health care interpreters and health care translators;

7 (2) make recommendations to the commission for any
8 legislation necessary to establish and enforce qualifications for
9 health care interpreters and health care translators or for the
10 adoption of rules by or for state agencies regulating health care
11 practitioners, hospitals, physician offices, and health care
12 facilities that hire health care interpreters or health care
13 translators; and

14 (3) perform other activities assigned by the
15 commission related to health care interpreters or health care
16 translators.

17 SECTION 2.192. Section 531.754, Government Code, is amended
18 to read as follows:

19 Sec. 531.754. TRAINING PROGRAM. The commission shall
20 develop and administer a training program for navigators. The
21 program must include training on:

22 (1) how to complete an online application for public
23 assistance benefits through the Texas Integrated Eligibility
24 Redesign System (TIERS);

25 (2) the importance of maintaining the confidentiality
26 of information handled by a navigator;

27 (3) the importance of obtaining and submitting

1 complete and accurate information when completing an application
2 for public assistance benefits online through the Texas Integrated
3 Eligibility Redesign System (TIERS);

4 (4) the financial assistance program, the
5 supplemental nutrition assistance program, Medicaid [~~the medical~~
~~assistance program~~], the child health plan program, and any other
6 public assistance benefits program for which an individual may
7 complete an online application through the Texas Integrated
8 Eligibility Redesign System (TIERS); and

10 (5) how an individual may apply for other public
11 assistance benefits for which an individual may not complete an
12 online application through the Texas Integrated Eligibility
13 Redesign System (TIERS).

14 SECTION 2.193. Sections 531.802(c), (d), and (g),
15 Government Code, are amended to read as follows:

16 (c) Subject to Subsection (d), the council is composed of
17 the following:

18 (1) the executive commissioner;
19 (2) the commissioner of state health services;
20 (3) the commissioner of the Department of Family and
21 Protective Services;
22 (4) the commissioner of aging and disability services;
23 (5) the commissioner of assistive and rehabilitative
24 services;
25 (6) the commissioner of education;
26 (7) the executive director of the Texas Juvenile
27 Justice Department [~~Probation Commission~~];

1 (8) ~~the executive commissioner of the Texas Youth~~
2 ~~Commission;~~

3 ~~(9)~~ the executive director of the Texas Workforce
4 Commission;

5 ~~(9) (10)~~ the director of the Texas Correctional
6 Office on Offenders with Medical or Mental Impairments;

7 ~~(10) (11)~~ two public representatives who are
8 parents of children who have received services from an agency
9 represented on the council, appointed by the executive
10 commissioner; and

11 ~~(11) (12)~~ two representatives who are young adults
12 or adolescents who have received services from an agency
13 represented on the council, appointed by the executive
14 commissioner.

15 (d) An individual listed in Subsections (c)(1)-(9)
16 ~~(c)(1)-(10)~~ may designate another individual as having authority
17 to act on behalf of the individual at council meetings and with
18 respect to council functions.

19 (g) The council is administratively attached to the
20 commission but is independent of direction by the commission or the
21 executive commissioner. The commission, through the commission's
22 Office of Health [Program] Coordination and Consumer Services ~~for~~
23 ~~Children and Youth~~, shall provide administrative support and
24 resources to the council as necessary to enable the council to
25 perform its duties.

26 SECTION 2.194. The heading to Subchapter U, Chapter 531,
27 Government Code, is amended to read as follows:

1 SUBCHAPTER U. MORTALITY REVIEW FOR CERTAIN INDIVIDUALS WITH AN
2 INTELLECTUAL OR DEVELOPMENTAL DISABILITY [~~DISABILITIES~~]
3 SECTION 2.195. Section 531.8501, Government Code, is
4 amended to read as follows:

5 Sec. 531.8501. DEFINITION. In this subchapter, "contracted
6 organization" means an entity that contracts with the commission
7 [~~Health and Human Services Commission~~] for the provision of
8 services as described by Section 531.851(c).

9 SECTION 2.196. Sections 531.851(a), (c), and (e),
10 Government Code, are amended to read as follows:

11 (a) The executive commissioner shall establish an
12 independent mortality review system to review the death of a person
13 with an intellectual or developmental disability who, at the time
14 of the person's death or at any time during the 24-hour period
15 before the person's death:

16 (1) resided in or received services from:

17 (A) an ICF-IID [~~intermediate care facility for~~
18 ~~persons with an intellectual or developmental disability~~
19 (~~ICF/IID~~)] operated or licensed by the Department of Aging and
20 Disability Services or a community center; or

21 (B) the ICF-IID [~~ICF/IID~~] component of the Rio
22 Grande State Center; or

23 (2) received services through a Section 1915(c) waiver
24 program for individuals who are eligible for ICF-IID [~~ICF/IID~~]
25 services.

26 (c) The executive commissioner shall contract with an
27 institution of higher education or a health care organization or

1 association with experience in conducting research-based mortality
2 studies to conduct independent mortality reviews of persons with an
3 intellectual or developmental disability. The contract must
4 require the contracted organization to form a review team
5 consisting of:

6 (1) a physician with expertise regarding the medical
7 treatment of individuals with an intellectual or developmental
8 disability [disabilities];

9 (2) a registered nurse with expertise regarding the
10 medical treatment of individuals with an intellectual or
11 developmental disability [disabilities];

12 (3) a clinician or other professional with expertise
13 in the delivery of services and supports for individuals with an
14 intellectual or developmental disability [disabilities]; and

15 (4) any other appropriate person as provided by the
16 executive commissioner.

17 (e) To ensure consistency across mortality review systems,
18 a review under this section must collect information consistent
19 with the information required to be collected by any other
20 independent mortality review process established specifically for
21 persons with an intellectual or developmental disability
22 [disabilities].

23 SECTION 2.197. Section 531.854(a), Government Code, is
24 amended to read as follows:

25 (a) The commission may use or publish information under this
26 subchapter only to advance statewide practices regarding the
27 treatment and care of individuals with an intellectual or [and]

1 developmental disability [disabilities]. A summary of the data in
2 the contracted organization's reports or a statistical compilation
3 of data reports may be released by the commission for general
4 publication if the summary or statistical compilation does not
5 contain any information that would permit the identification of an
6 individual or that is confidential or privileged under this
7 subchapter or other state or federal law.

8 SECTION 2.198. Section 531.901(4), Government Code, is
9 amended to read as follows:

10 (4) "Local or regional health information exchange"
11 means a health information exchange operating in this state that
12 securely exchanges electronic health information, including
13 information for patients receiving services under the child health
14 plan program or Medicaid [program], among hospitals, clinics,
15 physicians' offices, and other health care providers that are not
16 owned by a single entity or included in a single operational unit or
17 network.

18 SECTION 2.199. Sections 531.903(a) and (c), Government
19 Code, are amended to read as follows:

20 (a) The commission shall develop an electronic health
21 information exchange system to improve the quality, safety, and
22 efficiency of health care services provided under the child health
23 plan program and Medicaid [programs]. In developing the system,
24 the commission shall ensure that:

25 (1) the confidentiality of patients' health
26 information is protected and the privacy of those patients is
27 maintained in accordance with applicable federal and state law,

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1 including:

2 (A) Section 1902(a)(7), Social Security Act (42

4 (B) the Health Insurance Portability and
5 Accountability Act of 1996 (Pub. L. No. 104-191);

6 (C) Chapter 552 [~~T~~ Government Code];

(F) federal and state rules and regulations,

11 including:

12 (i) 42 C.F.R. Part 431, Subpart F; and

13 (ii) 45 C.F.R. Part 164;

14 (2) appropriate information technology systems used
15 by the commission and health and human services agencies are
16 interoperable;

20 (A) the comprehensive nature of the information
21 contained in electronic health records; and

22 (B) health care provider efficiency by
23 supporting integration of the information into the electronic
24 health record used by health care providers;

1 (5) the system has the elements described by
2 Subsection (b).

3 (c) The commission shall implement the health information
4 exchange system in stages as described by this chapter [Sections
5 ~~531.905 through 531.908~~], except that the commission may deviate
6 from those stages if technological advances make a deviation
7 advisable or more efficient.

8 SECTION 2.200. Section 531.904(b), Government Code, is
9 amended to read as follows:

10 (b) The executive commissioner shall appoint to the
11 advisory committee at least 12 and not more than 16 members who have
12 an interest in health information technology and who have
13 experience in serving persons receiving health care through the
14 child health plan program and Medicaid [~~programs~~].

15 SECTION 2.201. Sections 531.906(a) and (d), Government
16 Code, are amended to read as follows:

17 (a) In stage one of implementing the health information
18 exchange system, the commission shall support and coordinate
19 electronic prescribing tools used by health care providers and
20 health care facilities under the child health plan program and
21 Medicaid [~~programs~~].

22 (d) The commission shall apply for and actively pursue any
23 waiver to the child health plan program or the state Medicaid plan
24 from the federal Centers for Medicare and Medicaid Services or any
25 other federal agency as necessary to remove an identified
26 impediment to supporting and implementing electronic prescribing
27 tools under this section, including the requirement for handwritten

1 certification of certain drugs under 42 C.F.R. Section 447.512. If
2 the commission, with assistance from the Legislative Budget Board,
3 determines that the implementation of operational modifications in
4 accordance with a waiver obtained as required by this subsection
5 has resulted in cost increases in the child health plan program or
6 Medicaid [program], the commission shall take the necessary actions
7 to reverse the operational modifications.

8 SECTION 2.202. Section 531.907(a), Government Code, is
9 amended to read as follows:

10 (a) Based on the recommendations of the advisory committee
11 established under Section 531.904 and feedback provided by
12 interested parties, the commission in stage two of implementing the
13 health information exchange system may expand the system by:

14 (1) providing an electronic health record for each
15 child enrolled in the child health plan program;

16 (2) including state laboratory results information in
17 an electronic health record, including the results of newborn
18 screenings and tests conducted under the Texas Health Steps
19 program, based on the system developed for the health passport
20 under Section 266.006, Family Code;

21 (3) improving data-gathering capabilities for an
22 electronic health record so that the record may include basic
23 health and clinical information in addition to available claims
24 information, as determined by the executive commissioner;

25 (4) using evidence-based technology tools to create a
26 unique health profile to alert health care providers regarding the
27 need for additional care, education, counseling, or health

1 management activities for specific patients; and
2 (5) continuing to enhance the electronic health record
3 created for each Medicaid recipient [~~under Section 531.905~~] as
4 technology becomes available and interoperability capabilities
5 improve.

6 SECTION 2.203. Section 531.911, Government Code, is amended
7 to read as follows:

8 Sec. 531.911. RULES. The executive commissioner may adopt
9 rules to implement Sections 531.903 through 531.909 [531.910].

10 SECTION 2.204. Sections 531.912(a), (b), and (c),
11 Government Code, are amended to read as follows:

12 (a) In this section, "nursing facility" means a
13 convalescent or nursing home or related institution licensed under
14 Chapter 242, Health and Safety Code, that provides long-term care
15 services, as defined by Section [22.0011](#), Human Resources Code, to
16 Medicaid [medical assistance] recipients.

17 (b) If feasible, the executive commissioner by rule may
18 establish an incentive payment program for nursing facilities that
19 choose to participate. The program must be designed to improve the
20 quality of care and services provided to Medicaid [medical
21 assistance] recipients. Subject to Subsection (f), the program
22 may provide incentive payments in accordance with this section to
23 encourage facilities to participate in the program.

24 (c) In establishing an incentive payment program under this
25 section, the executive commissioner shall, subject to Subsection
26 (d), adopt common performance measures to be used in evaluating
27 nursing facilities that are related to structure, process, and

1 outcomes that positively correlate to nursing facility quality and
2 improvement. The common performance measures:

3 (1) must be:

4 (A) recognized by the executive commissioner as
5 valid indicators of the overall quality of care received by
6 Medicaid [~~medical assistance~~] recipients; and

7 (B) designed to encourage and reward
8 evidence-based practices among nursing facilities; and

9 (2) may include measures of:

10 (A) quality of care, as determined by clinical
11 performance ratings published by the federal Centers for Medicare
12 and Medicaid Services, the Agency for Healthcare Research and
13 Quality, or another federal agency;

14 (B) direct-care staff retention and turnover;

15 (C) recipient satisfaction, including the
16 satisfaction of recipients who are short-term and long-term
17 residents of facilities, and family satisfaction, as determined by
18 the Nursing Home Consumer Assessment of Healthcare [~~Health~~]
19 Providers and Systems surveys [~~survey~~] relied upon by the federal
20 Centers for Medicare and Medicaid Services;

21 (D) employee satisfaction and engagement;

22 (E) the incidence of preventable acute care
23 emergency room services use;

24 (F) regulatory compliance;

25 (G) level of person-centered care; and

26 (H) direct-care staff training, including a
27 facility's utilization of independent distance learning programs

1 for the continuous training of direct-care staff.

2 SECTION 2.205. The heading to Section 531.982, Government
3 Code, is amended to read as follows:

4 Sec. 531.982. IMPLEMENTATION [~~ESTABLISHMENT~~] OF TEXAS HOME
5 VISITING PROGRAM.

6 SECTION 2.206. Section 531.982(a), Government Code, is
7 amended to read as follows:

8 (a) The commission shall maintain [~~create~~] a strategic plan
9 to serve at-risk pregnant women and families with children under
10 the age of six through home visiting programs that improve outcomes
11 for parents and families.

12 SECTION 2.207. Section 531.988, Government Code, is amended
13 to read as follows:

14 Sec. 531.988. RULES. The executive commissioner
15 [~~commission~~] may adopt rules as necessary to implement this
16 subchapter.

17 SECTION 2.208. The heading to Chapter 533, Government Code,
18 is amended to read as follows:

19 CHAPTER 533. [~~IMPLEMENTATION OF~~] MEDICAID MANAGED CARE PROGRAM

20 SECTION 2.209. Sections 533.001(2) and (6), Government
21 Code, are amended to read as follows:

22 (2) "Executive commissioner" [~~"Commissioner"~~] means
23 the executive commissioner of the Health and Human Services
24 Commission [~~health and human services~~].

25 (6) "Recipient" means a recipient of Medicaid [~~medical~~
26 ~~assistance under Chapter 32, Human Resources Code~~].

27 SECTION 2.210. Section 533.002, Government Code, is amended

1 to read as follows:

2 Sec. 533.002. PURPOSE. The commission shall implement the
3 Medicaid managed care program [as part of the health care delivery
4 system developed under Chapter 532] by contracting with managed
5 care organizations in a manner that, to the extent possible:

6 (1) improves the health of Texans by:

7 (A) emphasizing prevention;
8 (B) promoting continuity of care; and
9 (C) providing a medical home for recipients;

10 (2) ensures that each recipient receives high quality,
11 comprehensive health care services in the recipient's local
12 community;

13 (3) encourages the training of and access to primary
14 care physicians and providers;

15 (4) maximizes cooperation with existing public health
16 entities, including local departments of health;

17 (5) provides incentives to managed care organizations
18 to improve the quality of health care services for recipients by
19 providing value-added services; and

20 (6) reduces administrative and other nonfinancial
21 barriers for recipients in obtaining health care services.

22 SECTION 2.211. Sections 533.0025(b), (c), (d), (e), (f),
23 and (h), Government Code, are amended to read as follows:

24 (b) Except as otherwise provided by this section and
25 notwithstanding any other law, the commission shall provide
26 Medicaid [medical assistance for] acute care services through the
27 most cost-effective model of Medicaid capitated managed care as

1 determined by the commission. The commission shall require
2 mandatory participation in a Medicaid capitated managed care
3 program for all persons eligible for Medicaid acute care [~~medical~~
4 ~~assistance~~] benefits, but may implement alternative models or
5 arrangements, including a traditional fee-for-service arrangement,
6 if the commission determines the alternative would be more
7 cost-effective or efficient.

8 (c) In determining whether a model or arrangement described
9 by Subsection (b) is more cost-effective, the executive
10 commissioner must consider:

11 (1) the scope, duration, and types of health benefits
12 or services to be provided in a certain part of this state or to a
13 certain population of recipients;

14 (2) administrative costs necessary to meet federal and
15 state statutory and regulatory requirements;

16 (3) the anticipated effect of market competition
17 associated with the configuration of Medicaid service delivery
18 models determined by the commission; and

19 (4) the gain or loss to this state of a tax collected
20 under Chapter 222, Insurance Code.

21 (d) If the commission determines that it is not more
22 cost-effective to use a Medicaid managed care model to provide
23 certain types of Medicaid [~~medical assistance for~~] acute care in a
24 certain area or to certain [~~medical assistance~~] recipients as
25 prescribed by this section, the commission shall provide Medicaid
26 [~~medical assistance for~~] acute care through a traditional
27 fee-for-service arrangement.

1 (e) The commission shall determine the most cost-effective
2 alignment of managed care service delivery areas. The executive
3 commissioner may consider the number of lives impacted, the usual
4 source of health care services for residents in an area, and other
5 factors that impact the delivery of health care services in the
6 area.

7 (f) The commission shall:

8 (1) conduct a study to evaluate the feasibility of
9 automatically enrolling applicants determined eligible for
10 benefits under Medicaid [~~the medical assistance program~~] in a
11 Medicaid managed care plan chosen by the applicant; and

12 (2) report the results of the study to the legislature
13 not later than December 1, 2014.

14 (h) If the commission determines that it is feasible, the
15 commission may, notwithstanding any other law, implement an
16 automatic enrollment process under which applicants determined
17 eligible for Medicaid [~~medical assistance~~] benefits are
18 automatically enrolled in a Medicaid managed care plan chosen by
19 the applicant. The commission may elect to implement the automatic
20 enrollment process as to certain populations of recipients [~~under~~
21 ~~the medical assistance program~~].

22 SECTION 2.212. Section 533.00251(a)(3), Government Code,
23 is amended to read as follows:

24 (3) "Nursing facility" means a convalescent or nursing
25 home or related institution licensed under Chapter 242, Health and
26 Safety Code, that provides long-term services and supports to
27 [Medicaid] recipients.

1 SECTION 2.213. Sections [533.00251\(b\)](#), (c), and (d),
2 Government Code, are amended to read as follows:

3 (b) Subject to Section [533.0025](#), the commission shall
4 expand the STAR + PLUS Medicaid managed care program to all areas of
5 this state to serve individuals eligible for acute care services
6 and long-term services and supports under Medicaid [~~the medical~~
7 ~~assistance program~~].

8 (c) Subject to Section [533.0025](#) and notwithstanding any
9 other law, the commission, in consultation with the advisory
10 committee, shall provide benefits under Medicaid [~~the medical~~
11 ~~assistance program~~] to recipients who reside in nursing facilities
12 through the STAR + PLUS Medicaid managed care program. In
13 implementing this subsection, the commission shall ensure:

14 (1) that the commission is responsible for setting the
15 minimum reimbursement rate paid to a nursing facility under the
16 managed care program, including the staff rate enhancement paid to
17 a nursing facility that qualifies for the enhancement;

18 (2) that a nursing facility is paid not later than the
19 10th day after the date the facility submits a clean claim;

20 (3) the appropriate utilization of services
21 consistent with criteria established [~~adopted~~] by the commission;

22 (4) a reduction in the incidence of potentially
23 preventable events and unnecessary institutionalizations;

24 (5) that a managed care organization providing
25 services under the managed care program provides discharge
26 planning, transitional care, and other education programs to
27 physicians and hospitals regarding all available long-term care

1 settings;

2 (6) that a managed care organization providing
3 services under the managed care program:

4 (A) assists in collecting applied income from
5 recipients; and

6 (B) provides payment incentives to nursing
7 facility providers that reward reductions in preventable acute care
8 costs and encourage transformative efforts in the delivery of
9 nursing facility services, including efforts to promote a
10 resident-centered care culture through facility design and
11 services provided;

12 (7) the establishment of a portal that is in
13 compliance with state and federal regulations, including standard
14 coding requirements, through which nursing facility providers
15 participating in the STAR + PLUS Medicaid managed care program may
16 submit claims to any participating managed care organization;

17 (8) that rules and procedures relating to the
18 certification and decertification of nursing facility beds under
19 Medicaid [~~the medical assistance program~~] are not affected; and

20 (9) that a managed care organization providing
21 services under the managed care program, to the greatest extent
22 possible, offers nursing facility providers access to:

23 (A) acute care professionals; and

24 (B) telemedicine, when feasible and in
25 accordance with state law, including rules adopted by the Texas
26 Medical Board.

27 (d) Subject to Subsection (e), the commission shall ensure

1 that a nursing facility provider authorized to provide services
2 under Medicaid [~~the medical assistance program~~] on September 1,
3 2013, is allowed to participate in the STAR + PLUS Medicaid managed
4 care program through August 31, 2017.

5 SECTION 2.214. Section 533.002515(a), Government Code, is
6 amended to read as follows:

7 (a) The commission shall develop a plan in preparation for
8 implementing the requirement under Section 533.00251(c) that the
9 commission provide benefits under Medicaid [~~the medical assistance~~
10 ~~program~~] to recipients who reside in nursing facilities through the
11 STAR + PLUS Medicaid managed care program. The plan required by
12 this section must be completed in two phases as follows:

- 13 (1) phase one: contract planning phase; and
14 (2) phase two: initial testing phase.

15 SECTION 2.215. Section 533.00252(a), Government Code, is
16 amended to read as follows:

17 (a) The STAR + PLUS Nursing Facility Advisory Committee is
18 established to advise the commission on the implementation of and
19 other activities related to the provision of Medicaid [~~medical~~
20 ~~assistance~~] benefits to recipients who reside in nursing facilities
21 through the STAR + PLUS Medicaid managed care program under Section
22 533.00251, including advising the commission regarding its duties
23 with respect to:

24 (1) developing quality-based outcomes and process
25 measures for long-term services and supports provided in nursing
26 facilities;

27 (2) developing quality-based long-term care payment

1 systems and quality initiatives for nursing facilities;

2 (3) transparency of information received from managed

3 care organizations;

4 (4) the reporting of outcome and process measures;

5 (5) the sharing of data among health and human

6 services agencies; and

7 (6) patient care coordination, quality of care

8 improvement, and cost savings.

9 SECTION 2.216. Section 533.00253(a)(2), Government Code,

10 is amended to read as follows:

11 (2) "Health home" means a primary care provider

12 practice, or, if appropriate, a specialty care provider practice,

13 incorporating several features, including comprehensive care

14 coordination, family-centered care, and data management, that are

15 focused on improving outcome-based quality of care and increasing

16 patient and provider satisfaction under Medicaid [~~the medical~~

17 ~~assistance program~~].

18 SECTION 2.217. Sections 533.00253(b), (d), and (e),

19 Government Code, are amended to read as follows:

20 (b) Subject to Section 533.0025, the commission shall, in

21 consultation with the advisory committee and the Children's Policy

22 Council established under Section 22.035, Human Resources Code,

23 establish a mandatory STAR Kids capitated managed care program

24 tailored to provide Medicaid [~~medical assistance~~] benefits to

25 children with disabilities. The managed care program developed

26 under this section must:

27 (1) provide Medicaid [~~medical assistance~~] benefits

1 that are customized to meet the health care needs of recipients
2 under the program through a defined system of care;

3 (2) better coordinate care of recipients under the
4 program;

5 (3) improve the health outcomes of recipients;

6 (4) improve recipients' access to health care
7 services;

8 (5) achieve cost containment and cost efficiency;

9 (6) reduce the administrative complexity of
10 delivering Medicaid [~~medical assistance~~] benefits;

11 (7) reduce the incidence of unnecessary
12 institutionalizations and potentially preventable events by
13 ensuring the availability of appropriate services and care
14 management;

15 (8) require a health home; and

16 (9) coordinate and collaborate with long-term care
17 service providers and long-term care management providers, if
18 recipients are receiving long-term services and supports outside of
19 the managed care organization.

20 (d) The commission shall provide Medicaid [~~medical~~
21 ~~assistance~~] benefits through the STAR Kids managed care program
22 established under this section to children who are receiving
23 benefits under the medically dependent children (MDCP) waiver
24 program. The commission shall ensure that the STAR Kids managed
25 care program provides all of the benefits provided under the
26 medically dependent children (MDCP) waiver program to the extent
27 necessary to implement this subsection.

1 (e) The commission shall ensure that there is a plan for
2 transitioning the provision of Medicaid [program] benefits to
3 recipients 21 years of age or older from under the STAR Kids program
4 to under the STAR + PLUS Medicaid managed care program that protects
5 continuity of care. The plan must ensure that coordination between
6 the programs begins when a recipient reaches 18 years of age.

7 SECTION 2.218. Section 533.0026(a), Government Code, is
8 amended to read as follows:

9 (a) Notwithstanding any other law, the commission shall
10 ensure that a managed care plan offered by a managed care
11 organization that contracts with the commission under this chapter
12 and any other Medicaid managed care model or arrangement
13 implemented under this chapter allow a [Medicaid] recipient who
14 receives services through the plan or other model or arrangement
15 to, in the manner and to the extent required by Section 32.072,
16 Human Resources Code:

17 (1) select an in-network ophthalmologist or
18 therapeutic optometrist in the managed care network to provide eye
19 health care services, other than surgery; and

20 (2) have direct access to the selected in-network
21 ophthalmologist or therapeutic optometrist for the provision of the
22 nonsurgical services.

23 SECTION 2.219. Section 533.0028, Government Code, is
24 amended to read as follows:

25 Sec. 533.0028. EVALUATION OF CERTAIN STAR + PLUS MEDICAID
26 MANAGED CARE PROGRAM SERVICES. The external quality review
27 organization shall periodically conduct studies and surveys to

1 assess the quality of care and satisfaction with health care
2 services provided to enrollees in the STAR + PLUS Medicaid managed
3 care program who are eligible to receive health care benefits under
4 both [the] Medicaid and the Medicare program [~~programs~~].

5 SECTION 2.220. Section 533.00281(d), Government Code, is
6 amended to read as follows:

7 (d) In conjunction with the commission's office of contract
8 management, the commission shall provide a report to the standing
9 committees of the senate and house of representatives with
10 jurisdiction over [the] Medicaid [~~program~~] not later than December
11 1 of each year. The report must:

12 (1) summarize the results of the utilization reviews
13 conducted under this section during the preceding fiscal year;

14 (2) provide analysis of errors committed by each
15 reviewed managed care organization; and

16 (3) extrapolate those findings and make
17 recommendations for improving the efficiency of the program.

18 SECTION 2.221. Section 533.003(b), Government Code, is
19 amended to read as follows:

20 (b) The commission, in considering approval of a
21 subcontract between a managed care organization and a pharmacy
22 benefit manager for the provision of prescription drug benefits
23 under [the] Medicaid [~~program~~], shall review and consider whether
24 the pharmacy benefit manager has been in the preceding three years:

25 (1) convicted of an offense involving a material
26 misrepresentation or an act of fraud or of another violation of
27 state or federal criminal law;

1 (2) adjudicated to have committed a breach of
2 contract; or

3 (3) assessed a penalty or fine in the amount of
4 \$500,000 or more in a state or federal administrative proceeding.

5 SECTION 2.222. Section [533.005\(a\)](#), Government Code, is
6 amended to read as follows:

7 (a) A contract between a managed care organization and the
8 commission for the organization to provide health care services to
9 recipients must contain:

10 (1) procedures to ensure accountability to the state
11 for the provision of health care services, including procedures for
12 financial reporting, quality assurance, utilization review, and
13 assurance of contract and subcontract compliance;

14 (2) capitation rates that ensure the cost-effective
15 provision of quality health care;

16 (3) a requirement that the managed care organization
17 provide ready access to a person who assists recipients in
18 resolving issues relating to enrollment, plan administration,
19 education and training, access to services, and grievance
20 procedures;

21 (4) a requirement that the managed care organization
22 provide ready access to a person who assists providers in resolving
23 issues relating to payment, plan administration, education and
24 training, and grievance procedures;

25 (5) a requirement that the managed care organization
26 provide information and referral about the availability of
27 educational, social, and other community services that could

1 benefit a recipient;

2 (6) procedures for recipient outreach and education;

3 (7) a requirement that the managed care organization
4 make payment to a physician or provider for health care services
5 rendered to a recipient under a managed care plan on any claim for
6 payment that is received with documentation reasonably necessary
7 for the managed care organization to process the claim:

8 (A) not later than:

9 (i) the 10th day after the date the claim is
10 received if the claim relates to services provided by a nursing
11 facility, intermediate care facility, or group home;

12 (ii) the 30th day after the date the claim
13 is received if the claim relates to the provision of long-term
14 services and supports not subject to Subparagraph (i); and

15 (iii) the 45th day after the date the claim
16 is received if the claim is not subject to Subparagraph (i) or (ii);
17 or

18 (B) within a period, not to exceed 60 days,
19 specified by a written agreement between the physician or provider
20 and the managed care organization;

21 (7-a) a requirement that the managed care organization
22 demonstrate to the commission that the organization pays claims
23 described by Subdivision (7)(A)(ii) on average not later than the
24 21st day after the date the claim is received by the organization;

25 (8) a requirement that the commission, on the date of a
26 recipient's enrollment in a managed care plan issued by the managed
27 care organization, inform the organization of the recipient's

1 Medicaid certification date;

2 (9) a requirement that the managed care organization
3 comply with Section [533.006](#) as a condition of contract retention
4 and renewal;

5 (10) a requirement that the managed care organization
6 provide the information required by Section [533.012](#) and otherwise
7 comply and cooperate with the commission's office of inspector
8 general and the office of the attorney general;

9 (11) a requirement that the managed care
10 organization's usages of out-of-network providers or groups of
11 out-of-network providers may not exceed limits for those usages
12 relating to total inpatient admissions, total outpatient services,
13 and emergency room admissions determined by the commission;

14 (12) if the commission finds that a managed care
15 organization has violated Subdivision (11), a requirement that the
16 managed care organization reimburse an out-of-network provider for
17 health care services at a rate that is equal to the allowable rate
18 for those services, as determined under Sections [32.028](#) and
19 [32.0281](#), Human Resources Code;

20 (13) a requirement that, notwithstanding any other
21 law, including Sections [843.312](#) and [1301.052](#), Insurance Code, the
22 organization:

23 (A) use advanced practice registered nurses and
24 physician assistants in addition to physicians as primary care
25 providers to increase the availability of primary care providers in
26 the organization's provider network; and

27 (B) treat advanced practice registered nurses

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1 and physician assistants in the same manner as primary care
2 physicians with regard to:

3 (i) selection and assignment as primary
4 care providers:

5 (ii) inclusion as primary care providers in
6 the organization's provider network; and

21 (A) a tracking mechanism to document the status
22 and final disposition of each provider's claims payment appeal:

23 (B) the contracting with physicians who are not
24 network providers and who are of the same or related specialty as
25 the appealing physician to resolve claims disputes related to
26 denial on the basis of medical necessity that remain unresolved
27 subsequent to a provider appeal;

4 (D) the managed care organization to allow a
5 provider with a claim that has not been paid before the time
6 prescribed by Subdivision (7)(A)(ii) to initiate an appeal of that
7 claim;

1 access to:

2 (i) preventive care;

3 (ii) primary care;

4 (iii) specialty care;

5 (iv) after-hours urgent care;

6 (v) chronic care;

7 (vi) long-term services and supports;

8 (vii) nursing services; and

9 (viii) therapy services, including

10 services provided in a clinical setting or in a home or

11 community-based setting; and

12 (B) regularly, as determined by the commission,
13 submit to the commission and make available to the public a report
14 containing data on the sufficiency of the organization's provider
15 network with regard to providing the care and services described
16 under Paragraph (A) and specific data with respect to Paragraphs
17 (A)(iii), (vi), (vii), and (viii) on the average length of time
18 between:

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(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;

4 (B) the organization's provider network
5 includes:

(i) a sufficient number of primary care providers;

(ii) a sufficient variety of provider types;

10 (iii) a sufficient number of providers of
11 long-term services and supports and specialty pediatric care
12 providers of home and community-based services; and

16 (C) health care services will be accessible to
17 recipients through the organization's provider network to a
18 comparable extent that health care services would be available to
19 recipients under a fee-for-service or primary care case management
20 model of Medicaid managed care;

25 (A) incorporates the National Committee for
26 Quality Assurance's Healthcare Effectiveness Data and Information
27 Set (HEDIS) measures:

14 (C) that includes the prior authorization
15 procedures and requirements prescribed by or implemented under
16 Sections 531.073(b), (c), and (g) for the vendor drug program;

17 (D) for purposes of which the managed care
18 organization:

22 (ii) may not receive drug rebate or pricing
23 information that is confidential under Section 531.071;

24 (E) that complies with the prohibition under
25 Section 531.089;

26 (F) under which the managed care organization may
27 not prohibit, limit, or interfere with a recipient's selection of a

1 pharmacy or pharmacist of the recipient's choice for the provision
2 of pharmaceutical services under the plan through the imposition of
3 different copayments;

4 (G) that allows the managed care organization or
5 any subcontracted pharmacy benefit manager to contract with a
6 pharmacist or pharmacy providers separately for specialty pharmacy
7 services, except that:

8 (i) the managed care organization and
9 pharmacy benefit manager are prohibited from allowing exclusive
10 contracts with a specialty pharmacy owned wholly or partly by the
11 pharmacy benefit manager responsible for the administration of the
12 pharmacy benefit program; and

13 (ii) the managed care organization and
14 pharmacy benefit manager must adopt policies and procedures for
15 reclassifying prescription drugs from retail to specialty drugs,
16 and those policies and procedures must be consistent with rules
17 adopted by the executive commissioner and include notice to network
18 pharmacy providers from the managed care organization;

19 (H) under which the managed care organization may
20 not prevent a pharmacy or pharmacist from participating as a
21 provider if the pharmacy or pharmacist agrees to comply with the
22 financial terms and conditions of the contract as well as other
23 reasonable administrative and professional terms and conditions of
24 the contract;

25 (I) under which the managed care organization may
26 include mail-order pharmacies in its networks, but may not require
27 enrolled recipients to use those pharmacies, and may not charge an

1 enrolled recipient who opts to use this service a fee, including
2 postage and handling fees;

3 (J) under which the managed care organization or
4 pharmacy benefit manager, as applicable, must pay claims in
5 accordance with Section [843.339](#), Insurance Code; and

6 (K) under which the managed care organization or
7 pharmacy benefit manager, as applicable:

8 (i) to place a drug on a maximum allowable
9 cost list, must ensure that:

10 (a) the drug is listed as "A" or "B"
11 rated in the most recent version of the United States Food and Drug
12 Administration's Approved Drug Products with Therapeutic
13 Equivalence Evaluations, also known as the Orange Book, has an "NR"
14 or "NA" rating or a similar rating by a nationally recognized
15 reference; and

16 (b) the drug is generally available
17 for purchase by pharmacies in the state from national or regional
18 wholesalers and is not obsolete;

19 (ii) must provide to a network pharmacy
20 provider, at the time a contract is entered into or renewed with the
21 network pharmacy provider, the sources used to determine the
22 maximum allowable cost pricing for the maximum allowable cost list
23 specific to that provider;

24 (iii) must review and update maximum
25 allowable cost price information at least once every seven days to
26 reflect any modification of maximum allowable cost pricing;

27 (iv) must, in formulating the maximum

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1 allowable cost price for a drug, use only the price of the drug and
2 drugs listed as therapeutically equivalent in the most recent
3 version of the United States Food and Drug Administration's
4 Approved Drug Products with Therapeutic Equivalence Evaluations,
5 also known as the Orange Book;

6 (v) must establish a process for
7 eliminating products from the maximum allowable cost list or
8 modifying maximum allowable cost prices in a timely manner to
9 remain consistent with pricing changes and product availability in
10 the marketplace:

11 (vi) must:

12 (a) provide a procedure under which a
13 network pharmacy provider may challenge a listed maximum allowable
14 cost price for a drug;

15 (b) respond to a challenge not later
16 than the 15th day after the date the challenge is made;

17 (c) if the challenge is successful,
18 make an adjustment in the drug price effective on the date the
19 challenge is resolved, and make the adjustment applicable to all
20 similarly situated network pharmacy providers, as determined by the
21 managed care organization or pharmacy benefit manager, as
22 appropriate;

23 (d) if the challenge is denied,
24 provide the reason for the denial; and

25 (e) report to the commission every 90
26 days the total number of challenges that were made and denied in the
27 preceding 90-day period for each maximum allowable cost list drug

1 for which a challenge was denied during the period;
2 (vii) must notify the commission not later
3 than the 21st day after implementing a practice of using a maximum
4 allowable cost list for drugs dispensed at retail but not by mail;
5 and

6 (viii) must provide a process for each of
7 its network pharmacy providers to readily access the maximum
8 allowable cost list specific to that provider;

9 (24) a requirement that the managed care organization
10 and any entity with which the managed care organization contracts
11 for the performance of services under a managed care plan disclose,
12 at no cost, to the commission and, on request, the office of the
13 attorney general all discounts, incentives, rebates, fees, free
14 goods, bundling arrangements, and other agreements affecting the
15 net cost of goods or services provided under the plan; and

16 (25) a requirement that the managed care organization
17 not implement significant, nonnegotiated, across-the-board
18 provider reimbursement rate reductions unless:

19 (A) subject to Subsection (a-3), the
20 organization has the prior approval of the commission to make the
21 reduction; or

22 (B) the rate reductions are based on changes to
23 the Medicaid fee schedule or cost containment initiatives
24 implemented by the commission.

25 SECTION 2.223. Section 533.0051(d), Government Code, is
26 amended to read as follows:

27 (d) Subject to Subsection (f), the commission shall assess

1 the feasibility and cost-effectiveness of including provisions in a
2 contract described by Subsection (a) that require the health
3 maintenance organization to provide to the providers in the
4 organization's provider network pay-for-performance opportunities
5 that support quality improvements in the care of [Medicaid]
6 recipients. Pay-for-performance opportunities may include
7 incentives for providers to provide care after normal business
8 hours and to participate in the early and periodic screening,
9 diagnosis, and treatment program and other activities that improve
10 [Medicaid] recipients' access to care. If the commission
11 determines that the provisions are feasible and may be
12 cost-effective, the commission shall develop and implement a pilot
13 program in at least one health care service region under which the
14 commission will include the provisions in contracts with health
15 maintenance organizations offering managed care plans in the
16 region.

17 SECTION 2.224. Section 533.0055(b), Government Code, is
18 amended to read as follows:

19 (b) The provider protection plan required under this
20 section must provide for:

21 (1) prompt payment and proper reimbursement of
22 providers by managed care organizations;

23 (2) prompt and accurate adjudication of claims
24 through:

25 (A) provider education on the proper submission
26 of clean claims and on appeals;

27 (B) acceptance of uniform forms, including HCFA

1 Forms 1500 and UB-92 and subsequent versions of those forms,
2 through an electronic portal; and

3 (C) the establishment of standards for claims
4 payments in accordance with a provider's contract;

5 (3) adequate and clearly defined provider network
6 standards that are specific to provider type, including physicians,
7 general acute care facilities, and other provider types defined in
8 the commission's network adequacy standards in effect on January 1,
9 2013, and that ensure choice among multiple providers to the
10 greatest extent possible;

11 (4) a prompt credentialing process for providers;

12 (5) uniform efficiency standards and requirements for
13 managed care organizations for the submission and tracking of
14 preauthorization requests for services provided under [the]
15 Medicaid [program];

16 (6) establishment of an electronic process, including
17 the use of an Internet portal, through which providers in any
18 managed care organization's provider network may:

19 (A) submit electronic claims, prior
20 authorization requests, claims appeals and reconsiderations,
21 clinical data, and other documentation that the managed care
22 organization requests for prior authorization and claims
23 processing; and

24 (B) obtain electronic remittance advice,
25 explanation of benefits statements, and other standardized
26 reports;

27 (7) the measurement of the rates of retention by

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1 managed care organizations of significant traditional providers;

2 (8) the creation of a work group to review and make

3 recommendations to the commission concerning any requirement under

4 this subsection for which immediate implementation is not feasible

5 at the time the plan is otherwise implemented, including the

6 required process for submission and acceptance of attachments for

7 claims processing and prior authorization requests through an

8 electronic process under Subdivision (6) and, for any requirement

9 that is not implemented immediately, recommendations regarding the

10 expected:

11 (A) fiscal impact of implementing the
12 requirement; and

13 (B) timeline for implementation of the
14 requirement; and

19 SECTION 2.225. Section 533.006, Government Code, is amended
20 to read as follows:

21 Sec. 533.006. PROVIDER NETWORKS. (a) The commission shall
22 require that each managed care organization that contracts with the
23 commission to provide health care services to recipients in a
24 region:

25 (1) seek participation in the organization's provider
26 network from:

(A) each health care provider in the region who

1 has traditionally provided care to [Medicaid] recipients;

2 (B) each hospital in the region that has been

3 designated as a disproportionate share hospital under [~~the state~~]

4 Medicaid [~~program~~]; and

5 (C) each specialized pediatric laboratory in the

6 region, including those laboratories located in children's

7 hospitals; and

8 (2) include in its provider network for not less than

9 three years:

10 (A) each health care provider in the region who:

11 (i) previously provided care to Medicaid

12 and charity care recipients at a significant level as prescribed by

13 the commission;

14 (ii) agrees to accept the prevailing

15 provider contract rate of the managed care organization; and

16 (iii) has the credentials required by the

17 managed care organization, provided that lack of board

18 certification or accreditation by The [~~the~~] Joint Commission [~~on~~

19 ~~Accreditation of Healthcare Organizations~~] may not be the sole

20 ground for exclusion from the provider network;

21 (B) each accredited primary care residency

22 program in the region; and

23 (C) each disproportionate share hospital

24 designated by the commission as a statewide significant traditional

25 provider.

26 (b) A contract between a managed care organization and the

27 commission for the organization to provide health care services to

1 recipients in a health care service region that includes a rural
2 area must require that the organization include in its provider
3 network rural hospitals, physicians, home and community support
4 services agencies, and other rural health care providers who:

5 (1) are sole community providers;
6 (2) provide care to Medicaid and charity care
7 recipients at a significant level as prescribed by the commission;

8 (3) agree to accept the prevailing provider contract
9 rate of the managed care organization; and

10 (4) have the credentials required by the managed care
11 organization, provided that lack of board certification or
12 accreditation by The [the] Joint Commission [~~on Accreditation of~~
13 ~~Healthcare Organizations~~] may not be the sole ground for exclusion
14 from the provider network.

15 SECTION 2.226. Sections 533.007(b), (d), and (e),
16 Government Code, are amended to read as follows:

17 (b) Each managed care organization that contracts with the
18 commission to provide health care services to recipients in a
19 health care service region shall submit an implementation plan not
20 later than the 90th day before the date on which the managed care
21 organization [~~commission~~] plans to begin to provide health care
22 services to recipients in that region through managed care. The
23 implementation plan must include:

24 (1) specific staffing patterns by function for all
25 operations, including enrollment, information systems, member
26 services, quality improvement, claims management, case management,
27 and provider and recipient training; and

1 (2) specific time frames for demonstrating
2 preparedness for implementation before the date on which the
3 managed care organization [~~commission~~] plans to begin to provide
4 health care services to recipients in that region through managed
5 care.

6 (d) Each managed care organization that contracts with the
7 commission to provide health care services to recipients in a
8 region shall submit status reports on the implementation plan not
9 later than the 60th day and the 30th day before the date on which the
10 managed care organization [~~commission~~] plans to begin to provide
11 health care services to recipients in that region through managed
12 care and every 30th day after that date until the 180th day after
13 that date.

14 (e) The commission shall conduct a compliance and readiness
15 review of each managed care organization that contracts with the
16 commission not later than the 15th day before the date on which the
17 process of enrolling recipients in a managed care plan issued by the
18 managed care organization is to begin [~~commission plans to begin~~
19 ~~the enrollment process~~] in a region and again not later than the
20 15th day before the date on which the managed care organization
21 [~~commission~~] plans to begin to provide health care services to
22 recipients in that region through managed care. The review must
23 include an on-site inspection and tests of service authorization
24 and claims payment systems, including the ability of the managed
25 care organization to process claims electronically, complaint
26 processing systems, and any other process or system required by the
27 contract.

1 SECTION 2.227. Section 533.0075, Government Code, is
2 amended to read as follows:

3 Sec. 533.0075. RECIPIENT ENROLLMENT. The commission shall:

4 (1) encourage recipients to choose appropriate
5 managed care plans and primary health care providers by:

6 (A) providing initial information to recipients
7 and providers in a region about the need for recipients to choose
8 plans and providers not later than the 90th day before the date on
9 which a managed care organization [~~the commission~~] plans to begin
10 to provide health care services to recipients in that region
11 through managed care;

12 (B) providing follow-up information before
13 assignment of plans and providers and after assignment, if
14 necessary, to recipients who delay in choosing plans and providers;
15 and

16 (C) allowing plans and providers to provide
17 information to recipients or engage in marketing activities under
18 marketing guidelines established by the commission under Section
19 533.008 after the commission approves the information or
20 activities;

21 (2) consider the following factors in assigning
22 managed care plans and primary health care providers to recipients
23 who fail to choose plans and providers:

24 (A) the importance of maintaining existing
25 provider-patient and physician-patient relationships, including
26 relationships with specialists, public health clinics, and
27 community health centers;

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(B) to the extent possible, the need to assign family members to the same providers and plans; and

3 (C) geographic convenience of plans and
4 providers for recipients;

10 (4) develop and implement an expedited process for
11 determining eligibility for and enrolling pregnant women and
12 newborn infants in managed care plans; and

19 SECTION 2.228. Section 533.009(c), Government Code, is
20 amended to read as follows:

21 (c) The executive commissioner, by rule, shall prescribe
22 the minimum requirements that a managed care organization, in
23 providing a disease management program, must meet to be eligible to
24 receive a contract under this section. The managed care
25 organization must, at a minimum, be required to:

26 (1) provide disease management services that have
27 performance measures for particular diseases that are comparable to

1 the relevant performance measures applicable to a provider of
2 disease management services under Section 32.057 [~~32.059~~], Human
3 Resources Code[~~, as added by Chapter 208, Acts of the 78th~~
4 ~~Legislature, Regular Session, 2003~~]; and

5 (2) show evidence of ability to manage complex
6 diseases in the Medicaid population.

7 SECTION 2.229. Section 533.012(c), Government Code, is
8 amended to read as follows:

9 (c) The commission's office of inspector general
10 [~~investigations and enforcement~~] or the office of the attorney
11 general, as applicable, shall review the information submitted
12 under this section as appropriate in the investigation of fraud in
13 the Medicaid managed care program.

14 SECTION 2.230. Sections 533.013(a) and (b), Government
15 Code, are amended to read as follows:

16 (a) In determining premium payment rates paid to a managed
17 care organization under a managed care plan, the commission shall
18 consider:

19 (1) the regional variation in costs of health care
20 services;

21 (2) the range and type of health care services to be
22 covered by premium payment rates;

23 (3) the number of managed care plans in a region;

24 (4) the current and projected number of recipients in
25 each region, including the current and projected number for each
26 category of recipient;

27 (5) the ability of the managed care plan to meet costs

1 of operation under the proposed premium payment rates;

2 (6) the applicable requirements of the federal
3 Balanced Budget Act of 1997 and implementing regulations that
4 require adequacy of premium payments to managed care organizations
5 participating in [~~the state~~] Medicaid [~~program~~];

6 (7) the adequacy of the management fee paid for
7 assisting enrollees of Supplemental Security Income (SSI) (42
8 U.S.C. Section 1381 et seq.) who are voluntarily enrolled in the
9 managed care plan;

10 (8) the impact of reducing premium payment rates for
11 the category of recipients who are pregnant; and

12 (9) the ability of the managed care plan to pay under
13 the proposed premium payment rates inpatient and outpatient
14 hospital provider payment rates that are comparable to the
15 inpatient and outpatient hospital provider payment rates paid by
16 the commission under a primary care case management model or a
17 partially capitated model.

18 (b) In determining the maximum premium payment rates paid to
19 a managed care organization that is licensed under Chapter 843,
20 Insurance Code, the commission shall consider and adjust for the
21 regional variation in costs of services under the traditional
22 fee-for-service component of [~~the state~~] Medicaid [~~program~~],
23 utilization patterns, and other factors that influence the
24 potential for cost savings. For a service area with a service area
25 factor of .93 or less, or another appropriate service area factor,
26 as determined by the commission, the commission may not discount
27 premium payment rates in an amount that is more than the amount

1 necessary to meet federal budget neutrality requirements for
2 projected fee-for-service costs unless:

3 (1) a historical review of managed care financial
4 results among managed care organizations in the service area served
5 by the organization demonstrates that additional savings are
6 warranted;

7 (2) a review of Medicaid fee-for-service delivery in
8 the service area served by the organization has historically shown
9 a significant overutilization by recipients of certain services
10 covered by the premium payment rates in comparison to utilization
11 patterns throughout the rest of the state; or

12 (3) a review of Medicaid fee-for-service delivery in
13 the service area served by the organization has historically shown
14 an above-market cost for services for which there is substantial
15 evidence that Medicaid managed care delivery will reduce the cost
16 of those services.

17 SECTION 2.231. Section 533.01315(a), Government Code, is
18 amended to read as follows:

19 (a) This section applies only to a recipient receiving
20 benefits [~~medical assistance~~] through any Medicaid managed care
21 model or arrangement.

22 SECTION 2.232. Sections 533.014(a) and (b), Government
23 Code, are amended to read as follows:

24 (a) The executive commissioner [~~commission~~] shall adopt
25 rules regarding the sharing of profits earned by a managed care
26 organization through a managed care plan providing health care
27 services under a contract with the commission under this chapter.

1 (b) Except as provided by Subsection (c), any amount
2 received by the state under this section shall be deposited in the
3 general revenue fund [~~for the purpose of funding the state Medicaid~~
4 ~~program~~].

5 SECTION 2.233. Section 533.015, Government Code, is amended
6 to read as follows:

7 Sec. 533.015. COORDINATION OF EXTERNAL OVERSIGHT
8 ACTIVITIES. To the extent possible, the commission shall
9 coordinate all external oversight activities to minimize
10 duplication of oversight of managed care plans under [~~the state~~]
11 Medicaid [~~program~~] and disruption of operations under those plans.

12 SECTION 2.234. Section 533.020(a), Government Code, is
13 amended to read as follows:

14 (a) The Texas Department of Insurance, in conjunction with
15 the commission, shall establish fiscal solvency standards and
16 complaint system guidelines for managed care organizations that
17 serve [~~Medicaid~~] recipients.

18 SECTION 2.235. Section 533.021, Government Code, is amended
19 to read as follows:

20 Sec. 533.021. MEDICAID MANAGED CARE ADVISORY COMMITTEES
21 [~~APPOINTMENT~~]. A [~~Not later than the 180th day before the date the~~]
22 ~~commission plans to begin to provide health care services to~~
23 ~~recipients in a health care service region through managed care,~~
24 ~~the commission, in consultation with health and human services~~
25 ~~agencies, shall appoint a~~] Medicaid managed care advisory committee
26 exists for each health care service [~~for that~~] region. The
27 commission, in consultation with health and human services

1 agencies, appoints the committee members.

2 SECTION 2.236. Section 533.023, Government Code, is amended
3 to read as follows:

4 Sec. 533.023. PRESIDING OFFICER; SUBCOMMITTEES. The
5 executive commissioner or the executive commissioner's designated
6 representative serves as the presiding officer of a committee. The
7 presiding officer may appoint subcommittees as necessary.

8 SECTION 2.237. Section 533.028, Government Code, is amended
9 to read as follows:

10 Sec. 533.028. OTHER LAW. Except as provided by this
11 chapter, a committee is subject to Chapter 2110 [Article 6252-33,
12 ~~Revised Statutes~~].

13 SECTION 2.238. Sections 533.041(a) and (d), Government
14 Code, are amended to read as follows:

15 (a) The executive commissioner shall appoint a state
16 Medicaid managed care advisory committee. The advisory committee
17 consists of representatives of:

18 (1) hospitals;

19 (2) managed care organizations and participating
20 health care providers;

21 (3) primary care providers and specialty care
22 providers;

23 (4) state agencies;

24 (5) low-income recipients or consumer advocates
25 representing low-income recipients;

26 (6) recipients with disabilities, including
27 recipients with an intellectual or [and] developmental disability

1 [disabilities] or with physical disabilities, or consumer
2 advocates representing those recipients;

3 (7) parents of children who are recipients;

4 (8) rural providers;

5 (9) advocates for children with special health care
6 needs;

7 (10) pediatric health care providers, including
8 specialty providers;

9 (11) long-term services and supports providers,
10 including nursing facility providers and direct service workers;

11 (12) obstetrical care providers;

12 (13) community-based organizations serving low-income
13 children and their families;

14 (14) community-based organizations engaged in
15 perinatal services and outreach;

16 (15) recipients who are 65 years of age or older;

17 (16) recipients with mental illness;

18 (17) nonphysician mental health providers
19 participating in the Medicaid managed care program; and

20 (18) entities with responsibilities for the delivery
21 of long-term services and supports or other Medicaid [~~program~~]
22 service delivery, including:

23 (A) independent living centers;

24 (B) area agencies on aging;

25 (C) aging and disability resource centers

26 established under the Aging and Disability Resource Center

27 initiative funded in part by the federal Administration on Aging

1 and the Centers for Medicare and Medicaid Services;

2 (D) community mental health and intellectual
3 disability centers; and

4 (E) the NorthSTAR Behavioral Health Program
5 provided under Chapter 534, Health and Safety Code.

6 (d) To the greatest extent possible, the executive
7 commissioner shall appoint members of the advisory committee who
8 reflect the geographic diversity of the state and include members
9 who represent rural [Medicaid program] recipients.

10 SECTION 2.239. Section 533.045(b), Government Code, is
11 amended to read as follows:

12 (b) A member of the advisory committee who is a [Medicaid
13 program] recipient or the relative of a [Medicaid program]
14 recipient is entitled to a per diem allowance and reimbursement at
15 rates established in the General Appropriations Act.

16 SECTION 2.240. The heading to Chapter 534, Government Code,
17 is amended to read as follows:

18 CHAPTER 534. SYSTEM REDESIGN FOR DELIVERY OF MEDICAID ACUTE CARE
19 SERVICES AND LONG-TERM SERVICES AND SUPPORTS TO PERSONS WITH AN
20 INTELLECTUAL OR [AND] DEVELOPMENTAL DISABILITY [DISABILITIES]

21 SECTION 2.241. Sections 534.001(6), (7), (8), and (11),
22 Government Code, are amended to read as follows:

23 (6) "ICF-IID" means the [Medicaid] program under
24 Medicaid serving individuals with an intellectual or [and]
25 developmental disability [disabilities] who receive care in
26 intermediate care facilities other than a state supported living
27 center.

1 (7) "ICF-IID program" means a program under [the]
2 Medicaid [program] serving individuals with an intellectual or
3 [and] developmental disability [~~disabilities~~] who reside in and
4 receive care from:

5 (A) intermediate care facilities licensed under
6 Chapter 252, Health and Safety Code; or

7 (B) community-based intermediate care facilities
8 operated by local intellectual and developmental disability
9 authorities.

10 (8) "Local intellectual and developmental disability
11 authority" has the meaning assigned [~~means an authority defined~~] by
12 Section 531.002 [~~Section 531.002(11)~~], Health and Safety Code.

13 (11) "Medicaid waiver program" means only the
14 following programs that are authorized under Section 1915(c) of the
15 federal Social Security Act (42 U.S.C. Section 1396n(c)) for the
16 provision of services to persons with an intellectual or [and]
17 developmental disability [~~disabilities~~]:

18 (A) the community living assistance and support
19 services (CLASS) waiver program;

20 (B) the home and community-based services (HCS)
21 waiver program;

22 (C) the deaf-blind with multiple disabilities
23 (DBMD) waiver program; and

24 (D) the Texas home living (TxHmL) waiver program.

25 SECTION 2.242. Section 534.051, Government Code, is amended
26 to read as follows:

27 Sec. 534.051. ACUTE CARE SERVICES AND LONG-TERM SERVICES

1 AND SUPPORTS SYSTEM FOR INDIVIDUALS WITH AN INTELLECTUAL OR [AND]
2 DEVELOPMENTAL DISABILITY [DISABILITIES]. In accordance with this
3 chapter, the commission and the department shall jointly design and
4 implement an acute care services and long-term services and
5 supports system for individuals with an intellectual or [and]
6 developmental disability [disabilities] that supports the
7 following goals:

8 (1) provide Medicaid services to more individuals in a
9 cost-efficient manner by providing the type and amount of services
10 most appropriate to the individuals' needs;

11 (2) improve individuals' access to services and
12 supports by ensuring that the individuals receive information about
13 all available programs and services, including employment and least
14 restrictive housing assistance, and how to apply for the programs
15 and services;

16 (3) improve the assessment of individuals' needs and
17 available supports, including the assessment of individuals'
18 functional needs;

19 (4) promote person-centered planning, self-direction,
20 self-determination, community inclusion, and customized,
21 integrated, competitive employment;

22 (5) promote individualized budgeting based on an
23 assessment of an individual's needs and person-centered planning;

24 (6) promote integrated service coordination of acute
25 care services and long-term services and supports;

26 (7) improve acute care and long-term services and
27 supports outcomes, including reducing unnecessary

1 institutionalization and potentially preventable events;

2 (8) promote high-quality care;

3 (9) provide fair hearing and appeals processes in

4 accordance with applicable federal law;

5 (10) ensure the availability of a local safety net

6 provider and local safety net services;

7 (11) promote independent service coordination and

8 independent ombudsmen services; and

9 (12) ensure that individuals with the most significant

10 needs are appropriately served in the community and that processes

11 are in place to prevent inappropriate institutionalization of

12 individuals.

13 SECTION 2.243. Section 534.052, Government Code, is amended

14 to read as follows:

15 Sec. 534.052. IMPLEMENTATION OF SYSTEM REDESIGN. The

16 commission and department shall, in consultation with the advisory

17 committee, jointly implement the acute care services and long-term

18 services and supports system for individuals with an intellectual

19 or [and] developmental disability ~~disabilities~~ in the manner and

20 in the stages described in this chapter.

21 SECTION 2.244. Sections 534.053(a), (b), and (e),

22 Government Code, are amended to read as follows:

23 (a) The Intellectual and Developmental Disability System

24 Redesign Advisory Committee shall ~~[is established to]~~ advise the

25 commission and the department on the implementation of the acute

26 care services and long-term services and supports system redesign

27 under this chapter. Subject to Subsection (b), the executive

1 commissioner and the commissioner of aging and disability services
2 [~~the department~~] shall jointly appoint members of the advisory
3 committee who are stakeholders from the intellectual and
4 developmental disabilities community, including:

5 (1) individuals with an intellectual or [and]
6 developmental disability [~~disabilities~~] who are recipients of
7 services under the Medicaid waiver programs, individuals with an
8 intellectual or [and] developmental disability [~~disabilities~~] who
9 are recipients of services under the ICF-IID program, and
10 individuals who are advocates of those recipients, including at
11 least three representatives from intellectual and developmental
12 disability advocacy organizations;

13 (2) representatives of Medicaid managed care and
14 nonmanaged care health care providers, including:

15 (A) physicians who are primary care providers and
16 physicians who are specialty care providers;

17 (B) nonphysician mental health professionals;
18 and

19 (C) providers of long-term services and
20 supports, including direct service workers;

21 (3) representatives of entities with responsibilities
22 for the delivery of Medicaid long-term services and supports or
23 other Medicaid [~~program~~] service delivery, including:

24 (A) representatives of aging and disability
25 resource centers established under the Aging and Disability
26 Resource Center initiative funded in part by the federal
27 Administration on Aging and the Centers for Medicare and Medicaid

1 Services;

2 (B) representatives of community mental health
3 and intellectual disability centers;

4 (C) representatives of and service coordinators
5 or case managers from private and public home and community-based
6 services providers that serve individuals with an intellectual or
7 [and] developmental disability [disabilities]; and

8 (D) representatives of private and public
9 ICF-IID providers; and

10 (4) representatives of managed care organizations
11 contracting with the state to provide services to individuals with
12 an intellectual or [and] developmental disability [disabilities].

13 (b) To the greatest extent possible, the executive
14 commissioner and the commissioner of aging and disability services
15 [~~the department~~] shall appoint members of the advisory committee
16 who reflect the geographic diversity of the state and include
17 members who represent rural Medicaid [~~program~~] recipients.

18 (e) A member of the advisory committee serves without
19 compensation. A member of the advisory committee who is a Medicaid
20 [~~program~~] recipient or the relative of a Medicaid [~~program~~]
21 recipient is entitled to a per diem allowance and reimbursement at
22 rates established in the General Appropriations Act.

23 SECTION 2.245. Section 534.054(a), Government Code, is
24 amended to read as follows:

25 (a) Not later than September 30 of each year, the commission
26 shall submit a report to the legislature regarding:

27 (1) the implementation of the system required by this

1 chapter, including appropriate information regarding the provision
2 of acute care services and long-term services and supports to
3 individuals with an intellectual or [and] developmental disability
4 [~~disabilities~~] under [~~the~~] Medicaid [~~program~~]; and

5 (2) recommendations, including recommendations
6 regarding appropriate statutory changes to facilitate the
7 implementation.

8 SECTION 2.246. Section 534.055(a), Government Code, is
9 amended to read as follows:

10 (a) The commission and department shall submit a report to
11 the legislature not later than December 1, 2014, that includes the
12 following information:

13 (1) the percentage of services provided by each local
14 intellectual and developmental disability authority to individuals
15 receiving ICF-IID or Medicaid waiver program services, compared to
16 the percentage of those services provided by private providers;

17 (2) the types of evidence provided by local
18 intellectual and developmental disability authorities to the
19 department to demonstrate the lack of available private providers
20 in areas of the state where local authorities provide services to
21 more than 40 percent of the Texas home living (TxHmL) waiver program
22 clients or 20 percent of the home and community-based services
23 (HCS) waiver program clients;

24 (3) the types and amounts of services received by
25 clients from local intellectual and developmental disability
26 authorities compared to the types and amounts of services received
27 by clients from private providers;

1 (4) the provider capacity of each local intellectual
2 and developmental disability authority as determined under Section
3 533A.0355(d) [~~Section 533.0355(d)~~], Health and Safety Code;

4 (5) the number of individuals served above or below
5 the applicable provider capacity by each local intellectual and
6 developmental disability authority; and

7 (6) if a local intellectual and developmental
8 disability authority is serving clients over the authority's
9 provider capacity, the length of time the local authority has
10 served clients above the authority's approved provider capacity.

11 SECTION 2.247. Section 534.101(2), Government Code, is
12 amended to read as follows:

13 (2) "Provider" means a person with whom the commission
14 contracts for the provision of long-term services and supports
15 under [the] Medicaid [program] to a specific population based on
16 capitation.

17 SECTION 2.248. Section 534.102, Government Code, is amended
18 to read as follows:

19 Sec. 534.102. PILOT PROGRAMS TO TEST MANAGED CARE
20 STRATEGIES BASED ON CAPITATION. The commission and the department
21 may develop and implement pilot programs in accordance with this
22 subchapter to test one or more service delivery models involving a
23 managed care strategy based on capitation to deliver long-term
24 services and supports under [the] Medicaid [program] to individuals
25 with an intellectual or [and] developmental disability
26 [disabilities].

27 SECTION 2.249. Sections 534.104(a) and (f), Government

1 Code, are amended to read as follows:

2 (a) The department shall identify private services
3 providers that are good candidates to develop a service delivery
4 model involving a managed care strategy based on capitation and to
5 test the model in the provision of long-term services and supports
6 under [the] Medicaid [program] to individuals with an intellectual
7 or [and] developmental disability [disabilities] through a pilot
8 program established under this subchapter.

9 (f) For each pilot program service provider, the department
10 shall develop and implement a pilot program. Under a pilot
11 program, the pilot program service provider shall provide long-term
12 services and supports under [the] Medicaid [program] to persons
13 with an intellectual or [and] developmental disability
14 [disabilities] to test its managed care strategy based on
15 capitation.

16 SECTION 2.250. Section 534.107, Government Code, is amended
17 to read as follows:

18 Sec. 534.107. COORDINATING SERVICES. In providing
19 long-term services and supports under [the] Medicaid [program] to
20 individuals with an intellectual or [and] developmental disability
21 [disabilities], a pilot program service provider shall:

22 (1) coordinate through the pilot program
23 institutional and community-based services available to the
24 individuals, including services provided through:

25 (A) a facility licensed under Chapter 252, Health
26 and Safety Code;

27 (B) a Medicaid waiver program; or

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(C) a community-based ICF-IID operated by local authorities:

10 (4) accept the risk of inappropriate
11 institutionalizations of individuals previously residing in
12 community settings.

13 SECTION 2.251. Section 534.109, Government Code, is amended
14 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.

25 SECTION 2.252. Section 534.110, Government Code, is amended
26 to read as follows:

27 Sec. 534.110. TRANSITION BETWEEN PROGRAMS. The commission

1 shall ensure that there is a comprehensive plan for transitioning
2 the provision of Medicaid [program] benefits between a Medicaid
3 waiver program or an ICF-IID program and a pilot program under this
4 subchapter to protect continuity of care.

5 SECTION 2.253. Section 534.151, Government Code, is amended
6 to read as follows:

7 Sec. 534.151. DELIVERY OF ACUTE CARE SERVICES FOR
8 INDIVIDUALS WITH AN INTELLECTUAL OR [AND] DEVELOPMENTAL DISABILITY
9 [DISABILITIES]. Subject to Section 533.0025, the commission shall
10 provide acute care Medicaid [program] benefits to individuals with
11 an intellectual or [and] developmental disability [disabilities]
12 through the STAR + PLUS Medicaid managed care program or the most
13 appropriate integrated capitated managed care program delivery
14 model and monitor the provision of those benefits.

15 SECTION 2.254. Sections 534.152(a), (b), (c), (e), and (f),
16 Government Code, are amended to read as follows:

17 (a) The commission shall:

18 (1) implement the most cost-effective option for the
19 delivery of basic attendant and habilitation services for
20 individuals with an intellectual or [and] developmental disability
21 [disabilities] under the STAR + PLUS Medicaid managed care program
22 that maximizes federal funding for the delivery of services for
23 that program and other similar programs; and

24 (2) provide voluntary training to individuals
25 receiving services under the STAR + PLUS Medicaid managed care
26 program or their legally authorized representatives regarding how
27 to select, manage, and dismiss personal attendants providing basic

1 attendant and habilitation services under the program.

2 (b) The commission shall require that each managed care
3 organization that contracts with the commission for the provision
4 of basic attendant and habilitation services under the STAR + PLUS
5 Medicaid managed care program in accordance with this section:

6 (1) include in the organization's provider network for
7 the provision of those services:

8 (A) home and community support services agencies
9 licensed under Chapter 142, Health and Safety Code, with which the
10 department has a contract to provide services under the community
11 living assistance and support services (CLASS) waiver program; and

12 (B) persons exempted from licensing under
13 Section 142.003(a)(19), Health and Safety Code, with which the
14 department has a contract to provide services under:

15 (i) the home and community-based services
16 (HCS) waiver program; or

17 (ii) the Texas home living (TxHmL) waiver
18 program;

19 (2) review and consider any assessment conducted by a
20 local intellectual and developmental disability authority
21 providing intellectual and developmental disability service
22 coordination under Subsection (c); and

23 (3) enter into a written agreement with each local
24 intellectual and developmental disability authority in the service
25 area regarding the processes the organization and the authority
26 will use to coordinate the services of individuals with an
27 intellectual or [and] developmental disability [disabilities].

1 (c) The department shall contract with and make contract
2 payments to local intellectual and developmental disability
3 authorities to conduct the following activities under this section:

4 (1) provide intellectual and developmental disability
5 service coordination to individuals with an intellectual or [and]
6 developmental disability [~~disabilities~~] under the STAR + PLUS
7 Medicaid managed care program by assisting those individuals who
8 are eligible to receive services in a community-based setting,
9 including individuals transitioning to a community-based setting;

10 (2) provide an assessment to the appropriate managed
11 care organization regarding whether an individual with an
12 intellectual or developmental disability needs attendant or
13 habilitation services, based on the individual's functional need,
14 risk factors, and desired outcomes;

15 (3) assist individuals with an intellectual or [and]
16 developmental disability [~~disabilities~~] with developing the
17 individuals' plans of care under the STAR + PLUS Medicaid managed
18 care program, including with making any changes resulting from
19 periodic reassessments of the plans;

20 (4) provide to the appropriate managed care
21 organization and the department information regarding the
22 recommended plans of care with which the authorities provide
23 assistance as provided by Subdivision (3), including documentation
24 necessary to demonstrate the need for care described by a plan; and

25 (5) on an annual basis, provide to the appropriate
26 managed care organization and the department a description of
27 outcomes based on an individual's plan of care.

1 (e) During the first three years basic attendant and
2 habilitation services are provided to individuals with an
3 intellectual or [and] developmental disability [~~disabilities~~]
4 under the STAR + PLUS Medicaid managed care program in accordance
5 with this section, providers eligible to participate in the home
6 and community-based services (HCS) waiver program, the Texas home
7 living (TxHmL) waiver program, or the community living assistance
8 and support services (CLASS) waiver program on September 1, 2013,
9 are considered significant traditional providers.

10 (f) A local intellectual and developmental disability
11 authority with which the department contracts under Subsection (c)
12 may subcontract with an eligible person, including a nonprofit
13 entity, to coordinate the services of individuals with an
14 intellectual or [and] developmental disability [~~disabilities~~]
15 under this section. The executive commissioner by rule shall
16 establish minimum qualifications a person must meet to be
17 considered an "eligible person" under this subsection.

18 SECTION 2.255. Sections 534.201(a), (b), (e), and (f),
19 Government Code, are amended to read as follows:

20 (a) This section applies to individuals with an
21 intellectual or [and] developmental disability [~~disabilities~~] who
22 are receiving long-term services and supports under the Texas home
23 living (TxHmL) waiver program on the date the commission implements
24 the transition described by Subsection (b).

25 (b) Not later than September 1, 2017, the commission shall
26 transition the provision of Medicaid [~~program~~] benefits to
27 individuals to whom this section applies to the STAR + PLUS Medicaid

1 managed care program delivery model or the most appropriate
2 integrated capitated managed care program delivery model, as
3 determined by the commission based on cost-effectiveness and the
4 experience of the STAR + PLUS Medicaid managed care program in
5 providing basic attendant and habilitation services and of the
6 pilot programs established under Subchapter C, subject to
7 Subsection (c)(1).

8 (e) The commission shall ensure that there is a
9 comprehensive plan for transitioning the provision of Medicaid
10 [program] benefits under this section that protects the continuity
11 of care provided to individuals to whom this section applies.

12 (f) In addition to the requirements of Section 533.005, a
13 contract between a managed care organization and the commission for
14 the organization to provide Medicaid [program] benefits under this
15 section must contain a requirement that the organization implement
16 a process for individuals with an intellectual or [and]
17 developmental disability [disabilities] that:

18 (1) ensures that the individuals have a choice among
19 providers;

20 (2) to the greatest extent possible, protects those
21 individuals' continuity of care with respect to access to primary
22 care providers, including the use of single-case agreements with
23 out-of-network providers; and

24 (3) provides access to a member services phone line
25 for individuals or their legally authorized representatives to
26 obtain information on and assistance with accessing services
27 through network providers, including providers of primary,

1 specialty, and other long-term services and supports.

2 SECTION 2.256. Sections 534.202(a), (b), (e), (f), and (i),
3 Government Code, are amended to read as follows:

4 (a) This section applies to individuals with an
5 intellectual or [and] developmental disability [~~disabilities~~] who,
6 on the date the commission implements the transition described by
7 Subsection (b), are receiving long-term services and supports
8 under:

9 (1) a Medicaid waiver program other than the Texas
10 home living (TxHmL) waiver program; or
11 (2) an ICF-IID program.

12 (b) After implementing the transition required by Section
13 534.201 but not later than September 1, 2020, the commission shall
14 transition the provision of Medicaid [~~program~~] benefits to
15 individuals to whom this section applies to the STAR + PLUS Medicaid
16 managed care program delivery model or the most appropriate
17 integrated capitated managed care program delivery model, as
18 determined by the commission based on cost-effectiveness and the
19 experience of the transition of Texas home living (TxHmL) waiver
20 program recipients to a managed care program delivery model under
21 Section 534.201, subject to Subsections (c)(1) and (g).

22 (e) The commission shall ensure that there is a
23 comprehensive plan for transitioning the provision of Medicaid
24 [~~program~~] benefits under this section that protects the continuity
25 of care provided to individuals to whom this section applies.

26 (f) Before transitioning the provision of Medicaid
27 [~~program~~] benefits for children under this section, a managed care

1 organization providing services under the managed care program
2 delivery model selected by the commission must demonstrate to the
3 satisfaction of the commission that the organization's network of
4 providers has experience and expertise in the provision of services
5 to children with an intellectual or [and] developmental disability
6 ~~[disabilities]~~. Before transitioning the provision of Medicaid
7 ~~[program]~~ benefits for adults with an intellectual or [and]
8 developmental disability ~~[disabilities]~~ under this section, a
9 managed care organization providing services under the managed care
10 program delivery model selected by the commission must demonstrate
11 to the satisfaction of the commission that the organization's
12 network of providers has experience and expertise in the provision
13 of services to adults with an intellectual or [and] developmental
14 disability ~~[disabilities]~~.

15 (i) In addition to the requirements of Section 533.005, a
16 contract between a managed care organization and the commission for
17 the organization to provide Medicaid ~~[program]~~ benefits under this
18 section must contain a requirement that the organization implement
19 a process for individuals with an intellectual or [and]
20 developmental disability ~~[disabilities]~~ that:

21 (1) ensures that the individuals have a choice among
22 providers;

23 (2) to the greatest extent possible, protects those
24 individuals' continuity of care with respect to access to primary
25 care providers, including the use of single-case agreements with
26 out-of-network providers; and

27 (3) provides access to a member services phone line

1 for individuals or their legally authorized representatives to
2 obtain information on and assistance with accessing services
3 through network providers, including providers of primary,
4 specialty, and other long-term services and supports.

5 SECTION 2.257. Section 535.051(b), Government Code, is
6 amended to read as follows:

7 (b) The chief administrative officer of each of the
8 following state agencies, in consultation with the governor, shall
9 designate one employee from the agency to serve as a liaison for
10 faith- and community-based organizations:

11 (1) ~~the Texas Department of Rural Affairs,~~
12 ~~(2)~~ the Texas Commission on Environmental Quality;
13 (2) ~~(3)~~ the Texas Department of Criminal Justice;
14 (3) ~~(4)~~ the Texas Department of Housing and
15 Community Affairs;

16 (4) ~~(5)~~ the Texas Juvenile Justice Department;
17 (5) ~~(6)~~ the Texas Veterans Commission;
18 (6) ~~(7)~~ the Texas Workforce Commission;
19 (7) ~~(8)~~ the office of the governor;
20 (8) ~~(9)~~ the Department of Public Safety;
21 (9) ~~(10)~~ the Texas Department of Insurance;
22 (10) ~~(11)~~ the Public Utility Commission of Texas;
23 (11) ~~(12)~~ the office of the attorney general;
24 (12) ~~(13)~~ the Department of Agriculture;
25 (13) ~~(14)~~ the office of the comptroller;
26 (14) ~~(15)~~ the Department of Information Resources;
27 (15) ~~(16)~~ the Office of State-Federal Relations;

1 (16) [~~(17)~~] the office of the secretary of state; and
2 (17) [~~(18)~~] other state agencies as determined by the
3 governor.

4 SECTION 2.258. Section 535.103(b), Government Code, is
5 amended to read as follows:

6 (b) The account consists of:

7 (1) all money appropriated for the purposes of this
8 subchapter; and

9 (2) any gifts, grants, or donations received for the
10 purposes of this subchapter [~~, and~~

11 ~~[(3) interest earned on money in the account]~~.

12 SECTION 2.259. The heading to Chapter 536, Government Code,
13 is amended to read as follows:

14 CHAPTER 536. MEDICAID AND THE CHILD HEALTH PLAN PROGRAM [~~PROGRAMS~~]:

15 QUALITY-BASED OUTCOMES AND PAYMENTS

16 SECTION 2.260. Section 536.002(a), Government Code, is
17 amended to read as follows:

18 (a) The Medicaid and CHIP Quality-Based Payment Advisory
19 Committee advises [~~is established to advise~~] the commission on
20 establishing, for purposes of the child health plan program and
21 Medicaid [~~programs administered by the commission or a health and~~
22 ~~human services agency~~]:

23 (1) reimbursement systems used to compensate
24 physicians or other health care providers under those programs that
25 reward the provision of high-quality, cost-effective health care
26 and quality performance and quality of care outcomes with respect
27 to health care services;

1 (2) standards and benchmarks for quality performance,
2 quality of care outcomes, efficiency, and accountability by managed
3 care organizations and physicians and other health care providers;

4 (3) programs and reimbursement policies that
5 encourage high-quality, cost-effective health care delivery models
6 that increase appropriate provider collaboration, promote wellness
7 and prevention, and improve health outcomes; and

8 (4) outcome and process measures under Section
9 **536.003.**

10 SECTION 2.261. Sections **536.003(a), (b), (d), and (e)**,
11 Government Code, are amended to read as follows:

12 (a) The commission, in consultation with the advisory
13 committee, shall develop quality-based outcome and process
14 measures that promote the provision of efficient, quality health
15 care and that can be used in the child health plan program and
16 Medicaid [programs] to implement quality-based payments for acute
17 care services and long-term services and supports across all
18 delivery models and payment systems, including fee-for-service and
19 managed care payment systems. Subject to Subsection (a-1), the
20 commission, in developing outcome and process measures under this
21 section, must include measures that are based on potentially
22 preventable events and that advance quality improvement and
23 innovation. The commission may change measures developed:

24 (1) to promote continuous system reform, improved
25 quality, and reduced costs; and

26 (2) to account for managed care organizations added to
27 a service area.

1 (b) To the extent feasible, the commission shall develop
2 outcome and process measures:

3 (1) consistently across all child health plan program
4 and Medicaid [program] delivery models and payment systems;

5 (2) in a manner that takes into account appropriate
6 patient risk factors, including the burden of chronic illness on a
7 patient and the severity of a patient's illness;

8 (3) that will have the greatest effect on improving
9 quality of care and the efficient use of services, including acute
10 care services and long-term services and supports;

11 (4) that are similar to outcome and process measures
12 used in the private sector, as appropriate;

13 (5) that reflect effective coordination of acute care
14 services and long-term services and supports;

15 (6) that can be tied to expenditures; and

16 (7) that reduce preventable health care utilization
17 and costs.

18 (d) The executive commissioner by rule may require managed
19 care organizations and physicians and other health care providers
20 participating in the child health plan program and Medicaid
21 [programs] to report to the commission in a format specified by the
22 executive commissioner information necessary to develop outcome
23 and process measures under this section.

24 (e) If the commission increases physician and other health
25 care provider reimbursement rates under the child health plan
26 program or Medicaid [program] as a result of an increase in the
27 amounts appropriated for the programs for a state fiscal biennium

1 as compared to the preceding state fiscal biennium, the commission
2 shall, to the extent permitted under federal law and to the extent
3 otherwise possible considering other relevant factors, correlate
4 the increased reimbursement rates with the quality-based outcome
5 and process measures developed under this section.

6 SECTION 2.262. Sections [536.004\(a\)](#), (c), and (e),
7 Government Code, are amended to read as follows:

8 (a) Using quality-based outcome and process measures
9 developed under Section [536.003](#) and subject to this section, the
10 commission, after consulting with the advisory committee and other
11 appropriate stakeholders with an interest in the provision of acute
12 care and long-term services and supports under the child health
13 plan program and Medicaid [~~programs~~], shall develop quality-based
14 payment systems, and require managed care organizations to develop
15 quality-based payment systems, for compensating a physician or
16 other health care provider participating in the child health plan
17 program or Medicaid [~~program~~] that:

18 (1) align payment incentives with high-quality,
19 cost-effective health care;
20 (2) reward the use of evidence-based best practices;
21 (3) promote the coordination of health care;
22 (4) encourage appropriate physician and other health
23 care provider collaboration;
24 (5) promote effective health care delivery models; and
25 (6) take into account the specific needs of the child
26 health plan program enrollee and Medicaid recipient populations.

27 (c) In developing quality-based payment systems under this

1 chapter, the commission shall examine and consider implementing:

2 (1) an alternative payment system;

3 (2) any existing performance-based payment system
4 used under the Medicare program that meets the requirements of this
5 chapter, modified as necessary to account for programmatic
6 differences, if implementing the system would:

7 (A) reduce unnecessary administrative burdens;

8 and

9 (B) align quality-based payment incentives for
10 physicians and other health care providers with the Medicare
11 program; and

12 (3) alternative payment methodologies within the
13 system that are used in the Medicare program, modified as necessary
14 to account for programmatic differences, and that will achieve cost
15 savings and improve quality of care in the child health plan program
16 and Medicaid [programs].

17 (e) The commission may modify a quality-based payment
18 system developed under this chapter to account for programmatic
19 differences between the child health plan program and Medicaid
20 [programs] and delivery systems under those programs.

21 SECTION 2.263. Sections 536.005(a) and (c), Government
22 Code, are amended to read as follows:

23 (a) To the extent possible, the commission shall convert
24 hospital reimbursement systems under the child health plan program
25 and Medicaid [programs] to a diagnosis-related groups (DRG)
26 methodology that will allow the commission to more accurately
27 classify specific patient populations and account for severity of

1 patient illness and mortality risk.

2 (c) Notwithstanding Subsection (a) and to the extent
3 possible, the commission shall convert outpatient hospital
4 reimbursement systems under the child health plan program and
5 Medicaid [programs] to an appropriate prospective payment system
6 that will allow the commission to:

7 (1) more accurately classify the full range of
8 outpatient service episodes;

9 (2) more accurately account for the intensity of
10 services provided; and

11 (3) motivate outpatient service providers to increase
12 efficiency and effectiveness.

13 SECTION 2.264. Section 536.051(a), Government Code, is
14 amended to read as follows:

15 (a) Subject to Section 1903(m)(2)(A), Social Security Act
16 (42 U.S.C. Section 1396b(m)(2)(A)), and other applicable federal
17 law, the commission shall base a percentage of the premiums paid to
18 a managed care organization participating in the child health plan
19 program or Medicaid [program] on the organization's performance
20 with respect to outcome and process measures developed under
21 Section 536.003 that address potentially preventable events. The
22 percentage of the premiums paid may increase each year.

23 SECTION 2.265. Sections 536.052(a) and (d), Government
24 Code, are amended to read as follows:

25 (a) The commission may allow a managed care organization
26 participating in the child health plan program or Medicaid
27 [program] increased flexibility to implement quality initiatives

1 in a managed care plan offered by the organization, including
2 flexibility with respect to financial arrangements, in order to:

3 (1) achieve high-quality, cost-effective health care;
4 (2) increase the use of high-quality, cost-effective
5 delivery models;

6 (3) reduce the incidence of unnecessary
7 institutionalization and potentially preventable events; and

8 (4) increase the use of alternative payment systems,
9 including shared savings models, in collaboration with physicians
10 and other health care providers.

11 (d) In awarding contracts to managed care organizations
12 under the child health plan program and Medicaid [programs], the
13 commission shall, in addition to considerations under Section
14 533.003 of this code and Section 62.155, Health and Safety Code,
15 give preference to an organization that offers a managed care plan
16 that successfully implements quality initiatives under Subsection
17 (a) as determined by the commission based on data or other evidence
18 provided by the organization or meets quality of care and
19 cost-efficiency benchmarks under Subsection (b).

20 SECTION 2.266. Section 536.101(1), Government Code, is
21 amended to read as follows:

22 (1) "Health home" means a primary care provider
23 practice or, if appropriate, a specialty care provider practice,
24 incorporating several features, including comprehensive care
25 coordination, family-centered care, and data management, that are
26 focused on improving outcome-based quality of care and increasing
27 patient and provider satisfaction under the child health plan

1 program and Medicaid [programs].

2 SECTION 2.267. Section 536.151(b), Government Code, is
3 amended to read as follows:

4 (b) The commission shall establish a program to provide a
5 confidential report to each hospital in this state that
6 participates in the child health plan program or Medicaid [program]
7 regarding the hospital's performance with respect to each
8 potentially preventable event described under Subsection (a). To
9 the extent possible, a report provided under this section should
10 include all potentially preventable events across all child health
11 plan program and Medicaid [program] payment systems. A hospital
12 shall distribute the information contained in the report to
13 physicians and other health care providers providing services at
14 the hospital.

15 SECTION 2.268. Section 536.203(c), Government Code, is
16 amended to read as follows:

17 (c) The commission may limit a payment initiative to:

18 (1) one or more regions in this state;

19 (2) one or more organized networks of physicians and
20 other health care providers; or

21 (3) specified types of services provided under the
22 child health plan program or Medicaid [program], or specified types
23 of enrollees or recipients under those programs.

24 SECTION 2.269. Section 536.253(b), Government Code, is
25 amended to read as follows:

26 (b) The commission shall establish a program to provide a
27 report to each Medicaid long-term services and supports provider in

1 this state regarding the provider's performance with respect to
2 potentially preventable admissions, potentially preventable
3 readmissions, and potentially preventable emergency room
4 visits. To the extent possible, a report provided under this
5 section should include applicable potentially preventable events
6 information across all Medicaid [program] payment systems.

7 SECTION 2.270. Section 537.002(b), Government Code, is
8 amended to read as follows:

9 (b) The waiver under this section must be designed to
10 achieve the following objectives regarding [~~the~~] Medicaid
11 [program] and alternatives to Medicaid [~~the program~~]:

12 (1) provide flexibility to determine Medicaid
13 eligibility categories and income levels;

14 (2) provide flexibility to design Medicaid benefits
15 that meet the demographic, public health, clinical, and cultural
16 needs of this state or regions within this state;

17 (3) encourage use of the private health benefits
18 coverage market rather than public benefits systems;

19 (4) encourage people who have access to private
20 employer-based health benefits to obtain or maintain those
21 benefits;

22 (5) create a culture of shared financial
23 responsibility, accountability, and participation in [~~the~~]
24 Medicaid [program] by:

25 (A) establishing and enforcing copayment
26 requirements similar to private sector principles for all
27 eligibility groups;

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(B) promoting the use of health savings accounts
to influence a culture of individual responsibility; and

3 (C) promoting the use of vouchers for
4 consumer-directed services in which consumers manage and pay for
5 health-related services provided to them using program vouchers;

21 (9) allow for the redesign of long-term care services
22 and supports to increase access to patient-centered care in the
23 most cost-effective manner.

24 SECTION 2.271. Section 538.002, Government Code, is amended
25 to read as follows:

26 Sec. 538.002. EFFECT OF CHAPTER; AUTHORITY OF
27 COMMISSION. This chapter does not affect or give the commission

1 additional authority to:

2 (1) affect any individual health care treatment
3 decision for a Medicaid recipient;

4 (2) replace or affect the process of determining
5 Medicaid benefits, including the approval process for receiving
6 benefits for durable medical equipment, or any applicable approval
7 process required for reimbursement for services or other equipment
8 under [the] Medicaid [program];

9 (3) implement a clinical initiative or associated rule
10 or program policy that is otherwise prohibited under state or
11 federal law; or

12 (4) implement any initiative that would expand
13 eligibility for benefits under [the] Medicaid [program].

14 SECTION 2.272. Section 538.051, Government Code, is amended
15 to read as follows:

16 Sec. 538.051. MEDICAID QUALITY IMPROVEMENT PROCESS. The
17 commission shall, according to the provisions of this chapter,
18 develop and implement a quality improvement process by which the
19 commission:

20 (1) receives suggestions for clinical initiatives
21 designed to improve:

22 (A) the quality of care provided under [the]
23 Medicaid [program]; and

24 (B) the cost-effectiveness of [the] Medicaid
25 [program];

26 (2) conducts a preliminary review under Section
27 538.053(4) of each suggestion received under Section 538.052 to

1 determine whether the suggestion warrants further consideration
2 and analysis; and

3 (3) conducts an analysis under Section 538.054 of
4 clinical initiative suggestions that are selected for analysis
5 under Subdivision (2) [~~and of required clinical initiatives under~~
6 ~~Section 538.0521~~].

7 SECTION 2.273. Section 538.052(a), Government Code, is
8 amended to read as follows:

9 (a) Subject to Subsection (b), the commission shall solicit
10 and accept suggestions for clinical initiatives, in either written
11 or electronic form, from:

12 (1) a member of the state legislature;

13 (2) the executive commissioner;

14 (3) the commissioner of aging and disability services
15 [~~the Department of Aging and Disability Services~~];

16 (4) the commissioner of state health services [~~the~~
17 ~~Department of State Health Services~~];

18 (5) the commissioner of the Department of Family and
19 Protective Services;

20 (6) the commissioner of assistive and rehabilitative
21 services [~~the Department of Assistive and Rehabilitative~~
22 ~~Services~~];

23 (7) the medical care advisory committee established
24 under Section 32.022, Human Resources Code;

25 (8) the physician payment advisory committee created
26 under Section 32.022(d), Human Resources Code; and

27 (9) the Electronic Health Information Exchange System

1 Advisory Committee established under Section [531.904](#).

2 SECTION 2.274. Section [538.054](#), Government Code, is amended
3 to read as follows:

4 Sec. 538.054. ANALYSIS OF CLINICAL INITIATIVES. The
5 commission shall conduct an analysis of each clinical initiative
6 selected by the commission after having conducted the commission's
7 preliminary review under Section [538.053\(4\)](#). The analysis
8 required under this section must include a review of:

9 (1) any public comments and submitted research
10 relating to the initiative;

11 (2) the available clinical research and historical
12 utilization information relating to the initiative;

13 (3) published medical literature relating to the
14 initiative;

15 (4) any adoption of the initiative by medical
16 societies or other clinical groups;

17 (5) whether the initiative has been implemented under:

18 (A) the Medicare program;

19 (B) another state medical assistance program; or

20 (C) a state-operated health care program,
21 including the child health plan program;

22 (6) the results of reports, research, pilot programs,
23 or clinical studies relating to the initiative conducted by:

24 (A) institutions of higher education, including
25 related medical schools;

26 (B) governmental entities and agencies; and

27 (C) private and nonprofit think tanks and

1 research groups;

2 (7) the impact that the initiative would have on [the]
3 Medicaid [program] if the initiative were implemented in this
4 state, including:

5 (A) an estimate of the number of recipients under
6 [the] Medicaid [program] that would be impacted by implementation
7 of the initiative; and

8 (B) a description of any potential cost savings
9 to the state that would result from implementation of the
10 initiative; and

11 (8) any statutory barriers to implementation of the
12 initiative.

13 SECTION 2.275. Section 538.055, Government Code, is amended
14 to read as follows:

15 Sec. 538.055. FINAL REPORT ON CLINICAL INITIATIVE. The
16 commission shall prepare a final report based on the commission's
17 analysis of a clinical initiative under Section 538.054. The final
18 report must include:

19 (1) a final determination of:

20 (A) the feasibility of implementing the
21 initiative;

22 (B) the likely impact implementing the
23 initiative would have on the quality of care provided under [the]
24 Medicaid [program]; and

25 (C) the anticipated cost savings to the state
26 that would result from implementing the initiative;

27 (2) a summary of the public comments, including a

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1 description of any opposition to the initiative;

2 (3) an identification of any statutory barriers to

3 implementation of the initiative; and

4 (4) if the initiative is not implemented, an

5 explanation of the decision not to implement the initiative.

6 SECTION 2.276. Section 538.057, Government Code, is amended
7 to read as follows:

8 Sec. 538.057. ACTION ON CLINICAL INITIATIVE BY
9 COMMISSION. After the commission conducts an analysis of a
10 clinical initiative under Section 538.054:

14 (A) implement the initiative if implementation
15 of the initiative is not otherwise prohibited by law; or

25 SECTION 2.277. Section 539.001, Government Code, is amended
26 to read as follows:

27 Sec. 539.001. DEFINITION [~~DEFINITIONS~~]. In this chapter,

1 "department" [+
2 ~~(1) "Department"~~] means the Department of State
3 Health Services.

4 ~~(2) "Executive commissioner"~~ means the ~~executive~~
5 ~~commissioner of the Health and Human Services Commission.]~~

6 SECTION 2.278. Sections [2105.001](#)(1) and (4), Government
7 Code, are amended to read as follows:

8 (1) "Agency" means:

9 (A) the Health and Human Services Commission
10 ~~[Texas Department of Human Services]~~;

11 (B) the ~~Texas~~ Department of State Health
12 Services;

13 (C) the Texas Department of Housing and Community
14 Affairs;

15 (D) the Texas Education Agency;

16 (E) the ~~Texas~~ Department of Aging and
17 Disability Services ~~[Mental Health and Mental Retardation]~~; or

18 (F) ~~[the Texas Department on Aging; or~~

19 ~~(G)~~ any other commission, board, department,
20 or state agency designated to receive block grant funds.

21 (4) "Provider" means a public or private organization
22 that receives block grant funds or may be eligible to receive block
23 grant funds to provide services or benefits to the public,
24 including:

25 (A) a local government unit;

26 (B) a council of government;

27 (C) a community action agency; or

1 (D) a private new community developer or
2 nonprofit community association in a community originally
3 established as a new community development program under the former
4 Urban Growth and New Community Development Act of 1970 (42 U.S.C.
5 Section 4511 et seq.).

6 SECTION 2.279. Section 2105.002, Government Code, is
7 amended to read as follows:

8 Sec. 2105.002. COMBINATION OF PROGRAMS NOT INTENDED TO
9 REDUCE SERVICES. The process of combining categorical federal
10 assistance programs into block grants should not have an overall
11 effect of reducing the relative proportion of services and benefits
12 made available to low-income individuals, elderly individuals,
13 [disabled] individuals with disabilities, and migrant and seasonal
14 agricultural workers.

15 SECTION 2.280. Section 2105.005(c), Government Code, is
16 amended to read as follows:

17 (c) To the extent consistent with the purpose of the block
18 grant, an agency's rules [~~agency by rule~~] shall ensure that
19 providers use block grant funds to the maximum benefit of
20 low-income recipients and intended recipients.

21 SECTION 2.281. Section 2105.009, Government Code, is
22 amended to read as follows:

23 Sec. 2105.009. PRIMARY CARE BLOCK GRANT. (a) The [~~Texas~~]
24 Department of State Health Services shall administer a [~~the~~]
25 primary care block grant if that grant is authorized and if the
26 department satisfies federal requirements relating to the
27 designation of an agency to administer the grant.

1 (b) In administering the primary care block grant, the
2 department may:

3 (1) receive the primary care block grant funds on
4 behalf of the state;

5 (2) spend primary care block grant funds and state
6 funds specifically appropriated by the legislature to match funds
7 received under a primary care block grant;

8 (3) make grants to, advance funds to, contract with,
9 and take other actions through community health centers that meet
10 the requirements of 42 U.S.C. Section 254c(e)(3) to provide for the
11 delivery of primary and supplemental health services to medically
12 underserved populations of the state; and

13 (4) ~~[adopt necessary rules; and]~~

14 ~~[45]~~ perform other activities necessary to
15 administer the primary care block grant.

16 (b-1) The executive commissioner of the Health and Human
17 Services Commission may adopt necessary rules for administering the
18 primary care block grant.

19 (c) In this section:

20 (1) "Community health center" has the meaning assigned
21 by 42 U.S.C. Section 254c(a), as that law existed on April 23, 1986.

22 (2) "Medically underserved population," "primary
23 health services," and "supplemental health services" have the
24 meanings assigned by 42 U.S.C. Section 254c(b), as that law existed
25 on April 23, 1986.

26 SECTION 2.282. Section 2105.058(d), Government Code, is
27 amended to read as follows:

1 (d) An agency's rules [~~agency by rule~~] may require a
2 provider to undertake other reasonable efforts to seek public
3 participation.

4 SECTION 2.283. Section 2105.152, Government Code, is
5 amended to read as follows:

6 Sec. 2105.152. HEALTH AND [DEPARTMENT OF] HUMAN SERVICES
7 COMMISSION PROCEDURES FOR FAIR HEARING. The Health and Human
8 Services Commission [~~Texas Department of Human Services~~] shall use
9 procedures for conducting a fair hearing under this subchapter.

10 SECTION 2.284. Section 2105.202(a), Government Code, is
11 amended to read as follows:

12 (a) The individual or entity responsible for adopting rules
13 for an [An] agency shall adopt specific rules for the agency that
14 define [~~defining~~] good cause for nonrenewal of a provider's
15 contract or reduction of a provider's funding.

16 SECTION 2.285. Section 2165.301, Government Code, is
17 amended by amending Subdivision (2) and adding Subdivision (2-a) to
18 read as follows:

19 (2) "Department" means the [~~Texas~~] Department of State
20 Health Services.

21 (2-a) "Executive commissioner" means the executive
22 commissioner of the Health and Human Services Commission.

23 SECTION 2.286. Sections 2165.302(a), (d), and (e),
24 Government Code, are amended to read as follows:

25 (a) Except as provided by Section 2165.303:

26 (1) the commission shall refer matters related to the
27 investigation and testing of indoor air quality in state buildings

1 under the charge and control of the commission to the department
2 [Texas Department of Health]; and

3 (2) the department shall conduct any necessary
4 investigation and testing of indoor air quality in state buildings,
5 on request or referral of an entity with charge and control of the
6 state building.

7 (d) The executive commissioner by rule [~~department~~] may
8 establish a system of charges for indoor air quality investigation
9 and testing in state buildings. A system established by the
10 executive commissioner [~~department~~] shall ensure that the
11 department is reimbursed for the cost of providing the services by
12 the agency or agencies occupying the portions of a building that are
13 investigated or tested.

14 (e) The executive commissioner [~~department~~] shall adopt
15 rules and procedures relating to the investigation and testing of
16 indoor air quality in state buildings.

17 SECTION 2.287. The following provisions of the Government
18 Code are repealed:

- 19 (1) Section 531.02131;
- 20 (2) Section 531.0222;
- 21 (3) Section 531.0249;
- 22 (4) Section 531.030;
- 23 (5) Section 531.0314;
- 24 (6) Section 531.046;
- 25 (7) Section 531.049;
- 26 (8) Section 531.065;
- 27 (9) Section 531.0993;

ARTICLE 3. HEALTH AND SAFETY CODE

13 SECTION 3.0001. The heading to Subtitle A, Title 2, Health
14 and Safety Code, is amended to read as follows:

15 SUBTITLE A. [TEXAS] DEPARTMENT OF STATE HEALTH SERVICES

16 SECTION 3.0002. The heading to Chapter 11, Health and
17 Safety Code, is amended to read as follows:

18 CHAPTER 11. GENERAL PROVISIONS [ORGANIZATION OF TEXAS DEPARTMENT
19 OF HEALTH]

20 SECTION 3.0003. Section [11.001](#), Health and Safety Code, is
21 amended to read as follows:

22 Sec. 11.001. DEFINITIONS. In this title:

25 (2) "Commissioner" means the commissioner of state
26 [public] health services.

27 (3) "Department" means the [Texas] Department of State

1 Health Services.

2 (4) "Executive commissioner" means the executive
3 commissioner of the Health and Human Services Commission.

4 SECTION 3.0004. Sections 11.003(b) and (c), Health and
5 Safety Code, are amended to read as follows:

6 (b) In the review of the department [Department of State
7 Health Services] by the Sunset Advisory Commission, as required by
8 [~~this section and~~] Section 1001.003, the sunset commission shall
9 review the powers and duties exercised by the department under
10 Chapter 108 and determine whether the department, under that
11 chapter, is:

12 (1) achieving the legislature's intent of empowering
13 consumers with information to make informed health care decisions;

14 (2) maintaining appropriate privacy and security
15 standards for patient information; and

16 (3) limiting the patient information the department
17 collects to the information necessary for performing the
18 department's duties under Chapter 108.

19 (c) The Sunset Advisory Commission shall report its
20 findings to the legislature in the report required by Section
21 325.010, Government Code. This section expires [~~subsection and~~
22 ~~Subsection (b) expire~~] September 1, 2015.

23 SECTION 3.0005. (a) Section 11.004(b), Health and Safety
24 Code, is transferred to Section 1001.071, Health and Safety Code,
25 redesignated as Section 1001.071(a), Health and Safety Code, and
26 amended to read as follows:

27 (a) [~~(b)~~] The department is the state agency with primary

1 responsibility to administer or provide [~~for providing~~] health
2 services, including:

- 3 (1) disease prevention;
- 4 (2) health promotion;
- 5 (3) indigent health care;
- 6 (4) certain acute care services;
- 7 (5) [~~health care facility regulation, excluding~~
8 ~~long-term care facilities,~~

9 [~~(6)~~] licensing of certain health professions; and
10 (6) [~~(7)~~] other health-related services as provided
11 by law.

12 (b) Section 1001.071, Health and Safety Code, is amended to
13 read as follows:

14 Sec. 1001.071. GENERAL POWERS AND DUTIES OF DEPARTMENT
15 RELATED TO HEALTH CARE. (b) The department is responsible for
16 administering human services programs regarding the public health,
17 including:

18 (1) implementing the state's public health care
19 delivery programs under the authority of the department;
20 (2) administering state health facilities, hospitals,
21 and health care systems;

22 (3) developing and providing health care services, as
23 directed by law;

24 (4) providing for the prevention and control of
25 communicable diseases;

26 (5) providing public education on health-related
27 matters, as directed by law;

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(8) investigating the causes of injuries and methods
of prevention:

14 (10) administering the registration of vital
15 statistics.

22 (13) enforcing regulations regarding radioactive
23 materials;

1 food vendors;

2 (16) enforcing regulations controlling hazardous
3 substances in households and workplaces; and

4 (17) implementing a mental health program for
5 veterans.

6 SECTION 3.0006. Sections [11.012\(a\), \(b\), \(c\), \(d\), and \(f\)](#),
7 Health and Safety Code, are transferred to Section [1001.051](#), Health
8 and Safety Code, redesignated respectively as Sections
9 [1001.051\(a-1\), \(a-2\), \(a-3\), \(a-4\), and \(b-1\)](#), Health and Safety
10 Code, and amended to read as follows:

11 (a-1) [~~a~~] The executive commissioner [~~of health and human~~
12 ~~services~~] shall employ the commissioner in accordance with Section
13 [531.0056](#), Government Code.

14 (a-2) [~~b~~] Except as provided in Subsection (a-3) [~~c~~],
15 the commissioner must:

16 (1) have at least five years of experience in the
17 administration of public health systems; and

18 (2) be a person licensed to practice medicine in this
19 state.

20 (a-3) [~~c~~] The executive commissioner [~~of health and human~~
21 ~~services~~] may, based on the qualifications and experience in
22 administering public health systems, employ a person other than a
23 physician as the commissioner.

24 (a-4) [~~d~~] If the executive commissioner [~~of health and~~
25 ~~human services~~] employs a person as commissioner who is not a
26 physician, then the executive commissioner [~~board~~] shall designate
27 a person licensed to practice medicine in this state as chief

1 medical executive.

2 **(b-1) [-(f)]** The executive commissioner [board] may
3 supplement the salary of the commissioner with the approval of the
4 governor. The salary may not exceed 1.5 times the salary of the
5 governor, from funds appropriated to the department. The use of
6 funds from other sources are not limited by this subsection.

7 SECTION 3.0007. Section 11.014, Health and Safety Code, is
8 transferred to Subchapter B, Chapter 1001, Health and Safety Code,
9 redesignated as Section 1001.034, Health and Safety Code, and
10 amended to read as follows:

11 Sec. 1001.034 [11.014]. INVESTIGATION OF DEPARTMENT. The
12 executive commissioner [board] shall investigate the conduct of the
13 work of the department. For that purpose, the executive
14 commissioner [board] shall have access at any time to all
15 department books and records and may require an officer or employee
16 of the department to furnish written or oral information.

17 SECTION 3.0008. Section 11.016, Health and Safety Code, is
18 transferred to Subchapter B, Chapter 1001, Health and Safety Code,
19 redesignated as Section 1001.035, Health and Safety Code, and
20 amended to read as follows:

21 Sec. 1001.035 [11.016]. ADVISORY COMMITTEES. (a) The
22 executive commissioner [board] may appoint advisory committees to
23 assist the executive commissioner and department [board] in
24 performing [its] duties related to department functions.

25 (b) If the executive commissioner appoints [The board shall
26 appoint] an advisory committee under this section, the appointment
27 must be made in a manner that provides for:

1 (1) a balanced representation of persons with
2 knowledge and interest in the committee's field of work;

3 (2) the inclusion on the committee of at least two
4 members who represent the interests of the public; and

5 (3) a balanced representation of the geographic
6 regions of the state.

7 (d) ~~A [Except as otherwise provided by law and contingent on~~
8 ~~the availability of department funds for this purpose, a]~~ member of
9 an advisory committee appointed under this section may ~~[by the~~
10 ~~board is entitled to]~~ receive reimbursement for~~[, with regard to]~~
11 travel expenses as provided by Section 2110.004, Government Code[,
12 ~~the per diem and travel allowance authorized by the General~~
13 ~~Appropriations Act for state employees].~~

14 (e) The executive commissioner ~~[board]~~ shall specify each
15 committee's purpose, powers, and duties, and shall require each
16 committee to report to the executive commissioner or department
17 ~~[board]~~ in the manner specified by the executive commissioner
18 ~~[board]~~ concerning the committee's activities and the results of
19 its work.

20 (f) The executive commissioner ~~[board]~~ shall establish
21 procedures for receiving reports relating to the activities and
22 accomplishments of an advisory committee established by statute to
23 advise the ~~[board or]~~ department or executive commissioner on
24 matters related to department functions. The executive
25 commissioner ~~[board]~~ may appoint additional members to those
26 advisory committees and may establish additional duties of those
27 committees as the executive commissioner ~~[board]~~ determines to be

1 necessary.

2 (g) The executive commissioner [board] shall adopt rules to
3 implement this section.

4 SECTION 3.0009. The heading to Chapter 12, Health and
5 Safety Code, is amended to read as follows:

6 CHAPTER 12. POWERS AND DUTIES OF [TEXAS] DEPARTMENT OF
7 STATE HEALTH SERVICES

8 SECTION 3.0010. Subchapter A, Chapter 12, Health and Safety
9 Code, is amended to read as follows:

10 SUBCHAPTER A. GENERAL POWERS AND DUTIES [OF BOARD]
11 Sec. 12.0001. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
12 CONFLICT WITH OTHER LAW [OF COMMISSIONER OF HEALTH AND HUMAN
13 SERVICES]. [~~The commissioner of health and human services has the~~
14 ~~powers and duties relating to the board and commissioner as~~
15 ~~provided by Section 531.0055, Government Code.~~] To the extent a
16 power or duty given to the [board or] commissioner by this title or
17 another law conflicts with Section 531.0055, Government Code,
18 Section 531.0055 controls.

19 Sec. 12.001. GENERAL POWERS AND DUTIES OF EXECUTIVE
20 COMMISSIONER. (a) The executive commissioner [board] has general
21 supervision and control over all matters relating to the health of
22 the citizens of this state.

23 (b) The executive commissioner [board] shall[+
24 [+] adopt rules for [~~its procedure and for~~] the
25 performance of each duty imposed by law on the executive
26 commissioner [board], the department, or the commissioner and file
27 a copy of those rules with the department.

1 Sec. 12.0011. INVESTIGATIONS IN GENERAL. Subject to the
2 oversight of the executive commissioner, the department shall [+, and
3 [~~(2)~~] examine, investigate, enter, and inspect any
4 public place or public building as the department [~~board~~]
5 determines necessary for the discovery and suppression of disease
6 and the enforcement of any health or sanitation law of this state.

7 [(c) ~~The board has all the powers, duties, and functions~~
8 granted by law to:

- 9 [~~(1) the Texas Board of Health;~~
- 10 [~~(2) the state commissioner of health;~~
- 11 [~~(3) the Texas Department of Health;~~
- 12 [~~(4) the Texas Board of Health Resources; and~~
- 13 [~~(5) the Texas Department of Health Resources.~~]

14 Sec. 12.002. CERTAIN PROCEDURES FOR [BOARD]
15 INVESTIGATIONS. (a) The commissioner or the commissioner's
16 designee [~~A member of the board~~] may administer oaths, summon
17 witnesses, and compel the attendance of witnesses in any matter
18 proper for [~~board~~] investigation by the department, subject to the
19 executive commissioner's oversight, including the determination of
20 nuisances and the investigation of:

- 21 (1) public water supplies;
- 22 (2) sanitary conditions;
- 23 (3) the existence of infection; or
- 24 (4) any matter that requires the department [~~board~~] to
25 exercise its discretionary powers and that is within the general
26 scope of its authority under this subchapter.

27 (b) Each district court shall aid the department [~~board~~] in

1 its investigations and in compelling compliance with this
2 subchapter. If a witness summoned by the commissioner or the
3 commissioner's designee [board] is disobedient or disrespectful to
4 the department's [board's] lawful authority, the district court of
5 the county in which the witness is summoned to appear shall punish
6 the witness in the manner provided for contempt of court.

7 Sec. 12.003. LEGAL REPRESENTATION. (a) A suit brought by
8 the department [board] must be brought in the name of the state.

9 (b) The attorney general shall assign a special assistant to
10 attend to the department's [board's] legal matters, and on the
11 department's [board's] request shall furnish necessary assistance
12 to the department [board] relating to its legal requirements.

13 [Sec. 12.004. DEVELOPMENT OF PROPOSED RULES.] (a) This
14 section applies to the process by which the department develops
15 proposed rules for the board's consideration before the proposed
16 rules are published in the Texas Register and before the board,
17 commissioner, or department complies with the rulemaking
18 requirements of the administrative procedure law, Chapter 2001,
19 Government Code. This section does not affect the duty of the
20 board, commissioner, or department to comply with the rulemaking
21 requirements of that law.

22 [(b) The board shall require the department to establish a
23 checklist of methods that, to the extent appropriate, the
24 department will follow to obtain early in the rule development
25 process the advice and opinions of the public and of persons who
26 will be most affected by a proposed rule. The checklist must
27 include methods for identifying persons who will be most affected]

1 and for soliciting at a minimum the advice and opinions of affected
2 local health departments, of recipients and providers of affected
3 services, and of advocates for affected recipients or providers.

4 [(c) The checklist may include negotiated rulemaking,
5 informal conferences, advisory committees, and any other
6 appropriate method.

7 [(d) A rule adopted by the board may not be challenged on the
8 grounds that the board, commissioner, or department did not comply
9 with this section. If the department was unable to solicit a
10 significant amount of advice and opinion from the public or from
11 affected persons early in the rule development process, the
12 department shall state in writing to the board the reasons why the
13 department was unable to do so.

14 [Sec. 12.005. MEDICAL DIRECTOR: MEDICAID MANAGED CARE AND
15 CHIPS PROGRAMS. (a) In addition to any other medical director
16 employed by the department, the board shall require the department
17 to employ a separate medical director whose duties consist of
18 acting as the medical director for the children's health insurance
19 program created under Title XXI of the Social Security Act (42
20 U.S.C. Section 1397aa et seq.) and also as the medical director for
21 the Medicaid managed care program, to the extent that those
22 programs are administered by the department.

23 [(b) The medical director shall be primarily responsible
24 for implementing and maintaining policies and systems for the
25 programs that relate to clinical and professional medical issues,
26 including clinical oversight.

27 [(c) The medical director must be a physician licensed to

1 ~~practice medicine in this state.]~~

2 SECTION 3.0011. Sections 12.0111(b) and (c), Health and
3 Safety Code, are amended to read as follows:

4 (b) Notwithstanding other law, the executive commissioner
5 by rule shall adopt and the department shall collect [charge] a fee
6 for issuing or renewing a license that is in an amount designed to
7 allow the department to recover from its license holders all of the
8 department's direct and indirect costs in administering and
9 enforcing the applicable licensing program.

10 (c) Notwithstanding other law, each regulatory board or
11 other agency that is under the jurisdiction of the department or
12 administratively attached to the department and that issues
13 licenses shall adopt by rule and collect [charge] a fee for issuing
14 or renewing a license that is in an amount designed to allow the
15 department and the regulatory board or agency to recover from the
16 license holders all of the direct and indirect costs to the
17 department and to the regulatory board or agency in administering
18 and enforcing the applicable licensing program.

19 SECTION 3.0012. Sections 12.0115(a), (e), and (h), Health
20 and Safety Code, are amended to read as follows:

21 (a) In this section, "health care delivery programs"
22 includes the department's primary health care services program, its
23 program to improve maternal and infant health, its services program
24 for [chronically ill and disabled] children with special health
25 care needs, any aspects of health care delivery under the state
26 Medicaid program assigned to the department by law or by the
27 commission [Health and Human Services Commission], and the part of

1 any other department program concerned with the department's
2 responsibility for the delivery of health care services.

3 (e) One of the primary goals of the department in
4 integrating the administration of [~~its~~] contracts entered into by
5 the executive commissioner or the executive commissioner's
6 designee on behalf of the department with providers of health care
7 services shall be designing an integrated contract administration
8 system that reduces the administrative and paperwork burden on
9 providers while still providing the department with the information
10 it needs to effectively administer the contracts. The department's
11 integration of contract administration must include:

12 (1) the integration of the initial procurement process
13 within and across programs, at least in part by efficiently
14 combining requests for bids or proposals within or across programs
15 to the extent it reduces the administrative burden for providers;

16 (2) the establishment of uniform contract terms,
17 including:

18 (A) contract terms that require information from
19 providers, or that prescribe performance standards for providers,
20 that could be made uniform within or across programs while
21 remaining effective as contract terms;

22 (B) the establishment of a procedure under which
23 a contractor or a person responding to a request for bids or
24 proposals may supply the department with requested information
25 whenever possible by referencing current and correct information
26 previously supplied to and on file with the department; and

27 (C) contract terms regarding incentives for

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1 contractors to meet or exceed contract requirements;

2 (3) the integration of contract monitoring,
3 particularly with regard to monitoring providers that deliver
4 health services for the department under more than one contract or
5 under more than one department program; and

6 (4) the integration of reimbursement methods:

10 (B) including the application across programs of
11 the most effective and efficient reimbursement technologies or
12 methods that are available to the department under any of its
13 programs.

14 (h) The department may not integrate health care delivery
15 programs under this section in a way that affects the single state
16 agency status of another state agency for federal purposes without
17 obtaining the approval of the commission [Health and Human Services
18 Commission] and any necessary federal approval.

19 SECTION 3.0013. Sections [12.0121\(b\)](#) and [\(d\)](#), Health and
20 Safety Code, are amended to read as follows:

21 (b) The executive commissioner [board] by rule shall adopt a
22 list of categories of licensed, certified, registered, or otherwise
23 authorized providers to whom the department may award a grant for
24 professional services under this section or with whom the
25 department may contract or otherwise engage to perform professional
26 services under this section.

27 (d) The department may award a grant, enter into a contract,

1 or otherwise engage an individual or a group or association of
2 individuals to perform professional services without complying
3 with Subsection (c) if the executive commissioner by order
4 [~~ratified by the board at its next regular meeting~~] determines that
5 an emergency exists that necessitates the use of different
6 procedures. A grant, contract, or engagement under this subsection
7 is effective only for the period specified by the executive
8 commissioner's order.

9 SECTION 3.0014. Section 12.0122(d), Health and Safety Code,
10 is amended to read as follows:

11 (d) The executive commissioner [department] by rule may
12 establish fees that the department may collect [charges] for the
13 sale of laboratory services.

14 SECTION 3.0015. Section 12.01221, Health and Safety Code,
15 is transferred to Subchapter B, Chapter 33, Health and Safety Code,
16 redesignated as Section 33.0165, Health and Safety Code, and
17 amended to read as follows:

18 Sec. 33.0165 [~~12.01221~~]. MUTUAL AID AGREEMENT FOR NEWBORN
19 SCREENING LABORATORY SERVICES. (a) In this section, "newborn
20 screening laboratory services" means the performance of tests to
21 analyze specimens collected as part of the newborn screenings
22 performed under this subchapter [~~Subchapter B, Chapter 33~~].

23 (b) Notwithstanding Section 12.0122 or other law, the
24 department may enter into a mutual aid agreement to provide newborn
25 screening laboratory services to another state and to receive
26 newborn screening laboratory services from another state in the
27 event of an unexpected interruption of service, including an

1 interruption caused by a disaster.

2 (c) Each mutual aid agreement under Subsection (b) shall
3 include provisions:

4 (1) to address the confidentiality of the identity of
5 the newborn child and the newborn child's family; and

6 (2) to ensure the return of blood specimens and
7 related records to the state that received the newborn screening
8 laboratory services.

9 SECTION 3.0016. Section [12.0123](#), Health and Safety Code, as
10 added by Chapter 1411 (H.B. 2085), Acts of the 76th Legislature,
11 Regular Session, 1999, is transferred to Subchapter B, Chapter 32,
12 Human Resources Code, redesignated as Section 32.0705, Human
13 Resources Code, amended to conform to Section [12.0123](#), Health and
14 Safety Code, as added by Chapters 1447 (H.B. 2896) and 1460 (H.B.
15 2641), Acts of the 76th Legislature, Regular Session, 1999, and
16 further amended to read as follows:

17 Sec. 32.0705 [[12.0123](#)]. EXTERNAL AUDITS OF CERTAIN
18 MEDICAID CONTRACTORS BASED ON RISK. (a) In this section, "Medicaid
19 contractor" means an entity that:

20 (1) is not a health and human services agency as
21 defined by Section [531.001](#), Government Code; and

22 (2) under a contract with the commission or otherwise
23 on behalf of the commission [~~department~~], performs one or more
24 administrative services in relation to the commission's
25 [~~department's~~] operation of [~~a part of the state~~] Medicaid
26 [~~program~~], such as claims processing, utilization review, client
27 enrollment, provider enrollment, quality monitoring, or payment of

1 claims.

2 (b) The commission [department] shall contract with an
3 independent auditor to perform annual independent external
4 financial and performance audits of any Medicaid contractor used
5 [~~by the department~~] in the commission's [~~department's~~] operation of
6 [~~a part of the state~~] Medicaid [~~program~~]. The commission
7 [~~department~~] regularly shall review the [~~its~~] Medicaid contracts
8 and ensure that:

9 (1) the frequency and extent of audits of a Medicaid
10 contractor under this section are based on the amount of risk to the
11 state involved in the administrative services being performed by
12 the contractor;

13 (2) audit procedures related to financial audits and
14 performance audits are used consistently in audits under this
15 section; and

16 (3) to the extent possible, audits under this section
17 are completed in a timely manner.

18 (c) If another state agency succeeds to the commission's
19 [~~department's~~] operation of a part of [~~the state~~] Medicaid
20 [~~program~~] for which the commission [~~department~~] used a Medicaid
21 contractor, the successor agency shall comply with this section
22 with regard to the Medicaid contractor, including the requirement
23 to contract with an independent auditor to perform the external
24 financial and performance audits required by this section.

25 (d) An audit required by this section must be completed
26 before the end of the fiscal year immediately following the fiscal
27 year for which the audit is performed.

1 SECTION 3.0017. Section 12.0124, Health and Safety Code, is
2 transferred to Subchapter B, Chapter 32, Human Resources Code,
3 redesignated as Section 32.0316, Human Resources Code, and amended
4 to read as follows:

5 Sec. 32.0316 [12.0124]. ELECTRONIC TRANSACTIONS; [~~STATE~~]
6 MEDICAID [~~PROGRAM~~]. The executive commissioner shall adopt and the
7 commission [~~department or the department's successor in function in~~
8 ~~relation to the department's operation of a part of the state~~
9 ~~Medicaid program~~] shall implement policies that encourage the use
10 of electronic transactions in Medicaid. The policies shall require
11 payment to Medicaid [~~service~~] providers by electronic funds
12 transfer, including electronic remittance and status reports. The
13 policies shall also include the establishment of incentives to
14 submit claims electronically and of disincentives to submit claims
15 on paper that are reasonably based on the higher administrative
16 costs to process claims submitted on paper.

17 SECTION 3.0018. Sections 12.0125(a) and (c), Health and
18 Safety Code, are amended to read as follows:

19 (a) The department shall develop a voluntary drug
20 manufacturer rebate program for drugs purchased by or on behalf of a
21 client of the Kidney Health Care Program or the Children with
22 Special Health Care Needs [~~Chronically Ill and Disabled Children's~~]
23 Services Program for which rebates are not available under the
24 Medicaid drug manufacturer rebate program.

25 (c) Amounts received by the department under the drug rebate
26 program established under this section may be appropriated only for
27 the Kidney Health Care Program or the Children with Special Health

1 Care Needs [~~Chronically Ill and Disabled Children's~~] Services
2 Program.

3 SECTION 3.0019. Section 12.0128, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 12.0128. HEALTH ALERT NETWORK. The department shall
6 include local health officials [~~the Texas Association of Local~~
7 ~~Health Officials~~], the Texas Association of Community Health
8 Centers, and the Texas Organization of Rural and Community
9 Hospitals in the department's Texas Health Alert Network to the
10 extent federal funds for bioterrorism preparedness are available
11 for that purpose.

12 SECTION 3.0020. Section 12.014(b), Health and Safety Code,
13 is amended to read as follows:

14 (b) The executive commissioner [~~board~~] by rule may adopt
15 reasonable registration fees to cover the costs of establishing and
16 maintaining a registry and may adopt other rules as necessary to
17 administer this section.

18 SECTION 3.0021. Sections 12.0145(a), (d), and (g), Health
19 and Safety Code, are amended to read as follows:

20 (a) The department shall publish and provide information in
21 accordance with this section regarding each final enforcement
22 action taken by the department or[~~T~~] commissioner[, ~~or board~~]
23 against a person or facility regulated by the department in which
24 any kind of sanction is imposed, including:

25 (1) the imposition of a reprimand, a period of
26 probation, a monetary penalty, or a condition on a person's
27 continued practice or a facility's continued operation; and

1 (2) the refusal to renew or the suspension, probation,
2 or revocation of a license or other form of permission to engage in
3 an activity.

4 (d) The department shall publish and provide the
5 information promptly after the sanction has been imposed or, when
6 applicable, promptly after the period during which the sanction is
7 imposed has begun. The executive commissioner [department] by rule
8 shall establish the length of time during which the required
9 information will be published and provided under this section based
10 on the executive commissioner's [department's] determination
11 regarding the types of services provided by regulated entities and
12 the length of time for which information about a category of
13 enforcement actions is useful to a member of the public.

14 (g) A determination that the department is not required to
15 publish and provide information under this section does not affect
16 a determination regarding whether the information is subject to
17 required disclosure under the open records law, Chapter 552,
18 Government Code. The executive commissioner's [department's]
19 determination regarding the length of the period during which
20 information should continue to be published and provided under this
21 section does not affect a determination regarding the period for
22 which the information must be preserved under Chapter 441,
23 Government Code, or under another law.

24 SECTION 3.0022. Section 12.015(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) If the department determines that a person is not
27 eligible for a level of care in a nursing facility [home], the

1 department shall inform the person that community services might be
2 available under a [~~the~~] community care for the aged and disabled
3 program administered by the [~~Texas~~] Department of Aging and
4 Disability [~~Human~~] Services.

5 SECTION 3.0023. Section 12.016(d), Health and Safety Code,
6 is amended to read as follows:

7 (d) An applicant for a license, permit, registration, or
8 similar form of permission required by law to be obtained from the
9 department may not amend the application after the 31st day before
10 the date on which a public hearing on the application is scheduled
11 to begin. If an amendment of an application would be necessary
12 within that period, the applicant shall resubmit the application to
13 the department and must again comply with notice requirements and
14 any other requirements of law or department [~~board~~] rule as though
15 the application were originally submitted to the department on that
16 date.

17 SECTION 3.0024. Section 12.019(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) The executive commissioner by rule may set a fee to be
20 collected by the department [~~may charge~~] for providing genetic
21 counseling services. The fee may not exceed the actual cost of
22 providing the services.

23 SECTION 3.0025. Section 12.020(e), Health and Safety Code,
24 is amended to read as follows:

25 (e) The executive commissioner shall institute intellectual
26 property policies for the department that establish minimum
27 standards for:

1 (1) the public disclosure or availability of products,
2 technology, and scientific information, including inventions,
3 discoveries, trade secrets, and computer software;

4 (2) review by the department of products, technology,
5 and scientific information, including consideration of ownership
6 and appropriate legal protection;

7 (3) the licensing of products, technology, and
8 scientific information;

9 (4) the identification of ownership and licensing
10 responsibilities for each class of intellectual property; and

11 (5) royalty participation by inventors and the
12 department.

13 SECTION 3.0026. Section [12.032](#), Health and Safety Code, is
14 amended to read as follows:

15 Sec. 12.032. FEES FOR PUBLIC HEALTH SERVICES. (a) The
16 executive commissioner [board] by rule may adopt [~~charge~~] fees to
17 be collected by the department from [~~to~~] a person who receives
18 public health services from the department.

19 (b) The executive commissioner [board] by rule may require
20 department contractors to collect [~~charge~~] fees for public health
21 services provided by department contractors participating in the
22 department's programs. A department contractor shall retain a fee
23 collected under this subsection and shall use the fee in accordance
24 with the contract provisions.

25 (c) The amount of a fee collected [~~charged~~] for a public
26 health service may not exceed the cost to the department of
27 providing the service.

1 (d) The executive commissioner by rule [board] may
2 establish a fee schedule. In establishing the schedule, the
3 executive commissioner [board] shall consider a person's ability to
4 pay the entire amount of a fee.

5 (e) The executive commissioner [board] may not deny public
6 health services to a person because of the person's inability to pay
7 for the services.

8 SECTION 3.0027. Sections 12.033(a), (b), and (c), Health
9 and Safety Code, are amended to read as follows:

10 (a) Except as otherwise provided by this section, the
11 executive commissioner [board] by rule shall adopt [~~charge~~] fees to
12 be collected by the department for the distribution and
13 administration of vaccines and sera provided under:

14 (1) Section 38.001, Education Code;
15 (2) Section 42.043, Human Resources Code;
16 (3) Chapter 826 (Rabies Control Act of 1981);
17 (4) Chapter 81 (Communicable Disease Prevention and
18 Control Act); and
19 (5) Section 161.005.

20 (b) Except as otherwise provided by this section, the
21 executive commissioner [board] by rule may require a department
22 contractor to collect [~~charge~~] fees for public health services
23 provided by a contractor participating in a department program
24 under the laws specified by Subsection (a).

25 (c) Provided the executive commissioner [board] finds that
26 the monetary savings of this subsection are greater than any costs
27 associated with administering it, the executive commissioner

1 [board] by rule shall establish a fee schedule for fees under this
2 section. In establishing the fee schedule, the executive
3 commissioner [board] shall consider a person's financial ability to
4 pay all or part of the fee, including the availability of health
5 insurance coverage. In the event the fee schedule conflicts with
6 any federal law or regulation, the executive commissioner [board]
7 shall seek a waiver from the applicable federal law or regulation to
8 permit the fee schedule. In the event the waiver is denied, the fee
9 schedule shall not go into effect.

10 SECTION 3.0028. Sections 12.034(a), (c), and (d), Health
11 and Safety Code, are amended to read as follows:

12 (a) The executive commissioner [board] shall establish
13 procedures for the collection of fees for public health services.
14 The procedures shall be used by the department and by those
15 department contractors required by the executive commissioner
16 [board] to collect [charge] fees.

17 (c) The department shall make a reasonable effort to collect
18 fees billed after services are performed. However, the executive
19 commissioner [board] by rule may waive the collection procedures if
20 the administrative costs exceed the fees to be collected.

21 (d) If the executive commissioner [board] elects to require
22 cash payments by program participants, the money received shall be
23 deposited locally at the end of each day and retained by the
24 department for not more than seven days. At the end of that time,
25 the money shall be deposited in the state treasury.

26 SECTION 3.0029. Section 12.035, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 12.035. PUBLIC HEALTH SERVICES FEE ACCOUNT [~~FUND~~].

2 (a) The department shall deposit all money collected for fees and
3 charges collected under Sections 12.0122(d) and 12.032(a) in the
4 state treasury to the credit of the [~~Texas Department of Health~~]
5 public health services fee account in the general revenue fund.

6 (b) The department shall maintain proper accounting records
7 to allocate the money [~~fund~~] among the state and federal programs
8 generating the fees and administrative costs incurred in collecting
9 the fees.

10 [((c) ~~The public health services fee fund is exempt from~~
11 ~~Section 403.095(b), Government Code.~~)]

12 SECTION 3.0030. Sections 12.036(c) and (d), Health and
13 Safety Code, are amended to read as follows:

14 (c) The executive commissioner [~~board~~] or the executive
15 commissioner's [~~board's~~] designee may waive the department's right
16 of subrogation in whole or in part if the executive commissioner
17 [~~board~~] or the designee determines that:

18 (1) enforcement of the right would tend to defeat the
19 purpose of the department's program; or

20 (2) the administrative expense of the enforcement
21 would be greater than the expected recovery.

22 (d) The executive commissioner [~~board~~] may adopt rules for
23 the enforcement of the department's right of subrogation.

24 SECTION 3.0031. Section 12.037(b), Health and Safety Code,
25 is amended to read as follows:

26 (b) The executive commissioner [~~board~~] by rule shall
27 prescribe the criteria for department action under this section.

1 SECTION 3.0032. Section 12.038, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 12.038. RULES. The executive commissioner [board] may
4 adopt rules necessary to implement this subchapter.

5 SECTION 3.0033. Sections 12.055(b) and (d), Health and
6 Safety Code, are amended to read as follows:

7 (b) A state agency or local unit of government under
8 Subsection (a)(3) shall acquire goods or services by any
9 procurement method approved by the commission [~~Health and Human~~
10 ~~Services Commission~~] that provides the best value to the state
11 agency or local unit of government. The state agency or local unit
12 of government shall document that the state agency or local unit of
13 government considered all relevant factors under Subsection (c) in
14 making the acquisition.

15 (d) If a state agency to which this section applies acquires
16 goods or services with a value that exceeds \$100,000, the state
17 agency shall consult with and receive approval from the commission
18 [~~Health and Human Services Commission~~] before considering factors
19 other than price and meeting specifications.

20 SECTION 3.0034. Subchapter F, Chapter 12, Health and Safety
21 Code, is amended to read as follows:

22 SUBCHAPTER F. OFFICE OF BORDER [~~TEXAS-MEXICO~~] HEALTH
23 [~~AND ENVIRONMENTAL ISSUES~~]

24 Sec. 12.071. OFFICE OF BORDER [~~TEXAS-MEXICO~~] HEALTH [~~AND~~
25 ~~ENVIRONMENTAL ISSUES~~]. The department shall establish and maintain
26 an office in the department to coordinate and promote health and
27 environmental issues between this state and Mexico.

1 SECTION 3.0035. Section 12.091, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 12.091. DEFINITION [DEFINITIONS]. In this subchapter,
4 "panel"[~~+~~

5 [~~(1) "Medical standards division" means the Medical~~
6 ~~Standards on Motor Vehicle Operations Division of the department.~~

7 [~~(2) "Panel"~~] means a panel of the medical advisory
8 board.

9 SECTION 3.0036. Section 12.092(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) The commissioner shall appoint the medical advisory
12 board members from:

13 (1) persons licensed to practice medicine in this
14 state, including physicians who are board certified in internal
15 medicine, psychiatry, neurology, physical medicine, or
16 ophthalmology and who are jointly recommended by the department
17 [~~Texas Department of Health~~] and the Texas Medical Association; and

18 (2) persons licensed to practice optometry in this
19 state who are jointly recommended by the department and the Texas
20 Optometric Association.

21 SECTION 3.0037. Section 12.093, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 12.093. ADMINISTRATION[; ~~RULES~~]. (a) The medical
24 advisory board is administratively attached to the department
25 [~~medical standards division~~].

26 (b) The department [~~medical standards division~~]:

27 (1) shall provide administrative support for the

1 medical advisory board and panels of the medical advisory board;
2 and

3 (2) may collect and maintain the individual medical
4 records necessary for use by the medical advisory board and the
5 panels under this section from a physician, hospital, or other
6 health care provider.

7 SECTION 3.0038. Section 12.094(a), Health and Safety Code,
8 is amended to read as follows:

9 (a) The executive commissioner [board]:

10 (1) may adopt rules to govern the activities of the
11 medical advisory board;

12 (2) by rule may establish a reasonable fee to pay a
13 member of the medical advisory board for the member's professional
14 consultation services; and

15 (3) if appropriate, may authorize reimbursement for
16 [~~per diem and~~] travel expenses as provided by Section 2110.004,
17 Government Code, [~~allowances~~] for each meeting a member attends[,
18 ~~not to exceed the amounts authorized for state employees by the~~
19 ~~General Appropriations Act~~].

20 SECTION 3.0039. Section 12.097(b), Health and Safety Code,
21 is amended to read as follows:

22 (b) In a subsequent proceeding under Subchapter H, Chapter
23 411, Government Code, or Subchapter N, Chapter 521, Transportation
24 Code, the department [~~medical standards division~~] may provide a
25 copy of the report of the medical advisory board or panel and a
26 medical record or report relating to an applicant or license holder
27 to:

1 (1) the Department of Public Safety of the State of
2 Texas;
3 (2) the applicant or license holder; and
4 (3) the officer who presides at the hearing.

5 SECTION 3.0040. Section [12.113\(a\)](#), Health and Safety Code,
6 is amended to read as follows:

7 (a) Volunteers recruited under this subchapter may include
8 students in high school or an institution of higher education,
9 senior citizens, participants in the TANF [~~AEDC~~] job opportunities
10 and basic skills (JOBS) training program, VISTA and AmeriCorps
11 volunteers, and volunteers from business and community networks.

12 SECTION 3.0041. Section [12.133\(b\)](#), Health and Safety Code,
13 is amended to read as follows:

14 (b) Subject to the approval of the advisory committee, the
15 executive commissioner [~~board~~] shall adopt rules governing the
16 collection of information under Subsection (a). The rules may
17 provide for regular audits of randomly selected political
18 subdivisions and may govern the manner in which a political
19 subdivision is selected for an audit and the selection of an
20 auditor.

21 SECTION 3.0042. Section [12.134\(a\)](#), Health and Safety Code,
22 is amended to read as follows:

23 (a) Subject to the approval of the advisory committee, the
24 executive commissioner [~~board~~] shall adopt rules under which a
25 political subdivision or agency of this state may dispute
26 information submitted by a political subdivision under Section
27 [12.133](#).

1 SECTION 3.0043. Section 12.136(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) If the department, pursuant to rules adopted by the
4 executive commissioner, [board] finds, after an audit conducted
5 under Section 12.133 or 12.134, that a political subdivision has
6 overstated unreimbursed health care expenditures in the
7 information submitted under Section 12.133 for any year, the
8 department shall report that fact to the comptroller and shall
9 reduce that political subdivision's percentage of the subsequent
10 annual distribution of the earnings from the account appropriately.

11 SECTION 3.0044. Sections 12.137(a) and (b), Health and
12 Safety Code, are amended to read as follows:

13 (a) The tobacco settlement permanent trust account
14 administration advisory committee shall advise the department
15 [board] on the implementation of the department's duties under this
16 subchapter.

17 (b) The advisory committee is composed of 11 members
18 appointed as follows:

19 (1) one member appointed by the executive commissioner
20 [board] to represent a public hospital or hospital district located
21 in a county with a population of 50,000 or less or a public hospital
22 owned or maintained by a municipality;

23 (2) one member appointed by the political subdivision
24 that, in the year preceding the appointment, received the largest
25 annual distribution paid from the account;

26 (3) one member appointed by the political subdivision
27 that, in the year preceding the appointment, received the second

1 largest annual distribution paid from the account;

2 (4) four members appointed by the Texas Conference of
3 Urban Counties from nominations received from political
4 subdivisions that in the year preceding the appointment, received
5 the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, or 12th largest
6 annual distribution paid from the account;

7 (5) one member appointed by the County Judges and
8 Commissioners Association of Texas;

9 (6) one member appointed by the North and East Texas
10 County Judges and Commissioners Association;

11 (7) one member appointed by the South Texas County
12 Judges and Commissioners Association; and

13 (8) one member appointed by the West Texas County
14 Judges and Commissioners Association.

15 SECTION 3.0045. Section [12.138](#), Health and Safety Code, is
16 amended to read as follows:

17 Sec. 12.138. APPROVAL OF RULES. A rule to be adopted by the
18 executive commissioner [board] relating to certification of a
19 percentage of an annual distribution under Section [12.132](#) or
20 collection of information under Sections [12.132](#), [12.133](#), and [12.134](#)
21 must be submitted to the advisory committee and may not become
22 effective before the rule is approved by the advisory committee. If
23 the advisory committee disapproves a proposed rule, the advisory
24 committee shall provide the executive commissioner [board] the
25 specific reasons that the rule was disapproved.

26 SECTION 3.0046. Section [12.139](#), Health and Safety Code, is
27 amended to read as follows:

1 Sec. 12.139. ANNUAL REVIEW. The advisory committee shall
2 annually:

3 (1) review the results of any audit conducted under
4 this subchapter and the results of any dispute filed under Section
5 12.134; and

6 (2) review the rules adopted by the executive
7 commissioner [~~board~~] under this subchapter and propose any
8 amendments to the rules the advisory committee considers necessary.

9 SECTION 3.0047. The heading to Chapter 13, Health and
10 Safety Code, is amended to read as follows:

11 CHAPTER 13. [~~HEALTH~~] DEPARTMENT HOSPITALS AND RESPIRATORY
12 FACILITIES

13 SECTION 3.0048. The heading to Subchapter A, Chapter 13,
14 Health and Safety Code, is amended to read as follows:

15 SUBCHAPTER A. CARE AND TREATMENT IN [~~HEALTH~~] DEPARTMENT HOSPITALS

16 SECTION 3.0049. Sections 13.002(a), (c), and (d), Health
17 and Safety Code, are amended to read as follows:

18 (a) The department [~~board~~] may admit to any hospital under
19 its supervision a patient who:

20 (1) is eligible to receive patient services under a
21 department program; and

22 (2) will benefit from hospitalization.

23 (c) The executive commissioner [~~board~~] may adopt rules and
24 the department may enter into contracts as necessary to implement
25 this section.

26 (d) This section does not require the executive
27 commissioner [~~board~~] or department to:

- 1 (1) admit a patient to a particular hospital;
2 (2) guarantee the availability of space at any
3 hospital; or
4 (3) provide treatment for a particular medical need at
5 any hospital.

6 SECTION 3.0050. Section 13.003(b), Health and Safety Code,
7 is amended to read as follows:

8 (b) The department [board] may establish at the Rio Grande
9 State Center:

- 10 (1) cancer screening;
11 (2) diagnostic services;
12 (3) educational services;
13 (4) obstetrical services;
14 (5) gynecological services;
15 (6) other inpatient health care services; and
16 (7) outpatient health care services, including
17 diagnostic, treatment, disease management, and supportive care
18 services.

19 SECTION 3.0051. The heading to Section 13.004, Health and
20 Safety Code, is amended to read as follows:

21 Sec. 13.004. TREATMENT OF CERTAIN PERSONS WITH MENTAL
22 ILLNESS OR AN INTELLECTUAL DISABILITY [MENTALLY ILL OR MENTALLY
23 RETARDED PERSONS].

24 SECTION 3.0052. Section 13.004(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) The department or the Department of Aging and Disability
27 Services, as appropriate, [Texas Department of Mental Health and

1 ~~Mental Retardation~~] may transfer a ~~mentally ill or mentally~~
2 ~~retarded~~ person with mental illness or an intellectual disability
3 who is infected with tuberculosis to a public health hospital as
4 defined by Section 13.033 [the Texas Center for Infectious
5 Disease].

6 SECTION 3.0053. Section 13.005, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 13.005. CARE AND TREATMENT OF CERTAIN PATIENTS. (a)
9 The department [~~board~~] shall fully develop essential services
10 needed for the control of tuberculosis. To provide those services,
11 the department [~~board~~] may contract for the support, maintenance,
12 care, and treatment of tuberculosis patients:

13 (1) admitted to facilities under the department's
14 [~~board's~~] jurisdiction; or

15 (2) otherwise subject to the department's [~~board's~~]
16 jurisdiction.

17 (b) The department [~~board~~] may contract with:

18 (1) municipal, county, or state hospitals;

19 (2) private physicians;

20 (3) licensed nursing facilities [~~homes~~] and
21 hospitals; and

22 (4) hospital districts.

23 (c) The department [~~board~~] may contract for diagnostic and
24 other services available in a community or region as necessary to
25 prevent further spread of tuberculosis.

26 (d) A contract may not include the assignment of any lien
27 accruing to the state.

1 (e) The department [board] may establish and operate
2 outpatient clinics as necessary to provide follow-up treatment on
3 discharged patients. A person who receives treatment as an
4 outpatient is financially liable in the manner provided for
5 inpatients.

6 SECTION 3.0054. Sections 13.033(3) and (5), Health and
7 Safety Code, are amended to read as follows:

8 (3) "Physician" means a person licensed by the Texas
9 [State Board of] Medical Board [Examiners] to practice medicine in
10 this state.

11 (5) "Public health [state chest] hospital" means a
12 hospital operated by the department to provide services under this
13 subchapter, including the Texas Center for Infectious Disease [and
14 the Rio Grande State Center].

15 SECTION 3.0055. Section 13.034, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 13.034. [BOARD] DUTIES OF EXECUTIVE COMMISSIONER AND
18 DEPARTMENT. (a) The executive commissioner [board] shall adopt
19 rules [and bylaws] relating to:

20 (1) the management of public health [state chest]
21 hospitals;

22 (2) the duties of officers and employees of those
23 hospitals; and

24 (3) the enforcement of necessary discipline and
25 restraint of patients.

26 (a-1) The executive commissioner may adopt rules as
27 necessary for the proper and efficient hospitalization of

1 tuberculosis patients.

2 (b) The department [board] shall supply each hospital with
3 the necessary personnel for the operation and maintenance of the
4 hospital.

5 (c) The department [board] may:

6 (1) prescribe the form and content of applications,
7 certificates, records, and reports provided for under this
8 subchapter;

9 (2) require reports from the administrator of a public
10 health [~~state chest~~] hospital relating to the admission,
11 examination, diagnosis, release, or discharge of a patient;

12 (3) visit each hospital regularly to review admitting
13 procedures and the care and treatment of all new patients admitted
14 since the last visit; and

15 (4) investigate by personal visit a complaint made by
16 a patient or by another person on behalf of a patient [+ and]

17 [+5) adopt rules as necessary for the proper and
18 efficient hospitalization of tuberculosis patients].

19 [(d) The board may delegate a power or duty of the board to
20 an employee. The delegation does not relieve the board from its
21 responsibility.]

22 SECTION 3.0056. Section 13.035(a), Health and Safety Code,
23 is amended to read as follows:

24 (a) The department shall employ a qualified hospital
25 administrator for each public health [~~state chest~~] hospital.

26 SECTION 3.0057. Sections 13.036(a) and (c), Health and
27 Safety Code, are amended to read as follows:

1 (a) A resident of this state who has tuberculosis may be
2 admitted to a public health [~~state chest~~] hospital. A person who is
3 not a resident of this state and who has tuberculosis may be
4 admitted to a public health [~~state chest~~] hospital in accordance
5 with Section 13.046.

6 (c) An application for admission to a public health [~~state~~
7 ~~chest~~] hospital shall be accompanied by a certificate issued by a
8 physician stating that the physician has thoroughly examined the
9 applicant and that the applicant has tuberculosis. In the case of an
10 applicant who is not a resident of this state, the certificate may
11 be issued by a physician who holds a license to practice medicine in
12 the state of residence of the applicant.

13 SECTION 3.0058. Section 13.038(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) A patient admitted to a public health [~~state chest~~]
16 hospital is a public patient and classified as indigent,
17 nonindigent, or nonresident.

18 SECTION 3.0059. Section 13.039(b), Health and Safety Code,
19 is amended to read as follows:

20 (b) The action shall be brought on the written request of
21 the public health [~~state chest~~] hospital administrator,
22 accompanied by a certificate as to the amount owed to the state. In
23 any action, the certificate is sufficient evidence of the amount
24 owed to the state for the support of that patient.

25 SECTION 3.0060. Sections 13.041(a) and (c), Health and
26 Safety Code, are amended to read as follows:

27 (a) The department [~~board~~] may:

1 (1) return a nonresident patient admitted to a public
2 health [~~state chest~~] hospital to the proper agency of the state of
3 the patient's residence; and

4 (2) permit the return of a resident of this state who
5 has been admitted to a tuberculosis hospital in another state.

6 (c) The department [~~board~~] may enter into reciprocal
7 agreements with the proper agencies of other states to facilitate
8 the return to the states of their residence of nonresident patients
9 admitted to tuberculosis [~~state chest~~] hospitals in other states.

10 SECTION 3.0061. Section 13.042, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 13.042. DISCRIMINATION PROHIBITED. (a) A public
13 health [~~state chest~~] hospital may not discriminate against a
14 patient.

15 (b) Each patient is entitled to equal facilities,
16 attention, and treatment. However, a public health [~~state chest~~]
17 hospital may provide different care and treatment of patients
18 because of differences in the condition of the individual patients.

19 SECTION 3.0062. Sections 13.043(a) and (c), Health and
20 Safety Code, are amended to read as follows:

21 (a) A patient in a public health [~~state chest~~] hospital may
22 not offer an officer, agent, or employee of the hospital a tip,
23 payment, or reward of any kind.

24 (c) The department [~~board~~] shall strictly enforce this
25 section.

26 SECTION 3.0063. Sections 13.044(a), (d), and (e), Health
27 and Safety Code, are amended to read as follows:

1 (a) On the request of any charitable organization in this
2 state, the department [~~board~~] may permit the erection, furnishing,
3 and maintenance by the charitable organization of accommodations on
4 the grounds of a public health [~~state chest~~] hospital for persons
5 who have tuberculosis and who are:

6 (1) members of the charitable organization;
7 (2) members of the families of persons who are members
8 of the charitable organization; or
9 (3) surviving spouses or minor children of deceased
10 persons who are members of the charitable organization.

11 (d) The officers or a board or committee of the charitable
12 organization and the department [~~board~~] must enter into a written
13 agreement relating to the location, construction, style, and
14 character, and terms of existence of buildings, and other questions
15 arising in connection with the grant of permission to erect and
16 maintain private accommodations. The department must maintain as a
17 record a copy of the written agreement [~~must be recorded in the~~
18 ~~minutes of the board~~].

19 (e) Except for the preferential right to occupy vacant
20 accommodations erected by the person's charitable organization, a
21 person described by Subsection (a) shall be classified in the same
22 manner as other public health [~~state chest~~] hospital patients and
23 shall be admitted, maintained, cared for, and treated in those
24 hospitals in the same manner and under the same conditions and rules
25 that apply to other patients.

26 SECTION 3.0064. Section 13.045(a), Health and Safety Code,
27 is amended to read as follows:

1 (a) A county may donate and convey land to the state in
2 consideration of the establishment of a public health [~~state chest~~] hospital by the executive commissioner [~~board~~].

4 SECTION 3.0065. Section 13.046, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 13.046. ADMISSION OF NONRESIDENT PATIENTS. (a) The
7 department may enter into an agreement with an agency of another
8 state responsible for the care of residents of that state who have
9 tuberculosis under which:

10 (1) residents of the other state who have tuberculosis
11 may be admitted to a public health [~~state chest~~] hospital, subject
12 to the availability of appropriate space after the needs of
13 eligible tuberculosis and chronic respiratory disease patients who
14 are residents of this state have been met; and

15 (2) the other state is responsible for paying all
16 costs of the hospitalization and treatment of patients admitted
17 under the agreement.

18 (b) Section 13.041 does not apply to the return of a
19 nonresident patient admitted to a public health [~~state chest~~] hospital in accordance with an agreement entered into under this
20 section. The return of that patient to the state of residence is
22 governed by the agreement.

23 SECTION 3.0066. Section 31.002(a)(3), Health and Safety
24 Code, is amended to read as follows:

25 (3) "Other benefit" means a benefit, other than a
26 benefit provided under this chapter, to which an individual is
27 entitled for payment of the costs of primary health care services,

1 including benefits available from:

2 (A) an insurance policy, group health plan, or

3 prepaid medical care plan;

4 (B) Title XVIII or XIX of the Social Security Act

5 (42 U.S.C. Section 1395 et seq. or Section 1396 et seq.);

6 (C) the United States Department of Veterans

7 Affairs [Administration];

8 (D) the TRICARE program of the United States

9 Department of Defense [Civilian Health and Medical Program of the

10 Uniformed Services];

11 (E) workers' compensation or any other

12 compulsory employers' insurance program;

13 (F) a public program created by federal or state

14 law, or by an ordinance or rule of a municipality or political

15 subdivision of the state, excluding benefits created by the

16 establishment of a municipal or county hospital, a joint

17 municipal-county hospital, a county hospital authority, a hospital

18 district, or the facilities of a publicly supported medical school;

19 or

20 (G) a cause of action for medical, facility, or

21 medical transportation expenses, or a settlement or judgment based

22 on the cause of action, if the expenses are related to the need for

23 services provided under this chapter.

24 SECTION 3.0067. Section 31.002(b), Health and Safety Code,

25 is amended to read as follows:

26 (b) The executive commissioner [board] by rule may define a

27 word or term not defined by Subsection (a) as necessary to

1 administer this chapter. The executive commissioner [board] may
2 not define a word or term so that the word or term is inconsistent or
3 in conflict with the purposes of this chapter, or is in conflict
4 with the definition and conditions of practice governing a provider
5 who is required to be licensed, registered, certified, identified,
6 or otherwise sanctioned under the laws of this state.

7 SECTION 3.0068. Sections 31.003(a), (b), (c), (d), (e), and
8 (g), Health and Safety Code, are amended to read as follows:

9 (a) The executive commissioner [board] may establish a
10 program in the department to provide primary health care services
11 to eligible individuals.

12 (b) If the program is established, the executive
13 commissioner [board] shall adopt rules relating to:

14 (1) the type, amount, and duration of services to be
15 provided under this chapter; and

16 (2) the determination by the department of the
17 services needed in each service area.

18 (c) If budgetary limitations exist, the executive
19 commissioner [board] by rule shall establish a system of priorities
20 relating to the types of services provided, geographic areas
21 covered, or classes of individuals eligible for services.

22 (d) The executive commissioner [board] shall adopt rules
23 under Subsection (c) relating to the geographic areas covered and
24 the classes of individuals eligible for services according to a
25 statewide determination of the need for services.

26 (e) The executive commissioner [board] shall adopt rules
27 under Subsection (c) relating to the types of services provided

1 according to the set of service priorities established under this
2 subsection. Initial service priorities shall focus on the funding
3 of, provision of, and access to:

- 4 (1) diagnosis and treatment;
- 5 (2) emergency services;
- 6 (3) family planning services;
- 7 (4) preventive health services, including
8 immunizations;
- 9 (5) health education; and
- 10 (6) laboratory, X-ray, nuclear medicine, or other
11 appropriate diagnostic services.

12 (g) The executive commissioner [board] should require that
13 the services provided under this chapter be reserved to the
14 greatest extent possible for low-income individuals who are not
15 eligible for similar services through any other publicly funded
16 program.

17 SECTION 3.0069. Sections 31.004(a) and (b), Health and
18 Safety Code, are amended to read as follows:

19 (a) The executive commissioner [board] shall adopt rules
20 necessary to administer this chapter, and the department shall
21 administer the program in accordance with those [board] rules.

22 (b) The executive commissioner [~~with the advice and~~
23 ~~assistance of the commissioner and the department, the board~~] by
24 rule shall:

25 (1) establish the administrative structure of the
26 program;

27 (2) establish a plan of areawide administration to

1 provide authorized services;

2 (3) designate, if possible, local public and private
3 resources as providers; and

4 (4) prevent duplication by coordinating authorized
5 primary health care services with existing federal, state, and
6 local programs.

7 SECTION 3.0070. Sections 31.005(a), (b), (c), and (e),
8 Health and Safety Code, are amended to read as follows:

9 (a) The executive commissioner ~~[board]~~ shall adopt rules
10 relating to the department's determination of whether program
11 services are to be provided through a network of approved
12 providers, directly by the department, or by a combination of the
13 department and approved providers as prescribed by this section.

14 (b) The department shall provide services only as
15 prescribed by department ~~[board]~~ rule.

16 (c) The department may provide primary health care services
17 directly to eligible individuals to the extent that the department
18 ~~[board]~~ determines that existing private or public providers or
19 other resources in the service area are unavailable or unable to
20 provide those services. In making that determination, the
21 department shall:

22 (1) initially determine the proposed need for services
23 in the service area;

24 (2) notify existing private and public providers and
25 other resources in the service area of the department's initial
26 determination of need and the services the department proposes to
27 provide directly to eligible individuals;

1 (3) provide existing private and public providers and
2 other resources in the service area a reasonable opportunity to
3 comment on the department's initial determination of need and the
4 availability and ability of existing private or public providers or
5 other resources in the service area to satisfy the need;

6 (4) provide existing private and public providers and
7 other resources in the service area a reasonable opportunity to
8 obtain approval as providers under the program; and

9 (5) eliminate, reduce, or otherwise modify the
10 proposed scope or type of services the department proposes to
11 provide directly to the extent that those services may be provided
12 by existing private or public providers or other resources in the
13 service area that meet the executive commissioner's [board's]
14 criteria for approval as providers.

15 (e) If after a review the department [board] determines that
16 a private or public provider or other resource is available to
17 provide services and has been approved as a provider, the
18 department shall, immediately after approving the provider,
19 eliminate, reduce, or modify the scope and type of services the
20 department provides directly to the extent the private or public
21 provider or other resource is available and able to provide the
22 service.

23 SECTION 3.0071. Sections 31.006(a), (b), (d), (f), and (i),
24 Health and Safety Code, are amended to read as follows:

25 (a) The executive commissioner [board] shall adopt rules
26 relating to:

27 (1) the selection and expedited selection of

1 providers, including physicians, registered nurses, and
2 facilities; and

3 (2) the denial, modification, suspension, and
4 termination of program participation.

5 (b) The department shall select and approve providers to
6 participate in the program according to the criteria and following
7 the procedures prescribed by department [board] rules.

8 (d) The executive commissioner [board] may not adopt
9 facility approval criteria that discriminate against a facility
10 solely because it is operated for profit.

11 (f) The department [board] shall provide a due process
12 hearing procedure in accordance with department rules for the
13 resolution of conflicts between the department and a provider.
14 Chapter 2001, Government Code, does [do] not apply to conflict
15 resolution procedures adopted under this section.

16 (i) The notice and hearing required by this section do not
17 apply if a grant or contract:

18 (1) is canceled by the department because of
19 exhaustion of funds or because insufficient funds require the
20 executive commissioner [board] to adopt service priorities; or
21 (2) expires according to its terms.

22 SECTION 3.0072. Sections 31.007(a), (c), (d), and (e),
23 Health and Safety Code, are amended to read as follows:

24 (a) The executive commissioner [board] shall adopt rules
25 relating to application procedures for admission to the program.

26 (c) The application form must be accompanied by:

27 (1) a statement by the applicant, or by the person with

1 a legal obligation to provide for the applicant's support, that the
2 applicant or person is financially unable to pay for all or part of
3 the cost of the necessary services; and

4 (2) any other assurances from the applicant or any
5 documentary evidence required by department rules [~~the board~~] that
6 is necessary to support the applicant's eligibility.

7 (d) Except as permitted by department [~~program~~] rules, the
8 department may not provide services or authorize payment for
9 services delivered to an individual before the eligibility date
10 assigned to the individual by the department.

11 (e) The department shall determine or cause to be determined
12 the eligibility date in accordance with department [~~board~~] rules.
13 The date may not be later than the date on which the individual
14 submits a properly completed application form and all supporting
15 documents required by this chapter or department [~~board~~] rules.

16 SECTION 3.0073. Section 31.008, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 31.008. ELIGIBILITY FOR SERVICES. (a) The executive
19 commissioner [~~board~~] shall adopt rules relating to eligibility
20 criteria for an individual to receive services under the program,
21 including health, medical, and financial criteria. The department
22 shall determine or cause to be determined an applicant's
23 eligibility in accordance with this chapter and department [~~board~~]
24 rules.

25 (b) Except as modified by other rules adopted under this
26 chapter, the executive commissioner [~~board~~] by rule shall provide
27 that to be eligible to receive services, the individual must be a

1 resident of this state.

2 SECTION 3.0074. Sections 31.009(c), (d), and (f), Health
3 and Safety Code, are amended to read as follows:

4 (c) The executive commissioner [board] by rule shall
5 provide criteria for action by the department under this section.

6 (d) Chapter 2001, Government Code, does [do] not apply to
7 the granting, denial, modification, suspension, or termination of
8 services. The department shall conduct hearings in accordance with
9 the department's [board's] due process hearing rules.

10 (f) The notice and hearing required by this section do not
11 apply if the department restricts program services to conform to
12 budgetary limitations that require the executive commissioner
13 [board] to establish service priorities.

14 SECTION 3.0075. Sections 31.010(b) and (e), Health and
15 Safety Code, are amended to read as follows:

16 (b) Except as provided by department [board] rules, an
17 individual is not eligible to receive services under this chapter
18 to the extent that the individual, or a person with a legal
19 obligation to support the individual, is eligible for some other
20 benefit that would pay for all or part of the services.

21 (e) The department [commissioner] may waive enforcement of
22 Subsections (b)-(d) [~~of this section~~] as prescribed by department
23 [board] rules in certain individually considered cases in which
24 enforcement will deny services to a class of otherwise eligible
25 individuals because of conflicting federal, state, or local laws or
26 rules.

27 SECTION 3.0076. Section 31.012, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 31.012. FEES. (a) The department [board] may charge
3 fees for the services provided directly by the department or
4 through approved providers in accordance with Subchapter D, Chapter
5 12.

6 (b) The executive commissioner by rule [board] shall adopt
7 standards and procedures to develop and implement a schedule of
8 allowable charges for program services.

9 SECTION 3.0077. Section 31.013(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) Except as provided by this chapter or by other law, the
12 department [board] may seek, receive, and spend funds received
13 through an appropriation, grant, donation, or reimbursement from
14 any public or private source to administer this chapter.

15 SECTION 3.0078. Sections 31.015(b) and (d), Health and
16 Safety Code, are amended to read as follows:

17 (b) The executive commissioner [board] shall adopt rules
18 relating to the information a provider is required to report to the
19 department and shall adopt procedures to prevent unnecessary and
20 duplicative reporting of data.

21 (d) The report required under Subsection (c) must include:

22 (1) the number of individuals receiving care under
23 this chapter;

24 (2) the total cost of the program, including a
25 delineation of the total administrative costs and the total cost
26 for each service authorized under Section 31.003(e);

27 (3) the average cost per recipient of services;

1 (4) the number of individuals who received services in
2 each public health region; and
3 (5) any other information required by the executive
4 commissioner [board].

5 SECTION 3.0079. Section 32.002(a)(8), Health and Safety
6 Code, is amended to read as follows:

7 (8) "Other benefit" means a benefit, other than a
8 benefit provided under this chapter, to which an individual is
9 entitled for payment of the costs of maternal and infant health
10 improvement services, ancillary services, educational services, or
11 transportation services, including benefits available from:

12 (A) an insurance policy, group health plan, or
13 prepaid medical care plan;

14 (B) Title XVIII of the Social Security Act (42
15 U.S.C. Section 1395 et seq.);

16 (C) the United States Department of Veterans
17 Affairs [Administration];

18 (D) the TRICARE program of the United States
19 Department of Defense [Civilian Health and Medical Program of the
20 Uniformed Services];

21 (E) workers' compensation or any other
22 compulsory employers' insurance program;

23 (F) a public program created by federal or state
24 law, other than Title XIX of the Social Security Act (42 U.S.C.
25 Section 1396 et seq.), or by an ordinance or rule of a municipality
26 or political subdivision of the state, excluding benefits created
27 by the establishment of a municipal or county hospital, a joint

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1 municipal-county hospital, a county hospital authority, a hospital
2 district, or the facilities of a publicly supported medical school;
3 or

4 (G) a cause of action for medical, facility, or
5 medical transportation expenses, or a settlement or judgment based
6 on the cause of action, if the expenses are related to the need for
7 services provided under this chapter.

8 SECTION 3.0080. Section 32.002(b), Health and Safety Code,
9 is amended to read as follows:

10 (b) The executive commissioner [board] by rule may define a
11 word or term not defined by Subsection (a) as necessary to
12 administer this chapter. The executive commissioner [board] may
13 not define a word or term so that the word or term is inconsistent or
14 in conflict with the purposes of this chapter, or is in conflict
15 with the definition and conditions of practice governing a provider
16 who is required to be licensed, registered, certified, identified,
17 or otherwise sanctioned under the laws of this state.

18 SECTION 3.0081. Section 32.003, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 32.003. MATERNAL AND INFANT HEALTH IMPROVEMENT
21 SERVICES PROGRAM. (a) The executive commissioner [board] may
22 establish a maternal and infant health improvement services program
23 in the department to provide comprehensive maternal and infant
24 health improvement services and ancillary services to eligible
25 women and infants.

26 (b) If the program is established, the executive
27 commissioner [board] shall adopt rules relating to:

1 (1) the type, amount, and duration of services to be
2 provided under this chapter; and

3 (2) the determination by the department of the
4 services needed in each service area.

5 (c) If budgetary limitations exist, the executive
6 commissioner [board] by rule shall establish a system of priorities
7 relating to the types of services provided, geographic areas
8 covered, or classes of individuals eligible for services.

9 (d) The executive commissioner [board] shall adopt the
10 rules according to a statewide determination of the need for
11 services.

12 (e) In structuring the program and adopting rules, the
13 department and executive commissioner [board] shall attempt to
14 maximize the amount of federal matching funds available for
15 maternal and infant health improvement services while continuing to
16 serve targeted populations.

17 (f) If necessary, the executive commissioner [board] by
18 rule may coordinate services and other parts of the program with the
19 medical assistance program. However, the executive commissioner
20 [board] may not adopt rules relating to the services under either
21 program that would:

22 (1) cause the program established under this chapter
23 not to conform with federal law to the extent that federal matching
24 funds would not be available; or

25 (2) affect the status of the single state agency to
26 administer the medical assistance program.

27 SECTION 3.0082. Section 32.006(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) The executive commissioner [board] shall adopt rules
3 necessary to administer this chapter, and the department shall
4 administer the program in accordance with those [board] rules.

5 SECTION 3.0083. Sections 32.011(b), (c), (d), and (e),
6 Health and Safety Code, are amended to read as follows:

7 (b) The executive commissioner [board] by rule shall
8 provide criteria for action by the department under this section.

9 (c) Chapter 2001, Government Code, does not apply to the
10 granting, denial, modification, suspension, or termination of
11 services. The department shall provide [conduct] hearings in
12 accordance with the department's [board's] due process hearing
13 rules.

14 (d) The department shall render the final administrative
15 decision following [in] a due process hearing to deny, modify,
16 suspend, or terminate the receipt of services.

17 (e) The notice and hearing required by this section do not
18 apply if the department restricts program services to conform to
19 budgetary limitations that require the executive commissioner
20 [board] to establish service priorities.

21 SECTION 3.0084. Sections 32.012(b) and (e), Health and
22 Safety Code, are amended to read as follows:

23 (b) Except as provided by department [board] rules, an
24 individual is not eligible to receive services under this chapter
25 to the extent that the individual or a person with a legal
26 obligation to support the individual is eligible for some other
27 benefit that would pay for all or part of the services.

1 (e) The department [~~commissioner~~] may waive enforcement of
2 Subsections (b)-(d) [~~of this section~~] as prescribed by department
3 [~~board~~] rules in certain individually considered cases in which
4 enforcement will deny services to a class of otherwise eligible
5 individuals because of conflicting federal, state, or local laws or
6 rules.

7 SECTION 3.0085. Section 32.014, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 32.014. FEES. (a) Except as prohibited by federal law
10 or regulation, the department [~~board~~] may collect [~~charge~~] fees for
11 the services provided directly by the department or through
12 approved providers in accordance with Subchapter D, Chapter 12.

13 (b) The executive commissioner by rule [~~board~~] shall adopt
14 standards and procedures to develop and implement a schedule of
15 allowable charges for program services.

16 SECTION 3.0086. Section 32.015(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) Except as provided by this chapter or by other law, the
19 department [~~board~~] may seek, receive, and spend funds received
20 through an appropriation, grant, donation, or reimbursement from
21 any public or private source to administer this chapter.

22 SECTION 3.0087. Section 32.017(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) The executive commissioner [~~board~~] shall adopt rules
25 relating to the information a provider is required to report to the
26 department and shall adopt procedures to prevent unnecessary and
27 duplicative reporting of data.

1 SECTION 3.0088. The heading to Section 32.021, Health and
2 Safety Code, is amended to read as follows:

3 Sec. 32.021. REQUIREMENTS REGARDING THE WOMEN, INFANTS, AND
4 CHILDREN PROGRAM.

5 SECTION 3.0089. Section 32.021(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) An agency, organization, or other entity that contracts
8 with the Special Supplemental Nutrition Program for Women, Infants,
9 and Children shall each month provide the clinical and nutritional
10 services supported by that program during extended hours, as
11 defined by the department.

12 SECTION 3.0090. The heading to Section 32.0211, Health and
13 Safety Code, is amended to read as follows:

14 Sec. 32.0211. WOMEN, INFANTS, AND CHILDREN PROGRAM OUTREACH
15 CAMPAIGN TO PROMOTE FATHERS' INVOLVEMENT.

16 SECTION 3.0091. Sections 32.0211(a), (c), and (d), Health
17 and Safety Code, are amended to read as follows:

18 (a) The attorney general shall:

19 (1) subject to Subsections (b) and (c), develop and
20 periodically update a publication that:

21 (A) describes the importance and long-term
22 positive effects on children of a father's involvement during a
23 mother's pregnancy; and

24 (B) provides guidance to prospective fathers on
25 the positive actions that they can take to support the pregnant
26 mother during pregnancy and the effect those actions have on
27 pregnancy outcomes; and

1 (2) make the publication described by Subdivision (1)
2 available to any agency, organization, or other entity that
3 contracts with the Special Supplemental Nutrition Program for
4 Women, Infants, and Children and on the attorney general's Internet
5 website in a format that allows the public to download and print the
6 publication.

7 (c) In developing the publication required by Subsection
8 (a), the attorney general shall consult with:

9 (1) the department as the state agency responsible for
10 administering the Special Supplemental Nutrition Program for
11 Women, Infants, and Children and this state's program under the
12 Maternal and Child Health Services Block Grant Act (42 U.S.C.
13 Section 701 et seq.); and

14 (2) the Texas Council on Family Violence.

15 (d) An agency, organization, or other entity that contracts
16 with the Special Supplemental Nutrition Program for Women, Infants,
17 and Children shall make the publication described by Subsection (a)
18 available to each client receiving clinical or nutritional services
19 under the program.

20 SECTION 3.0092. The heading to Section 32.042, Health and
21 Safety Code, is amended to read as follows:

22 Sec. 32.042. DUTIES OF EXECUTIVE COMMISSIONER [BOARD];
23 RULES.

24 SECTION 3.0093. Section 32.042(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) The executive commissioner [board] by rule shall adopt:
27 (1) minimum standards and objectives to implement

1 voluntary perinatal health care systems; and
2 (2) policies for health promotion and education, risk
3 assessment, access to care, and perinatal system structure,
4 including the transfer and transportation of pregnant women and
5 infants.

6 SECTION 3.0094. Section [32.044](#)(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) Each voluntary perinatal health care system must have:
9 (1) a coordinating board responsible for ensuring,
10 providing, or coordinating planning access to services, data
11 collection, and provider education;
12 (2) access to appropriate emergency medical services;
13 (3) risk assessment, transport, and transfer
14 protocols for perinatal patients;
15 (4) one or more health care facilities categorized
16 according to perinatal care capabilities using standards adopted by
17 department [board] rule; and
18 (5) documentation of broad-based participation in
19 planning by providers of perinatal services and community
20 representatives throughout the defined geographic region.

21 SECTION 3.0095. Sections [32.045](#)(b) and (c), Health and
22 Safety Code, are amended to read as follows:

23 (b) The executive commissioner [board] by rule shall
24 establish eligibility criteria for awarding the grants. The rules
25 must require the department to consider:

26 (1) the need of an area and the extent to which the
27 grant would meet the identified need;

1 (2) the availability of personnel and training
2 programs;

3 (3) the availability of other funding sources;

4 (4) the assurance of providing quality services;

5 (5) the need for emergency transportation of perinatal
6 patients and the extent to which the system meets the identified
7 needs; and

8 (6) the stage of development of a perinatal health
9 care system.

10 (c) The department may approve grants according to rules
11 adopted by the executive commissioner [board]. A grant awarded
12 under this section is governed by Chapter 783, Government Code, and
13 rules adopted under that chapter.

14 SECTION 3.0096. Section 32.062, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 32.062. ESTABLISHMENT; PRESIDING OFFICER. (a) The
17 task force is composed of 25 members appointed by the executive
18 commissioner [of the Health and Human Services Commission] as
19 follows:

20 (1) four representatives of family violence centers,
21 as defined by Section 51.002, Human Resources Code, from different
22 geographic regions in this state, including both rural and urban
23 areas;

24 (2) one representative of a statewide family violence
25 advocacy organization;

26 (3) one representative of a statewide association of
27 obstetricians and gynecologists;

- 1 (4) two representatives of the family and community
2 health programs in the department [~~Department of State Health~~
3 ~~Services~~];
4 (5) one representative of a statewide sexual assault
5 advocacy organization;
6 (6) one representative of the commission's [~~Health and~~
7 ~~Human Services Commission~~] Texas Home Visiting Program;
8 (7) one representative of a statewide association of
9 midwifery;
10 (8) one representative of a statewide family
11 physician's association;
12 (9) one representative of a statewide nursing
13 association;
14 (10) one representative of a statewide hospital
15 association;
16 (11) one representative of a statewide pediatric
17 medical association;
18 (12) one representative of a statewide medical
19 association;
20 (13) one representative of The University of Texas
21 School of Social Work Institute on Domestic Violence and Sexual
22 Assault;
23 (14) one representative of The University of Texas
24 School of Law Domestic Violence Clinic;
25 (15) one representative of the governor's EMS and
26 Trauma Advisory Council;
27 (16) one representative of a Department of Family and

1 Protective Services prevention and early intervention program;

2 (17) one representative of a statewide osteopathic

3 medical association;

4 (18) one representative of a statewide association of

5 community health centers;

6 (19) one representative of the office of the attorney

7 general;

8 (20) one representative from a medical school or a

9 teaching hospital in the state who is either an attending physician

10 of the hospital or a faculty member of the medical school; and

11 (21) one representative of the commission's [Health

12 and Human Services Commission's] Family Violence Program.

13 (b) The executive commissioner [~~of the Health and Human~~

14 ~~Services Commission~~] shall appoint a task force member to serve as

15 presiding officer of the task force.

16 SECTION 3.0097. Section 32.064, Health and Safety Code, is

17 amended to read as follows:

18 Sec. 32.064. REPORT. Not later than September 1, 2015, the

19 task force shall submit a report to the governor, the lieutenant

20 governor, the speaker of the house of representatives, the

21 presiding officers of the standing committees of the legislature

22 having primary jurisdiction over health and human services, the

23 executive commissioner [~~of the Health and Human Services~~

24 ~~Commission~~], and the commissioner [~~of state health services~~]

25 containing:

26 (1) the findings and legislative, policy, and research

27 recommendations of the task force; and

1 (2) a description of the activities of the task force.

2 SECTION 3.0098. Section 33.001(3), Health and Safety Code,
3 is amended to read as follows:

4 (3) "Other benefit" means a benefit, other than a
5 benefit under this chapter, to which an individual is entitled for
6 the payment of the costs of services. The term includes:

7 (A) benefits available under:

8 (i) an insurance policy, group health plan,
9 or prepaid medical care plan;

10 (ii) Title XVIII of the Social Security Act
11 (42 U.S.C. Section 1395 et seq.);

12 (iii) Title XIX of the Social Security Act
13 (42 U.S.C. Section 1396 et seq.);

14 (iv) the United States Department of
15 Veterans Affairs [Veterans' Administration];

16 (v) the TRICARE program of the United
17 States Department of Defense [Civilian Health and Medical Program
18 of the Uniformed Services]; or

19 (vi) workers' compensation or any other
20 compulsory employers insurance program;

21 (B) a public program created by federal or state
22 law or by ordinance or rule of a municipality or political
23 subdivision of the state, except those benefits created by the
24 establishment of a municipal or county hospital, a joint
25 municipal-county hospital, a county hospital authority, a hospital
26 district, or by the facilities of a publicly supported medical
27 school; and

5 SECTION 3.0099. Section 33.002(b), Health and Safety Code,
6 is amended to read as follows:

7 (b) The executive commissioner [board] shall adopt rules
8 necessary to carry out the program, including a rule specifying
9 other heritable diseases covered by this chapter.

10 SECTION 3.0100. Section [33.004](#), Health and Safety Code, is
11 amended to read as follows:

12 Sec. 33.004. [STUDY ON] NEWBORN SCREENING PROGRAM; FEES
13 [METHODOLOGY AND EQUIPMENT]. [(a) Not later than March 1, 2006,
14 ~~the department shall:~~

15 [(1) conduct a study to determine the most
16 cost-effective method of conducting newborn screening, including
17 screening for disorders listed in the core uniform panel of newborn
18 screening conditions recommended in the 2005 report by the American
19 College of Medical Genetics entitled "Newborn Screening: Toward a
20 Uniform Screening Panel and System" or another report determined by
21 the department to provide more appropriate newborn screening
22 guidelines, to protect the health and welfare of this state's
23 newborns and to maximize the number of newborn screenings that may
24 be conducted with the funding available for the screening.

25 [(2) determine the disorders to be studied under
26 Subdivision (1) and ensure the study does not examine screening and
27 services provided under Chapter 47; and

1 [(3) obtain proposals or information regarding the
2 conduct of newborn screening and compare the costs of the
3 department performing newborn screening services to the costs of
4 outsourcing screening to a qualified laboratory with at least two
5 years' experience performing newborn screening tests.]

6 (b) In accordance with rules adopted by the executive
7 commissioner [of the Health and Human Services Commission], the
8 department shall [may] implement a newborn screening program.

9 (c) In implementing the newborn screening program [If the
10 department determines under Subsection (a) that the department's
11 performance of newborn screening services is more cost-effective
12 than outsourcing newborn screening], the department shall obtain
13 the use of screening methodologies[, including tandem mass
14 spectrometers] and hire the employees necessary to administer
15 newborn screening under this chapter.

16 [(d) If the department determines under Subsection (a) that
17 outsourcing of newborn screening is more cost-effective, the
18 department shall contract for the resources and services necessary
19 to conduct newborn screening using a competitive procurement
20 process.]

21 (e) The department shall periodically review the newborn
22 screening program [as revised under this section] to determine the
23 efficacy and cost-effectiveness of the program and determine
24 whether adjustments to the program are necessary to protect the
25 health and welfare of this state's newborns and to maximize the
26 number of newborn screenings that may be conducted with the funding
27 available for the screening.

1 (f) The executive commissioner by rule ~~[department]~~ may
2 establish ~~[adjust]~~ the amounts charged for newborn screening fees,
3 including fees assessed for follow-up services, tracking
4 confirmatory testing, and diagnosis.

5 SECTION 3.0101. Section [33.011](#)(a-1), Health and Safety
6 Code, is amended to read as follows:

7 (a-1) Except as provided by this subsection and to the
8 extent funding is available for the screening, the department shall
9 require newborn screening tests to screen for disorders listed as
10 core and secondary conditions in the ~~[December 2011]~~ Recommended
11 Uniform Screening Panel of the Secretary's Advisory Committee on
12 Heritable Disorders in Newborns and Children or another report
13 determined by the department to provide more stringent newborn
14 screening guidelines to protect the health and welfare of this
15 state's newborns. The department, with the advice of the Newborn
16 Screening Advisory Committee, may require additional newborn
17 screening tests under this subsection to screen for other disorders
18 or conditions. The department may exclude from the newborn
19 screening tests required under this subsection screenings for
20 galactose epimerase and galactokinase.

21 SECTION 3.0102. Section [33.0112](#), Health and Safety Code, is
22 amended to read as follows:

23 Sec. 33.0112. DESTRUCTION OF GENETIC MATERIAL. (a) The
24 department shall destroy any genetic material obtained from a child
25 under this chapter not later than the second anniversary of the date
26 the department receives the genetic material unless a parent,
27 managing conservator, or guardian of the child consents to

1 disclosure under Section 33.018(c-1) [~~33.017(c-1)~~] .

2 (b) The department shall destroy any genetic material
3 obtained from a child under this chapter not later than the second
4 anniversary of the date the department receives the genetic
5 material if:

6 (1) a parent, managing conservator, or guardian of the
7 child consents to disclosure under Section 33.018(c-1)
8 [~~33.017(c-1)~~] ;

9 (2) the parent, managing conservator, or guardian who
10 consented to the disclosure revokes the consent under Section
11 33.018(i) [~~33.017(i)~~] ; and

12 (3) the department receives the written revocation of
13 consent under Section 33.018(i) [~~33.017(i)~~] not later than the
14 second anniversary of the date the department received the genetic
15 material.

16 (c) The department shall destroy any genetic material
17 obtained from a child under this chapter not later than the 60th day
18 after the date the department receives a written revocation of
19 consent under Section 33.018(i) [~~33.017(i)~~] if:

20 (1) a parent, managing conservator, or guardian of the
21 child consented to disclosure under Section 33.018(c-1)
22 [~~33.017(c-1)~~] ;

23 (2) the parent, managing conservator, or guardian who
24 consented to the disclosure or the child revokes the consent under
25 Section 33.018(i) [~~33.017(i)~~] ; and

26 (3) the department receives the written revocation of
27 consent later than the second anniversary of the date the

1 department received the genetic material.

2 [(d) A reference in this section to Section 33.017 means
3 Section 33.017 as added by Chapter 179 (H.B. 1672), Acts of the 81st
4 Legislature, Regular Session, 2009.]

5 SECTION 3.0103. Sections 33.016(a), (d), and (f), Health
6 and Safety Code, are amended to read as follows:

7 (a) The department may develop a program to approve any
8 laboratory that wishes to perform the tests required to be
9 administered under this chapter. To the extent that they are not
10 otherwise provided in this chapter, the executive commissioner
11 [~~board~~] may adopt rules prescribing procedures and standards for
12 the conduct of the program.

13 (d) The department may extend or renew any approval in
14 accordance with reasonable procedures prescribed by the executive
15 commissioner [~~board~~].

16 (f) Hearings under this section shall be conducted in
17 accordance with the department's hearing rules [~~adopted by the~~
18 ~~board~~] and the applicable provisions of Chapter 2001, Government
19 Code.

20 SECTION 3.0104. Sections 33.017(b) and (f), Health and
21 Safety Code, are amended to read as follows:

22 (b) The advisory committee consists of members appointed by
23 the commissioner [~~of state health services~~]. The advisory
24 committee must include the following members:

25 (1) at least four physicians licensed to practice
26 medicine in this state, including at least two physicians
27 specializing in neonatal-perinatal medicine;

1 (2) at least two hospital representatives;
2 (3) at least two persons who have family members
3 affected by a condition for which newborn screening is or may be
4 required under this subchapter; and
5 (4) at least two health care providers who are
6 involved in the delivery of newborn screening services, follow-up,
7 or treatment in this state.

8 (f) The advisory committee shall meet at least three times
9 each year and at other times at the call of the commissioner [~~or~~
10 ~~state health services~~].

11 SECTION 3.0105. Section [33.032](#), Health and Safety Code, is
12 amended to read as follows:

13 Sec. 33.032. PROGRAM SERVICES. (a) Within the limits of
14 funds available for this purpose and in cooperation with the
15 individual's physician, the department may provide services
16 directly or through approved providers to individuals of any age
17 who meet the eligibility criteria specified by department [~~board~~]
18 rules on the confirmation of a positive test for phenylketonuria,
19 other heritable diseases, hypothyroidism, or another disorder for
20 which the screening tests are required.

21 (b) The executive commissioner [~~board~~] may adopt:
22 (1) rules specifying the type, amount, and duration of
23 program services to be offered;

24 (2) rules establishing the criteria for eligibility
25 for services, including the medical and financial criteria;

26 (3) rules establishing the procedures necessary to
27 determine the medical, financial, and other eligibility of the

1 individual;

2 (4) substantive and procedural rules for applying for
3 program services and processing those applications;

4 (5) rules for providing services according to a
5 sliding scale of financial eligibility;

6 (6) substantive and procedural rules for the denial,
7 modification, suspension, and revocation of an individual's
8 approval to receive services; and

9 (7) substantive and procedural rules for the approval
10 of providers to furnish program services.

11 (c) The department may select providers according to the
12 criteria in the department's [board's] rules.

13 (d) The executive commissioner by rule [board] may
14 establish [charge] fees to be collected by the department for the
15 provision of services, except that services may not be denied to an
16 individual because of the individual's inability to pay the fees.

17 SECTION 3.0106. Section 33.035(d), Health and Safety Code,
18 is amended to read as follows:

19 (d) The executive commissioner [board] by rule shall
20 provide criteria for actions taken under this section.

21 SECTION 3.0107. Section 33.036(c), Health and Safety Code,
22 is amended to read as follows:

23 (c) Chapter 2001, Government Code, does [do] not apply to
24 the notice and hearing required by this section.

25 SECTION 3.0108. Section 33.037(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) The department [board] may require an individual or, if

1 the individual is a minor, the minor's parent, managing
2 conservator, or guardian, or other person with a legal obligation
3 to support the individual to pay or reimburse the department for all
4 or part of the cost of the services provided.

5 SECTION 3.0109. Sections [33.038](#)(b) and (d), Health and
6 Safety Code, are amended to read as follows:

7 (b) This section creates a separate and distinct cause of
8 action, and the department [commissioner] may request the attorney
9 general to bring suit in the appropriate court of Travis County on
10 behalf of the department.

11 (d) The executive commissioner [board] by rule shall
12 provide criteria for actions taken under this section.

13 SECTION 3.0110. Sections [35.0021](#)(6), (7), (10), (11), and
14 (12), Health and Safety Code, are amended to read as follows:

15 (6) "Other benefit" means a benefit, other than a
16 benefit provided under this chapter, to which a person is entitled
17 for payment of the costs of services provided under the program,
18 including benefits available from:

19 (A) an insurance policy, group health plan,
20 health maintenance organization, or prepaid medical or dental care
21 plan;

22 (B) Title XVIII, Title XIX, or Title XXI of the
23 Social Security Act (42 U.S.C. Sec. 1395 et seq., 42 U.S.C. Sec.
24 1396 et seq., and 42 U.S.C. Sec. 1397aa et seq.), as amended;

25 (C) the United States Department of Veterans
26 Affairs;

27 (D) the TRICARE program of the United States

1 Department of Defense [civilian Health and Medical Program of the
2 Uniformed Services];

3 (E) workers' compensation or any other
4 compulsory employers' insurance program;

5 (F) a public program created by federal or state
6 law or the ordinances or rules of a municipality or other political
7 subdivision of the state, excluding benefits created by the
8 establishment of a municipal or county hospital, a joint
9 municipal-county hospital, a county hospital authority, a hospital
10 district, or the facilities of a publicly supported medical school;
11 or

12 (G) a cause of action for the cost of care,
13 including medical care, dental care, facility care, and medical
14 supplies, required for a person applying for or receiving services
15 from the department, or a settlement or judgment based on the cause
16 of action, if the expenses are related to the need for services
17 provided under this chapter.

18 (7) "Physician" means a person licensed by the Texas
19 [State Board of] Medical Board [Examiners] to practice medicine in
20 this state.

21 (10) "Rehabilitation services" means the process of
22 the physical restoration, improvement, or maintenance of a body
23 function destroyed or impaired by congenital defect, disease, or
24 injury and includes:

25 (A) facility care, medical and dental care, and
26 occupational, speech, and physical therapy;

27 (B) the provision of braces, artificial

1 appliances, durable medical equipment, and other medical supplies;
2 and

3 (C) other types of care specified by department
4 [~~the board in the program~~] rules.

5 (11) "Services" means the care, activities, and
6 supplies provided under this chapter or department [~~program~~] rules,
7 including medical care, dental care, facility care, medical
8 supplies, occupational, physical, and speech therapy, and other
9 care specified by department [~~program~~] rules.

10 (12) "Specialty center" means a facility and staff
11 that meet minimum standards established under the program and are
12 designated by the department [~~board~~] for program use in the
13 comprehensive diagnostic and treatment services for a specific
14 medical condition.

15 SECTION 3.0111. Sections 35.003(b) and (c), Health and
16 Safety Code, are amended to read as follows:

17 (b) The executive commissioner [~~board~~] by rule shall:

18 (1) specify the type, amount, and duration of services
19 to be provided under this chapter; and

20 (2) permit the payment of insurance premiums for
21 eligible children.

22 (c) If budgetary limitations exist, the executive
23 commissioner [~~board~~] by rule shall establish a system of priorities
24 relating to the types of services or the classes of persons eligible
25 for the services. A waiting list of eligible persons may be
26 established if necessary for the program to remain within the
27 budgetary limitations. The department shall collect from each

1 applicant for services who is placed on a waiting list appropriate
2 information to facilitate contacting the applicant when services
3 become available and to allow efficient enrollment of the applicant
4 in those services. The information collected must include:

5 (1) the applicant's name, address, and phone number;
6 (2) the name, address, and phone number of a contact
7 person other than the applicant;

8 (3) the date of the applicant's earliest application
9 for services;

10 (4) the applicant's functional needs;
11 (5) the range of services needed by the applicant; and
12 (6) a date on which the applicant is scheduled for
13 reassessment.

14 SECTION 3.0112. Section [35.0033](#)(b), Health and Safety Code,
15 is amended to read as follows:

16 (b) Except as required by ~~the~~ department rule, a health
17 benefits plan provider under this chapter is not subject to a law
18 that requires coverage or the offer of coverage of a health care
19 service or benefit.

20 SECTION 3.0113. Sections [35.004](#)(a), (b), (d), (e), (f),
21 (h), and (i), Health and Safety Code, are amended to read as
22 follows:

23 (a) The executive commissioner ~~board~~ shall adopt
24 substantive and procedural rules for the selection of providers to
25 participate in the program, including rules for the selection of
26 specialty centers and rules requiring that providers accept program
27 payments as payment in full for services provided.

1 (b) The department [board] shall approve physicians,
2 dentists, licensed dietitians, facilities, specialty centers, and
3 other providers to participate in the program according to the
4 criteria and following the procedures prescribed by department
5 rules [~~the board~~].

6 (d) Except as specified in the department [program] rules, a
7 recipient of services may select any provider approved by the
8 department [board]. If the recipient is a minor, the person legally
9 authorized to consent to the treatment may select the provider.

10 (e) The executive commissioner [board] shall adopt
11 substantive and procedural rules for the modification, suspension,
12 or termination of the approval of a provider.

13 (f) The department [board] shall provide a due process
14 hearing procedure in accordance with department rules for the
15 resolution of conflicts between the department and a provider.
16 Chapter 2001, Government Code, does [do] not apply to conflict
17 resolution procedures adopted under this section.

18 (h) Subsection (f) does not apply if a contract:

19 (1) is canceled by the department because services are
20 restricted to conform to budgetary limitations and service
21 priorities are adopted by the executive commissioner [board]
22 regarding types of services to be provided; or

23 (2) expires according to its terms.

24 (i) The Interagency Cooperation Act, Chapter 771,
25 Government Code, [~~Article 4413(32), Vernon's Texas Civil~~
26 ~~Statutes~~] does not apply to a payment made by the department for
27 services provided by a publicly supported medical school facility

1 to an eligible child. A publicly supported medical school facility
2 receiving payment under this chapter shall deposit the payment in
3 local funds.

4 SECTION 3.0114. Sections 35.0041(a) and (c), Health and
5 Safety Code, are amended to read as follows:

6 (a) The executive commissioner [department] by rule shall
7 develop and the department shall implement policies permitting
8 reimbursement of a provider for services under the program
9 performed using telemedicine medical services.

10 (c) In developing and implementing the policies required by
11 this section, the executive commissioner and the department shall
12 consult with:

13 (1) The University of Texas Medical Branch at
14 Galveston;

15 (2) Texas Tech University Health Sciences Center;

16 (3) the commission [Health and Human Services
17 Commission], including the state Medicaid office;

18 (4) providers of telemedicine medical services and
19 telehealth services hub sites in this state;

20 (5) providers of services to children with special
21 health care needs; and

22 (6) representatives of consumer or disability groups
23 affected by changes to services for children with special health
24 care needs.

25 SECTION 3.0115. Section 35.005, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 35.005. ELIGIBILITY FOR SERVICES. (a) The executive

1 commissioner [board] by rule shall:

2 (1) define medical, financial, and other criteria for
3 eligibility to receive services; and

4 (2) establish a system for verifying eligibility
5 information submitted by an applicant for or recipient of services.

6 (b) In defining medical and financial criteria for
7 eligibility under Subsection (a), the executive commissioner
8 [board] may not:

9 (1) establish an exclusive list of coverable medical
10 conditions; or

11 (2) consider as a source of support to provide
12 services assets legally owned or available to a child's household.

13 (c) A child is not eligible to receive rehabilitation
14 services unless:

15 (1) the child is a resident of this state;

16 (2) at least one physician or dentist certifies to the
17 department that the physician or dentist has examined the child and
18 finds the child to be a child with special health care needs whose
19 disability meets the medical criteria established by the executive
20 commissioner [board];

21 (3) the department determines that the persons who
22 have any legal obligation to provide services for the child are
23 unable to pay for the entire cost of the services;

24 (4) the child has a family income that is less than or
25 equal to 200 percent of the federal poverty level; and

26 (5) the child meets all other eligibility criteria
27 established by department [board] rules.

1 (d) A child is not eligible to receive services, other than
2 rehabilitation services, unless the child:

3 (1) is a resident of this state; and

4 (2) meets all other eligibility criteria established
5 by department [board] rules.

6 (e) Notwithstanding Subsection (c)(4), a child with special
7 health care needs who has a family income that is greater than 200
8 percent of the federal poverty level and who meets all other
9 eligibility criteria established by this section and by department
10 [board] rules is eligible for services if the department determines
11 that the child's family is or will be responsible for medical
12 expenses that are equal to or greater than the amount by which the
13 family's income exceeds 200 percent of the federal poverty level.

14 SECTION 3.0116. Sections 35.006(a), (c), (d), and (e),
15 Health and Safety Code, are amended to read as follows:

16 (a) The executive commissioner [board] shall adopt
17 substantive and procedural rules for the denial of applications and
18 the modification, suspension, or termination of services.

19 (c) The executive commissioner [board] by rule shall
20 provide criteria for action by the department under this section.

21 (d) The department shall conduct hearings under this
22 section in accordance with the department's [board's] due process
23 hearing rules. Chapter 2001, Government Code, does [do] not apply
24 to the granting, denial, modification, suspension, or termination
25 of services.

26 (e) This section does not apply if the department restricts
27 services to conform to budgetary limitations that require the

1 executive commissioner [board] to adopt service priorities
2 regarding types of services to be provided.

3 SECTION 3.0117. Sections 35.007(a) and (b), Health and
4 Safety Code, are amended to read as follows:

5 (a) The department [board] shall require a child receiving
6 services, or the person who has a legal obligation to support the
7 child, to pay for or reimburse the department for that part of the
8 cost of the services that the child or person is financially able to
9 pay.

10 (b) A child is not eligible to receive services under this
11 chapter to the extent that the child or a person with a legal
12 obligation to support the child is eligible for some other benefit
13 that would pay for all or part of the services. The executive
14 commissioner [board] may waive this subsection if its enforcement
15 will deny services to a class of children because of conflicting
16 state and federal laws or rules and regulations.

17 SECTION 3.0118. Section 35.008(b), Health and Safety Code,
18 is amended to read as follows:

19 (b) This section creates a separate cause of action, and the
20 department [commissioner] may request the attorney general to bring
21 suit in the appropriate court of Travis County on behalf of the
22 department.

23 SECTION 3.0119. Section 35.009, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 35.009. FEES. The executive commissioner by rule
26 [board] may adopt reasonable procedures and standards for the
27 determination of fees and charges for program services.

1 SECTION 3.0120. Sections [36.004](#)(a) and (c), Health and
2 Safety Code, are amended to read as follows:

3 (a) The executive commissioner [board] by rule shall
4 require screening of individuals who attend public or private
5 preschools or schools to detect vision and hearing disorders and
6 any other special senses or communication disorders specified by
7 the executive commissioner [board]. In developing the rules, the
8 executive commissioner [board] may consider the number of
9 individuals to be screened and the availability of:

10 (1) personnel qualified to administer the required
11 screening;
12 (2) appropriate screening equipment; and
13 (3) state and local funds for screening activities.

14 (c) The executive commissioner [board] shall adopt a
15 schedule for implementing the screening requirements and shall give
16 priority to the age groups that may derive the greatest educational
17 and social benefits from early identification of special senses and
18 communication disorders.

19 SECTION 3.0121. Sections [36.005](#)(a) and (c), Health and
20 Safety Code, are amended to read as follows:

21 (a) An individual required to be screened shall undergo
22 approved screening for vision and hearing disorders and any other
23 special senses and communication disorders specified by the
24 executive commissioner [board]. The individual shall comply with
25 the requirements as soon as possible after the individual's
26 admission to a preschool or school and within the period set by the
27 executive commissioner [board]. The individual or, if the

1 individual is a minor, the minor's parent, managing conservator, or
2 guardian, may substitute professional examinations for the
3 screening.

4 (c) The chief administrator of each preschool or school
5 shall ensure that each individual admitted to the preschool or
6 school complies with the screening requirements set by the
7 executive commissioner [board] or submits an affidavit of
8 exemption.

9 SECTION 3.0122. Sections 36.006(a) and (d), Health and
10 Safety Code, are amended to read as follows:

11 (a) The chief administrator of each preschool or school
12 shall maintain, on a form prescribed by the department in
13 accordance with department rules, screening records for each
14 individual in attendance, and the records are open for inspection
15 by the department or the local health department.

16 (d) Each preschool or school shall submit to the department
17 an annual report on the screening status of the individuals in
18 attendance during the reporting year and shall include in the
19 report any other information required by the executive commissioner
20 [board]. The report must be on a form prescribed by the department
21 in accordance with department rules and must be submitted according
22 to the [board's] rules.

23 SECTION 3.0123. Sections 36.007(b) and (c), Health and
24 Safety Code, are amended to read as follows:

25 (b) The executive commissioner [board] by rule shall:

26 (1) describe the type, amount, and duration of
27 remedial services that the department provides;

1 (2) establish medical, financial, and other criteria
2 to be applied by the department in determining an individual's
3 eligibility for the services;

4 (3) establish criteria for the selection by the
5 department of providers of remedial services; and

6 (4) establish procedures necessary to provide
7 remedial services.

8 (c) The executive commissioner [board] may establish a
9 schedule to determine financial eligibility.

10 SECTION 3.0124. Sections 36.008(d) and (e), Health and
11 Safety Code, are amended to read as follows:

12 (d) The department may modify, suspend, or terminate the
13 eligibility of an applicant for or recipient of remedial services
14 after notice to the affected individual and an opportunity for a
15 fair hearing that is conducted in accordance with the department's
16 informal hearing rules [~~adopted by the board~~].

17 (e) The executive commissioner [board] by rule shall
18 provide criteria for actions taken under this section.

19 SECTION 3.0125. Section 36.009(a), Health and Safety Code,
20 is amended to read as follows:

21 (a) The executive commissioner [board] may require an
22 individual or, if the individual is a minor, the minor's parent,
23 managing conservator, or guardian, to pay or reimburse the
24 department for a part of the cost of the remedial services provided.

25 SECTION 3.0126. Section 36.010(d), Health and Safety Code,
26 is amended to read as follows:

27 (d) The executive commissioner [board] by rule shall

1 provide criteria for actions taken under this section.

2 SECTION 3.0127. Section 36.011(a), Health and Safety Code,
3 is amended to read as follows:

4 (a) The department in accordance with department rules may
5 require that persons who administer special senses and
6 communication disorders screening complete an approved training
7 program, and the department may train those persons and approve
8 training programs.

9 SECTION 3.0128. Sections 37.001(b), (c), and (d), Health
10 and Safety Code, are amended to read as follows:

11 (b) The executive commissioner [board], in cooperation with
12 the Texas Education Agency, shall adopt rules for the mandatory
13 spinal screening of children in grades 6 and 9 attending public or
14 private schools. The department shall coordinate the spinal
15 screening program with any other screening program conducted by the
16 department on those children.

17 (c) The executive commissioner [board] shall adopt
18 substantive and procedural rules necessary to administer screening
19 activities.

20 (d) A rule adopted by the executive commissioner [board]
21 under this chapter may not require any expenditure by a school,
22 other than an incidental expense required for certification
23 training for nonhealth practitioners and for notification
24 requirements under Section 37.003.

25 SECTION 3.0129. Sections 37.002(a) and (c), Health and
26 Safety Code, are amended to read as follows:

27 (a) Each individual required by a department [board] rule to

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1 be screened shall undergo approved screening for abnormal spinal
2 curvature. The individual's parent, managing conservator, or
3 guardian may substitute professional examinations for the
4 screening.

5 (c) The chief administrator of each school shall ensure that
6 each individual admitted to the school complies with the screening
7 requirements set by the executive commissioner [board] or submits
8 an affidavit of exemption.

9 SECTION 3.0130. Section 39.002, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 39.002. CHILDREN'S OUTREACH HEART PROGRAM. The
12 department, with approval of the executive commissioner [board],
13 may establish a children's outreach heart program to provide:

14 (1) prediagnostic cardiac screening and follow-up
15 evaluation services to persons under 21 years of age who are from
16 low-income families and who may have a heart disease or defect; and

17 (2) training to local physicians and public health
18 nurses in screening and diagnostic procedures for heart disease or
19 defect.

20 SECTION 3.0131. Section 39.003, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 39.003. RULES. The executive commissioner [board]
23 shall adopt rules the executive commissioner [+] considers
24 necessary to define the scope of the children's outreach heart
25 program and the medical and financial standards for eligibility.

26 SECTION 3.0132. Section 39.004, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 39.004. FEES. Recipients of services or training
2 provided by the program may be charged a fee for services or
3 training according to rules adopted by the executive commissioner
4 [~~board~~].

5 SECTION 3.0133. Section 40.002, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 40.002. EPILEPSY PROGRAM. [(a)] The department, with
8 approval of the executive commissioner [~~board~~], may establish an
9 epilepsy program to provide diagnostic services, treatment, and
10 support services to eligible persons who have epilepsy.

11 [~~(b) The commissioner may appoint an epilepsy advisory~~
12 ~~board to assist the department in developing the epilepsy program.~~]]

13 SECTION 3.0134. Section 40.003, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 40.003. RULES. The executive commissioner [~~board~~] may
16 adopt rules the executive commissioner [~~it~~] considers necessary to
17 define the scope of the epilepsy program and the medical and
18 financial standards for eligibility.

19 SECTION 3.0135. Section 40.004(a), Health and Safety Code,
20 is amended to read as follows:

21 (a) The commissioner, with the approval of the executive
22 commissioner [~~board~~], may appoint an administrator to carry out the
23 epilepsy program.

24 SECTION 3.0136. Section 40.005, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 40.005. FEES. Program patients may be charged a fee
27 for services according to rules adopted by the executive

1 commissioner [board].

2 SECTION 3.0137. Sections 41.001(1) and (2), Health and
3 Safety Code, are amended to read as follows:

4 (1) "Hemophilia" means a human physical condition
5 characterized by bleeding resulting from a genetically or
6 hereditarily determined deficiency of a blood coagulation factor
7 [~~or hereditarily~~] resulting in an abnormal or deficient plasma
8 procoagulant.

9 (2) "Other benefit" means a benefit, other than a
10 benefit under this chapter, to which a person is entitled for
11 payment of the costs of blood factor replacement products[, ~~blood~~
12 ~~derivatives and concentrates,~~] and other substances provided under
13 this chapter, including benefits available from:

14 (A) an insurance policy, group health plan, or
15 prepaid medical or dental care plan;

16 (B) Title XVIII or Title XIX of the Social
17 Security Act (42 U.S.C. Sec. 1395 et seq. or 42 U.S.C. Sec. 1396 et
18 seq.);

19 (C) the United States Department of Veterans
20 Affairs [Administration];

21 (D) the TRICARE program of the United States
22 Department of Defense [~~Civilian Health and Medical Program of the~~
23 ~~Uniformed Services~~];

24 (E) workers' compensation or any compulsory
25 employers' insurance program;

26 (F) a public program created by federal law,
27 state law, or the ordinances or rules of a municipality or political

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1 subdivision of the state, excluding benefits created by the
2 establishment of a municipal or county hospital, a joint
3 municipal-county hospital, a county hospital authority, a hospital
4 district, or the facilities of a publicly supported medical school;
5 or

6 (G) a cause of action for medical or dental
7 expenses to a person applying for or receiving services from the
8 department, or a settlement or judgment based on the cause of
9 action, if the expenses are related to the need for services
10 provided under this chapter.

11 SECTION 3.0138. Section 41.002, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 41.002. HEMOPHILIA ASSISTANCE PROGRAM. (a) The
14 hemophilia assistance program is in the department to assist
15 persons who have hemophilia and who require continuing treatment
16 with blood factor replacement [~~, blood derivatives, or manufactured~~
17 ~~pharmaceutical~~] products, but who are unable to pay the entire cost
18 of the treatment.

19 (b) The executive commissioner [~~department~~] shall establish
20 standards of eligibility for assistance under this chapter in
21 accordance with Section 41.004.

22 (c) The department shall provide, through approved
23 providers, financial assistance for medically eligible persons in
24 obtaining blood factor replacement products [~~, blood derivatives~~
25 ~~and concentrates,~~] and other substances for use in medical or
26 dental facilities or in the home.

27 SECTION 3.0139. Section 41.007(b), Health and Safety Code,

1 is amended to read as follows:

2 (b) The department shall identify [~~investigate~~] any
3 potential sources of funding from federal grants or programs.

4 SECTION 3.0140. Sections 42.001(b) and (c), Health and
5 Safety Code, are amended to read as follows:

6 (b) The state finds that one of the most serious and tragic
7 problems facing the public health and welfare is the death each year
8 from end stage renal [~~chronic kidney~~] disease of hundreds of
9 persons in this state, when the present state of medical art and
10 technology could return many of those individuals to a socially
11 productive life. Patients may die for lack of personal financial
12 resources to pay for the expensive equipment and care necessary for
13 survival. The state therefore recognizes a responsibility to allow
14 its citizens to remain healthy without being pauperized and a
15 responsibility to use the resources and organization of the state
16 to gather and disseminate information on the prevention and
17 treatment of end stage renal [~~chronic kidney~~] disease.

18 (c) A comprehensive program to combat end stage renal
19 [~~kidney~~] disease must be implemented through the combined and
20 correlated efforts of individuals, state and local governments,
21 persons in the field of medicine, universities, and nonprofit
22 organizations. The program provided by this chapter is designed to
23 direct the use of resources and to coordinate the efforts of the
24 state in this vital matter of public health.

25 SECTION 3.0141. Section 42.002(2), Health and Safety Code,
26 is amended to read as follows:

27 (2) "Other benefit" means a benefit, other than one

1 provided under this chapter, to which a person is entitled for
2 payment of the costs of medical care and treatment, services,
3 pharmaceuticals, transportation, and supplies, including benefits
4 available from:

5 (A) an insurance policy, group health plan, or
6 prepaid medical care plan;

7 (B) Title XVIII or Title XIX of the Social
8 Security Act (42 U.S.C. Sec. 1395 et seq. and 42 U.S.C. Sec. 1396 et
9 seq.);

10 (C) the United States Department of Veterans
11 Affairs [Administration];

12 (D) the TRICARE program of the United States
13 Department of Defense [Civilian Health and Medical Program of the
14 Uniformed Services];

15 (E) workers' compensation or other compulsory
16 employers' insurance programs [program];

17 (F) a public program created by federal law,
18 state law, or the ordinances or rules of a municipality or other
19 political subdivision of the state, excluding benefits created by
20 the establishment of a municipal or county hospital, a joint
21 municipal-county hospital, a county hospital authority, or a
22 hospital district; or

23 (G) a cause of action for medical expenses
24 brought by an applicant for or recipient of services from the
25 department, or a settlement or judgment based on the cause of
26 action, if the expenses are related to the need for services
27 provided under this chapter.

1 SECTION 3.0142. Section 42.003, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 42.003. KIDNEY HEALTH CARE PROGRAM [DIVISION]. (a)
4 The kidney health care program [division] is in the department to
5 carry out this chapter. [~~The board shall administer the division.~~]

6 (b) The department [division] may develop and expand
7 [~~assist in the development and expansion of~~] programs for the care
8 and treatment of persons with end stage renal [~~chronic kidney~~]
9 disease, including dialysis and other lifesaving medical
10 procedures and techniques.

11 (c) The executive commissioner [~~board~~] may adopt rules
12 necessary to carry out this chapter and to provide adequate kidney
13 care and treatment for citizens of this state.

14 SECTION 3.0143. Section 42.004, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 42.004. SERVICES. (a) The department [division]
17 shall provide kidney care services directly or through public or
18 private resources to persons the department determines [~~determined~~
19 ~~by the board~~] to be eligible for services authorized under this
20 chapter.

21 (b) The department [division] may cooperate with other
22 departments, agencies, political subdivisions, and public and
23 private institutions to provide the services authorized by this
24 chapter to eligible persons, to study the public health and welfare
25 needs involved, and to plan, establish, develop, and provide
26 programs or facilities and services that are necessary or
27 desirable, including any that are jointly administered with state

1 agencies.

2 (c) The department [division] may conduct research and
3 compile statistics relating to the provision of kidney care
4 services and the need for the services by [disabled or handicapped]
5 persons with disabilities.

6 (d) The department [division] may contract with schools,
7 hospitals, corporations, agencies, and individuals, including
8 doctors, nurses, and technicians, for training, physical
9 restoration, transportation, and other services necessary to treat
10 and care for persons with end stage renal [kidney] disease.

11 SECTION 3.0144. Sections 42.0045(a), (b), and (c), Health
12 and Safety Code, are amended to read as follows:

13 (a) Sections 483.041(a) and 483.042 of this code, Subtitle
14 J, Title 3, Occupations Code, and other applicable laws
15 establishing prohibitions do not apply to a dialysate, device, or
16 drug exclusively used or necessary to perform dialysis that a
17 physician prescribes or orders for administration or delivery to a
18 person with end stage renal disease [chronic kidney failure] if:

19 (1) the dialysate, device, or drug is lawfully held by
20 a manufacturer or wholesaler licensed by the department [registered
21 ~~with the board~~];

22 (2) the manufacturer or wholesaler delivers the
23 dialysate, device, or drug to:

24 (A) a person with end stage renal disease
25 [chronic kidney failure] for self-administration at the person's
26 home or a specified address, as ordered by a physician; or

27 (B) a physician for administration or delivery to

1 a person with end stage renal disease [~~chronic kidney failure~~] ; and
2 (3) the manufacturer or wholesaler has sufficient and
3 qualified supervision to adequately protect the public health.

4 (b) The executive commissioner [board] shall adopt rules
5 necessary to ensure the safe distribution, without the interruption
6 of supply, of a dialysate, device, or drug covered by Subsection
7 (a). The rules must include provisions regarding manufacturer and
8 wholesaler licensing, record keeping, evidence of a delivery to a
9 patient or a patient's designee, patient training, specific product
10 and quantity limitation, physician prescriptions or order forms,
11 adequate facilities, and appropriate labeling to ensure that
12 necessary information is affixed to or accompanies the dialysate,
13 device, or drug.

14 (c) If the department [board] determines that a dialysate,
15 device, or drug distributed under this chapter is ineffective or
16 unsafe for its intended use, the department [board] may immediately
17 recall the dialysate, device, or drug distributed to an individual
18 patient.

19 SECTION 3.0145. Sections 42.005(a), (b), (c), and (d),
20 Health and Safety Code, are amended to read as follows:

21 (a) The executive commissioner [board] may establish [~~and~~
22 ~~maintain~~] standards for the accreditation of all facilities
23 designed or intended to deliver care or treatment for persons with
24 end stage renal [~~chronic kidney~~] disease, and the department shall
25 maintain all established standards.

26 (b) The department [division] may conduct surveys of
27 existing facilities in this state that diagnose, evaluate, and

1 treat patients with end stage renal [kidney] disease and may
2 prepare and submit its findings and a specific program of action.

3 (c) The department [division] may evaluate the need to
4 create local or regional facilities and to establish a major kidney
5 research center.

6 (d) The department [division] may:

7 (1) establish or construct rehabilitation facilities
8 and workshops;

9 (2) make grants to public agencies and make contracts
10 or other arrangements with public and other nonprofit agencies,
11 organizations, or institutions for the establishment of workshops
12 and rehabilitation facilities; and

13 (3) operate facilities to carry out this chapter.

14 SECTION 3.0146. Sections 42.006(a), (b), and (d), Health
15 and Safety Code, are amended to read as follows:

16 (a) The department shall select providers to furnish kidney
17 health care services under the program according to the criteria
18 and procedures adopted by the executive commissioner [board].

19 (b) The department [board] shall provide a hearing
20 procedure in accordance with department rules for the resolution of
21 conflicts between the department and a provider. Chapter 2001,
22 Government Code, does [do] not apply to conflict resolution
23 procedures adopted under this section.

24 (d) Subsections (b) and (c) do not apply if a contract:

25 (1) is canceled because program services are
26 restricted to conform to budgetary limitations that require the
27 executive commissioner [board] to adopt service priorities

1 regarding types of services to be furnished or classes of eligible
2 individuals; or

3 (2) expires according to its terms.

4 SECTION 3.0147. Section 42.007, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 42.007. ELIGIBILITY FOR SERVICES. The executive
7 commissioner [board] may determine the terms, conditions, and
8 standards, including medical and financial standards, for the
9 eligibility of persons with end stage renal [~~chronic kidney~~]
10 disease to receive the aid, care, or treatment provided under this
11 chapter.

12 SECTION 3.0148. Sections 42.008(b), (c), and (d), Health
13 and Safety Code, are amended to read as follows:

14 (b) The program rules adopted by the executive commissioner
15 [board] must contain the criteria for the department's action under
16 this section.

17 (c) Chapter 2001, Government Code, does [do] not apply to
18 the granting, denial, modification, suspension, or termination of
19 services provided under this chapter. Hearings under this section
20 must be conducted in accordance with the department's [board's]
21 hearing rules.

22 (d) This section does not apply if program services are
23 restricted to conform to budgetary limitations that require the
24 executive commissioner [board] to adopt service priorities
25 regarding types of services to be furnished or classes of eligible
26 persons.

27 SECTION 3.0149. Section 42.009(d), Health and Safety Code,

1 is amended to read as follows:

2 (d) The executive commissioner [board] may waive the
3 provisions of Subsection (a) in certain individually considered
4 cases when the enforcement of that provision will deny services to a
5 class of end stage renal disease patients because of conflicting
6 state or federal laws or rules.

7 SECTION 3.0150. Sections 42.011(a) and (b), Health and
8 Safety Code, are amended to read as follows:

9 (a) The department [division] may receive and use gifts to
10 carry out this chapter.

11 (b) The department [board] may comply with any requirements
12 necessary to obtain federal funds in the maximum amount and most
13 advantageous proportions possible to carry out this chapter.

14 SECTION 3.0151. Section 42.012(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) The department [division] may enter into contracts and
17 agreements with persons, colleges, universities, associations,
18 corporations, municipalities, and other units of government as
19 necessary to carry out this chapter.

20 SECTION 3.0152. Section 42.013, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 42.013. COOPERATION. (a) The department [division]
23 may cooperate with private or public agencies to facilitate the
24 availability of adequate care for all citizens with end stage renal
25 [chronic kidney] disease.

26 (b) The department [board] shall make agreements,
27 arrangements, or plans to cooperate with the federal government in

1 carrying out the purposes of this chapter or of any federal statute
2 or rule relating to the prevention, care, or treatment of end stage
3 renal [~~kidney~~] disease or the care, treatment, or rehabilitation of
4 persons with end stage renal [~~kidney~~] disease. The executive
5 commissioner [~~board~~] may adopt rules and methods of administration
6 found by the federal government to be necessary for the proper and
7 efficient operation of the agreements, arrangements, or plans.

8 (c) The department [~~division~~] may enter into reciprocal
9 agreements with other states.

10 SECTION 3.0153. Section 42.014, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 42.014. SCIENTIFIC INVESTIGATIONS. (a) The
13 department [~~division~~] may develop and administer scientific
14 investigations into the cause, prevention, methods of treatment,
15 and cure of end stage renal [~~kidney~~] disease, including research
16 into kidney transplantation.

17 (b) The department [~~division~~] may develop techniques for an
18 effective method of mass testing to detect end stage renal [~~kidney~~]
19 disease and urinary tract infections.

20 SECTION 3.0154. Section 42.015, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 42.015. EDUCATIONAL PROGRAMS. (a) The department
23 [~~division~~] may develop, implement [~~institute, carry on~~], and
24 supervise educational programs for the public and health providers,
25 including physicians, hospitals, and public health departments,
26 concerning end stage renal [~~chronic kidney~~] disease, including
27 prevention and methods of care and treatment.

1 (b) The department [division] may use existing public or
2 private programs or groups for the educational programs.

3 SECTION 3.0155. Section 42.016, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 42.016. REPORTS. The department [board] shall report
6 to the governor and the legislature not later than February 1 of
7 each year concerning its findings, progress, and activities under
8 this chapter and the state's total need in the field of kidney
9 health care.

10 SECTION 3.0156. Section 42.017, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 42.017. INSURANCE PREMIUMS. The department [board]
13 may provide for payment of the premiums required to maintain
14 coverage under Title XVIII of the Social Security Act (42 U.S.C.
15 Section 1395 et seq.) for certain classes of persons with end stage
16 renal disease, in individually considered instances according to
17 criteria established by department [board] rules.

18 SECTION 3.0157. Section 42.018, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 42.018. FREEDOM OF SELECTION. The freedom of an
21 eligible person to select a treating physician, a treatment
22 facility, or a treatment modality is not limited by Section 42.009
23 if the physician, facility, or modality is approved by the
24 department [board] as required by this chapter.

25 SECTION 3.0158. Section 43.003(a)(3), Health and Safety
26 Code, is amended to read as follows:

27 (3) "Other benefit" means a benefit, other than a

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1 benefit provided under this chapter, to which an individual is
2 entitled for the payment of the costs of oral health treatment
3 services, including benefits available from:

(B) Title XVIII or Title XIX of the Social Security Act, as amended (42 U.S.C. Sec. 1395 et seq. and 42 U.S.C. Sec. 1396 et seq.);

9 (C) the United States Department of Veterans
10 Affairs [Administration];

11 (D) the TRICARE program of the United States
12 Department of Defense [Civilian Health and Medical Program of the
13 Uniformed Services];

14 (E) workers' compensation or any other
15 compulsory employer's insurance program;

16 (F) a public program created by federal law,
17 state law, or the ordinances or rules of a municipality or other
18 political subdivision of the state; or

23 SECTION 3.0159. Section 43.003(b), Health and Safety Code,
24 is amended to read as follows:

25 (b) The executive commissioner [board] by rule may define a
26 word or term not defined by Subsection (a) as necessary to
27 administer this chapter. The executive commissioner [board] may

1 not define a word or term so that the word or term is inconsistent or
2 in conflict with the purposes of this chapter.

3 SECTION 3.0160. Sections 43.004(b) and (e), Health and
4 Safety Code, are amended to read as follows:

5 (b) The executive commissioner [board] shall adopt rules to
6 govern the program, to prescribe the type, amount, and duration of
7 oral health services to be provided, and, if necessary to conform to
8 budgetary limitations, to prescribe a system of program priorities
9 regarding the types of services to be furnished, the geographic
10 areas to be covered, or the classes of individuals eligible for
11 services.

12 (e) The department may provide services only as prescribed
13 by department [board] rules.

14 SECTION 3.0161. Section 43.005(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) The department shall:

17 (1) administer the program of oral health services
18 [~~established by the board~~]; and

19 (2) develop [~~adopt~~] the design and content of all
20 forms necessary for the program.

21 SECTION 3.0162. Sections 43.006(a), (b), and (d), Health
22 and Safety Code, are amended to read as follows:

23 (a) The executive commissioner [board] may adopt
24 substantive and procedural rules relating to:

25 (1) the selection of dentists, physicians,
26 facilities, and other providers to furnish program services,
27 including criteria for the emergency selection of providers; and

1 (2) the denial, modification, suspension, or
2 termination of a provider's program participation.

3 (b) The department shall approve providers to participate
4 in the program according to the criteria, rules, and procedures
5 adopted by the executive commissioner [board].

6 (d) The department [board] shall provide a due process
7 hearing procedure in accordance with department rules for the
8 resolution of conflicts between the department and a provider.
9 Chapter 2001, Government Code, does [do] not apply to conflict
10 resolution procedures adopted under this section.

11 SECTION 3.0163. Section 43.007, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 43.007. INDIVIDUAL REFERRAL AND APPLICATION FOR
14 SERVICES. (a) The executive commissioner [board] may adopt
15 substantive and procedural rules to govern the application for
16 admission to the program and the receipt of treatment services,
17 including the dental, financial, and other criteria for eligibility
18 to receive treatment services.

19 (b) An applicant for treatment services must be referred to
20 the program by a person who knows the individual's economic
21 condition, such as a school administrator or school nurse, social
22 worker, municipal or county official, dentist, physician, public
23 health clinic, community health center, hospital, or any other
24 source acceptable to the executive commissioner [board].

25 (c) An applicant for treatment services must complete or
26 cause to be completed an application form prescribed under Section
27 43.005 [~~by the department~~].

1 (d) The application form must include or be accompanied by:
2 (1) a statement by the individual, or by the person
3 with a legal obligation to support the individual, that the
4 individual or the person is financially unable to pay for all or
5 part of the cost of the necessary treatment services;
6 (2) a statement from the referring person that the
7 treatment services are necessary to prevent or reduce the
8 probability of pain, infection, or disease; and
9 (3) any other assurances from the applicant or any
10 other documentary evidence required by the department [board] to
11 support the applicant's eligibility.

12 SECTION 3.0164. Section 43.008, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 43.008. ELIGIBILITY FOR SERVICES. (a) The department
15 shall determine an individual's eligibility for treatment services
16 according to this chapter and department [~~the program~~] rules.

17 (b) An individual is not eligible to receive treatment
18 services provided under this chapter unless:

19 (1) the individual is a resident of this state;
20 (2) the department has determined that neither the
21 individual nor a person with a legal obligation to support the
22 individual is financially able to pay for all or part of the
23 treatment services provided by this chapter;

24 (3) the individual complies with any other
25 requirements stated in the department [~~program~~] rules; and

26 (4) at least one licensed dentist or licensed
27 physician has certified to the department that the dentist or

1 physician has examined the individual and has found that:

2 (A) the individual meets the department's
3 [board's] dental criteria; and

4 (B) the dentist or physician has reason to expect
5 that the treatment services provided by or through the department
6 will prevent or reduce the probability of the individual's
7 experiencing pain, infection, or disease.

8 (c) Except as permitted by department [program] rules, the
9 department may not provide treatment services before an
10 individual's eligibility date assigned by the department or
11 authorize payment for treatment services furnished by a provider
12 before that date.

13 SECTION 3.0165. Sections 43.009(b) and (c), Health and
14 Safety Code, are amended to read as follows:

15 (b) The executive commissioner [board] by rule shall
16 provide criteria for action by the department under this section.

17 (c) Chapter 2001, Government Code, does [do] not apply to
18 the granting, denial, modification, suspension, or termination of
19 treatment services. The department shall conduct hearings in
20 accordance with the department's [board's] due process hearing
21 rules.

22 SECTION 3.0166. Section 43.010(e), Health and Safety Code,
23 is amended to read as follows:

24 (e) The commissioner may waive the enforcement of
25 Subsection (b) as prescribed by department [board] rules in certain
26 individually considered cases in which enforcement will deny
27 treatment services to a class of otherwise eligible individuals

1 because of conflicting federal, state, or local laws or rules.

2 SECTION 3.0167. Section 43.012, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 43.012. FEES. The department, in accordance with
5 department rules, [board] may charge fees for the oral health
6 services provided directly by the department or through approved
7 providers in accordance with Subchapter D, Chapter 12.

8 SECTION 3.0168. Section 43.013(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) The department [subject to limitations or conditions
11 prescribed by the legislature, the board] may seek, receive, and
12 spend funds received from any public or private source for the
13 purposes of this chapter, subject to:

14 (1) the limitations or conditions prescribed by the
15 legislature; and

16 (2) any limitations or conditions prescribed by the
17 executive commissioner.

18 SECTION 3.0169. Section 45.003, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 45.003. RULES. The executive commissioner [board] may
21 adopt rules governing eligibility for a child passenger safety seat
22 system from the program established under Section 45.002.

23 SECTION 3.0170. Sections 47.001(3), (4), (6), and (9),
24 Health and Safety Code, are amended to read as follows:

25 (3) "Health care provider" means a registered nurse
26 recognized as an advanced practice registered nurse by the Texas
27 Board of Nursing or a physician assistant licensed by the Texas

1 Physician Assistant Board.

2 (4) "Hearing loss" means a hearing loss of 30 dB HL or
3 greater in the frequency region important for speech recognition
4 and comprehension in one or both ears, approximately 500 through
5 4,000 Hz. As technological advances permit the detection of less
6 severe hearing loss, the executive commissioner [department] may
7 modify this definition by rule.

8 (6) "Intervention or follow-up care" means the early
9 intervention services described in Part C, Individuals with
10 Disabilities Education Act (20 U.S.C. Sections 1431-1443)
11 [1431-1445], as amended by Pub. L. No. 105-17].

12 (9) "Physician" means a person licensed to practice
13 medicine by the Texas [State Board of] Medical Board [Examiners].

14 SECTION 3.0171. Sections 47.004(a), (b), and (d), Health
15 and Safety Code, are amended to read as follows:

16 (a) The executive commissioner [department or the
17 department's designee] shall establish certification criteria for
18 implementing a program.

19 (b) In order to be certified, the program must:

20 (1) provide hearing screening using equipment
21 recommended by the department;

22 (2) use appropriate staff to provide the screening;

23 (3) maintain and report data electronically as
24 required by [the] department rule;

25 (4) distribute family, health care provider, and
26 physician educational materials standardized by the department;

27 (5) provide information, as recommended by the

1 department, to the parents on follow-up services for newborns and
2 infants who do not pass the screening; and

3 (6) be supervised by:

- 4 (A) a physician;
5 (B) an audiologist;
6 (C) a registered nurse; or
7 (D) a physician assistant.

8 (d) The department may renew the certification of a program
9 on a periodic basis as established by department [board] rule in
10 order to ensure quality services to newborns, infants, and
11 families.

12 SECTION 3.0172. Section 47.007, Health and Safety Code, as
13 amended by Chapters 1273 (H.B. 411) and 601 (S.B. 229), Acts of the
14 82nd Legislature, Regular Session, 2011, is reenacted and amended
15 to read as follows:

16 Sec. 47.007. INFORMATION MANAGEMENT, REPORTING, AND
17 TRACKING SYSTEM. (a) The department shall provide each birthing
18 facility that provides newborn hearing screening under the state's
19 medical assistance program provided under Chapter 32, Human
20 Resources Code, with access to the appropriate information
21 management, reporting, and tracking system for the program. The
22 information management, reporting, and tracking system must be
23 capable of providing the department with information and data
24 necessary to plan, monitor, and evaluate the program, including the
25 program's screening, follow-up, diagnostic, and intervention
26 components.

27 (b) Subject to Section 47.008, a qualified hearing

1 screening provider, hospital, health care provider, physician,
2 audiologist, or intervention specialist shall access the
3 information management, reporting, and tracking system to provide
4 information to the department and may obtain information from the
5 department relating to:

6 (1) the results of each hearing screening performed
7 under Section 47.003(a) or 47.0031(a);

8 (2) the results of each diagnostic audiological
9 evaluation required under Section 47.0031(b)(2);

10 (3) infants who receive follow-up care;

11 (4) infants identified with hearing loss;

12 (5) infants who are referred for intervention
13 services; and

14 (6) case level information necessary to report
15 required statistics to:

16 (A) the federal Maternal and Child Health Bureau
17 on an annual basis; and

18 (B) the federal Centers for Disease Control and
19 Prevention.

20 (c) A birthing facility described by Subsection (a) shall
21 report the resulting information in the format and within the time
22 frame specified by the department.

23 (d) [A birthing facility described by Subsection (a) shall
24 report the resulting information in the format and within the time
25 frame specified by the department.]

26 [(d) A qualified hearing screening provider, audiologist,
27 intervention specialist, educator, or other person who receives a

1 ~~referral from a program under this chapter shall:~~

2 [1] ~~provide the services needed by the child or refer~~
3 ~~the child to a person who provides the services needed by the child;~~
4 ~~and~~

5 [2] ~~provide, with the consent of the child's parent,~~
6 ~~the following information to the department or the department's~~
7 ~~designee:~~

8 [(A) ~~results of follow-up care;~~
9 [(B) ~~results of audiologic testing of infants~~
10 ~~identified with hearing loss; and~~
11 [(C) ~~reports on the initiation of intervention~~
12 ~~services.~~

13 [(e)] A qualified hearing screening provider, audiologist,
14 intervention specialist, educator, or other person who receives a
15 referral from a program under this chapter shall:

16 (1) provide the services needed by the newborn or
17 infant or refer the newborn or infant to a person who provides the
18 services needed by the newborn or infant; and

19 (2) provide, with the consent of the newborn's or
20 infant's parent, the following information to the department or the
21 department's designee:

22 (A) results of follow-up care;
23 (B) results of audiologic testing of an infant
24 identified with hearing loss; and
25 (C) reports on the initiation of intervention
26 services.

27 (e) [A qualified hearing screening provider, audiologist,

1 ~~intervention specialist, educator, or other person who provides~~
2 ~~services to infants who are diagnosed with hearing loss shall~~
3 ~~provide, with the consent of the infant's parent, the following~~
4 ~~information to the department or the department's designee:~~

5 [←(1) ~~results of follow-up services;~~
6 [←(2) ~~results of audiologic testing of infants~~
7 ~~identified with hearing loss; and~~
8 [←(3) ~~reports on the initiation of intervention~~
9 ~~services.~~

10 [←(f)] A qualified hearing screening provider, audiologist,
11 intervention specialist, educator, or other person who provides
12 services to an infant who is diagnosed with hearing loss shall
13 provide, with the consent of the infant's parent, the following
14 information to the department or the department's designee:

15 (1) results of follow-up care;
16 (2) results of audiologic testing; and
17 (3) reports on the initiation of intervention
18 services.

19 (f) [A hospital that provides services under this chapter
20 shall use the information management, reporting, and tracking
21 system, which the department has provided the hospital with access
22 to, to report, with the consent of the infant's parent, the
23 following information to the department or the department's
24 designee:

25 [←(1) ~~results of all follow-up services for infants who~~
26 ~~do not pass the birth admission screening if the hospital provides~~
27 ~~the follow-up services; or~~

1 [~~(2) the name of the provider or facility where the~~
2 ~~hospital refers an infant who does not pass the birth admission~~
3 ~~screening for follow-up services.~~

4 [~~(g)~~] A hospital that provides services under this chapter
5 shall use the information management, reporting, and tracking
6 system described by this section, access to which has been provided
7 to the hospital by the department, to report, with the consent of
8 the infant's parent, the following information to the department or
9 the department's designee:

10 (1) results of all follow-up services for an infant
11 who does not pass the screening described by Section 47.003(a) if
12 the hospital provides the follow-up services; or

13 (2) the name of the provider or facility to which the
14 hospital refers an infant who does not pass the screening described
15 by Section 47.003(a) for follow-up services.

16 (g) The department shall ensure that the written consent of
17 a parent is obtained before any information individually
18 identifying the newborn or infant is released through the
19 information management, reporting, and tracking system.

20 (h) Subject to Section 47.008, a qualified hearing
21 screening provider, hospital, health care provider, physician,
22 audiologist, or intervention specialist may obtain information
23 from the department relating to:

24 (1) the results of each hearing screening performed
25 under Section 47.003(a) or 47.0031(a);

26 (2) the results of each diagnostic audiological
27 evaluation required under Section 47.0031(b)(2);

1 (3) infants who receive follow-up care;
2 (4) infants identified with hearing loss; and
3 (5) infants who are referred for intervention
4 services.

5 SECTION 3.0173. Section [47.008\(c\)](#), Health and Safety Code,
6 is amended to read as follows:

7 (c) The executive commissioner [~~department~~] by rule shall
8 develop guidelines to protect the confidentiality of patients in
9 accordance with Chapter 159, Occupations Code, and require the
10 written consent of a parent or guardian of a patient before any
11 individually identifying information is provided to the department
12 as set out in this chapter. The department shall permit a parent or
13 guardian at any time to withdraw information provided to the
14 department under this chapter.

15 SECTION 3.0174. Section [47.010\(a\)](#), Health and Safety Code,
16 is amended to read as follows:

17 (a) The executive commissioner [~~of the Health and Human~~
18 ~~Services Commission~~] may adopt rules for the department to
19 implement this chapter.

20 SECTION 3.0175. Section [61.003\(f\)](#), Health and Safety Code,
21 is amended to read as follows:

22 (f) For purposes of this chapter, a person who is an inmate
23 or resident of a state supported living center, as defined by
24 Section 531.002, [~~school~~] or institution operated by the Texas
25 Department of Criminal Justice, Department of Aging and Disability
26 Services, Department of State Health Services, Texas Juvenile
27 Justice Department [~~Youth Commission~~], Texas School for the Blind

1 and Visually Impaired, Texas School for the Deaf, or any other state
2 agency or who is an inmate, patient, or resident of a school or
3 institution operated by a federal agency is not considered a
4 resident of a hospital district or of any governmental entity
5 except the state or federal government.

6 SECTION 3.0176. Section [61.004](#)(b), Health and Safety Code,
7 is amended to read as follows:

8 (b) The provider of assistance and the governmental entity
9 or hospital district shall submit all relevant information to the
10 department in accordance with the application, documentation, and
11 verification procedures established by [~~the~~] department rule under
12 Section [61.006](#).

13 SECTION 3.0177. Sections [61.006](#)(c) and (e), Health and
14 Safety Code, are amended to read as follows:

15 (c) The department shall also define the services and
16 establish the payment standards for the categories of services
17 listed in Sections [61.028](#)(a) and [61.0285](#) in accordance with
18 commission [~~Texas Department of Human Services~~] rules relating to
19 the Temporary Assistance for Needy Families-Medicaid program.

20 (e) The department shall ensure that each person who meets
21 the basic income and resources requirements for Temporary
22 Assistance for Needy Families program payments but who is
23 categorically ineligible for Temporary Assistance for Needy
24 Families will be eligible for assistance under Subchapter B.
25 Except as provided by Section [61.023](#)(b), the executive commissioner
26 [~~department~~] by rule shall also provide that a person who receives
27 or is eligible to receive Temporary Assistance for Needy Families,

1 Supplemental Security Income, or Medicaid benefits is not eligible
2 for assistance under Subchapter B even if the person has exhausted a
3 part or all of that person's benefits.

4 SECTION 3.0178. Section [61.007](#), Health and Safety Code, is
5 amended to read as follows:

6 Sec. 61.007. INFORMATION PROVIDED BY APPLICANT. The
7 executive commissioner [department] by rule shall require each
8 applicant to provide at least the following information:

9 (1) the applicant's full name and address;

10 (2) the applicant's social security number, if
11 available;

12 (3) the number of persons in the applicant's
13 household, excluding persons receiving Temporary Assistance for
14 Needy Families, Supplemental Security Income, or Medicaid
15 benefits;

16 (4) the applicant's county of residence;

17 (5) the existence of insurance coverage or other
18 hospital or health care benefits for which the applicant is
19 eligible;

20 (6) any transfer of title to real property that the
21 applicant has made in the preceding 24 months;

22 (7) the applicant's annual household income, excluding
23 the income of any household member receiving Temporary Assistance
24 for Needy Families, Supplemental Security Income, or Medicaid
25 benefits; and

26 (8) the amount of the applicant's liquid assets and the
27 equity value of the applicant's car and real property.

1 SECTION 3.0179. Section 61.008(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) The executive commissioner [department] by rule shall
4 provide that in determining eligibility:

5 (1) a county may not consider the value of the
6 applicant's homestead;

7 (2) a county must consider the equity value of a car
8 that is in excess of the amount exempted under department
9 guidelines as a resource;

10 (3) a county must subtract the work-related and child
11 care expense allowance allowed under department guidelines;

12 (4) a county must consider as a resource real property
13 other than a homestead and, except as provided by Subsection (b),
14 must count that property in determining eligibility;

15 (5) if an applicant transferred title to real property
16 for less than market value to become eligible for assistance under
17 this chapter, the county may not credit toward eligibility for
18 state assistance an expenditure for that applicant made during a
19 two-year period beginning on the date on which the property is
20 transferred; and

21 (6) if an applicant is a sponsored alien, a county may
22 include in the income and resources of the applicant:

23 (A) the income and resources of a person who
24 executed an affidavit of support on behalf of the applicant; and

25 (B) the income and resources of the spouse of a
26 person who executed an affidavit of support on behalf of the
27 applicant, if applicable.

1 SECTION 3.0180. Section 61.011, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 61.011. SERVICES BY STATE HOSPITAL OR CLINIC. A state
4 hospital or clinic shall be entitled to payment for services
5 rendered to an eligible resident under the provisions of this
6 chapter applicable to other providers. The executive commissioner
7 [department] may adopt rules as necessary to implement this
8 section.

9 SECTION 3.0181. Section 61.0285(b), Health and Safety Code,
10 is amended to read as follows:

11 (b) A county must notify the department of the county's
12 intent to provide services specified by Subsection (a). If the
13 services are approved in accordance with [by the department under]
14 Section 61.006, or if the department fails to notify the county of
15 the department's disapproval before the 31st day after the date the
16 county notifies the department of its intent to provide the
17 services, the county may credit the services toward eligibility for
18 state assistance under this subchapter.

19 SECTION 3.0182. Section 61.034(b), Health and Safety Code,
20 is amended to read as follows:

21 (b) A county may contract with a provider of assistance to
22 provide a health care service at a rate below the payment standard
23 set by [the] department rule.

24 SECTION 3.0183. Sections 61.036(c) and (d), Health and
25 Safety Code, are amended to read as follows:

26 (c) Regardless of the application, documentation, and
27 verification procedures or eligibility standards established [by

1 ~~the department~~] under Subchapter A, a county may credit an
2 expenditure for an eligible resident toward eligibility for state
3 assistance if the eligible resident received the health care
4 services at:

5 (1) a hospital maintained or operated by a state
6 agency that has a contract with the county to provide health care
7 services;

8 (2) a federally qualified health center delivering
9 federally qualified health center services, as those terms are
10 defined in 42 U.S.C. Sections 1396d(1)(2)(A) and (B), that has a
11 contract with the county to provide health care services; or

12 (3) a hospital or other health care provider if the
13 eligible resident is an inmate of a county jail or another county
14 correctional facility.

15 (d) Regardless of the application, documentation, and
16 verification procedures or eligibility standards established ~~by~~
17 ~~the department~~] under Subchapter A, a county may credit an
18 intergovernmental transfer to the state toward eligibility for
19 state assistance if the transfer was made to provide health care
20 services as part of the Texas Healthcare Transformation and Quality
21 Improvement Program waiver issued under 42 U.S.C. Section 1315.

22 SECTION 3.0184. Section 61.037(h), Health and Safety Code,
23 is amended to read as follows:

24 (h) The executive commissioner ~~department~~ shall adopt
25 rules governing the circumstances under which a waiver may be
26 granted under Subsection (g) and the procedures to be used by a
27 county to apply for the waiver. The procedures must provide that

1 the department shall make a determination with respect to an
2 application for a waiver not later than the 90th day after the date
3 the application is submitted to the department in accordance with
4 the procedures established by [the] department rule. To be
5 eligible for state assistance under Subsection (g), a county must
6 submit monthly financial reports, in the form required by the
7 department, covering the 12-month period preceding the date on
8 which the assistance is sought.

9 SECTION 3.0185. Section 61.0395(b), Health and Safety Code,
10 is amended to read as follows:

11 (b) The executive commissioner [department] may adopt rules
12 governing the distribution of state assistance under this chapter
13 that establish a maximum annual allocation for each county eligible
14 for assistance under this chapter in compliance with Subsection
15 (a).

16 SECTION 3.0186. Section 61.042(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) A county may establish procedures consistent with those
19 used by the commission [~~Texas Department of Human Services~~] under
20 Chapter 31, Human Resources Code, for administering an employment
21 services program and requiring an applicant or eligible resident to
22 register for work with the Texas Workforce [~~Employment~~] Commission.

23 SECTION 3.0187. Section 61.065(c), Health and Safety Code,
24 is amended to read as follows:

25 (c) If the contract for the sale of the hospital provides
26 for the provision by the hospital of health care services to county
27 residents, the value of the health care services credited or paid in

1 a state fiscal year under the contract is included as part of the
2 computation of a county expenditure under Section 61.037 to the
3 extent that the value of the services does not exceed the payment
4 standard established by [the] department rule for allowed inpatient
5 and outpatient services.

6 SECTION 3.0188. Section 61.067(g), Health and Safety Code,
7 is amended to read as follows:

8 (g) The lien does not attach to a claim under the workers'
9 compensation law of this state, the Federal Employers' [Employees]
10 Liability Act, or the Federal Longshore and Harbor Workers'
11 Compensation Act.

12 SECTION 3.0189. Section 61.068(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) A public hospital or hospital district may establish
15 procedures consistent with those used by the commission [Health and
16 Human Services Commission] under Chapter 31, Human Resources Code,
17 for administering an employment services program and requiring an
18 applicant or eligible resident to register for work with the Texas
19 Workforce Commission.

20 SECTION 3.0190. Section 62.002(4), Health and Safety Code,
21 is amended to read as follows:

22 (4) "Household [Net family] income" means the sum
23 [amount] of the individual incomes of each individual in an
24 applicant's or enrollee's household, minus the standard income
25 disregard prescribed by federal law [income established for a
26 family after reduction for offsets for child care expenses, in
27 accordance with standards applicable under the Medicaid program].

1 SECTION 3.0191. Section 62.004, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 62.004. FEDERAL LAW AND REGULATIONS. The executive
4 commissioner shall monitor federal legislation affecting Title XXI
5 of the Social Security Act (42 U.S.C. Section 1397aa et seq.) and
6 changes to the federal regulations implementing that law. If the
7 executive commissioner determines that a change to Title XXI of the
8 Social Security Act (42 U.S.C. Section 1397aa et seq.) or the
9 federal regulations implementing that law conflicts with this
10 chapter, the executive commissioner shall report the changes to the
11 governor, lieutenant governor, and speaker of the house of
12 representatives, with recommendations for legislation necessary to
13 implement the federal law or regulations, seek a waiver, or
14 withdraw from participation.

15 SECTION 3.0192. Sections 62.051 and 62.052, Health and
16 Safety Code, are amended to read as follows:

17 Sec. 62.051. DUTIES OF EXECUTIVE COMMISSIONER AND
18 COMMISSION IN GENERAL. (a) The executive commissioner
19 [~~commission~~] shall administer [~~develop~~] a state-designed child
20 health plan program to obtain health benefits coverage for children
21 in low-income families. The executive commissioner [~~commission~~]
22 shall ensure that the child health plan program is designed and
23 administered in a manner that qualifies for federal funding under
24 Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et
25 seq.), as amended, and any other applicable law or regulations.

26 (b) The executive commissioner [~~commission~~] is [~~the agency~~]
27 responsible for making policy for the child health plan program,

1 including policy related to covered benefits provided under the
2 child health plan. The executive commissioner [commission] may not
3 delegate this duty to another agency or entity.

4 (c) The executive commissioner [commission] shall oversee
5 the implementation of the child health plan program and coordinate
6 the activities of each agency necessary to the implementation of
7 the program, including the [~~Texas Department of Health, Texas~~
8 ~~Department of Human Services, and~~] Texas Department of Insurance.

9 (d) The executive commissioner [commission] shall adopt
10 rules as necessary to implement this chapter. [~~The commission may~~
11 ~~require the Texas Department of Health, the Texas Department of~~
12 ~~Human Services, or any other health and human services agency to~~
13 ~~adopt, with the approval of the commission, any rules that may be~~
14 ~~necessary to implement the program. With the consent of another~~
15 ~~agency, including the Texas Department of Insurance, the commission~~
16 ~~may delegate to that agency the authority to adopt, with the~~
17 ~~approval of the commission, any rules that may be necessary to~~
18 ~~implement the program.]~~

19 (e) The commission shall conduct a review of each entity
20 that enters into a contract under Section 62.055 or [Section]
21 62.155[~~r~~] to ensure that the entity is available, prepared, and
22 able to fulfill the entity's obligations under the contract in
23 compliance with the contract, this chapter, and rules adopted under
24 this chapter.

25 (f) The commission shall ensure that the amounts spent for
26 administration of the child health plan program do not exceed any
27 limit on those expenditures imposed by federal law.

1 Sec. 62.052. AUTHORITY OF COMMISSION RELATING TO HEALTH
2 PLAN PROVIDER CONTRACTS [~~DUTIES OF TEXAS DEPARTMENT OF HEALTH~~].
3 [~~a~~] The commission may [~~direct the Texas Department of Health~~
4 ~~to~~]:

5 (1) implement contracts with health plan providers
6 under Section 62.155;

7 (2) monitor the health plan providers, through
8 reporting requirements and other means, to ensure performance under
9 the contracts and quality delivery of services;

10 (3) monitor the quality of services delivered to
11 enrollees through outcome measurements including:

12 (A) rate of hospitalization for ambulatory
13 sensitive conditions, including asthma, diabetes, epilepsy,
14 dehydration, gastroenteritis, pneumonia, and UTI/kidney infection;

15 (B) rate of hospitalization for injuries;

16 (C) percent of enrolled adolescents reporting
17 risky health behavior such as injuries, tobacco use, alcohol/drug
18 use, dietary behavior, physical activity, or other health related
19 behaviors; and

20 (D) percent of adolescents reporting attempted
21 suicide; and

22 (4) provide payment under the contracts to the health
23 plan providers.

24 [~~(b) The commission, or the Texas Department of Health under
25 the direction of and in consultation with the commission, shall
26 adopt rules as necessary to implement this section.~~]

27 SECTION 3.0193. Subchapter B, Chapter 62, Health and Safety

1 Code, is amended by amending Section [62.053](#) and adding Section
2 62.0531 to read as follows:

3 Sec. 62.053. AUTHORITY OF COMMISSION RELATING TO
4 ELIGIBILITY AND MEDICAID COORDINATION [~~DUTIES OF TEXAS DEPARTMENT~~
5 ~~OF HUMAN SERVICES~~]. The commission [~~(a) Under the direction of the~~
6 ~~commission, the Texas Department of Human Services~~] may:

7 (1) accept applications for coverage under the child
8 health plan and implement the child health plan program eligibility
9 screening and enrollment procedures;

10 (2) resolve grievances relating to eligibility
11 determinations; and

12 (3) coordinate the child health plan program with the
13 Medicaid program.

14 Sec. 62.0531. AUTHORITY OF COMMISSION RELATING TO THIRD
15 PARTY ADMINISTRATOR. [~~(b)~~] If the commission contracts with a third
16 party administrator under Section [62.055](#), the commission may
17 [~~direct the Texas Department of Human Services to~~] :

18 (1) implement the contract;

19 (2) monitor the third party administrator, through
20 reporting requirements and other means, to ensure performance under
21 the contract and quality delivery of services; and

22 (3) provide payment under the contract to the third
23 party administrator.

24 [(c) ~~The commission, or the Texas Department of Human~~
25 ~~Services under the direction of and in consultation with the~~
26 ~~commission, shall adopt rules as necessary to implement this~~
27 ~~section.~~]

1 SECTION 3.0194. Sections [62.054](#)(a) and (b), Health and
2 Safety Code, are amended to read as follows:

3 (a) At the request of the commission, the Texas Department
4 of Insurance shall provide any necessary assistance with the
5 ~~development of the~~ child health plan. The department shall
6 monitor the quality of the services provided by health plan
7 providers and resolve grievances relating to the health plan
8 providers.

9 (b) The commission and the Texas Department of Insurance may
10 adopt a memorandum of understanding that addresses the
11 responsibilities of each agency with respect to ~~in developing~~ the
12 plan.

13 SECTION 3.0195. Section [62.055](#), Health and Safety Code, is
14 amended by amending Subsection (e) and adding Subsection (f) to
15 read as follows:

16 (e) The executive commissioner ~~commission~~ shall~~[+]~~
17 ~~[+1]~~ retain all policymaking authority over the state
18 child health plan.~~[+]~~

19 (f) The commission shall:

20 (1) ~~[+2]~~ procure all contracts with a third party
21 administrator through a competitive procurement process in
22 compliance with all applicable federal and state laws or
23 regulations; and

24 (2) ~~[+3]~~ ensure that all contracts with child health
25 plan providers under Section [62.155](#) are procured through a
26 competitive procurement process in compliance with all applicable
27 federal and state laws or regulations.

1 SECTION 3.0196. Sections 62.101(a), (b), and (c), Health
2 and Safety Code, are amended to read as follows:

3 (a) A child is eligible for health benefits coverage under
4 the child health plan if the child:

5 (1) is younger than 19 years of age;

6 (2) is not eligible for medical assistance under the
7 Medicaid program;

8 (3) is not covered by a health benefits plan offering
9 adequate benefits, as determined by the commission;

10 (4) has a household [family] income that is less than
11 or equal to the income eligibility level established under
12 Subsection (b); and

13 (5) satisfies any other eligibility standard imposed
14 under the child health plan program in accordance with 42 U.S.C.
15 Section 1397bb, as amended, and any other applicable law or
16 regulations.

17 (b) The executive commissioner [~~commission~~] shall establish
18 income eligibility levels consistent with Title XXI, Social
19 Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any
20 other applicable law or regulations, and subject to the
21 availability of appropriated money, so that a child who is younger
22 than 19 years of age and whose household [~~net family~~] income is at
23 or below 200 percent of the federal poverty level is eligible for
24 health benefits coverage under the program. [~~In addition, the
commission may establish eligibility standards regarding the
amount and types of allowable assets for a family whose net family
income is above 150 percent of the federal poverty level.~~]

1 (c) The executive commissioner shall evaluate enrollment
2 levels and program impact [~~every six months during the first 12~~
3 ~~months of implementation and~~] at least annually [~~thereafter~~] and
4 shall submit a finding of fact to the Legislative Budget Board and
5 the Governor's Office of Budget, [and] Planning, and Policy as to
6 the adequacy of funding and the ability of the program to sustain
7 enrollment at the eligibility level established by Subsection (b).
8 In the event that appropriated money is insufficient to sustain
9 enrollment at the authorized eligibility level, the executive
10 commissioner shall:

11 (1) suspend enrollment in the child health plan;
12 (2) establish a waiting list for applicants for
13 coverage; and

14 (3) establish a process for periodic or continued
15 enrollment of applicants in the child health plan program as the
16 availability of money allows.

17 SECTION 3.0197. Section 62.1011, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 62.1011. VERIFICATION OF INCOME. The commission shall
20 continue employing methods of verifying the individual incomes [~~net~~
21 ~~income~~] of the individuals considered in the calculation of an
22 applicant's household [~~net family~~] income. The commission shall
23 verify income under this section unless the applicant reports a
24 household [~~net family~~] income that exceeds the income eligibility
25 level established under Section 62.101(b).

26 SECTION 3.0198. Sections 62.1015(a) and (c), Health and
27 Safety Code, are amended to read as follows:

1 (a) In this section:

2 (1) "Charter school" [,"charter school," "employee,"]
3 and "regional education service center" have the meanings assigned
4 by Section 1579.002 [~~2, Article 3.50-7~~], Insurance Code.

5 (2) "Employee" has the meaning assigned by Section
6 1579.003, Insurance Code.

7 (c) The cost of health benefits coverage for children
8 enrolled in the child health plan under this section shall be paid
9 as provided in the General Appropriations Act. Expenditures made
10 to provide health benefits coverage under this section may not be
11 included for the purpose of determining the state children's health
12 insurance expenditures, as that term is defined by 42 U.S.C.
13 Section 1397ee(d)(2)(B), as amended, unless the commission [~~Health~~
14 ~~and Human Services Commission~~], after consultation with the
15 appropriate federal agencies, determines that the expenditures may
16 be included without adversely affecting federal matching funding
17 for the child health plan provided under this chapter.

18 SECTION 3.0199. Sections 62.102(b) and (c), Health and
19 Safety Code, are amended to read as follows:

20 (b) During the sixth month following the date of initial
21 enrollment or reenrollment of an individual whose household [~~net~~
22 ~~family~~] income exceeds 185 percent of the federal poverty level,
23 the commission shall:

24 (1) review the individual's household [~~net family~~]
25 income and may use electronic technology if available and
26 appropriate; and

27 (2) continue to provide coverage if the individual's

1 household [~~net family~~] income does not exceed the income
2 eligibility limits prescribed by this chapter.

3 (c) If, during the review required under Subsection (b), the
4 commission determines that the individual's household [~~net family~~]
5 income exceeds the income eligibility limits prescribed by this
6 chapter, the commission may not disenroll the individual until:

7 (1) the commission has provided the family an
8 opportunity to demonstrate that the family's household [~~net family~~]
9 income is within the income eligibility limits prescribed by this
10 chapter; and

11 (2) the family fails to demonstrate such eligibility.

12 SECTION 3.0200. Sections [62.103\(a\)](#) and (d), Health and
13 Safety Code, are amended to read as follows:

14 (a) The executive commissioner [~~commission, or the Texas~~
15 ~~Department of Human Services at the direction of and in~~
16 ~~consultation with the commission,~~] shall adopt an application form
17 and application procedures for requesting child health plan
18 coverage under this chapter.

19 (d) The executive commissioner [~~commission~~] may permit
20 application to be made by mail, over the telephone, or through the
21 Internet.

22 SECTION 3.0201. Sections [62.104\(a\)](#) and (g), Health and
23 Safety Code, are amended to read as follows:

24 (a) The executive commissioner [~~commission, or the Texas~~
25 ~~Department of Human Services at the direction of and in~~
26 ~~consultation with the commission,~~] shall develop eligibility
27 screening and enrollment procedures for children that comply with

1 the requirements of 42 U.S.C. Section 1397bb, as amended, and any
2 other applicable law or regulations. The procedures shall ensure
3 that Medicaid-eligible children are identified and referred to the
4 Medicaid program.

5 (g) The executive commissioner [~~In the first year of~~
6 ~~implementation of the child health plan, enrollment shall be open.~~
7 ~~Thereafter, the commission~~] may establish enrollment periods for
8 the child health plan.

9 SECTION 3.0202. Sections 62.151(b), (c), (e), and (f),
10 Health and Safety Code, are amended to read as follows:

11 (b) In modifying [~~developing~~] the covered benefits, the
12 executive commissioner [~~commission~~] shall consider the health care
13 needs of healthy children and children with special health care
14 needs.

15 (c) In modifying [~~developing~~] the plan, the executive
16 commissioner [~~commission~~] shall ensure that primary and preventive
17 health benefits do not include reproductive services, other than
18 prenatal care and care related to diseases, illnesses, or
19 abnormalities related to the reproductive system.

20 (e) In modifying [~~developing~~] the covered benefits, the
21 executive commissioner [~~commission~~] shall seek input from the
22 Public Assistance Health Benefit Review and Design Committee
23 established under Section 531.067, Government Code.

24 (f) If the executive commissioner [~~The commission, if it~~]
25 determines the policy to be cost-effective, the executive
26 commissioner may ensure that an enrolled child does not, unless
27 authorized by the commission in consultation with the child's

1 attending physician or advanced practice nurse, receive under the
2 child health plan:

3 (1) more than four different outpatient brand-name
4 prescription drugs during a month; or

5 (2) more than a 34-day supply of a brand-name
6 prescription drug at any one time.

7 SECTION 3.0203. Sections 62.153(a) and (c), Health and
8 Safety Code, are amended to read as follows:

9 (a) To the extent permitted under 42 U.S.C. Section 1397cc,
10 as amended, and any other applicable law or regulations, the
11 executive commissioner [~~commission~~] shall require enrollees to
12 share the cost of the child health plan, including provisions
13 requiring enrollees under the child health plan to pay:

14 (1) a copayment for services provided under the plan;

15 (2) an enrollment fee; or

16 (3) a portion of the plan premium.

17 (c) If cost-sharing provisions imposed under Subsection (a)
18 include requirements that enrollees pay a portion of the plan
19 premium, the executive commissioner [~~commission~~] shall specify the
20 manner in which the premium is paid. The commission may require
21 that the premium be paid to the [~~Texas Department of Health, the~~
22 ~~Texas Department of Human Services, or the~~] health plan provider.

23 SECTION 3.0204. Section 62.154(b), Health and Safety Code,
24 is amended to read as follows:

25 (b) A child is not subject to a waiting period adopted under
26 Subsection (a) if:

27 (1) the family lost coverage for the child as a result

1 of:

2 (A) termination of employment because of a layoff
3 or business closing;

4 (B) termination of continuation coverage under
5 the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L.
6 No. 99-272);

7 (C) change in marital status of a parent of the
8 child;

9 (D) termination of the child's Medicaid
10 eligibility because:

11 (i) the child's family's earnings or
12 resources increased; or

13 (ii) the child reached an age at which
14 Medicaid coverage is not available; or

15 (E) a similar circumstance resulting in the
16 involuntary loss of coverage;

17 (2) the family terminated health benefits plan
18 coverage for the child because the cost to the child's family for
19 the coverage exceeded 9.5 [10] percent of the family's household
20 [~~net~~] income;

21 (3) the child has access to group-based health
22 benefits plan coverage and is required to participate in the health
23 insurance premium payment reimbursement program administered by
24 the commission; [or]

25 (4) the commission has determined that other grounds
26 exist for a good cause exception; or

27 (5) federal law provides that the child is not subject

1 to a waiting period adopted under Subsection (a).

2 SECTION 3.0205. Sections [62.155](#)(a) and (d), Health and
3 Safety Code, are amended to read as follows:

4 (a) The commission[~~, or the Texas Department of Health at~~
5 ~~the direction of and in consultation with the commission,~~] shall
6 select the health plan providers under the program through a
7 competitive procurement process. A health plan provider, other
8 than a state administered primary care case management network,
9 must hold a certificate of authority or other appropriate license
10 issued by the Texas Department of Insurance that authorizes the
11 health plan provider to provide the type of child health plan
12 offered and must satisfy, except as provided by this chapter, any
13 applicable requirement of the Insurance Code or another insurance
14 law of this state.

15 (d) The executive commissioner may authorize an exception
16 to Subsection (c)(2) if there is only one acceptable applicant to
17 become a health plan provider in the service area.

18 SECTION 3.0206. Section [62.1551](#), Health and Safety Code, is
19 amended to read as follows:

20 Sec. 62.1551. INCLUSION OF CERTAIN HEALTH CARE PROVIDERS IN
21 PROVIDER NETWORKS. Notwithstanding any other law, including
22 Sections [843.312](#) and [1301.052](#), Insurance Code, the executive
23 commissioner [~~of the commission~~] shall adopt rules to require a
24 managed care organization or other entity to ensure that advanced
25 practice registered nurses and physician assistants are available
26 as primary care providers in the organization's or entity's
27 provider network. The rules must require advanced practice

1 registered nurses and physician assistants to be treated in the
2 same manner as primary care physicians with regard to:

3 (1) selection and assignment as primary care
4 providers;

5 (2) inclusion as primary care providers in the
6 provider network; and

7 (3) inclusion as primary care providers in any
8 provider network directory maintained by the organization or
9 entity.

10 SECTION 3.0207. Section 62.156, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 62.156. HEALTH CARE PROVIDERS. Health care providers
13 who provide health care services under the child health plan must
14 satisfy certification and licensure requirements, as required by
15 [the] commission rules and[~~the~~] consistent with other law.

16 SECTION 3.0208. Section 62.1561, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 62.1561. PROHIBITION OF CERTAIN HEALTH CARE PROVIDERS.
19 The executive commissioner [~~of the commission~~] shall adopt rules
20 for prohibiting a person from participating in the child health
21 plan program as a health care provider for a reasonable period, as
22 determined by the executive commissioner, if the person:

23 (1) fails to repay overpayments under the program; or
24 (2) owns, controls, manages, or is otherwise
25 affiliated with and has financial, managerial, or administrative
26 influence over a provider who has been suspended or prohibited from
27 participating in the program.

1 SECTION 3.0209. Sections [62.157](#)(b) and (c), Health and
2 Safety Code, as added by Chapter 959 (S.B. 1536), Acts of the 77th
3 Legislature, Regular Session, 2001, are amended to read as follows:

4 (b) The policies must provide for:

5 (1) the availability of covered benefits
6 appropriately provided through telemedicine medical services and
7 telehealth services that are comparable to the same types of
8 covered benefits provided without the use of telemedicine medical
9 services and telehealth services; and

10 (2) the availability of covered benefits for different
11 services performed by multiple health care providers during a
12 single telemedicine medical services and telehealth services
13 session, if the executive commissioner [commission] determines
14 that delivery of the covered benefits in that manner is
15 cost-effective in comparison to the costs that would be involved in
16 obtaining the services from providers without the use of
17 telemedicine medical services and telehealth services, including
18 the costs of transportation and lodging and other direct costs.

19 (c) In developing the policies required by Subsection (a),
20 the executive commissioner [commission] shall consult with:

21 (1) The University of Texas Medical Branch at
22 Galveston;

23 (2) Texas Tech University Health Sciences Center;

24 (3) the [~~Texas~~] Department of State Health Services;

25 (4) providers of telemedicine hub sites in this state;

26 (5) providers of services to children with special
27 health care needs; and

1 (6) representatives of consumer or disability groups
2 affected by changes to services for children with special health
3 care needs.

4 SECTION 3.0210. Section 62.157, Health and Safety Code, as
5 added by Chapter 1255 (S.B. 789), Acts of the 77th Legislature,
6 Regular Session, 2001, is redesignated as Section 62.1571, Health
7 and Safety Code, and amended to read as follows:

8 Sec. 62.1571 [~~62.157~~]. TELEMEDICINE MEDICAL SERVICES. (a)
9 In providing covered benefits to a child, a health plan provider
10 must permit benefits to be provided through telemedicine medical
11 services in accordance with policies developed by the commission.

12 (b) The policies must provide for:

13 (1) the availability of covered benefits
14 appropriately provided through telemedicine medical services that
15 are comparable to the same types of covered benefits provided
16 without the use of telemedicine medical services; and

17 (2) the availability of covered benefits for different
18 services performed by multiple health care providers during a
19 single session of telemedicine medical services, if the executive
20 commissioner [~~commission~~] determines that delivery of the covered
21 benefits in that manner is cost-effective in comparison to the
22 costs that would be involved in obtaining the services from
23 providers without the use of telemedicine medical services,
24 including the costs of transportation and lodging and other direct
25 costs.

26 (c) In developing the policies required by Subsection (a),
27 the executive commissioner [~~commission~~] shall consult with the

1 telemedicine and telehealth advisory committee.

2 (d) In this section, "telemedicine medical service" has the
3 meaning assigned by Section 531.001, Government [57.042,
4 Utilities] Code.

5 SECTION 3.0211. Section 62.159, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 62.159. DISEASE MANAGEMENT SERVICES. (a) In this
8 section, "disease management services" means services to assist a
9 child manage a disease or other chronic health condition, such as
10 heart disease, diabetes, respiratory illness, end-stage renal
11 disease, HIV infection, or AIDS, and with respect to which the
12 executive commissioner [~~commission~~] identifies populations for
13 which disease management would be cost-effective.

14 (b) The child health plan must provide disease management
15 services or coverage for disease management services in the manner
16 required by the executive commissioner [~~commission~~], including:

17 (1) patient self-management education;
18 (2) provider education;
19 (3) evidence-based models and minimum standards of
20 care;

21 (4) standardized protocols and participation
22 criteria; and

23 (5) physician-directed or physician-supervised care.

24 SECTION 3.0212. Section 63.003, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 63.003. HEALTH BENEFITS PLAN COVERAGE FOR CERTAIN
27 CHILDREN. The executive commissioner [~~commission~~] shall develop

1 and implement a program to provide health benefits plan coverage
2 for a child who:

3 (1) is a qualified alien, as that term is defined by 8
4 U.S.C. Section 1641(b);

5 (2) is younger than 19 years of age;

6 (3) entered the United States after August 22, 1996;

7 (4) has resided in the United States for less than five
8 years; and

9 (5) meets the income eligibility requirement of, but
10 is not eligible for assistance under:

11 (A) the child health plan program under Chapter
12 62; or

13 (B) the medical assistance program under Chapter
14 32, Human Resources Code.

15 SECTION 3.0213. Section 63.005(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) Except as required by the executive commissioner
18 [~~commission~~], a health benefits plan provider under this chapter is
19 not subject to a law that requires coverage or the offer of coverage
20 of a health care service or benefit.

21 SECTION 3.0214. Section 63.006, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 63.006. COST-SHARING PAYMENTS. (a) Except as provided
24 by Subsection (b), the executive commissioner [~~commission~~] may not
25 require a child who is provided health benefits plan coverage under
26 Section 63.003 and who meets the income eligibility requirement of
27 the medical assistance program under Chapter 32, Human Resources

1 Code, to pay a premium, deductible, coinsurance, or other
2 cost-sharing payment as a condition of health benefits plan
3 coverage under this chapter.

4 (b) The executive commissioner [commission] may require a
5 child described by Subsection (a) to pay a copayment as a condition
6 of health benefits plan coverage under this chapter that is equal to
7 any copayment required under the child health plan program under
8 Chapter 62.

9 (c) The executive commissioner [commission] may require a
10 child who is provided health benefits plan coverage under Section
11 63.003 and who meets the income eligibility requirement of the
12 child health plan program under Chapter 62 to pay a premium,
13 deductible, coinsurance, or other cost-sharing payment as a
14 condition of health benefits plan coverage under this chapter. The
15 payment must be equal to any premium, deductible, coinsurance, or
16 other cost-sharing payment required under the child health plan
17 program under Chapter 62.

18 SECTION 3.0215. Section 64.001, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 64.001. TEACHING HOSPITAL ACCOUNT. The [Texas]
21 Department of State Health Services state-owned multi-categorical
22 teaching hospital account is an account in the general revenue
23 fund. Money in the account may be appropriated only to the
24 department to provide funding for indigent health care.

25 SECTION 3.0216. Section 81.003(5), Health and Safety Code,
26 is amended to read as follows:

27 (5) "Physician" means a person licensed to practice

1 medicine by the Texas [State Board of] Medical Board [~~Examiners~~].

2 SECTION 3.0217. Sections 81.004(b) and (c), Health and
3 Safety Code, are amended to read as follows:

4 (b) The executive commissioner [~~board~~] may adopt rules
5 necessary for the effective administration and implementation of
6 this chapter.

7 (c) A designee of the executive commissioner [~~board~~] may
8 exercise a power granted to or perform a duty imposed on the
9 executive commissioner [~~board~~] under this chapter except as
10 otherwise required by law.

11 SECTION 3.0218. Section 81.008, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 81.008. COMMUNICABLE DISEASE IN ANIMALS; EXCHANGE OF
14 INFORMATION. The Texas Animal Health Commission and the Texas A&M
15 University Veterinary Medical Diagnostic Laboratory shall each
16 adopt by rule a memorandum of understanding, adopted also by rule by
17 the executive commissioner, governing the [with the department to]
18 exchange of information on communicable diseases in animals between
19 the department and those entities.

20 SECTION 3.0219. Sections 81.010(c), (e), (h), (i), and (k),
21 Health and Safety Code, are amended to read as follows:

22 (c) The council consists of one representative from each of
23 the following agencies appointed by the executive director or
24 commissioner of each agency:

- 25 (1) the Department of State Health Services;
26 (2) the Department of Aging and Disability Services;
27 (3) the Department of Assistive and Rehabilitative

1 Services;

2 (4) the Department of Family and Protective Services;

3 (5) ~~the Texas Youth Commission;~~

4 ~~(6)~~ the Texas Department of Criminal Justice;

5 ~~(6) (7)~~ the Texas Juvenile Justice Department

6 ~~Probation Commission~~;

7 (7) (8) the Texas Medical Board;

8 (8) (9) the Texas Board of Nursing;

9 (9) (10) the State Board of Dental Examiners;

10 (10) (11) the Health and Human Services Commission;

11 (11) (12) the Texas Workforce Commission; and

12 (12) (13) the Texas Higher Education Coordinating

13 Board.

14 (e) The representative from the commission ~~[Health and~~

15 ~~Human Services Commission]~~ serves as chairperson of the council.

16 (h) The council shall:

17 (1) coordinate communication among the member

18 agencies listed in Subsection (c) concerning each agency's programs

19 in providing services related to AIDS, HIV, and hepatitis;

20 (2) develop a plan that facilitates coordination of

21 agency programs based on statistical information regarding this

22 state for:

23 (A) prevention of AIDS, HIV infection, and

24 hepatitis; and

25 (B) provision of services to individuals who have

26 hepatitis or are infected with HIV;

27 (3) identify all statewide plans related to AIDS, HIV,

1 and hepatitis;

2 (4) compile a complete inventory of all federal,
3 state, and local money spent in this state on HIV infection, AIDS,
4 and hepatitis prevention and health care services, including
5 services provided through or covered under Medicaid and Medicare;

6 (5) identify the areas with respect to which state
7 agencies interact on HIV, AIDS, and hepatitis issues and the policy
8 issues arising from that interaction;

9 (6) assess gaps in prevention and health care services
10 for HIV infection, AIDS, and hepatitis in this state, including
11 gaps in services that result from provision of services by
12 different state agencies, and develop strategies to address these
13 gaps through service coordination;

14 (7) identify barriers to prevention and health care
15 services for HIV infection, AIDS, and hepatitis faced by
16 marginalized populations;

17 (8) identify the unique health care service and other
18 service needs of persons who are infected with HIV or who have AIDS
19 or hepatitis;

20 (9) evaluate the level of service and quality of
21 health care in this state for persons who are infected with HIV or
22 who have AIDS or hepatitis as compared to national standards;

23 (10) identify issues that emerge related to HIV, AIDS,
24 and hepatitis and the potential impact on delivery of prevention
25 and health care services; and

26 (11) provide the information required under
27 Subdivisions (1) through (10) to the department [Department of

1 ~~State Health Services~~].

2 (i) Not later than September 1 of each year, the department
3 ~~[Department of State Health Services]~~ shall file a report with the
4 legislature and the governor containing policy recommendations
5 based on information reported to the council in Subsection (h)
6 relating to:

7 (1) prevention of AIDS, HIV infection, and hepatitis;
8 and

9 (2) delivery of health services to individuals who
10 have AIDS or hepatitis or are infected with HIV.

11 (k) The commission ~~[Health and Human Services Commission]~~
12 shall provide administrative support to the council.

13 SECTION 3.0220. Section [81.021](#), Health and Safety Code, is
14 amended to read as follows:

15 Sec. 81.021. PROTECTION OF PUBLIC HEALTH ~~[BOARD'S DUTY]~~.
16 The executive commissioner and department ~~[board]~~ shall exercise
17 their powers ~~[its power]~~ in matters relating to protecting the
18 public health to prevent the introduction of disease into the
19 state.

20 SECTION 3.0221. Section [81.023](#), Health and Safety Code, is
21 amended to read as follows:

22 Sec. 81.023. IMMUNIZATION. (a) The department ~~[board]~~
23 shall develop immunization requirements for children.

24 (b) The department ~~[board]~~ shall cooperate with the
25 Department of Family and Protective ~~[and Regulatory]~~ Services in
26 formulating and implementing the immunization requirements for
27 children admitted to child-care facilities.

1 (c) The department [board] shall cooperate with the State
2 Board of Education in formulating and implementing immunization
3 requirements for students admitted to public or private primary or
4 secondary schools.

5 SECTION 3.0222. Section 81.024, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 81.024. REPORTS BY DEPARTMENT [BOARD]. The department
8 [board] shall provide regular reports of the incidence, prevalence,
9 and medical and economic effects of each disease that the
10 department [board] determines is a threatening risk to the public
11 health. A disease may be a risk because of its indirect
12 complications.

13 SECTION 3.0223. Section 81.041, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 81.041. REPORTABLE DISEASES. (a) The executive
16 commissioner [board] shall identify each communicable disease or
17 health condition that shall be reported under this chapter.

18 (b) The executive commissioner [board] shall classify each
19 reportable disease according to its nature and the severity of its
20 effect on the public health.

21 (c) The executive commissioner [board] shall maintain and
22 revise as necessary the list of reportable diseases.

23 (d) The executive commissioner [board] may establish
24 registries for reportable diseases and other communicable diseases
25 and health conditions. The provision to the department of
26 information relating to a communicable disease or health condition
27 that is not classified as reportable is voluntary only.

1 (e) Acquired immune deficiency syndrome and human
2 immunodeficiency virus infection are reportable diseases under
3 this chapter for which the executive commissioner [board] shall
4 require reports.

5 (f) In a public health disaster, the commissioner may
6 require reports of communicable diseases or other health conditions
7 from providers without the adoption of a [board] rule or other
8 action by the executive commissioner. The commissioner shall issue
9 appropriate instructions relating to complying with the reporting
10 requirements of this section.

11 SECTION 3.0224. Sections 81.042(c) and (d), Health and
12 Safety Code, are amended to read as follows:

13 (c) A local school authority shall report a child attending
14 school who is suspected of having a reportable disease. The
15 executive commissioner [board] by rule shall establish procedures
16 to determine if a child should be suspected and reported and to
17 exclude the child from school pending appropriate medical diagnosis
18 or recovery.

19 (d) A person in charge of a clinical or hospital laboratory,
20 blood bank, mobile unit, or other facility in which a laboratory
21 examination of a specimen derived from a human body yields
22 microscopical, cultural, serological, or other evidence of a
23 reportable disease shall report the findings, in accordance with
24 this section and procedures adopted by the executive commissioner
25 [board], in the jurisdiction in which:

26 (1) the physician's office is located, if the
27 laboratory examination was requested by a physician; or

1 (2) the laboratory is located, if the laboratory
2 examination was not requested by a physician.

3 SECTION 3.0225. Section 81.043(b), Health and Safety Code,
4 is amended to read as follows:

5 (b) A [Except as provided by Subsection (c), a] health
6 authority shall report reportable diseases to the department's
7 central office at least as frequently as the interval set by
8 department [board] rule.

9 SECTION 3.0226. Sections 81.044(a), (b), and (d), Health
10 and Safety Code, are amended to read as follows:

11 (a) The executive commissioner [board] shall prescribe the
12 form and method of reporting under this chapter, which may be in
13 writing, by telephone, by electronic data transmission, or by other
14 means.

15 (b) The executive commissioner [board] may require the
16 reports to contain any information relating to a case that is
17 necessary for the purposes of this chapter, including:

18 (1) the patient's name, address, age, sex, race, and
19 occupation;

20 (2) the date of onset of the disease or condition;

21 (3) the probable source of infection; and

22 (4) the name of the attending physician or dentist.

23 (d) For a case of acquired immune deficiency syndrome or
24 human immunodeficiency virus infection, the executive commissioner
25 [department] shall require the reports to contain:

26 (1) the information described by Subsection (b); and

27 (2) the patient's ethnicity, national origin, and city

1 and county of residence.

2 SECTION 3.0227. Sections 81.048(a) and (g), Health and
3 Safety Code, are amended to read as follows:

4 (a) The executive commissioner [board] shall:

5 (1) designate certain reportable diseases for
6 notification under this section; and

7 (2) define the conditions that constitute possible
8 exposure to those diseases.

9 (g) A hospital that gives notice of a possible exposure
10 under Subsection (c) or a local health authority that receives
11 notice of a possible exposure under Subsection (c) may give notice
12 of the possible exposure to a person other than emergency medical
13 personnel, a peace officer, a detention officer, a county jailer,
14 or a fire fighter if the person demonstrates that the person was
15 exposed to the reportable disease while providing emergency care.

16 The executive commissioner [~~of the Health and Human Services~~
17 ~~Commission~~] shall adopt rules to implement this subsection.

18 SECTION 3.0228. Sections 81.050(a), (b), (c), (d), (e),
19 (g), (j), (k), and (l), Health and Safety Code, are amended to read
20 as follows:

21 (a) The executive commissioner [board] by rule shall
22 prescribe the criteria that constitute exposure to reportable
23 diseases[, including HIV infection]. The criteria must be based on
24 activities that the United States Public Health Service determines
25 pose a risk of infection.

26 (b) A person whose occupation or whose volunteer service is
27 included in one or more of the following categories may request the

1 department or a health authority to order testing of another person
2 who may have exposed the person to a reportable disease [~~, including~~
3 ~~HIV infection~~]:

4 (1) a law enforcement officer;
5 (2) a fire fighter;
6 (3) an emergency medical service employee or
7 paramedic;

8 (4) a correctional officer;
9 (5) an employee, contractor, or volunteer, other than
10 a correctional officer, who performs a service in a correctional
11 facility as defined by Section 1.07, Penal Code, or a secure
12 correctional facility or secure detention facility as defined by
13 Section 51.02, Family Code; or

14 (6) an employee of a juvenile probation department.

15 (c) A request under this section may be made only if the
16 person:

17 (1) has experienced the exposure in the course of the
18 person's employment or volunteer service;

19 (2) believes that the exposure places the person at
20 risk of a reportable disease [~~, including HIV infection~~]; and

21 (3) presents to the department or health authority a
22 sworn affidavit that delineates the reasons for the request.

23 (d) The department or the department's designee who meets
24 the minimum training requirements prescribed by department [board]
25 rule shall review the person's request and inform the person
26 whether the request meets the criteria establishing risk of
27 infection with a reportable disease [~~, including HIV infection~~].

1 (e) The department or the department's designee shall give
2 the person who is subject to the order prompt and confidential
3 written notice of the order. The order must:

4 (1) state the grounds and provisions of the order,
5 including the factual basis for its issuance;

6 (2) refer the person to appropriate health care
7 facilities where the person can be tested for reportable diseases[~~,~~
8 ~~including HIV infection~~]; and

9 (3) inform the person who is subject to the order of
10 that person's right to refuse to be tested and the authority of the
11 department or health authority to ask for a court order requiring
12 the test.

13 (g) In reviewing the order, the court shall determine
14 whether exposure occurred and whether that exposure presents a
15 possible risk of infection as defined by department [~~board~~] rule.
16 The attorney for the state and the attorney for the person subject
17 to the order may introduce evidence at the hearing in support of or
18 opposition to the testing of the person. On conclusion of the
19 hearing, the court shall either issue an appropriate order
20 requiring counseling and testing of the person for reportable
21 diseases[~~, including HIV infection,~~] or refuse to issue the order
22 if the court has determined that the counseling and testing of the
23 person is unnecessary. The court may assess court costs against the
24 person who requested the test if the court finds that there was not
25 reasonable cause for the request.

26 (j) For the purpose of qualifying for workers' compensation
27 or any other similar benefits for compensation, an employee who

1 claims a possible work-related exposure to a reportable disease[~~, including HIV infection,~~] must provide the employer with a sworn
2 affidavit of the date and circumstances of the exposure and
3 document that, not later than the 10th day after the date of the
4 exposure, the employee had a test result that indicated an absence
5 of the reportable disease[~~, including HIV infection~~].

6
7 (k) A person listed in Subsection (b) who may have been
8 exposed to a reportable disease[~~, including HIV infection,~~] may not
9 be required to be tested.

10 (l) In this section, [~~HIV~~ and] "test result" has [have]
11 the meaning [~~meanings~~] assigned by Section [81.101](#).

12 SECTION 3.0229. Section [81.051](#)(j), Health and Safety Code,
13 is amended to read as follows:

14 (j) A partner notification program shall routinely evaluate
15 the performance of counselors and other program personnel to ensure
16 that high quality services are being delivered. A program shall
17 adopt quality assurance and training guidelines according to
18 recommendations of the Centers for Disease Control and Prevention
19 of the United States Public Health Service for professionals
20 participating in the program.

21 SECTION 3.0230. Section [81.062](#)(b), Health and Safety Code,
22 is amended to read as follows:

23 (b) A witness or deponent who is not a party and who is
24 subpoenaed or otherwise compelled to appear at a hearing or
25 proceeding under this section conducted outside the witness's or
26 deponent's county of residence is entitled to a travel and per diem
27 allowance. The executive commissioner [~~board~~] by rule shall set

1 the allowance in an amount not to exceed the travel and per diem
2 allowance authorized for state employees traveling in this state on
3 official business.

4 SECTION 3.0231. Section 81.064(a), Health and Safety Code,
5 is amended to read as follows:

6 (a) The department or a health authority may enter at
7 reasonable times and inspect within reasonable limits a public
8 place in the performance of that person's duty to prevent or control
9 the entry into or spread in this state of communicable disease by
10 enforcing this chapter or the rules [of the board] adopted under
11 this chapter.

12 SECTION 3.0232. Section 81.081, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 81.081. DEPARTMENT'S [BOARD'S] DUTY. The department
15 [board] shall impose control measures to prevent the spread of
16 disease in the exercise of its power to protect the public health.

17 SECTION 3.0233. Sections 81.082(a) and (c-1), Health and
18 Safety Code, are amended to read as follows:

19 (a) A health authority has supervisory authority and
20 control over the administration of communicable disease control
21 measures in the health authority's jurisdiction unless
22 specifically preempted by the department. Control measures imposed
23 by a health authority must be consistent with, and at least as
24 stringent as, the control measure standards in rules adopted by the
25 executive commissioner [board].

26 (c-1) A health authority may designate health care
27 facilities within the health authority's jurisdiction that are

1 capable of providing services for the examination, observation,
2 quarantine, isolation, treatment, or imposition of control
3 measures during a public health disaster or during an area
4 quarantine under Section 81.085. A health authority may not
5 designate a nursing facility [home] or other institution licensed
6 under Chapter 242.

7 SECTION 3.0234. Section 81.084(d), Health and Safety Code,
8 is amended to read as follows:

9 (d) The department or health authority shall remove the
10 quarantine and return control of the property to the person who owns
11 or controls it if the control measures are effective. If the
12 control measures are ineffective or if there is not a technically
13 feasible control measure available for use, the department or
14 health authority may continue the quarantine and order the person
15 who owns or controls the property:

16 (1) to destroy the property, other than land, in a
17 manner that disinfects or decontaminates the property to prevent
18 the spread of infection or contamination;

19 (2) if the property is land, to securely fence the
20 perimeter of the land or any part of the land that is infected or
21 contaminated; or

22 (3) to securely seal off an infected or contaminated
23 structure or other property on land to prevent entry into the
24 infected or contaminated area until the quarantine is removed by
25 the department [board] or health authority.

26 SECTION 3.0235. Sections 81.086(d), (e), and (h), Health
27 and Safety Code, are amended to read as follows:

1 (d) The owner or operator of a carrier or conveyance placed
2 in quarantine by order of the department or health authority, or of
3 a county or district court under Section 81.083 or 81.084, shall
4 bear the expense of the control measures employed to disinfect or
5 decontaminate the carrier or conveyance. The department or health
6 authority, as appropriate, shall charge and be reimbursed for the
7 cost of control measures performed by the department's or health
8 authority's employees. The department [board] shall deposit the
9 reimbursements to the credit of the general revenue fund to be used
10 to administer this chapter. A health authority shall distribute
11 the reimbursements to each county, municipality, or other
12 governmental entity in an amount proportional to that entity's
13 contribution to the quarantine and control expense.

14 (e) The owner or claimant of cargo or an object on board the
15 carrier or conveyance shall pay the expense of the control measures
16 employed in the manner provided by Section 81.084. The cost of
17 services rendered or provided by the department [board] or health
18 authority is subject to reimbursement as provided by Subsection
19 (d).

20 (h) If the department or health authority has reasonable
21 cause to believe that a carrier or conveyance is transporting cargo
22 or an object that is or may be infected or contaminated with a
23 communicable disease, the department or health authority may:

24 (1) require that the cargo or object be transported in
25 secure confinement or sealed in a car, trailer, hold, or
26 compartment, as appropriate, that is secured on the order and
27 instruction of the department [board] or health authority, if the

1 cargo or object is being transported through this state;

2 (2) require that the cargo or object be unloaded at an

3 alternate location equipped with adequate investigative and

4 disease control facilities if the cargo or object is being

5 transported to an intermediate or ultimate destination in this

6 state that cannot provide the necessary facilities; and

7 (3) investigate and, if necessary, quarantine the

8 cargo or object and impose any required control measure as

9 authorized by Section [81.084](#).

10 SECTION 3.0236. Sections [81.091\(a\)](#), (c), and (d), Health

11 and Safety Code, are amended to read as follows:

12 (a) A physician, nurse, midwife, or other person in

13 attendance at childbirth shall use or cause to be used prophylaxis

14 approved by the executive commissioner ~~[board]~~ to prevent

15 ophthalmia neonatorum.

16 (c) Subject to the availability of funds, the department

17 shall furnish prophylaxis approved by the executive commissioner

18 ~~[board]~~ free of charge to:

19 (1) health care providers if the newborn's financially

20 responsible adult is unable to pay; and

21 (2) a midwife identified under Chapter 203,

22 Occupations Code, who requests prophylaxis for administration

23 under standing delegation orders issued by a licensed physician

24 under Subsection (b) and subject to the provisions of Subchapter A,

25 Chapter 157, Occupations Code.

26 (d) If a physician is not available to issue a standing

27 delegation order or if no physician will agree to issue a standing

1 delegation order, a midwife shall administer or cause to be
2 administered by an appropriately trained and licensed individual
3 prophylaxis approved by the executive commissioner [~~Texas Board of~~
4 ~~Health~~] to prevent ophthalmia neonatorum to each infant that the
5 midwife delivers.

6 SECTION 3.0237. Section 81.0955(b), Health and Safety Code,
7 is amended to read as follows:

8 (b) A hospital, certified emergency medical services
9 personnel, or a physician on behalf of the person exposed,
10 following a report of the exposure incident, shall take reasonable
11 steps to test the deceased person for communicable diseases. The
12 hospital, certified emergency medical services personnel, or
13 physician shall provide the test results to the department or to the
14 local health authority responsible for following the procedures
15 prescribed by Section 81.050(h) to inform the person exposed and,
16 if applicable, the next of kin of the deceased person regarding the
17 test results. The hospital, certified emergency medical services
18 personnel, or physician shall follow applicable reporting
19 requirements prescribed by Subchapter C. This subsection does not
20 impose a duty on a hospital, certified emergency medical services
21 personnel, or a physician to provide any further testing,
22 treatment, or services or to perform further procedures. The
23 executive commissioner [~~of the Health and Human Services~~
24 ~~Commission~~] shall adopt rules to implement this subsection.

25 SECTION 3.0238. Sections 81.101(1) and (4), Health and
26 Safety Code, are amended to read as follows:

27 (1) "AIDS" means acquired immune deficiency syndrome

1 as defined by the Centers for Disease Control and Prevention of the
2 United States Public Health Service.

3 (4) "Blood bank" means a blood bank, blood center,
4 regional collection center, tissue bank, transfusion service, or
5 other similar facility licensed by the Center for [Bureau of]
6 Biologics Evaluation and Research of the United States Food and
7 Drug Administration, accredited for membership in the AABB
8 (formerly known as the American Association of Blood Banks), or
9 qualified for membership in the American Association of Tissue
10 Banks.

11 SECTION 3.0239. Sections 81.102(a), (c), and (d), Health
12 and Safety Code, are amended to read as follows:

13 (a) A person may not require another person to undergo a
14 medical procedure or test designed to determine or help determine
15 if a person has AIDS or HIV infection, antibodies to HIV, or
16 infection with any other probable causative agent of AIDS unless:

17 (1) the medical procedure or test is required under
18 Subsection (d), under Section 81.050, or under Article 21.31, Code
19 of Criminal Procedure;

20 (2) the medical procedure or test is required under
21 Section 81.090, and no objection has been made under Section
22 81.090(1);

23 (3) the medical procedure or test is authorized under
24 Chapter 545, Insurance Code;

25 (4) a medical procedure is to be performed on the
26 person that could expose health care personnel to AIDS or HIV
27 infection, according to department rules [board guidelines]

1 defining the conditions that constitute possible exposure to AIDS
2 or HIV infection, and there is sufficient time to receive the test
3 result before the procedure is conducted; or

4 (5) the medical procedure or test is necessary:

5 (A) as a bona fide occupational qualification and
6 there is not a less discriminatory means of satisfying the
7 occupational qualification;

8 (B) to screen blood, blood products, body fluids,
9 organs, or tissues to determine suitability for donation;

10 (C) in relation to a particular person under this
11 chapter;

12 (D) to manage accidental exposure to blood or
13 other body fluids, but only if the test is conducted under written
14 infectious disease control protocols adopted by the health care
15 agency or facility;

16 (E) to test residents and clients of residential
17 facilities of the department or the Department of Aging and
18 Disability Services [Texas Department of Mental Health and Mental
19 Retardation], but only if:

20 (i) the test result would change the
21 medical or social management of the person tested or others who
22 associated with that person; and

23 (ii) the test is conducted in accordance
24 with guidelines adopted by the residential facility or rules of the
25 appropriate department [Texas Department of Mental Health and
26 Mental Retardation and approved by the department]; or

27 (F) to test residents and clients of residential

1 facilities of the Texas Juvenile Justice Department [Youth
2 Commission], but only if:

16 (d) The executive commissioner [board] may adopt emergency
17 rules for mandatory testing for HIV infection if the commissioner
18 files a certificate of necessity with the executive commissioner
19 [board] that contains supportive findings of medical and scientific
20 fact and that declares a sudden and imminent threat to public
21 health. The rules must provide for:

22 (1) the narrowest application of HIV testing necessary
23 for the protection of the public health:

1 carrying out the recommended actions;

2 (3) counseling of persons with seropositive test
3 results; and

4 (4) confidentiality regarding persons tested and
5 their test results.

6 SECTION 3.0240. Section [81.107\(a\)](#), Health and Safety Code,
7 is amended to read as follows:

8 (a) In a case of accidental exposure to blood or other body
9 fluids under Section [81.102\(a\)\(5\)\(D\)](#) [~~81.102(a)(4)(D)~~], the health
10 care agency or facility may test a person who may have exposed the
11 health care worker to HIV without the person's specific consent to
12 the test.

13 SECTION 3.0241. Section [81.108](#), Health and Safety Code, is
14 amended to read as follows:

15 Sec. 81.108. TESTING BY INSURERS. The Insurance Code and
16 any rules adopted by the commissioner of insurance for the Texas
17 Department [~~State Board~~] of Insurance exclusively govern all
18 practices of insurers in testing applicants to show or help show
19 whether a person has AIDS or HIV infection, antibodies to HIV, or
20 infection with any other probable causative agent of AIDS.

21 SECTION 3.0242. Section [81.159\(a\)](#), Health and Safety Code,
22 is amended to read as follows:

23 (a) The commissioner shall designate health care facilities
24 throughout the state that are capable of providing services for the
25 examination, observation, isolation, or treatment of persons
26 having or suspected of having a communicable disease. However, the
27 commissioner may not designate:

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- 1 (1) a nursing facility [~~home~~] or custodial care home
- 2 required to be licensed under Chapter 242; or
- 3 (2) an ICF-IID [~~intermediate care facility for the~~
- 4 ~~mentally retarded~~ required to be licensed under Chapter 252.

5 SECTION 3.0243. Section 81.166(d), Health and Safety Code,
6 is amended to read as follows:

7 (d) The notification of probable cause hearing shall read as
8 follows:

9 (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.

17 The proposed patient and the proposed patient's [his or her]
18 attorney _____ have been given written notice
19 that the proposed patient was placed under an order of protective
20 custody and the reasons for such order on _____ (date of
21 notice).

22 I have examined the affidavit of medical evaluation and
23 _____ (other evidence considered). Based on this
24 evidence, I find that there is probable cause to believe that the
25 proposed patient presents a substantial risk of serious harm to
26 self [himself or herself] (yes ____ or no ____) or others (yes ____
27 or no ____) such that the proposed patient [(s)he] cannot be at

1 liberty pending final hearing because the proposed patient [-(s)he]
2 is infected with or is reasonably suspected of being infected with a
3 communicable disease that presents an immediate threat to the
4 public health and the proposed patient [-(s)he] has failed or
5 refused to comply with the orders of the health authority or the
6 [Texas] Department of State Health Services delivered on _____
7 (date of service) _____.

8 SECTION 3.0244. Section 81.178(d), Health and Safety Code,
9 is amended to read as follows:

10 (d) The appropriate courts of this state retain
11 jurisdiction to inquire at any time into the person's [mental]
12 condition and the necessity of the person's continued commitment.

13 SECTION 3.0245. Sections 81.211(a) and (b), Health and
14 Safety Code, are amended to read as follows:

15 (a) In the case of a person who is not a resident of this
16 state and who may be admitted to a public health [state chest]
17 hospital in accordance with Section 13.046, the attorney general,
18 at the request of the department, shall file a copy of an order
19 issued by a court of another state that authorizes the commitment of
20 the person to a health care facility for inpatient care in the
21 manner provided by Chapter 35, Civil Practice and Remedies Code,
22 for enforcement of foreign judgments.

23 (b) The application must be filed with the district court in
24 the county in which the public health [state chest] hospital to
25 which the person will be admitted is located.

26 SECTION 3.0246. Section 81.304, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 81.304. MINIMUM STANDARDS. The executive commissioner
2 [board] by rule shall adopt minimum standards to implement the
3 exposure control plan and the other provisions of this subchapter.
4 The rules shall be analogous to standards adopted by the federal
5 Occupational Safety and Health Administration. Each governmental
6 unit shall comply with the minimum standards adopted under this
7 subchapter.

8 SECTION 3.0247. Section 81.305(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) The executive commissioner [board] by rule shall
11 recommend that governmental units implement needleless systems and
12 sharps with engineered sharps injury protection for employees.

13 SECTION 3.0248. Sections 81.306(a) and (c), Health and
14 Safety Code, are amended to read as follows:

15 (a) The executive commissioner [board] by rule shall
16 require that information concerning exposure incidents be recorded
17 in a written or electronic sharps injury log to be maintained by a
18 governmental unit. This information must be reported to the
19 department and must include:

20 (1) the date and time of the exposure incident;
21 (2) the type and brand of sharp involved in the
22 exposure incident; and

23 (3) a description of the exposure incident, including:
24 (A) the job classification or title of the
25 exposed employee;

26 (B) the department or work area where the
27 exposure incident occurred;

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(C) the procedure that the exposed employee was performing at the time of the incident:

3 (D) how the incident occurred;

4 (E) the employee's body part that was involved in
5 the exposure incident; and

6 (F) whether the sharp had engineered sharps
7 injury protection and, if so, whether the protective mechanism was
8 activated and whether the injury occurred before, during, or after
9 the activation of the protective mechanism.

21 SECTION 3.0249. Sections 81.307(a) and (c), Health and
22 Safety Code, are amended to read as follows:

23 (a) The department, in accordance with rules adopted by the
24 executive commissioner [board], shall implement a registration
25 program for existing needleless systems and sharps with engineered
26 sharps injury protection.

27 (c) The department shall collect [charge] a fee to register

1 a device in an amount established by rule by the executive
2 commissioner [~~board~~]. The fees collected under this section may be
3 appropriated only to the department to implement this subchapter.

4 SECTION 3.0250. Section 81.352(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) The executive commissioner [~~department~~] shall adopt
7 rules to govern:

8 (1) the form and content of the sign required by
9 Subsection (a) and the manner and place of posting of the sign; and
10 (2) the form and content of the written warning
11 required by Subsection (a).

12 SECTION 3.0251. Sections 81.353(a) and (d), Health and
13 Safety Code, are amended to read as follows:

14 (a) The department may assess an administrative penalty if a
15 person violates this subchapter [~~section~~] or a rule adopted under
16 this subchapter [~~section~~].

17 (d) The enforcement of the penalty may be stayed during the
18 time the order is under judicial review if the person pays the
19 penalty to the clerk of the court or files a supersedeas bond with
20 the court in the amount of the penalty. A person who cannot afford
21 to pay the penalty or file the bond may stay the enforcement by
22 filing an affidavit in the manner required by the Texas Rules of
23 Civil Procedure for a party who cannot afford to file security for
24 costs, subject to the right of the department [~~board~~] to contest the
25 affidavit as provided by those rules.

26 SECTION 3.0252. Section 82.004, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 82.004. REGISTRY REQUIRED. The department [~~board~~]
2 shall maintain a cancer registry for the state.

3 SECTION 3.0253. Section 82.005(b), Health and Safety Code,
4 is amended to read as follows:

5 (b) The cancer registry must include:

6 (1) a record of the cases of cancer that occur in the
7 state; and

8 (2) information concerning cancer cases as the
9 executive commissioner [~~board~~] considers necessary and appropriate
10 for the recognition, prevention, cure, or control of cancer.

11 SECTION 3.0254. Section 82.006, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 82.006. EXECUTIVE COMMISSIONER AND DEPARTMENT [~~BOARD~~]
14 POWERS. (a) To implement this chapter, the executive commissioner
15 [~~board~~] may [+]

16 [+] adopt rules that the executive commissioner
17 [~~board~~] considers necessary. [+]

18 (b) To implement this chapter, the department may:

19 (1) [+] execute contracts considered [~~that the~~
20 ~~board considers~~] necessary;

21 (2) [+] receive the data from medical records of
22 cases of cancer that are in the custody or under the control of
23 clinical laboratories, health care facilities, and health care
24 practitioners to record and analyze the data directly related to
25 those diseases;

26 (3) [+] compile and publish statistical and other
27 studies derived from the patient data obtained under this chapter

1 to provide, in an accessible form, information that is useful to
2 physicians, other medical personnel, and the general public;

3 (4) [~~5~~] comply with requirements as necessary to
4 obtain federal funds in the maximum amounts and most advantageous
5 proportions possible;

6 (5) [~~6~~] receive and use gifts made for the purpose
7 of this chapter; and

8 (6) [~~7~~] limit cancer reporting activities under
9 this chapter to specified geographic areas of the state to ensure
10 optimal use of funds available for obtaining the data.

11 SECTION 3.0255. Sections 82.008(a), (b), and (e), Health
12 and Safety Code, are amended to read as follows:

13 (a) To ensure an accurate and continuing source of data
14 concerning cancer, each health care facility, clinical laboratory,
15 and health care practitioner shall furnish to the department [~~board~~
16 ~~or its representative~~], on request, data the executive commissioner
17 [~~board~~] considers necessary and appropriate that is derived from
18 each medical record pertaining to a case of cancer that is in the
19 custody or under the control of the health care facility, clinical
20 laboratory, or health care practitioner. The department may not
21 request data that is more than three years old unless the department
22 is investigating a possible cancer cluster.

23 (b) A health care facility, clinical laboratory, or health
24 care practitioner shall furnish the data requested under Subsection
25 (a) in a reasonable format prescribed by [~~the~~] department rule and
26 within six months of the patient's admission, diagnosis, or
27 treatment for cancer unless a different period is prescribed by the

1 United States Department of Health and Human Services.

2 (e) The executive commissioner [board] shall adopt
3 procedures that ensure adequate notice is given to the health care
4 facility, clinical laboratory, or health care practitioner before
5 the department accesses data under Subsection (d).

6 SECTION 3.0256. Section 82.009(b), Health and Safety Code,
7 is amended to read as follows:

8 (b) Medical or epidemiological information may be released:

9 (1) for statistical purposes in a manner that prevents
10 identification of individuals, health care facilities, clinical
11 laboratories, or health care practitioners;

12 (2) with the consent of each person identified in the
13 information; or

14 (3) to promote cancer research, including release of
15 information to other cancer registries and appropriate state and
16 federal agencies, under rules adopted by the executive commissioner
17 [board] to ensure confidentiality as required by state and federal
18 laws.

19 SECTION 3.0257. Section 82.011, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 82.011. EXAMINATION AND SUPERVISION NOT REQUIRED.
22 This chapter does not require an individual to submit to any medical
23 examination or supervision or to examination or supervision by the
24 department [board or its representatives].

25 SECTION 3.0258. Sections 84.003(b), (c), (d), and (e),
26 Health and Safety Code, are amended to read as follows:

27 (b) Blood lead levels in adults are laboratory findings that

1 are reportable to the department as provided by department [board]
2 rule.

3 (c) The executive commissioner [board] may adopt rules that
4 require other occupational conditions to be reported under this
5 chapter. Before the executive commissioner [board] requires
6 another occupational condition to be reported, the executive
7 commissioner [board] must find that the condition:

- 8 (1) has a well-understood etiology;
9 (2) results predominantly from occupational
10 exposures; and
11 (3) is preventable.

12 (d) The executive commissioner [board] shall maintain a
13 list of reportable conditions.

14 (e) The executive commissioner [board] shall adopt rules
15 necessary to administer and implement this chapter.

16 SECTION 3.0259. Section 84.004(c), Health and Safety Code,
17 is amended to read as follows:

18 (c) The executive commissioner [board] shall prescribe the
19 form and method of reporting. The executive commissioner [board]
20 may require the reports to contain any information necessary to
21 achieve the purposes of this chapter, including the person's name,
22 address, age, sex, race, occupation, employer, and attending
23 physician.

24 SECTION 3.0260. Section 84.005(b), Health and Safety Code,
25 is amended to read as follows:

26 (b) The department may seek, receive, and spend any funds
27 received through appropriations, grants, or donations from public

1 or private sources for the purpose of identifying, reporting, or
2 preventing those occupational conditions that have been determined
3 by the executive commissioner [board] to be injurious or to be a
4 threat to the public health, subject to any limitations or
5 conditions prescribed by the legislature.

6 SECTION 3.0261. Section 84.006(b), Health and Safety Code,
7 is amended to read as follows:

8 (b) The executive commissioner [board] shall adopt rules
9 establishing procedures to ensure that all information and records
10 maintained by the department under this chapter are kept
11 confidential and protected from release to unauthorized persons.

12 SECTION 3.0262. Section 84.007(b), Health and Safety Code,
13 is amended to read as follows:

14 (b) In performing the department's [commissioner's] duty to
15 prevent an occupational condition, the department's [commissioner
16 ~~or the commissioner's~~] designee may enter at reasonable times and
17 inspect within reasonable limits all or any part of an area,
18 structure, or conveyance, regardless of ownership, that is not used
19 for private residential purposes.

20 SECTION 3.0263. Sections 85.002(1), (2), and (6), Health
21 and Safety Code, are amended to read as follows:

22 (1) "AIDS" means acquired immune deficiency syndrome
23 as defined by the Centers for Disease Control and Prevention of the
24 United States Public Health Service.

25 (2) "Communicable disease" has the meaning assigned by
26 Section 81.003 [~~(Communicable Disease Prevention and Control~~
27 ~~Act)~~].

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1 (6) "Testing program" means a [medical] program using
2 a diagnostic test approved by the United States Food and Drug
3 Administration to indicate the presence of HIV [to test for AIDS,
4 HIV infection, antibodies to HIV, or infection with any other
5 probable causative agent of AIDS].

6 SECTION 3.0264. The heading to Subchapter A, Chapter 85,
7 Health and Safety Code, is amended to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS AND EDUCATIONAL MATERIALS
[EDUCATION PROGRAMS]

10 SECTION 3.0265. Sections [85.004](#) and [85.005](#), Health and
11 Safety Code, are amended to read as follows:

12 Sec. 85.004. EDUCATIONAL MATERIALS [~~EDUCATION PROGRAMS~~].

13 (a) The department shall develop model educational materials

14 [~~education programs~~] to be available on the department's Internet

15 website to educate the public about AIDS and HIV infection.

16 (b) The [As part of the programs, the department shall
17 ~~develop a model~~] educational materials must:

18 (1) include information [pamphlet] about methods of
19 transmission and prevention of HIV infection, [about] state laws
20 relating to the transmission, and [to] conduct that may result in
21 the transmission of HIV; and [-]

22 (2) [~~(c) The programs must~~] be scientifically
23 accurate and factually correct and designed to:

1 [~~(3) educate health care workers and health facility~~
2 ~~employees about methods of transmission and prevention in their~~
3 ~~particular workplace environments; and~~

4 [~~(4) educate the public about state laws relating to~~
5 ~~the transmission and conduct that may result in the transmission of~~
6 ~~HIV]~~.

7 Sec. 85.005. EDUCATIONAL MATERIALS DESIGNED FOR CERTAIN
8 PERSONS; SPECIFIC INFORMATION [~~SPECIAL COMPONENTS OF EDUCATION~~
9 ~~PROGRAMS~~]. (a) The department shall include in the educational
10 materials specific information [~~education programs special~~
11 ~~components~~] designed to reach:

12 (1) persons with behavior conducive to HIV
13 transmission;

14 (2) persons younger than 18 years of age; and

15 (3) minority groups.

16 (b) In developing educational materials [~~designing~~
17 ~~education programs~~] for ethnic minorities and in assisting local
18 community organizations in developing educational materials
19 [~~education programs~~] for minority groups, the department shall
20 ensure that the educational materials [~~programs~~] reflect the nature
21 and spread of HIV infection in minorities in this state.

22 SECTION 3.0266. The heading to Section 85.006, Health and
23 Safety Code, is amended to read as follows:

24 Sec. 85.006. EDUCATIONAL MATERIALS [~~EDUCATION PROGRAMS~~]
25 FOR [~~DISABLED~~] PERSONS WITH DISABILITIES.

26 SECTION 3.0267. Sections 85.006(a) and (b), Health and
27 Safety Code, are amended to read as follows:

1 (a) The department shall develop and promote the
2 availability of educational materials concerning HIV [education]
3 and prevention of HIV infection [programs] specifically designed to
4 address the concerns of persons with physical or mental
5 disabilities.

6 (b) In developing [designing] those educational materials
7 [programs], the department shall consult persons with disabilities
8 or consult experts in the appropriate professional disciplines.

9 SECTION 3.0268. The heading to Section 85.007, Health and
10 Safety Code, is amended to read as follows:

11 Sec. 85.007. EDUCATIONAL MATERIALS [~~EDUCATION PROGRAMS~~]
12 FOR MINORS.

13 SECTION 3.0269. Sections 85.007(a) and (c), Health and
14 Safety Code, are amended to read as follows:

15 (a) The department shall give priority to developing model
16 educational materials for education programs for persons younger
17 than 18 years of age.

18 (c) In addition, the educational materials [~~in the~~
19 ~~education program~~] intended for persons younger than 18 years of
20 age must:

21 (1) teach that sexual activity before marriage is
22 likely to have harmful psychological and physical consequences;

23 (2) teach adolescents ways to recognize and respond to
24 unwanted physical and verbal sexual advances;

25 (3) teach that the use of alcohol or drugs increases a
26 person's vulnerability to unwanted sexual advances; and

27 (4) emphasize the importance of attaining

1 self-sufficiency before engaging in sexual activity.

2 SECTION 3.0270. Sections 85.008, 85.009, 85.010, and
3 85.011, Health and Safety Code, are amended to read as follows:

4 Sec. 85.008. PROMOTION [~~DISTRIBUTION~~] OF AVAILABILITY OF
5 EDUCATIONAL MATERIALS [~~EDUCATION PROGRAMS~~]. [(a)] The department
6 shall determine where HIV education efforts are needed in this
7 state and shall promote the availability of educational materials
8 on the department's Internet website [~~initiate programs~~] in those
9 areas [~~by identifying local resources~~].

10 [(b) The department shall assist communities, especially
11 ~~those in rural areas, in establishing self-sustaining education~~
12 ~~programs, using public and private resources.~~]]

13 Sec. 85.009. AVAILABILITY OF EDUCATIONAL MATERIALS
14 [~~EDUCATION PROGRAMS AVAILABLE ON REQUEST~~]. The department shall
15 make the educational materials [~~the education programs~~] available
16 on the department's Internet website for [~~to~~] local governments and
17 private businesses [~~on request~~].

18 Sec. 85.010. EDUCATIONAL COURSE FOR EMPLOYEES AND CLIENTS
19 OF HEALTH CARE FACILITIES. A health care facility licensed by the
20 department or [~~or~~] the [~~Texas~~] Department of Aging and Disability
21 Services [~~Mental Health and Mental Retardation, or the Texas~~
22 ~~Department of Human Services~~] shall require its employees to
23 complete an educational course about HIV infection based on the
24 model educational materials [~~education programs~~] developed by the
25 department.

26 Sec. 85.011. CONTRACTS FOR EDUCATIONAL MATERIALS
27 [~~EDUCATION PROGRAMS~~]. (a) The department may contract with any

1 person, other than a person who advocates or promotes conduct that
2 violates state law, for the design and[~~and~~] development[~~, and~~
3 ~~distribution~~] of educational materials [~~education programs~~].

4 (b) This section does not restrict the inclusion in
5 educational materials of [~~an education program from providing~~]
6 accurate information about different ways to reduce the risk of
7 exposure to or the transmission of HIV.

8 SECTION 3.0271. Sections 85.012(b) and (e), Health and
9 Safety Code, are amended to read as follows:

10 (b) The model workplace guidelines must include provisions
11 stating that:

12 (1) all employees will receive some education about
13 methods of transmission and prevention of HIV infection and related
14 conditions;

15 (2) accommodations will be made to keep persons with
16 HIV infection employed and productive for as long as possible;

17 (3) the confidentiality of employee medical records
18 will be protected;

19 (4) HIV-related policies will be consistent with
20 current information from public health authorities, such as the
21 Centers for Disease Control and Prevention of the United States
22 Public Health Service, and with state and federal law and
23 regulations;

24 (5) persons with HIV infection are entitled to the
25 same rights and opportunities as persons with other communicable
26 diseases; and

27 (6) employers and employees should not engage in

1 discrimination against persons with HIV infection unless based on
2 accurate scientific information.

3 (e) Employers should be encouraged to adopt HIV-related
4 workplace guidelines that incorporate, at a minimum, the guidelines
5 established by the department [board] under this section.

6 SECTION 3.0272. Section 85.015(b), Health and Safety Code,
7 is amended to read as follows:

8 (b) Subsection (a)(2) does not restrict the inclusion in
9 educational materials of [an education program from providing]
10 accurate information about ways to reduce the risk of exposure to or
11 transmission of HIV.

12 SECTION 3.0273. Section 85.016, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 85.016. RULES. The executive commissioner [board] may
15 adopt rules necessary to implement Subchapters A through F.

16 SECTION 3.0274. Sections 85.032 and 85.033, Health and
17 Safety Code, are amended to read as follows:

18 Sec. 85.032. RULES; PROGRAM STRUCTURE. (a) The executive
19 commissioner [board] may adopt rules relating to:

20 (1) the services that may be furnished under the
21 program;

22 (2) a system of priorities regarding the types of
23 services provided, geographic areas covered, or classes of
24 individuals or communities targeted for services under the program;
25 and

26 (3) a process for resolving conflicts between the
27 department and a program receiving money under this subchapter.

1 (b) Executive commissioner [Board] or department actions
2 relating to service, geographic, and other priorities shall be
3 based on the set of priorities and guidelines established under
4 this section.

5 (c) In structuring the program and adopting rules, the
6 department and the executive commissioner, as appropriate, [board]
7 shall attempt to:

8 (1) coordinate the use of federal, local, and private
9 funds;

10 (2) encourage the provision of community-based
11 services;

12 (3) address needs that are not met by other sources of
13 funding;

14 (4) provide funding as extensively as possible across
15 the regions of the state in amounts that reflect regional needs; and

16 (5) encourage cooperation among local service
17 providers.

18 Sec. 85.033. COORDINATION OF SERVICES. (a) To prevent
19 unnecessary duplication of services, the executive commissioner
20 [board] and the department shall seek to coordinate the services
21 provided by eligible programs under Subchapters A through G with
22 existing federal, state, and local programs.

23 (b) The department shall consult with the [Texas]
24 Department of Aging and Disability [Human] Services and the
25 commission to ensure that programs funded under this subchapter
26 complement and do not unnecessarily duplicate services provided
27 through the [Texas] Department of Aging and Disability [Human]

1 Services and the commission.

2 SECTION 3.0275. Section 85.041(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) The executive commissioner [board] may adopt rules
5 relating to the information a program is required to report to the
6 department and shall adopt procedures and forms for reporting the
7 information to prevent unnecessary and duplicative reporting of
8 data.

9 SECTION 3.0276. Section 85.044, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 85.044. ADVISORY COMMITTEE. The executive
12 commissioner [board] may appoint an advisory committee to assist in
13 the development of procedures and guidelines required by this
14 subchapter.

15 SECTION 3.0277. Section 85.061(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) The program shall assist hospital districts, local
18 health departments, public or nonprofit hospitals and clinics,
19 nonprofit community organizations, and HIV-infected individuals in
20 the purchase of medications approved by the commissioner [board]
21 that have been shown to be effective in reducing hospitalizations
22 due to HIV-related conditions.

23 SECTION 3.0278. Section 85.062(a), Health and Safety Code,
24 is amended to read as follows:

25 (a) To be eligible for the program, an individual:
26 (1) must not be eligible for Medicaid benefits;
27 (2) must meet financial eligibility criteria set by

1 department [board] rule;

2 (3) must not qualify for any other state or federal
3 program available for financing the purchase of the prescribed
4 medication; and

5 (4) must be diagnosed by a licensed physician as
6 having AIDS or an HIV-related condition or illness of at least the
7 minimal severity set by the executive commissioner [board].

8 SECTION 3.0279. Section 85.063, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 85.063. PROCEDURES AND ELIGIBILITY GUIDELINES. The
11 executive commissioner [board] by rule shall establish:

12 (1) application and distribution procedures;
13 (2) eligibility guidelines to ensure the most
14 appropriate distribution of funds available each year; and
15 (3) appellate procedures to resolve any eligibility or
16 funding conflicts.

17 SECTION 3.0280. Section 85.064(d), Health and Safety Code,
18 is amended to read as follows:

19 (d) The department shall deposit money received under this
20 section in the state treasury to the credit of the general revenue
21 fund [~~HIV medication fund and to the credit of a special account in~~
~~that fund that shall be established for each entity sending funds~~
~~under this section~~].

22 SECTION 3.0281. Section 85.081(a), Health and Safety Code,
23 is amended to read as follows:

24 (a) The department shall develop, and the executive
25 commissioner shall adopt, model protocols for counseling and

1 testing related to HIV infection. The protocols shall be made
2 available to health care providers on request.

3 SECTION 3.0282. Section 85.087(d), Health and Safety Code,
4 is amended to read as follows:

5 (d) The executive commissioner by rule [board] shall set the
6 fee in an amount that is reasonable and necessary to cover the costs
7 of providing the course.

8 SECTION 3.0283. Section 85.088(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) State-funded primary health, women's reproductive
11 health, and sexually transmitted disease clinics shall:

12 (1) make available to patients and clients information
13 and educational materials concerning the prevention of HIV
14 infection; and

15 (2) provide or refer patients and clients to
16 voluntary[anonymous] and affordable counseling and HIV testing
17 services, including the patient's or client's choice of anonymous
18 or confidential HIV testing or counseling [~~programs concerning HIV~~
19 ~~infection or provide referrals to those programs~~].

20 SECTION 3.0284. Sections 85.111(a), (b), and (c), Health
21 and Safety Code, are amended to read as follows:

22 (a) Each state agency annually shall provide to each state
23 employee [~~an~~] educational information [~~pamphlet~~] about:

24 (1) methods of transmission and prevention of HIV
25 infection;

26 (2) state laws relating to the transmission of HIV
27 infection; and

1 (3) conduct that may result in the transmission of HIV
2 infection.

3 (b) The educational information [pamphlet] shall be
4 provided to a newly hired state employee on the first day of
5 employment.

6 (c) The educational information [pamphlet] shall be based
7 on the model developed by the department and shall include the
8 workplace guidelines adopted by the state agency.

9 SECTION 3.0285. Section 85.113, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 85.113. WORKPLACE GUIDELINES FOR STATE CONTRACTORS.
12 An entity that contracts with or is funded by any of the following
13 state agencies to operate a program involving direct client contact
14 shall adopt and implement workplace guidelines similar to the
15 guidelines adopted by the agency that funds or contracts with the
16 entity:

17 (1) the Department of Assistive and Rehabilitative
18 Services [~~Texas Commission on Alcohol and Drug Abuse;~~
19 [~~(2) the Texas Commission for the Blind;~~
20 [~~(3) the Texas Commission for the Deaf and Hard of~~
21 ~~Hearing~~];

22 (2) [~~(4)~~] the Texas Juvenile Justice Department
23 [~~Probation Commission~~];

24 (3) [~~(5)~~] the Texas Department of Criminal Justice;

25 (4) [~~(6)~~] the ~~Texas Youth Commission;~~

26 [~~(7)~~] the department;

27 (5) [~~(8)~~] the [Texas] Department of Aging and

1 Disability [Human] Services; and
2 (6) [(-9)] the commission [Texas Department of Mental
3 Health and Mental Retardation; and
4 [(-10) the Texas Rehabilitation Commission].

5 SECTION 3.0286. Section 85.114(b), Health and Safety Code,
6 is amended to read as follows:

7 (b) Education available under this section shall be based on
8 the model educational materials [~~education program~~] developed by
9 the department and tailored to the cultural, educational, language,
10 and developmental needs of the clients, inmates, patients, or
11 residents, including the use of Braille or telecommunication
12 devices for the deaf.

13 SECTION 3.0287. Sections 85.116(b) and (d), Health and
14 Safety Code, are amended to read as follows:

15 (b) The executive commissioner [~~board~~] by rule shall
16 prescribe the criteria that constitute possible exposure to HIV
17 under this section. The criteria must be based on activities the
18 United States Public Health Service determines pose a risk of HIV
19 infection.

20 (d) The cost of a state employee's testing and counseling
21 shall be paid from funds appropriated for payment of workers'
22 compensation benefits to state employees. The commissioner of
23 workers' compensation [~~director of the workers' compensation~~
24 ~~division of the attorney general's office~~] shall adopt rules
25 necessary to administer this subsection.

26 SECTION 3.0288. Section 85.201(a), Health and Safety Code,
27 is amended to read as follows:

1 (a) The legislature finds that:

2 (1) the Centers for Disease Control and Prevention of
3 the United States Public Health Service have made recommendations
4 for preventing transmission of human immunodeficiency virus (HIV)
5 and hepatitis B virus (HBV) to patients in the health care setting;

6 (2) the Centers for Disease Control and Prevention of
7 the United States Public Health Service have found that when health
8 care workers adhere to recommended infection-control procedures,
9 the risk of transmitting HBV from an infected health care worker to
10 a patient is small, and the risk of transmitting HIV is likely to be
11 even smaller;

12 (3) the risk of transmission of HIV and HBV in health
13 care settings will be minimized if health care workers adhere to the
14 Centers for Disease Control and Prevention of the United States
15 Public Health Service recommendations; and

16 (4) health care workers who perform exposure-prone
17 procedures should know their HIV antibody status; health care
18 workers who perform exposure-prone procedures and who do not have
19 serologic evidence of immunity to HBV from vaccination or from
20 previous infection should know their HBsAg status and, if that is
21 positive, should also know their HBeAg status.

22 SECTION 3.0289. Section 85.202(4), Health and Safety Code,
23 is amended to read as follows:

24 (4) "Universal precautions" means procedures for
25 disinfection and sterilization of reusable medical devices and the
26 appropriate use of infection control, including hand washing, the
27 use of protective barriers, and the use and disposal of needles and

1 other sharp instruments as those procedures are defined by the
2 Centers for Disease Control and Prevention of the United States
3 Public Health Service.

4 SECTION 3.0290. Sections [85.257](#)(c) and (d), Health and
5 Safety Code, are amended to read as follows:

6 (c) Counseling provided by a service provider, including
7 written information provided under Subsection (a) and referrals,
8 must conform with counseling protocols adopted by the executive
9 commissioner ~~[board]~~. Except as provided by Section [85.256](#), the
10 counseling protocols must be consistent with the requirements of
11 Section [81.109](#) and the protocols adopted under Section [85.081](#).

12 (d) Counseling provided by a service provider under this
13 section must be provided in English and in Spanish. The department
14 ~~[board]~~ may require a service provider to provide counseling in
15 another language if the department ~~[board]~~ finds that the service
16 provider is marketing home collection kits in a community in which a
17 significant portion of the population speaks a language other than
18 English or Spanish.

19 SECTION 3.0291. Section [85.258](#)(c), Health and Safety Code,
20 is amended to read as follows:

21 (c) In addition to the labeling requirements in Subsections
22 (a) and (b), a home collection kit labeled in Spanish must also be
23 available. The department ~~[board]~~ may require a service provider
24 to label a home collection kit in another language if the department
25 ~~[board]~~ finds that the service provider is marketing home
26 collection kits in a community in which a significant portion of the
27 population speaks a language other than English or Spanish.

1 SECTION 3.0292. Section 85.275(f), Health and Safety Code,
2 is amended to read as follows:

3 (f) The assistant presiding officer shall:

4 (1) perform the duties of the presiding officer if the
5 presiding officer is absent or is not able to perform those duties
6 because of disability [~~becomes disabled~~]; and

7 (2) complete the unexpired portion of the presiding
8 officer's term if the office of the presiding officer becomes
9 vacant.

10 SECTION 3.0293. Section 87.001(7), Health and Safety Code,
11 is amended to read as follows:

12 (7) "Health facility" includes:

13 (A) a general or special hospital licensed by the
14 department under Chapter 241;

15 (B) a physician-owned or physician-operated
16 clinic;

17 (C) a publicly or privately funded medical
18 school;

19 (D) a state hospital operated by the department
20 or a state supported living center operated [~~school maintained and~~
21 ~~managed~~] by the [Texas] Department of Aging and Disability Services
22 [~~Mental Health and Mental Retardation~~];

23 (E) a genetic evaluation and counseling center;

24 (F) a public health clinic conducted by a local
25 health unit, health department, or public health district organized
26 and recognized under Chapter 121;

27 (G) a physician peer review organization; and

1 (H) another facility specified by department
2 [board] rule.

3 SECTION 3.0294. Sections 87.002(c) and (d), Health and
4 Safety Code, are amended to read as follows:

5 (c) The department may release medical, epidemiological, or
6 toxicological information:

7 (1) for statistical purposes, if released in a manner
8 that prevents the identification of any person;

9 (2) with the consent of each person identified in the
10 information or, if the person is a minor, the minor's parents,
11 managing conservator, guardian, or other person who is legally
12 authorized to consent;

13 (3) to medical personnel, appropriate state agencies,
14 health authorities, regional directors, and public officers of
15 counties and municipalities as necessary to comply with this
16 chapter and department [board] rules relating to the
17 identification, monitoring, and referral of children with birth
18 defects;

19 (4) to appropriate federal agencies, such as the
20 Centers for Disease Control and Prevention of the United States
21 Public Health Service; or

22 (5) to medical personnel to the extent necessary to
23 protect the health or life of the child identified in the
24 information.

25 (d) The executive commissioner [A board member], the
26 commissioner, another employee of the department, or an authorized
27 agent may not be examined in a civil, criminal, special, or other

1 proceeding as to the existence or contents of pertinent records of
2 or reports or information about a child identified or monitored for
3 a birth defect by the department without the consent of the child's
4 parents, managing conservator, guardian, or other person
5 authorized by law of this state or another state or by a court order
6 to give consent.

7 SECTION 3.0295. Section 87.021, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 87.021. SURVEILLANCE PROGRAM; REGISTRY ESTABLISHED.
10 (a) The executive commissioner [board] shall establish in the
11 department a program to:

12 (1) identify and investigate certain birth defects in
13 children; and

14 (2) maintain a central registry of cases of birth
15 defects.

16 (b) The executive commissioner [board] may authorize the
17 department to implement a statewide program or to limit the program
18 to a part or all of one or more public health regions, depending on
19 the funding available to the department. In establishing the
20 program, the executive commissioner [board] shall consider:

21 (1) the number and geographic distribution of births
22 in the state;

23 (2) the trained personnel and other departmental
24 resources that may be assigned to the program activities; and

25 (3) the occurrence or probable occurrence of an urgent
26 situation that requires or will require an unusual commitment of
27 the department's personnel and other resources.

1 (c) The ~~board and the~~ department shall design the program
2 so that the program will:

3 (1) provide information to identify risk factors and
4 causes of birth defects;

5 (2) provide information on other possible causes of
6 birth defects;

7 (3) provide for the development of strategies to
8 prevent birth defects;

9 (4) provide for interview studies about the causes of
10 birth defects;

11 (5) together with other departmental programs,
12 contribute birth defects data to a central registry;

13 (6) provide for the appointment of authorized agents
14 to collect birth defects information; and

15 (7) provide for the active collection of birth defects
16 information.

17 (d) The executive commissioner ~~board~~ shall adopt rules to
18 govern the operation of the program and carry out the intent of this
19 chapter. At a minimum, the rules shall:

20 (1) use a medically recognized system to specify the
21 birth defects to be identified and investigated;

22 (2) select a system for classifying the birth defects
23 according to the public health significance of each defect to
24 prioritize the use of resources;

25 (3) develop a system to select and specify the cases to
26 be investigated;

27 (4) specify a system for selecting the demographic

1 areas in which the department may undertake investigations; and
2 (5) prescribe the training and experience a person
3 must have for appointment as an authorized agent of the department.

4 (e) In adopting the rules required by Subsection (d), the
5 executive commissioner [board] shall consider at least:

6 (1) the known incidence and prevalence rates of a
7 birth defect in the state or portions of the state;

8 (2) the known incidence and prevalence rates of a
9 particular birth defect in specific population groups who live in
10 the state or portions of the state;

11 (3) the morbidity and mortality resulting from the
12 birth defect; and

13 (4) the existence, cost, and availability of a
14 strategy to prevent and treat the birth defect.

15 (f) In addition to providing for the active collection of
16 birth defects information under Subsection (c)(7), the [board and
17 the] department may design the program to also provide for the
18 passive collection of that information.

19 SECTION 3.0296. Section 87.022, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 87.022. DATA COLLECTION. (a) To ensure an accurate
22 source of data necessary to investigate the incidence, prevalence,
23 and trends of birth defects, the executive commissioner [board] may
24 require a health facility, health professional, or midwife to make
25 available for review by the department or by an authorized agent
26 medical records or other information that is in the facility's,
27 professional's, or midwife's custody or control and that relates to

1 the occurrence of a birth defect specified by the executive
2 commissioner [board].

3 (b) The executive commissioner [board] by rule shall
4 prescribe the manner in which records and other information are
5 made available to the department.

6 (c) The executive commissioner [board] shall adopt
7 procedural rules to facilitate cooperation between the health care
8 facility, health professional, or midwife and a department employee
9 or authorized agent, including rules for notice, requests for
10 medical records, times for record reviews, and record management
11 during review.

12 SECTION 3.0297. Section 87.023, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 87.023. REFERRAL FOR SERVICES. A child who meets the
15 medical criteria prescribed by department [board] rule, and the
16 child's family, shall be referred to the department's case
17 management program for guidance in applying for financial or
18 medical assistance available through existing state and federal
19 programs.

20 SECTION 3.0298. Sections 87.061(b) and (c), Health and
21 Safety Code, are amended to read as follows:

22 (b) The department shall use the registry to:

23 (1) investigate the causes of birth defects and other
24 health conditions as authorized by Texas statutes;

25 (2) design and evaluate measures to prevent the
26 occurrence of birth defects and other health conditions; and

27 (3) conduct other investigations and activities

1 necessary for the executive commissioner [board] and department to
2 fulfill their obligation to protect the health of the public.

3 (c) The department may store in the central registry
4 information that is obtained from the section of the birth
5 certificate entitled "For Medical and Health Use Only." This
6 information may be used only as provided by Section 192.002(b),
7 [191.002(b)] relating to the form and contents of the birth
8 certificate.

9 SECTION 3.0299. Section 87.063(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) The commissioner and the department's committee for the
12 protection of human subjects shall review each research proposal
13 that requests the use of information in the central registry. The
14 executive commissioner [board] shall adopt rules establishing
15 criteria to be used in deciding if the research design should be
16 approved. A proposal that meets the approval criteria is
17 considered to establish a valid interest as required by Section
18 87.062(a), and the commissioner and the committee shall authorize
19 the researcher to review the records relevant to the research
20 proposal and to contact cases and controls.

21 SECTION 3.0300. Sections 88.001(6), (7), (9), and (11),
22 Health and Safety Code, are amended to read as follows:

23 (6) "Reference level" ["Blood lead levels of concern"]
24 means the presence of blood lead concentrations suspected to be
25 associated with mental and physical disorders due to absorption,
26 ingestion, or inhalation of lead as specified in the most recent
27 reference value [criteria] issued by the [United States Department

1 ~~of Health and Human Services, United States Public Health Service,~~]
2 Centers for Disease Control and Prevention of the United States
3 Public Health Service.

4 (7) "Lead poisoning" means the presence of a confirmed
5 venous blood level established by department [~~board~~] rule in the
6 range specified for medical evaluation and possible pharmacologic
7 treatment in the most recent criteria issued by the [~~United States~~
8 ~~Department of Health and Human Services, United States Public~~
9 ~~Health Service,~~] Centers for Disease Control and Prevention of the
10 United States Public Health Service.

11 (9) "Physician" means a person licensed to practice
12 medicine by the Texas [~~State Board of~~] Medical Board [~~Examiners~~].

13 (11) "Regional director" means a physician appointed
14 under Section 121.007 [~~by the board~~] as the chief administrative
15 officer of a public health region as designated under Chapter 121.

16 SECTION 3.0301. Sections 88.002(a), (b), and (d), Health
17 and Safety Code, are amended to read as follows:

18 (a) Except as specifically authorized by this chapter,
19 reports, records, and information furnished to a health authority,
20 a regional director, or the department that relate to cases or
21 suspected cases of children with reportable blood lead levels [~~of~~
22 ~~concern or lead poisoning~~] are confidential and may be used only for
23 the purposes of this chapter.

24 (b) Reports, records, and information relating to cases or
25 suspected cases of childhood lead poisoning and children with
26 reportable blood lead levels [~~of concern~~] are not public
27 information under the open records law, Chapter 552, Government

1 Code, and may not be released or made public on subpoena or
2 otherwise except as provided by this chapter.

3 (d) The commissioner, a regional director or other
4 department employee, a health authority or employee of a public
5 health district, a health authority or employee of a county or
6 municipal health department, or a public official of a county or
7 municipality may not be examined in a civil, criminal, special, or
8 other proceeding as to the existence or contents of pertinent
9 records of or reports or information about a child identified,
10 examined, or treated for lead poisoning or about a child possessing
11 reportable blood lead levels [~~of concern~~] by the department, a
12 public health district, a local health department, or a health
13 authority without the consent of the child's parents, managing
14 conservator, guardian, or other person authorized by law to give
15 consent.

16 SECTION 3.0302. Section 88.0025, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 88.0025. CHILDHOOD LEAD POISONING PREVENTION. The
19 executive commissioner may adopt [~~board may implement~~] policies and
20 procedures to promote the elimination of childhood lead poisoning
21 within the state, and the department shall implement all adopted
22 policies and procedures. The executive commissioner [~~board~~] may
23 adopt measures to:

24 (1) significantly reduce the incidence of childhood
25 lead poisoning throughout the state;

26 (2) improve public awareness of lead safety issues and
27 educate both property owners and tenants about practices that can

1 reduce the incidence of lead poisoning; and
2 (3) encourage the testing of children likely to suffer
3 the consequences of lead poisoning so that prompt diagnosis and
4 treatment and the prevention of harm are possible.

5 SECTION 3.0303. Section 88.003, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 88.003. REPORTABLE HEALTH CONDITION. (a) Childhood
8 blood lead levels that exceed the reference level [~~of concern~~] are
9 reportable.

10 (b) The executive commissioner [~~board~~] by rule may
11 designate:

12 (1) blood lead concentrations in children that must be
13 reported; and

14 (2) the ages of children for whom the reporting
15 requirements apply.

16 (c) The executive commissioner [~~board~~] may adopt rules that
17 establish a registry of children with blood lead levels that exceed
18 the reference level [~~of concern~~] and lead poisoning.

19 SECTION 3.0304. Section 88.004, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 88.004. PERSONS REQUIRED TO REPORT. (a) A person
22 required to report childhood blood lead levels [~~of concern~~] shall
23 report to the department in the manner specified by department
24 [~~board~~] rule. Except as provided by this section, a person required
25 by this section to report must make the report immediately after the
26 person gains knowledge of [~~the case or suspected case of~~] a child
27 with a reportable blood lead level [~~of concern~~].

1 (b) A physician shall report a case or suspected case of
2 childhood lead poisoning or of a child with a reportable blood lead
3 level [~~of concern~~] after the physician's first examination of a
4 child for whom reporting is required by this chapter or department
5 [~~board~~] rule.

6 (c) A person in charge of an independent clinical
7 laboratory, a hospital or clinic laboratory, or other facility in
8 which a laboratory examination of a specimen derived from the human
9 body yields evidence of a child with a reportable blood lead level
10 [~~of concern~~] shall report the findings to the department as
11 required by department [~~board~~] rule.

12 (d) If a report is not made as required by Subsection (b) or
13 (c), the following persons shall report [~~a case or suspected case of~~
14 ~~a child with lead poisoning or~~] a child's reportable blood lead
15 level [~~of concern~~] and all information known concerning the child:

16 (1) the administrator of a hospital licensed under
17 Chapter 241;

18 (2) a [~~professional~~] registered nurse;

19 (3) an administrator or director of a public or
20 private child care facility;

21 (4) an administrator of a home and community support
22 services [~~health~~] agency;

23 (5) an administrator or health official of a public or
24 private institution of higher education;

25 (6) a superintendent, manager, or health official of a
26 public or private camp, home, or institution;

27 (7) a parent, managing conservator, or guardian; and

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1 (8) a health professional.

2 SECTION 3.0305. Sections 88.005(a) and (b), Health and
3 Safety Code, are amended to read as follows:

4 (a) The executive commissioner [board] shall prescribe the
5 form and method of reporting under this chapter, including a report
6 in writing, by telephone, or by electronic data transmission.

7 (b) The executive commissioner by rule [Board rules] may
8 require the reports to contain any information relating to a case
9 that is necessary for the purposes of this chapter, including:

10 (1) the child's name, address, age, sex, and race;

11 (2) the child's blood lead concentration;

14 (4) the name of the attending physician.

15 SECTION 3.0306. Section 88.006(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) A physician who attends a child during the child's
18 hospitalization shall immediately notify the department if the
19 physician knows or suspects that the child has lead poisoning or a
20 blood lead level that exceeds the reference level [~~of concern~~] and
21 the physician believes the lead poisoning or blood lead level [~~of~~
22 ~~concern~~] resulted from the child's exposure to a dangerous level of
23 lead that may be a threat to the public health.

24 SECTION 3.0307. Section [88.007](#), Health and Safety Code, is
25 amended to read as follows:

26 Sec. 88.007. DEPARTMENT RULES FOR FOLLOW-UP CARE;
27 COORDINATION OF CARE. (a) The executive commissioner [department]

1 may adopt rules establishing standards for follow-up care provided
2 to children with a confirmed blood lead level that exceeds the
3 reference level [of concern].

4 (b) Rules adopted under this section must meet any federal
5 requirements for coordinated follow-up care for children with
6 confirmed blood lead levels that exceed the reference level [of
7 concern] and may include, in a manner consistent with current
8 federal guidelines:

9 (1) an environmental lead investigation of all or
10 parts of a child's home environment, child-care facility, or
11 child-occupied facility that may be a source of a lead hazard
12 causing or contributing to the child's lead exposure; and

13 (2) guidance to parents, guardians, and consulting
14 physicians on how to eliminate or control lead exposures that may be
15 contributing to the child's blood lead level.

16 SECTION 3.0308. Section 88.009, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 88.009. ENVIRONMENTAL LEAD INVESTIGATION PROCEDURES.
19 The executive commissioner [~~department~~] may adopt rules
20 establishing procedures for environmental lead investigations of
21 dwellings and other premises subject to this chapter. The rules
22 must meet, but may not exceed, any requirements established under
23 regulations adopted by the federal Environmental Protection Agency
24 under Subchapter IV, Toxic Substances Control Act (15 U.S.C.
25 Section 2681 et seq.).

26 SECTION 3.0309. Section 89.001(5), Health and Safety Code,
27 is amended to read as follows:

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1 (5) "Jail" means:

2 (A) a county jail; or

(B) a facility for the confinement of persons accused of an offense that is:

(ii) operated by a vendor under contract with a community supervision and corrections department under Chapter 76, Government Code.

11 SECTION 3.0310. Section 89.011(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) The governing body of a jail or community corrections
14 facility, through the community supervision and corrections
15 department, shall require that each employee or volunteer working
16 or providing services in a jail or a community corrections
17 facility, who meets the screening guidelines prescribed by
18 department [board] rule, present to the governing body a
19 certificate signed by a physician that states that:

20 (1) the employee or volunteer has been tested for
21 tuberculosis infection in accordance with department [board]
22 rules; and

25 SECTION 3.0311. Section 89.051(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) Each inmate in a jail or community corrections facility

1 shall undergo a screening test for tuberculosis infection approved
2 by the executive commissioner [board] if:

3 (1) the inmate will probably be confined in jail or a
4 community corrections facility for more than seven days; and

5 (2) the inmate meets the screening guidelines
6 prescribed by department [board] rules.

7 SECTION 3.0312. Section 89.073, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 89.073. ADOPTION OF LOCAL STANDARDS. (a) The
10 standards prescribed by this chapter and the rules adopted by the
11 executive commissioner [board] relating to screening tests or
12 examinations for tuberculosis required for certain employees and
13 volunteers are minimum standards.

14 (b) With the prior approval of the department:

15 (1) a governing body may adopt and enforce standards
16 for carrying out this chapter if the standards are compatible with
17 and equal to or more stringent than the standards prescribed by this
18 chapter and department [~~the board's~~] rules; and

19 (2) a private facility may adopt and enforce standards
20 for carrying out this chapter if the standards are compatible with
21 and equal to or more stringent than the standards prescribed by this
22 chapter and department [~~the board's~~] rules.

23 (c) The executive commissioner [board] shall adopt
24 substantive and procedural rules to govern the submission of
25 standards adopted under Subsection (b). At a minimum these rules
26 must contain:

27 (1) a procedure for the submission of standards for

1 departmental review; and

2 (2) an internal departmental appeal process by which a
3 governing body or private entity may seek a review of the
4 department's decision to reject proposed standards.

5 SECTION 3.0313. Section 89.101(1), Health and Safety Code,
6 is amended to read as follows:

7 (1) "Corrections facility" means:

8 (A) a jail or community corrections facility,
9 without regard to whether the jail or facility satisfies the
10 requirements of Section 89.002;

11 (B) any correctional facility operated by or
12 under contract with a division of the Texas Department of Criminal
13 Justice; or

14 (C) a detention facility operated by the Texas
15 Juvenile Justice Department [Youth Commission].

16 SECTION 3.0314. Section 92.002, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 92.002. REPORTABLE INJURY; RULES. (a) Spinal cord
19 injuries, traumatic brain injuries, and submersion injuries are
20 reportable to the department. The executive commissioner [board]
21 by rule shall define those terms for reporting purposes.

22 (b) The executive commissioner [board] may adopt rules that
23 require other injuries to be reported under this subchapter.

24 (c) The executive commissioner [board] shall maintain and
25 revise, as necessary, the list of reportable injuries.

26 (d) The executive commissioner [board] shall adopt rules
27 necessary to administer this subchapter.

1 SECTION 3.0315. Section 92.003(c), Health and Safety Code,
2 is amended to read as follows:

3 (c) The department [board] shall prescribe the form and
4 method of reporting. The department [board] may require the
5 reports to contain any information, including the person's name,
6 address, age, sex, race, occupation, employer, and attending
7 physician, necessary to achieve the purposes of this subchapter.

8 SECTION 3.0316. Section 92.004(b), Health and Safety Code,
9 is amended to read as follows:

10 (b) The department may seek, receive, and spend any funds
11 received through appropriations, grants, donations, or
12 contributions from public or private sources for the purpose of
13 identifying, reporting, or preventing those injuries [~~that have~~
14 ~~been~~] determined by the executive commissioner [board] to be
15 harmful or to be a threat to the public health.

16 SECTION 3.0317. Sections 92.006(b) and (c), Health and
17 Safety Code, are amended to read as follows:

18 (b) The executive commissioner [board] shall adopt rules
19 establishing procedures to ensure that all information and records
20 maintained by the department under this subchapter are kept
21 confidential and protected from release to unauthorized persons.

22 (c) The commissioner [director], the commissioner's
23 [~~director's~~] designee, the executive commissioner, or an employee
24 of the department or commission may not be examined in a judicial or
25 other proceeding about the existence or contents of pertinent
26 records of, investigation reports of, or reports or information
27 about a person examined or treated for an injury without that

1 person's consent.

2 SECTION 3.0318. Sections **92.007**(b) and (c), Health and
3 Safety Code, are amended to read as follows:

4 (b) The department [~~director or the director's designee~~]
5 may enter at reasonable times and inspect within reasonable limits
6 a public place or building, including a public conveyance, in the
7 department's [~~director's~~] duty to prevent an injury.

8 (c) The department [~~director or the director's designee~~]
9 may not enter a private residence to conduct an investigation about
10 the causes of injuries without first receiving permission from a
11 lawful adult occupant of the residence.

12 SECTION 3.0319. Section **92.010**, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 92.010. COORDINATION WITH DEPARTMENT OF ASSISTIVE AND
15 REHABILITATIVE SERVICES [~~TEXAS REHABILITATION COMMISSION~~]. The
16 department and the Department of Assistive and Rehabilitative
17 Services [~~Texas Rehabilitation Commission~~] shall enter into a
18 memorandum of understanding to:

19 (1) exchange relevant injury data on an ongoing basis
20 notwithstanding Section **92.006**;

21 (2) maintain the confidentiality of injury data
22 provided to the department by the Department of Assistive and
23 Rehabilitative Services [~~commission~~] in accordance with Section
24 **92.006** and Section **111.057**, Human Resources Code; and

25 (3) cooperate in conducting investigations of spinal
26 cord and traumatic brain injuries.

27 SECTION 3.0320. Section **92.011**(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) The department and the Texas Traumatic Brain Injury
3 Advisory Council established [within the department] under
4 Subchapter B shall:

5 (1) exchange relevant injury data on an ongoing basis
6 to the extent allowed by Section 92.006;

7 (2) maintain the confidentiality of injury data
8 provided to the council by the department in accordance with
9 Section 92.006;

10 (3) permit the council to review and comment on the
11 department's [board's] rules under Section 92.002(b) before the
12 rules are proposed; and

13 (4) cooperate in conducting investigations of
14 traumatic brain injuries.

15 SECTION 3.0321. Section 92.052, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 92.052. ADVISORY COUNCIL [ASSOCIATED AGENCY]. [(a)]
18 The Texas Traumatic Brain Injury Advisory Council is an advisory
19 council within the commission [department].

20 [(b) Notwithstanding Subsection (a), if, as a result of
21 legislation enacted in the 78th Legislature, Regular Session, 2003,
22 a state agency other than the department is designated to serve as
23 the agency with primary responsibility in relation to persons with
24 physical disabilities, the council is an advisory council within
25 that state agency and a reference in this chapter to the department
26 means that agency.]

27 SECTION 3.0322. Section 92.053(b), Health and Safety Code,

1 is amended to read as follows:

2 (b) The council is composed of 21 [22] members appointed as
3 follows:

4 (1) eight public consumer members appointed by the
5 executive commissioner [~~of health and human services~~], at least
6 three of whom must be individuals related to persons with a
7 traumatic brain injury and at least three of whom must be persons
8 with a brain injury;

9 (2) six professional members appointed by the
10 executive commissioner [~~of health and human services~~], each of whom
11 must have special training and interest in the care, treatment, or
12 rehabilitation of persons with a traumatic brain injury, with one
13 representative each from:

14 (A) acute hospital trauma units;

15 (B) the National Institute on [~~for~~] Disability
16 and Rehabilitation Research Traumatic Brain Injury Model System in
17 this state;

18 (C) acute or post-acute rehabilitation
19 facilities;

20 (D) community-based services;

21 (E) faculties of institutions of higher
22 education; and

23 (F) providers in the areas of physical therapy,
24 occupational therapy, or cognitive rehabilitation; and

25 (3) seven [~~eight~~] state agency members, with one
26 representative from each of the following agencies appointed by the
27 chief executive officer of the agency:

1 (A) [Texas] Department of State Health Services;
2 (B) [Texas] Department of Aging and Disability
3 [Human] Services;
4 (C) Department of Assistive and Rehabilitative
5 Services [~~Texas Department of Mental Health and Mental Retardation~~,
6 [~~(D) Texas Rehabilitation Commission~~];
7 [(D)] [~~(E)~~] Health and Human Services Commission;
8 [(E)] [~~(F)~~] Texas Education Agency;
9 [(F)] [~~(G)~~] Texas [~~Planning~~] Council for
10 Developmental Disabilities; and
11 [(G)] [~~(H)~~] Texas Department of Insurance.

12 SECTION 3.0323. Section 92.057, Health and Safety Code, is
13 amended by amending Subsections (b) and (c) and adding Subsection
14 (b-1) to read as follows:

15 (b) Except as provided by Subsection (b-1), a [A] member who
16 is a representative of a state agency shall be reimbursed for travel
17 expenses incurred while conducting council business from the funds
18 of the agency the person represents in accordance with the General
19 Appropriations Act.

20 (b-1) A member who is a representative of a health and human
21 services agency listed by Section 531.001(4), Government Code,
22 shall be reimbursed for travel expenses incurred while conducting
23 council business from the funds of the commission in accordance
24 with the General Appropriations Act.

25 (c) If money is available for this purpose in the account
26 established under Section 92.062(b), the commission [~~department~~]
27 shall reimburse a public consumer member for the member's actual

1 and necessary expenses incurred in performing council duties,
2 including travel, meals, lodging, respite care for a dependent with
3 a disability, and telephone long-distance charges.

4 SECTION 3.0324. Section 92.060, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 92.060. COMMISSION DUTIES [~~OF THE DEPARTMENT~~]. (a)

7 The commission [~~department~~] shall:

8 (1) provide administrative support services to the
9 council;

10 (2) accept gifts and grants on behalf of the council
11 from any public or private entity;

12 (3) receive, deposit, and disburse gifts and grants
13 for the council in accordance with this subchapter and provide
14 other administrative services in support of the council as
15 requested by and negotiated with the council; and

16 (4) enter into a memorandum of understanding with the
17 council that delineates the responsibilities of the commission
18 [~~department~~] and the council under this subchapter and amend the
19 memorandum as necessary to reflect changes in those
20 responsibilities.

21 (b) The executive commissioner [~~board~~] may adopt rules as
22 necessary to implement the commission's [~~department's~~] duties under
23 this subchapter and federal developmental disability laws.

24 SECTION 3.0325. Section 92.062(b), Health and Safety Code,
25 is amended to read as follows:

26 (b) The [~~health and human services~~] commission shall
27 deposit any money received under Subsection (a) to the credit of the

1 Texas Traumatic Brain Injury Advisory Council account. The Texas
2 Traumatic Brain Injury Advisory Council account is an account in
3 the general revenue fund that may be appropriated only for the
4 purpose of carrying out this subchapter.

5 SECTION 3.0326. Section 93.013(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) The council may receive gifts and grants from any public
8 or private source to perform its duties under this chapter. The
9 department shall accept the gifts on behalf of the council [and
10 shall deposit any funds accepted under this section to the credit of
11 a special account in the general revenue fund as required by Section
12 93.014].

13 SECTION 3.0327. Section 93.014, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 93.014. FUNDS FOR CLINICAL RESEARCH [~~HEART DISEASE~~
16 ~~AND STROKE RESOURCE FUND.~~ (a) ~~The heart disease and stroke~~
17 ~~resource fund is an account of the general revenue fund~~].

18 [(b) ~~The legislature may appropriate money deposited to the~~
19 ~~credit of the heart disease and stroke resource fund only to the~~
20 ~~council for:~~

21 [(1) ~~heart disease and stroke prevention, research,~~
22 ~~and medical care for heart attack and stroke victims; and~~
23 [(2) ~~grants to nonprofit heart disease and stroke~~
24 ~~organizations.~~

25 [(c)] The council shall develop a policy governing the award
26 of funds for clinical research that follows scientific peer review
27 guidelines for primary and secondary prevention of heart disease or

1 stroke or that follows other review procedures that are designed to
2 distribute those funds on the basis of scientific merit.

3 ~~[(d) Interest earned from the investment of the heart~~
4 ~~disease and stroke resource fund shall be deposited to the credit of~~
5 ~~the fund.]~~

6 SECTION 3.0328. Section 94.004(c), Health and Safety Code,
7 is amended to read as follows:

8 (c) The department may charge a fee for the course to
9 persons other than employees of entities receiving state or federal
10 funds for hepatitis C counseling and testing programs through a
11 contract with the department. The executive commissioner by rule
12 [~~board~~] shall set the fee in an amount necessary to cover the costs
13 of providing the course.

14 SECTION 3.0329. Section 95.002(f), Health and Safety Code,
15 is amended to read as follows:

16 (f) The office shall:

17 (1) provide educational and other material to assist
18 local risk assessment activities;

19 (2) monitor the quality of risk assessment activities
20 provided under this chapter; and

21 (3) consult with the Texas Board of Nursing [~~Nurse~~
22 ~~Examiners~~] to determine the training requirements necessary for a
23 nurse or other person to conduct risk assessment activities under
24 this chapter.

25 SECTION 3.0330. Section 95.051, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 95.051. DEFINITION [~~DEFINITIONS~~]. In this subchapter,

1 "public"[+]

2 [+(1) "Department" means the Department of State Health
3 Services.]

4 [+(2) "Executive commissioner" means the executive
5 commissioner of the Health and Human Services Commission.]

6 [+(3) "Public" health district" means a district
7 created under Chapter 121.]

8 SECTION 3.0331. Section 95A.001, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 95A.001. DEFINITION [~~DEFINITIONS~~]. In this chapter,

11 "council"[+]

12 [+(1) "Commission" means the Health and Human Services
13 Commission.]

14 [+(2) "Council"] means the Texas Diabetes Council.

15 SECTION 3.0332. Section 96.001(3), Health and Safety Code,
16 is amended to read as follows:

17 (3) "Health facility" includes:

18 (A) a general or special hospital licensed by the
19 department under Chapter 241;

20 (B) a physician-owned or physician-operated
21 clinic;

22 (C) a publicly or privately funded medical
23 school;

24 (D) a state hospital operated [~~or state school~~
25 ~~maintained and managed~~] by the department or a state supported
26 living center operated by [~~Department of State Health Services or~~]
27 the Department of Aging and Disability Services;

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1 (E) a public health clinic conducted by a local
2 health unit, health department, or public health district organized
3 and recognized under Chapter 121; and

4 (F) another facility specified by a rule adopted
5 by the executive commissioner.

6 SECTION 3.0333. Section 98.110(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) Notwithstanding any other law, the department may
9 disclose information reported by health care facilities under
10 Section 98.103 or 98.1045 to other programs within the department,
11 to the commission [~~Health and Human Services Commission~~], to other
12 health and human services agencies, as defined by Section 531.001,
13 Government Code, and to the federal Centers for Disease Control and
14 Prevention, or any other agency of the United States Department of
15 Health and Human Services, for public health research or analysis
16 purposes only, provided that the research or analysis relates to
17 health care-associated infections or preventable adverse events.
18 The privilege and confidentiality provisions contained in this
19 chapter apply to such disclosures.

20 SECTION 3.0334. Sections 101.001(1) and (3), Health and
21 Safety Code, are amended to read as follows:

24 (A) is established to provide support services to
25 aid persons with [victims of] Alzheimer's disease and related
26 disorders and their caregivers;

(B) encourages research into the cause.

1 prevention, treatment, and care of persons with [~~victims of~~]
2 Alzheimer's disease and related disorders; and

3 (C) is dedicated to the development of essential
4 services for persons with [~~victims of~~] Alzheimer's disease and
5 related disorders and their caregivers.

6 (3) "Primary family caregiver" means an individual who
7 is a relative of a person with [~~victim of~~] Alzheimer's disease or
8 related disorders, who has or has had a major responsibility for
9 care and supervision of the person [~~victim~~], and who is not a
10 professional health care provider paid to care for the person
11 [~~victim~~].

12 SECTION 3.0335. Section 101.002(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) The Texas Council on Alzheimer's Disease and Related
15 Disorders is composed of:

16 (1) five public members, one of whom is an individual
17 related to a person with [~~victim of~~] Alzheimer's disease or related
18 disorders but who is not a primary family caregiver, one of whom is
19 a primary family caregiver, two of whom are members of an
20 Alzheimer's disease and related disorders support group, and one of
21 whom is an interested citizen;

22 (2) seven professional members with special training
23 and interest in Alzheimer's disease and related disorders, with one
24 representative each from nursing facilities [~~homes~~], physicians,
25 nurses, public hospitals, private hospitals, home health agencies,
26 and faculty of institutions of higher education; and

27 (3) the [~~chief executive officer or the officer's~~

1 ~~designated~~] representative from the commission, department, and
2 [Texas] Department of [on] Aging and Disability Services designated
3 by the executive commissioner or commissioner of each agency, as
4 applicable[, Texas Department of Human Services, Texas Department
5 of Mental Health and Mental Retardation, and Long-Term Care
6 Coordinating Council for the Elderly].

7 SECTION 3.0336. Section 101.007(a), Health and Safety Code,
8 is amended to read as follows:

9 (a) The council shall:

10 (1) advise the department [board] and recommend needed
11 action for the benefit of persons with [victims of] Alzheimer's
12 disease and related disorders and for their caregivers;

13 (2) coordinate public and private family support
14 networking systems for primary family caregivers;

15 (3) disseminate information on services and related
16 activities for persons with [victims of] Alzheimer's disease and
17 related disorders to the medical and health care community, the
18 academic community, primary family caregivers, advocacy
19 associations, and the public;

20 (4) coordinate a volunteer assistance program
21 primarily for in-home and respite care services;

22 (5) encourage research to benefit persons with
23 [victims of] Alzheimer's disease and related disorders;

24 (6) recommend to the department [board] disbursement
25 of grants and funds available for the council; and

26 (7) facilitate coordination of state agency services
27 and activities relating to persons with [victims of] Alzheimer's

1 disease and related disorders.

2 SECTION 3.0337. Section 101.008, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 101.008. DUTIES OF DEPARTMENT. The department shall:

5 (1) provide administrative assistance, services, and
6 materials to the council;

7 (2) accept, deposit, and disburse funds made available
8 to the council at the direction of the executive commissioner
9 [~~board~~];

10 (3) accept gifts and grants on behalf of the council
11 from any public or private entity;

12 (4) maintain a population data base of persons with
13 [~~victims of~~] Alzheimer's disease and related disorders in this
14 state; and

15 (5) apply for and receive on behalf of the council any
16 appropriations, gifts, or other funds from the state or federal
17 government or any other public or private entity, subject to
18 limitations and conditions prescribed by legislative
19 appropriation.

20 SECTION 3.0338. Section 101.009(b), Health and Safety Code,
21 is amended to read as follows:

22 (b) The department [~~board~~] shall deposit any money received
23 under Subsection (a) in the state treasury [~~to the credit of the~~
24 ~~Alzheimer's disease and related disorders council fund~~] to be used
25 for the purposes of this chapter.

26 SECTION 3.0339. Section 101.010, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 101.010. REPORT. Before September 1 of each
2 even-numbered year, the council shall submit a biennial report of
3 the council's activities and recommendations to the governor,
4 lieutenant governor, speaker of the house of representatives, and
5 members of the legislature[~~, Long-Term Care Coordinating Council~~
6 ~~for the Elderly, and board~~].

7 SECTION 3.0340. Sections 103.002(a), (b), and (c), Health
8 and Safety Code, are amended to read as follows:

9 (a) The Texas Diabetes Council is composed of 11 citizen
10 members appointed from the public and one representative each from
11 the department, the commission [~~Health and Human Services~~
12 ~~Commission~~], and the Department of Assistive and Rehabilitative
13 Services.

14 (b) The governor, with the advice and consent of the senate,
15 shall appoint the following citizen members:

16 (1) a licensed physician with a specialization in
17 treating diabetes;

18 (2) a registered nurse with a specialization in
19 diabetes education and training;

20 (3) a registered and licensed dietitian with a
21 specialization in the diabetes education field;

22 (4) a person with experience and training in public
23 health policy;

24 (5) three consumer members, with special
25 consideration given to persons active in the Texas affiliates of
26 the Juvenile Diabetes Research Foundation (JDRF) or the American
27 Diabetes Association; and

1 (6) four members from the general public with
2 expertise or demonstrated commitment to diabetes issues.

3 (c) The commissioner, executive commissioner, and
4 commissioner of assistive and rehabilitative services [~~chairman of~~
5 ~~the board of each agency listed in Subsection (a)~~] shall appoint
6 that agency's representative to the council. Agency
7 representatives shall be nonvoting members of the council.

8 SECTION 3.0341. Section 103.008(b), Health and Safety Code,
9 is amended to read as follows:

10 (b) If the office of a member who is an agency
11 representative becomes vacant, the commissioner or executive
12 commissioner, as appropriate, [~~chairman of the board~~] of that
13 agency shall appoint an agency representative to serve for the
14 remainder of that member's term.

15 SECTION 3.0342. Section 103.009, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 103.009. REIMBURSEMENT. [(a)] The department shall
18 reimburse council and advisory committee members for travel and
19 other necessary expenses incurred in performing official duties as
20 provided by Section 2110.004, Government Code [~~at the same rate~~
21 ~~provided for state employees in the General Appropriations Act~~].

22 [(b) Funds for travel reimbursement shall be appropriated
23 to the department.]

24 SECTION 3.0343. Section 103.013(c), Health and Safety Code,
25 is amended to read as follows:

26 (c) The council shall make written recommendations for
27 performing its duties under this chapter to the executive

1 commissioner [~~board~~] and the legislature. If the council considers
2 a recommendation that will affect an agency not represented on the
3 council, the council shall seek the advice and assistance of the
4 agency before taking action on the recommendation. The council's
5 recommendations shall be implemented by the agencies affected by
6 the recommendations.

7 SECTION 3.0344. Section [103.0131\(a\)](#), Health and Safety
8 Code, is amended to read as follows:

9 (a) In conjunction with developing each state plan
10 described in Section [103.013](#), the council shall conduct a statewide
11 assessment of existing programs for the prevention of diabetes and
12 treatment of individuals with diabetes that are administered by the
13 commission [~~Health and Human Services Commission~~] or a health and
14 human services agency, as defined by Section [531.001](#), Government
15 Code. As part of the assessment, the council shall collect data
16 regarding:

17 (1) the number of individuals served by the programs;
18 (2) the areas where services to prevent diabetes and
19 treat individuals with diabetes are unavailable; and
20 (3) the number of health care providers treating
21 individuals with diabetes under the programs.

22 SECTION 3.0345. Section [103.015\(a\)](#), Health and Safety Code,
23 is amended to read as follows:

24 (a) The council may receive gifts and grants from any public
25 or private source to perform its duties under this chapter. The
26 department shall accept the gifts on behalf of the council and shall
27 deposit any funds accepted under this section to the credit of [~~a~~

1 ~~special account in~~] the general revenue fund.

2 SECTION 3.0346. Sections [103.017](#)(a) and (c), Health and
3 Safety Code, are amended to read as follows:

4 (a) The department, commission, and [~~the~~] Department of
5 Assistive and Rehabilitative Services[~~, and the Health and Human~~
6 ~~Services Commission~~] shall work with the council to jointly
7 develop, produce, and implement a general public awareness strategy
8 focusing on diabetes, its complications, and techniques for
9 achieving good management. Each agency shall pay for the costs of
10 producing and disseminating information on diabetes to clients
11 served by that agency.

12 (c) The department, commission, and [~~the~~] Department of
13 Assistive and Rehabilitative Services[~~, and the Health and Human~~
14 ~~Services Commission~~] may jointly develop and implement a statewide
15 plan for conducting regional training sessions for public and
16 private service providers, including institutional health care
17 providers, who have routine contact with persons with diabetes.

18 SECTION 3.0347. Section [103A.007](#), Health and Safety Code,
19 is amended to read as follows:

20 Sec. 103A.007. DUTIES OF COUNCIL. The council using
21 existing resources may conduct studies and advise the department,
22 the commission [~~Health and Human Services Commission~~], and the
23 Texas Department of Insurance on:

24 (1) public use data, outcome data, and other
25 information submitted to or collected by the department under
26 Chapter 108 or other law related to hemophilia or other bleeding or
27 clotting disorders and the department's disclosure and

1 dissemination of that information within and outside the
2 department; and

3 (2) other issues that affect the health and wellness
4 of persons living with hemophilia or other bleeding or clotting
5 disorders.

6 SECTION 3.0348. Section 104.011(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) The statewide health coordinating council is composed
9 of 17 members determined as follows:

10 (1) the executive commissioner or a representative
11 designated by the executive commissioner;

12 (2) the chair of the Texas Higher Education
13 Coordinating Board or a representative designated by the presiding
14 officer;

15 (3) the commissioner or a representative designated by
16 the commissioner;

17 (4) the commissioner [~~presiding officer~~] of aging [~~the~~
18 ~~Department of Aging~~] and disability services [~~Disability Services~~]
19 or a representative designated by the commissioner of aging and
20 disability services [~~presiding officer~~]; and

21 (5) the following members appointed by the governor:

22 (A) three health care professionals from the
23 allied health, dental, medical, mental health, and pharmacy
24 professions, no two of whom may be from the same profession;

25 (B) one registered nurse;

26 (C) two representatives of a university or
27 health-related institution of higher education;

- 1 (D) one representative of a junior or community
2 college with a nursing program;
3 (E) one hospital administrator;
4 (F) one managed care administrator; and
5 (G) four public members.

6 SECTION 3.0349. Section [104.0112\(c\)](#), Health and Safety
7 Code, is amended to read as follows:

8 (c) If the executive commissioner has knowledge that a
9 potential ground for removal exists, the executive commissioner
10 shall notify the presiding officer of the council of the potential
11 ground. The presiding officer shall then notify the governor and
12 the attorney general that a potential ground for removal exists. If
13 the potential ground for removal involves the presiding officer,
14 the executive commissioner shall notify the next highest ranking
15 officer of the council, who shall then notify the governor and the
16 attorney general that a potential ground for removal exists.

17 SECTION 3.0350. Section [104.023](#), Health and Safety Code, is
18 amended to read as follows:

19 Sec. 104.023. REVIEW OF STATE HEALTH PLAN. The statewide
20 health coordinating council shall submit the state health plan to
21 the commission [~~Health and Human Services Commission~~] for review
22 and comment before the plan is sent to the governor.

23 SECTION 3.0351. Section [104.043\(a\)](#), Health and Safety Code,
24 is amended to read as follows:

25 (a) If the department does not receive necessary data from
26 an entity as required by department [~~the executive commissioner's~~]
27 rules, the department shall send to the entity a notice requiring

1 the entity to submit the data not later than the 30th day after the
2 date on which the entity receives the notice.

3 SECTION 3.0352. Section 105.005, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 105.005. RULES. The executive commissioner [~~of the~~
6 ~~Health and Human Services Commission~~] may adopt rules to govern the
7 reporting and collection of data.

8 SECTION 3.0353. Section 107A.001, Health and Safety Code,
9 is amended to read as follows:

10 Sec. 107A.001. CENTER FOR ELIMINATION OF
11 DISPROPORTIONALITY AND DISPARITIES. The executive commissioner
12 [~~of the Health and Human Services Commission~~] shall maintain a
13 center for elimination of disproportionality and disparities in the
14 commission [~~Health and Human Services Commission~~] to:

15 (1) assume a leadership role in working or contracting
16 with state and federal agencies, universities, private interest
17 groups, communities, foundations, and offices of minority health to
18 develop health initiatives to decrease or eliminate health and
19 health access disparities among racial, multicultural,
20 disadvantaged, ethnic, and regional populations, including
21 appropriate language services; and

22 (2) maximize use of existing resources without
23 duplicating existing efforts.

24 SECTION 3.0354. Section 107A.003, Health and Safety Code,
25 is amended to read as follows:

26 Sec. 107A.003. FUNDING. The commission [~~Health and Human~~
27 ~~Services Commission~~] may distribute to the center unobligated and

1 unexpended appropriations to be used to carry out its powers.

2 SECTION 3.0355. Chapter 108, Health and Safety Code, is
3 amended to read as follows:

4 CHAPTER 108. ~~[TEXAS]~~ HEALTH CARE DATA COLLECTION ~~[INFORMATION~~
5 ~~COUNCIL]~~

6 Sec. 108.001. DEPARTMENT DUTIES ~~[CREATION OF COUNCIL]~~. The
7 department ~~[Texas Health Care Information Council]~~ shall
8 administer this chapter and report to the governor, the
9 legislature, and the public.

10 Sec. 108.002. DEFINITIONS. In this chapter:

11 (1) "Accurate and consistent data" means data that has
12 been edited by the department ~~[council]~~ and subject to provider
13 validation and certification.

14 ~~(2) "Board" means the Texas Board of Health.]~~

15 (3) "Certification" means the process by which a
16 provider confirms the accuracy and completeness of the data set
17 required to produce the public use data file in accordance with
18 department ~~[council]~~ rule.

19 (4) "Charge" or "rate" means the amount billed by a
20 provider for specific procedures or services provided to a patient
21 before any adjustment for contractual allowances. The term does
22 not include copayment charges to enrollees in health benefit plans
23 charged by providers paid by capitation or salary.

24 (4-a) "Commission" means the Health and Human Services
25 Commission.

26 (6) "Data" means information collected under Section
27 108.0065 or 108.009 in the form initially received.

1 [(7) "Department" means the Department of State Health
2 Services.]

3 (8) "Edit" means to use an electronic standardized
4 process developed and implemented by department [council] rule to
5 identify potential errors and mistakes in data elements by
6 reviewing data fields for the presence or absence of data and the
7 accuracy and appropriateness of data.

8 [(8-a) "Executive commissioner" means the executive
9 commissioner of the Health and Human Services Commission.]

10 (9) "Health benefit plan" means a plan provided by:

11 (A) a health maintenance organization; or
12 (B) an approved nonprofit health corporation
13 that is certified under Section 162.001, Occupations Code, and that
14 holds a certificate of authority issued by the commissioner of
15 insurance under Chapter 844, Insurance Code.

16 (10) "Health care facility" means:

17 (A) a hospital;
18 (B) an ambulatory surgical center licensed under
19 Chapter 243;
20 (C) a chemical dependency treatment facility
21 licensed under Chapter 464;

22 (D) a renal dialysis facility;
23 (E) a birthing center;
24 (F) a rural health clinic;
25 (G) a federally qualified health center as
26 defined by 42 U.S.C. Section 1396d(1)(2)(B); or
27 (H) a free-standing imaging center.

1 (11) "Health maintenance organization" means an
2 organization as defined in Section [843.002](#), Insurance Code.

3 (12) "Hospital" means a public, for-profit, or
4 nonprofit institution licensed or owned by this state that is a
5 general or special hospital, private mental hospital, chronic
6 disease hospital, or other type of hospital.

7 (13) "Outcome data" means measures related to the
8 provision of care, including:

- 9 (A) patient demographic information;
- 10 (B) patient length of stay;
- 11 (C) mortality;
- 12 (D) co-morbidity;
- 13 (E) complications; and
- 14 (F) charges.

15 (14) "Physician" means an individual licensed under
16 the laws of this state to practice medicine under Subtitle B, Title
17 3, Occupations Code.

18 (15) "Provider" means a physician or health care
19 facility.

20 (16) "Provider quality" means the extent to which a
21 provider renders care that, within the capabilities of modern
22 medicine, obtains for patients medically acceptable health
23 outcomes and prognoses, after severity adjustment.

24 (17) "Public use data" means patient level data
25 relating to individual hospitalizations that has not been
26 summarized or analyzed, that has had patient identifying
27 information removed, that identifies physicians only by use of

1 uniform physician identifiers, and that is severity and risk
2 adjusted, edited, and verified for accuracy and consistency.
3 Public use data may exclude some data elements submitted to the
4 department [~~council~~].

5 (19) "Severity adjustment" means a method to stratify
6 patient groups by degrees of illness and mortality.

7 (20) "Uniform patient identifier" means a number
8 assigned by the department [~~council~~] to an individual patient and
9 composed of numeric, alpha, or alphanumeric characters.

10 (21) "Uniform physician identifier" means a number
11 assigned by the department [~~council~~] to an individual physician and
12 composed of numeric, alpha, or alphanumeric characters.

13 (22) "Validation" means the process by which a
14 provider verifies the accuracy and completeness of data and
15 corrects any errors identified before certification in accordance
16 with department [~~council~~] rule.

17 [Sec. 108.0026. TRANSFER OF DUTIES; REFERENCE TO COUNCIL.]
18 (a) ~~The powers and duties of the Texas Health Care Information~~
19 ~~Council under this chapter were transferred to the Department of~~
20 ~~State Health Services in accordance with Section 1.19, Chapter 198~~
21 ~~(H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.~~

22 [(b) ~~In this chapter or other law, a reference to the Texas~~
23 ~~Health Care Information Council means the Department of State~~
24 ~~Health Services.~~]

25 [Sec. 108.003. COUNCIL COMPOSITION; EXPENSES.] (a) ~~The~~
26 ~~council is composed of four ex officio state agency members and 15~~
27 ~~members appointed by the governor in accordance with this section.~~

1 [~~(b) The ex officio members of the council are:~~

2 [~~(1) the commissioner of public health or the~~
3 ~~commissioner's designee;~~

4 [~~(2) the commissioner of health and human services or~~
5 ~~the commissioner's designee;~~

6 [~~(3) the commissioner of insurance or the~~
7 ~~commissioner's designee; and~~

8 [~~(4) the public insurance counsel or the counsel's~~
9 ~~designee.~~

10 [~~(c) The governor shall appoint the following members of the~~
11 ~~council:~~

12 [~~(1) three representatives of the business community,~~
13 ~~with at least one representing small businesses, who are purchasers~~
14 ~~of health care but who are not involved in the provision of health~~
15 ~~care or health insurance;~~

16 [~~(2) two representatives from labor, one of whom is~~
17 ~~not directly involved with management of health care benefits;~~

18 [~~(3) two representatives of consumers who are not~~
19 ~~professionally involved in the purchase, provision,~~
20 ~~administration, or review of health care or health care insurance;~~

21 [~~(4) two representatives of hospitals;~~

22 [~~(5) one representative of health maintenance~~
23 ~~organizations;~~

24 [~~(6) three representatives of physicians who are~~
25 ~~involved in direct patient care; and~~

26 [~~(7) two members who are not professionally involved~~
27 ~~in the purchase, provision, administration, or utilization review~~

1 ~~of health care or health care insurance and who have expertise in:~~
2 [(A) ~~health planning;~~
3 [(B) ~~health economics;~~
4 [(C) ~~provider quality assurance;~~
5 [(D) ~~information systems; or~~
6 [(E) ~~the reimbursement of medical education and~~
7 ~~research costs.~~

8 [(d) ~~The chairman is appointed by and serves at the pleasure~~
9 ~~of the governor. Members annually shall elect a vice chairman.~~

10 [(e) ~~A majority of voting members constitutes a quorum for~~
11 ~~the transaction of any business. An act by the majority of the~~
12 ~~voting members present at any meeting at which there is a quorum is~~
13 ~~considered to be an act of the council.~~

14 [(f) ~~The council may appoint committees and may elect any~~
15 ~~officers subordinate to those provided for in Subsection (d).~~

16 [(g) ~~The council shall appoint technical advisory~~
17 ~~committees and shall consult with the appropriate technical~~
18 ~~advisory committee with respect to a rule before the rule is finally~~
19 ~~adopted by the council. The council is not required to consult with~~
20 ~~a technical advisory committee before adopting an emergency rule in~~
21 ~~accordance with Section 2001.034, Government Code. The council~~
22 ~~shall submit an emergency rule adopted by the council to the~~
23 ~~appropriate advisory committee for review not later than the first~~
24 ~~advisory committee meeting that occurs after the rule is adopted.~~
25 ~~The council may consult with the appropriate technical advisory~~
26 ~~committee with respect to other formal action of the council. A~~
27 ~~technical advisory committee may consult with other professionals~~

1 ~~as necessary. Chapter 2110, Government Code, does not apply to an~~
2 ~~advisory committee appointed under this subsection. The technical~~
3 ~~advisory committees shall include:~~

4 ~~[(1) a technical advisory committee that includes,~~
5 ~~among other individuals, at least five practicing physicians~~
6 ~~licensed in this state to provide advice and recommendations to the~~
7 ~~council on the development and implementation of the methodology~~
8 ~~and the interpretation of a provider quality report and data under~~
9 ~~Section 108.010;~~

10 ~~[(2) a technical advisory committee composed of at~~
11 ~~least five practicing physicians licensed in this state who have~~
12 ~~been actively engaged in organized peer review at a hospital in this~~
13 ~~state to provide advice, recommendations, and peer review expertise~~
14 ~~to the council on:~~

15 ~~[(A) the use of peer review in the determination~~
16 ~~of quality inpatient care,~~

17 ~~[(B) the development and interpretation of data~~
18 ~~elements necessary to the determination of quality inpatient care,~~
19 ~~and~~

20 ~~[(C) the development and format of reports and~~
21 ~~information relating to provider quality,~~

22 ~~[(3) a technical advisory committee that includes~~
23 ~~providers and consumers to provide advice and recommendations to~~
24 ~~the council relating to education about the development and~~
25 ~~dissemination of provider reports and data;~~

26 ~~[(4) a technical advisory committee that includes~~
27 ~~representatives of consumers and each type of issuer of health~~

1 benefit plans to assist the council in complying with Section
2 108.009(o), and

3 [(5) a technical advisory committee composed of
4 providers, consumers, and individuals who have expertise in
5 hospital information systems, health information management,
6 quality management, and security of confidential data.

7 [(h) A member of the council may not receive compensation
8 for service on the council. However, the member shall be reimbursed
9 for the member's actual and necessary meals, lodging,
10 transportation, and incidental expenses if incurred while
11 performing council business.

12 [(i) A member of an advisory committee appointed by the
13 council may not receive compensation or reimbursement of any
14 expense incurred while serving on the committee.

15 [(j) Appointments to the council shall be made without
16 regard to the race, color, disability, sex, religion, age, or
17 national origin of appointees. Additionally, in making the
18 appointments to the council, the governor shall consider
19 geographical representation.

20 [(k) A person may not serve as a member of the council if the
21 person is required to register as a lobbyist under Chapter 305,
22 Government Code, because of the person's activities for
23 compensation on behalf of a profession related to the operation of
24 the council.

25 [Sec. 108.004. MEETINGS. (a) The council, council
26 committees, and technical advisory committees are subject to the
27 open meetings law, Chapter 551, Government Code.

1 [~~(b) The council shall meet as often as necessary, but not~~
2 ~~less often than quarterly, to perform its duties under this~~
3 ~~chapter.~~

4 [~~(c) The council shall publish a notice of its meetings in~~
5 ~~the Texas Register.~~

6 [~~Sec. 108.0045. OPEN RECORDS. Subject to the restrictions~~
7 ~~of this chapter, the council is subject to the open records law,~~
8 ~~Chapter 552, Government Code.~~

9 [~~Sec. 108.005. TERMS. (a) The terms of the agency members~~
10 ~~are concurrent with their terms of office. The appointed council~~
11 ~~members serve six-year staggered terms, with the terms of five~~
12 ~~members expiring September 1 of each odd-numbered year.~~

13 [~~(b) An appointed member may not serve more than two full~~
14 ~~consecutive terms.~~

15 [~~(c) It is a ground for removal from the council if a member~~
16 ~~of the council:~~

17 [~~(1) does not have at the time of appointment the~~
18 ~~qualifications required by Section 108.003;~~

19 [~~(2) does not maintain during service the~~
20 ~~qualifications required by Section 108.003;~~

21 [~~(3) cannot discharge the member's duties for a~~
22 ~~substantial part of the term for which the member is appointed~~
23 ~~because of illness or disability; or~~

24 [~~(4) fails to attend at least one-half of the~~
25 ~~regularly scheduled meetings that the member is eligible to attend~~
26 ~~during a calendar year.]~~

27 Sec. 108.006. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER

1 AND DEPARTMENT [COUNCIL]. (a) The department [council] shall
2 develop a statewide health care data collection system to collect
3 health care charges, utilization data, provider quality data, and
4 outcome data to facilitate the promotion and accessibility of
5 cost-effective, good quality health care. The executive
6 commissioner or department, as applicable, [council] shall perform
7 the following duties:

8 (1) the department shall direct the collection,
9 dissemination, and analysis of data under this chapter;

10 (2) [contract with] the department shall [~~to~~] collect
11 the data under this chapter;

12 (3) the executive commissioner shall adopt policies
13 and rules necessary to carry out this chapter, including rules
14 concerning data collection requirements;

15 (4) the department shall build on and not duplicate
16 other data collection required by state or federal law, by an
17 accreditation organization, or by department [~~board~~] rule;

18 (5) working with appropriate agencies, the
19 department, with the approval of the executive commissioner, shall
20 review public health data collection programs in this state and
21 recommend, where appropriate, consolidation of the programs and any
22 legislation necessary to effect the consolidation;

23 (6) the department shall assure that public use data
24 is made available and accessible to interested persons;

25 (7) the executive commissioner shall prescribe by rule
26 the process for providers to submit data consistent with Section
27 108.009;

1 (8) the executive commissioner shall adopt by rule and
2 the department shall implement a methodology to collect and
3 disseminate data reflecting provider quality in accordance with
4 Section 108.010;

5 (9) the department shall make reports to the
6 legislature, the governor, and the public on:

7 (A) the charges and rate of change in the charges
8 for health care services in this state;

9 (B) the effectiveness of the department
10 [~~council~~] in carrying out the legislative intent of this chapter;

11 (C) if applicable, any recommendations on the
12 need for further legislation; and

13 (D) the quality and effectiveness of health care
14 and access to health care for all citizens of this state;

15 (10) the department shall develop an annual work plan
16 and establish priorities to accomplish its duties;

17 (11) the department shall provide consumer education
18 on the interpretation and understanding of the public use or
19 provider quality data before the data is disseminated to the
20 public;

21 (12) the department shall work with the commission
22 [~~Health and Human Services Commission~~] and each health and human
23 services agency that administers a part of the state Medicaid
24 program to avoid duplication of expenditures of state funds for
25 computer systems, staff, or services in the collection and analysis
26 of data relating to the state Medicaid program;

27 (13) the department shall work with the Department of

1 Information Resources in developing and implementing the statewide
2 health care data collection system and maintain consistency with
3 Department of Information Resources standards; and

4 (14) the department shall develop and implement a
5 health care information plan ~~[to be used by the department]~~ to:

6 (A) support public health and preventative
7 health initiatives;

8 (B) assist in the delivery of primary and
9 preventive health care services;

10 (C) facilitate the establishment of appropriate
11 benchmark data to measure performance improvements;

12 (D) establish and maintain a systematic approach
13 to the collection, storage, and analysis of health care data for
14 longitudinal, epidemiological, and policy impact studies; and

15 (E) develop and use system-based protocols to
16 identify individuals and populations at risk.

17 (b) The department ~~[council]~~ may:

18 (1) employ a ~~[or contract with the department to~~
19 ~~employ an executive]~~ director and other staff, including
20 administrative personnel, necessary to comply with this chapter and
21 rules adopted under this chapter;

22 (2) engage professional consultants as it considers
23 necessary to the performance of its duties; and

24 (3) ~~[adopt rules clarifying which health care~~
25 ~~facilities must provide data under this chapter; and~~

26 ~~[44]~~ apply for and receive any appropriation,
27 donation, or other funds from the state or federal government or any

1 other public or private source, subject to Section 108.015 and
2 limitations and conditions provided by legislative appropriation.

3 **(b-1) The executive commissioner may adopt rules clarifying**
4 **which health care facilities must provide data under this chapter.**

5 (c) The department [~~council~~] may not establish or recommend
6 rates of payment for health care services.

7 (d) The department [~~council~~] may not take an action that
8 affects or relates to the validity, status, or terms of an
9 interagency agreement [~~or a contract with the department~~] without
10 the executive commissioner's [~~board's~~] approval.

11 (e) In the collection of data, the department [~~council~~]
12 shall consider the research and initiatives being pursued by the
13 United States Department of Health and Human Services, the National
14 Committee for Quality Assurance, and The [~~the~~] Joint Commission [~~on~~
15 ~~Accreditation of Healthcare Organizations~~] to reduce potential
16 duplication or inconsistencies. The executive commissioner
17 [~~council~~] may not adopt rules that conflict with or duplicate any
18 federally mandated data collection programs or requirements of
19 comparable scope.

20 (f) The executive commissioner [~~council~~] shall prescribe by
21 rule a public use data file minimum data set that maintains patient
22 confidentiality and establishes data accuracy and consistency.

23 (g) The public use data file minimum data set as defined by
24 department [~~council~~] rule is subject to annual review by the
25 department [~~council with the assistance of the advisory committee~~
26 ~~under Section 108.003(g)(5)~~]. The purpose of the review is to
27 evaluate requests to modify the existing minimum data set and

1 editing process. A decision to modify the minimum data set by the
2 addition or deletion of data elements shall include consideration
3 of the value of the specific data to be added or deleted and the
4 technical feasibility of establishing data accuracy and
5 consistency. The department [~~council~~] may also consider the costs
6 to the department [~~council~~] and providers associated with modifying
7 the minimum data set.

8 (h) In accordance with Section 108.0135, the department
9 [~~council~~] may release data collected under Section 108.009 that is
10 not included in the public use data file minimum data set
11 established under Subsection (f).

12 ~~[Sec. 108.0062. DRUG PURCHASING COOPERATIVES.]~~ (a) The
13 ~~council~~ shall develop criteria for evaluating drug purchasing
14 cooperatives that purchase drugs on behalf of consumers and create
15 an evaluation form for consumers to evaluate drug purchasing
16 cooperatives.

17 ~~[(b) The council shall distribute the evaluation forms to~~
18 ~~the department, local health departments, the Texas Department of~~
19 ~~Insurance, and the consumer protection division of the office of~~
20 ~~the attorney general.~~

21 ~~[(c) The council shall compile the information from~~
22 ~~completed evaluation forms and make the information available to~~
23 ~~the public.]~~

24 Sec. 108.0065. POWERS AND DUTIES OF COMMISSION AND
25 DEPARTMENT [~~COUNCIL~~] RELATING TO MEDICAID MANAGED CARE. (a) In
26 this section, [+

27 (1) "Commission" means the Health and Human Services

1 Commission.

2 [+] "Medicaid managed care organization" means a
3 managed care organization, as defined by Section 533.001,
4 Government Code, that is contracting with the commission to
5 implement the Medicaid managed care program under Chapter 533,
6 Government Code.

7 (b) The commission may direct the department [~~council~~] to
8 collect data under this chapter with respect to Medicaid managed
9 care organizations. The department [~~council~~] shall coordinate the
10 collection of the data with the collection of data for health
11 benefit plan providers, but with the approval of the commission may
12 collect data in addition to the data otherwise required of health
13 benefit plan providers.

14 (c) Each Medicaid managed care organization shall provide
15 to the department the data required by the executive commissioner
16 [~~council~~] in the form required by the executive commissioner
17 [~~council~~] or, if the data is also being submitted to the commission
18 [~~or Medicaid operating agency~~], in the form required by the
19 commission [~~or Medicaid operating agency~~].

20 (d) Dissemination of data collected under this section is
21 subject to Sections 108.010, 108.011, 108.012, 108.013, 108.014,
22 and 108.0141.

23 (e) The commission shall analyze the data collected in
24 accordance with this section and shall use the data to:

25 (1) evaluate the effectiveness and efficiency of the
26 Medicaid managed care system;

27 (2) determine the extent to which Medicaid managed

1 care does or does not serve the needs of Medicaid recipients in this
2 state; and

3 (3) assess the cost-effectiveness of the Medicaid
4 managed care system in comparison to the fee-for-service system,
5 considering any improvement in the quality of care provided.

6 (h) The commission, using existing funds, may contract with
7 an entity to comply with the requirements under Subsection (e).

8 Sec. 108.007. REVIEW POWERS. (a) The ~~council, through~~
9 ~~the~~ department, ~~and~~ subject to reasonable rules and guidelines,
10 may:

11 (1) inspect documents and records used by data sources
12 that are required to compile data and reports; and

13 (2) compel providers to produce accurate documents and
14 records.

15 (b) The ~~department~~ ~~council~~ may enter into a memorandum of
16 understanding with a state agency, including the division of the
17 commission ~~Health and Human Services Commission~~ responsible for
18 the state Medicaid program, or with a school of public health or
19 another institution of higher education, to share data and
20 expertise, to obtain data for the ~~department~~ ~~council~~, or to make
21 data available to the ~~department~~ ~~council~~. An agreement entered
22 into under this subsection must protect patient confidentiality.

23 [Sec. 108.008. DUTIES OF DEPARTMENT.] (a) The ~~department,~~
24 ~~as the state health planning and development agency under Chapter~~
25 ~~104, is responsible for the collection of data under Chapter 311.~~

26 [(b) The ~~department~~ shall:]

27 [(1) contract with the council to collect data under]

1 ~~this chapter;~~

2 [+(2) provide administrative assistance to the
3 ~~council;~~

4 [+(3) coordinate administrative responsibilities with
5 ~~the council to avoid unnecessary duplication of the collection of~~
6 ~~data and other duties;~~

7 [+(4) on request of the council, give the council
8 ~~access to data collected by the department;~~

9 [+(5) submit or assist in the council's budget request
10 ~~to the legislature; and~~

11 [+(6) work with the Department of Information Resources
12 ~~in developing and implementing the statewide health care data~~
13 ~~collection system and maintain consistency with Department of~~
14 ~~Information Resources standards.~~

15 [(c) ~~The department may not take an action that affects or~~
16 ~~relates to the validity, status, or terms of an interagency~~
17 ~~agreement or a contract with the council without the council's~~
18 ~~approval.~~

19 [~~Sec. 108.0081. MEMORANDUM OF UNDERSTANDING.~~ The council
20 ~~and the department shall enter into a memorandum of understanding~~
21 ~~to implement the department's duties under Section 108.008(b).~~ The
22 ~~memorandum of understanding must address:~~

23 [+(1) ~~payroll and travel reimbursement services;~~

24 [+(2) ~~purchasing services;~~

25 [+(3) ~~personnel services;~~

26 [+(4) ~~budget management services;~~

27 [+(5) ~~computer support and maintenance services;~~

1 [~~(6) meeting coordination services;~~,
2 [~~(7) any other administrative support or other~~
3 ~~services to be provided by the department for the council; and~~
4 [~~(8) the manner in which the council will reimburse~~
5 ~~the department for the cost of services provided by the department~~
6 ~~for the council.~~]

7 Sec. 108.0085. DUTIES OF ATTORNEY GENERAL. The attorney
8 general shall furnish the department [~~council~~] with advice and
9 legal assistance that may be required to implement this chapter.

10 Sec. 108.009. DATA SUBMISSION AND COLLECTION. (a) The
11 department [~~council~~] may collect, and, except as provided by
12 Subsection [~~Subsections (c) and~~] (d), providers shall submit to the
13 department [~~council~~] or another entity as determined by the
14 department [~~council~~], all data required by this section. The data
15 shall be collected according to uniform submission formats, coding
16 systems, and other technical specifications necessary to make the
17 incoming data substantially valid, consistent, compatible, and
18 manageable using electronic data processing, if available.

19 (b) The executive commissioner [~~council~~] shall adopt rules
20 to implement the data submission requirements imposed by Subsection
21 (a) in appropriate stages to allow for the development of efficient
22 systems for the collection and submission of the data. A rule
23 adopted by the executive commissioner [~~council~~] that requires
24 submission of a data element that, before adoption of the rule, was
25 not required to be submitted may not take effect before the 90th day
26 after the date the rule is adopted and must take effect not later
27 than the first anniversary after the date the rule is adopted.

1 (d) The department [~~council~~] may not collect data from
2 individual physicians or from an entity that is composed entirely
3 of physicians and that is a professional association organized
4 under the former Texas Professional Association Act (Article 1528f,
5 Vernon's Texas Civil Statutes) or formed under the Texas
6 Professional Association Law, as described by Section 1.008(1),
7 Business Organizations Code, a limited liability partnership
8 organized under former Section 3.08, Texas Revised Partnership Act
9 (Article 6132b-3.08, Vernon's Texas Civil Statutes), or formed as
10 described by Subchapter J, Chapter 152, Business Organizations
11 Code, or a limited liability company organized under the former
12 Texas Limited Liability Company Act (Article 1528n, Vernon's Texas
13 Civil Statutes) or formed under the Texas Limited Liability Company
14 Law, as described by Section 1.008(e), Business Organizations Code,
15 except to the extent the entity owns and operates a health care
16 facility in this state. This subsection does not prohibit the
17 release of data about physicians using uniform physician
18 identifiers that has been collected from a health care facility
19 under this chapter.

20 (e) The department [~~council~~] shall establish [~~the~~
21 ~~department as~~] the single collection point for receipt of data from
22 providers. With the approval of the executive commissioner
23 [~~council and the board~~], the department may transfer collection of
24 any data required to be collected by the department under any other
25 law to the statewide health care data collection system.

26 (f) The executive commissioner [~~council~~] may not require
27 providers to submit data more frequently than quarterly, but

1 providers may submit data on a more frequent basis.

2 (g) The department [~~council~~] shall coordinate data
3 collection with the data collection formats used by federally
4 qualified health centers. To satisfy the requirements of this
5 chapter:

6 (1) a federally qualified health center shall submit
7 annually to the department [~~council~~] a copy of the Medicaid cost
8 report of federally qualified health centers; and

9 (2) a provider receiving federal funds under 42 U.S.C.
10 Section 254b or [~~or~~] 254c[, ~~or~~ 256] shall submit annually to the
11 department [~~council~~] a copy of the Uniform Data System [~~Bureau of~~
12 ~~Common Reporting Requirements~~] data report developed by the United
13 States Department of [~~Public~~] Health and Human Services [~~Service~~].

14 (h) The department shall coordinate data collection with
15 the data submission formats used by hospitals and other providers.
16 The department shall accept data in the format developed by the
17 American National Standards Institute or its successor or other
18 nationally accepted standardized forms that hospitals and other
19 providers use for other complementary purposes.

20 (i) The executive commissioner [~~council~~] shall develop by
21 rule reasonable alternate data submission procedures for providers
22 that do not possess electronic data processing capacity.

23 (k) The department [~~council~~] shall collect health care data
24 elements relating to payer type, the racial and ethnic background
25 of patients, and the use of health care services by consumers. The
26 department [~~council~~] shall prioritize data collection efforts on
27 inpatient and outpatient surgical and radiological procedures from

1 hospitals, ambulatory surgical centers, and free-standing imaging
2 [~~radiology~~] centers.

3 (m) To the extent feasible, the department [~~council~~] shall
4 obtain from public records the information that is available from
5 those records.

6 (o) A provider of a health benefit plan shall annually
7 submit to the department [~~council~~] aggregate data by service area
8 required by the Healthcare Effectiveness [~~Health Plan Employer~~]
9 Data and Information Set (HEDIS) as operated by the National
10 Committee for Quality Assurance. The department [~~council~~] may
11 approve the submission of data in accordance with other methods
12 generally used by the health benefit plan industry. If the
13 Healthcare Effectiveness [~~Health Plan Employer~~] Data and
14 Information Set does not generally apply to a health benefit plan,
15 the department [~~council~~] shall require submission of data in
16 accordance with other methods. This subsection does not relieve a
17 health care facility that provides services under a health benefit
18 plan from the requirements of this chapter. Information submitted
19 under this section is subject to Section 108.011 but is not subject
20 to Section 108.010.

21 Sec. 108.010. COLLECTION AND DISSEMINATION OF PROVIDER
22 QUALITY DATA. (a) Subject to Section 108.009, the department
23 [~~council~~] shall collect data reflecting provider quality based on a
24 methodology and review process established through the executive
25 commissioner's [~~council's~~] rulemaking process. The methodology
26 shall identify and measure quality standards and adhere to any
27 federal mandates.

1 (b) The department [council] shall study and analyze
2 initial methodologies for obtaining provider quality data,
3 including outcome data.

4 (c) The department [council] shall test the methodology by
5 collecting provider quality data for one year, subject to Section
6 [108.009](#). The department [council] may test using pilot
7 methodologies. After collecting provider quality data for one
8 year, the department [council] shall report findings applicable to
9 a provider to that provider and allow the provider to review and
10 comment on the initial provider quality data applicable to that
11 provider. The department [council] shall verify the accuracy of
12 the data during this review and revision process. After the review
13 and revision process, provider quality data for subsequent reports
14 shall be published and made available to the public, on a time
15 schedule the department [council] considers appropriate.

16 (d) If the department [council] determines that provider
17 quality data to be published under Subsection (c) does not provide
18 the intended result or is inaccurate or inappropriate for
19 dissemination, the department [council] is not required to publish
20 the data or reports based in whole or in part on the data. This
21 subsection does not affect the release of public use data in
22 accordance with Section [108.011](#) or the release of information
23 submitted under Section [108.009\(o\)](#).

24 (e) The executive commissioner [council] shall adopt rules
25 allowing a provider to submit concise written comments regarding
26 any specific provider quality data to be released concerning the
27 provider. The department [council] shall make the comments

1 available to the public at the office of the department [council]
2 and in an electronic form accessible through the Internet. The
3 comments shall be attached to any public release of provider
4 quality data. Providers shall submit the comments to the
5 department [council] to be attached to the public release of
6 provider quality data in the same format as the provider quality
7 data that is to be released.

8 (f) The methodology adopted [by the council] for measuring
9 quality shall include case-mix qualifiers, severity adjustment
10 factors, adjustments for medical education and research, and any
11 other factors necessary to accurately reflect provider quality.

12 (g) In addition to the requirements of this section, any
13 release of provider quality data shall comply with Sections
14 108.011(e) and (f).

15 (h) A provider quality data report may not identify an
16 individual physician by name, but must identify the physician by
17 the uniform physician identifier designated by the department
18 [council] under Section 108.011(c).

19 (i) The department [council] shall release provider quality
20 data in an aggregate form without uniform physician identifiers
21 when[+]

22 [+] the data relates to providers described by
23 Section 108.0025(1); or

24 [+] the cell size of the data is below the minimum
25 size established by department [council] rule that would enable
26 identification of an individual patient or physician.

27 Sec. 108.011. DISSEMINATION OF PUBLIC USE DATA AND

1 DEPARTMENT [COUNCIL] PUBLICATIONS. (a) The department [council]
2 shall promptly provide public use data and data collected in
3 accordance with Section 108.009(o) to those requesting it. The
4 public use data does not include provider quality data prescribed
5 by Section 108.010 or confidential data prescribed by Section
6 108.013.

7 (b) Subject to the restrictions on access to department
8 [council] data prescribed by Sections 108.010 and 108.013, and
9 using the public use data and other data, records, and matters of
10 record available to it, the department [council] shall prepare and
11 issue reports to the governor, the legislature, and the public as
12 provided by this section and Section 108.006(a). The department
13 [council] must issue the reports at least annually.

14 (c) Subject to the restrictions on access to department
15 [council] data prescribed by Sections 108.010 and 108.013, the
16 department [council] shall use public use data to prepare and issue
17 reports that provide information relating to providers, such as the
18 incidence rate of selected medical or surgical procedures. The
19 reports must provide the data in a manner that identifies
20 individual providers, including individual physicians, and that
21 identifies and compares data elements for all providers.
22 Individual physicians may not be identified by name, but shall be
23 identified by uniform physician identifiers. The executive
24 commissioner [council] by rule shall designate the characters to be
25 used as uniform physician identifiers.

26 (c-1) The department [council] shall use public use data to
27 prepare and issue reports that provide information for review and

1 analysis by the commission [~~Health and Human Services Commission~~]
2 relating to services that are provided in a niche hospital, as
3 defined by Section 105.002, Occupations Code, and that are provided
4 by a physician with an ownership interest in the niche hospital.

5 (c-2) Subsection (c-1) does not apply to an ownership
6 interest in publicly available shares of a registered investment
7 company, such as a mutual fund, that owns publicly traded equity
8 securities or debt obligations issued by a niche hospital or an
9 entity that owns the niche hospital.

10 (d) The executive commissioner [~~council~~] shall adopt
11 procedures to establish the accuracy and consistency of the public
12 use data before releasing the public use data to the public. The
13 department may adopt additional procedures as the department
14 determines necessary.

15 (e) If public use data is requested from the department
16 [~~council~~] about a specific provider, the department [~~council~~] shall
17 notify the provider about the release of the data. This subsection
18 does not authorize the provider to interfere with the release of
19 that data.

20 (f) A report issued by the department [~~council~~] shall
21 include a reasonable review and comment period for the affected
22 providers before public release of the report.

23 (g) The executive commissioner [~~council~~] shall adopt rules
24 allowing a provider to submit concise written comments regarding
25 any specific public use data to be released concerning the
26 provider. The department [~~council~~] shall make the comments
27 available to the public at [~~and~~] the office of the department

1 [council] and in an electronic form accessible through the
2 Internet. The comments shall be attached to any public release of
3 the public use data. Providers shall submit the comments to the
4 department [council] to be attached to the public release of public
5 use data in the same format as the public use data that is to be
6 released.

7 (h) Tapes containing public use data and provider quality
8 reports that are released to the public must include general
9 consumer education material, including an explanation of the
10 benefits and limitations of the information provided in the public
11 use data and provider quality reports.

12 (i) The department [council] shall release public use data
13 in an aggregate form without uniform physician identifiers when[+
14 [+(1) the data relates to providers described by
15 section 108.0025(1); or

16 [+(2)] the cell size of the data is below the minimum
17 size established by department [council] rule that would enable
18 identification of an individual patient or physician.

19 Sec. 108.012. COMPUTER ACCESS TO DATA. (a) The department
20 [council] shall provide a means for computer-to-computer access to
21 the public use data. All reports shall maintain patient
22 confidentiality as provided by Section 108.013.

23 (b) The department [council] may charge a person requesting
24 public use or provider quality data a fee for the data. The fees may
25 reflect the quantity of information provided and the expense
26 incurred by the department [council] in collecting and providing
27 the data. The executive commissioner by rule [and] shall [be] set

1 the fees at a level that will raise revenue sufficient for the
2 operation of the department [~~council~~]. The department [~~council~~]
3 may not charge a fee for providing public use data to another state
4 agency.

5 Sec. 108.013. CONFIDENTIALITY AND GENERAL ACCESS TO DATA.

6 (a) The data received by the department under this chapter shall be
7 used by the department and commission for the benefit of the public.
8 Subject to specific limitations established by this chapter and
9 department [~~executive commissioner~~] rule, the department shall
10 make determinations on requests for information in favor of access.

11 (b) The executive commissioner by rule shall designate the
12 characters to be used as uniform patient identifiers. The basis for
13 assignment of the characters and the manner in which the characters
14 are assigned are confidential.

15 (c) Unless specifically authorized by this chapter, the
16 department may not release and a person or entity may not gain
17 access to any data obtained under this chapter:

18 (1) that could reasonably be expected to reveal the
19 identity of a patient;

20 (2) that could reasonably be expected to reveal the
21 identity of a physician;

22 (3) disclosing provider discounts or differentials
23 between payments and billed charges;

24 (4) relating to actual payments to an identified
25 provider made by a payer; or

26 (5) submitted to the department in a uniform
27 submission format that is not included in the public use data set

1 established under Sections [108.006\(f\)](#) and (g), except in accordance
2 with Section [108.0135](#).

3 (d) Except as provided by this section, all data collected
4 and used by the department under this chapter is subject to the
5 confidentiality provisions and criminal penalties of:

- 6 (1) [Section 311.037](#);
7 (2) [Section 81.103](#); and
8 (3) [Section 159.002](#), Occupations Code.

9 (e) Data on patients and compilations produced from the data
10 collected that identify patients are not:

11 (1) subject to discovery, subpoena, or other means of
12 legal compulsion for release to any person or entity except as
13 provided by this section; or

14 (2) admissible in any civil, administrative, or
15 criminal proceeding.

16 (f) Data on physicians and compilations produced from the
17 data collected that identify physicians are not:

18 (1) subject to discovery, subpoena, or other means of
19 legal compulsion for release to any person or entity except as
20 provided by this section; or

21 (2) admissible in any civil, administrative, or
22 criminal proceeding.

23 (g) Unless specifically authorized by this chapter, the
24 department may not release data elements in a manner that will
25 reveal the identity of a patient. The department may not release
26 data elements in a manner that will reveal the identity of a
27 physician.

1 (h) Subsections (c) and (g) do not prohibit the release of a
2 uniform physician identifier in conjunction with associated public
3 use data in accordance with Section [108.011](#) or a provider quality
4 report in accordance with Section [108.010](#).

5 (i) Notwithstanding any other law and except as provided by
6 this section, the department may not provide information made
7 confidential by this section to any other agency of this state.

8 (j) The executive commissioner shall by rule develop and
9 implement a mechanism to comply with Subsections (c)(1) and (2).

10 (k) The department may disclose data collected under this
11 chapter that is not included in public use data to any department or
12 commission program if the disclosure is reviewed and approved by
13 the institutional review board under Section [108.0135](#).

14 (l) Confidential data collected under this chapter that is
15 disclosed to a department or commission program remains subject to
16 the confidentiality provisions of this chapter and other applicable
17 law. The department shall identify the confidential data that is
18 disclosed to a program under Subsection (k). The program shall
19 maintain the confidentiality of the disclosed confidential data.

20 (m) The following provisions do not apply to the disclosure
21 of data to a department or commission program:

- 22 (1) Section [81.103](#);
- 23 (2) Sections [108.010](#)(g) and (h);
- 24 (3) Sections [108.011](#)(e) and (f);
- 25 (4) Section [311.037](#); and
- 26 (5) Section [159.002](#), Occupations Code.

27 (n) Nothing in this section authorizes the disclosure of

1 physician identifying data.

2 Sec. 108.0131. LIST OF PURCHASERS OR RECIPIENTS OF DATA.
3 The department shall post on the department's Internet website a
4 list of each entity that purchases or receives data collected under
5 this chapter.

6 Sec. 108.0135. INSTITUTIONAL REVIEW BOARD. (a) The
7 department shall establish an institutional review board to review
8 and approve requests for access to data not contained in public use
9 data. The members of the institutional review board must have
10 experience and expertise in ethics, patient confidentiality, and
11 health care data.

12 (b) To assist the institutional review board in determining
13 whether to approve a request for information, the executive
14 commissioner shall adopt rules similar to the federal Centers for
15 Medicare and Medicaid Services' guidelines on releasing data.

16 (c) A request for information other than public use data
17 must be made on the form prescribed by the department.

18 (d) Any approval to release information under this section
19 must require that the confidentiality provisions of this chapter be
20 maintained and that any subsequent use of the information conform
21 to the confidentiality provisions of this chapter.

22 Sec. 108.014. CIVIL PENALTY. (a) A person who knowingly or
23 negligently releases data in violation of this chapter is liable
24 for a civil penalty of not more than \$10,000.

25 (b) A person who fails to supply available data under
26 Sections 108.009 and 108.010 is liable for a civil penalty of not
27 less than \$1,000 or more than \$10,000 for each act of violation.

1 (c) The attorney general, at the request of the department
2 [council], shall enforce this chapter. The venue of an action
3 brought under this section is in Travis County.

4 (d) A civil penalty recovered in a suit instituted by the
5 attorney general under this chapter shall be deposited in the
6 general revenue fund to the credit of the health care information
7 account.

8 Sec. 108.0141. CRIMINAL PENALTY. (a) A person who
9 knowingly accesses data in violation of this chapter or who with
10 criminal negligence releases data in violation of this chapter
11 commits an offense.

12 (b) An offense under this section is a state jail felony.

13 Sec. 108.015. CONFLICT OF INTEREST. The department
14 [council] may not accept a donation from a person required to
15 provide data under this chapter or from a person or business entity
16 who provides goods or services to the department [council] for
17 compensation.

18 Sec. 108.016. SUNSET REVIEW. Unless continued in existence
19 in accordance with Chapter 325, Government Code (Texas Sunset Act),
20 after the review required by Section 11.003(b), this chapter
21 expires September 1, 2015.

22 SECTION 3.0356. Section 114.002, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 114.002. INTERAGENCY OBESITY COUNCIL. The council is
25 composed of the commissioner, the commissioner of agriculture, [~~the~~
26 ~~commissioner of state health services~~,] and the commissioner of
27 education, or a staff member designated by each of those

1 commissioners.

2 SECTION 3.0357. Section 114.005, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 114.005. REVIEW OF AGENCY PROGRAMS. The council shall
5 review the status of the programs of the department, the Department
6 of Agriculture, [~~the Department of State Health Services,~~] and the
7 Texas Education Agency that promote better health and nutrition and
8 prevent obesity among children and adults in this state.

9 SECTION 3.0358. Section 114.006(d), Health and Safety Code,
10 is amended to read as follows:

11 (d) The council shall provide to the department [~~Department~~
12 ~~of State Health Services~~] information on effective strategies for
13 employers to use to promote workplace wellness, including
14 information on the projected costs and benefits. The department
15 [~~Department of State Health Services~~] shall post the information on
16 its Internet website.

17 SECTION 3.0359. Section 114.007(c), Health and Safety Code,
18 is amended to read as follows:

19 (c) A report submitted by the council under Subsection (a)
20 must include the following information regarding the
21 evidence-based public health awareness plan under Section 114.006:

22 (1) a cost estimate for an ongoing program to
23 implement the plan;

24 (2) projected benefits of the program;

25 (3) a summary of the information provided to the
26 department [~~Department of State Health Services~~] for its Internet
27 website; and

1 (4) recommendations for goals and future legislation.

2 SECTION 3.0360. Section 115.007(a), Health and Safety Code,
3 is amended to read as follows:

4 (a) The task force consists of:

5 (1) the commissioner, the executive director or
6 director, or a deputy or assistant commissioner of:

7 (A) the commission, designated by the executive
8 commissioner;

9 (B) the Department of Aging and Disability
10 Services, designated by the commissioner of aging and disability
11 services [~~that agency~~];

12 (C) the Department of Assistive and
13 Rehabilitative Services, designated by the commissioner of assistive and
14 assistive and rehabilitative services [~~that agency~~];

15 (D) the division of early childhood intervention
16 services, designated by the commissioner of assistive and
17 rehabilitative services [~~the Department of Assistive and~~
18 ~~Rehabilitative Services~~];

19 (E) the Department of Family and Protective
20 Services, designated by the commissioner of family and protective
21 services [~~that agency~~];

22 (F) the department [~~Department of State Health~~
23 ~~Services~~], designated by the commissioner [~~of that agency~~];

24 (G) the Texas Education Agency, designated by the
25 commissioner of education [~~that agency~~];

26 (H) the Texas Juvenile Justice Department [~~Youth~~
27 ~~Commission~~], designated by the executive director [~~commissioner~~]

1 of that agency; and

2 (I) [the Texas Juvenile Probation Commission,

3 designated by the executive director of that agency; and

4 [J] the Texas Correctional Office on Offenders
5 with Medical or Mental Impairments, designated by the director of
6 that office; and

7 (2) eight nonvoting members who are:

8 (A) a representative of a local mental health
9 authority or a local intellectual and developmental disability
10 [mental retardation] authority, appointed by the governor;

11 (B) two members of the house of representatives,
12 appointed by the speaker of the house of representatives;

13 (C) two senators, appointed by the lieutenant
14 governor; and

15 (D) three parents or consumer advocates, one each
16 appointed by the commission, the Texas Education Agency, and the
17 Texas Juvenile Justice Department [Youth Commission].

18 SECTION 3.0361. Section 121.002(2), Health and Safety Code,
19 is amended to read as follows:

20 (2) "Physician" means a person licensed to practice
21 medicine by the Texas Medical [State] Board [of Medical Examiners].

22 SECTION 3.0362. Section 121.003(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) The governing bodies of municipalities and the
25 commissioners courts of counties may cooperate with one another in
26 making necessary improvements and providing services to promote the
27 public health in accordance with Chapter 791, Government Code [The

1 ~~Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas~~
2 ~~Civil Statutes)~~].

3 SECTION 3.0363. Section 121.004, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 121.004. LOCAL HEALTH UNITS. A local health unit is a
6 division of municipal or county government that provides public
7 health services but does not provide each service listed [~~required~~
8 ~~of a local health department~~] under Section 121.006(d) [~~121.032(a)~~]
9 or required of a public health district under Section 121.043(a).

10 SECTION 3.0364. Section 121.005(d), Health and Safety Code,
11 is amended to read as follows:

12 (d) The executive commissioner [~~board~~] may adopt rules
13 necessary to implement this section.

14 SECTION 3.0365. Section 121.006(c), Health and Safety Code,
15 is amended to read as follows:

16 (c) Chapter 783, Government Code, [~~The Uniform Grant and~~
17 ~~Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas~~
18 ~~Civil Statutes)~~] and standards adopted under that chapter [~~Act~~]
19 control, if applicable, if the local health unit, local health
20 department, or public health district receives state support for
21 the provision of public health services.

22 SECTION 3.0366. Section 121.0065(c), Health and Safety
23 Code, is amended to read as follows:

24 (c) The executive commissioner [~~board~~] shall adopt rules
25 governing:

26 (1) the allocation formula for grants awarded under
27 this section;

1 (2) the manner in which a municipality, county, public
2 health district, or other political subdivision applies for a
3 grant;

4 (3) the procedures for awarding grants; and

5 (4) the minimum essential public health services to be
6 provided under the grant and other standards applicable to the
7 services to be provided under the grant.

8 SECTION 3.0367. Section [121.007](#), Health and Safety Code, is
9 amended to read as follows:

10 Sec. 121.007. PUBLIC HEALTH REGIONS. (a) The department
11 ~~[board]~~ may designate geographic areas of the state as public
12 health regions to provide public health services.

13 (b) The department ~~[board]~~ shall appoint a physician to
14 serve as regional director for each public health region. The
15 regional director is the chief administrative officer of the
16 region. The department ~~[board]~~ shall establish the qualifications
17 and terms of employment of a regional director.

18 (c) The department ~~[board or its designee]~~ may require a
19 regional director to perform the duties of a health authority. The
20 regional director may perform those duties, as authorized by the
21 department ~~[board or commissioner]~~, in a jurisdiction in the region
22 in which the health authority fails to perform duties prescribed
23 ~~[by the board]~~ under Section [121.024](#). The regional director shall
24 perform the duties of a health authority in a jurisdiction in the
25 region in which there is not a health authority.

26 SECTION 3.0368. Section [121.008\(a\)](#), Health and Safety Code,
27 is amended to read as follows:

1 (a) The department [board] shall hold an annual conference
2 for health authorities and for directors of local health
3 departments and public health districts. The commissioner or the
4 commissioner's designee shall preside over the conference.

5 SECTION 3.0369. Section [121.022](#)(b), Health and Safety Code,
6 is amended to read as follows:

7 (b) To be qualified to serve as a health authority, the
8 appointee must:

9 (1) take and subscribe to the official oath; and
10 (2) file a copy of the oath and appointment with the
11 department [board].

12 SECTION 3.0370. Sections [121.024](#)(b) and (c), Health and
13 Safety Code, are amended to read as follows:

14 (b) A health authority shall perform each duty that is:

15 (1) necessary to implement and enforce a law to
16 protect the public health; or

17 (2) prescribed by the department [board].

18 (c) The duties of a health authority include:

19 (1) establishing, maintaining, and enforcing
20 quarantine in the health authority's jurisdiction;

21 (2) aiding the department [board] in relation to local
22 quarantine, inspection, disease prevention and suppression, birth
23 and death statistics, and general sanitation in the health
24 authority's jurisdiction;

25 (3) reporting the presence of contagious, infectious,
26 and dangerous epidemic diseases in the health authority's
27 jurisdiction to the department [board] in the manner and at the

1 times prescribed by the department [board];

2 (4) reporting to the department [board] on any subject
3 on which it is proper for the department [board] to direct that a
4 report be made; and

5 (5) aiding the department [board] in the enforcement
6 of the following in the health authority's jurisdiction:

- 7 (A) proper rules, requirements, and ordinances;
8 (B) sanitation laws;
9 (C) quarantine rules; and
10 (D) vital statistics collections.

11 SECTION 3.0371. Sections [121.029\(a\)](#) and (b), Health and
12 Safety Code, are amended to read as follows:

13 (a) A health authority, unless otherwise restricted by law,
14 may delegate a power or duty imposed on the health authority by the
15 department [board], or by this or any other law, to a properly
16 qualified physician to act while the health authority is absent or
17 incapacitated.

18 (b) The physician designated by the health authority must:

19 (1) meet the qualifications set out in Section
20 [121.022\(a\)](#);

21 (2) be appointed as a designee in the same manner as
22 the appointment of the health authority;

23 (3) take, subscribe, and file the official oath and
24 appointment with the department [board] as required by Section
25 [121.022\(b\)](#); and

26 (4) file a certified copy of the written delegation
27 with the department [board].

1 SECTION 3.0372. Section [121.033](#)(d), Health and Safety Code,
2 is amended to read as follows:

3 (d) A director of a local health department who is not a
4 physician shall appoint a physician as the health authority in the
5 local health department's jurisdiction, subject to the approval of
6 the governing body or the commissioners court, as appropriate, and
7 the department [board].

8 SECTION 3.0373. Sections [121.0331](#)(a) and (b), Health and
9 Safety Code, are amended to read as follows:

10 (a) A health authority, unless otherwise restricted by law,
11 may delegate a power or duty imposed on the health authority by the
12 department [board], or by this or any other law, to a properly
13 qualified physician who is employed by the municipality's or
14 county's local health department to act while the health authority
15 is absent or incapacitated.

16 (b) The physician designated by the health authority must:

17 (1) meet the qualifications set out in Section
18 [121.022](#)(a);

19 (2) be appointed as a designee in the same manner as
20 the appointment of the health authority;

21 (3) take, subscribe, and file the official oath and
22 appointment with the department [board] as required by Section
23 [121.022](#)(b); and

24 (4) file a certified copy of the written delegation
25 with the department [board].

26 SECTION 3.0374. Section [121.043](#)(b), Health and Safety Code,
27 is amended to read as follows:

1 (b) For purposes of Section 121.005, a public health
2 district shall be identified by its program of public health
3 services and shall, at a minimum, provide the services listed [~~for a~~
4 ~~local health department~~] under Section 121.006(d) [~~121.032(b)~~].

5 SECTION 3.0375. Section 121.045(d), Health and Safety Code,
6 is amended to read as follows:

7 (d) A director of a public health district who is not a
8 physician shall appoint a physician as the health authority for the
9 district, subject to the approval of the members and the department
10 [~~board~~].

11 SECTION 3.0376. Sections 121.0451(a) and (b), Health and
12 Safety Code, are amended to read as follows:

13 (a) A health authority, unless otherwise restricted by law,
14 may delegate a power or duty imposed on the health authority by the
15 department [~~board~~], or by this or any other law, to a properly
16 qualified physician who is employed by the public health district
17 to act while the health authority is absent or incapacitated.

18 (b) The physician designated by the health authority must:

19 (1) meet the qualifications set out in Section
20 121.022(a);

21 (2) be appointed as a designee in the same manner as
22 the appointment of the health authority;

23 (3) take, subscribe, and file the official oath and
24 appointment with the department [~~board~~] as required by Section
25 121.022(b); and

26 (4) file a certified copy of the written delegation
27 with the department [~~board~~].

1 SECTION 3.0377. Section 122.008(b), Health and Safety Code,
2 is amended to read as follows:

3 (b) A nurse employed under Subsection (a) shall:

4 (1) investigate the health conditions and sanitary
5 surroundings of the schools and the personal, physical, and health
6 condition of students in the schools;

7 (2) cooperate with the department [Texas Department of
8 ~~Health~~] and local health authorities; and

9 (3) perform other duties required by the commissioners
10 court.

11 SECTION 3.0378. Sections 141.002(2) and (5), Health and
12 Safety Code, are amended to read as follows:

13 (2) "Day camp" includes any camp that primarily
14 operates during any portion of the day between 7 a.m. and 10 p.m.
15 for a period of four or more consecutive days but may incidentally
16 offer not more than two overnight stays each camp session. The term
17 does not include a facility required to be licensed with the
18 Department of Family and Protective [~~and Regulatory~~] Services.

19 (5) "Youth camp" means a facility or property, other
20 than a facility required to be licensed by the Department of Family
21 and Protective [~~and Regulatory~~] Services, that:

22 (A) has the general characteristics of a day
23 camp, resident camp, or travel camp;

24 (B) is used primarily or partially for
25 recreational, athletic, religious, or educational activities; and

26 (C) accommodates at least five minors who attend
27 or temporarily reside at the camp for all or part of at least four

1 days.

2 SECTION 3.0379. Section 141.0035, Health and Safety Code,
3 is amended to read as follows:

4 Sec. 141.0035. LICENSE FEES. (a) The executive
5 commissioner [board] by rule shall establish the amount of the fee
6 for obtaining or renewing a license under this chapter. The
7 executive commissioner [board] shall set the fee in a reasonable
8 amount designed to recover the direct and indirect costs to the
9 department of administering and enforcing this chapter. The
10 executive commissioner [board] may set fees in a different amount
11 for resident youth camps and day youth camps to reflect differences
12 in the costs of administering and enforcing this chapter for
13 resident and day camps.

14 (b) Before the executive commissioner adopts or amends
15 [~~adopting or amending~~] a rule under Subsection (a), the department
16 [board] shall solicit comments and information from the operators
17 of affected youth camps and allow affected youth camp operators the
18 opportunity to meet with appropriate department staff who are
19 involved with the rulemaking process.

20 SECTION 3.0380. Section 141.004(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) To obtain a license, a person must submit a license
23 application accompanied by a license fee in an amount set by the
24 executive commissioner by rule [board].

25 SECTION 3.0381. Section 141.005, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 141.005. LICENSE RENEWAL. (a) A person holding a

1 license issued under this chapter must renew the license annually
2 by submitting a renewal application on a date determined by
3 department [board] rule on a form provided by the department.

4 (b) The application must be accompanied by a renewal fee in
5 an amount set by the executive commissioner by rule [board].

6 (c) The department may not renew the license of a youth camp
7 which has not corrected deficiencies before the application for
8 renewal is submitted. The executive commissioner [board] shall
9 adopt substantive and procedural rules for the submission by a
10 youth camp operator of evidence that a deficiency or deficiencies
11 have been corrected.

12 SECTION 3.0382. Sections 141.007(b) and (c), Health and
13 Safety Code, are amended to read as follows:

14 (b) An employee or agent who enters a youth camp to
15 investigate and inspect conditions shall notify the person in
16 charge of the camp of the inspector's presence and shall present
17 proper credentials. The department may exercise the remedies
18 authorized by Section 141.015(b) [141.014(b)] if the employee or
19 agent is not allowed to enter.

20 (c) The executive commissioner [department] may prescribe
21 reasonable record-keeping requirements for licensed youth camps,
22 including a requirement that the youth camp keep records relating
23 to matters involving the health and safety of campers. An employee
24 or agent of the department may examine, during regular business
25 hours, any records relating to the health and safety of campers.

26 SECTION 3.0383. Section 141.008(a), Health and Safety Code,
27 is amended to read as follows:

1 (a) The executive commissioner [board] may adopt rules to
2 implement this chapter. In adopting the rules the executive
3 commissioner [board] shall comply with Subchapter B, Chapter 2001,
4 Government Code, including Sections 2001.032(b) and 2001.033,
5 Government Code. In developing the rules to be adopted by the
6 executive commissioner, the department [board] shall consult
7 parents, youth camp operators, and appropriate public and private
8 officials and organizations.

9 SECTION 3.0384. Section 141.009, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 141.009. STANDARDS. The executive commissioner
12 [board] by rule shall establish health and safety standards for
13 youth camps. The standards may relate to:

14 (1) adequate and proper supervision at all times of
15 camp activities;

16 (2) qualifications for directors, supervisors, and
17 staff and sufficient numbers of those persons;

18 (3) proper safeguards for sanitation and public
19 health;

20 (4) adequate medical services for personal health and
21 first aid;

22 (5) proper procedures for food preparation, handling,
23 and mass feeding;

24 (6) healthful and sufficient water supply;

25 (7) proper waste disposal;

26 (8) proper water safety procedures for swimming pools,
27 lakes, and waterways;

11 SECTION 3.0385. Sections 141.0095(d) and (f), Health and
12 Safety Code, are amended to read as follows:

13 (d) In accordance with this section and the criteria and
14 guidelines developed by the training advisory committee
15 established under Section [141.0096](#), the executive commissioner [~~of~~
16 ~~the Health and Human Services Commission~~] by rule shall establish
17 criteria and guidelines for training and examination programs on
18 sexual abuse and child molestation. The department may approve
19 training and examination programs offered by trainers under
20 contract with youth camps or by online training organizations or
21 may approve programs offered in another format authorized by the
22 department.

23 (f) The department may assess a fee in the amount set by the
24 executive commissioner by rule as necessary to cover the costs of
25 administering this section to each person that applies for the
26 department's approval of a training and examination program on
27 sexual abuse and child molestation under this section.

1 SECTION 3.0386. Sections [141.0096\(a\), \(b\), and \(c\)](#), Health
2 and Safety Code, are amended to read as follows:

3 (a) The department shall appoint a training advisory
4 committee to advise the department and the executive commissioner
5 [~~of the Health and Human Services Commission~~] in the development of
6 criteria and guidelines for the training and examination program on
7 sexual abuse and child molestation required under Section [141.0095](#)
8 and to perform any other functions requested by the department.

9 (b) The training advisory committee consists of not more
10 than nine members selected by the commissioner [~~of state health~~
11 ~~services~~] as follows:

12 (1) at least two members who represent the general
13 public; and

14 (2) other members, who include experienced camping
15 professionals representing the camping communities of this state,
16 representatives of youth camps selected by the department, and
17 representatives of the Council on Sex Offender Treatment
18 established under Chapter 110, Occupations Code.

19 (c) The training advisory committee shall meet at the call
20 of the commissioner [~~of state health services~~].

21 SECTION 3.0387. Sections [141.010\(a\), \(b\), and \(d\)](#), Health
22 and Safety Code, are amended to read as follows:

23 (a) The executive commissioner [~~board~~] shall appoint a
24 committee to advise the executive commissioner [~~board~~] in the
25 development of standards and procedures, make recommendations to
26 the executive commissioner [~~board~~] regarding the content of the
27 rules adopted to implement this chapter [~~Act~~], and perform any

1 other functions requested by the executive commissioner [board] in
2 the implementation and administration of the chapter [Act].

3 (b) The advisory committee may not exceed nine members, at
4 least two of whom shall be members of the general public. The other
5 members should be experienced camping professionals who represent
6 the camping communities of the state. In making the appointments,
7 the executive commissioner [board] shall attempt to reflect the
8 geographic diversity of the state in proportion to the number of
9 camps licensed by the department in each geographic area of the
10 state.

11 (d) A vacancy on the advisory committee is filled by the
12 executive commissioner [board] in the same manner as other
13 appointments to the advisory committee.

14 SECTION 3.0388. The heading to Section 141.013, Health and
15 Safety Code, is amended to read as follows:

16 Sec. 141.013. [BOARD] HEARINGS.

17 SECTION 3.0389. Section 141.013(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) The department [board] may:
20 (1) call and conduct hearings;
21 (2) administer oaths;
22 (3) receive evidence;
23 (4) issue subpoenas for witnesses, papers, and
24 documents related to the hearing; and
25 (5) make findings of fact and decisions concerning the
26 administration of this chapter and rules adopted under this
27 chapter.

1 SECTION 3.0390. Sections [141.016](#)(a) and (b), Health and
2 Safety Code, are amended to read as follows:

3 (a) The department ~~[commissioner]~~ may assess an
4 administrative penalty if a person violates this chapter ~~[Act]~~ or a
5 rule or order adopted or license issued under this chapter ~~[Act]~~.

6 (b) In determining the amount of the penalty, the department
7 ~~[commissioner]~~ shall consider:

- 8 (1) the person's previous violations;
- 9 (2) the seriousness of the violation;
- 10 (3) any hazard to the health and safety of the public;
- 11 (4) the person's demonstrated good faith; and
- 12 (5) such other matters as justice may require.

13 SECTION 3.0391. Sections [141.017](#)(b), (c), and (d), Health
14 and Safety Code, are amended to read as follows:

15 (b) If a hearing is held, the administrative law judge
16 ~~[commissioner]~~ shall make findings of fact and shall issue a
17 written proposal for decision regarding the occurrence of the
18 violation and the amount of the penalty that may be warranted.

19 (c) If the person charged with the violation does not
20 request a hearing, the department ~~[commissioner]~~ may assess a
21 penalty after determining that a violation has occurred and the
22 amount of the penalty that may be warranted.

23 (d) After making a determination under this section that a
24 penalty is to be assessed against a person, the department
25 ~~[commissioner]~~ shall issue an order requiring that the person pay
26 the penalty.

27 SECTION 3.0392. Section [141.018](#), Health and Safety Code, is

1 amended to read as follows:

2 Sec. 141.018. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
3 later than the 30th day after the date an order finding that a
4 violation has occurred is issued, the department [~~commissioner~~]
5 shall inform the person against whom the order is issued of the
6 amount of the penalty for the violation.

7 (b) Not later than the 30th day after the date on which a
8 decision or order charging a person with a penalty is final, the
9 person shall:

10 (1) pay the penalty in full; or
11 (2) file a petition for [~~if the person seeks~~] judicial
12 review of the department's order contesting the amount of the
13 penalty, the fact of the violation, or both.

14 (b-1) Within the period prescribed by Subsection (b), a
15 person who files a petition for judicial review may:

16 (1) stay enforcement of the penalty by:
17 (A) paying [~~send the amount of~~] the penalty to
18 the court [~~commissioner~~] for placement in an escrow account; or
19 (B) posting [~~post~~] with the court [~~commissioner~~]
20 a supersedeas bond for the amount of the penalty; or
21 (2) request that the department stay enforcement of
22 the penalty by:

23 (A) filing with the court a sworn affidavit of
24 the person stating that the person is financially unable to pay the
25 penalty and is financially unable to give the supersedeas bond; and
26 (B) sending a copy of the affidavit to the
27 department.

1 (b-2) If the department receives a copy of an affidavit
2 under Subsection (b-1)(2), the department may file with the court,
3 within five days after the date the copy is received, a contest to
4 the affidavit. The court shall hold a hearing on the facts alleged
5 in the affidavit as soon as practicable and shall stay the
6 enforcement of the penalty on finding that the alleged facts are
7 true. The person who files an affidavit has the burden of proving
8 that the person is financially unable to pay the penalty or to give
9 a supersedeas bond.

10 (c) A bond posted under this section must be in a form
11 approved by the court [commissioner] and be effective until all
12 judicial review of the order or decision is final.

13 (d) A person who does not send money to, [~~the commissioner~~
14 ~~or~~] post the bond with, or file the affidavit with the court within
15 the period prescribed by Subsection (b) waives all rights to
16 contest the violation or the amount of the penalty.

17 SECTION 3.0393. Section 141.019, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 141.019. REFUND OF ADMINISTRATIVE PENALTY. On [~~Note~~
20 ~~later than the 30th day after~~] the date the court's judgment [~~of a~~
21 ~~judicial determination~~] that an administrative penalty against a
22 person should be reduced or not assessed becomes final, the court
23 [~~commissioner~~] shall order that:

24 (1) [~~remit to the person~~] the appropriate amount of
25 any penalty payment plus accrued interest be remitted to the person
26 not later than the 30th day after that date; or

27 (2) [~~execute a release of~~] the bond be released, if the

1 person has posted a bond.

2 SECTION 3.0394. Section 141.020, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 141.020. RECOVERY OF ADMINISTRATIVE PENALTY BY
5 ATTORNEY GENERAL. The attorney general at the request of the
6 department [commissioner] may bring a civil action to recover an
7 administrative penalty under this chapter.

8 SECTION 3.0395. Sections 142.001(6) and (22), Health and
9 Safety Code, are amended to read as follows:

10 (6) "Certified agency" means a home and community
11 support services agency, or a portion of the agency, that:

12 (A) provides a home health service; and
13 (B) is certified by an official of the United
14 States Department of Health and Human Services as in compliance
15 with conditions of participation in Title XVIII, Social Security
16 Act (42 U.S.C. Section 1395 et seq.).

17 (22) "Personal assistance service" means routine
18 ongoing care or services required by an individual in a residence or
19 independent living environment that enable the individual to engage
20 in the activities of daily living or to perform the physical
21 functions required for independent living, including respite
22 services. The term includes:

23 (A) personal care;
24 (B) health-related services performed under
25 circumstances that are defined as not constituting the practice of
26 professional nursing by the Texas Board of Nursing under the terms
27 of [~~through~~] a memorandum of understanding executed by [~~with~~] the

5 SECTION 3.0396. Section 142.0011, Health and Safety Code,
6 is amended by amending Subsection (b) and adding Subsection (c) to
7 read as follows:

8 (b) The executive commissioner [department] shall protect
9 clients of home and community support services agencies by
10 [regulating those agencies and.]

11 [+] adopting rules relating to quality of care and
12 quality of life.

13 (c) The department shall protect clients of home and
14 community support services agencies by:

(2) strictly monitoring factors related to health, safety, welfare, and dignity of each client;

26 SECTION 3.0397. Section 142.0012(d), Health and Safety
27 Code is amended to read as follows:

1 (d) The executive commissioner [department] may adopt rules
2 that specify the ownership interests and other relationships that
3 qualify a person as a controlling person.

4 SECTION 3.0398. Section 142.004(c), Health and Safety Code,
5 is amended to read as follows:

6 (c) The executive commissioner [board] by rule shall
7 require that, at a minimum, before the department may approve a
8 license application, the applicant must provide to the department:

9 (1) documentation establishing that, at a minimum, the
10 applicant has sufficient financial resources to provide the
11 services required by this chapter and by the department during the
12 term of the license;

13 (2) a list of the management personnel for the
14 proposed home and community support services agency, a description
15 of personnel qualifications, and a plan for providing continuing
16 training and education for the personnel during the term of the
17 license;

18 (3) documentation establishing that the applicant is
19 capable of meeting the minimum standards established by the
20 executive commissioner [board] relating to the quality of care;

21 (4) a plan that provides for the orderly transfer of
22 care of the applicant's clients if the applicant cannot maintain or
23 deliver home health, hospice, or personal assistance services under
24 the license;

25 (5) identifying information on the home and community
26 support services agency owner, administrator, and chief financial
27 officer to enable the department to conduct criminal background

1 checks on those persons;

2 (6) identification of any controlling person with
3 respect to the applicant; and

4 (7) documentation relating to any controlling person
5 identified under Subdivision (6), if requested by the department
6 and relevant to the controlling person's compliance with any
7 applicable licensing standard required or adopted [~~by the board~~]
8 under this chapter.

9 SECTION 3.0399. Sections 142.006(a), (b), and (c), Health
10 and Safety Code, are amended to read as follows:

11 (a) The department shall issue a home and community support
12 services agency license to provide home health, hospice, or
13 personal assistance services for each place of business to an
14 applicant if:

15 (1) the applicant:

16 (A) qualifies for the license to provide the type
17 of service that is to be offered by the applicant;

18 (B) submits an application and license fee as
19 required by this chapter; and

20 (C) complies with all applicable licensing
21 standards required or adopted [~~by the board~~] under this chapter;
22 and

23 (2) any controlling person with respect to the
24 applicant complies with all applicable licensing standards
25 required or adopted [~~by the board~~] under this chapter.

26 (b) A license issued under this chapter expires two years
27 after the date of issuance. The executive commissioner [~~of the~~

1 ~~Health and Human Services Commission~~] by rule may adopt a system
2 under which licenses expire on various dates during the two-year
3 period. For the year in which a license expiration date is changed,
4 the department shall prorate the license fee on a monthly basis.
5 Each license holder shall pay only that portion of the license fee
6 allocable to the number of months for which the license is valid. A
7 license holder shall pay the total license renewal fee at the time
8 of renewal. The department may issue an initial license for a
9 shorter term to conform expiration dates for a locality or an
10 applicant. The department may issue a temporary license to an
11 applicant for an initial license.

12 (c) The department may find that a home and community
13 support services agency has satisfied the requirements for
14 licensing if the agency is accredited by an accreditation
15 organization, such as The [the] Joint Commission [~~on Accreditation~~
16 ~~of Healthcare Organizations~~] or the Community Health Accreditation
17 Program, and the department finds that the accreditation
18 organization has standards that meet or exceed the requirements for
19 licensing under this chapter. A license fee is required of the home
20 and community support services agency at the time of a license
21 application.

22 SECTION 3.0400. Section 142.008(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) The executive commissioner [~~board~~] by rule shall
25 establish eligibility requirements for a branch office license.

26 SECTION 3.0401. Section 142.0085(b), Health and Safety
27 Code, is amended to read as follows:

1 (b) The executive commissioner [board] by rule shall
2 establish standards required for the issuance of an alternate
3 delivery site license.

4 SECTION 3.0402. Sections 142.009(h) and (l), Health and
5 Safety Code, are amended to read as follows:

6 (h) Except for the investigation of complaints, a home and
7 community support services agency licensed by the department under
8 this chapter is not subject to additional surveys relating to home
9 health, hospice, or personal assistance services while the agency
10 maintains accreditation for the applicable service from The [~~the~~]
11 Joint Commission [~~for Accreditation of Healthcare Organizations~~],
12 the Community Health Accreditation Program, or other accreditation
13 organizations that meet or exceed the regulations adopted under
14 this chapter. Each provider must submit to the department
15 documentation from the accrediting body indicating that the
16 provider is accredited when the provider is applying for the
17 initial license and annually when the license is renewed.

18 (l) The department and other state agencies that are under
19 the commission [~~Health and Human Services Commission~~] and that
20 contract with home and community support services agencies to
21 deliver services for which a license is required under this chapter
22 shall execute a memorandum of understanding that establishes
23 procedures to eliminate or reduce duplication of standards or
24 conflicts between standards and of functions in license,
25 certification, or compliance surveys and complaint investigations.
26 [~~The Health and Human Services Commission shall review the~~
27 ~~recommendation of the council relating to the memorandum of~~

1 ~~understanding before considering approval.]~~ The memorandum of
2 understanding must be approved by the commission.

3 SECTION 3.0403. Sections [142.010](#)(a) and (b), Health and
4 Safety Code, are amended to read as follows:

5 (a) The executive commissioner by rule ~~[department]~~ shall
6 set license fees for home and community support services agencies
7 in amounts that are reasonable to meet the costs of administering
8 this chapter, except that the fees may not be less than \$600 or more
9 than \$2,000 for a license to provide home health, hospice, or
10 personal assistance services.

11 (b) The executive commissioner ~~[board]~~ shall consider the
12 size of the home and community support services agency, the number
13 of clients served, the number of services provided, and the
14 necessity for review of other accreditation documentation in
15 determining the amount collected by the department for [eff] initial
16 and renewal license fees.

17 SECTION 3.0404. Section [142.0104](#)(a), Health and Safety
18 Code, is amended to read as follows:

19 (a) If certain application information as specified by
20 department ~~[executive commissioner]~~ rule changes after the
21 applicant submits an application to the department for a license
22 under this chapter or after the department issues the license, the
23 license holder shall report the change to the department and pay a
24 fee not to exceed \$50 not later than the time specified by
25 department ~~[executive commissioner]~~ rule.

26 SECTION 3.0405. Section [142.011](#)(d), Health and Safety Code,
27 is amended to read as follows:

1 (d) A person whose application is denied or whose license is
2 suspended or revoked is entitled to a hearing [~~before the~~
3 ~~department~~] if the person submits a written request to the
4 commission [~~department~~]. Chapter 2001, Government Code, and the
5 department's rules for contested case hearings apply to hearings
6 conducted under this section and to appeals from department
7 decisions.

8 SECTION 3.0406. Sections 142.017(c), (d), (e), and (g),
9 Health and Safety Code, are amended to read as follows:

10 (c) The executive commissioner [~~department~~] by rule shall
11 specify each violation for which the department may assess an
12 administrative penalty [~~may be assessed~~]. In determining which
13 violations warrant penalties, the department shall consider:

14 (1) the seriousness of the violation, including the
15 nature, circumstances, extent, and gravity of the violation and the
16 hazard of the violation to the health or safety of clients; and

17 (2) whether the affected home and community support
18 services agency had identified the violation as a part of its
19 internal quality assurance process and had made appropriate
20 progress on correction.

21 (d) The executive commissioner [~~department~~] by rule shall
22 establish a schedule of appropriate and graduated penalties for
23 each violation based on:

24 (1) the seriousness of the violation, including the
25 nature, circumstances, extent, and gravity of the violation and the
26 hazard or safety of clients;

27 (2) the history of previous violations by the person

1 or a controlling person with respect to that person;

2 (3) whether the affected home and community support
3 services agency had identified the violation as a part of its
4 internal quality assurance process and had made appropriate
5 progress on correction;

6 (4) the amount necessary to deter future violations;

7 (5) efforts made to correct the violation; and

8 (6) any other matters that justice may require.

9 (e) Except as provided by Subsection (j), the executive
10 commissioner [department] by rule shall provide the home and
11 community support services agency with a reasonable period of time
12 following the first day of a violation to correct the violation
13 before the department assesses [assessing] an administrative
14 penalty if a plan of correction has been implemented.

15 (g) The executive commissioner [department] shall establish
16 a system to ensure standard and consistent application of penalties
17 regardless of the home and community support services agency
18 location.

19 SECTION 3.0407. Section [142.0171\(c\)](#), Health and Safety
20 Code, is amended to read as follows:

21 (c) If the person notified of the violation accepts the
22 determination of the department or if the person fails to respond in
23 a timely manner to the notice, the department [commissioner or the
24 commissioner's designee] shall [issue an] order [approving the
25 determination and ordering that] the person to pay the proposed
26 penalty.

27 SECTION 3.0408. Section [142.0172](#), Health and Safety Code,

1 is amended to read as follows:

2 Sec. 142.0172. HEARING; ORDER. (a) If the person notified
3 requests a hearing, the department shall refer the case to the State
4 Office of Administrative Hearings and an administrative law judge
5 of that office shall conduct the hearing.

6 (a-1) The department shall[+

7 [(1) ~~set a hearing,~~

8 [(2)] give written notice of the hearing to the
9 person[+ and]

10 [(3) ~~designate a hearings examiner to conduct the~~
11 ~~hearing~~].

12 (b) The administrative law judge [hearings examiner] shall
13 make findings of fact and conclusions of law and shall promptly
14 issue to the department [~~commissioner or the commissioner's~~
15 ~~designee~~] a proposal for decision as to the occurrence of the
16 violation and a recommendation as to the amount of the proposed
17 penalty if a penalty is determined to be warranted.

18 (c) Based on the findings of fact and conclusions of law and
19 the recommendations of the administrative law judge [hearings
20 examiner], the department [~~commissioner or the commissioner's~~
21 ~~designee~~] by order may find that a violation has occurred and may
22 assess a penalty or may find that no violation has occurred.

23 SECTION 3.0409. Sections 142.018(a) and (b), Health and
24 Safety Code, are amended to read as follows:

25 (a) In this section, "abuse," "exploitation," and "neglect"
26 have the meanings applicable through a rule adopted by the
27 executive commissioner [~~of the Health and Human Services~~

1 ~~Commission~~] under Section 48.002(c), Human Resources Code, except
2 that if the executive commissioner has not adopted applicable rules
3 under that section, the statutory definitions of those terms under
4 Section 48.002(a), Human Resources Code, shall be used.

5 (b) A home and community support services agency that has
6 cause to believe that a person receiving services from the agency
7 has been abused, exploited, or neglected by an employee of the
8 agency shall report the information to:

9 (1) the department; and
10 (2) the Department of Family and Protective [~~and~~
11 ~~Regulatory~~] Services or other appropriate state agency as required
12 by Section 48.051, Human Resources Code.

13 SECTION 3.0410. Section 142.021, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 142.021. ADMINISTRATION OF MEDICATION. A person may
16 not administer medication to a client of a home and community
17 support services agency unless the person:

18 (1) holds a license under state law that authorizes
19 the person to administer medication;

20 (2) holds a permit issued under Section 142.025 and
21 acts under the delegated authority of a person who holds a license
22 under state law that authorizes the person to administer
23 medication;

24 (3) administers a medication to a client of a home and
25 community support service agency in accordance with rules of the
26 Texas Board of Nursing that permit delegation of the administration
27 of medication to a person not holding a permit under Section

1 142.025; or

2 (4) administers noninjectable medication under
3 circumstances authorized by the memorandum of understanding
4 executed by the department and the Texas Board of Nursing [adopted
5 under Section 142.016].

6 SECTION 3.0411. Section 142.023, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 142.023. RULES FOR ADMINISTRATION OF MEDICATION. The
9 executive commissioner [board] by rule shall establish:

10 (1) minimum requirements for the issuance, denial,
11 renewal, suspension, emergency suspension, and revocation of a
12 permit to a home health medication aide;

13 (2) curricula to train a home health medication aide;

14 (3) minimum standards for the approval of home health
15 medication aide training programs and for rescinding approval;

16 (4) the acts and practices that are allowed or
17 prohibited to a permit holder; and

18 (5) minimum standards for on-site supervision of a
19 permit holder by a registered nurse.

20 SECTION 3.0412. Section 142.024(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) An application for the approval of a home health
23 medication aide training program must be made to the department on a
24 form prescribed by the department and under department rules
25 [prescribed by the board].

26 SECTION 3.0413. Sections 142.025(a) and (d), Health and
27 Safety Code, are amended to read as follows:

1 (a) To be issued or to have renewed a home health medication
2 aide permit, a person shall apply to the department on a form
3 prescribed by the department and under department rules [~~adopted by~~
4 ~~the board~~].

5 (d) The department shall issue a permit or renew a permit to
6 an applicant who:

7 (1) meets the minimum requirements adopted under
8 Section 142.023;

9 (2) successfully completes the examination or the
10 continuing education requirements; and

11 (3) pays a nonrefundable application fee specified in
12 department rules [~~determined by the board~~].

13 SECTION 3.0414. Section 142.026(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) The executive commissioner by rule [~~board~~] shall set the
16 fees in amounts reasonable and necessary to recover the amount
17 projected by the department as required to administer its functions
18 under this subchapter. The fees may not exceed:

19 (1) \$25 for a combined permit application and
20 examination fee; and

21 (2) \$15 for a renewal permit application fee.

22 SECTION 3.0415. Section 144.013(f), Health and Safety Code,
23 is amended to read as follows:

24 (f) If the department denies an application twice, the
25 application is canceled. The applicant is entitled to a hearing
26 [~~before the commissioner~~] on the denial if the applicant requests
27 the hearing not later than the 30th day after the date of the second

1 denial.

2 SECTION 3.0416. Section 144.021(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) As a condition of licensure, the department, in
5 accordance with department rules, may prescribe other reasonable
6 and appropriate construction, operational, maintenance, and
7 inspection requirements to ensure compliance with this chapter and
8 other applicable rules [of the department].

9 SECTION 3.0417. Section 144.022(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) Each licensed rendering establishment, related station,
12 or dead animal hauler shall have a dead animal log that meets the
13 requirements prescribed by [~~the~~] department rule. The name of the
14 licensed rendering establishment, related station, or dead animal
15 hauler must be on the front of the log.

16 SECTION 3.0418. Section 144.026(b), Health and Safety Code,
17 is amended to read as follows:

18 (b) Liquid waste shall be treated in the manner required by
19 the department and disposed of in a manner approved by [~~the~~]
20 department rule.

21 SECTION 3.0419. Section 144.043(e), Health and Safety Code,
22 is amended to read as follows:

23 (e) If the department denies an application twice, the
24 application is canceled. The applicant is entitled to a hearing
25 [~~before the commissioner~~] on the denial if the applicant requests
26 the hearing not later than the 30th day after the date of the second
27 denial.

1 SECTION 3.0420. Sections [144.063](#)(b) and (c), Health and
2 Safety Code, are amended to read as follows:

3 (b) The term of a [An operating] license issued under this
4 chapter is two years [is valid for one year and may be renewed
5 annually by the license holder]. The executive commissioner by
6 rule [department] shall set a [an annual] renewal fee.

7 (c) A license holder may renew a license by paying the
8 renewal fee to the department on or before the expiration date of
9 the license [January 1 of each year]. On receipt of the fee, the
10 license is automatically renewed [for the next calendar year].

11 SECTION 3.0421. Section [144.064](#), Health and Safety Code, is
12 amended to read as follows:

13 Sec. 144.064. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE
14 OR PERMIT; REINSTATEMENT. (a) The department [commissioner] may
15 deny, suspend, or revoke an operating license, construction permit,
16 or renewal of an operating license or construction permit if the
17 department [commissioner] finds that:

18 (1) the license holder or permit holder has violated
19 this chapter or a rule or order adopted under this chapter or did
20 not exercise due care to prevent the violation; or

21 (2) a fact or condition exists that would have
22 justified the denial of the license or permit application if the
23 fact or condition was known at the time the original application was
24 filed.

25 (b) On the discovery of such a violation, the department
26 [commissioner] shall notify the license holder or permit holder of
27 the violation. If the license holder or permit holder fails to make

1 the necessary corrections, the department shall notify the license
2 holder or permit holder of a hearing to suspend or revoke the
3 license or permit.

4 (c) The department [~~commissioner~~] may reinstate a suspended
5 license or permit, or may issue a new license or permit to a person
6 whose license or permit has been revoked, if a ground to deny the
7 original license or permit application does not exist.

8 SECTION 3.0422. Section [144.072](#)(e), Health and Safety Code,
9 is amended to read as follows:

10 (e) The executive commissioner [~~department~~] by rule shall
11 set the fees authorized by this chapter in amounts that allow the
12 department to recover the annual expenditures of state funds by the
13 department in:

14 (1) reviewing and acting on a license renewal or
15 registration;

16 (2) amending a license, renewal license, or
17 registration;

18 (3) inspecting a licensed facility or vehicles and
19 equipment regulated under this chapter; and

20 (4) implementing and enforcing this chapter,
21 including a rule or order adopted or a license issued under this
22 chapter.

23 SECTION 3.0423. Section [144.073](#), Health and Safety Code, is
24 amended to read as follows:

25 Sec. 144.073. FEES [~~ACCOUNT~~]. All fees collected under
26 this chapter are payable to the department and shall be deposited to
27 the credit of the [~~rendering fee account in the~~] general revenue

1 fund[. Money in the account may be appropriated only to the
2 ~~department~~] to be used to process and investigate applications
3 filed under this chapter and to administer this chapter.

4 SECTION 3.0424. Section 144.074, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 144.074. ADOPTION OF RULES. The executive
7 commissioner [~~board~~] may adopt rules consistent with this chapter
8 as necessary for the enforcement of this chapter.

9 SECTION 3.0425. Section 144.076, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 144.076. PUBLIC RECORDS. The transcript of any
12 hearing held by the State Office of Administrative Hearings
13 [~~commissioner~~] and findings made by the administrative law judge
14 [~~commissioner~~] or the department under this chapter are public
15 records open to inspection at all reasonable times.

16 SECTION 3.0426. Sections 144.081(a) and (b), Health and
17 Safety Code, are amended to read as follows:

18 (a) The department [~~commissioner~~] may assess an
19 administrative penalty against a person who violates this chapter,
20 a rule adopted [~~by the board~~] under the authority of this chapter,
21 or an order or license issued under this chapter.

22 (b) In determining the amount of the penalty, the department
23 [~~commissioner~~] shall consider:

- 24 (1) the person's previous violations;
- 25 (2) the seriousness of the violation;
- 26 (3) any hazard to the health and safety of the public;
- 27 (4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

2 SECTION 3.0427. Sections 144.082(b), (c), and (d), Health
3 and Safety Code, are amended to read as follows:

4 (b) If a hearing is held, the administrative law judge
5 [commissioner] shall make findings of fact and shall issue a
6 written proposal for decision regarding the occurrence of the
7 violation and the amount of the penalty that may be warranted.

8 (c) If the person notified of the violation does not request
9 a hearing, the department [commissioner] may assess a penalty after
10 determining that a violation has occurred and the amount of the
11 penalty that may be warranted.

12 (d) After making a determination under this section that a
13 penalty is to be assessed against a person, the department
14 [commissioner] shall issue an order requiring that the person pay
15 the penalty.

16 SECTION 3.0428. Section 144.083, Health and Safety Code,
17 is amended to read as follows:

Sec. 144.083. 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.

23 (b) Not later than the 30th day after the date on which a
24 decision or order charging a person with a penalty is final, the
25 person shall:

26 (1) pay the penalty in full; or

27 (2) file a petition for [if the person seeks] judicial

1 review of the department's order contesting the amount of the
2 penalty, the fact of the violation, or both._

3 **(b-1) Within the period prescribed by Subsection (b), a**
4 person who files a petition for judicial review may:

5 **(1) stay enforcement of the penalty by:**

6 (A) paying [send the amount of] the penalty to
7 the court [~~commissioner~~] for placement in an escrow account; or

8 (B) posting [~~post~~] with the court [~~commissioner~~]
9 a supersedeas bond for the amount of the penalty; or

10 **(2) request that the department stay enforcement of**
11 the penalty by:

12 (A) filing with the court a sworn affidavit of
13 the person stating that the person is financially unable to pay the
14 penalty and is financially unable to give the supersedeas bond; and

15 (B) sending a copy of the affidavit to the
16 department.

17 **(b-2) If the department receives a copy of an affidavit**
18 under Subsection (b-1)(2), the department may file with the court,
19 within five days after the date the copy is received, a contest to
20 the affidavit. The court shall hold a hearing on the facts alleged
21 in the affidavit as soon as practicable and shall stay the
22 enforcement of the penalty on finding that the alleged facts are
23 true. The person who files an affidavit has the burden of proving
24 that the person is financially unable to pay the penalty or to give
25 a supersedeas bond.

26 (c) A bond posted under this section must be in a form
27 approved by the court [~~commissioner~~] and be effective until all

1 judicial review of the order or decision is final.

2 (d) A person who does not send money to, [~~the commissioner~~
3 ~~or~~] post the bond with, or file the affidavit with the court within
4 the period prescribed by Subsection (b) waives all rights to
5 contest the violation or the amount of the penalty.

6 SECTION 3.0429. Section 144.084, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 144.084. REFUND OF ADMINISTRATIVE PENALTY. On [Not
9 ~~later than the 30th day after~~] the date the court's judgment [~~of a~~
10 ~~judicial determination~~] that an administrative penalty against a
11 person should be reduced or not assessed becomes final, the court
12 [~~commissioner~~] shall order that:

13 (1) [~~remit to the person~~] the appropriate amount of
14 any penalty payment plus accrued interest be remitted to the person
15 not later than the 30th day after that date; or

16 (2) [~~execute a release of~~] the bond be released, if the
17 person has posted a bond.

18 SECTION 3.0430. Section 144.085, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 144.085. RECOVERY OF ADMINISTRATIVE PENALTY BY
21 ATTORNEY GENERAL. The attorney general at the request of the
22 department [~~commissioner~~] may bring a civil action to recover an
23 administrative penalty under this subchapter.

24 SECTION 3.0431. Section 145.004(b), Health and Safety Code,
25 is amended to read as follows:

26 (b) The department [~~Texas Department of Health~~] may enforce
27 Chapter 431 against a person who adulterates or misbrands a tanning

1 device. The department may investigate a person accused of
2 adulterating or misbranding a tanning device. For the purposes of
3 this subsection, a tanning device is adulterated or misbranded if
4 the tanning device would be an adulterated or misbranded device
5 under Section 431.111 or 431.112 [~~, Health and Safety Code~~].

6 SECTION 3.0432. Section 145.006, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 145.006. WARNING SIGNS. (a) A tanning facility shall
9 post a warning sign in a conspicuous location where it is readily
10 visible by persons entering the establishment. The executive
11 commissioner [board] by rule shall specify the size, design, and
12 graphic design of the sign. The sign must have dimensions of at
13 least 11 inches by 17 inches and must contain the following wording:

14 Repeated exposure to ultraviolet radiation may cause chronic
15 sun damage characterized by wrinkling, dryness, fragility,
16 bruising of the skin, and skin cancer.

17 DANGER: ULTRAVIOLET RADIATION

18 Failure to use protective eyewear may result in severe burns
19 or permanent injury to the eyes.

20 Medications or cosmetics may increase your sensitivity to
21 ultraviolet radiation. Consult a physician before using a sunlamp
22 if you are using medications, have a history of skin problems, or
23 believe you are especially sensitive to sunlight. Pregnant women
24 or women taking oral contraceptives who use this product may
25 develop discolored skin.

26 A customer may call the [~~Texas~~] Department of State Health
27 Services at (insert toll-free telephone number) to report an

1 alleged injury regarding this tanning facility.

2 IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF AN
3 ULTRAVIOLET LAMP OR SUNLAMP.

4 (b) A tanning facility operator shall also post a warning
5 sign at each tanning device in a conspicuous location that is
6 readily visible to a person about to use the device. The executive
7 commissioner [board] by rule shall specify the size, design, and
8 graphic design of the sign. The sign must have dimensions of at
9 least 11 inches by 17 inches and must contain the following wording:

10 DANGER: ULTRAVIOLET RADIATION

11 1. Follow the manufacturer's instructions for use of this
12 device.

13 2. Avoid too frequent or lengthy exposure. As with natural
14 sunlight, exposure can cause serious eye and skin injuries and
15 allergic reactions. Repeated exposure may cause skin cancer.

16 3. Wear protective eyewear. Failure to use protective
17 eyewear may result in severe burns or permanent damage to the eyes.

18 4. Do not sunbathe before or after exposure to ultraviolet
19 radiation from sunlamps.

20 5. Medications or cosmetics may increase your sensitivity
21 to ultraviolet radiation. Consult a physician before using a
22 sunlamp if you are using medication, have a history of skin
23 problems, or believe you are especially sensitive to sunlight.
24 Pregnant women or women using oral contraceptives who use this
25 product may develop discolored skin.

26 A customer may call the [Texas] Department of State Health
27 Services at (insert toll-free telephone number) to report an

1 alleged injury regarding this tanning device.

2 IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF
3 THIS DEVICE.

4 (c) The department [~~Texas Department of Health~~] shall
5 include with a license application and an application for renewal
6 of a license a description of the design standards required for
7 signs under this section.

8 SECTION 3.0433. Sections 145.008(i), (j), and (k), Health
9 and Safety Code, are amended to read as follows:

10 (i) A record of each customer using a tanning device shall
11 be maintained at the tanning facility at least until the third
12 anniversary of the date of the customer's last use of a tanning
13 device. The executive commissioner [~~of the Health and Human~~
14 ~~Services Commission~~] by rule shall prescribe the form and content
15 of the records. The record shall include:

16 (1) the date and time of the customer's use of a
17 tanning device;

18 (2) the length of time the tanning device was used;

19 (3) any injury or illness resulting from the use of a
20 tanning device;

21 (4) any written informed consent statement required to
22 be signed under Subsection (e);

23 (5) the customer's skin type, as determined by the
24 customer by using the Fitzpatrick scale for classifying a skin
25 type;

26 (6) whether the customer has a family history of skin
27 cancer; and

1 (7) whether the customer has a past medical history of
2 skin cancer.

3 (j) An operator shall keep an incident log at each tanning
4 facility. The log shall be maintained at the tanning facility at
5 least until the third anniversary of the date of an incident. The
6 executive commissioner [board] by rule shall prescribe the form and
7 content of the log. The log shall include each:

8 (1) alleged injury;

9 (2) use of a tanning device by a customer not wearing
10 protective eyewear;

11 (3) mechanical problem with a tanning device; and

12 (4) customer complaint.

13 (k) The department [~~Texas Department of Health~~] shall
14 provide to each applicant for an original or renewal license a
15 written copy of the Fitzpatrick scale.

16 SECTION 3.0434. Sections 145.009(a), (c), (d), and (e),
17 Health and Safety Code, are amended to read as follows:

18 (a) A person may not operate a tanning facility unless the
19 person holds a license issued by the department to operate the
20 facility. Unless revoked or suspended, a license is valid until the
21 second [~~first~~] anniversary of the date the license was issued. A
22 separate license is required for each tanning facility.

23 (c) The department [~~board annually~~] shall renew licenses
24 after application for renewal is made on forms provided by the
25 department for this purpose and after receipt of renewal fees.

26 (d) The executive commissioner [~~department~~] by rule may
27 adopt a system under which licenses expire on various dates during

1 the year. As part of this system the license fees and [~~the annual~~]
2 renewal fees may be prorated on a monthly basis to reflect the
3 actual number of months the license is valid.

4 (e) The department may revoke, suspend, suspend on an
5 emergency basis, or probate by an emergency order of the
6 commissioner, or the commissioner's designee, a license to operate
7 a tanning facility for:

8 (1) a failure to pay a license fee or [~~an annual~~]
9 renewal fee for a license;

10 (2) an applicant's acquisition or attempted
11 acquisition of a license by fraud or deception;

12 (3) a violation of this chapter;

13 (4) a violation of a rule of the department adopted
14 under this chapter; or

15 (5) a violation of an order issued under this chapter.

16 SECTION 3.0435. Sections [145.010\(a\), \(b\), \(c\), and \(e\)](#),
17 Health and Safety Code, are amended to read as follows:

18 (a) The department [~~board~~] shall collect a fee for:

19 (1) a license issued or renewed; or

20 (2) a license that is modified.

21 (b) The department [~~board~~] may charge prorated [~~or annual~~]
22 fees.

23 (c) The executive commissioner [~~board~~] by rule shall set the
24 fees for issuance or renewal of a license in the amounts prescribed
25 by Section 12.0111 and for modification of a license in an amount
26 [in amounts] that allows [allow] the department to recover not less
27 than 50 percent of the costs to the department in:

1 (1) reviewing and acting on a license application;
2 (2) modifying [~~or renewing~~] a license;
3 (3) inspecting a licensed facility; and
4 (4) implementing and enforcing this chapter or rules
5 relating to this chapter.

6 (e) A license fee received by the department shall be
7 deposited in the state treasury to the credit of the food and drug
8 registration account in the general revenue fund. The fees are
9 dedicated to the department for the administration and enforcement
10 of this chapter.

11 SECTION 3.0436. Section 145.011(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) The executive commissioner [board] may adopt rules as
14 necessary to implement this chapter.

15 SECTION 3.0437. Section 145.012(c), Health and Safety Code,
16 is amended to read as follows:

17 (c) If an emergency order is issued without a hearing, the
18 department shall refer the matter to the State Office of
19 Administrative Hearings. An administrative law judge of that
20 office shall determine a time and place for a hearing and hold the
21 hearing [~~at which the emergency order is affirmed, modified, or set~~
22 ~~aside~~]. The hearing shall be held under rules of the department.

23 SECTION 3.0438. Sections 145.0121(a) and (f), Health and
24 Safety Code, are amended to read as follows:

25 (a) If it appears that a person has violated or is violating
26 this chapter or an order issued or a rule adopted under this
27 chapter, the department [~~commissioner~~] may request the attorney

1 general or the district or county attorney or the municipal
2 attorney of a municipality in the jurisdiction where the violation
3 is alleged to have occurred or may occur to institute a civil suit
4 for:

- 5 (1) an order enjoining the violation;
6 (2) a permanent or temporary injunction, a temporary
7 restraining order, or other appropriate remedy if the department
8 shows that the person has engaged in or is engaging in a violation;
9 (3) the assessment and recovery of a civil penalty; or
10 (4) both injunctive relief and a civil penalty.

11 (f) The department [~~commissioner~~] or the attorney general
12 may each recover reasonable expenses incurred in obtaining
13 injunctive relief or a civil penalty under this section, including
14 investigation and court costs, reasonable attorney's fees, witness
15 fees, and other expenses. The expenses recovered by the department
16 [~~commissioner~~] under this section shall be used for the
17 administration and enforcement of this chapter. The expenses
18 recovered by the attorney general shall be used by the attorney
19 general.

20 SECTION 3.0439. Sections 145.0122(a), (d), (e), (f), (g),
21 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
22 amended to read as follows:

23 (a) The department [~~board or the board's designee~~] may
24 impose an administrative penalty against a person licensed or
25 regulated under this chapter who violates this chapter or a rule or
26 order adopted under this chapter.

27 (d) If the department [~~commissioner or the commissioner's~~

1 ~~designee~~] determines a violation has occurred, the department shall
2 give to the person written notice [~~commissioner or the~~
3 ~~commissioner's designee may issue to the board or the board's~~
4 ~~designee a report~~] that states the facts on which the determination
5 is based and the department's [~~commissioner's or the designee's~~]
6 recommendation on the imposition of a penalty[~~, including a~~
7 ~~recommendation on the amount of the penalty~~].

8 [(e) ~~Within 14 days after the date the report is issued, the~~
9 ~~commissioner or the commissioner's designee shall give written~~
10 ~~notice of the report to the person.~~] The notice may be given by
11 certified mail. The notice must include a brief summary of the
12 alleged violation and a statement of the amount of the recommended
13 penalty and must inform the person that the person has a right to a
14 hearing on the occurrence of the violation, the amount of the
15 penalty, or both the occurrence of the violation and the amount of
16 the penalty.

17 (f) Within 20 days after the date the person receives the
18 notice, the person in writing may accept the determination and
19 recommended penalty of the department [~~commissioner or the~~
20 ~~commissioner's designee~~] or may make a written request for a
21 hearing on the occurrence of the violation, the amount of the
22 penalty, or both the occurrence of the violation and the amount of
23 the penalty.

24 (g) If the person accepts the determination and recommended
25 penalty of the department [~~commissioner or the commissioner's~~
26 ~~designee~~], the department [~~board~~] by order shall [~~approve the~~
27 ~~determination and~~] impose the recommended penalty.

1 (h) If the person requests a hearing or fails to respond
2 timely to the notice, the department shall refer the matter to the
3 State Office of Administrative Hearings [~~commissioner or the~~
4 ~~commissioner's designee shall set a hearing~~] and shall give notice
5 of the hearing to the person. The hearing shall be held by an
6 administrative law judge of that office [~~the department~~]. The
7 administrative law judge shall make findings of fact and
8 conclusions of law and promptly issue to the department [~~board~~] a
9 written proposal for a decision about the occurrence of the
10 violation and the amount of a proposed penalty. Based on the
11 findings of fact, conclusions of law, and proposal for a decision,
12 the department [~~board~~] by order may find that a violation has
13 occurred and impose a penalty or may find that no violation
14 occurred.

15 (i) The notice of the department's [~~board's~~] order given to
16 the person under Chapter 2001, Government Code, must include a
17 statement of the right of the person to judicial review of the
18 order.

19 (j) Within 30 days after the date the department's [~~board's~~]
20 order becomes final as provided by Section [2001.144](#), Government
21 Code, the person shall:

22 (1) pay the amount of the penalty;
23 (2) pay the amount of the penalty and file a petition
24 for judicial review contesting the occurrence of the violation, the
25 amount of the penalty, or both the occurrence of the violation and
26 the amount of the penalty; or

27 (3) without paying the amount of the penalty, file a

1 petition for judicial review in a district court in Travis County
2 contesting the occurrence of the violation, the amount of the
3 penalty, or both the occurrence of the violation and the amount of
4 the penalty.

5 (k) Within the 30-day period, a person who acts under
6 Subsection (j)(3) may:

7 (1) stay enforcement of the penalty by:

8 (A) paying the amount of the penalty to the court
9 for placement in an escrow account; or

10 (B) giving to the court a supersedeas bond that
11 is approved by the court for the amount of the penalty and that is
12 effective until all judicial review of the department's [~~board's~~]
13 order is final; or

14 (2) request the court to stay enforcement of the
15 penalty by:

16 (A) filing with the court a sworn affidavit of
17 the person stating that the person is financially unable to pay the
18 amount of the penalty and is financially unable to give the
19 supersedeas bond; and

20 (B) giving a copy of the affidavit to the
21 department [~~commissioner~~] by certified mail.

22 (1) If the department [~~commissioner~~] receives a copy of an
23 affidavit under Subsection (k)(2), the department [~~commissioner~~]
24 may file with the court, not later than the fifth day after the date
25 the copy is received, a contest to the affidavit. The court shall
26 hold a hearing on the facts alleged in the affidavit as soon as
27 practicable and shall stay the enforcement of the penalty on

1 finding that the alleged facts are true. The person who files an
2 affidavit has the burden of proving that the person is financially
3 unable to pay the amount of the penalty and give a supersedeas bond.

4 (m) If the person does not pay the amount of the penalty and
5 the enforcement of the penalty is not stayed, the department
6 [~~commissioner~~] may refer the matter to the attorney general for
7 collection of the amount of the penalty.

8 (n) Judicial review of the department's order [~~of the~~
9 ~~board~~]:

10 (1) is instituted by filing a petition as provided by
11 Subchapter G, Chapter 2001, Government Code; and
12 (2) is under the substantial evidence rule.

13 SECTION 3.0440. Section 146.0025(a), Health and Safety
14 Code, is amended to read as follows:

15 (a) This chapter does not apply to:

16 (1) a medical facility licensed under other law;
17 (2) an office or clinic of a person licensed by the
18 Texas [~~State Board of~~] Medical Board [~~Examiners~~];

19 (3) a person who performs only ear piercing; or

20 (4) a facility in which only ear piercing is
21 performed.

22 SECTION 3.0441. Section 146.003(b), Health and Safety Code,
23 as amended by Chapters 516 (S.B. 61) and 1528 (S.B. 932), Acts of
24 the 76th Legislature, Regular Session, 1999, is reenacted to read
25 as follows:

26 (b) The department may issue a license or temporary location
27 license for a tattoo or body piercing studio after determining that

1 the studio is in compliance with applicable statutes, rules, and
2 zoning codes.

3 SECTION 3.0442. Section [146.004](#), Health and Safety Code, is
4 amended to read as follows:

5 Sec. 146.004. LICENSE TERM; RENEWAL. (a) A tattoo studio
6 or body piercing studio license is valid for two years [~~one year~~]
7 from the date of issuance. A temporary tattooing or body piercing
8 location license is valid for a specified period not to exceed seven
9 days.

10 (b) A tattoo studio or body piercing studio license may be
11 renewed [~~annually~~] on payment of the required renewal fee.

12 SECTION 3.0443. Section [146.0041\(a\)](#), Health and Safety
13 Code, is amended to read as follows:

14 (a) The department may refuse to issue an original or
15 renewal tattoo studio or body piercing studio license if it has
16 reasonable grounds to believe and finds that any of the following
17 circumstances exist:

18 (1) the applicant has been convicted of a violation of
19 this chapter during the two years immediately preceding the filing
20 of the application;

21 (2) three years have not elapsed since the
22 termination, by pardon or otherwise, of a sentence imposed on the
23 applicant for a conviction associated with tattooing or body
24 piercing;

25 (3) the applicant violated or caused to be violated a
26 provision of this chapter or a rule [~~of the department~~] adopted
27 under this chapter involving moral turpitude during the six months

1 immediately preceding the filing of the application;
2 (4) the applicant failed to answer or falsely or
3 incorrectly answered a question in an original or renewal
4 application;

5 (5) the applicant is indebted to the state for a fee or
6 penalty imposed by this chapter or by rule [~~of the department~~]
7 adopted under this chapter;

8 (6) the applicant is a minor; or

9 (7) the applicant does not provide an adequate
10 building available at the address for which the license is sought
11 before conducting any activity authorized by the license.

12 SECTION 3.0444. Section [146.0042\(b\)](#), Health and Safety
13 Code, is amended to read as follows:

14 (b) The department may suspend for not more than 60 days or
15 revoke an original or renewal tattoo studio or body piercing studio
16 license if it is found, after notice and hearing, that any of the
17 following is true:

18 (1) the license holder has been finally convicted of a
19 violation of this chapter;

20 (2) the license holder violated a provision of this
21 chapter or a rule [~~of the department~~] adopted under this chapter;

22 (3) the license holder made a false or misleading
23 statement in connection with the original or renewal application,
24 either in the formal application itself or in any other written
25 instrument relating to the application submitted to the department;

26 (4) the license holder is indebted to the state for
27 fees or payment of penalties imposed by this chapter or by a rule

1 [of the department] adopted under this chapter;

2 (5) the license holder knowingly misrepresented to a
3 customer or the public any tattoo or body piercing jewelry sold by
4 the license holder; or

5 (6) the license holder was intoxicated on the licensed
6 premises.

7 SECTION 3.0445. Section 146.005, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 146.005. FEES. [(a)] The executive commissioner by
10 rule [~~board~~] shall set license and registration fees and license
11 and registration renewal fees in amounts necessary for the
12 department to administer this chapter.

13 [(b) Fees collected under this section may only be
14 appropriated to the department to administer and enforce this
15 chapter.]

16 SECTION 3.0446. Section 146.007(b), Health and Safety Code,
17 is amended to read as follows:

18 (b) The [~~board, commissioner, and~~] department may enforce
19 Chapter 431 in relation to a drug, cosmetic, or device that is used
20 in tattooing and that is not otherwise subject to that chapter as if
21 the drug, cosmetic, or device satisfied the definitions assigned
22 those terms under Section 431.002.

23 SECTION 3.0447. Section 146.010(a), Health and Safety Code,
24 is amended to read as follows:

25 (a) The executive commissioner [~~board~~] by rule shall
26 establish sanitation requirements for tattoo and body piercing
27 studios and any other necessary requirements relating to the

1 building or part of the building in which a tattoo or body piercing
2 studio is located.

3 SECTION 3.0448. Section 146.013(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) A tattooist shall maintain a permanent record of each
6 person tattooed by the tattooist for a period established by
7 department rule [~~the board~~]. A person who performs body piercing
8 shall maintain a permanent record of each individual whose body is
9 pierced by the person for a period established by department rule
10 [~~the board~~].

11 SECTION 3.0449. Section 146.015(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) The executive commissioner [~~board~~] shall adopt rules to
14 implement this chapter.

15 SECTION 3.0450. Section 146.017(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) The refusal to issue a license, the suspension or
18 revocation of a license, and any appeals are governed by the
19 department's [~~board's~~] formal hearing procedures and the procedures
20 for a contested case hearing under Chapter 2001, Government Code. A
21 person may appeal a final decision of the department as provided by
22 that chapter.

23 SECTION 3.0451. Sections 146.019(a), (d), (e), (f), (g),
24 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
25 amended to read as follows:

26 (a) The department [~~commissioner~~] may impose an
27 administrative penalty against a person who violates a rule adopted

1 under Section 146.007 or an order adopted or license issued under
2 this chapter.

3 (d) The department [~~commissioner who determines that a~~
4 ~~violation has occurred~~] shall issue an order that states the facts
5 on which a [~~the~~] determination that a violation occurred is based,
6 including an assessment of the penalty.

7 (e) The department [~~within 14 days after the date the report~~
8 ~~is issued, the commissioner~~] shall give written notice of the order
9 [~~report~~] to the person. The notice may be given by certified mail.
10 The notice must include a brief summary of the alleged violation and
11 a statement of the amount of the recommended penalty and must inform
12 the person that the person has a right to a hearing on the
13 occurrence of the violation, the amount of the penalty, or both the
14 occurrence of the violation and the amount of the penalty.

15 (f) Within 20 days after the date the person receives the
16 notice, the person in writing may accept the determination and
17 recommended penalty of the department [~~commissioner~~] or may make
18 written request for a hearing on the occurrence of the violation,
19 the amount of the penalty, or both the occurrence of the violation
20 and the amount of the penalty.

21 (g) If the person accepts the determination and recommended
22 penalty of the department [~~commissioner~~], the department
23 [~~commissioner~~] by order shall [~~approve the determination and~~]
24 impose the recommended penalty.

25 (h) If the person requests a hearing or fails to respond
26 timely to the notice, the department [~~commissioner~~] shall refer the
27 case to the State Office of Administrative Hearings and [~~set a~~

1 ~~hearing and give notice of the hearing to the person. The hearing~~
2 ~~shall be held by~~] an administrative law judge of that office shall
3 hold the hearing. The department shall give written notice of the
4 hearing to the person [the State Office of Administrative
5 Hearings]. The administrative law judge shall make findings of
6 fact and conclusions of law and promptly issue to the department
7 [~~commissioner~~] a proposal for a decision about the occurrence of
8 the violation and the amount of a proposed penalty. Based on the
9 findings of fact, conclusions of law, and proposal for a decision,
10 the department [~~commissioner~~] by order may find that a violation
11 has occurred and impose a penalty or may find that no violation
12 occurred.

13 (i) The notice of the department's [~~commissioner's~~] order
14 given to the person under Chapter 2001, Government Code, must
15 include a statement of the right of the person to judicial review of
16 the order.

17 (j) Within 30 days after the date the department's
18 [~~commissioner's~~] order is final as provided by Subchapter F,
19 Chapter 2001, Government Code, the person shall:

20 (1) pay the amount of the penalty;

21 (2) pay the amount of the penalty and file a petition
22 for judicial review contesting the occurrence of the violation, the
23 amount of the penalty, or both the occurrence of the violation and
24 the amount of the penalty; or

25 (3) without paying the amount of the penalty, file a
26 petition for judicial review contesting the occurrence of the
27 violation, the amount of the penalty, or both the occurrence of the

1 violation and the amount of the penalty.

2 (k) Within the 30-day period, a person who acts under
3 Subsection (j)(3) [~~of this section~~] may:

4 (1) stay enforcement of the penalty by:

5 (A) paying the amount of the penalty to the court
6 for placement in an escrow account; or

7 (B) giving to the court a supersedeas bond
8 approved by the court for the amount of the penalty and that is
9 effective until all judicial review of the department's
10 [~~commissioner's~~] order is final; or

11 (2) request the court to stay enforcement of the
12 penalty by:

13 (A) filing with the court a sworn affidavit of
14 the person stating that the person is financially unable to pay the
15 amount of the penalty and is financially unable to give the
16 supersedeas bond; and

17 (B) giving a copy of the affidavit to the
18 department [~~commissioner~~] by certified mail.

19 (1) The department on receipt of [~~commissioner who~~
20 ~~receives~~] a copy of an affidavit under Subsection (k)(2) [~~of this~~
21 ~~section~~] may file, with the court within five days after the date
22 the copy is received, a contest to the affidavit. The court shall
23 hold a hearing on the facts alleged in the affidavit as soon as
24 practicable and shall stay the enforcement of the penalty on
25 finding that the alleged facts are true. The person who files an
26 affidavit has the burden of proving that the person is financially
27 unable to pay the amount of the penalty and to give a supersedeas

1 bond.

2 (m) If the person does not pay the amount of the penalty and
3 the enforcement of the penalty is not stayed, the department
4 [~~commissioner~~] may refer the matter to the attorney general for
5 collection of the amount of the penalty.

6 (n) Judicial review of the order of the department
7 [~~commissioner~~]:

8 (1) is instituted by filing a petition as provided by
9 Subchapter G, Chapter 2001, Government Code [~~and its subsequent~~
10 ~~amendments~~]; and

11 (2) is under the substantial evidence rule.

12 SECTION 3.0452. Section 146.024, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 146.024. REGISTRATION TERM; RENEWAL. (a) A tattooist
15 or body piercer registration is valid for two years [~~one year~~] from
16 the date of issuance.

17 (b) A tattooist or body piercer registration may be renewed
18 [~~annually~~] on:

19 (1) payment of the required renewal fee; and
20 (2) submission of proof of completion of a training
21 course approved by the department that includes not less than four
22 hours related to bloodborne pathogens, infection control, and
23 aseptic technique.

24 SECTION 3.0453. Sections 146.025(b) and (d), Health and
25 Safety Code, are amended to read as follows:

26 (b) The department may approve a course of instruction based
27 on any standards set by the executive commissioner [~~department~~] to

1 reasonably ensure that a tattooist or body piercer develops the job
2 skills and knowledge necessary to protect public health and safety.

3 (d) The executive commissioner [department] by rule shall
4 set a fee in an amount reasonable and necessary to cover the cost to
5 the department of reviewing the course content and issuing the
6 approval.

7 SECTION 3.0454. Section 161.001(a), Health and Safety Code,
8 is amended to read as follows:

9 (a) A person who administers or authorizes the
10 administration of a vaccine or immunizing agent is not liable for an
11 injury caused by the vaccine or immunizing agent if the
12 immunization is required by department rule [~~the board~~] or is
13 otherwise required by law or other rules [~~rule~~].

14 SECTION 3.0455. Sections 161.004(a) and (f), Health and
15 Safety Code, are amended to read as follows:

16 (a) Every child in the state shall be immunized against
17 vaccine preventable diseases caused by infectious agents in
18 accordance with the immunization schedule adopted in department
19 rules [~~by the board~~].

20 (f) The executive commissioner [~~board~~] shall adopt rules
21 that are necessary to administer this section.

22 SECTION 3.0456. Sections 161.005(a) and (b), Health and
23 Safety Code, are amended to read as follows:

24 (a) On admission of a child to a mental health facility of
25 the department, a state supported living center of the [~~Texas~~]
26 Department of Aging and Disability Services, or a facility of
27 [~~Mental Health and Mental Retardation,~~] the Texas Department of

1 Criminal Justice[~~T~~] or the Texas Juvenile Justice Department [~~Youth~~
2 ~~Commission~~], the facility physician shall review the immunization
3 history of the child and administer any needed vaccinations or
4 refer the child for immunization.

5 (b) The department and the executive commissioner [~~board~~]
6 have the same powers and duties under this section as the department
7 and the executive commissioner [~~those entities~~] have under Sections
8 38.001 and 51.933, Education Code. In addition, the provisions of
9 those sections relating to provisional admissions and exceptions
10 apply to this section.

11 SECTION 3.0457. Sections 161.0051(b) and (c), Health and
12 Safety Code, are amended to read as follows:

13 (b) The executive commissioner [~~board~~] by rule may require
14 nursing facilities [~~homes~~] to offer, in accordance with an
15 immunization schedule adopted in department rules [~~by the board~~],
16 immunizations to elderly residents or to staff who are in contact
17 with elderly residents against diseases that the executive
18 commissioner [~~board~~] determines to be:

- 19 (1) caused by infectious agents;
- 20 (2) potentially deadly; and
- 21 (3) preventable by vaccine.

22 (c) The executive commissioner [~~board~~] by rule shall
23 require nursing homes to offer, in accordance with an immunization
24 schedule adopted in department rules [~~by the board~~]:

- 25 (1) pneumococcal vaccine to elderly residents; and
- 26 (2) influenza vaccine to elderly residents and to
27 staff who are in contact with elderly residents.

1 SECTION 3.0458. Sections 161.0052(b), (c), (d), (f), and
2 (h), Health and Safety Code, are amended to read as follows:

3 (b) The executive commissioner [of the Health and Human
4 Services Commission] by rule shall require a hospital to inform
5 each elderly person admitted to the hospital for a period of 24
6 hours or more that the pneumococcal and influenza vaccines are
7 available. If the elderly person requests a vaccine, and if a
8 physician, or an advanced nurse practitioner or physician assistant
9 on behalf of a physician, determines that the vaccine is in the
10 person's best interest, the hospital must make the vaccination
11 available to the person before the person is discharged from the
12 hospital.

13 (c) The executive commissioner [of the Health and Human
14 Services Commission] by rule shall require an end stage renal
15 disease facility to offer, to the extent possible as determined by
16 the facility, the opportunity to receive the pneumococcal and
17 influenza vaccines to each elderly person who receives ongoing care
18 at the facility if a physician, or an advanced nurse practitioner or
19 physician assistant on behalf of a physician, determines that the
20 vaccine is in the person's best interest. If the facility decides
21 it is not feasible to offer the vaccine, the facility must provide
22 the person with information on other options for obtaining the
23 vaccine.

24 (d) The Texas [State Board of] Medical Board [Examiners] by
25 rule shall require a physician responsible for the management of a
26 physician's office that provides ongoing medical care to elderly
27 persons to offer, to the extent possible as determined by the

1 physician, the opportunity to receive the pneumococcal and
2 influenza vaccines to each elderly person who receives ongoing care
3 at the office. If the physician decides it is not feasible to offer
4 the vaccine, the physician must provide the person with information
5 on other options for obtaining the vaccine.

6 (f) In adopting rules under this section, the executive
7 commissioner [~~of the Health and Human Services Commission~~] and the
8 Texas [~~State Board of~~] Medical Board [~~Examiners~~] shall consider the
9 recommendations of the Advisory Committee on Immunization
10 Practices of the Centers for Disease Control and Prevention.

11 (h) The department shall make available to hospitals and end
12 stage renal disease facilities, and the Texas [~~State Board of~~]
13 Medical Board [~~Examiners~~] shall make available to physicians'
14 offices, educational and informational materials concerning
15 vaccination against influenza virus and pneumococcal disease.

16 SECTION 3.0459. Sections 161.007(a), (a-3), and (k), Health
17 and Safety Code, are amended to read as follows:

18 (a) The department, for the primary purpose of establishing
19 and maintaining a single repository of accurate, complete, and
20 current immunization records to be used in aiding, coordinating,
21 and promoting efficient and cost-effective communicable disease
22 prevention and control efforts, shall establish and maintain an
23 immunization registry. The executive commissioner [~~of the Health~~
24 ~~and Human Services Commission~~] by rule shall develop guidelines to:

25 (1) protect the confidentiality of patients in
26 accordance with Section 159.002, Occupations Code;
27 (2) inform the individual or the individual's legally

1 authorized representative about the registry and that registry
2 information may be released under Section [161.00735](#);

3 (3) require the written or electronic consent of the
4 individual or the individual's legally authorized representative
5 before any information relating to the individual is included in
6 the registry;

7 (4) permit the individual or the individual's legally
8 authorized representative to withdraw consent for the individual to
9 be included in the registry; and

10 (5) determine the process by which consent is
11 verified, including affirmation by a health care provider, birth
12 registrar, regional health information exchange, or local
13 immunization registry that consent has been obtained.

14 (a-3) The executive commissioner [~~of the Health and Human~~
15 ~~Services Commission~~] by rule shall develop guidelines and
16 procedures for obtaining consent from an individual after the
17 individual's 18th birthday, including procedures for retaining
18 immunization information in a separate database that is
19 inaccessible by any person other than the department during the
20 one-year period during which an 18-year-old may consent to
21 inclusion in the registry under Subsection (a-2).

22 (k) The executive commissioner [~~of the Health and Human~~
23 ~~Services Commission~~] shall adopt rules to implement this section.

24 SECTION 3.0460. Sections [161.00705\(e\)](#) and (i), Health and
25 Safety Code, are amended to read as follows:

26 (e) The executive commissioner [~~of the Health and Human~~
27 ~~Services Commission~~] by rule shall determine the period during

1 which the information collected under this section must remain in
2 the immunization registry following the end of the disaster, public
3 health emergency, terrorist attack, hostile military or
4 paramilitary action, or extraordinary law enforcement emergency.

5 (i) The executive commissioner [~~of the Health and Human~~
6 ~~Services Commission~~] shall adopt rules necessary to implement this
7 section.

8 SECTION 3.0461. Section [161.00706\(c\)](#), Health and Safety
9 Code, is amended to read as follows:

10 (c) The executive commissioner [~~of the Health and Human~~
11 ~~Services Commission~~] shall:

12 (1) develop rules to ensure that immunization history
13 submitted under Subsection (a)(2) is medically verified
14 immunization information;

15 (2) develop guidelines for use by the department in
16 informing first responders about the registry and that registry
17 information may be released under Section [161.00735](#); and

18 (3) adopt rules necessary for the implementation of
19 this section.

20 SECTION 3.0462. Section [161.0072\(c\)](#), Health and Safety
21 Code, is amended to read as follows:

22 (c) The executive commissioner [~~board~~] shall develop rules
23 to ensure that the immunization history submitted by an individual
24 or the individual's legally authorized representative is medically
25 verified immunization information.

26 SECTION 3.0463. Sections [161.00735\(e\)](#) and (h), Health and
27 Safety Code, are amended to read as follows:

1 (e) The executive commissioner [~~of the Health and Human~~
2 ~~Services Commission~~] by rule[~~-~~] shall determine the period during
3 which the information collected under Subsection (c) must remain in
4 the immunization registry following the end of the disaster.

5 (h) The executive commissioner [~~of the Health and Human~~
6 ~~Services Commission~~] shall make every effort to enter into a
7 memorandum of agreement with each state to which residents of this
8 state are likely to evacuate in a disaster on:

9 (1) the release and use of registry information under
10 this section to the appropriate health authority or local health
11 authority of that state, including the length of time the
12 information may be retained by that state; and

13 (2) the receipt and use of information submitted by
14 the health authority or local health authority of that state for
15 inclusion in the registry under this section.

16 SECTION 3.0464. Section [161.008](#)(h), Health and Safety Code,
17 is amended to read as follows:

18 (h) The executive commissioner [~~of the Health and Human~~
19 ~~Services Commission~~] shall adopt rules to implement this section.

20 SECTION 3.0465. Section [161.0105](#)(c), Health and Safety
21 Code, is amended to read as follows:

22 (c) The immunity created by this section is in addition to
23 any immunity created by Sections [161.001](#) and [161.007](#)(i)
24 [~~161.007(g)~~].

25 SECTION 3.0466. Section [161.0107](#)(c), Health and Safety
26 Code, is amended to read as follows:

27 (c) The executive commissioner [~~of the Health and Human~~

1 Services Commission] by rule shall specify:

2 (1) the fields necessary to populate the immunization
3 registry, including a field that indicates the patient's consent to
4 be listed in the immunization registry has been obtained; and

5 (2) the data standards that must be used for
6 electronic submission of immunization information.

7 SECTION 3.0467. Section 161.0109(b), Health and Safety
8 Code, is amended to read as follows:

9 (b) The department shall collaborate with the Cancer
10 Prevention and Research Institute of Texas [~~Cancer Council~~] or its
11 successor entity to develop educational programs for parents
12 regarding human papillomavirus and promoting awareness of a minor's
13 need for preventive services for cervical cancer and its
14 precursors.

15 SECTION 3.0468. Section 161.021(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) Unless prohibited by other law, a person, including a
18 hospital, sanatorium, nursing facility [~~home~~], rest home, medical
19 society, cancer registry, or other organization, may provide
20 interviews, reports, statements, memoranda, or other information
21 relating to the condition and treatment of any person, to be used in
22 a study to reduce morbidity or mortality or to identify persons who
23 may need immunization, to:

24 (1) the department;

25 (2) a person that makes inquiries under immunization
26 surveys conducted for the department;

27 (3) a medical organization;

1 (4) a hospital;
2 (5) a hospital committee; or
3 (6) a cancer registry, including a cancer registry of
4 a cancer treatment center [~~as defined by Section 82.002~~].

5 SECTION 3.0469. Section [161.0213](#), Health and Safety Code,
6 is amended to read as follows:

7 Sec. 161.0213. CONFIDENTIALITY. Reports, records, and
8 information furnished to the commissioner or the commissioner's
9 designee or the Texas [~~Natural Resource Conservation~~] Commission on
10 Environmental Quality that relate to an epidemiologic or
11 toxicologic investigation of human illnesses or conditions and of
12 environmental exposures that are harmful or believed to be harmful
13 to the public health are not public information under Chapter 552,
14 Government Code, and are subject to the same confidentiality
15 requirements as described by Section [81.046](#).

16 SECTION 3.0470. Sections [161.0315](#)(c) and (e), Health and
17 Safety Code, are amended to read as follows:

18 (c) A hospital district may require in a contract with a
19 health care facility described by Subsection (b) a provision that
20 allows the governing body of the district to appoint a specified
21 number of members to the facility's medical peer review committee
22 or medical committee to evaluate medical and health care services
23 for which the district contracts with the facility to provide. The
24 governing body of a hospital district may receive a report from the
25 facility's medical peer review committee or medical committee under
26 this section in a closed meeting. A report, information, or a
27 record that the district receives from the facility related to a

1 review action conducted under the terms of the contract is:

2 (1) confidential;

3 (2) not subject to disclosure under Chapter 552,

4 Government Code; and

5 (3) subject to the same confidentiality and disclosure

6 requirements to which a report, information, or record of a medical

7 peer review committee under Section 160.007 [~~160.006~~], Occupations

8 Code, is subject.

9 (e) The governing body of a hospital district may receive a

10 report under Subsection (d)(3) in a closed meeting. A report,

11 information, or a record that the hospital district receives under

12 Subsection (d)(3) is:

13 (1) confidential;

14 (2) not subject to disclosure under Chapter 552,

15 Government Code; and

16 (3) subject to the same confidentiality and disclosure

17 requirements to which a report, information, or record of a medical

18 peer review committee under Section 160.007 [~~160.006~~], Occupations

19 Code, is subject.

20 SECTION 3.0471. Section 161.083(a), Health and Safety Code,

21 is amended to read as follows:

22 (a) Pursuant to federal regulation under 21 C.F.R. Section

23 1140.14(b) [~~897.14(b)~~], a person may not sell, give, or cause to be

24 sold or given a cigarette or tobacco product to someone who is

25 younger than 27 years of age unless the person to whom the cigarette

26 or tobacco product was sold or given presents an apparently valid

27 proof of identification.

1 SECTION 3.0472. Section 161.101(c), Health and Safety Code,
2 is amended to read as follows:

3 (c) The executive commissioner [board] shall adopt rules to
4 implement this section.

5 SECTION 3.0473. Sections 161.131(1) and (8), Health and
6 Safety Code, are amended to read as follows:

7 (1) "Abuse" has the meaning assigned by the federal
8 Protection and Advocacy for [Mentally Ill] Individuals with Mental
9 Illness Act [~~of 1986~~] (42 U.S.C. Section 10801 et seq.).

10 (8) "Neglect" has the meaning assigned by the federal
11 Protection and Advocacy for [Mentally Ill] Individuals with Mental
12 Illness Act [~~of 1986~~] (42 U.S.C. Section 10801 et seq.).

13 SECTION 3.0474. Sections 161.132(d) and (f), Health and
14 Safety Code, are amended to read as follows:

15 (d) The executive commissioner by rule for the department
16 and the Department of Aging and Disability Services, and [Texas
17 Board of Mental Health and Mental Retardation, Texas Board of
18 Health, Texas Commission on Alcohol and Drug Abuse, and] each state
19 health care regulatory agency by rule shall:

20 (1) prescribe procedures for the investigation of
21 reports received under Subsection (a) or (b) and for coordination
22 with and referral of reports to law enforcement agencies or other
23 appropriate agencies; and

24 (2) prescribe follow-up procedures to ensure that a
25 report referred to another agency receives appropriate action.

26 (f) The executive commissioner by rule and each [Each] state
27 health care regulatory agency by rule shall provide for appropriate

1 disciplinary action against a health care professional licensed by
2 the agency who fails to report as required by this section.

3 SECTION 3.0475. Section 161.133, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 161.133. [MEMORANDUM OF UNDERSTANDING ON] INSERVICE
6 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
10 mental health facility, treatment facility, or hospital that
11 provides comprehensive medical rehabilitation services to annually
12 provide as a condition of continued licensure a minimum of eight
13 hours of inservice training designed to assist employees and health
14 care professionals associated with the facility in identifying
15 patient abuse or neglect and illegal, unprofessional, or unethical
16 conduct by or in the facility.

17 (b) The rules [~~memorandum~~] must prescribe:

18 (1) minimum standards for the training program; and
19 (2) a means for monitoring compliance with the
20 requirement.

21 (c) The department [~~Each agency~~] shall review and the
22 executive commissioner shall modify the rules [~~memorandum~~] as
23 necessary not later than the last month of each state fiscal year.

24 SECTION 3.0476. Section 161.134(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) A hospital, mental health facility, or treatment
27 facility may not suspend or terminate the employment of or

1 discipline or otherwise discriminate against an employee for
2 reporting to the employee's supervisor, an administrator of the
3 facility, a state regulatory agency, or a law enforcement agency a
4 violation of law, including a violation of this chapter, a rule
5 adopted under this chapter, or a rule of another agency [~~adopted by~~
6 ~~the Texas Board of Mental Health and Mental Retardation, the Texas~~
7 ~~Board of Health, or the Texas Commission on Alcohol and Drug Abuse~~].

8 SECTION 3.0477. Sections [161.135](#)(a) and (c), Health and
9 Safety Code, are amended to read as follows:

10 (a) A hospital, mental health facility, or treatment
11 facility may not retaliate against a person who is not an employee
12 for reporting a violation of law, including a violation of this
13 chapter, a rule adopted under this chapter, or a rule of another
14 agency [~~adopted by the Texas Board of Mental Health and Mental~~
15 ~~Retardation, the Texas Board of Health, or the Texas Commission on~~
16 ~~Alcohol and Drug Abuse~~].

17 (c) A person suing under this section has the burden of
18 proof, except that it is a rebuttable presumption that the
19 plaintiff was retaliated against if:

20 (1) before the 60th day after the date on which the
21 plaintiff made a report in good faith, the hospital, mental health
22 facility, or treatment facility:

23 (A) discriminates in violation of Section
24 [161.134](#) against a relative who is an employee of the facility;

25 (B) transfers, disciplines, suspends,
26 terminates, or otherwise discriminates against the person or a
27 relative who is a volunteer in the facility or who is employed under

1 the patient work program administered by the department [~~Texas~~
2 ~~Department of Mental Health and Mental Retardation~~];

3 (C) commits or threatens to commit, without
4 justification, the person or a relative of the person; or

5 (D) transfers, discharges, punishes, or
6 restricts the privileges of the person or a relative of the person
7 who is receiving inpatient or outpatient services in the facility;
8 or

9 (2) a person expected to testify on behalf of the
10 plaintiff is intentionally made unavailable through an action of
11 the facility, including a discharge, resignation, or transfer.

12 SECTION 3.0478. Sections 161.301(a), (b), and (d), Health
13 and Safety Code, are amended to read as follows:

14 (a) The department [~~commissioner~~] shall develop and
15 implement a public awareness campaign designed to reduce tobacco
16 use by minors in this state. The campaign may use advertisements or
17 similar media to provide educational information about tobacco use.

18 (b) The department [~~commissioner~~] may contract with another
19 person to develop and implement the public awareness campaign. The
20 contract shall be awarded on the basis of competitive bids.

21 (d) The department [~~commissioner~~] may not award a contract
22 under Subsection (b) to:

23 (1) a person or entity that is required to register
24 with the Texas Ethics Commission under Chapter 305, Government
25 Code, except as provided by Subsection (f);

26 (2) any partner, employee, employer, relative,
27 contractor, consultant, or related entity of a person or entity

1 described by Subdivision (1) and not described by Subsection (f);

2 or

3 (3) a person or entity who has been hired to represent
4 associations or other entities for the purpose of affecting the
5 outcome of legislation, agency rules, or other government policies
6 through grassroots or media campaigns.

7 SECTION 3.0479. Section 161.352(c), Health and Safety Code,
8 is amended to read as follows:

9 (c) The executive commissioner [department] by rule shall
10 establish the time for filing an annual report under this section
11 and shall prescribe the form for the report.

12 SECTION 3.0480. Section 161.353(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) Each manufacturer shall assign a nicotine yield rating
15 to each cigarette or tobacco product distributed in this state. The
16 rating shall be assigned in accordance with department standards
17 [~~adopted by the department~~].

18 SECTION 3.0481. Section 161.402, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 161.402. MATERIAL SAFETY DATA SHEET REQUIRED; ASBESTOS
21 INSTALLATION OR REINSTALLATION PROHIBITED. The executive
22 commissioner [~~board~~] shall adopt rules designating the materials or
23 replacement parts for which a person must obtain a material safety
24 data sheet before installing the materials or parts in a public
25 building. A person may not install materials or replacement parts
26 in a public building if:

27 (1) the person does not obtain a required material

1 safety data sheet; or

2 (2) the materials or parts, according to the material
3 safety data sheet, contain more than one percent asbestos and there
4 is an alternative material or part.

5 SECTION 3.0482. Section [161.501\(a\)](#), Health and Safety Code,
6 is amended to read as follows:

7 (a) A hospital, birthing center, physician, nurse midwife,
8 or midwife who provides prenatal care to a pregnant woman during
9 gestation or at delivery of an infant shall:

10 (1) provide the woman and the father of the infant, if
11 possible, or another adult caregiver for the infant, with a
12 resource pamphlet that includes:

13 (A) a list of the names, addresses, and phone
14 numbers of professional organizations that provide postpartum
15 counseling and assistance to parents relating to postpartum
16 depression and other emotional trauma associated with pregnancy and
17 parenting;

18 (B) information regarding the prevention of
19 shaken baby syndrome including:

20 (i) techniques for coping with anger caused
21 by a crying baby;

22 (ii) different methods for preventing a
23 person from shaking a newborn, infant, or other young child;

24 (iii) the dangerous effects of shaking a
25 newborn, infant, or other young child; and

26 (iv) the symptoms of shaken baby syndrome
27 and who to contact, as recommended by the American Academy of

1 Pediatrics, if a parent suspects or knows that a baby has been
2 shaken in order to receive prompt medical treatment:

3 (C) a list of diseases for which a child is
4 required by state law to be immunized and the appropriate schedule
5 for the administration of those immunizations;

(D) the appropriate schedule for follow-up procedures for newborn screening;

(E) information regarding sudden infant death syndrome, including current recommendations for infant sleeping conditions to lower the risk of sudden infant death syndrome; and

11 (F) educational information in both English and
12 Spanish on pertussis disease and the availability of a vaccine to
13 protect against pertussis, including information on the Centers for
14 Disease Control and Prevention recommendation that parents receive
15 Tdap during the postpartum period to protect newborns from the
16 transmission of pertussis;

23 (A) selecting and interacting with a primary
24 health care practitioner and establishing a "medical home" for the
25 child;

26 (B) dental care;

27 (c) effective parenting;

- (D) child safety;
- (E) the importance of reading to a child;
- (F) expected developmental milestones;
- (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.

13 SECTION 3.0483. The heading to Section 161.502, Health and
14 Safety Code, is amended to read as follows:

15 Sec. 161.502. DUTIES OF DEPARTMENT, EXECUTIVE
16 COMMISSIONER, AND COMMISSION.

17 SECTION 3.0484. Sections 161.502(c) and (d), Health and
18 Safety Code, are amended to read as follows:

19 (c) The executive commissioner [Health and Human Services
20 ~~Commission~~] shall develop specific performance measures by which
21 the commission may evaluate the effectiveness of the resource guide
22 under Section 161.501(a)(2) in:

23 (1) reducing costs to the state; and
24 (2) improving outcomes for children.

25 (d) Not later than December 1 of each even-numbered year,
26 the commission [~~Health and Human Services Commission~~] shall submit
27 a report to the legislature on the effectiveness of the resource

1 guide under Section 161.501(a)(2), including legislative
2 recommendations concerning the guide.

3 SECTION 3.0485. Section 161.551, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 161.551. DEFINITIONS. (a) In this subchapter,

6 "servicemember" [+

7 [+(1) "Commission" means the Health and Human Services
8 Commission.

9 [+(2) "Department" means the Department of State Health
10 Services.

11 [+(3) "Servicemember"] means a member or former member
12 of the state military forces or a component of the United States
13 armed forces, including a reserve component.

14 (b) In this section, "state military forces" has the meaning
15 assigned by Section 437.001, Government Code.

16 SECTION 3.0486. Sections 162.001(1) and (2), Health and
17 Safety Code, are amended to read as follows:

18 (1) "Blood bank" means a facility that obtains blood
19 from voluntary donors, as that term is defined by the United States
20 Food and Drug Administration, the AABB (formerly known as the
21 American Association of Blood Banks), and the American Red Cross
22 Blood Services and that is registered or licensed by the Center for
23 [Office of] Biologics Evaluation and Research of the United States
24 Food and Drug Administration and accredited by the AABB [American
25 Association of Blood Banks] or the American Red Cross Blood
26 Services, or is qualified for membership in the American
27 Association of Tissue Banks. The term includes a blood center,

1 regional collection center, tissue bank, and transfusion service.

2 (2) "AIDS" means acquired immune deficiency syndrome
3 as defined by the Centers for Disease Control and Prevention of the
4 United States Public Health Service.

5 SECTION 3.0487. Section 162.002(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) For each donation of blood, a blood bank shall require
8 the donor to submit to tests for communicable [~~infectious~~]
9 diseases, including tests for AIDS, HIV, or hepatitis, and
10 serological tests for contagious venereal diseases.

11 SECTION 3.0488. Section 162.004, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 162.004. DISCLOSURE REQUIRED BY LAW. A blood bank
14 shall disclose all information required by law, including HIV test
15 results, to:

16 (1) the department and a local health authority as
17 required under Chapter 81 (Communicable Disease Prevention and
18 Control Act);

19 (2) the Centers for Disease Control and Prevention of
20 the United States Public Health Service, as required by federal law
21 or regulation; or

22 (3) any other local, state, or federal entity, as
23 required by law, rule, or regulation.

24 SECTION 3.0489. Sections 162.006(a) and (b), Health and
25 Safety Code, are amended to read as follows:

26 (a) A blood bank may report to other blood banks the name of
27 a donor with a possible communicable [~~infectious~~] disease according

1 to positive blood test results.

2 (b) A blood bank that reports a donor's name to other blood
3 banks under this section may not disclose the communicable
4 [~~infectious~~] disease that the donor has or is suspected of having.

5 SECTION 3.0490. Section 162.007(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) A blood bank shall report blood test results for blood
8 confirmed as HIV positive by the normal procedures blood banks
9 presently use or found to be contaminated by any other communicable
10 [~~infectious~~] disease to:

11 (1) the hospital or other facility in which the blood
12 was transfused or provided;

13 (2) the physician who transfused the infected blood;
14 or

15 (3) the recipient of the blood.

16 SECTION 3.0491. Section 162.016, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 162.016. BE A BLOOD DONOR ACCOUNT; DEDICATION. (a)
19 The be a blood donor account is a separate account in the general
20 revenue fund. The account is composed of:

21 (1) money deposited to the credit of the account under
22 Section 504.641, Transportation Code; and

23 (2) gifts, grants, donations, and legislative
24 appropriations.

25 (b) The department administers the account.

26 (b-1) The department [and] may spend money credited to the
27 account or money deposited to the associated trust fund account

1 created under Section 504.6012, Transportation Code, only to:

2 (1) make grants to nonprofit blood centers in this
3 state for programs to recruit and retain volunteer blood donors;
4 and

5 (2) defray the cost of administering the account.

6 (c) The department [board]

7 [~~(1)~~] may accept gifts, grants, and donations from any
8 source for the benefit of the account. The executive commissioner
9 of the Health and Human Services Commission [~~, and~~

10 [~~(2)~~] by rule shall establish guidelines for spending
11 money described by Subsection (b-1) [~~credited to the account~~].

12 SECTION 3.0492. Section 162.018, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 162.018. BROCHURE ON UMBILICAL CORD BLOOD OPTIONS.
15 (a) The executive commissioner [~~of the Health and Human Services~~
16 ~~Commission~~] shall prepare and update as necessary a brochure based
17 on nationally accepted, peer reviewed, scientific research
18 information regarding stem cells contained in the umbilical cord
19 blood after delivery of an infant. The information in the brochure
20 must include:

21 (1) the current and potential uses, risks, and
22 benefits of stem cells contained in umbilical cord blood to a
23 potential recipient of donated stem cells, including a biological
24 family member, extended family member, or nonrelated individual;

25 (2) the options available for future use or storage of
26 umbilical cord blood after delivery of an infant, including:

27 (A) discarding the stem cells;

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1 (B) donating the stem cells to a public umbilical
2 cord blood bank:

3 (C) storing the stem cells in a private family
4 umbilical cord blood bank for use by immediate and extended family
5 members; and

6 (D) storing the stem cells for immediate and
7 extended family use through a family or sibling donor banking
8 program that provides free collection, processing, and storage when
9 a medical need exists;

10 (3) the medical process used to collect umbilical cord
11 blood after delivery of an infant;

12 (4) any risk associated with umbilical cord blood
13 collection to the mother and the infant:

17 (6) the average cost of public and private umbilical
18 cord blood banking.

19 (b) The department [Department of State Health Services]
20 shall make the brochure available on the department's website and
21 shall distribute the brochure on request to physicians or other
22 persons permitted by law to attend a pregnant woman during
23 gestation or at delivery of an infant.

24 SECTION 3.0493. Section 164.003(5), Health and Safety Code,
25 is amended to read as follows:

26 (5) "Mental health facility" means:

(A) a "mental health facility" as defined by

1 Section 571.003;

2 (B) a residential treatment facility, other than
3 a mental health facility, in which persons are treated for
4 emotional problems or disorders in a 24-hour supervised living
5 environment; and

6 (C) an adult day-care facility [~~or adult day~~
7 ~~health care facility~~] as defined by Section 103.003, Human
8 Resources Code.

9 SECTION 3.0494. Section 164.004, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 164.004. EXEMPTIONS. This chapter does not apply to:

12 (1) a treatment facility:

13 (A) operated by the department [~~Texas Department~~
14 ~~of Mental Health and Mental Retardation~~], a federal agency, or a
15 political subdivision; or

16 (B) funded by the department [~~Texas Commission on~~
17 ~~Alcohol and Drug Abuse~~];

18 (2) a community center established under Subchapter A,
19 Chapter 534, or a facility operated by a community center; or

20 (3) a facility owned and operated by a nonprofit or
21 not-for-profit organization offering counseling concerning family
22 violence, help for runaway children, or rape.

23 SECTION 3.0495. Section 164.006, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 164.006. SOLICITING AND CONTRACTING WITH CERTAIN
26 REFERRAL SOURCES. A treatment facility or a person employed or
27 under contract with a treatment facility, if acting on behalf of the

1 treatment facility, may not:

2 (1) contact a referral source or potential client for
3 the purpose of soliciting, directly or indirectly, a referral of a
4 patient to the treatment facility without disclosing its soliciting
5 agent's, employee's, or contractor's affiliation with the treatment
6 facility;

7 (2) offer to provide or provide mental health or
8 chemical dependency services to a public or private school in this
9 state, on a part-time or full-time basis, the services of any of its
10 employees or agents who make, or are in a position to make, a
11 referral, if the services are provided on an individual basis to
12 individual students or their families. Nothing herein prohibits a
13 treatment facility from:

14 (A) offering or providing educational programs
15 in group settings to public schools in this state if the affiliation
16 between the educational program and the treatment facility is
17 disclosed;

18 (B) providing counseling services to a public
19 school in this state in an emergency or crisis situation if the
20 services are provided in response to a specific request by a school;
21 provided that, under no circumstances may a student be referred to
22 the treatment facility offering the services; or

23 (C) entering into a contract under Section
24 **464.020** with the board of trustees of a school district with a
25 disciplinary alternative education program, or with the board's
26 designee, for the provision of chemical dependency treatment
27 services;

1 (3) provide to an entity of state or local government,
2 on a part-time or full-time basis, the mental health or chemical
3 dependency services of any of its employees, agents, or contractors
4 who make or are in a position to make referrals unless:

5 (A) the treatment facility discloses to the
6 governing authority of the entity:

7 (i) the employee's, agent's, or
8 contractor's relationship to the facility; and

9 (ii) the fact that the employee, agent, or
10 contractor might make a referral, if permitted, to the facility;
11 and

12 (B) the employee, agent, or contractor makes a
13 referral only if:

14 (i) the treatment facility obtains the
15 governing authority's authorization in writing for the employee,
16 agent, or contractor to make the referrals; and

17 (ii) the employee, agent, or contractor
18 discloses to the prospective patient the employee's, agent's, or
19 contractor's relationship to the facility at initial contact; or

20 (4) in relation to intervention and assessment
21 services, contract with, offer to remunerate, or remunerate a
22 person who operates an intervention and assessment service that
23 makes referrals to a treatment facility for inpatient treatment of
24 mental illness or chemical dependency unless the intervention and
25 assessment service is:

26 (A) operated by a community mental health and
27 intellectual disability [~~mental retardation~~] center funded by the

1 department and the Department of Aging and Disability Services

2 [~~Texas Department of Mental Health and Mental Retardation~~];

3 (B) operated by a county or regional medical
4 society;

5 (C) a qualified mental health referral service as
6 defined by Section [164.007](#); or

7 (D) owned and operated by a nonprofit or
8 not-for-profit organization offering counseling concerning family
9 violence, help for runaway children, or rape.

10 SECTION 3.0496. Section [164.007](#)(a), Health and Safety Code,
11 is amended to read as follows:

12 (a) A qualified mental health referral service means a
13 service that conforms to all of the following standards:

14 (1) the referral service does not exclude as a
15 participant in the referral service an individual who meets the
16 qualifications for participation and qualifications for
17 participation cannot be based in whole or in part on an individual's
18 or entity's affiliation or nonaffiliation with other participants
19 in the referral service;

20 (2) a payment the participant makes to the referral
21 service is assessed equally against and collected equally from all
22 participants, and is only based on the cost of operating the
23 referral service and not on the volume or value of any referrals to
24 or business otherwise generated by the participants of the referral
25 service;

26 (3) the referral service imposes no requirements on
27 the manner in which the participant provides services to a referred

1 person, except that the referral service may require that the
2 participant charge the person referred at the same rate as it
3 charges other persons not referred by the referral service, or that
4 these services be furnished free of charge or at a reduced charge;

5 (4) a referral made to a mental health professional or
6 chemical dependency treatment facility is made only in accordance
7 with Subdivision (1) and the referral service does not make
8 referrals to mental health facilities other than facilities
9 maintained or operated by the department [~~Texas Department of~~
10 ~~Mental Health and Mental Retardation~~], community mental health [~~and~~
11 ~~mental retardation~~] centers, or other political subdivisions,
12 provided that a physician may make a referral directly to any mental
13 health facility;

14 (5) the referral service is staffed by appropriately
15 licensed and trained mental health professionals and a person who
16 makes assessments for the need for treatment of mental illness or
17 chemical dependency is a mental health professional as defined by
18 this chapter;

19 (6) in response to each inquiry or after personal
20 assessment, the referral service makes referrals, on a clinically
21 appropriate, rotational basis, to at least three mental health
22 professionals or chemical dependency treatment facilities whose
23 practice addresses or facilities are located in the county of
24 residence of the person seeking the referral or assessment, but if
25 there are not three providers in the inquirer's county of
26 residence, the referral service may include additional providers
27 from other counties nearest the inquirer's county of residence;

1 (7) no information that identifies the person seeking
2 a referral, such as name, address, or telephone number, is used,
3 maintained, distributed, or provided for a purpose other than
4 making the requested referral or for administrative functions
5 necessary to operating the referral service;

6 (8) the referral service makes the following
7 disclosures to each person seeking a referral:

8 (A) the manner in which the referral service
9 selects the group of providers participating in the referral
10 service;

11 (B) whether the provider participant has paid a
12 fee to the referral service;

13 (C) the manner in which the referral service
14 selects a particular provider from its list of provider
15 participants to which to make a referral;

16 (D) the nature of the relationship or any
17 affiliation between the referral service and the group of provider
18 participants to whom it could make a referral; and

19 (E) the nature of any restriction that would
20 exclude a provider from continuing as a provider participant;

21 (9) the referral service maintains each disclosure in
22 a written record certifying that the disclosure has been made and
23 the record certifying that the disclosure has been made is signed by
24 either the person seeking a referral or by the person making the
25 disclosure on behalf of the referral service; and

26 (10) if the referral service refers callers to a 1-900
27 telephone number or another telephone number that requires the

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1 payment of a toll or fee payable to or collected by the referral
2 service, the referral service discloses the per minute charge.

3 SECTION 3.0497. Section [164.009\(a\)](#), Health and Safety Code,
4 is amended to read as follows:

5 (a) A treatment facility may not admit a patient to its
6 facilities without fully disclosing to the patient or, if the
7 patient is a minor, the patient's parent, managing conservator, or
8 guardian, in, if possible, the primary language of the patient,
9 managing conservator, or guardian, as the case may be, the
10 following information in writing before admission:

11 (1) the treatment facility's estimated average daily
12 charge for inpatient treatment with an explanation that the patient
13 may be billed separately for services provided by mental health
14 professionals;

15 (2) the name of the attending physician, if the
16 treatment facility is a mental health facility, or the name of the
17 attending mental health professional, if the facility is a chemical
18 dependency facility; and

19 (3) the current "patient's bill of rights" as adopted
20 by the executive commissioner [~~Texas Department of Mental Health~~
~~and Mental Retardation, the Texas Commission on Alcohol and Drug~~
~~Abuse, or the Texas Department of Health~~] that sets out
23 restrictions to the patient's freedom that may be imposed on the
24 patient during the patient's stay in a treatment facility.

25 SECTION 3.0498. Section [164.014](#), Health and Safety Code, is
26 amended to read as follows:

27 Sec. 164.014. RULE-MAKING AUTHORITY. The executive

1 commissioner [~~Texas Commission on Alcohol and Drug Abuse and Texas~~
2 ~~Board of Mental Health and Mental Retardation~~] may adopt rules
3 interpreting the provisions of this chapter relating to the
4 activities of a chemical dependency facility or mental health
5 facility under the department's [~~its~~] jurisdiction.

6 SECTION 3.0499. Section 166.002(12), Health and Safety
7 Code, is amended to read as follows:

8 (12) "Physician" means:

9 (A) a physician licensed by the Texas Medical
10 [~~State~~] Board [~~of Medical Examiners~~]; or
11 (B) a properly credentialed physician who holds a
12 commission in the uniformed services of the United States and who is
13 serving on active duty in this state.

14 SECTION 3.0500. Section 166.004(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) In this section, "health care provider" means:

17 (1) a hospital;
18 (2) an institution licensed under Chapter 242,
19 including a skilled nursing facility;
20 (3) a home and community support services agency;
21 (4) an assisted living [~~a personal care~~] facility;

22 and

23 (5) a special care facility.

24 SECTION 3.0501. Section 166.011(c), Health and Safety Code,
25 is amended to read as follows:

26 (c) The executive commissioner [~~of the Health and Human~~
27 ~~Services Commission~~] by rule shall modify the advance directive

1 forms required under this chapter as necessary to provide for the
2 use of a digital or electronic signature that complies with the
3 requirements of this section.

4 SECTION 3.0502. Section 166.039(g), Health and Safety Code,
5 is amended to read as follows:

6 (g) A person listed in Subsection (b) who wishes to
7 challenge a treatment decision made under this section must apply
8 for temporary guardianship under Chapter 1251, Estates [~~Section~~
9 ~~875, Texas Probate~~] Code. The court may waive applicable fees in
10 that proceeding.

11 SECTION 3.0503. Sections 166.046(b) and (c), Health and
12 Safety Code, are amended to read as follows:

13 (b) The patient or the person responsible for the health
14 care decisions of the individual who has made the decision
15 regarding the directive or treatment decision:

16 (1) may be given a written description of the ethics or
17 medical committee review process and any other policies and
18 procedures related to this section adopted by the health care
19 facility;

20 (2) shall be informed of the committee review process
21 not less than 48 hours before the meeting called to discuss the
22 patient's directive, unless the time period is waived by mutual
23 agreement;

24 (3) at the time of being so informed, shall be
25 provided:

26 (A) a copy of the appropriate statement set forth
27 in Section 166.052; and

7 (4) is entitled to:

8 (A) attend the meeting; and

11 (c) The written explanation required by Subsection
12 (b) (4) (B) [~~(b) (2) (B)~~] must be included in the patient's medical
13 record.

14 SECTION 3.0504. Sections 166.052(a) and (b), Health and
15 Safety Code, are amended to read as follows:

16 (a) In cases in which the attending physician refuses to
17 honor an advance directive or treatment decision requesting the
18 provision of life-sustaining treatment, the statement required by
19 Section 166.046(b)(3)(A) [166.046(b)(2)(A)] shall be in
20 substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Against Life-Sustaining Treatment That You Wish To Continue

24 You have been given this information because you have
25 requested life-sustaining treatment,* which the attending
26 physician believes is not appropriate. This information is being
27 provided to help you understand state law, your rights, and the

1 resources available to you in such circumstances. It outlines the
2 process for resolving disagreements about treatment among
3 patients, families, and physicians. It is based upon Section
4 [166.046](#) of the Texas Advance Directives Act, codified in Chapter
5 166 of the Texas Health and Safety Code.

6 When an attending physician refuses to comply with an advance
7 directive or other request for life-sustaining treatment because of
8 the physician's judgment that the treatment would be inappropriate,
9 the case will be reviewed by an ethics or medical committee.
10 Life-sustaining treatment will be provided through the review.

11 You will receive notification of this review at least 48
12 hours before a meeting of the committee related to your case. You
13 are entitled to attend the meeting. With your agreement, the
14 meeting may be held sooner than 48 hours, if possible.

15 You are entitled to receive a written explanation of the
16 decision reached during the review process.

17 If after this review process both the attending physician and
18 the ethics or medical committee conclude that life-sustaining
19 treatment is inappropriate and yet you continue to request such
20 treatment, then the following procedure will occur:

21 1. The physician, with the help of the health care facility,
22 will assist you in trying to find a physician and facility willing
23 to provide the requested treatment.

24 2. You are being given a list of health care providers and
25 referral groups that have volunteered their readiness to consider
26 accepting transfer, or to assist in locating a provider willing to
27 accept transfer, maintained by the Department of State Health

1 Services [~~Texas Health Care Information Council~~]. You may wish to
2 contact providers or referral groups on the list or others of your
3 choice to get help in arranging a transfer.

4 3. The patient will continue to be given life-sustaining
5 treatment until he or she can be transferred to a willing provider
6 for up to 10 days from the time you were given the committee's
7 written decision that life-sustaining treatment is not
8 appropriate.

9 4. If a transfer can be arranged, the patient will be
10 responsible for the costs of the transfer.

11 5. If a provider cannot be found willing to give the requested
12 treatment within 10 days, life-sustaining treatment may be
13 withdrawn unless a court of law has granted an extension.

14 6. You may ask the appropriate district or county court to
15 extend the 10-day period if the court finds that there is a
16 reasonable expectation that a physician or health care facility
17 willing to provide life-sustaining treatment will be found if the
18 extension is granted.

19 * "Life-sustaining treatment" means treatment that, based on
20 reasonable medical judgment, sustains the life of a patient and
21 without which the patient will die. The term includes both
22 life-sustaining medications and artificial life support, such as
23 mechanical breathing machines, kidney dialysis treatment, and
24 artificial nutrition and hydration. The term does not include the
25 administration of pain management medication or the performance of
26 a medical procedure considered to be necessary to provide comfort
27 care, or any other medical care provided to alleviate a patient's

1 pain.

2 (b) In cases in which the attending physician refuses to
3 comply with an advance directive or treatment decision requesting
4 the withholding or withdrawal of life-sustaining treatment, the
5 statement required by Section [166.046\(b\)\(3\)\(A\)](#) shall be in
6 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.

24 You will receive notification of this review at least 48
25 hours before a meeting of the committee related to your case. You
26 are entitled to attend the meeting. With your agreement, the
27 meeting may be held sooner than 48 hours, if possible.

1 You are entitled to receive a written explanation of the
2 decision reached during the review process.

3 If you or the attending physician do not agree with the
4 decision reached during the review process, and the attending
5 physician still refuses to comply with your request to withhold or
6 withdraw life-sustaining treatment, then the following procedure
7 will occur:

8 1. The physician, with the help of the health care facility,
9 will assist you in trying to find a physician and facility willing
10 to withdraw or withhold the life-sustaining treatment.

11 2. You are being given a list of health care providers and
12 referral groups that have volunteered their readiness to consider
13 accepting transfer, or to assist in locating a provider willing to
14 accept transfer, maintained by the Department of State Health
15 Services [~~Texas Health Care Information Council~~]. You may wish to
16 contact providers or referral groups on the list or others of your
17 choice to get help in arranging a transfer.

18 *"Life-sustaining treatment" means treatment that, based on
19 reasonable medical judgment, sustains the life of a patient and
20 without which the patient will die. The term includes both
21 life-sustaining medications and artificial life support, such as
22 mechanical breathing machines, kidney dialysis treatment, and
23 artificial nutrition and hydration. The term does not include the
24 administration of pain management medication or the performance of
25 a medical procedure considered to be necessary to provide comfort
26 care, or any other medical care provided to alleviate a patient's
27 pain.

1 SECTION 3.0505. Sections 166.053(a), (c), and (d), Health
2 and Safety Code, are amended to read as follows:

3 (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.

10 (c) The department [~~Texas Health Care Information Council~~] shall post the current registry list on its website in a form appropriate for easy comprehension by patients and persons responsible for the health care decisions of patients [~~and shall provide a clearly identifiable link from its home page to the registry page~~]. The list shall separately indicate those providers and groups that have indicated their interest in assisting the transfer of:

18 (1) those patients on whose behalf life-sustaining treatment is being sought;

20 (2) those patients on whose behalf the withholding or withdrawal of life-sustaining treatment is being sought; and

22 (3) patients described in both Subdivisions (1) and (2).

24 (d) The registry list described in this section shall include the following disclaimer:

26 "This registry lists providers and groups that have indicated to the Department of State Health Services [~~Texas Health~~

1 ~~Care Information Council~~] their interest in assisting the transfer
2 of patients in the circumstances described, and is provided for
3 information purposes only. Neither the Department of State Health
4 Services [~~Texas Health Care Information Council~~] nor the State of
5 Texas endorses or assumes any responsibility for any
6 representation, claim, or act of the listed providers or groups."

7 SECTION 3.0506. Sections 166.081(2), (6), and (10), Health
8 and Safety Code, are amended to read as follows:

9 (2) "DNR identification device" means an
10 identification device specified by department rule [~~the board~~]
11 under Section 166.101 that is worn for the purpose of identifying a
12 person who has executed or issued an out-of-hospital DNR order or on
13 whose behalf an out-of-hospital DNR order has been executed or
14 issued under this subchapter.

15 (6) "Out-of-hospital DNR order":

16 (A) means a legally binding out-of-hospital
17 do-not-resuscitate order, in the form specified by department rule
18 [~~the board~~] under Section 166.083, prepared and signed by the
19 attending physician of a person, that documents the instructions of
20 a person or the person's legally authorized representative and
21 directs health care professionals acting in an out-of-hospital
22 setting not to initiate or continue the following life-sustaining
23 treatment:

24 (i) cardiopulmonary resuscitation;
25 (ii) advanced airway management;
26 (iii) artificial ventilation;
27 (iv) defibrillation;

1 (v) transcutaneous cardiac pacing; and
2 (vi) other life-sustaining treatment
3 specified by department rule [~~the board~~] under Section 166.101(a);
4 and

5 (B) does not include authorization to withhold
6 medical interventions or therapies considered necessary to provide
7 comfort care or to alleviate pain or to provide water or nutrition.

14 SECTION 3.0507. Sections 166.082(a) and (f), Health and
15 Safety Code, are amended to read as follows:

16 (a) A competent person may at any time execute a written
17 out-of-hospital DNR order directing health care professionals
18 acting in an out-of-hospital setting to withhold cardiopulmonary
19 resuscitation and certain other life-sustaining treatment
20 designated by department rule [the board].

21 (f) The executive commissioner [board], on the
22 recommendation of the department, shall by rule adopt procedures
23 for the disposition and maintenance of records of an original
24 out-of-hospital DNR order and any copies of the order.

25 SECTION 3.0508. Sections 166.083(a), (b), and (c), Health
26 and Safety Code, are amended to read as follows:

(a) A written out-of-hospital DNR order shall be in the

1 standard form specified by department [board] rule as recommended
2 by the department.

3 (b) The standard form of an out-of-hospital DNR order
4 specified by department rule [~~the board~~] must, at a minimum,
5 contain the following:

6 (1) a distinctive single-page format that readily
7 identifies the document as an out-of-hospital DNR order;

8 (2) a title that readily identifies the document as an
9 out-of-hospital DNR order;

10 (3) the printed or typed name of the person;

11 (4) a statement that the physician signing the
12 document is the attending physician of the person and that the
13 physician is directing health care professionals acting in
14 out-of-hospital settings, including a hospital emergency
15 department, not to initiate or continue certain life-sustaining
16 treatment on behalf of the person, and a listing of those procedures
17 not to be initiated or continued;

18 (5) a statement that the person understands that the
19 person may revoke the out-of-hospital DNR order at any time by
20 destroying the order and removing the DNR identification device, if
21 any, or by communicating to health care professionals at the scene
22 the person's desire to revoke the out-of-hospital DNR order;

23 (6) places for the printed names and signatures of the
24 witnesses or the notary public's acknowledgment and for the printed
25 name and signature of the attending physician of the person and the
26 medical license number of the attending physician;

27 (7) a separate section for execution of the document

1 by the legal guardian of the person, the person's proxy, an agent of
2 the person having a medical power of attorney, or the attending
3 physician attesting to the issuance of an out-of-hospital DNR order
4 by nonwritten means of communication or acting in accordance with a
5 previously executed or previously issued directive to physicians
6 under Section [166.082\(c\)](#) that includes the following:

7 (A) a statement that the legal guardian, the
8 proxy, the agent, the person by nonwritten means of communication,
9 or the physician directs that each listed life-sustaining treatment
10 should not be initiated or continued in behalf of the person; and
11 (B) places for the printed names and signatures
12 of the witnesses and, as applicable, the legal guardian, proxy,
13 agent, or physician;

14 (8) a separate section for execution of the document
15 by at least one qualified relative of the person when the person
16 does not have a legal guardian, proxy, or agent having a medical
17 power of attorney and is incompetent or otherwise mentally or
18 physically incapable of communication, including:

19 (A) a statement that the relative of the person
20 is qualified to make a treatment decision to withhold
21 cardiopulmonary resuscitation and certain other designated
22 life-sustaining treatment under Section [166.088](#) and, based on the
23 known desires of the person or a determination of the best interest
24 of the person, directs that each listed life-sustaining treatment
25 should not be initiated or continued in behalf of the person; and
26 (B) places for the printed names and signatures
27 of the witnesses and qualified relative of the person;

1 (9) a place for entry of the date of execution of the
2 document;

3 (10) a statement that the document is in effect on the
4 date of its execution and remains in effect until the death of the
5 person or until the document is revoked;

6 (11) a statement that the document must accompany the
7 person during transport;

8 (12) a statement regarding the proper disposition of
9 the document or copies of the document, as the executive
10 commissioner [board] determines appropriate; and

11 (13) a statement at the bottom of the document, with
12 places for the signature of each person executing the document,
13 that the document has been properly completed.

14 (c) The executive commissioner [board] may, by rule and as
15 recommended by the department, modify the standard form of the
16 out-of-hospital DNR order described by Subsection (b) in order to
17 accomplish the purposes of this subchapter.

18 SECTION 3.0509. Sections 166.088(e) and (g), Health and
19 Safety Code, are amended to read as follows:

20 (e) The fact that an adult person has not executed or issued
21 an out-of-hospital DNR order does not create a presumption that the
22 person does not want a treatment decision made to withhold
23 cardiopulmonary resuscitation and certain other designated
24 life-sustaining treatment designated by department rule [the
25 board].

26 (g) A person listed in Section 166.039(b) who wishes to
27 challenge a decision made under this section must apply for

1 temporary guardianship under Chapter 1251, Estates [~~Section 875,~~
2 ~~Texas Probate~~] Code. The court may waive applicable fees in that
3 proceeding.

4 SECTION 3.0510. Section 166.089(h), Health and Safety Code,
5 is amended to read as follows:

6 (h) An out-of-hospital DNR order executed or issued and
7 documented or evidenced in the manner prescribed by this subchapter
8 is valid and shall be honored by responding health care
9 professionals unless the person or persons found at the scene:

10 (1) identify themselves as the declarant or as the
11 attending physician, legal guardian, qualified relative, or agent
12 of the person having a medical power of attorney who executed or
13 issued the out-of-hospital DNR order on behalf of the person; and

14 (2) request that cardiopulmonary resuscitation or
15 certain other life-sustaining treatment designated by department
16 rule [~~the board~~] be initiated or continued.

17 SECTION 3.0511. Section 166.090(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) A person who has a valid out-of-hospital DNR order under
20 this subchapter may wear a DNR identification device around the
21 neck or on the wrist as prescribed by department [~~board~~] rule
22 adopted under Section 166.101.

23 SECTION 3.0512. Section 166.092(b), Health and Safety Code,
24 is amended to read as follows:

25 (b) An oral revocation under Subsection (a)(3) or (a)(4)
26 takes effect only when the declarant or a person who identifies
27 himself or herself as the legal guardian, a qualified relative, or

1 the agent of the declarant having a medical power of attorney who
2 executed the out-of-hospital DNR order communicates the intent to
3 revoke the order to the responding health care professionals or the
4 attending physician at the scene. The responding health care
5 professionals shall record the time, date, and place of the
6 revocation in accordance with the statewide out-of-hospital DNR
7 protocol and rules adopted by the executive commissioner [board]
8 and any applicable local out-of-hospital DNR protocol. The
9 attending physician or the physician's designee shall record in the
10 person's medical record the time, date, and place of the revocation
11 and, if different, the time, date, and place that the physician
12 received notice of the revocation. The attending physician or the
13 physician's designee shall also enter the word "VOID" on each page
14 of the copy of the order in the person's medical record.

15 SECTION 3.0513. Section 166.094, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 166.094. LIMITATION ON LIABILITY FOR WITHHOLDING
18 CARDIOPULMONARY RESUSCITATION AND CERTAIN OTHER LIFE-SUSTAINING
19 PROCEDURES. (a) A health care professional or health care facility
20 or entity that in good faith causes cardiopulmonary resuscitation
21 or certain other life-sustaining treatment designated by
22 department rule [~~the board~~] to be withheld from a person in
23 accordance with this subchapter is not civilly liable for that
24 action.

25 (b) A health care professional or health care facility or
26 entity that in good faith participates in withholding
27 cardiopulmonary resuscitation or certain other life-sustaining

1 treatment designated by department rule [~~the board~~] from a person
2 in accordance with this subchapter is not civilly liable for that
3 action.

4 (c) A health care professional or health care facility or
5 entity that in good faith participates in withholding
6 cardiopulmonary resuscitation or certain other life-sustaining
7 treatment designated by department rule [~~the board~~] from a person
8 in accordance with this subchapter is not criminally liable or
9 guilty of unprofessional conduct as a result of that action.

10 (d) A health care professional or health care facility or
11 entity that in good faith causes or participates in withholding
12 cardiopulmonary resuscitation or certain other life-sustaining
13 treatment designated by department rule [~~the board~~] from a person
14 in accordance with this subchapter and rules adopted under this
15 subchapter is not in violation of any other licensing or regulatory
16 laws or rules of this state and is not subject to any disciplinary
17 action or sanction by any licensing or regulatory agency of this
18 state as a result of that action.

19 SECTION 3.0514. Section 166.096, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 166.096. HONORING OUT-OF-HOSPITAL DNR ORDER DOES NOT
22 CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an
23 offense under Section 22.08, Penal Code, by withholding
24 cardiopulmonary resuscitation or certain other life-sustaining
25 treatment designated by department rule [~~the board~~] from a person
26 in accordance with this subchapter.

27 SECTION 3.0515. Section 166.097(b), Health and Safety Code,

1 is amended to read as follows:

2 (b) A person is subject to prosecution for criminal homicide
3 under Chapter 19, Penal Code, if the person, with the intent to
4 cause cardiopulmonary resuscitation or certain other
5 life-sustaining treatment designated by department rule [~~the~~
6 ~~board~~] to be withheld from another person contrary to the other
7 person's desires, falsifies or forges an out-of-hospital DNR order
8 or intentionally conceals or withholds personal knowledge of a
9 revocation and thereby directly causes cardiopulmonary
10 resuscitation and certain other life-sustaining treatment
11 designated by department rule [~~the board~~] to be withheld from the
12 other person with the result that the other person's death is
13 hastened.

14 SECTION 3.0516. Section 166.098, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 166.098. PREGNANT PERSONS. A person may not withhold
17 cardiopulmonary resuscitation or certain other life-sustaining
18 treatment designated by department rule [~~the board~~] under this
19 subchapter from a person known by the responding health care
20 professionals to be pregnant.

21 SECTION 3.0517. Sections 166.100 and 166.101, Health and
22 Safety Code, are amended to read as follows:

23 Sec. 166.100. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED.
24 This subchapter does not impair or supersede any legal right or
25 responsibility a person may have under a constitution, other
26 statute, regulation, or court decision to effect the withholding of
27 cardiopulmonary resuscitation or certain other life-sustaining

1 treatment designated by department rule [~~the board~~].

2 Sec. 166.101. DUTIES OF DEPARTMENT AND EXECUTIVE
3 COMMISSIONER [~~BOARD~~]. (a) The executive commissioner [~~board~~]
4 shall, on the recommendation of the department, adopt all
5 reasonable and necessary rules to carry out the purposes of this
6 subchapter, including rules:

7 (1) adopting a statewide out-of-hospital DNR order
8 protocol that sets out standard procedures for the withholding of
9 cardiopulmonary resuscitation and certain other life-sustaining
10 treatment by health care professionals acting in out-of-hospital
11 settings;

12 (2) designating life-sustaining treatment that may be
13 included in an out-of-hospital DNR order, including all procedures
14 listed in Sections 166.081(6)(A)(i) through (v); and

15 (3) governing recordkeeping in circumstances in which
16 an out-of-hospital DNR order or DNR identification device is
17 encountered by responding health care professionals.

18 (b) The rules adopted [~~by the board~~] under Subsection (a)
19 are not effective until approved by the Texas Medical [~~State~~] Board
20 [~~of Medical Examiners~~].

21 (c) Local emergency medical services authorities may adopt
22 local out-of-hospital DNR order protocols if the local protocols do
23 not conflict with the statewide out-of-hospital DNR order protocol
24 adopted by the executive commissioner [~~board~~].

25 (d) The executive commissioner [~~board~~] by rule shall
26 specify a distinctive standard design for a necklace and a bracelet
27 DNR identification device that signifies, when worn by a person,

1 that the possessor has executed or issued a valid out-of-hospital
2 DNR order under this subchapter or is a person for whom a valid
3 out-of-hospital DNR order has been executed or issued.

4 (e) The department shall report to the executive
5 commissioner [board] from time to time regarding issues identified
6 in emergency medical services responses in which an out-of-hospital
7 DNR order or DNR identification device is encountered. The report
8 may contain recommendations to the executive commissioner [board]
9 for necessary modifications to the form of the standard
10 out-of-hospital DNR order or the designated life-sustaining
11 procedures listed in the standard out-of-hospital DNR order, the
12 statewide out-of-hospital DNR order protocol, or the DNR
13 identification devices.

14 SECTION 3.0518. Section 171.012(a-1), Health and Safety
15 Code, is amended to read as follows:

16 (a-1) During a visit made to a facility to fulfill the
17 requirements of Subsection (a), the facility and any person at the
18 facility may not accept any form of payment, deposit, or exchange or
19 make any financial agreement for an abortion or abortion-related
20 services other than for payment of a service required by Subsection
21 (a). The amount charged for a service required by Subsection (a)
22 may not exceed the reimbursement rate established for the service
23 by the executive commissioner [Health and Human Services
24 Commission] for statewide medical reimbursement programs.

25 SECTION 3.0519. Section 171.0124, Health and Safety Code,
26 is amended to read as follows:

27 Sec. 171.0124. EXCEPTION FOR MEDICAL EMERGENCY. A

1 physician may perform an abortion without obtaining informed
2 consent under this subchapter in a medical emergency. A physician
3 who performs an abortion in a medical emergency shall:

4 (1) include in the patient's medical records a
5 statement signed by the physician certifying the nature of the
6 medical emergency; and

7 (2) not later than the 30th day after the date the
8 abortion is performed, certify to the department [~~Department of~~
9 ~~State Health Services~~] the specific medical condition that
10 constituted the emergency.

11 SECTION 3.0520. Section [171.014](#)(d), Health and Safety Code,
12 is amended to read as follows:

13 (d) The department shall annually review the materials to
14 determine if changes to the contents of the materials are
15 necessary. The executive commissioner [~~department~~] shall adopt
16 rules necessary for considering and making changes to the
17 materials.

18 SECTION 3.0521. Section [181.053](#), Health and Safety Code, is
19 amended to read as follows:

20 Sec. 181.053. NONPROFIT AGENCIES. The executive
21 commissioner [~~department~~] shall by rule exempt from this chapter a
22 nonprofit agency that pays for health care services or prescription
23 drugs for an indigent person only if the agency's primary business
24 is not the provision of health care or reimbursement for health care
25 services.

26 SECTION 3.0522. Section [181.102](#)(c), Health and Safety Code,
27 is amended to read as follows:

1 (c) For purposes of Subsection (a), the executive
2 commissioner, in consultation with the department [~~Department of~~
3 ~~State Health Services~~], the Texas Medical Board, and the Texas
4 Department of Insurance, by rule may recommend a standard
5 electronic format for the release of requested health records. The
6 standard electronic format recommended under this section must be
7 consistent, if feasible, with federal law regarding the release of
8 electronic health records.

9 SECTION 3.0523. Section 181.103, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 181.103. CONSUMER INFORMATION WEBSITE. The attorney
12 general shall maintain an Internet website that provides:

13 (1) information concerning a consumer's privacy rights
14 regarding protected health information under federal and state law;

15 (2) a list of the state agencies, including the
16 department [~~Department of State Health Services~~], the Texas Medical
17 Board, and the Texas Department of Insurance, that regulate covered
18 entities in this state and the types of entities each agency
19 regulates;

20 (3) detailed information regarding each agency's
21 complaint enforcement process; and

22 (4) contact information, including the address of the
23 agency's Internet website, for each agency listed under Subdivision
24 (2) for reporting a violation of this chapter.

25 SECTION 3.0524. Section 182.053(b), Health and Safety Code,
26 is amended to read as follows:

27 (b) The governor shall also appoint at least two ex officio,

1 nonvoting members representing the department [Department of State
2 ~~Health Services~~].

3 SECTION 3.0525. Section 182.103(b), Health and Safety Code,
4 is amended to read as follows:

5 (b) The corporation shall comply with all state and federal
6 laws and rules relating to the transmission of health information,
7 including Chapter 181, and rules adopted under that chapter, and
8 the Health Insurance Portability and Accountability Act of 1996
9 (Pub. L. No. 104-191) and rules adopted under that Act.

10 SECTION 3.0526. Section 182.108(b), Health and Safety Code,
11 is amended to read as follows:

12 (b) The commission shall review and the executive
13 commissioner by rule shall adopt acceptable standards submitted for
14 ratification under Subsection (a).

15 SECTION 3.0527. Section 191.001, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 191.001. DEFINITIONS. In this title:

18 (1) ~~"Board"~~ means the ~~Texas Board of Health~~.

19 ~~(2)~~ "Department" means the ~~Texas~~ Department of
20 State Health Services.

21 (2) "Executive commissioner" means the executive
22 commissioner of the Health and Human Services Commission.

23 (3) "Vital statistics unit" means the vital statistics
24 unit established in the Department of State Health Services.

25 SECTION 3.0528. Subchapter A, Chapter 191, Health and
26 Safety Code, is amended by adding Section 191.0011 to read as
27 follows:

1 Sec. 191.0011. REFERENCE IN OTHER LAW. A reference in other
2 law to the bureau of vital statistics of the department or of the
3 former Texas Department of Health means the vital statistics unit
4 established in the department.

5 SECTION 3.0529. Section 191.002(b), Health and Safety Code,
6 is amended to read as follows:

7 (b) The department shall:

8 (1) establish a [bureau of] vital statistics unit in
9 the department with suitable offices that are properly equipped for
10 the preservation of its official records;

11 (2) establish a statewide system of vital statistics;

12 (3) provide instructions and prescribe forms for
13 collecting, recording, transcribing, compiling, and preserving
14 vital statistics;

15 (4) require the enforcement of this title and rules
16 adopted under this title;

17 (5) prepare, print, and supply to local registrars
18 forms for registering, recording, and preserving returns or
19 otherwise carrying out the purposes of this title; and

20 (6) propose legislation necessary for the purposes of
21 this title.

22 SECTION 3.0530. Section 191.003, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 191.003. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
25 AND DEPARTMENT [BOARD]. (a) The executive commissioner [board]
26 shall[+]

27 [+] adopt necessary rules for collecting,

1 recording, transcribing, compiling, and preserving vital
2 statistics.

3 (a-1) The department shall:

4 (1) [+] supervise the [bureau of] vital
5 statistics unit; and

6 (2) [-] appoint the director of the [bureau of]
7 vital statistics unit.

8 (b) In an emergency, the executive commissioner [board] may
9 suspend any part of this title that hinders the uniform and
10 efficient registration of vital events and may substitute emergency
11 rules designed to expedite that registration under disaster
12 conditions.

13 SECTION 3.0531. Section 191.004(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) The director of the [bureau of] vital statistics unit is
16 the state registrar of vital statistics. The director must be a
17 competent vital statistician.

18 SECTION 3.0532. Sections 191.0045(a), (b), (c), (d), (e),
19 and (g), Health and Safety Code, are amended to read as follows:

20 (a) The department [bureau of vital statistics] may collect
21 [charge] fees for providing services to the public and performing
22 other activities in connection with maintenance of the vital
23 statistics system, including:

24 (1) performing searches of birth, death, fetal death,
25 marriage, divorce, annulment, and other records;

26 (2) preparing and issuing copies and certified copies
27 of birth, death, fetal death, marriage, divorce, annulment, and

1 other records; and

2 (3) filing a record, amendment, or affidavit under
3 this title.

4 (b) The executive commissioner [board] by rule may
5 prescribe a schedule of fees for vital statistics services. The
6 aggregate of the amounts of the fees may not exceed the cost of
7 administering the vital statistics system.

8 (c) The department [~~bureau of vital statistics~~] shall
9 refund to an applicant any fee received for services that the
10 department [~~bureau~~] cannot perform. If the money has been
11 deposited to the credit of the vital statistics account in the
12 general revenue fund, the comptroller shall issue a warrant against
13 the fund for refund of the payment on presentation of a claim signed
14 by the state registrar.

15 (d) A local registrar or county clerk who issues a certified
16 copy of a birth or death certificate shall collect [~~charge~~] the same
17 fees as collected [~~charged~~] by the department [~~bureau of vital~~
18 ~~statistics~~], including the additional fee required under
19 Subsection (e), except as provided by Subsections (g) and (h).

20 (e) In addition to fees charged [~~collected~~] by the
21 department [~~bureau of vital statistics~~] under Subsection (b), the
22 department [~~bureau~~] shall collect an additional \$2 fee for each of
23 the following:

24 (1) issuing a certified copy of a certificate of
25 birth;

26 (2) issuing a wallet-sized certification of birth; and
27 (3) conducting a search for a certificate of birth.

1 (g) A local registrar or county clerk that on March 31,
2 1995, was collecting [~~charging~~] a fee for the issuance of a
3 certified copy of a birth certificate that exceeded the fee
4 collected [~~charged~~] by the department [~~bureau of vital statistics~~]
5 for the same type of certificate may continue to do so but shall not
6 raise this fee until the fee collected [~~charged~~] by the department
7 [~~bureau~~] exceeds the fee collected [~~charged~~] by the local registrar
8 or county clerk. A local registrar or county clerk to which this
9 subsection applies shall collect [~~charge~~] the additional fee as
10 required under Subsection (e).

11 SECTION 3.0533. Section 191.0047, Health and Safety Code,
12 is amended to read as follows:

13 Sec. 191.0047. BIRTH INFORMATION FOR DEPARTMENT OF FAMILY
14 AND PROTECTIVE SERVICES. (a) The department [~~Department of State~~
15 ~~Health Services~~] shall implement an efficient and effective method
16 to verify birth information or provide a certified copy of a birth
17 record necessary to provide services for the benefit of a minor
18 being served by the Department of Family and Protective Services.

19 (b) The department [~~Department of State Health Services~~]
20 shall enter into a memorandum of understanding with the Department
21 of Family and Protective Services to implement this section.
22 Subject to Subsection (c), the terms of the memorandum of
23 understanding must include methods for reimbursing the department
24 [~~Department of State Health Services~~] in an amount that is not more
25 than the actual costs the department incurs in verifying the birth
26 information or providing the birth record to the Department of
27 Family and Protective Services.

1 (c) The department [Department of State Health Services]
2 may not collect a fee or other amount for verification of birth
3 information or provision of a certified copy of the birth record
4 under Subsection (a) for a child in the managing conservatorship of
5 the Department of Family and Protective Services if parental rights
6 to the child have been terminated and the child is eligible for
7 adoption.

8 SECTION 3.0534. Section 191.0048(b), Health and Safety
9 Code, is amended to read as follows:

10 (b) On each paper or electronic application form for a copy
11 or certified copy of a birth, marriage, or divorce record, the
12 department [~~bureau of vital statistics~~] shall include a printed box
13 for the applicant to check indicating that the applicant wishes to
14 make a voluntary contribution of \$5 to promote healthy early
15 childhood by supporting the Texas Home Visiting Program
16 administered by the Office of Early Childhood Coordination of the
17 Health and Human Services Commission.

18 SECTION 3.0535. Section 191.005, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 191.005. VITAL STATISTICS ACCOUNT [~~FUND~~]. (a) The
21 vital statistics account [~~fund~~] is an account in the general
22 revenue fund in the state treasury.

23 (b) The legislature shall make appropriations to the
24 department from the vital statistics account [~~fund~~] to be used to
25 defray expenses incurred in the administration and enforcement of
26 the system of vital statistics.

27 (c) All fees collected by the department under this chapter

1 [bureau of vital statistics] shall be deposited to the credit of the
2 vital statistics account [~~fund~~].

3 SECTION 3.0536. Section 191.021(b), Health and Safety Code,
4 is amended to read as follows:

5 (b) To facilitate registration, the department [~~board~~] may
6 combine or divide registration districts.

7 SECTION 3.0537. Section 191.022(d), Health and Safety Code,
8 is amended to read as follows:

9 (d) The local registrar shall sign each report made to the
10 department [~~bureau of vital statistics~~].

11 SECTION 3.0538. Section 191.025(c), Health and Safety Code,
12 is amended to read as follows:

13 (c) A local registrar shall supply forms of certificates to
14 persons who need them. The executive commissioner [~~board~~] shall
15 establish and promulgate rules for strict accountability of birth
16 certificates to prevent birth certificate fraud.

17 SECTION 3.0539. Sections 191.026(c) and (e), Health and
18 Safety Code, are amended to read as follows:

19 (c) The local registrar shall copy in the record book
20 required under Section 191.025 each certificate that the local
21 registrar registers, unless the local registrar keeps duplicates
22 under Subsection (d) or makes photographic duplications as
23 authorized by Chapter [~~181 or~~] 201, Local Government Code, or the
24 provisions of Chapter 204, Local Government Code, derived from
25 former Chapter 181, Local Government Code. Except as provided by
Subsection (e), the copies shall be permanently preserved in the
local registrar's office as the local record, in the manner

1 directed by the state registrar.

2 (e) The local registrar may, after the first anniversary of
3 the date of registration of a birth, death, or fetal death, destroy
4 the permanent record of the birth, death, or fetal death maintained
5 by the local registrar if:

6 (1) the local registrar has access to electronic
7 records of births, deaths, and fetal deaths maintained by the
8 [bureau of] vital statistics unit; and

9 (2) before destroying the records, the local registrar
10 certifies to the state registrar that each record maintained by the
11 local office that is to be destroyed has been verified against the
12 records contained in the unit's [bureau's] database and that each
13 record is included in the database or otherwise accounted for.

14 SECTION 3.0540. Section 191.032(b), Health and Safety Code,
15 is amended to read as follows:

16 (b) The executive commissioner [board] shall adopt rules
17 necessary to implement this section.

18 SECTION 3.0541. Section 191.033(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) The state registrar may attach to the original record an
21 addendum that sets out any information received by the state
22 registrar that may contradict the information in a birth, death, or
23 fetal death record required to be maintained in the [bureau of]
24 vital statistics unit.

25 SECTION 3.0542. Section 191.051(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) Subject to department [board] rules controlling the

1 accessibility of vital records, the state registrar shall supply to
2 a properly qualified applicant, on request, a certified copy of a
3 record, or part of a record, of a birth, death, or fetal death
4 registered under this title.

5 SECTION 3.0543. Section 191.056(b), Health and Safety Code,
6 is amended to read as follows:

7 (b) The department [~~bureau of vital statistics~~] may
8 contract with the national agency to have copies of vital records
9 that are filed with the vital statistics unit [~~bureau~~] transcribed
10 for that agency.

11 SECTION 3.0544. Section 191.057(b), Health and Safety Code,
12 is amended to read as follows:

13 (b) If the [~~bureau of~~] vital statistics unit or any local
14 registration official receives an application for a certified copy
15 of a birth, death, or fetal death record to which an addendum has
16 been attached under Section 191.033, the application shall be sent
17 immediately to the state registrar. After examining the
18 application, the original record, and the addendum, the state
19 registrar may refuse to issue a certified copy of the record or part
20 of the record to the applicant.

21 SECTION 3.0545. Sections 192.002(b) and (d), Health and
22 Safety Code, are amended to read as follows:

23 (b) The section of the birth certificate entitled "For
24 Medical and Health Use Only" is not part of the legal birth
25 certificate. Information held by the department under that section
26 of the certificate is confidential. That information may not be
27 released or made public on subpoena or otherwise, except that

1 release may be made for statistical purposes only so that no person,
2 patient, or facility is identified, or to medical personnel of a
3 health care entity, as that term is defined in Subtitle B, Title 3,
4 Occupations Code, or to a faculty member at a medical school, as
5 that term is defined in Section [61.501](#), Education Code, for
6 statistical or medical research, or to appropriate state or federal
7 agencies for statistical research. The executive commissioner
8 [board] may adopt rules to implement this subsection.

9 (d) The social security numbers of the mother and father
10 recorded on the form shall be made available to the United States
11 [~~federal~~] Social Security Administration.

12 SECTION 3.0546. Sections [192.0021](#)(a) and (b), Health and
13 Safety Code, are amended to read as follows:

14 (a) The department shall promote and sell copies of an
15 heirloom birth certificate. The department shall solicit donated
16 designs for the certificate from Texas artists and select the best
17 donated designs for the form of the certificate. An heirloom birth
18 certificate must contain the same information as, and have the same
19 effect of, a certified copy of another birth record. The executive
20 commissioner by rule [department] shall prescribe a fee for the
21 issuance of an heirloom birth certificate in an amount that does not
22 exceed \$50. The heirloom birth certificate must be printed on
23 high-quality paper with the appearance of parchment not smaller
24 than 11 inches by 14 inches.

25 (b) The department shall deposit 50 percent of the proceeds
26 from the sale of heirloom birth certificates to the credit of the
27 childhood immunization account and the other 50 percent to the

1 credit of the undedicated portion of the general revenue fund. The
2 childhood immunization account is an account in the general revenue
3 fund. Money in the account may be used only by the department
4 [~~Department of State Health Services~~] for:

5 (1) making grants to fund childhood immunizations and
6 related education programs; and
7 (2) administering this section.

8 SECTION 3.0547. Sections 192.0022(b), (c), (f), (g), (h),
9 and (i), Health and Safety Code, are amended to read as follows:

10 (b) The person who is required to file a fetal death
11 certificate under Section 193.002 shall advise the parent or
12 parents of a stillborn child:

13 (1) that a parent may, but is not required to, request
14 the preparation of a certificate of birth resulting in stillbirth;
15 (2) that a parent may obtain a certificate of birth
16 resulting in stillbirth by contacting the [~~bureau of~~] vital
17 statistics unit to request the certificate and paying the required
18 fee; and

19 (3) regarding the way or ways in which a parent may
20 contact the [~~bureau of~~] vital statistics unit to request the
21 certificate.

22 (c) A parent may provide a name for a stillborn child on the
23 request for a certificate of birth resulting in stillbirth. If the
24 requesting parent does not wish to provide a name, the [~~bureau of~~]
25 vital statistics unit shall fill in the certificate with the name
26 "baby boy" or "baby girl" and the last name of the parent. The name
27 of the stillborn child provided on or later added by amendment to

1 the certificate of birth resulting in stillbirth shall be the same
2 name as placed on the original or amended fetal death certificate.

3 (f) The department [bureau of vital statistics] may not use
4 a certificate of birth resulting in stillbirth to calculate live
5 birth statistics.

6 (g) On issuance of a certificate of birth resulting in
7 stillbirth to a parent who has requested the certificate as
8 provided by this section, the [bureau of] vital statistics unit
9 shall file an exact copy of the certificate with the local registrar
10 of the registration district in which the stillbirth occurred. The
11 local registrar shall file the certificate of birth resulting in
12 stillbirth with the fetal death certificate.

13 (h) A parent may request the [bureau of] vital statistics
14 unit to issue a certificate of birth resulting in stillbirth
15 without regard to the date on which the fetal death certificate was
16 issued.

17 (i) The executive commissioner [~~of the Health and Human~~
18 ~~Services Commission~~] may adopt rules necessary to administer this
19 section.

20 SECTION 3.0548. Section 192.005(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) The items on a birth certificate relating to the child's
23 father shall be completed only if:

24 (1) the child's mother was married to the father:
25 (A) at the time of the child's conception;
26 (B) at the time of the child's birth; or
27 (C) after the child's birth;

1 (2) paternity is established by order of a court of
2 competent jurisdiction; or

3 (3) a valid acknowledgment of paternity executed by
4 the father has been filed with the ~~bureau of~~ vital statistics unit
5 as provided by Subchapter D, Chapter 160, Family Code.

6 SECTION 3.0549. Sections 192.006(c), (d), and (e), Health
7 and Safety Code, are amended to read as follows:

8 (c) The state registrar shall require proof of the change in
9 status that the executive commissioner ~~[board]~~ by rule may
10 prescribe.

11 (d) Supplementary birth certificates and applications for
12 supplementary birth certificates shall be prepared and filed in
13 accordance with department ~~[board]~~ rules.

14 (e) In accordance with department ~~[board]~~ rules, a
15 supplementary birth certificate may be filed for a person whose
16 parentage has been determined by an acknowledgment of paternity.

17 SECTION 3.0550. Section 192.008(c), Health and Safety Code,
18 is amended to read as follows:

19 (c) The executive commissioner ~~[board]~~ shall adopt rules
20 and procedures to ensure that birth records and indexes under the
21 control of the department or local registrars and accessible to the
22 public do not contain information or cross-references through which
23 the confidentiality of adoption placements may be directly or
24 indirectly violated. The rules and procedures may not interfere
25 with the registries established under Subchapter E, Chapter 162,
26 Family Code, or with a court order under this section.

27 SECTION 3.0551. Section 192.009(d), Health and Safety Code,

1 is amended to read as follows:

2 (d) If the department ~~bureau of vital statistics~~ determines that a certificate filed with the state registrar under this section requires correction, the department ~~bureau~~ shall mail the certificate directly to an attorney of record with respect to the petition of adoption, annulment of adoption, or revocation of adoption. The attorney shall return the corrected certificate to the department ~~bureau~~. If there is no attorney of record, the department ~~bureau~~ shall mail the certificate to the clerk of the court for correction.

11 SECTION 3.0552. Section 192.010, Health and Safety Code, is amended to read as follows:

13 Sec. 192.010. CHANGE OF NAME. (a) Subject to department ~~board~~ rules, an adult whose name is changed by court order, or the legal representative of any person whose name is changed by court order, may request that the state registrar attach an amendment showing the change to the person's original birth record.

18 (b) The state registrar shall require proof of the change of name that the executive commissioner ~~board~~ by rule may prescribe.

20 SECTION 3.0553. Section 192.012(a), Health and Safety Code, is amended to read as follows:

22 (a) If the mother of a child is not married to the father of the child, a person listed in Section 192.003 who is responsible for filing the birth certificate shall:

25 (1) provide an opportunity for the child's mother and putative father to sign an acknowledgment of paternity as provided by Subchapter D [E], Chapter 160, Family Code; and

1 (2) provide oral and written information to the
2 child's mother and putative father about:

3 (A) establishing paternity, including an
4 explanation of the rights and responsibilities that result from
5 acknowledging paternity; and

6 (B) the availability of child support services.

7 SECTION 3.0554. Section 192.021(c), Health and Safety Code,
8 is amended to read as follows:

9 (c) Registration under this section is subject to
10 department [board] rules.

11 SECTION 3.0555. Section 192.022, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 192.022. DELAY OF ONE YEAR OR MORE: APPLICATION FILED
14 WITH STATE REGISTRAR. Subject to department [board] rules, an
15 application to file a delayed birth certificate for a birth in this
16 state not registered before the one-year anniversary of the date of
17 birth shall be made to the state registrar.

18 SECTION 3.0556. Section 193.001(d), Health and Safety Code,
19 is amended to read as follows:

20 (d) The department [~~bureau of vital statistics~~] and each
21 local registrar shall make the information provided under
22 Subsection (c) available to the public and may collect [charge] a
23 fee in an amount prescribed under Section 191.0045 for providing
24 that service.

25 SECTION 3.0557. Section 193.003(b), Health and Safety Code,
26 is amended to read as follows:

27 (b) Subject to department [board] rules, a certificate of a

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1 fetal death that occurs in this state shall be filed with the local
2 registrar of the registration district in which:
3 (1) the fetal death occurs; or
4 (2) the body is found, if the place of fetal death is
5 not known.

6 SECTION 3.0558. Section 193.006(d), Health and Safety Code,
7 is amended to read as follows:

8 (d) When the death certificate is filed with the [bureau of]
9 vital statistics unit, the state registrar shall notify the Texas
10 Veterans Commission.

11 SECTION 3.0559. Sections 193.007(c) and (f), Health and
12 Safety Code, are amended to read as follows:

13 (c) The department [bureau of vital statistics] shall
14 furnish a form for filing records under this section. Records
15 submitted under this section must be on the form furnished by the
16 department [bureau]. The state registrar may accept a certificate
17 that is verified as provided by this section.

18 (f) Not later than the seventh day after the date on which a
19 certificate is accepted and ordered filed by a court under this
20 section, the clerk of the court shall forward to the [bureau of]
21 vital statistics unit:

22 (1) the certificate; and
23 (2) an order from the court that the state registrar
24 accept the certificate.

25 SECTION 3.0560. Section 194.001, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 194.001. REPORT OF MARRIAGE. (a) The county clerk

1 shall file with the [bureau of] vital statistics unit a copy of each
2 completed marriage license application and a copy of any affidavit
3 of an absent applicant submitted with an application. The clerk
4 shall file the copies not later than the 90th day after the date of
5 the application. The clerk may not collect a fee for filing the
6 copies.

7 (b) The county clerk shall file with the [bureau of] vital
8 statistics unit a copy of each declaration of informal marriage
9 executed under Section 2.402 [~~1.92~~], Family Code. The clerk shall
10 file the copy not later than the 90th day after the date on which the
11 declaration is executed.

12 SECTION 3.0561. Section 194.0011, Health and Safety Code,
13 is amended to read as follows:

14 Sec. 194.0011. MARRIAGE LICENSE APPLICATIONS. (a) The
15 executive commissioner [~~board~~] by rule shall prescribe the format
16 and content of the department form used for the marriage license
17 application.

18 (b) The [bureau of] vital statistics unit shall print and
19 distribute the department forms to each county clerk throughout the
20 state.

21 (c) The department form [~~adopted by the board~~] shall replace
22 locally adopted forms.

23 (d) A county clerk may reproduce the department [~~board's~~]
24 form locally.

25 SECTION 3.0562. Sections 194.002(a), (b), (d), (e), and
26 (f), Health and Safety Code, are amended to read as follows:

27 (a) The department [~~bureau of vital statistics~~] shall

1 prescribe a form for reporting divorces and annulments of marriage.

2 The form must require the following information:

3 (1) each party's:

4 (A) full name;

5 (B) usual residence;

6 (C) age;

7 (D) place of birth;

8 (E) color or race; and

9 (F) number of children;

10 (2) the date and place of the parties' marriage;

11 (3) the date the divorce or annulment of marriage was
12 granted; and

13 (4) the court and the style and docket number of the
14 case in which the divorce or annulment of marriage was granted.

15 (b) The [bureau of] vital statistics unit shall furnish
16 sufficient copies of the form to each district clerk.

17 (d) Not later than the ninth day of each month, each
18 district clerk shall file with the [bureau of] vital statistics
19 unit a completed report for each divorce or annulment of marriage
20 granted in the district court during the preceding calendar month.

21 If a report does not include the information required by Subsection
22 (a)(3) or (4), the clerk must complete that information on the
23 report before the clerk files the report with the unit [bureau].

24 (e) For each report that a district clerk files with the
25 [bureau of] vital statistics unit under this section, the clerk may
26 collect a \$1 fee as costs in the case in which the divorce or
27 annulment of marriage is granted.

1 (f) If the department [bureau of vital statistics]
2 determines that a report filed with the department [bureau] under
3 this section requires correction, the department [bureau] shall
4 mail the report form directly to an attorney of record with respect
5 to the divorce or annulment of marriage. The attorney shall return
6 the corrected report form to the department [bureau]. If there is
7 no attorney of record, the department [bureau] shall mail the
8 report form to the district clerk for correction.

9 SECTION 3.0563. Section 194.003, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 194.003. STATE INDEX. (a) The [bureau of] vital
12 statistics unit shall maintain a statewide alphabetical index,
13 under the names of both parties, of each marriage license
14 application or declaration of informal marriage. The statewide
15 index does not replace the indexes required in each county.

16 (b) The [bureau of] vital statistics unit shall maintain a
17 statewide alphabetical index, under the names of both parties, of
18 each report of divorce or annulment of marriage.

19 SECTION 3.0564. Section 194.004, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 194.004. RELEASE OF INFORMATION. (a) The [bureau of]
22 vital statistics unit shall furnish on request any information it
23 has on record relating to any marriage, divorce, or annulment of
24 marriage.

25 (b) The [bureau of] vital statistics unit may not issue:

26 (1) a certificate or a certified copy of information
27 relating to a marriage; or

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3 SECTION 3.0565. Sections 194.005(b) and (c), Health and
4 Safety Code, are amended to read as follows:

5 (b) The department shall collect [~~prescribe~~] a \$50 fee for
6 the issuance of an heirloom wedding anniversary certificate.

7 (c) The executive commissioner [of the Health and Human
8 Services Commission] shall adopt rules designating certain
9 milestone wedding anniversary dates and shall design and promote
10 heirloom wedding anniversary certificates celebrating those
11 anniversary dates.

12 SECTION 3.0566. Chapter 222, Health and Safety Code, is
13 amended to read as follows:

14 CHAPTER 222. HEALTH CARE FACILITY SURVEY, CONSTRUCTION,

INSPECTION, AND REGULATION

SUBCHAPTER A. SURVEY AND CONSTRUCTION OF HOSPITALS

17 Sec. 222.001. SHORT TITLE. This subchapter may be cited as
18 the Texas Hospital Survey and Construction Act.

19 Sec. 222.002. DEFINITIONS. In this subchapter:

[- (1) "Board" means the Texas Board of Health.]

(4) "Hospital" includes a public health center, a

1 general hospital, or a tuberculosis, mental, chronic disease, or
2 other type of hospital, and related facilities such as a
3 laboratory, outpatient department, nurses' home and training
4 facility, or central service facility operated in connection with a
5 hospital.

6 (5) "Public health center" means a publicly owned
7 facility for providing public health services and includes related
8 facilities such as a laboratory, clinic, or administrative office
9 operated in connection with a facility for providing public health
10 services.

11 Sec. 222.003. EXCEPTION. This subchapter does not apply to
12 a hospital furnishing primarily domiciliary care.

13 [Sec. 222.004. DIVISION OF HOSPITAL SURVEY AND
14 CONSTRUCTION. (a) The division of hospital survey and
15 construction is a division of the department.]

16 [(b) The division is administered by a full-time salaried
17 director appointed by the commissioner and under the supervision
18 and direction of the board.]

19 [(c) The commissioner shall appoint other personnel of the
20 division.]

21 Sec. 222.005. SURVEY, PLANNING, AND CONSTRUCTION OF
22 HOSPITALS. (a) The department[, through the division of hospital
23 survey and construction,] is the only agency of the state
24 authorized to make an inventory of existing hospitals, survey the
25 need for construction of hospitals, and develop a program of
26 hospital construction as provided by the federal Hospital Survey
27 and Construction Act (42 U.S.C. Section 291 et seq.).

1 (b) The executive commissioner [board] may [establish
2 ~~methods of administration and~~] adopt rules to meet the requirements
3 of the federal Hospital Survey and Construction Act relating to
4 survey, planning, and construction of hospitals and public health
5 centers. The executive commissioner shall adopt other rules the
6 executive commissioner considers necessary.

7 (c) The commissioner may establish methods of
8 administration and shall:

9 (1) require reports and[~~–~~] make inspections and
10 investigations[~~, and prescribe rules~~] as the commissioner
11 considers necessary; and

12 (2) take other action that the commissioner considers
13 necessary to carry out the federal Hospital Survey and Construction
14 Act and the regulations adopted under that Act.

15 Sec. 222.006. FUNDING. (a) The department [~~commissioner~~]
16 shall accept, on behalf of the state, a payment of federal funds or
17 a gift or grant made to assist in meeting the cost of carrying out
18 the purpose of this subchapter, and may spend the payment, gift, or
19 grant for that purpose.

20 (b) The department [~~commissioner~~] shall deposit the
21 payment, gift, or grant in the state treasury to the credit of the
22 hospital construction fund.

23 (c) The department [~~commissioner~~] shall deposit to the
24 credit of the hospital construction fund money received from the
25 federal government for a construction project approved by the
26 surgeon general of the United States Public Health Service. The
27 department [~~commissioner~~] shall use the money only for payments to

1 applicants for work performed and purchases made in carrying out
2 approved projects.

3 Sec. 222.007. AGREEMENTS FOR USE OF FACILITIES AND SERVICES
4 OF OTHER ENTITIES. To the extent the department [commissioner]
5 considers desirable to carry out the purposes of this subchapter,
6 the department [commissioner] may enter into an agreement for the
7 use of a facility or service of another public or private
8 department, agency, or institution.

9 Sec. 222.008. EXPERTS AND CONSULTANTS. The department
10 [commissioner] may contract for services of experts or consultants,
11 or organizations of experts or consultants, on a part-time or
12 fee-for-service basis. The contracts may not involve the
13 performance of administrative duties.

14 Sec. 222.009. [COMMISSIONER'S] REPORT. (a) The department
15 [commissioner] annually shall report to the executive commissioner
16 [board] on activities and expenditures under this subchapter.

17 (b) The department [commissioner] shall include in the
18 report recommendations for additional legislation that the
19 department [commissioner] considers appropriate to furnish
20 adequate hospital, clinic, and similar facilities to the public.

21 SUBCHAPTER B. LIMITATION ON INSPECTION AND OTHER REGULATION OF
22 HEALTH CARE FACILITIES

23 [Sec. 222.021. PURPOSE. The purpose of this subchapter is
24 to require that state agencies that perform inspections of health
25 care facilities, including the Texas Department of Health, the
26 Texas Department of Human Services, the Texas Department of Mental
27 Health and Mental Retardation, and other agencies with which each

1 ~~of those agencies contracts, do not duplicate their procedures or~~
2 ~~subject health care facilities to duplicative rules.]~~

3 Sec. 222.022. DEFINITIONS. In this subchapter:

4 (1) "Executive commissioner" means the executive
5 commissioner of the Health and Human Services Commission.

6 (2) "Health care facility" has the meaning assigned by
7 Section 104.002, except that the term does not include a chemical
8 dependency treatment facility licensed by the Department of State
9 Health Services under Chapter 464 [Texas Commission on Alcohol and
10 Drug Abuse].

11 (3) [~~(2)~~] "Inspection" includes a survey, inspection,
12 investigation, or other procedure necessary for a state agency to
13 carry out an obligation imposed by federal and state laws, rules,
14 and regulations.

15 Sec. 222.023. LIMITATION ON INSPECTIONS. (a) A state
16 agency may make or require only those inspections necessary to
17 carry out obligations imposed on the agency by federal and state
18 laws, rules, and regulations.

19 (b) Instead of making an on-site inspection, a state agency
20 shall accept an on-site inspection by another state agency charged
21 with making an inspection if the inspection substantially complies
22 with the accepting agency's inspection requirements.

23 (c) A state agency shall coordinate its inspections within
24 the agency and with inspections required of other agencies to
25 ensure compliance with this section.

26 Sec. 222.024. CERTIFICATION OR ACCREDITATION INSTEAD OF
27 INSPECTION. (a) Except as provided by Subsection (c), a hospital

1 licensed by the [Texas] Department of State Health Services is not
2 subject to additional annual licensing inspections before the
3 department issues the hospital a license while the hospital
4 maintains:

5 (1) certification under Title XVIII of the Social
6 Security Act (42 U.S.C. Section 1395 et seq.); or

7 (2) accreditation from The [the] Joint Commission [~~on~~
8 ~~Accreditation of Healthcare Organizations~~], the American
9 Osteopathic Association, or other national accreditation
10 organization for the offered services.

11 (b) If the Department of State Health Services [~~department~~]
12 licenses a hospital exempt from an annual licensing inspection
13 under Subsection (a), the department shall issue a renewal license
14 to the hospital if the hospital annually:

15 (1) submits a complete application required by the
16 department;

17 (2) remits any applicable fees;

18 (3) submits a copy of documentation from the
19 certification or accreditation body showing that the hospital is
20 certified or accredited; and

21 (4) submits a copy of the most recent fire safety
22 inspection report from the fire marshal in whose jurisdiction the
23 hospital is located.

24 (c) The Department of State Health Services [~~department~~]
25 may conduct an inspection of a hospital exempt from an annual
26 licensing inspection under Subsection (a) before issuing a renewal
27 license to the hospital if the certification or accreditation body

1 has not conducted an on-site inspection of the hospital in the
2 preceding three years and the department determines that an
3 inspection of the hospital by the certification or accreditation
4 body is not scheduled within 60 days.

5 [Sec. 222.025. LIMITATION OF OTHER REGULATION. (a) The
6 ~~Texas Department of Human Services, the Texas Department of Health,~~
7 ~~and the Texas Department of Mental Health and Mental Retardation~~
8 ~~each by rule shall execute a memorandum of understanding that~~
9 ~~establishes procedures to eliminate or reduce duplication of~~
10 ~~functions in certifying or licensing hospitals, nursing homes, or~~
11 ~~other facilities under their jurisdiction for payments under the~~
12 ~~requirements of Chapter 32, Human Resources Code, and federal law~~
13 ~~and regulations relating to Titles XVIII and XIX of the Social~~
14 ~~Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.).~~
15 The procedures must provide for use by each agency of information
16 collected by the agencies in making inspections for certification
17 purposes and in investigating complaints regarding matters that
18 would affect the certification of a nursing home or other facility
19 under their jurisdiction.

20 [(b) The Texas Department of Health shall coordinate all
21 licensing or certification procedures conducted by the state
22 agencies covered by this section.]

23 [Sec. 222.0255. NURSING HOMES. (a) The Texas Department of
24 Human Services shall develop one set of standards for nursing homes
25 that apply to licensing and to certification for participation in
26 the medical assistance program under Chapter 32, Human Resources
27 Code.]

1 **[(b) The standards must comply with federal regulations. If**
2 ~~the federal regulations at the time of adoption are less stringent~~
3 ~~than the state standards, the department shall keep and comply with~~
4 ~~the state standards.~~

5 **[(c) The department by rule shall adopt the standards and**
6 ~~any amendments to the standards.~~

7 **[(d) The department shall maintain a set of standards for**
8 ~~nursing homes that are licensed only.~~

9 **[(e) Chapter 242 establishes the minimum licensing**
10 ~~standards for an institution. The licensing standards adopted by~~
11 ~~the department under this chapter shall be adopted subject to~~
12 ~~Section 242.037(b) and must comply with Section 242.037(c) and the~~
13 ~~other provisions of Chapter 242.]~~

14 Sec. 222.026. COMPLAINT INVESTIGATIONS AND ENFORCEMENT
15 AUTHORITY. (a) Section [Sections] 222.024 does [~~, 222.025, and~~
16 ~~222.025 do~~] not affect the authority of the [Texas] Department of
17 State Health Services to implement and enforce the provisions of
18 Chapter 241 (Texas Hospital Licensing Law) to:

19 (1) reinspect a hospital if a hospital applies for the
20 reissuance of its license after a final ruling upholding the
21 suspension or revocation of a hospital's license, the assessment of
22 administrative or civil penalties, or the issuance of an injunction
23 against the hospital for violations of provisions of the licensing
24 law, rules adopted under the licensing law, special license
25 conditions, or orders of the commissioner of state health services;
26 or

27 (2) investigate a complaint against a hospital and, if

1 appropriate, enforce the provisions of the licensing law on a
2 finding by the Department of State Health Services [~~department~~] that reasonable cause exists to believe that the hospital has
3 violated provisions of the licensing law, rules adopted under the
4 licensing law, special license conditions, or orders of the
5 commissioner of state health services; provided, however, that the
6 Department of State Health Services [~~department~~] shall coordinate
7 with the federal Centers for Medicare and Medicaid Services [~~Health~~
8 ~~Care Financing Administration~~] and its agents responsible for the
9 inspection of hospitals to determine compliance with the conditions
10 of participation under Title XVIII of the Social Security Act (42
11 U.S.C. Section 1395 et seq.), so as to avoid duplicate
12 investigations.

14 (b) The executive commissioner [~~department~~] shall by rule
15 establish a procedure for the acceptance and timely review of
16 complaints received from hospitals concerning the objectivity,
17 training, and qualifications of the persons conducting the
18 inspection.

19 Sec. 222.027. PHYSICIAN ON SURVEY TEAM. The [~~Texas~~] Department of State Health Services shall ensure that a licensed
20 physician involved in direct patient care as defined by the Texas
21 Medical [~~State~~] Board [~~of Medical Examiners~~] is included on a
22 survey team sent under Title XVIII of the Social Security Act (42
23 U.S.C. Section 1395 et seq.) when surveying the quality of services
24 provided by physicians in hospitals.

1 SUBCHAPTER C. SURVEYS OF INTERMEDIATE CARE FACILITIES FOR
2 INDIVIDUALS WITH AN INTELLECTUAL DISABILITY [MENTALLY RETARDED]

3 Sec. 222.041. DEFINITIONS. In this subchapter:

4 (1) "Board" means the Texas Board of Human Services.

5 [←2] "Commissioner" means the commissioner of aging
6 and disability services [human services].

7 (2) [←3] "Department" means the [Texas] Department
8 of Aging and Disability Human Services.

9 (3) "Executive commissioner" means the executive
10 commissioner of the Health and Human Services Commission.

11 (4) "ICF-IID" ["ICF-MR"] means the medical assistance
12 program serving individuals with an intellectual disability or a
13 related condition who receive [persons receiving] care in
14 intermediate care facilities [for mentally retarded persons].

15 Sec. 222.042. LICENSING OF [ICF-MR] BEDS AND FACILITIES.
16 The department may not license or approve as meeting licensing
17 standards new ICF-IID [ICF-MR] beds or the expansion of an existing
18 ICF-IID [ICF-MR] facility unless the new beds or the expansion was
19 included in the plan approved by the Health and Human Services
20 Commission in accordance with Section [533.062](#).

21 [Sec. 222.043. REVIEW OF ICF-MR SURVEYS.] (a) The board by
22 rule shall establish policies and procedures as prescribed by this
23 section to conduct an informal review of ICF-MR surveys when the
24 survey findings are disputed by the provider. The board shall
25 provide that the procedure may be used only if the deficiencies
26 cited in the survey report do not pose an imminent threat of danger
27 to the health or safety of a resident.

1 [(b) The department shall designate at least one employee to
2 conduct on a full-time basis the review provided by this section.
3 The person must be impartial and may not be directly involved in or
4 supervise any initial or recertification surveys. The person may
5 participate in or direct follow-up surveys for quality assurance
6 purposes only at the discretion of the commissioner or the
7 commissioner's designated representative or under Chapter 242.]

8 [(c) The employee designated under Subsection (b) should
9 have current knowledge of applicable federal laws and survey
10 processes. The employee reports directly to the commissioner or
11 the commissioner's designated representative.]

12 [(d) If a provider disputes the findings of a survey team or
13 files a complaint relating to the conduct of the survey, the
14 employee designated under Subsection (b) shall conduct an informal
15 review as soon as possible, but before the 45th day after the date
16 of receiving the request for a review or the expiration of the
17 period during which the provider is required to correct the alleged
18 deficiency, whichever is sooner.]

19 [(e) The employee conducting the review shall sustain,
20 alter, or reverse the original findings of the survey team after
21 consulting with the commissioner or the commissioner's designated
22 representative.]

23 Sec. 222.044. FOLLOW-UP SURVEYS. (a) The department shall
24 conduct follow-up surveys of ICF-IID [ICF-MR] facilities to:

- 25 (1) evaluate and monitor the findings of the
26 certification or licensing survey teams; and
- 27 (2) ensure consistency in deficiencies cited and in

1 punitive actions recommended throughout the state.

2 (b) A provider shall correct any additional deficiency
3 cited by the department. The department may not impose an
4 additional punitive action for the deficiency unless the provider
5 fails to correct the deficiency within the period during which the
6 provider is required to correct the deficiency.

7 Sec. 222.046. SURVEYS OF ICF-IID [~~ICF-MR~~] FACILITIES. (a)
8 The department shall ensure that each survey team sent to survey an
9 ICF-IID [~~ICF-MR~~] facility includes a qualified intellectual
10 disabilities [~~mental retardation~~] professional, as that term is
11 defined by federal law.

12 (b) The department shall require that each survey team sent
13 to survey an ICF-IID [~~ICF-MR~~] facility conduct a final interview
14 with the provider to ensure that the survey team informs the
15 provider of the survey findings and that the survey team has
16 requested the necessary information from the provider. The survey
17 team shall allow the provider to record the interview. The provider
18 shall immediately give the survey team a copy of any recording.

19 SECTION 3.0567. Section 241.003, Health and Safety Code, is
20 amended by amending Subdivisions (2), (4), (11), and (12) and
21 adding Subdivisions (2-a) and (4-a) to read as follows:

22 (2) "Commission" means the Health and Human Services
23 Commission.

24 (2-a) "Commissioner" means the commissioner of state
25 health services [~~Board~~ means the Texas Board of Health].

26 (4) "Department" means the [~~Texas~~] Department of State
27 Health Services.

1 (4-a) "Executive commissioner" means the executive
2 commissioner of the Health and Human Services Commission.

3 (11) "Physician" means a physician licensed by the
4 Texas ~~State Board of~~ Medical Board ~~[Examiners]~~.

5 (12) "Physician assistant" means a physician
6 assistant licensed by the Texas Physician Assistant ~~State~~ Board
7 ~~[of Physician Assistant Examiners]~~.

8 SECTION 3.0568. Section 241.006(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) The department is authorized to review current and
11 proposed state rules, including ~~[issued by the]~~ department rules
12 and rules of ~~[or by]~~ other state agencies, that mandate that a
13 hospital place or post a notice, poster, or sign in a conspicuous
14 place or in an area of high public traffic, concerning the rights of
15 patients or others or the responsibilities of the hospital, which
16 is directed at patients, patients' families, or others. The
17 purpose of this review shall be to coordinate the placement,
18 format, and language contained in the required notices in order to:

19 (1) eliminate the duplication of information;
20 (2) reduce the potential for confusion to patients,
21 patients' families, and others; and
22 (3) reduce the administrative burden of compliance on
23 hospitals.

24 SECTION 3.0569. Section 241.009, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 241.009. PHOTO IDENTIFICATION BADGE REQUIRED. (a) In
27 this section, "health[+

1 [~~(1) "Health~~] care provider" means a person who
2 provides health care services at a hospital as a physician, as an
3 employee of the hospital, under a contract with the hospital, or in
4 the course of a training or educational program at the hospital.

5 [~~(2) "Hospital" means a hospital licensed under this~~
6 ~~chapter.~~]

7 (b) A hospital licensed under this chapter shall adopt a
8 policy requiring a health care provider providing direct patient
9 care at the hospital to wear a photo identification badge during all
10 patient encounters, unless precluded by adopted isolation or
11 sterilization protocols. The badge must be of sufficient size and
12 worn in a manner to be visible and must clearly state:

13 (1) at minimum the provider's first or last name;
14 (2) the department of the hospital with which the
15 provider is associated;
16 (3) the type of license held by the provider, if the
17 provider holds a license under Title 3, Occupations Code; and
18 (4) if applicable, the provider's status as a student,
19 intern, trainee, or resident.

20 SECTION 3.0570. Section 241.022(d), Health and Safety Code,
21 is amended to read as follows:

22 (d) The application must be accompanied by:
23 (1) a copy of the hospital's current patient transfer
24 policy;
25 (2) a nonrefundable license fee;
26 (3) copies of the hospital's patient transfer
27 agreements, unless the filing of copies has been waived by the

1 department [~~hospital licensing director~~] in accordance with the
2 rules adopted under this chapter; and

3 (4) a copy of the most recent annual fire safety
4 inspection report from the fire marshal in whose jurisdiction the
5 hospital is located.

6 SECTION 3.0571. Sections 241.023(b), (c-2), (c-3), (d), and
7 (e), Health and Safety Code, are amended to read as follows:

8 (b) A license may be renewed every two years [~~annually~~]
9 after payment of the required fee and submission of an application
10 for license renewal that contains the information required by
11 Section 241.022(b).

12 (c-2) The department [~~hospital licensing director~~] may
13 recommend a waiver of the requirement of Subsection (c-1)(7) for a
14 hospital if another hospital that is to be included in the license:

15 (1) complies with the emergency services standards for
16 a general hospital; and

17 (2) is in close geographic proximity to the hospital.

18 (c-3) The executive commissioner [~~of the Health and Human~~
19 ~~Services Commission~~] shall adopt rules to implement the waiver
20 provision of Subsection (c-2). The rules must provide for a
21 determination by the department that the waiver will facilitate the
22 creation or operation of the hospital seeking the waiver and that
23 the waiver is in the best interest of the individuals served or to
24 be served by the hospital.

25 (d) Subject to Subsection (e), a license issued under this
26 section for a hospital includes each outpatient facility that is
27 not separately licensed, that is located apart from the hospital,

1 and for which the hospital has submitted to the department:

2 (1) a copy of a fire safety survey that is dated not
3 earlier than one year before the submission date indicating
4 approval by:

5 (A) the local fire authority in whose
6 jurisdiction the outpatient facility is located; or

7 (B) the nearest fire authority, if the outpatient
8 facility is located outside of the jurisdiction of a local fire
9 authority; and

10 (2) if the hospital is accredited by The [the] Joint
11 Commission [~~on Accreditation of Healthcare Organizations~~] or the
12 American Osteopathic Association, a copy of documentation from the
13 accrediting body showing that the outpatient facility is included
14 within the hospital's accreditation.

15 (e) Subsection (d) applies only if the federal Department of
16 Health and Human Services, Centers for Medicare and Medicaid
17 Services [~~Health Care Financing Administration~~], or Office of
18 Inspector General adopts final or interim final rules requiring
19 state licensure of outpatient facilities as a condition of the
20 determination of provider-based status for Medicare reimbursement
21 purposes.

22 SECTION 3.0572. Sections 241.025(a), (b), (d), and (e),
23 Health and Safety Code, are amended to read as follows:

24 (a) The department shall charge each hospital a [an annual]
25 license fee for an initial license or a license renewal.

26 (b) The executive commissioner [~~board~~] by rule shall adopt
27 the fees authorized by Subsection (a) in amounts as prescribed by

1 Section 12.0111 and according to a schedule under which the number
2 of beds in the hospital determines the amount of the fee. [~~The fee~~
3 ~~may not exceed \$15 a bed.~~] A minimum license fee may be
4 established. [~~The minimum fee may not exceed \$1,000.~~]

5 (d) All license fees collected shall be deposited in the
6 state treasury to the credit of the department to administer and
7 enforce this chapter. [~~These fees are hereby appropriated to the~~
8 ~~department.~~]

9 (e) Notwithstanding Subsection (d), to the extent that
10 money received from the fees collected under this chapter exceeds
11 the costs to the department to conduct the activity for which the
12 fee is imposed, the department may use the money to administer
13 Chapter 324 and similar laws that require the department to provide
14 information related to hospital care to the public. The executive
15 commissioner [~~department~~] may not consider the costs of
16 administering Chapter 324 or similar laws in adopting a fee imposed
17 under this section.

18 SECTION 3.0573. Sections 241.026(a) through (e), Health and
19 Safety Code, are amended to read as follows:

20 (a) The executive commissioner [~~board~~] shall adopt rules
21 and the department shall enforce the rules to further the purposes
22 of this chapter. The rules at a minimum shall address:

23 (1) minimum requirements for staffing by physicians
24 and nurses;

25 (2) hospital services relating to patient care;

26 (3) fire prevention, safety, and sanitation
27 requirements in hospitals;

1 (4) patient care and a patient bill of rights;
2 (5) compliance with other state and federal laws
3 affecting the health, safety, and rights of hospital patients; and
4 (6) compliance with nursing peer review under
5 Subchapter I, Chapter 301, and Chapter 303, Occupations Code, and
6 the rules of the Texas Board of Nursing relating to peer review.

7 (b) In adopting rules, the executive commissioner [board]
8 shall consider the conditions of participation for certification
9 under Title XVIII of the Social Security Act (42 U.S.C. Section 1395
10 et seq.) and the standards of The [~~the~~] Joint Commission [~~on~~
11 ~~Accreditation of Healthcare Organizations~~] and will attempt to
12 achieve consistency with those conditions and standards.

13 (c) The department [~~Upon the recommendation of the hospital~~
14 ~~licensing director and the council, the board~~] by order may waive or
15 modify the requirement of a particular provision of this chapter
16 [~~Act~~] or minimum standard adopted by department [board] rule under
17 this section to a particular general or special hospital if the
18 department [board] determines that the waiver or modification will
19 facilitate the creation or operation of the hospital and that the
20 waiver or modification is in the best interests of the individuals
21 served or to be served by the hospital.

22 (d) The executive commissioner [board] shall adopt rules
23 establishing procedures and criteria for the issuance of the waiver
24 or modification order. The criteria must include at a minimum a
25 statement of the appropriateness of the waiver or modification
26 against the best interests of the individuals served by the
27 hospital.

1 (e) If the department [board] orders a waiver or
2 modification of a provision or standard, the licensing record of
3 the hospital granted the waiver or modification shall contain
4 documentation to support the [board's] action. Department [The
5 board's] rules shall specify the type and specificity of the
6 supporting documentation that must be included.

7 SECTION 3.0574. Section 241.0265, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 241.0265. STANDARDS FOR CARE FOR MENTAL HEALTH AND
10 CHEMICAL DEPENDENCY. (a) The care and treatment of a patient
11 receiving mental health services in a facility licensed by the
12 department under this chapter or Chapter 577 are governed by the
13 applicable department standards adopted [by the Texas Department of
14 Mental Health and Mental Retardation to the same extent as if the
15 standards adopted by that department were rules adopted by the
16 board] under this chapter or Chapter 577.

17 (b) The care and treatment of a patient receiving chemical
18 dependency treatment in a facility licensed by the department under
19 this chapter are governed by the same standards that govern the care
20 and treatment of a patient receiving treatment in a treatment
21 facility licensed under Chapter 464 [and that are adopted by the
22 Texas Commission on Alcohol and Drug Abuse], to the same extent as
23 if the standards [adopted by the commission] were rules adopted [by
24 the board] under this chapter.

25 (c) The department shall enforce the standards provided by
26 Subsections (a) and (b). A violation of a standard is subject to
27 the same consequence as a violation of a rule adopted [by the board]

1 under this chapter or Chapter 577. The department is not required
2 to enforce a standard if the enforcement violates a federal law,
3 rule, or regulation.

4 SECTION 3.0575. Section 241.027(a), Health and Safety Code,
5 is amended to read as follows:

6 (a) The executive commissioner [board] shall adopt rules to
7 govern the transfer of patients between hospitals that do not have a
8 transfer agreement and governing services not included in transfer
9 agreements.

10 SECTION 3.0576. Sections 241.051(a) and (b), Health and
11 Safety Code, are amended to read as follows:

12 (a) The department may make any inspection, survey, or
13 investigation that it considers necessary. A representative of the
14 department may enter the premises of a hospital at any reasonable
15 time to make an inspection, a survey, or an investigation to assure
16 compliance with or prevent a violation of this chapter, the rules
17 adopted under this chapter, an order or special order of the
18 commissioner [~~of health~~], a special license provision, a court
19 order granting injunctive relief, or other enforcement procedures.
20 The department shall maintain the confidentiality of hospital
21 records as applicable under state or federal law.

22 (b) The department or a representative of the department is
23 entitled to access to all books, records, or other documents
24 maintained by or on behalf of the hospital to the extent necessary
25 to enforce this chapter, the rules adopted under this chapter, an
26 order or special order of the commissioner [~~of health~~], a special
27 license provision, a court order granting injunctive relief, or

1 other enforcement procedures.

2 SECTION 3.0577. Sections [241.053](#)(a) and (d), Health and
3 Safety Code, are amended to read as follows:

4 (a) The department, after providing notice and an
5 opportunity for a hearing to the applicant or license holder, may
6 deny, suspend, or revoke a hospital's license if the department
7 finds that the hospital:

8 (1) failed to comply with:

9 (A) a provision of this chapter;

10 (B) a rule adopted under this chapter;

11 (C) a special license condition;

12 (D) an order or emergency order by the
13 commissioner [~~of health~~]; or

14 (E) another enforcement procedure permitted
15 under this chapter;

16 (2) has a history of noncompliance with the rules
17 adopted under this chapter relating to patient health, safety, and
18 rights which reflects more than nominal noncompliance; or

19 (3) has aided, abetted, or permitted the commission of
20 an illegal act.

21 (d) Administrative hearings required under this section
22 shall be conducted under the department's [~~board's~~] formal hearing
23 rules and the contested case provisions of Chapter 2001, Government
24 Code.

25 SECTION 3.0578. Sections [241.0531](#)(a) and (c), Health and
26 Safety Code, are amended to read as follows:

27 (a) Following notice to the hospital and opportunity for

1 hearing, the commissioner [~~of health~~] or a person designated by the
2 commissioner may issue an emergency order, either mandatory or
3 prohibitory in nature, in relation to the operation of a hospital
4 licensed under this chapter if the commissioner or the
5 commissioner's designee determines that the hospital is violating
6 or threatening to violate this chapter, a rule adopted pursuant to
7 this chapter, a special license provision, injunctive relief issued
8 pursuant to Section 241.054, an order of the commissioner or the
9 commissioner's designee, or another enforcement procedure
10 permitted under this chapter and the provision, rule, license
11 provision, injunctive relief, order, or enforcement procedure
12 relates to the health or safety of the hospital's patients.

13 (c) The hearing shall not be governed by the contested case
14 provisions of Chapter 2001, Government Code, but shall instead be
15 held in accordance with the department's [~~board's~~] informal hearing
16 rules.

17 SECTION 3.0579. Section 241.054(b), Health and Safety Code,
18 is amended to read as follows:

19 (b) After the notice and opportunity to comply, the
20 commissioner [~~of health~~] may request the attorney general or the
21 appropriate district or county attorney to institute and conduct a
22 suit for a violation of this chapter or a rule adopted under this
23 chapter.

24 SECTION 3.0580. Section 241.058, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 241.058. MINOR VIOLATIONS. (a) This chapter does not
27 require the commissioner [~~of health~~] or a designee of the

1 commissioner to report a minor violation for prosecution or the
2 institution of any other enforcement proceeding authorized under
3 this chapter, if the commissioner or [a] designee [~~of the~~
4 ~~commissioner~~] determines that prosecution or enforcement is not in
5 the best interests of the persons served or to be served by the
6 hospital.

7 (b) For the purpose of this section, a "minor violation"
8 means a violation of this chapter, the rules adopted under this
9 chapter, a special license provision, an order or emergency order
10 issued by the commissioner [~~of health~~] or the commissioner's
11 designee, or another enforcement procedure permitted under this
12 chapter by a hospital that does not constitute a threat to the
13 health, safety, and rights of the hospital's patients or other
14 persons.

15 SECTION 3.0581. Sections [241.059\(a\), \(b\), and \(d\)](#) through
16 (n), Health and Safety Code, are amended to read as follows:

17 (a) The department [~~commissioner of health~~] may assess an
18 administrative penalty against a hospital that violates this
19 chapter, a rule adopted pursuant to this chapter, a special license
20 provision, an order or emergency order issued by the commissioner
21 or the commissioner's designee, or another enforcement procedure
22 permitted under this chapter. The department [~~commissioner~~] shall
23 assess an administrative penalty against a hospital that violates
24 Section [166.004](#).

25 (b) In determining the amount of the penalty, the department
26 [~~commissioner of health~~] shall consider:

27 (1) the hospital's previous violations;

1 (2) the seriousness of the violation;
2 (3) any threat to the health, safety, or rights of the
3 hospital's patients;
4 (4) the demonstrated good faith of the hospital; and
5 (5) such other matters as justice may require.

6 (d) When it is determined that a violation has occurred, the
7 ~~department [commissioner of health shall issue a report that states~~
8 ~~the facts on which the determination is based and the~~
9 ~~commissioner's recommendation on the imposition of a penalty,~~
10 ~~including a recommendation on the amount of the penalty.~~

11 [~~(e)~~ Within 14 days after the date the report is issued, the
12 ~~commissioner of health~~] shall give written notice of the violation
13 [~~report~~] to the person, delivered by certified mail. The notice
14 must include a brief summary of the alleged violation and a
15 statement of the amount of the recommended penalty and must inform
16 the person that the person has a right to a hearing on the
17 occurrence of the violation, the amount of the penalty, or both the
18 occurrence of the violation and the amount of the penalty.

19 (f) Within 20 days after the date the person receives the
20 notice, the person in writing may accept the determination and
21 recommended penalty of the department [~~commissioner of health~~] or
22 may make a written request for a hearing on the occurrence of the
23 violation, the amount of the penalty, or both the occurrence of the
24 violation and the amount of the penalty.

25 (g) If the person accepts the determination and recommended
26 penalty of the department [~~commissioner of health~~], the department
27 [~~commissioner~~] by order shall impose the recommended penalty.

1 (h) If the person requests a hearing or fails to respond
2 timely to the notice, the department shall refer the matter to the
3 State Office of Administrative Hearings and an administrative law
4 judge of that office shall hold the hearing. The department
5 [~~commissioner of health~~] shall [~~set a hearing and~~] give notice of
6 the hearing to the person. [~~The hearing shall be held by the~~
7 ~~department.~~] The administrative law judge [~~person~~] conducting the
8 hearing shall make findings of fact and conclusions of law and
9 promptly issue to the department [~~commissioner~~] a written proposal
10 for a decision about the occurrence of the violation and the amount
11 of the penalty. Based on the findings of fact, conclusions of law,
12 and proposal for a decision, the department [~~commissioner~~] by order
13 may find that a violation has occurred and impose a penalty or may
14 find that no violation occurred.

15 (i) The notice of the department's [~~commissioner of~~
16 ~~health's~~] order given to the person under Chapter 2001, Government
17 Code, must include a statement of the right of the person to
18 judicial review of the order.

19 (j) Within 30 days after the date the department's
20 [~~commissioner of health's~~] order is final as provided by Subchapter
21 F, Chapter 2001, Government Code, the person shall:

- 22 (1) pay the amount of the penalty;
23 (2) pay the amount of the penalty and file a petition
24 for judicial review contesting the occurrence of the violation, the
25 amount of the penalty, or both the occurrence of the violation and
26 the amount of the penalty; or
27 (3) without paying the amount of the penalty, file a

1 petition for judicial review contesting the occurrence of the
2 violation, the amount of the penalty, or both the occurrence of the
3 violation and the amount of the penalty.

4 (k) Within the 30-day period, a person who acts under
5 Subsection (j)(3) may:

6 (1) stay enforcement of the penalty by:

7 (A) paying the amount of the penalty to the court
8 for placement in an escrow account; or

9 (B) giving to the court a supersedeas bond that
10 is approved by the court for the amount of the penalty and that is
11 effective until all judicial review of the department's [board's]
12 order is final; or

13 (2) request the court to stay enforcement of the
14 penalty by:

15 (A) filing with the court a sworn affidavit of
16 the person stating that the person is financially unable to pay the
17 amount of the penalty and is financially unable to give the
18 supersedeas bond; and

19 (B) giving a copy of the affidavit to the
20 department [~~commissioner of health~~] by certified mail.

21 (1) When the department [~~commissioner of health~~] receives a
22 copy of an affidavit under Subsection (k)(2), the department [~~he~~]
23 may file with the court, within five days after the date the copy is
24 received, a contest to the affidavit. The court shall hold a
25 hearing on the facts alleged in the affidavit as soon as practicable
26 and shall stay the enforcement of the penalty on finding that the
27 alleged facts are true. The person who files an affidavit has the

1 burden of proving that the person is financially unable to pay the
2 amount of the penalty and to give a supersedeas bond.

3 (m) If the person does not pay the amount of the penalty and
4 the enforcement of the penalty is not stayed, the department
5 [~~commissioner of health~~] may refer the matter to the attorney
6 general for collection of the amount of the penalty.

7 (n) Judicial review of the order of the department
8 [~~commissioner of health~~]:

9 (1) is instituted by filing a petition as provided by
10 Subchapter G, Chapter 2001, Government Code; and

11 (2) is under the substantial evidence rule.

12 SECTION 3.0582. Sections 241.060(a), (d), (e), (f), (g),
13 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
14 amended to read as follows:

15 (a) The department [~~board~~] may impose an administrative
16 penalty against a person licensed or regulated under this chapter
17 who violates this chapter or a rule or order adopted under this
18 chapter relating to the provision of mental health, chemical
19 dependency, or rehabilitation services.

20 (d) If the department [~~commissioner~~] determines that a
21 violation has occurred, the department [~~commissioner may issue to~~
22 ~~the board a report that states the facts on which the determination~~
23 ~~is based and the commissioner's recommendation on the imposition of~~
24 ~~a penalty, including a recommendation on the amount of the penalty.~~

25 [(e) Within 14 days after the date the report is issued, the
26 ~~commissioner~~] shall give written notice of the violation [~~report~~
27 to the person. The notice may be given by certified mail. The

1 notice must include a brief summary of the alleged violation and a
2 statement of the amount of the recommended penalty and must inform
3 the person that the person has a right to a hearing on the
4 occurrence of the violation, the amount of the penalty, or both the
5 occurrence of the violation and the amount of the penalty.

6 (f) Within 20 days after the date the person receives the
7 notice, the person in writing may accept the determination and
8 recommended penalty of the department [commissioner] or may make a
9 written request for a hearing on the occurrence of the violation,
10 the amount of the penalty, or both the occurrence of the violation
11 and the amount of the penalty.

12 (g) If the person accepts the determination and recommended
13 penalty of the department [commissioner], the department [board] by
14 order shall [~~approve the determination and~~] impose the recommended
15 penalty.

16 (h) If the person requests a hearing or fails to respond
17 timely to the notice, the department [commissioner] shall refer the
18 matter to the State Office of Administrative Hearings and an
19 administrative law judge of that office shall hold the hearing. The
20 department shall [~~set a hearing and~~] give notice of the hearing to
21 the person. The administrative law judge shall make findings of
22 fact and conclusions of law and promptly issue to the department
23 [board] a written proposal for a decision about the occurrence of
24 the violation and the amount of a proposed penalty. Based on the
25 findings of fact, conclusions of law, and proposal for a decision,
26 the department [board] by order may find that a violation has
27 occurred and impose a penalty or may find that no violation

1 occurred.

2 (i) The notice of the department's [board's] order given to
3 the person under Chapter 2001, Government Code, must include a
4 statement of the right of the person to judicial review of the
5 order.

6 (j) Within 30 days after the date the department's [board's]
7 order is final as provided by Subchapter F, Chapter 2001,
8 Government Code, the person shall:

9 (1) pay the amount of the penalty;

10 (2) pay the amount of the penalty and file a petition
11 for judicial review contesting the occurrence of the violation, the
12 amount of the penalty, or both the occurrence of the violation and
13 the amount of the penalty; or

14 (3) without paying the amount of the penalty, file a
15 petition for judicial review contesting the occurrence of the
16 violation, the amount of the penalty, or both the occurrence of the
17 violation and the amount of the penalty.

18 (k) Within the 30-day period, a person who acts under
19 Subsection (j)(3) may:

20 (1) stay enforcement of the penalty by:

21 (A) paying the amount of the penalty to the court
22 for placement in an escrow account; or

23 (B) giving to the court a supersedeas bond that
24 is approved by the court for the amount of the penalty and that is
25 effective until all judicial review of the department's [board's]
26 order is final; or

27 (2) request the court to stay enforcement of the

1 penalty by:

2 (A) filing with the court a sworn affidavit of
3 the person stating that the person is financially unable to pay the
4 amount of the penalty and is financially unable to give the
5 supersedeas bond; and

6 (B) giving a copy of the affidavit to the
7 commissioner by certified mail.

8 (1) The department [~~commissioner~~] on receipt of a copy of an
9 affidavit under Subsection (k)(2) may file with the court within
10 five days after the date the copy is received a contest to the
11 affidavit. The court shall hold a hearing on the facts alleged in
12 the affidavit as soon as practicable and shall stay the enforcement
13 of the penalty on finding that the alleged facts are true. The
14 person who files an affidavit has the burden of proving that the
15 person is financially unable to pay the amount of the penalty and to
16 give a supersedeas bond.

17 (m) If the person does not pay the amount of the penalty and
18 the enforcement of the penalty is not stayed, the department
19 [~~commissioner~~] may refer the matter to the attorney general for
20 collection of the amount of the penalty.

21 (n) Judicial review of the department's order [~~of the~~
22 ~~board~~]:

23 (1) is instituted by filing a petition as provided by
24 Subchapter G, Chapter 2001, Government Code; and
25 (2) is under the substantial evidence rule.

26 SECTION 3.0583. Section 241.101(i), Health and Safety Code,
27 is amended to read as follows:

1 (i) Graduate medical education may be used as a standard or
2 qualification for medical staff membership or privileges for a
3 physician, provided that equal recognition is given to training
4 programs accredited by the Accreditation Council for [or] Graduate
5 Medical Education and by the American Osteopathic Association.

6 SECTION 3.0584. Sections 241.104(a) and (c), Health and
7 Safety Code, are amended to read as follows:

8 (a) The executive commissioner [board] by rule shall adopt
9 fees for hospital plan reviews according to a schedule based on the
10 estimated construction costs.

11 (c) The department shall charge a fee for field surveys of
12 construction plans reviewed under this section. The executive
13 commissioner [board] by rule shall adopt a fee schedule for the
14 surveys that provides a minimum fee of \$500 and a maximum fee of
15 \$1,000 for each survey conducted.

16 SECTION 3.0585. Sections 241.123(a), (b), (d), (e), (f),
17 and (g), Health and Safety Code, are amended to read as follows:

18 (a) The executive commissioner [board] by rule shall adopt
19 standards for the provision of rehabilitation services by a
20 hospital to ensure the health and safety of a patient receiving the
21 services.

22 (b) The standards [~~adopted by the board~~] at a minimum shall
23 require a hospital that provides comprehensive medical
24 rehabilitation:

25 (1) to have a director of comprehensive medical
26 rehabilitation who is:

27 (A) a licensed physician;

1 (B) either board certified or eligible for board
2 certification in a medical specialty related to rehabilitation; and
3 (C) qualified by training and experience to serve
4 as medical director;

5 (2) to have medical supervision by a licensed
6 physician for 24 hours each day; and

7 (3) to provide appropriate therapy to each patient by
8 an interdisciplinary team consisting of licensed physicians,
9 rehabilitation nurses, and therapists as are appropriate for the
10 patient's needs.

11 (d) A hospital shall prepare for each patient receiving
12 inpatient rehabilitation services a written treatment plan
13 designed for that patient's needs for treatment and care. The
14 executive commissioner [~~board~~] by rule shall specify a time after
15 admission of a patient for inpatient rehabilitation services by
16 which a hospital must evaluate the patient for the patient's
17 initial treatment plan and by which a hospital must provide copies
18 of the plan after evaluation.

19 (e) A hospital shall prepare for each patient receiving
20 inpatient rehabilitation services a written continuing care plan
21 that addresses the patient's needs for care after discharge,
22 including recommendations for treatment and care and information
23 about the availability of resources for treatment or care. The
24 executive commissioner [~~board~~] by rule shall specify the time
25 before discharge by which the hospital must provide a copy of the
26 continuing care plan. Department [~~The board's~~] rules may allow a
27 facility to provide the continuing care plan by a specified time

1 after discharge if providing the plan before discharge is
2 impracticable.

3 (f) A hospital shall provide a copy of a treatment or
4 continuing care plan prepared under this section to the following
5 persons in the person's primary language, if practicable:

6 (1) the patient;

7 (2) a person designated by the patient; and

8 (3) as specified by department [board] rule, family
9 members or other persons with responsibility for or demonstrated
10 participation in the patient's care or treatment.

11 (g) Rules adopted by the executive commissioner [board]
12 under this subchapter may not conflict with a federal rule,
13 regulation, or standard.

14 SECTION 3.0586. Section 241.151(5), Health and Safety Code,
15 is amended to read as follows:

16 (5) "Legally authorized representative" means:

17 (A) a parent or legal guardian if the patient is a
18 minor;

19 (B) a legal guardian if the patient has been
20 adjudicated incapacitated to manage the patient's personal
21 affairs;

22 (C) an agent of the patient authorized under a
23 medical [durable] power of attorney [for health care];

24 (D) an attorney ad litem appointed for the
25 patient;

26 (E) a person authorized to consent to medical
27 treatment on behalf of the patient under Chapter 313;

1 (F) a guardian ad litem appointed for the
2 patient;

3 (G) a personal representative or heir of the
4 patient, as defined by Chapter 22, Estates [Section 3, Texas
5 ~~Probate~~] Code, if the patient is deceased;

6 (H) an attorney retained by the patient or by the
7 patient's legally authorized representative; or

8 (I) a person exercising a power granted to the
9 person in the person's capacity as an attorney-in-fact or agent of
10 the patient by a statutory durable power of attorney that is signed
11 by the patient as principal.

12 SECTION 3.0587. Section 241.183(c), Health and Safety Code,
13 as added by Chapter 217 (H.B. 15), Acts of the 83rd Legislature,
14 Regular Session, 2013, is amended to read as follows:

15 (c) The commission [~~Health and Human Services Commission~~]
16 shall study patient transfers that are not medically necessary but
17 would be cost-effective. Based on the study under this subsection,
18 if the executive commissioner determines that the transfers are
19 feasible and desirable, the executive commissioner may adopt rules
20 addressing those transfers.

21 SECTION 3.0588. Section 241.183, Health and Safety Code, as
22 added by Chapter 917 (H.B. 1376), Acts of the 83rd Legislature,
23 Regular Session, 2013, is amended to read as follows:

24 Sec. 241.183. POSTED NOTICE. Subject to Section 241.006,
25 the executive commissioner [~~department~~] shall adopt rules for a
26 notice to be posted in a conspicuous place in the facility described
27 by Section 241.181 that notifies prospective patients that the

1 facility is an emergency room and charges rates comparable to a
2 hospital emergency room.

3 SECTION 3.0589. Section [241.184](#), Health and Safety Code, as
4 added by Chapter 917 (H.B. 1376), Acts of the 83rd Legislature,
5 Regular Session, 2013, is amended to read as follows:

6 Sec. 241.184. ADMINISTRATIVE PENALTY. The department
7 [~~commissioner of health~~] may assess an administrative penalty under
8 Section [241.059](#) against a hospital that violates this subchapter.

9 SECTION 3.0590. The heading to Chapter 242, Health and
10 Safety Code, is amended to read as follows:

11 CHAPTER 242. CONVALESCENT AND NURSING FACILITIES [~~HOMES~~] AND
12 RELATED INSTITUTIONS

13 SECTION 3.0591. Sections [242.002](#)(1) and (2), Health and
14 Safety Code, are amended to read as follows:

15 (1) "Commission" means the Health and [~~Board~~ means
16 ~~the Texas Board of~~] Human Services Commission.

17 (2) "Commissioner" means the commissioner of aging and
18 disability [~~human~~] services.

19 SECTION 3.0592. Section [242.0021](#)(d), Health and Safety
20 Code, is amended to read as follows:

21 (d) The executive commissioner [~~department~~] may adopt rules
22 that define the ownership interests and other relationships that
23 qualify a person as a controlling person.

24 SECTION 3.0593. Section [242.003](#), Health and Safety Code, is
25 amended to read as follows:

26 Sec. 242.003. EXEMPTIONS. Except as otherwise provided,
27 this chapter does not apply to:

- 1 (1) a hotel or other similar place that furnishes only
2 food, lodging, or both, to its guests;
- 3 (2) a hospital;
- 4 (3) an establishment conducted by or for the adherents
5 of a well-recognized church or religious denomination for the
6 purpose of providing facilities for the care or treatment of the
7 sick who depend exclusively on prayer or spiritual means for
8 healing, without the use of any drug or material remedy, if the
9 establishment complies with safety, sanitary, and quarantine laws
10 and rules;
- 11 (4) an establishment that furnishes, in addition to
12 food, shelter, and laundry, only baths and massages;
- 13 (5) an institution operated by a person licensed by
14 the Texas Board of Chiropractic Examiners;
- 15 (6) a facility that:
16 (A) primarily engages in training, habilitation,
17 rehabilitation, or education of clients or residents;
18 (B) is operated under the jurisdiction of a state
19 or federal agency, including the commission, department,
20 Department of Assistive and Rehabilitative Services, [Department
21 ~~of Aging and Disability Services,~~] Department of State Health
22 Services, [Health and Human Services Commission,] Texas Department
23 of Criminal Justice, and United States Department of Veterans
24 Affairs; and
25 (C) is certified through inspection or
26 evaluation as meeting the standards established by the state or
27 federal agency;

1 (7) a foster care type residential facility that
2 serves fewer than five persons and operates under rules adopted by
3 [the Texas Department of Human Services or] the executive
4 commissioner [~~of the Health and Human Services Commission, as~~
5 ~~applicable~~]; and

6 (8) a facility licensed under Chapter 252 or exempt
7 from licensure under Section 252.003.

8 SECTION 3.0594. Section 242.013, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 242.013. PAPERWORK REDUCTION RULES. (a) The
11 executive commissioner [~~department~~] shall[+

12 [+] adopt rules to reduce the amount of paperwork an
13 institution must complete and retain.

14 (a-1) The department shall[+and

15 [+] attempt to reduce the amount of paperwork to the
16 minimum amount required by state and federal law unless the
17 reduction would jeopardize resident safety.

18 (b) The department[, the contracting agency,] and providers
19 shall work together to review rules and propose changes in
20 paperwork requirements so that additional time is available for
21 direct resident care.

22 SECTION 3.0595. Section 242.032(e), Health and Safety Code,
23 is amended to read as follows:

24 (e) In making the evaluation required by Subsection (d), the
25 department shall require the applicant or license holder to file a
26 sworn affidavit of a satisfactory compliance history and any other
27 information required by the department to substantiate a

1 satisfactory compliance history relating to each state or other
2 jurisdiction in which the applicant or license holder and any other
3 person described by Subsection (d) operated an institution at any
4 time before the date on which the application is made. The
5 executive commissioner [department] by rule shall determine what
6 constitutes a satisfactory compliance history. The department may
7 consider and evaluate the compliance history of the applicant and
8 any other person described by Subsection (d) for any period during
9 which the applicant or other person operated an institution in this
10 state or in another state or jurisdiction. The department may also
11 require the applicant or license holder to file information
12 relating to the history of the financial condition of the applicant
13 or license holder and any other person described by Subsection (d)
14 with respect to an institution operated in another state or
15 jurisdiction at any time before the date on which the application is
16 made.

17 SECTION 3.0596. Section 242.033(e), Health and Safety Code,
18 is amended to read as follows:

19 (e) The report required for license renewal under
20 Subsection (d)(3) must comply with department rules [~~adopted by the~~
21 ~~board~~] that specify the date of submission of the report, the
22 information it must contain, and its form.

23 SECTION 3.0597. Sections 242.0335(a) and (c), Health and
24 Safety Code, are amended to read as follows:

25 (a) The department shall maintain, and keep current, a list
26 of license holders that operate an institution in this state and
27 that have excellent operating records according to the information

1 available to the department. The executive commissioner
2 [department] by rule shall establish specific criteria for the
3 department to designate [designating] a license holder as eligible
4 for the list.

5 (c) An applicant for a change of ownership license must meet
6 all applicable requirements that an applicant for renewal of a
7 license must meet under this subchapter, including under Section
8 242.032(d), and under rules [~~that the department has~~] adopted under
9 this subchapter. Any requirement relating to inspections or to an
10 accreditation review applies only to institutions operated by the
11 license holder at the time the application is made for the change of
12 ownership license.

13 SECTION 3.0598. Sections 242.0336(b-2), (b-3), (b-4), and
14 (d-1), Health and Safety Code, are amended to read as follows:

15 (b-2) Notwithstanding Section 242.0335, the executive
16 commissioner [department] shall establish criteria under which the
17 department may waive the 30-day requirement or the notification
18 requirement of Subsection (b-1). The criteria may include the
19 occurrence of forcible entry and detainer, death, or divorce or
20 other events that affect the ownership of the institution by the
21 existing license holder.

22 (b-3) After receipt of an application or written
23 notification described by Subsection (b-1), the department may
24 place a hold on payments to the existing license holder in an amount
25 not to exceed the average of the monthly vendor payments paid to the
26 facility, as determined by the department. The department shall
27 release funds to the previous license holder not later than the

1 120th day after the date on which the final reporting requirements
2 are met and any resulting informal reviews or formal appeals are
3 resolved. The department may reduce the amount of funds released to
4 the previous license holder by the amount owed to the department or
5 the commission [~~Health and Human Services Commission~~] under the
6 previous license holder's Medicaid contract or license.

7 (b-4) The executive commissioner [~~of the Health and Human~~
8 ~~Services Commission~~] shall adopt rules for the department that
9 define a change of ownership. In adopting the rules, the executive
10 commissioner shall consider:

11 (1) the proportion of ownership interest that is being
12 transferred to another person;

13 (2) the addition or removal of a stockholder, partner,
14 owner, or other controlling person;

15 (3) the reorganization of the license holder into a
16 different type of business entity; and

17 (4) the death or incapacity of a stockholder, partner,
18 or owner.

19 (d-1) The executive commissioner [~~department~~] shall
20 establish criteria under which the department may substitute a desk
21 review of the facility's compliance with applicable requirements
22 [~~may be substituted~~] for the on-site inspection or survey under
23 Subsection (d).

24 SECTION 3.0599. Sections 242.034(a), (d), and (h), Health
25 and Safety Code, are amended to read as follows:

26 (a) The executive commissioner [~~board~~] may establish by
27 rule license fees for institutions licensed by the department under

1 this chapter. The license fee may not exceed \$375 plus:

2 (1) \$15 for each unit of capacity or bed space for
3 which a license is sought; and

4 (2) a background examination fee imposed under
5 Subsection (d).

6 (d) The executive commissioner by rule [board] may
7 establish a background examination fee in an amount necessary to
8 defray the department's expenses in administering its duties under
9 Sections 242.032(d) and (e).

10 (h) The license fees established under this chapter are an
11 allowable cost for reimbursement under the medical assistance
12 program administered by the commission [~~Texas Department of Human~~
13 ~~Services~~] under Chapter 32, Human Resources Code. Any fee
14 increases shall be reflected in reimbursement rates prospectively.

15 SECTION 3.0600. Section 242.035(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) Unless prohibited by another state or federal
18 requirement, the department shall allow a licensed institution to
19 operate a portion of the institution under the standards of a lower
20 licensing category. The executive commissioner [board] shall
21 establish procedures and standards to accommodate an institution's
22 operation under the lower category.

23 SECTION 3.0601. Section 242.036(a), Health and Safety Code,
24 is amended to read as follows:

25 (a) The executive commissioner [board] may adopt and[~~and~~]
26 publish[~~and~~] and the department may enforce minimum standards
27 relating to the grading of an institution[, ~~other than an~~

1 ~~institution that provides maternity care,~~] in order to recognize
2 those institutions that provide more than the minimum level of
3 services and personnel as established by the executive commissioner
4 [~~board~~].

5 SECTION 3.0602. Sections 242.037(a), (c), (d), (e), (f),
6 (h), and (i), Health and Safety Code, are amended to read as
7 follows:

8 (a) The executive commissioner [~~department~~] shall make and
9 the department shall enforce rules and minimum standards to
10 implement this chapter, including rules and minimum standards
11 relating to quality of life, quality of care, and residents'
12 rights.

13 (c) The rules and standards adopted by the executive
14 commissioner [~~department~~] may not be less stringent than the
15 Medicaid certification standards and regulations imposed under the
16 Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L.
17 No. 100-203.

18 (d) To implement Sections 242.032(d) and (e), the executive
19 commissioner [~~department~~] by rule shall adopt minimum standards for
20 the background and qualifications of any person described by
21 Section 242.032(d). The department may not issue or renew a license
22 if a person described by Section 242.032 does not meet the minimum
23 standards adopted under this section.

24 (e) In addition to standards or rules required by other
25 provisions of this chapter, the executive commissioner [~~board~~]
26 shall adopt and[~~and~~] publish[~~and~~] and the department shall enforce
27 minimum standards relating to:

- 1 (1) the construction of an institution, including
2 plumbing, heating, lighting, ventilation, and other housing
3 conditions, to ensure the residents' health, safety, comfort, and
4 protection from fire hazard;
- 5 (2) the regulation of the number and qualification of
6 all personnel, including management and nursing personnel,
7 responsible for any part of the care given to the residents;
- 8 (3) requirements for in-service education of all
9 employees who have any contact with the residents;
- 10 (4) training on the care of persons with Alzheimer's
11 disease and related disorders for employees who work with those
12 persons;
- 13 (5) sanitary and related conditions in an institution
14 and its surroundings, including water supply, sewage disposal, food
15 handling, and general hygiene in order to ensure the residents'
16 health, safety, and comfort;
- 17 (6) the nutritional needs of each resident according
18 to good nutritional practice or the recommendations of the
19 physician attending the resident;
- 20 (7) equipment essential to the residents' health and
21 welfare;
- 22 (8) the use and administration of medication in
23 conformity with applicable law and rules;
- 24 (9) care and treatment of residents and any other
25 matter related to resident health, safety, and welfare;
- 26 (10) licensure of institutions; and
- 27 (11) implementation of this chapter.

1 (f) The executive commissioner [board] shall adopt and[–]
2 publish[–] and the department shall enforce minimum standards
3 requiring appropriate training in geriatric care for each
4 individual who provides services to geriatric residents in an
5 institution and who holds a license or certificate issued by an
6 agency of this state that authorizes the person to provide the
7 services. The minimum standards may require that each licensed or
8 certified individual complete an appropriate program of continuing
9 education or in-service training, as determined by department
10 [board] rule, on a schedule determined by department [board] rule.

11 (h) [~~The board shall adopt each rule adopted by the Texas~~
12 ~~Board of Health under~~] Section 161.0051 applies [~~as part of the~~
13 ~~rules and standards adopted under this chapter that apply~~] to
14 institutions serving residents who are elderly persons, and any
15 rules and standards adopted under that section are considered to be
16 rules and standards adopted under this chapter.

17 (i) The minimum standards adopted [~~by the board~~] under this
18 section must require that each institution, as part of an existing
19 training program, provide each registered nurse, licensed
20 vocational nurse, nurse aide, and nursing assistant who provides
21 nursing services in the institution at least one hour of training
22 each year in caring for people with dementia.

23 SECTION 3.0603. Section 242.038, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 242.038. REASONABLE TIME TO COMPLY. The executive
26 commissioner [board] by rule shall give an institution that is in
27 operation when a rule or standard is adopted under this chapter a

1 reasonable time to comply with the rule or standard.

2 SECTION 3.0604. Sections 242.0385(a) and (d), Health and
3 Safety Code, are amended to read as follows:

4 (a) The executive commissioner [department] by rule shall
5 adopt a procedure under which a person proposing to construct or
6 modify an institution may submit building plans to the department
7 for review for compliance with the department's architectural
8 requirements before beginning construction or modification. In
9 adopting the procedure, the executive commissioner [department]
10 shall set reasonable deadlines by which the department must
11 complete review of submitted plans.

12 (d) A fee collected under this section shall be deposited in
13 the general revenue fund [and may be appropriated only to the
14 department to conduct reviews under this section].

15 SECTION 3.0605. Section 242.039, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 242.039. FIRE SAFETY REQUIREMENTS. (a) The executive
18 commissioner [board] shall adopt rules necessary to specify the
19 edition of the Life Safety Code of the National Fire Protection
20 Association that will be used to establish the life safety
21 requirements for an institution licensed under this chapter.

22 (b) The executive commissioner [board] shall adopt the
23 edition of the Life Safety Code of the National Fire Protection
24 Association for fire safety as designated by federal law and
25 regulations for an institution or portion of an institution that is
26 constructed after September 1, 1993, and for an institution or
27 portion of an institution that was operating or approved for

1 construction on or before September 1, 1993.

2 (c) The executive commissioner [board] may not require more
3 stringent fire safety standards than those required by federal law
4 and regulation. The rules adopted under this section may not
5 prevent an institution licensed under this chapter from voluntarily
6 conforming to fire safety standards that are compatible with, equal
7 to, or more stringent than those adopted by the executive
8 commissioner [board].

9 (d) Licensed health care facilities in existence at the time
10 of the effective date of this subsection may have their existing use
11 or occupancy continued if such facilities comply with fire safety
12 standards and ordinances in existence at the time of the effective
13 date of this subsection.

14 (e) Notwithstanding any other provision of this section, a
15 municipality shall have the authority to enact additional and
16 higher fire safety standards applicable to new construction
17 beginning on or after the effective date of this subsection.

18 [~~(f)~~] (1) An advisory committee is created to propose rules
19 for adoption by the department concerning the applicability of
20 municipal ordinances and regulations to the remodeling and
21 renovation of existing structures to be used as health care
22 facilities licensed under this chapter.

23 [~~(2)~~] The advisory committee shall be appointed by the
24 board and composed as follows:

25 [~~(A)~~ two municipal fire marshals;

26 [~~(B)~~ four individuals representing the nursing
27 home industry;

1 [(C) the commissioner of human services or a
2 ~~designee~~,
3 [(D) one building official from a municipality
4 ~~that has adopted the Uniform Building Code~~,
5 [(E) one building official from a municipality
6 ~~that has adopted the Standard Building Code~~,
7 [(F) one architect licensed under state law;
8 [(G) one member of the Texas Board of Human
9 ~~Services~~, and
10 [(H) one state Medicaid director or designee.
11 [(3) The advisory committee shall serve without
12 ~~compensation or remuneration of any kind.]~~

13 (g) The executive commissioner [~~of the Health and Human~~
14 ~~services Commission~~] shall adopt rules to implement an expedited
15 inspection process that allows an applicant for a license or for a
16 renewal of a license to obtain a life safety code and physical plant
17 inspection not later than the 15th day after the date the request is
18 made. The department may charge a fee to recover the cost of the
19 expedited inspection. The rules must permit the department to
20 charge [~~set~~] different fee amounts based on the size and type of
21 institution.

22 SECTION 3.0606. Sections 242.040(a), (c), and (d), Health
23 and Safety Code, are amended to read as follows:

24 (a) The department shall establish a system for certifying
25 institutions that meet standards adopted by the executive
26 commissioner [~~board~~] concerning the specialized care and treatment
27 of persons with Alzheimer's disease and related disorders.

1 (c) The executive commissioner [board] by rule may adopt
2 standards for the specialized care and treatment of persons with
3 Alzheimer's disease and related disorders and provide procedures
4 for institutions applying for certification under this section.
5 The rules must provide for a three-year certification period.

6 (d) The executive commissioner by rule [board] may
7 establish and the department may collect [charge] fees for the
8 certification in an amount necessary to administer this section.

9 SECTION 3.0607. Section 242.042(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) Each institution shall prominently and conspicuously
12 post for display in a public area of the institution that is readily
13 available to residents, employees, and visitors:

14 (1) the license issued under this chapter;

15 (2) a sign prescribed by the department that specifies
16 complaint procedures established under this chapter or rules
17 adopted under this chapter and that specifies how complaints may be
18 registered with the department;

19 (3) a notice in a form prescribed by the department
20 stating that licensing inspection reports and other related reports
21 which show deficiencies cited by the department are available at
22 the institution for public inspection and providing the
23 department's toll-free telephone number that may be used to obtain
24 information concerning the institution;

25 (4) a concise summary of the most recent inspection
26 report relating to the institution;

27 (5) notice that the department can provide summary

1 reports relating to the quality of care, recent investigations,
2 litigation, and other aspects of the operation of the institution;

3 (6) notice that the Texas Board of Nursing Facility
4 Administrators, if applicable, can provide information about the
5 nursing facility administrator;

6 (7) any notice or written statement required to be
7 posted under Section [242.072\(c\)](#);

8 (8) notice that informational materials relating to
9 the compliance history of the institution are available for
10 inspection at a location in the institution specified by the sign;

11 (9) notice that employees, other staff, residents,
12 volunteers, and family members and guardians of residents are
13 protected from discrimination or retaliation as provided by
14 Sections [260A.014](#) and [260A.015](#); and

15 (10) a sign required to be posted under Section
16 [260A.006\(a\)](#).

17 SECTION 3.0608. Sections [242.043\(a\)](#) and (h), Health and
18 Safety Code, are amended to read as follows:

19 (a) The department or the department's representative may
20 make any inspection, survey, or investigation that it considers
21 necessary and may enter the premises of an institution at
22 reasonable times to make an inspection, survey, or investigation in
23 accordance with department [board] rules.

24 (h) The executive commissioner [~~department~~] shall establish
25 proper procedures to ensure that copies of all forms and reports
26 under this section are made available to consumers, service
27 recipients, and the relatives of service recipients as the

1 executive commissioner [department] considers proper.

2 SECTION 3.0609. Section 242.044(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) For at least two unannounced inspections each licensing
5 period of an institution [~~other than one that provides maternity~~
6 ~~care~~], the department shall invite at least one person as a citizen
7 advocate from:

8 (1) the AARP [~~American Association of Retired~~
9 ~~Persons~~];

10 (2) the Texas Senior Citizen Association;

11 (3) [~~the Texas Retired Federal Employees,~~

12 [(4)] the department's Certified Long-term [~~Long Term~~]
13 Care Ombudsman; or

14 (4) [(5)] another statewide organization for the
15 elderly.

16 SECTION 3.0610. Section 242.045(b), Health and Safety Code,
17 is amended to read as follows:

18 (b) In this section, "unauthorized person" does not
19 include:

20 (1) the department;

21 (2) the office of the attorney general;

22 (3) a statewide organization for the elderly,
23 including the AARP and [~~American Association of Retired Persons,~~]
24 the Texas Senior Citizen Association[~~, and the Texas Retired~~
25 ~~Federal Employees~~];

26 (4) an ombudsman or representative of the department

27 [~~Texas Department on Aging~~];

1 (5) a representative of an agency or organization when
2 a Medicare or Medicaid survey is made concurrently with a licensing
3 inspection; or

4 (6) any other person or entity authorized by law to
5 make an inspection or to accompany an inspector.

6 SECTION 3.0611. Section [242.046\(a\)](#), Health and Safety Code,
7 is amended to read as follows:

8 (a) The department shall hold an open hearing in a licensed
9 institution[~~, other than an institution that provides maternity~~
10 ~~care,~~] if the department has taken a punitive action against the
11 institution in the preceding 12 months or if the department
12 receives a complaint from an ombudsman, advocate, resident, or
13 relative of a resident relating to a serious or potentially serious
14 problem in the institution and the department has reasonable cause
15 to believe the complaint is valid. The department is not required
16 to hold more than one open meeting in a particular institution in
17 each year.

18 SECTION 3.0612. Sections [242.047\(a\), \(b\), \(c\), and \(e\)](#),
19 Health and Safety Code, are amended to read as follows:

20 (a) The department shall accept an annual accreditation
21 review from The [~~the~~] Joint Commission [~~on Accreditation of Health~~
22 ~~Organizations~~] for a nursing facility [~~home~~] instead of an
23 inspection for renewal of a license under Section [242.033](#) and in
24 satisfaction of the requirements for certification [~~by the~~
25 ~~department~~] for participation in the medical assistance program
26 under Chapter 32, Human Resources Code, and the federal Medicare
27 program, but only if:

1 (1) the nursing facility [home] is accredited by The
2 Joint Commission [~~the commission~~] under The Joint Commission's [~~the~~
3 ~~commission's~~] long-term care standards;

4 (2) The Joint Commission [~~the commission~~] maintains an
5 annual inspection or review program [~~that,~~] for each nursing
6 facility that the department determines [home,] meets the
7 [~~department's~~] applicable minimum standards [~~as confirmed by the~~
8 ~~board~~];

9 (3) The Joint Commission [~~the commission~~] conducts an
10 annual on-site inspection or review of the facility [home];

11 (4) the nursing facility [home] submits to the
12 department a copy of its annual accreditation review from The Joint
13 Commission [~~the commission~~] in addition to the application, fee,
14 and any report required for renewal of a license or for
15 certification, as applicable; and

16 (5) the department has:

17 (A) determined whether a waiver or authorization
18 from a federal agency is necessary under federal law, including for
19 federal funding purposes, before the department accepts an annual
20 accreditation review from The Joint Commission [~~the joint~~
21 ~~commission~~]:

22 (i) instead of an inspection for license
23 renewal purposes;

24 (ii) as satisfying the requirements for
25 certification [~~by the department~~] for participation in the medical
26 assistance program; or

27 (iii) as satisfying the requirements for

1 certification [~~by the department~~] for participation in the federal
2 Medicare program; and

3 (B) obtained any necessary federal waivers or
4 authorizations.

5 (b) The department shall coordinate its licensing and
6 certification activities with The Joint Commission [~~the~~
7 ~~commission~~].

8 (c) The department and The Joint Commission [~~the~~
9 ~~commission~~] shall sign a memorandum of agreement to implement this
10 section. The memorandum must provide that if all parties to the
11 memorandum do not agree in the development, interpretation, and
12 implementation of the memorandum, any area of dispute is to be
13 resolved by the executive commissioner [~~board~~].

14 (e) This section does not require a nursing facility [~~home~~]
15 to obtain accreditation from The Joint Commission [~~the commission~~].

16 SECTION 3.0613. Sections 242.049(a), (b), (c), (e), (f),
17 (g), and (i), Health and Safety Code, are amended to read as
18 follows:

19 (a) The department may evaluate data for quality of care in
20 nursing facilities [~~homes~~].

21 (b) The department may gather data on a form or forms to be
22 provided by the department to improve the quality of care in nursing
23 facilities [~~homes~~] and may provide information to nursing
24 facilities [~~homes~~] which will allow them to improve and maintain
25 the quality of care which they provide. Data referred to in this
26 section can include information compiled from documents otherwise
27 available under Chapter 552, Government Code, including but not

1 limited to individual survey reports and investigation reports.

2 (c) All licensed nursing facilities [~~homes~~] in the state may
3 be required to submit information designated by the department as
4 necessary to improve the quality of care in nursing facilities
5 [~~homes~~].

6 (e) The information and reports, compilations, and analyses
7 developed by the department for quality improvement shall be used
8 only for the evaluation and improvement of quality care in nursing
9 facilities [~~homes~~]. No department proceeding or record shall be
10 subject to discovery, subpoena, or other means of legal compulsion
11 for release to any person or entity, and shall not be admissible in
12 any civil, administrative, or criminal proceeding. This privilege
13 shall be recognized by Rules 501 and 502 of the Texas Rules of
14 Evidence.

15 (f) Notwithstanding Subsection (d), the department shall
16 transmit reports, compilations, and analyses of the information
17 provided by a nursing facility [~~home~~] to that nursing facility
18 [~~home~~], and such disclosure shall not be violative of this section
19 nor shall it constitute a waiver of confidentiality.

20 (g) A member, agent, or employee of the department may not
21 disclose or be required to disclose a communication made to the
22 department or a record or proceeding of the department required to
23 be submitted under this section except to the nursing facility
24 [~~home~~] in question or its agents or employees.

25 (i) Any information, reports, and other documents produced
26 which are subject to any means of legal compulsion or which are
27 considered to be public information under Chapter 260A [~~Subchapter~~

1 E] and the rules adopted under that chapter [subchapter] shall
2 continue to be subject to legal compulsion and be treated as public
3 information under Chapter 260A [~~Subchapter E after the effective~~
4 ~~date of this Act~~], even though such information, reports, and other
5 documents may be used in the collection, compilation, and analysis
6 described in Subsections (b) and (d).

7 SECTION 3.0614. Section 242.052, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 242.052. DRUG TESTING OF EMPLOYEES. (a) An
10 institution may establish a drug testing policy for employees of
11 the institution. An institution that establishes a drug testing
12 policy under this subsection may adopt the model drug testing
13 policy adopted by the executive commissioner [board] or may use
14 another drug testing policy.

15 (b) The executive commissioner [board] by rule shall adopt a
16 model drug testing policy for use by institutions. The model drug
17 testing policy must be designed to ensure the safety of residents
18 through appropriate drug testing and to protect the rights of
19 employees. The model drug testing policy must:

20 (1) require at least one scheduled drug test each year
21 for each employee of an institution that has direct contact with a
22 resident in the institution; and

23 (2) authorize random, unannounced drug testing for
24 employees described by Subdivision (1).

25 SECTION 3.0615. Section 242.062(b), Health and Safety Code,
26 is amended to read as follows:

27 (b) The executive commissioner [board] by rule shall

1 provide for the placement of residents during the institution's
2 suspension or closing to ensure their health and safety.

3 SECTION 3.0616. Sections [242.065\(e\)](#) and (i), Health and
4 Safety Code, are amended to read as follows:

5 (e) If a person who is liable under this section fails to pay
6 any amount the person is obligated to pay under this section, the
7 state may seek satisfaction from any owner, other controlling
8 person, or affiliate of the person found liable. The owner, other
9 controlling person, or affiliate may be found liable in the same
10 suit or in another suit on a showing by the state that the amount to
11 be paid has not been paid or otherwise legally discharged. The
12 executive commissioner [department] by rule may establish a method
13 for satisfying an obligation imposed under this section from an
14 insurance policy, letter of credit, or other contingency fund.

15 (i) In this section, "affiliate" means:

16 (1) with respect to a partnership other than a limited
17 partnership, each partner of the partnership;

18 (2) with respect to a corporation:

19 (A) an officer;

20 (B) a director;

21 (C) a stockholder who owns, holds, or has the
22 power to vote at least 10 percent of any class of securities issued
23 by the corporation, regardless of whether the power is of record or
24 beneficial; and

25 (D) a controlling individual;

26 (3) with respect to an individual:

27 (A) each partnership and each partner in the

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1 partnership in which the individual or any other affiliate of the
2 individual is a partner; and

5 (i) an officer;

6 (ii) a director;

11 (iv) a controlling individual;

12 (4) with respect to a limited partnership:

13 (A) a general partner; and

14 (B) a limited partner who is a controlling
15 individual;

16 (5) with respect to a limited liability company:

17 (A) an owner who is a manager as described by the
18 Texas Limited Liability Company Law, as described by Section
19 1.008(e), Business Organizations Code [Act (Article 1528n,
20 Vernon's Texas Civil Statutes)]; and

21 (B) each owner who is a controlling individual;
22 and

25 SECTION 3.0617. Section 242.066(d), Health and Safety Code,

1 gradations of penalties in accordance with the relative seriousness
2 of the violation.

3 SECTION 3.0618. Sections 242.067(g) and (h), Health and
4 Safety Code, are amended to read as follows:

5 (g) If the person charged with the violation consents to the
6 administrative penalty recommended by the department, does not
7 timely respond to a notice sent under Subsection (c) or (e), or
8 fails to correct the violation to the department's satisfaction,
9 the department [~~commissioner or the commissioner's designee~~] shall
10 assess the recommended administrative penalty [~~recommended by the~~
11 ~~department~~].

12 (h) If the department [~~commissioner or the commissioner's~~
13 ~~designee~~] assesses the recommended penalty, the department shall
14 give written notice to the person charged of the decision and the
15 person shall pay the penalty.

16 SECTION 3.0619. Section 242.068(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) An administrative law judge of the State Office of
19 Administrative Hearings shall order a hearing and the department
20 shall give notice of the hearing if a person charged under Section
21 242.067(c) requests a hearing.

22 SECTION 3.0620. Sections 242.069(a), (b), (e), (f), and
23 (g), Health and Safety Code, are amended to read as follows:

24 (a) The department [~~commissioner~~] shall give notice of the
25 decision taken under Section 242.068(d) to the person charged. If
26 the department [~~commissioner~~] finds that a violation has occurred
27 and has assessed an administrative penalty, the department

1 [commissioner] shall give written notice to the person charged of:
2 (1) the findings;
3 (2) the amount of the penalty;
4 (3) the rate of interest payable with respect to the
5 penalty and the date on which interest begins to accrue;
6 (4) whether payment of the penalty or other action
7 under Section 242.071 is required; and
8 (5) the person's right to judicial review of the order.

9 (b) Not later than the 30th day after the date on which the
10 department's [commissioner's] order is final, the person charged
11 with the penalty shall:

12 (1) pay the full amount of the penalty; or
13 (2) file a petition for judicial review contesting the
14 occurrence of the violation, the amount of the penalty, the failure
15 to correct the violation to the department's satisfaction, or all
16 of the above.

17 (e) If a penalty is reduced or not assessed, the department
18 [commissioner] shall:

19 (1) remit to the person charged the appropriate amount
20 of any penalty payment plus accrued interest; or
21 (2) execute a release of the supersedeas bond if one
22 has been posted.

23 (f) Accrued interest on amounts remitted by the department
24 [commissioner] under Subsection (e)(1) shall be paid:

25 (1) at a rate equal to the rate charged on loans to
26 depository institutions by the New York Federal Reserve Bank; and
27 (2) for the period beginning on the date the penalty is

1 paid under Subsection (b) and ending on the date the penalty is
2 remitted.

3 (g) Interest under Subsection (d) shall be paid:

4 (1) at a rate equal to the rate charged on loans to
5 depository institutions by the New York Federal Reserve Bank; and

6 (2) for the period beginning on the date the notice of
7 the department's [~~commissioner's~~] order is received by the person
8 and ending on the date the penalty is paid.

9 SECTION 3.0621. Sections 242.071(a) and (i), Health and
10 Safety Code, are amended to read as follows:

11 (a) In lieu of demanding payment of an administrative
12 penalty assessed under Section 242.066, the department
13 [~~commissioner~~] may, in accordance with this section, allow the
14 person to use, under the supervision of the department, any portion
15 of the penalty to ameliorate the violation or to improve services,
16 other than administrative services, in the institution affected by
17 the violation.

18 (i) The department shall approve or deny an amelioration
19 plan not later than the 45th day after the date the department
20 receives the plan. On approval of a person's plan, [~~the department~~
21 ~~shall deny~~] a pending request for a hearing submitted by the person
22 under Section 242.067(d) shall be denied.

23 SECTION 3.0622. Section 242.072(a), Health and Safety Code,
24 is amended to read as follows:

25 (a) If the department [~~commissioner~~] finds that an
26 institution has committed an act for which a civil penalty may be
27 imposed under Section 242.065, the department [~~commissioner~~] may,

1 as appropriate under the circumstances, order the institution to
2 immediately suspend admissions.

3 SECTION 3.0623. Section 242.074(d), Health and Safety Code,
4 is amended to read as follows:

5 (d) The executive commissioner [department] shall adopt
6 rules to implement this section. The rules shall include the
7 conditions that constitute a significant change in an institution's
8 financial condition that are required to be reported under
9 Subsection (a).

10 SECTION 3.0624. Section 242.095(b), Health and Safety Code,
11 is amended to read as follows:

12 (b) The trustee may petition the court to order the release
13 to the trustee of any payment owed the trustee for care and services
14 provided to the residents if the payment has been withheld,
15 including a payment withheld by the commission [Texas Department of
16 ~~Human Services~~] at the recommendation of the department.

17 SECTION 3.0625. Section 242.096(d), Health and Safety Code,
18 is amended to read as follows:

19 (d) The department shall disburse money from the nursing and
20 convalescent home trust fund as ordered by the court in accordance
21 with department [board] rules.

22 SECTION 3.0626. Sections 242.0965(d) and (e), Health and
23 Safety Code, are amended to read as follows:

24 (d) The department shall disburse money from the assisted
25 living facility trust fund as ordered by the court in accordance
26 with department [board] rules.

27 (e) Any unencumbered amount in the assisted living facility

1 trust fund in excess of \$500,000 at the end of each fiscal year
2 shall be transferred to the credit of the general revenue fund [~~and~~
3 ~~may be appropriated only to the department for its use in~~
4 ~~administering and enforcing Chapter 247~~].

5 SECTION 3.0627. Sections [242.097](#)(a) and (c), Health and
6 Safety Code, are amended to read as follows:

7 (a) In addition to the license fee provided by Section
8 [242.034](#), the executive commissioner by rule [~~department~~] shall
9 adopt an annual fee to be [~~charged and~~] collected by the department
10 if the amount of the nursing and convalescent home trust fund is
11 less than \$10,000,000. The fee shall be deposited to the credit of
12 the nursing and convalescent home trust fund created by this
13 subchapter.

14 (c) The executive commissioner [~~department~~] shall set the
15 fee for each nursing and convalescent home at \$1 for each licensed
16 unit of capacity or bed space in that home or in an amount necessary
17 to provide not more than \$10,000,000 in the fund. The total fees
18 assessed in a year may not exceed \$20 for each licensed unit of
19 capacity or bed space in a home.

20 SECTION 3.0628. Sections [242.0975](#)(a) and (c), Health and
21 Safety Code, are amended to read as follows:

22 (a) In addition to the license fee provided by Section
23 [247.024](#), the executive commissioner by rule [~~department~~] shall
24 adopt an annual fee to be [~~charged and~~] collected by the department
25 if the amount of the assisted living facility trust fund is less
26 than \$500,000. The fee shall be deposited to the credit of the
27 assisted living facility trust fund created by this subchapter.

1 (c) The executive commissioner [department] shall set the
2 fee on the basis of the number of beds in assisted living facilities
3 required to pay the fee and in an amount necessary to provide not
4 more than \$500,000 in the assisted living facility trust fund.

5 SECTION 3.0629. Section 242.098(d), Health and Safety Code,
6 is amended to read as follows:

7 (d) The amount that remains unreimbursed on the expiration
8 of one year after the date on which the funds were received is
9 delinquent and the department [~~Texas Department of Human Services~~]
10 may determine that the home is ineligible for a Medicaid provider
11 contract.

12 SECTION 3.0630. Section 242.156(b), Health and Safety Code,
13 is amended to read as follows:

14 (b) The executive commissioner [department] shall specify
15 the details of the examination.

16 SECTION 3.0631. Section 242.158, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 242.158. IDENTIFICATION OF CERTAIN NURSING FACILITY
19 [~~HOME~~] RESIDENTS REQUIRING MENTAL HEALTH OR INTELLECTUAL
20 DISABILITY [~~MENTAL RETARDATION~~] SERVICES. (a) Each resident of a
21 nursing facility [~~home~~] who is considering making a transition to a
22 community-based care setting shall be identified to determine the
23 presence of a mental illness or intellectual disability [~~mental~~
24 ~~retardation~~], regardless of whether the resident is receiving
25 treatment or services for a mental illness or intellectual
26 disability [~~mental retardation~~].

27 (b) In identifying residents having a mental illness or

1 intellectual disability [~~mental retardation~~], the department shall
2 use an identification process that is at least as effective as the
3 mental health and intellectual disability [~~mental retardation~~]
4 identification process established by federal law. The results of
5 the identification process may not be used to prevent a resident
6 from remaining in the nursing facility [~~home~~] unless the nursing
7 facility [~~home~~] is unable to provide adequate care for the
8 resident.

9 (c) The department shall compile [~~and provide to the Texas~~
10 ~~Department of Mental Health and Mental Retardation~~] information
11 regarding each resident identified as having a mental illness or
12 intellectual disability [~~mental retardation~~] before the resident
13 makes a transition from the nursing facility [~~home~~] to a
14 community-based care setting. The department shall provide to the
15 Department of State Health Services information regarding each
16 resident identified as having a mental illness.

17 (d) The department and the [~~Texas~~] Department of State
18 Health Services [~~Mental Health and Mental Retardation~~] shall use
19 the information compiled and provided under Subsection (c) solely
20 for the purposes of:

21 (1) determining the need for and funding levels of
22 mental health and intellectual disability [~~mental retardation~~]
23 services for residents making a transition from a nursing facility
24 [~~home~~] to a community-based care setting;
25 (2) providing mental health or intellectual
26 disability [~~mental retardation~~] services to an identified resident
27 after the resident makes that transition; and

1 (3) referring an identified resident to a local mental
2 health or local intellectual and developmental disability [~~mental~~
3 ~~retardation~~] authority or private provider for additional mental
4 health or intellectual disability [~~mental retardation~~] services.

5 (e) This section does not authorize the department to decide
6 for a resident of a nursing facility [~~home~~] that the resident will
7 make a transition from the nursing facility [~~home~~] to a
8 community-based care setting.

9 SECTION 3.0632. Section 242.181(1), Health and Safety Code,
10 is amended to read as follows:

11 (1) "Person with a disability [~~Handicapped person~~]"
12 means a person whose physical or mental functioning is impaired to
13 the extent that the person needs medical attention, counseling,
14 physical therapy, therapeutic or corrective equipment, or another
15 person's attendance and supervision.

16 SECTION 3.0633. Section 242.182, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 242.182. RESPITE CARE. (a) An institution licensed
19 under this chapter may provide respite care for an elderly person or
20 a [~~handicapped~~] person with a disability according to a plan of
21 care.

22 (b) The executive commissioner [~~board~~] may adopt rules for
23 the regulation of respite care provided by an institution licensed
24 under this chapter.

25 SECTION 3.0634. Section 242.185, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 242.185. INSPECTIONS. The department, at the time of

1 an ordinary licensing inspection or at other times determined
2 necessary by the department, shall inspect an institution's records
3 of respite care services, physical accommodations available for
4 respite care, and the plan of care records to ensure that the
5 respite care services comply with the licensing standards of this
6 chapter and with any rules the executive commissioner [board] may
7 adopt to regulate respite care services.

8 SECTION 3.0635. Section 242.204, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 242.204. RULES. The executive commissioner [board]
11 shall adopt rules governing:

12 (1) the content of the disclosure statement required
13 by this subchapter, consistent with the information categories
14 required by Section 242.202(d); and

15 (2) the amount of an administrative penalty to be
16 assessed for a violation of this subchapter.

17 SECTION 3.0636. Sections 242.221(c) and (e), Health and
18 Safety Code, are amended to read as follows:

19 (c) The department and the commission [~~Health and Human~~
20 ~~Services Commission~~] shall work together to apply for all available
21 federal funds to help pay for the automated system.

22 (e) The department shall charge a fee to nursing facilities
23 that do not receive their Medicaid reimbursements electronically.
24 The executive commissioner by rule [~~department~~] shall set the fee
25 in an amount necessary to cover the costs of manually processing and
26 sending the reimbursements.

27 SECTION 3.0637. Section 242.226, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 242.226. RULES. The executive commissioner
3 [department] shall adopt rules and make policy changes as necessary
4 to improve the efficiency of the reimbursement process and to
5 maximize the automated reimbursement system's capabilities.

6 SECTION 3.0638. Section [242.251](#), Health and Safety Code, is
7 amended to read as follows:

8 Sec. 242.251. SCOPE OF SUBCHAPTER. This subchapter applies
9 to any dispute between an institution licensed under this chapter
10 and the department relating to:

- 11 (1) renewal of a license under Section [242.033](#);
- 12 (2) suspension or revocation of a license under
13 Section [242.061](#);
- 14 (3) assessment of a civil penalty under Section
15 [242.065](#);
- 16 (4) assessment of a monetary penalty under Section
17 [242.066](#); or
- 18 (5) assessment of a penalty as described by Section
19 [32.021\(n\)](#) [~~32.021(k)~~], Human Resources Code.

20 SECTION 3.0639. Section [242.264\(a\)](#), Health and Safety Code,
21 is amended to read as follows:

22 (a) The arbitrator may enter any order that may be entered
23 by the department, executive commissioner [board], commissioner,
24 or court under this chapter in relation to a dispute described by
25 Section [242.251](#).

26 SECTION 3.0640. Section [242.302](#), Health and Safety Code, as
27 added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th

1 Legislature, Regular Session, 1997, is amended to read as follows:

2 Sec. 242.302. POWERS AND DUTIES OF DEPARTMENT AND EXECUTIVE
3 COMMISSIONER. (a) The executive commissioner [board] may adopt
4 rules consistent with this subchapter. The executive commissioner
5 shall adopt and publish a code of ethics for nursing facility
6 administrators.

7 (b) The department shall:

8 (1) [adopt and publish a code of ethics for nursing
9 facility administrators;

10 [+(2) establish the qualifications of applicants for
11 licenses and the renewal of licenses issued under this subchapter;

12 [(+3)] spend funds necessary for the proper
13 administration of the department's assigned duties under this
14 subchapter; and

15 (2) periodically assess the continuing education
16 needs of license holders to determine whether specific course
17 content should be required [+(4) establish reasonable and
18 necessary fees for the administration and implementation of this
19 subchapter; and

20 [+(5) establish a minimum number of hours of continuing
21 education required to renew a license issued under this subchapter
22 and periodically assess the continuing education needs of license
23 holders to determine whether specific course content should be
24 required].

25 (c) The department is the licensing agency for the healing
26 arts, as provided by 42 U.S.C. Section 1396g.

27 (d) The executive commissioner shall establish:

1 (1) the qualifications of applicants for licenses and
2 the renewal of licenses issued under this subchapter;

3 (2) reasonable and necessary fees for the
4 administration and implementation of this subchapter; and

5 (3) a minimum number of hours of continuing education
6 required to renew a license issued under this subchapter.

7 SECTION 3.0641. Section 242.303(d), Health and Safety Code,
8 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
9 Legislature, Regular Session, 1997, is amended to read as follows:

10 (d) The committee shall advise the department [board] on the
11 licensing of nursing facility administrators, including the
12 content of applications for licensure and of the examination
13 administered to license applicants under Section 242.306. The
14 committee shall review and recommend rules and minimum standards of
15 conduct for the practice of nursing facility administration. The
16 committee shall review all complaints against administrators and
17 make recommendations to the department regarding disciplinary
18 actions. Failure of the committee to review complaints and make
19 recommendations in a timely manner shall not prevent the department
20 from taking disciplinary action.

21 SECTION 3.0642. Section 242.304(a), Health and Safety Code,
22 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
23 Legislature, Regular Session, 1997, is amended to read as follows:

24 (a) The executive commissioner, in consultation with the
25 department, [board] by rule shall set reasonable and necessary fees
26 in amounts necessary to cover the cost of administering this
27 subchapter. The executive commissioner [board] by rule may set

1 different licensing fees for different categories of licenses.

2 SECTION 3.0643. Sections 242.306(b) and (c), Health and
3 Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts
4 of the 75th Legislature, Regular Session, 1997, are amended to read
5 as follows:

6 (b) The department [board] shall prescribe the form of the
7 application and the executive commissioner may by rule establish
8 dates by which applications and fees must be received.

9 (c) An applicant for a nursing facility administrator's
10 license must take a licensing examination under this subchapter.
11 To qualify for the licensing examination, the applicant must have
12 satisfactorily completed a course of instruction and training
13 prescribed by the executive commissioner [board] that is conducted
14 by or in cooperation with an accredited postsecondary educational
15 institution and that is designed and administered to provide
16 sufficient knowledge of:

17 (1) the needs served by nursing facilities;
18 (2) the laws governing the operation of nursing
19 facilities and the protection of the interests of facility
20 residents; and
21 (3) the elements of nursing facility administration.

22 SECTION 3.0644. Section 242.307(d), Health and Safety Code,
23 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
24 Legislature, Regular Session, 1997, is amended to read as follows:

25 (d) The executive commissioner [board] may establish by
26 rule additional educational requirements to be met by an applicant
27 who fails the examination three times.

1 SECTION 3.0645. Sections [242.308\(c\), \(d\), and \(e\)](#), Health
2 and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84),
3 Acts of the 75th Legislature, Regular Session, 1997, are amended to
4 read as follows:

5 (c) A license is valid for two years. The executive
6 commissioner [board] by rule may adopt a system under which
7 licenses expire on various dates during the two-year period. For
8 the year in which a license expiration date is changed, license fees
9 payable on the original expiration date shall be prorated on a
10 monthly basis so that each license holder shall pay only that
11 portion of the license fee that is allocable to the number of months
12 during which the license is valid. On renewal of the license on the
13 new expiration date, the total license renewal fee is payable.

14 (d) The executive commissioner [board] by rule may provide
15 for the issuance of a temporary license. Rules adopted under this
16 section shall include a time limit for a licensee to practice under
17 a temporary license.

18 (e) The executive commissioner [board] by rule may provide
19 for a license holder to be placed on inactive status.

20 SECTION 3.0646. Section [242.309](#), Health and Safety Code, as
21 added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
22 Legislature, Regular Session, 1997, is amended to read as follows:

23 Sec. 242.309. PROVISIONAL LICENSE. (a) The department
24 [board] shall issue a provisional license to an applicant currently
25 licensed in another jurisdiction who seeks a license in this state
26 and who:

27 (1) has been licensed in good standing as a nursing

1 facility administrator for at least two years in another
2 jurisdiction, including a foreign country, that has licensing
3 requirements that are substantially equivalent to the requirements
4 of this subchapter;

5 (2) has passed a national or other examination
6 recognized by the department [board] relating to the practice of
7 nursing facility administration; and

8 (3) is sponsored by a person licensed by the
9 department [board] under this subchapter with whom the provisional
10 license holder will practice during the time the person holds a
11 provisional license.

12 (b) The department [board] may waive the requirement of
13 Subsection (a)(3) for an applicant if the department [board]
14 determines that compliance with that subsection would be a hardship
15 to the applicant.

16 (c) A provisional license is valid until the date the
17 department [board] approves or denies the provisional license
18 holder's application for a license. The department [board] shall
19 issue a license under this subchapter to the provisional license
20 holder if:

21 (1) the provisional license holder is eligible to be
22 licensed under Section 242.306; or

23 (2) the provisional license holder passes the part of
24 the examination under Section 242.307 that relates to the
25 applicant's knowledge and understanding of the laws and rules
26 relating to the practice of nursing facility administration in this
27 state and:

1 (A) the department [board] verifies that the
2 provisional license holder meets the academic and experience
3 requirements for a license under this subchapter; and

4 (B) the provisional license holder satisfies all
5 other license requirements under this subchapter.

6 (d) The department [board] must approve or deny a
7 provisional license holder's application for a license not later
8 than the 180th day after the date the provisional license is issued.
9 The department [board] may extend the 180-day period if the results
10 of an examination have not been received by the department [board]
11 before the end of that period.

12 (e) The executive commissioner by rule [board] may
13 establish a fee for provisional licenses in an amount reasonable
14 and necessary to cover the cost of issuing the license.

15 SECTION 3.0647. Section 242.311, Health and Safety Code, as
16 added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
17 Legislature, Regular Session, 1997, is amended to read as follows:

18 Sec. 242.311. MANDATORY CONTINUING EDUCATION. (a) The
19 executive commissioner [board] by rule shall establish a minimum
20 number of hours of continuing education required to renew a license
21 under this subchapter. The department may assess the continuing
22 education needs of license holders and may require license holders
23 to attend continuing education courses specified by department rule
24 [~~the board~~].

25 (b) The executive commissioner [board] shall identify the
26 key factors for the competent performance by a license holder of the
27 license holder's professional duties. The department shall adopt a

1 procedure to assess a license holder's participation in continuing
2 education programs.

3 SECTION 3.0648. Sections [242.312\(c\), \(e\), \(f\), and \(g\)](#),
4 Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B.
5 84), Acts of the 75th Legislature, Regular Session, 1997, are
6 amended to read as follows:

7 (c) The executive commissioner [board] by rule shall adopt a
8 form to standardize information concerning complaints made to the
9 department. The executive commissioner [board] by rule shall
10 prescribe information to be provided to a person when the person
11 files a complaint with the department.

12 (e) The executive commissioner [board] shall adopt rules
13 concerning the investigation of complaints filed with the
14 department. The rules adopted under this subsection shall:

15 (1) distinguish between categories of complaints;
16 (2) ensure that complaints are not dismissed without
17 appropriate consideration;
18 (3) require that the executive commissioner [board] be
19 advised at least quarterly of complaints that have been dismissed
20 and require that a letter be sent to each person who has filed a
21 complaint that is dismissed explaining the action taken on the
22 complaint;

23 (4) ensure that the person who filed the complaint has
24 an opportunity to explain the allegations made in the complaint;
25 and

26 (5) prescribe guidelines concerning the categories of
27 complaints that may require the use of a private investigator and

1 the procedures to be followed by the department in obtaining the
2 services of a private investigator.

3 (f) The department shall dispose of all complaints in a
4 timely manner. The executive commissioner [board] by rule shall
5 establish a schedule for initiating a complaint investigation that
6 is under the control of the department not later than the 30th day
7 after the date the complaint is received by the department. The
8 schedule shall be kept in the information file for the complaint,
9 and all parties shall be notified of the projected time
10 requirements for pursuing the complaint. A change in the schedule
11 must be noted in the complaint information file and all parties to
12 the complaint must be notified not later than the seventh day after
13 the date the change is made.

14 (g) The commissioner shall notify the executive
15 commissioner [board] at least quarterly of complaints that have
16 extended beyond the time prescribed by the executive commissioner
17 [board] for resolving complaints so that the department may take
18 any necessary corrective actions on the processing of complaints.

19 SECTION 3.0649. Section 242.315(a), Health and Safety Code,
20 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
21 Legislature, Regular Session, 1997, is amended to read as follows:

22 (a) The department may impose an administrative penalty
23 against a person licensed or regulated under this subchapter who
24 violates this subchapter or a rule adopted [by the board] under this
25 subchapter.

26 SECTION 3.0650. Section 242.316(d), Health and Safety Code,
27 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th

1 Legislature, Regular Session, 1997, is amended to read as follows:

2 (d) If the person requests a hearing, the department shall
3 [set a hearing and] give notice of the hearing to the person. The
4 hearing shall be held in accordance with the rules on contested case
5 hearings adopted by the executive commissioner.

6 SECTION 3.0651. Section 242.317(a), Health and Safety Code,
7 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
8 Legislature, Regular Session, 1997, is amended to read as follows:

9 (a) The executive commissioner [~~department~~] by rule shall
10 adopt procedures governing:

11 (1) informal disposition of a contested case under
12 Section 2001.056, Government Code; and

13 (2) informal proceedings held in compliance with
14 Section 2001.054, Government Code.

15 SECTION 3.0652. Section 242.318, Health and Safety Code, as
16 added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
17 Legislature, Regular Session, 1997, is amended to read as follows:

18 Sec. 242.318. MONITORING OF LICENSE HOLDER. The executive
19 commissioner [~~department~~] by rule shall develop a system for
20 monitoring a license holder's compliance with the requirements of
21 this subchapter. Rules adopted under this section shall include
22 procedures for monitoring a license holder who is required by the
23 department to perform certain acts to ascertain that the license
24 holder performs the required acts and to identify and monitor
25 license holders who represent a risk to the public.

26 SECTION 3.0653. Section 242.403, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 242.403. STANDARDS FOR QUALITY OF LIFE AND QUALITY OF
2 CARE. (a) The executive commissioner [department] shall adopt
3 standards to implement Sections 242.401 and 242.402. Those
4 standards must, at a minimum, address:

- 5 (1) admission of residents;
- 6 (2) care of residents younger than 18 years of age;
- 7 (3) an initial assessment and comprehensive plan of
8 care for residents;
- 9 (4) transfer or discharge of residents;
- 10 (5) clinical records;
- 11 (6) infection control at the institution;
- 12 (7) rehabilitative services;
- 13 (8) food services;
- 14 (9) nutrition services provided by a director of food
15 services who is licensed by the Texas State Board of Examiners of
16 Dietitians or, if not so licensed, who is in scheduled consultation
17 with a person who is so licensed as frequently and for such time as
18 the executive commissioner [department] shall determine necessary
19 to assure each resident a diet that meets the daily nutritional and
20 special dietary needs of each resident;
- 21 (10) social services and activities;
- 22 (11) prevention of pressure sores;
- 23 (12) bladder and bowel retraining programs for
24 residents;
- 25 (13) prevention of complications from nasogastric or
26 gastrotomy tube feedings;
- 27 (14) relocation of residents within an institution;

1 (15) postmortem procedures; and
2 (16) appropriate use of chemical and physical
3 restraints.

4 (b) The executive commissioner [department] may require an
5 institution to submit information to the department, including
6 Minimum Data Set Resident Assessments, necessary to ensure the
7 quality of care in institutions. Information submitted to the
8 department that identifies a resident of an institution is
9 confidential and not subject to disclosure under Chapter 552,
10 Government Code.

11 (c) The executive commissioner [department] may adopt
12 standards in addition to those required by Subsection (a) to
13 implement Sections 242.401 and 242.402.

14 SECTION 3.0654. Sections 242.501(a) and (c), Health and
15 Safety Code, are amended to read as follows:

16 (a) The executive commissioner [department] by rule shall
17 adopt a statement of the rights of a resident. The statement must
18 be consistent with Chapter 102, Human Resources Code, but shall
19 reflect the unique circumstances of a resident at an institution.
20 At a minimum, the statement of the rights of a resident must address
21 the resident's constitutional, civil, and legal rights and the
22 resident's right:

23 (1) to be free from abuse and exploitation;
24 (2) to safe, decent, and clean conditions;
25 (3) to be treated with courtesy, consideration, and
26 respect;
27 (4) to not be subjected to discrimination based on

1 age, race, religion, sex, nationality, or disability and to
2 practice the resident's own religious beliefs;

3 (5) to place in the resident's room an electronic
4 monitoring device that is owned and operated by the resident or
5 provided by the resident's guardian or legal representative;

6 (6) to privacy, including privacy during visits and
7 telephone calls;

8 (7) to complain about the institution and to organize
9 or participate in any program that presents residents' concerns to
10 the administrator of the institution;

11 (8) to have information about the resident in the
12 possession of the institution maintained as confidential;

13 (9) to retain the services of a physician the resident
14 chooses, at the resident's own expense or through a health care
15 plan, and to have a physician explain to the resident, in language
16 that the resident understands, the resident's complete medical
17 condition, the recommended treatment, and the expected results of
18 the treatment, including reasonably expected effects, side
19 effects, and risks associated with psychoactive medications;

20 (10) to participate in developing a plan of care, to
21 refuse treatment, and to refuse to participate in experimental
22 research;

23 (11) to a written statement or admission agreement
24 describing the services provided by the institution and the related
25 charges;

26 (12) to manage the resident's own finances or to
27 delegate that responsibility to another person;

- 1 (13) to access money and property that the resident
2 has deposited with the institution and to an accounting of the
3 resident's money and property that are deposited with the
4 institution and of all financial transactions made with or on
5 behalf of the resident;
- 6 (14) to keep and use personal property, secure from
7 theft or loss;
- 8 (15) to not be relocated within the institution,
9 except in accordance with standards adopted [by the department]
10 under Section 242.403;
- 11 (16) to receive visitors;
- 12 (17) to receive unopened mail and to receive
13 assistance in reading or writing correspondence;
- 14 (18) to participate in activities inside and outside
15 the institution;
- 16 (19) to wear the resident's own clothes;
- 17 (20) to discharge himself or herself from the
18 institution unless the resident is an adjudicated mental
19 incompetent;
- 20 (21) to not be discharged from the institution except
21 as provided in the standards adopted [by the department] under
22 Section 242.403;
- 23 (22) to be free from any physical or chemical
24 restraints imposed for the purposes of discipline or convenience,
25 and not required to treat the resident's medical symptoms; and
- 26 (23) to receive information about prescribed
27 psychoactive medication from the person prescribing the medication

1 or that person's designee, to have any psychoactive medications
2 prescribed and administered in a responsible manner, as mandated by
3 Section 242.505, and to refuse to consent to the prescription of
4 psychoactive medications.

5 (c) The executive commissioner [department] may adopt
6 rights of residents in addition to those required by Subsection (a)
7 and may consider additional rights applicable to residents in other
8 jurisdictions.

9 SECTION 3.0655. Section 242.601(b), Health and Safety Code,
10 is amended to read as follows:

11 (b) The medication administration procedures must comply
12 with this subchapter and the rules adopted [by the board] under
13 Section 242.608.

14 SECTION 3.0656. Section 242.608, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 242.608. RULES FOR ADMINISTRATION OF MEDICATION. The
17 executive commissioner [board] by rule shall establish:

18 (1) minimum requirements for the issuance, denial,
19 renewal, suspension, emergency suspension, and revocation of a
20 permit to administer medication to a resident;

21 (2) curricula to train persons to administer
22 medication to a resident;

23 (3) minimum standards for the approval of programs to
24 train persons to administer medication to a resident and for
25 rescinding approval; and

26 (4) the acts and practices that are allowed or
27 prohibited to a permit holder.

1 SECTION 3.0657. Section [242.609](#)(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) An application for the approval of a training program
4 must be made to the department on a form and under rules prescribed
5 by the executive commissioner [board].

6 SECTION 3.0658. Sections [242.610](#)(a), (c), (d), and (g),
7 Health and Safety Code, are amended to read as follows:

8 (a) To be issued or to have renewed a permit to administer
9 medication, a person shall apply to the department on a form
10 prescribed and under rules adopted by the executive commissioner
11 [board].

12 (c) The executive commissioner [department] shall require a
13 permit holder to satisfactorily complete a continuing education
14 course approved by the department for renewal of the permit.

15 (d) Subject to Subsections (h)-(m), the department shall
16 issue a permit or renew a permit to an applicant who:

17 (1) meets the minimum requirements adopted under
18 Section [242.608](#);

19 (2) successfully completes the examination or the
20 continuing education requirements; and

21 (3) pays a nonrefundable application fee determined by
22 the executive commissioner by rule [board].

23 (g) The executive commissioner [board] by rule may adopt a
24 system under which permits expire on various dates during the year.
25 For the year in which the permit expiration date is changed, the
26 department shall prorate permit fees on a monthly basis so that each
27 permit holder pays only that portion of the permit fee that is

1 allocable to the number of months during which the permit is valid.
2 On renewal of the permit on the new expiration date, the total
3 permit renewal fee is payable.

4 SECTION 3.0659. Section 242.611, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 242.611. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO
7 ADMINISTER MEDICATION. The executive commissioner by rule [board]
8 shall set the fees in amounts reasonable and necessary to recover
9 the amount projected by the department as required to administer
10 its functions. Except as otherwise provided by Section 242.610,
11 the fees may not exceed:

12 (1) \$25 for a combined permit application and
13 examination fee; and

14 (2) \$15 for a renewal permit application fee.

15 SECTION 3.0660. Sections 242.612(a) and (c), Health and
16 Safety Code, are amended to read as follows:

17 (a) The department [board] shall revoke, suspend, or refuse
18 to renew a permit or shall reprimand a permit holder for a violation
19 of this subchapter or a rule [of the board] adopted under this
20 subchapter. In addition, the department [board] may suspend a
21 permit in an emergency or rescind training program approval.

22 (c) The department [board] may place on probation a person
23 whose permit is suspended. If a permit suspension is probated, the
24 department [board] may require the person:

25 (1) to report regularly to the department on matters
26 that are the basis of the probation;

27 (2) to limit practice to the areas prescribed by the

1 department [board]; or

2 (3) to continue or review professional education until
3 the person attains a degree of skill satisfactory to the department
4 [board] in those areas that are the basis of the probation.

5 SECTION 3.0661. Section 242.613(c), Health and Safety Code,
6 is amended to read as follows:

7 (c) If requested in writing by a permit holder whose permit
8 is suspended, an administrative law judge of the State Office of
9 Administrative Hearings [department] shall conduct a hearing to
10 continue, modify, or rescind the emergency suspension.

11 SECTION 3.0662. Section 242.844, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 242.844. REQUIRED FORM ON ADMISSION. The executive
14 commissioner [department] by rule shall prescribe a form that must
15 be completed and signed on a resident's admission to an institution
16 by or on behalf of the resident. The form must state:

17 (1) that a person who places an electronic monitoring
18 device in the room of a resident or who uses or discloses a tape or
19 other recording made by the device may be civilly liable for any
20 unlawful violation of the privacy rights of another;

21 (2) that a person who covertly places an electronic
22 monitoring device in the room of a resident or who consents to or
23 acquiesces in the covert placement of the device in the room of a
24 resident has waived any privacy right the person may have had in
25 connection with images or sounds that may be acquired by the device;

26 (3) that a resident or the resident's guardian or legal
27 representative is entitled to conduct authorized electronic

1 monitoring under Subchapter R, Chapter 242, Health and Safety Code,
2 and that if the institution refuses to permit the electronic
3 monitoring or fails to make reasonable physical accommodations for
4 the authorized electronic monitoring that the person should contact
5 the [Texas] Department of Aging and Disability [Human] Services;

6 (4) the basic procedures that must be followed to
7 request authorized electronic monitoring;

8 (5) the manner in which this chapter affects the legal
9 requirement to report abuse or neglect when electronic monitoring
10 is being conducted; and

11 (6) any other information regarding covert or
12 authorized electronic monitoring that the executive commissioner
13 [~~department~~] considers advisable to include on the form.

14 SECTION 3.0663. Section 242.845(c), Health and Safety Code,
15 is amended to read as follows:

16 (c) If a resident does not have capacity to request
17 electronic monitoring but has not been judicially declared to lack
18 the required capacity, only the legal representative of the
19 resident may request electronic monitoring under this subchapter.

20 The executive commissioner [~~department~~] by rule shall prescribe:

21 (1) guidelines that will assist institutions, family
22 members of residents, advocates for residents, and other interested
23 persons to determine when a resident lacks the required capacity;
24 and

25 (2) who may be considered to be a resident's legal
26 representative for purposes of this subchapter, including:

27 (A) persons who may be considered the legal

1 representative under the terms of an instrument executed by the
2 resident when the resident had capacity; and

3 (B) persons who may become the legal
4 representative for the limited purpose of this subchapter under a
5 procedure prescribed by the executive commissioner [department].

6 SECTION 3.0664. Section 242.846(h), Health and Safety Code,
7 is amended to read as follows:

8 (h) The executive commissioner [department] may adopt rules
9 prescribing the place or places that a form signed under this
10 section must be maintained and the period for which it must be
11 maintained.

12 SECTION 3.0665. Section 242.847(g), Health and Safety Code,
13 is amended to read as follows:

14 (g) An institution may require an electronic monitoring
15 device to be installed in a manner that is safe for residents,
16 employees, or visitors who may be moving about the room. The
17 executive commissioner [department] may adopt rules regarding the
18 safe placement of an electronic monitoring device.

19 SECTION 3.0666. Section 242.849(c), Health and Safety Code,
20 is amended to read as follows:

21 (c) A person who sends more than one tape or recording to the
22 department shall identify for the department each tape or recording
23 on which the person believes that an incident of abuse or evidence
24 of neglect may be found. The executive commissioner [department]
25 may adopt rules encouraging persons who send a tape or recording to
26 the department to identify the place on the tape or recording that
27 an incident of abuse or evidence of neglect may be found.

1 SECTION 3.0667. Section 242.850, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 242.850. NOTICE AT ENTRANCE TO INSTITUTION. Each
4 institution shall post a notice at the entrance to the institution
5 stating that the rooms of some residents may be being monitored
6 electronically by or on behalf of the residents and that the
7 monitoring is not necessarily open and obvious. The executive
8 commissioner [department] by rule shall prescribe the format and
9 the precise content of the notice.

10 SECTION 3.0668. Section 242.901, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 242.901. DEFINITION [DEFINITIONS]. In this
13 subchapter, "family"[+

14 [(1) "Department" means the Department of Aging and
15 Disability Services.]

16 [(2) "Executive commissioner" means the executive
17 commissioner of the Health and Human Services Commission.]

18 [(3) "Family] council" means a group of family
19 members, friends, or legal guardians of residents, who organize and
20 meet privately or openly.

21 SECTION 3.0669. Section 243.002, Health and Safety Code, is
22 amended by amending Subdivisions (2) and (3) and adding Subdivision
23 (3-a) to read as follows:

24 (2) "Commissioner" means the commissioner of state
25 health services ["Board" means the Texas Board of Health].

26 (3) "Department" means the [Texas] Department of State
27 Health Services.

1 (3-a) "Executive commissioner" means the executive
2 commissioner of the Health and Human Services Commission.

3 SECTION 3.0670. Sections 243.005(b), (e), and (f), Health
4 and Safety Code, are amended to read as follows:

5 (b) Each application must be accompanied by a nonrefundable
6 license fee in an amount set by the executive commissioner by rule
7 [~~board~~].

8 (e) The license fee must be paid every two years [~~annually~~]
9 on renewal of the license.

10 (f) The department shall issue a renewal license to a center
11 certified under Title XVIII of the Social Security Act (42 U.S.C.
12 Section 1395 et seq.) when the center:

13 (1) remits any [~~annual~~] license fee; and

14 (2) submits the inspection results or the inspection
15 results report from the certification body.

16 SECTION 3.0671. Section 243.007, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 243.007. FEE AMOUNTS [~~FEES~~]. The executive
19 commissioner by rule [~~board~~] shall set fees imposed by this chapter
20 in amounts reasonable and necessary to defray the cost of
21 administering this chapter and as prescribed by Section 12.0111.

22 SECTION 3.0672. Section 243.008, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 243.008. DEPOSIT OF FEES [~~AMBULATORY SURGICAL CENTER~~
25 ~~LICENSING FUND~~]. All fees collected under this chapter shall be
26 deposited in the state treasury to the credit of the general revenue
27 [~~ambulatory surgical center licensing~~] fund [and may be

1 ~~appropriated to the department only to administer and enforce this~~
2 ~~chapter]~~.

3 SECTION 3.0673. Section 243.009, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 243.009. ADOPTION OF RULES. The executive
6 commissioner [board] shall adopt rules necessary to implement this
7 chapter, including requirements for the issuance, renewal, denial,
8 suspension, and revocation of a license to operate an ambulatory
9 surgical center.

10 SECTION 3.0674. Section 243.010(c), Health and Safety Code,
11 is amended to read as follows:

12 (c) This section does not authorize the executive
13 commissioner [board] to:

14 (1) establish the qualifications of a licensed
15 practitioner; or

16 (2) permit a person to provide health care services
17 who is not authorized to provide those services under another state
18 law.

19 SECTION 3.0675. Section 243.0115, Health and Safety Code,
20 is amended to read as follows:

21 Sec. 243.0115. EMERGENCY SUSPENSION. The department may
22 issue an emergency order to suspend a license issued under this
23 chapter if the department has reasonable cause to believe that the
24 conduct of a license holder creates an immediate danger to the
25 public health and safety. An emergency suspension is effective
26 immediately without a hearing on notice to the license holder. On
27 written request of the license holder to the department for a

1 hearing, the department shall refer the matter to the State Office
2 of Administrative Hearings. An administrative law judge of the
3 office [~~, the department~~] shall conduct a hearing not earlier than
4 the 10th day or later than the 30th day after the date the hearing
5 request is received by the department to determine if the emergency
6 suspension is to be continued, modified, or rescinded. The hearing
7 and any appeal are governed by the department's rules for a
8 contested case hearing and Chapter 2001, Government Code.

9 SECTION 3.0676. Sections 243.015(h), (i), (j), (k), and
10 (l), Health and Safety Code, are amended to read as follows:

11 (h) If the person accepts the determination and recommended
12 penalty or if the person fails to respond to the notice, the
13 department [~~commissioner of public health~~] by order shall [~~approve~~
14 ~~the determination and~~] impose the recommended penalty.

15 (i) If the person requests a hearing, the department
16 [~~commissioner of public health~~] shall refer the matter to the State
17 Office of Administrative Hearings, which shall promptly set a
18 hearing date, and the department shall give written notice of the
19 time and place of the hearing to the person. An administrative law
20 judge of that office [~~the State Office of Administrative Hearings~~]
21 shall conduct the hearing.

22 (j) The administrative law judge shall make findings of fact
23 and conclusions of law and promptly issue to the department
24 [~~commissioner of public health~~] a proposal for a decision about the
25 occurrence of the violation and the amount of a proposed penalty.

26 (k) Based on the findings of fact, conclusions of law, and
27 proposal for a decision, the department [~~commissioner of public~~

1 ~~health~~] by order may:

2 (1) find that a violation occurred and impose a
3 penalty; or

4 (2) find that a violation did not occur.

5 (1) The notice of the department's [~~commissioner's~~] order
6 under Subsection (k) that is sent to the person in accordance with
7 Chapter 2001, Government Code, must include a statement of the
8 right of the person to judicial review of the order.

9 SECTION 3.0677. Sections 243.016(a), (b), and (c), Health
10 and Safety Code, are amended to read as follows:

11 (a) Within 30 days after the date an order of the department
12 [~~commissioner of public health~~] under Section 243.015(k) that
13 imposes an administrative penalty becomes final, the person shall:

14 (1) pay the penalty; or

15 (2) file a petition for judicial review of the
16 department's [~~commissioner's~~] order contesting the occurrence of
17 the violation, the amount of the penalty, or both.

18 (b) Within the 30-day period prescribed by Subsection (a), a
19 person who files a petition for judicial review may:

20 (1) stay enforcement of the penalty by:

21 (A) paying the penalty to the court for placement
22 in an escrow account; or

23 (B) giving the court a supersedeas bond approved
24 by the court that:

25 (i) is for the amount of the penalty; and

26 (ii) is effective until all judicial review
27 of the department's [~~commissioner's~~] order is final; or

1 (2) request the court to stay enforcement of the
2 penalty by:

3 (A) filing with the court a sworn affidavit of
4 the person stating that the person is financially unable to pay the
5 penalty and is financially unable to give the supersedeas bond; and

6 (B) sending a copy of the affidavit to the
7 department [~~commissioner of public health~~] by certified mail.

8 (c) If the department [~~commissioner of public health~~]
9 receives a copy of an affidavit under Subsection (b)(2), the
10 department [~~commissioner~~] may file with the court, within five days
11 after the date the copy is received, a contest to the affidavit.
12 The court shall hold a hearing on the facts alleged in the affidavit
13 as soon as practicable and shall stay the enforcement of the penalty
14 on finding that the alleged facts are true. The person who files an
15 affidavit has the burden of proving that the person is financially
16 unable to pay the penalty or to give a supersedeas bond.

17 SECTION 3.0678. Section 244.002, Health and Safety Code, is
18 amended by amending Subdivision (3) and adding Subdivision (3-a) to
19 read as follows:

20 (3) "Department" means the [~~Texas~~] Department of State
21 Health Services.

22 (3-a) "Executive commissioner" means the executive
23 commissioner of the Health and Human Services Commission.

24 SECTION 3.0679. Sections 244.005(b), (c), and (e), Health
25 and Safety Code, are amended to read as follows:

26 (b) Each application must be accompanied by a nonrefundable
27 license fee in an amount set by the executive commissioner by rule

1 [board].

2 (c) The application must contain evidence that the
3 composition of the center's staff meets the standards adopted [by
4 the board] under this chapter for the level of license for which the
5 application is submitted.

6 (e) The license fee shall be paid every two years [~~annually~~]
7 on renewal of the license.

8 SECTION 3.0680. Section 244.007, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 244.007. FEES. The executive commissioner by rule
11 [board] shall set fees imposed by this chapter in amounts
12 reasonable and necessary to defray the cost of administering this
13 chapter and as prescribed by Section 12.0111.

14 SECTION 3.0681. Section 244.009, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 244.009. ADOPTION OF RULES. (a) The executive
17 commissioner [board] shall adopt rules necessary to implement this
18 chapter.

19 (b) The executive commissioner [board] shall adopt rules
20 that establish different levels of licenses to operate a birthing
21 center and that provide requirements for the issuance, renewal,
22 denial, suspension, and revocation of each level of license.

23 SECTION 3.0682. Section 244.010, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 244.010. MINIMUM STANDARDS. (a) For each level of
26 license of a birthing center, the rules must contain minimum
27 standards for:

1 (1) the qualifications for professional and
2 nonprofessional personnel;

3 (2) the supervision of professional and
4 nonprofessional personnel;

5 (3) the provision and coordination of treatment and
6 services;

7 (4) the organizational structure, including the lines
8 of authority and the delegation of responsibility;

9 (5) the keeping of clinical records; and

10 (6) any other aspect of the operation of a birthing
11 center that the executive commissioner [board] considers necessary
12 to protect the public.

13 (b) This section does not authorize the executive
14 commissioner [board] to:

15 (1) establish the qualifications of a licensed
16 practitioner; or

17 (2) permit a person to provide health care services
18 who is not authorized to provide those services under another state
19 law.

20 SECTION 3.0683. Sections 244.015(h), (i), (j), (k), and
21 (l), Health and Safety Code, are amended to read as follows:

22 (h) If the person accepts the determination and recommended
23 penalty or if the person fails to respond to the notice, the
24 department [commissioner of public health] by order shall approve
25 the determination and impose the recommended penalty.

26 (i) If the person requests a hearing, the department
27 [commissioner of public health] shall refer the matter to the State

1 Office of Administrative Hearings, which shall promptly set a
2 hearing date. The department shall [and] give written notice of the
3 time and place of the hearing to the person. An administrative law
4 judge of that office [~~the State Office of Administrative Hearings~~] shall conduct the hearing.

6 (j) The administrative law judge shall make findings of fact
7 and conclusions of law and promptly issue to the department
8 [~~commissioner of public health~~] a proposal for a decision about the
9 occurrence of the violation and the amount of a proposed penalty.

10 (k) Based on the findings of fact, conclusions of law, and
11 proposal for a decision, the department [~~commissioner of public~~
12 ~~health~~] by order may:

13 (1) find that a violation occurred and impose a
14 penalty; or

15 (2) find that a violation did not occur.

16 (l) The notice of the department's [~~commissioner's~~] order
17 under Subsection (k) that is sent to the person in accordance with
18 Chapter 2001, Government Code, must include a statement of the
19 right of the person to judicial review of the order.

20 SECTION 3.0684. Sections 244.016(a), (b), and (c), Health
21 and Safety Code, are amended to read as follows:

22 (a) Within 30 days after the date an order of the department
23 [~~commissioner of public health~~] under Section 244.015(k) that
24 imposes an administrative penalty becomes final, the person shall:

25 (1) pay the penalty; or

26 (2) file a petition for judicial review of the
27 department's [~~commissioner's~~] order contesting the occurrence of

1 the violation, the amount of the penalty, or both.

2 (b) Within the 30-day period prescribed by Subsection (a), a
3 person who files a petition for judicial review may:

4 (1) stay enforcement of the penalty by:

5 (A) paying the penalty to the court for placement
6 in an escrow account; or

7 (B) giving the court a supersedeas bond approved
8 by the court that:

9 (i) is for the amount of the penalty; and

10 (ii) is effective until all judicial review
11 of the department's [~~commissioner's~~] order is final; or

12 (2) request the court to stay enforcement of the
13 penalty by:

14 (A) filing with the court a sworn affidavit of
15 the person stating that the person is financially unable to pay the
16 penalty and is financially unable to give the supersedeas bond; and

17 (B) sending a copy of the affidavit to the
18 department [~~commissioner of public health~~] by certified mail.

19 (c) If the department [~~commissioner of public health~~]
20 receives a copy of an affidavit under Subsection (b)(2), the
21 department [~~commissioner~~] may file with the court, within five days
22 after the date the copy is received, a contest to the affidavit.

23 The court shall hold a hearing on the facts alleged in the affidavit
24 as soon as practicable and shall stay the enforcement of the penalty
25 on finding that the alleged facts are true. The person who files an
26 affidavit has the burden of proving that the person is financially
27 unable to pay the penalty or to give a supersedeas bond.

1 SECTION 3.0685. Section 245.002, Health and Safety Code, is
2 amended by amending Subdivision (4) and adding Subdivision (5) to
3 read as follows:

4 (4) "Department" means the [Texas] Department of State
5 Health Services.

6 (5) "Executive commissioner" means the executive
7 commissioner of the Health and Human Services Commission.

8 SECTION 3.0686. Sections 245.005(b) and (c), Health and
9 Safety Code, are amended to read as follows:

10 (b) Each application must be accompanied by a nonrefundable
11 license fee in an amount set by the executive commissioner by rule
12 [~~board~~].

13 (c) The application must contain evidence that there are one
14 or more physicians on the staff of the facility who are licensed by
15 the Texas [~~State Board of~~] Medical Board [~~Examiners~~].

16 SECTION 3.0687. Section 245.007, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 245.007. FEES. The executive commissioner by rule
19 [~~board~~] shall set fees imposed by this chapter in amounts
20 reasonable and necessary to defray the cost of administering this
21 chapter and Chapter 171.

22 SECTION 3.0688. Section 245.009, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 245.009. ADOPTION OF RULES. The executive
25 commissioner [~~board~~] shall adopt rules necessary to implement this
26 chapter, including requirements for the issuance, renewal, denial,
27 suspension, and revocation of a license to operate an abortion

1 facility.

2 SECTION 3.0689. Section 245.010(d), Health and Safety Code,
3 is amended to read as follows:

4 (d) This section does not authorize the executive
5 commissioner [board] to:

6 (1) establish the qualifications of a licensed
7 practitioner; or

8 (2) permit a person to provide health care services
9 who is not authorized to provide those services under other laws of
10 this state.

11 SECTION 3.0690. Section 245.018(c), Health and Safety Code,
12 is amended to read as follows:

13 (c) If the person notified of the violation accepts the
14 determination of the department, the department [commissioner of
15 public health or the commissioner's designee] shall [issue an]
16 order [approving the determination and ordering] the person to pay
17 the recommended penalty.

18 SECTION 3.0691. Section 245.019, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 245.019. HEARING; ORDER. (a) If the person requests a
21 hearing, the department shall transfer the case to the State Office
22 of Administrative Hearings and an administrative law judge of that
23 office shall hold the hearing.

24 (a-1) The department [commissioner of public health or the
25 commissioner's designee] shall [÷

26 [(1) set a hearing,

27 [(2)] give written notice of the hearing to the

1 person[, and]

2 [+(3) designate a hearings examiner to conduct the
3 hearing].

4 (b) The administrative law judge [~~hearings examiner~~] shall
5 make findings of fact and conclusions of law and shall promptly
6 issue to the department [~~commissioner~~] a proposal for decision as
7 to the occurrence of the violation and a recommendation as to the
8 amount of the proposed penalty, if a penalty is determined to be
9 warranted.

10 (c) Based on the findings of fact and conclusions of law and
11 the recommendations of the administrative law judge [~~hearings~~
12 ~~examiner~~], the department [~~commissioner~~] by order may find that a
13 violation has occurred and may assess a penalty or may find that no
14 violation has occurred.

15 SECTION 3.0692. Sections 245.020(a), (c), and (f), Health
16 and Safety Code, are amended to read as follows:

17 (a) The department [~~commissioner of public health or the~~
18 ~~commissioner's designee~~] shall give notice of the department's
19 [~~commissioner's~~] order under Section 245.019(c) to the person
20 alleged to have committed the violation. The notice must include:

21 (1) separate statements of the findings of fact and
22 conclusions of law;

23 (2) the amount of any penalty assessed; and

24 (3) a statement of the right of the person to judicial
25 review of the department's [~~commissioner's~~] order.

26 (c) Within the 30-day period, a person who acts under
27 Subsection (b)(3) may:

1 (1) stay enforcement of the penalty by:

2 (A) paying the amount of the penalty to the court

3 for placement in an escrow account; or

4 (B) giving to the court a supersedeas bond that

5 is approved by the court for the amount of the penalty and that is

6 effective until all judicial review of the department's

7 [~~commissioner's~~] order is final; or

8 (2) request the court to stay enforcement of the

9 penalty by:

10 (A) filing with the court a sworn affidavit of

11 the person stating that the person is financially unable to pay the

12 amount of the penalty and is financially unable to give the

13 supersedeas bond; and

14 (B) giving a copy of the affidavit to the

15 department by certified mail.

16 (f) Judicial review of the order of the department

17 [~~commissioner of public health~~]:

18 (1) is instituted by filing a petition as provided by

19 Subchapter G, Chapter 2001, Government Code; and

20 (2) is under the substantial evidence rule.

21 SECTION 3.0693. Section **245.022**(a), Health and Safety Code,

22 is amended to read as follows:

23 (a) The department may assess reasonable expenses and costs

24 against a person in an administrative hearing if, as a result of the

25 hearing, the person's license is denied, suspended, or revoked or

26 if administrative penalties are assessed against the person. The

27 person shall pay expenses and costs assessed under this subsection

1 not later than the 30th day after the date a department [~~board~~]
2 order requiring the payment of expenses and costs is final. The
3 department may refer the matter to the attorney general for
4 collection of the expenses and costs.

5 SECTION 3.0694. Sections 245.023(b) and (d), Health and
6 Safety Code, are amended to read as follows:

7 (b) Subsection (a) does not require the department to
8 provide information that is not in the possession of the
9 department. The Texas [~~State Board of~~] Medical Board [~~Examiners~~]
10 shall provide to the department information in the possession of
11 the board that the department is required to provide under
12 Subsection (a).

13 (d) An abortion facility shall provide to a woman, at the
14 time the woman initially consults the facility, a written statement
15 indicating the number of the toll-free telephone line maintained
16 under Subsection (c). The written statement must be available in
17 English and Spanish and be in substantially the following form:

18 "(toll-free telephone number)

19 You have a right to access certain information
20 concerning this abortion facility by using the toll-free
21 telephone number listed above. If you make a call to the
22 number, your identity will remain anonymous. The toll-free
23 telephone line can provide you with the following
24 information:

25 (1) Whether this abortion facility is
26 licensed by the Texas Department of State Health Services.

27 (2) The date of the last inspection of this

1 facility by the Texas Department of State Health Services and
2 any violations of law or rules discovered during that
3 inspection that may pose a health risk to you.

4 (3) Any relevant fine, penalty, or judgment
5 rendered against this facility or a doctor who provides
6 services at this facility."

7 SECTION 3.0695. Section 247.0011, Health and Safety Code,
8 is amended by amending Subsection (b) and adding Subsection (b-1)
9 to read as follows:

10 (b) The executive commissioner [department] shall protect
11 residents of assisted living facilities by:

12 (1) adopting rules relating to quality of care and
13 quality of life; and

14 (2) adopting rules relating to the assessment of the
15 condition and service needs of each resident.[+]

16 (b-1) The department shall protect residents of assisted
17 living facilities by:

18 (1) [+3] promoting policies that maximize the
19 dignity, autonomy, privacy, and independence of each resident;

20 (2) [+4] regulating the construction, maintenance,
21 and operation of assisted living facilities;

22 (3) [+5] strictly monitoring factors relating to the
23 health, safety, welfare, and dignity of each resident;

24 (4) [+6] imposing prompt and effective remedies for
25 violations of this chapter and rules and standards adopted under
26 this chapter;

27 (5) promoting [+7] providing a residential

1 environment that allows residents to maintain the highest possible
2 degree of independence and self-determination; and

3 (6) [(-8)] providing the public with helpful and
4 understandable information relating to the operation of assisted
5 living facilities in this state.

6 SECTION 3.0696. Section 247.002, Health and Safety Code, is
7 amended by amending Subdivision (2) and adding Subdivision (4-a) to
8 read as follows:

9 (2) "Commission" means the Health and Human Services
10 Commission [~~"Board"~~ means the executive commissioner of the Health
11 and Human Services Commission].

12 (4-a) "Executive commissioner" means the executive
13 commissioner of the Health and Human Services Commission.

14 SECTION 3.0697. Subdivision (7), Section 247.002, Health
15 and Safety Code, is redesignated as Subdivision (2-a), Section
16 247.002, Health and Safety Code, and amended to read as follows:

17 (2-a) [(-7)] "Commissioner" means the commissioner of
18 aging and disability services [~~the department~~].

19 SECTION 3.0698. Section 247.004, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

22 (1) a boarding home facility as defined by Section
23 260.001;

24 (2) an establishment conducted by or for the adherents
25 of the Church of Christ, Scientist, for the purpose of providing
26 facilities for the care or treatment of the sick who depend
27 exclusively on prayer or spiritual means for healing without the

1 use of any drug or material remedy if the establishment complies
2 with local safety, sanitary, and quarantine ordinances and
3 regulations;

4 (3) a facility conducted by or for the adherents of a
5 qualified religious society classified as a tax-exempt
6 organization under an Internal Revenue Service group exemption
7 ruling for the purpose of providing personal care services without
8 charge solely for the society's professed members or ministers in
9 retirement, if the facility complies with local safety, sanitation,
10 and quarantine ordinances and regulations; or

11 (4) a facility that provides personal care services
12 only to persons enrolled in a program that:

13 (A) is funded in whole or in part by the
14 department and that is monitored by the department or its
15 designated local intellectual and developmental disability [~~mental~~
16 ~~retardation~~] authority in accordance with department rules
17 [~~standards set by the department~~]; or

18 (B) is funded in whole or in part by the
19 Department of State Health Services and that is monitored by that
20 department, or by its designated local mental health authority in
21 accordance with department rules [~~standards set by the department~~].

22 SECTION 3.0699. Section 247.005(d), Health and Safety Code,
23 is amended to read as follows:

24 (d) The executive commissioner [~~department~~] may adopt rules
25 that specify the ownership interests and other relationships that
26 qualify a person as a controlling person.

27 SECTION 3.0700. Section 247.021(d), Health and Safety Code,

1 is amended to read as follows:

2 (d) The executive commissioner [department] by rule shall
3 establish procedures to issue a six-month provisional license to
4 existing facilities with residents. The department may issue a
5 provisional license if:

6 (1) the facility is in compliance with resident care
7 standards;

8 (2) the facility voluntarily discloses that the
9 facility needs additional time to comply with life safety code and
10 physical plant standards;

11 (3) the disclosure is made in writing by certified
12 mail to the department;

13 (4) an investigation of the violation was not
14 initiated and the violation was not independently detected by the
15 department; and

16 (5) the disclosure is made promptly after knowledge of
17 the information disclosed is obtained by the facility.

18 SECTION 3.0701. Section 247.0211(a), Health and Safety
19 Code, is amended to read as follows:

20 (a) The executive commissioner [~~of the Health and Human~~
21 ~~Services Commission~~] shall adopt rules to implement an expedited
22 inspection process that allows an applicant for an assisted living
23 facility license or for a renewal of a license to obtain a life
24 safety code and physical plant inspection not later than the 15th
25 day after the date the request is made.

26 SECTION 3.0702. Section 247.022(b), Health and Safety Code,
27 is amended to read as follows:

1 (b) Each application must be accompanied by a nonrefundable
2 license fee in an amount set by the executive commissioner by rule
3 [board].

4 SECTION 3.0703. Sections 247.023(a) and (c), Health and
5 Safety Code, are amended to read as follows:

6 (a) The department shall issue a license if, after
7 inspection and investigation, it finds that the applicant, the
8 assisted living facility, and all controlling persons with respect
9 to the applicant or facility meet the requirements of this chapter
10 and the standards adopted under this chapter. The license expires
11 on the second anniversary of the date of its issuance. The
12 executive commissioner [of the Health and Human Services
13 Commission] by rule may adopt a system under which licenses expire
14 on various dates during the two-year period. For the year in which
15 a license expiration date is changed, the department shall prorate
16 the license fee on a monthly basis. Each license holder shall pay
17 only that portion of the license fee allocable to the number of
18 months during which the license is valid. A license holder shall
19 pay the total license renewal fee at the time of renewal.

20 (c) The department [board] may require participation in a
21 continuing education program as a condition of renewal of a
22 license. The executive commissioner [board] shall adopt rules to
23 implement this subsection.

24 SECTION 3.0704. Sections 247.024(a), (b), and (c), Health
25 and Safety Code, are amended to read as follows:

26 (a) The executive commissioner by rule [department] shall
27 set license fees imposed by this chapter:

1 (1) on the basis of the number of beds in assisted
2 living facilities required to pay the fee; and

3 (2) in amounts reasonable and necessary to defray the
4 cost of administering this chapter, but not to exceed \$1,500.

5 (b) The executive commissioner [board] shall establish by
6 rule a base fee schedule and a per bed fee schedule.

7 (c) All fees or penalties collected under this chapter shall
8 be deposited in the state treasury to the credit of the general
9 revenue fund [~~and shall be appropriated to the department only to~~
10 ~~administer and enforce this chapter~~].

11 SECTION 3.0705. Section 247.025, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 247.025. ADOPTION OF RULES. The executive
14 commissioner [board] shall adopt rules necessary to implement this
15 chapter, including requirements for the issuance, renewal, denial,
16 suspension, and revocation of a license to operate an assisted
17 living facility.

18 SECTION 3.0706. Sections 247.026(a), (c), (d), (f), and
19 (i), Health and Safety Code, are amended to read as follows:

20 (a) The executive commissioner [board] by rule shall
21 prescribe minimum standards to protect the health and safety of an
22 assisted living facility resident.

23 (c) The executive commissioner [board] shall require an
24 assisted living facility that provides brain injury rehabilitation
25 services to include in the facility's consumer disclosure statement
26 a specific statement that licensure as an assisted living facility
27 does not indicate state review, approval, or endorsement of the

1 facility's rehabilitation services.

2 (d) The executive commissioner [board] may prescribe
3 different levels of minimum standards for assisted living
4 facilities according to the number of residents, the type of
5 residents, the level of personal care provided, the nutritional
6 needs of residents, and other distinctions the executive
7 commissioner [board] considers relevant. If the executive
8 commissioner [board] does not prescribe minimum standards for
9 facilities serving non-geriatric residents, the executive
10 commissioner [‡] must develop procedures for consideration and
11 approval of alternate methods of compliance by such facilities with
12 the department's [board's] standards.

13 (f) The executive commissioner [board] by rule shall
14 prescribe minimum standards requiring appropriate training in
15 geriatric care for each individual who provides services to
16 geriatric residents as an employee of an assisted living facility
17 and who holds a license or certificate issued by an agency of this
18 state that authorizes the person to provide the services. The
19 minimum standards may require that each licensed or certified
20 individual complete an appropriate program of continuing education
21 or in-service training, as determined by department [board] rule,
22 on a schedule determined by department [board] rule.

23 (i) The executive commissioner [board] by rule shall
24 require each manager of an assisted living facility that has 17 beds
25 or more to complete at least one educational course on the
26 management of assisted living facilities not later than the first
27 anniversary of the date the manager begins employment in that

1 capacity.

2 SECTION 3.0707. Sections **247.0261**(a) and (d), Health and
3 Safety Code, are amended to read as follows:

4 (a) The executive commissioner [department] by rule shall
5 adopt a procedure under which a person proposing to construct or
6 modify an assisted living facility may submit building plans to the
7 department for review for compliance with the department's
8 architectural requirements before beginning construction or
9 modification. In adopting the procedure, the executive
10 commissioner [department] shall set reasonable deadlines by which
11 the department must complete review of submitted plans.

12 (d) A fee collected under this section shall be deposited in
13 the general revenue fund to the credit of the assisted living
14 account [~~and shall be appropriated only to the department to~~
15 ~~conduct reviews under this section~~].

16 SECTION 3.0708. Sections **247.029**(a) and (b), Health and
17 Safety Code, are amended to read as follows:

18 (a) The executive commissioner [board] by rule shall
19 establish a classification and license for a facility that
20 advertises, markets, or otherwise promotes that the facility
21 provides personal care services to residents who have Alzheimer's
22 disease or related disorders. A facility is not required to be
23 classified under this section to provide care or treatment to
24 residents who have Alzheimer's disease or related disorders.

25 (b) The executive commissioner [board] shall adopt minimum
26 standards for an assisted living facility classified under this
27 section.

1 SECTION 3.0709. Sections 247.032(a) and (b), Health and
2 Safety Code, are amended to read as follows:

3 (a) In this section, "accreditation commission" means the
4 Commission on Accreditation of Rehabilitation Facilities (CARF),
5 ~~The [the]~~ Joint Commission [~~on Accreditation of Healthcare~~
6 ~~Organizations~~], or another organization approved by the executive
7 commissioner [~~of the Health and Human Services Commission~~].

8 (b) The department shall accept an accreditation survey
9 from an accreditation commission for an assisted living facility
10 instead of an inspection under Section 247.023 or an annual
11 inspection or survey conducted under the authority of Section
12 247.027, but only if:

13 (1) the accreditation commission's standards meet or
14 exceed the requirements for licensing of the executive commissioner
15 [~~of the Health and Human Services Commission~~] for an assisted
16 living facility;

17 (2) the accreditation commission maintains an
18 inspection or survey program that, for each assisted living
19 facility, meets the department's applicable minimum standards as
20 confirmed by the executive commissioner [~~of the Health and Human~~
21 ~~Services Commission~~];

22 (3) the accreditation commission conducts an on-site
23 inspection or survey of the facility at least as often as required
24 by Section 247.023 or 247.027 and in accordance with the
25 department's minimum standards;

26 (4) the assisted living facility submits to the
27 department a copy of its required accreditation reports to the

1 accreditation commission in addition to the application, the fee,
2 and any report required for renewal of a license;

3 (5) the inspection or survey results are available for
4 public inspection to the same extent that the results of an
5 investigation or survey conducted under Section 247.023 or 247.027
6 are available for public inspection; and

7 (6) the department ensures that the accreditation
8 commission has taken reasonable precautions to protect the
9 confidentiality of personally identifiable information concerning
10 the residents of the assisted living facility.

11 SECTION 3.0710. Section 247.033(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) The department may develop and implement a pilot program
14 to authorize the use of an accreditation survey that complies with
15 Section 247.032(b) to fulfill the requirements for a life and
16 safety code survey or inspection or another survey or inspection
17 required by this subchapter. If the department implements the
18 pilot program, the department may implement the pilot program with
19 the goal that [not later than August 31, 2014,] at least one
20 assisted living facility will have used an accreditation survey for
21 the purposes of this section. The accreditation commission's
22 standards must meet or exceed the assisted living facility
23 licensing requirements established by the executive commissioner
24 [of the Health and Human Services Commission] as required by
25 Section 247.032(b)(1).

26 SECTION 3.0711. Section 247.043(b), Health and Safety Code,
27 is amended to read as follows:

1 (b) If the thorough investigation reveals that abuse,
2 exploitation, or neglect has occurred, the department shall:

3 (1) implement enforcement measures, including closing
4 the facility, revoking the facility's license, relocating
5 residents, and making referrals to law enforcement agencies;

6 (2) notify the Department of Family and Protective
7 ~~and Regulatory~~ Services of the results of the investigation;

8 (3) notify a health and human services agency, as
9 defined by Section 531.001, Government Code, that contracts with
10 the facility for the delivery of personal care services of the
11 results of the investigation; and

12 (4) provide to a contracting health and human services
13 agency access to the department's documents or records relating to
14 the investigation.

15 SECTION 3.0712. Sections 247.045(g), (h), and (i), Health
16 and Safety Code, are amended to read as follows:

17 (g) The commissioner [~~of human services~~] must approve any
18 settlement agreement to a suit brought under this chapter.

19 (h) If a person who is liable under this section fails to pay
20 any amount the person is obligated to pay under this section, the
21 state may seek satisfaction from any owner, other controlling
22 person, or affiliate of the person found liable. The owner, other
23 controlling person, or affiliate may be found liable in the same
24 suit or in another suit on a showing by the state that the amount to
25 be paid has not been paid or otherwise legally discharged. The
26 executive commissioner [~~department~~] by rule may establish a method
27 for satisfying an obligation imposed under this section from an

1 insurance policy, letter of credit, or other contingency fund.

2 (i) In this section, "affiliate" means:

3 (1) with respect to a partnership other than a limited
4 partnership, each partner of the partnership;

5 (2) with respect to a corporation:

6 (A) an officer;

7 (B) a director;

8 (C) a stockholder who owns, holds, or has the
9 power to vote at least 10 percent of any class of securities issued
10 by the corporation, regardless of whether the power is of record or
11 beneficial; and

12 (D) a controlling individual;

13 (3) with respect to an individual:

14 (A) each partnership and each partner in the
15 partnership in which the individual or any other affiliate of the
16 individual is a partner; and

17 (B) each corporation or other business entity in
18 which the individual or another affiliate of the individual is:

19 (i) an officer;

20 (ii) a director;

21 (iii) a stockholder who owns, holds, or has
22 the power to vote at least 10 percent of any class of securities
23 issued by the corporation, regardless of whether the power is of
24 record or beneficial; and

25 (iv) a controlling individual;

26 (4) with respect to a limited partnership:

27 (A) a general partner; and

1 (B) a limited partner who is a controlling
2 individual:

4 (A) an owner who is a manager under [as described
5 by] the Texas Limited Liability Company Law as described by Section
6 1.008(e), Business Organizations Code [Act (Article 1528n,
7 Vernon's Texas Civil Statutes)]; and

12 SECTION 3.0713. Section 247.0451(c), Health and Safety
13 Code, is amended to read as follows:

14 (c) The executive commissioner [board] shall establish
15 gradations of penalties in accordance with the relative seriousness
16 of the violation.

17 SECTION 3.0714. Sections 247.0453(h) and (i), Health and
18 Safety Code, are amended to read as follows:

19 (h) If the person charged with the violation consents to the
20 penalty recommended by the department or does not timely respond to
21 a notice sent under Subsection (c) or (f)(2), the department
22 [~~commissioner or the commissioner's designee~~] shall assess the
23 [~~penalty~~] recommended penalty [~~by the department~~].

24 (i) If the department [~~commissioner or the commissioner's~~
25 ~~designee~~] assesses the recommended penalty, the department shall
26 give written notice to the person charged of the decision and the
27 person shall pay the penalty.

1 SECTION 3.0715. Sections 247.0454(a), (c), (d), and (e),
2 Health and Safety Code, are amended to read as follows:

3 (a) An administrative law judge shall order a hearing and
4 the department shall give notice of the hearing if a person charged
5 with a violation under Section 247.0451 timely requests a hearing.

6 (c) The administrative law judge shall make findings of fact
7 and conclusions of law and promptly issue to the department
8 [~~commissioner or the commissioner's designee~~] a written proposal
9 for decision regarding the occurrence of a violation of this
10 chapter or a rule, standard, or order adopted under this chapter or
11 a term of a license issued under this chapter and a recommendation
12 regarding the amount of the proposed penalty if a penalty is
13 warranted.

14 (d) Based on the findings of fact and conclusions of law and
15 the recommendation of the administrative law judge, the department
16 [~~commissioner or the commissioner's designee~~] by order may:

17 (1) find that a violation has occurred and assess an
18 administrative penalty; or

19 (2) find that a violation has not occurred.

20 (e) If the department [~~commissioner or the commissioner's~~
21 ~~designee~~] finds that a violation has not occurred, the department
22 [~~commissioner or the commissioner's designee~~] shall order that all
23 records reflecting that the department found a violation had
24 occurred and attempted to impose an administrative penalty shall be
25 expunged except:

26 (1) records obtained by the department during its
27 investigation; and

2 SECTION 3.0716. Sections 247.0455(a), (b), (f), and (g),
3 Health and Safety Code, are amended to read as follows:

4 (a) The department [~~commissioner or the commissioner's~~
5 ~~designee~~] shall give notice of the findings made under Section
6 **247.0454**(d) to the person charged. If the department [~~commissioner~~
7 ~~or the commissioner's designee~~] finds that a violation has
8 occurred, the department [~~commissioner or the commissioner's~~
9 ~~designee~~] shall give to the person charged written notice of:

10 (1) the findings;

(2) the amount of the administrative penalty;

14 (4) whether action under Section 247.0457 is required
15 in lieu of payment of all or part of the penalty; and

16 (5) the person's right to judicial review of the
17 department order [~~of the commissioner or the commissioner's~~
18 ~~designee~~].

19 (b) Not later than the 30th day after the date on which the
20 department order [~~of the commissioner or the commissioner's~~
21 ~~designee~~ is final, the person charged with the penalty shall:

22 (1) pay the full amount of the penalty; or

(f) If the amount of the penalty is reduced or the

1 assessment of a penalty is not upheld on judicial review, the
2 department [~~commissioner~~] shall:

3 (1) remit to the person charged the appropriate amount
4 of any penalty payment plus accrued interest; or

5 (2) execute a release of the supersedeas bond if one
6 has been posted.

7 (g) Accrued interest on amounts remitted by the department
8 [~~commissioner~~] under Subsection (f)(1) shall be paid:

9 (1) at a rate equal to the rate charged on loans to
10 depository institutions by the New York Federal Reserve Bank; and

11 (2) for the period beginning on the date the penalty is
12 paid and ending on the date the penalty is remitted to the person
13 charged.

14 SECTION 3.0717. Sections 247.0457(a) and (h), Health and
15 Safety Code, are amended to read as follows:

16 (a) In lieu of demanding payment of an administrative
17 penalty assessed under Section 247.0451, the department
18 [~~commissioner~~] in accordance with this section may allow the person
19 to use, under the supervision of the department, any portion of the
20 penalty to ameliorate the violation or to improve services, other
21 than administrative services, in the assisted living facility
22 affected by the violation.

23 (h) The department shall approve or deny an amelioration
24 plan not later than the 45th day after the date the department
25 receives the plan. On approval of a person's plan, the commission
26 or the State Office of Administrative Hearings, as appropriate,
27 [~~department~~] shall deny a pending request for a hearing submitted

1 by the person under Section 247.0453.

2 SECTION 3.0718. Section 247.046, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 247.046. COOPERATION AMONG AGENCIES. The executive
5 commissioner by rule for the department and [board,] the Department
6 of Family and Protective [and Regulatory] Services[~~T~~] and the
7 attorney general by rule shall adopt [~~by rule~~] a memorandum of
8 understanding that:

9 (1) defines those agencies' [~~each agency's~~]
10 responsibilities concerning assisted living facilities and
11 coordinates those agencies' [~~each agency's~~] activities;

12 (2) details coordinated procedures to be used by those
13 agencies [~~each agency~~] in responding to complaints relating to
14 neglect or abuse of residents of facilities, to substandard
15 facilities, and to unlicensed facilities;

16 (3) identifies enforcement needs those agencies [~~each~~
17 agency] may have in order to perform their [~~its~~] duties under the
18 memorandum of understanding, including any need for access to
19 information or to facilities under investigation or operating under
20 a plan of correction; and

21 (4) provides a plan for correcting violations in
22 substandard or unlicensed assisted living facilities that
23 specifies the conditions under which it is appropriate to impose
24 such a plan and that outlines a schedule of implementation for the
25 plan.

26 SECTION 3.0719. Section 247.050(a), Health and Safety Code,
27 is amended to read as follows:

1 (a) The executive commissioner [board] shall adopt
2 procedures to monitor the status of unlicensed assisted living
3 facilities. As part of these procedures, the department shall:

4 (1) maintain a registry of all reported unlicensed
5 assisted living facilities for the purpose of periodic follow-up by
6 the field staff in each region; and

7 (2) prepare a quarterly report that shows the number
8 of:

9 (A) complaints relating to unlicensed assisted
10 living facilities that are received;

11 (B) complaints that are investigated;

12 (C) unsubstantiated complaints;

13 (D) substantiated complaints; and

14 (E) cases referred to the attorney general.

15 SECTION 3.0720. Sections [247.051](#)(a) and (b), Health and
16 Safety Code, are amended to read as follows:

17 (a) The executive commissioner [~~Health and Human Services~~
18 ~~Commission~~] by rule shall establish an informal dispute resolution
19 process to address disputes between a facility and the department
20 concerning a statement of violations prepared by the department in
21 accordance with this section. The process must provide for
22 adjudication by an appropriate disinterested person of disputes
23 relating to a statement of violations. The informal dispute
24 resolution process must require:

25 (1) the assisted living facility to request informal
26 dispute resolution not later than the 10th day after the date of
27 notification by the department of the violation of a standard or

1 standards;

2 (2) the commission [Health and Human Services
3 ~~Commission~~] to complete the process not later than the 90th day
4 after the date of receipt of a request from the assisted living
5 facility for informal dispute resolution;

6 (3) that, not later than the 10th business day after
7 the date an assisted living facility requests an informal dispute
8 resolution, the department forward to the assisted living facility
9 a copy of all information that is referred to in the disputed
10 statement of violations or on which a citation is based in
11 connection with the survey, inspection, investigation, or other
12 visit, excluding:

13 (A) the name of any complainant, witness, or
14 informant;

15 (B) any information that would reasonably lead to
16 the identification of a complainant, witness, or informant;

17 (C) information obtained from or contained in the
18 records of the facility;

19 (D) information that is publicly available; or

20 (E) information that is confidential by law;

21 (4) the commission [Health and Human Services
22 ~~Commission~~] to give full consideration to all factual arguments
23 raised during the informal dispute resolution process that:

24 (A) are supported by references to specific
25 information that the facility or department relies on to dispute or
26 support findings in the statement of violations; and

27 (B) are provided by the proponent of the argument

1 to the commission [~~Health and Human Services Commission~~] and the
2 opposing party;

3 (5) that informal dispute resolution staff give full
4 consideration to the information provided by the assisted living
5 facility and the department;

6 (6) that ex parte communications concerning the
7 substance of any argument relating to a survey, inspection,
8 investigation, visit, or statement of violations under
9 consideration not occur between the informal dispute resolution
10 staff and the assisted living facility or the department; and

11 (7) that the assisted living facility and the
12 department be given a reasonable opportunity to submit arguments
13 and information supporting the position of the assisted living
14 facility or the department and to respond to arguments and
15 information presented against them.

16 (b) The commission [~~Health and Human Services Commission~~]
17 may not delegate its responsibility to administer the informal
18 dispute resolution process established by this section to another
19 state agency.

20 SECTION 3.0721. Section 247.061(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) The executive commissioner [~~department~~] and the
23 attorney general shall adopt by rule a memorandum of understanding
24 that:

25 (1) defines the department's and the attorney
26 general's [~~each agency's~~] responsibilities concerning assisted
27 living facilities;

1 (2) outlines and coordinates procedures to be used by
2 those agencies in responding to complaints concerning assisted
3 living facilities; and

4 (3) provides a plan for correcting violations or
5 deficiencies in assisted living facilities.

6 SECTION 3.0722. Section [247.062](#)(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) The department shall prepare a directory of assisted
9 living facilities that includes the name of the owner, the address
10 and telephone number of the facility, the number of beds in the
11 facility, and the facility's accessibility to persons with
12 disabilities [~~disabled persons~~].

13 SECTION 3.0723. Section [247.063](#), Health and Safety Code, is
14 amended to read as follows:

15 Sec. 247.063. REFERRALS. (a) If the [Texas] Department of
16 State Health Services, the department, [Mental Health and Mental
17 ~~Retardation or]~~ a local mental health authority, or a local
18 intellectual and developmental disability [mental retardation]
19 authority refers a patient or client to an assisted living
20 facility, the referral may not be made to a facility that is not
21 licensed under this chapter.

22 (b) If the [Texas] Department of State Health Services
23 [~~Mental Health and Mental Retardation~~] or a local mental health or
24 intellectual and developmental disability [mental retardation]
25 authority gains knowledge of an assisted living facility that is
26 not operated or licensed by the department or [Texas Department of
27 ~~Mental Health and Mental Retardation,~~] the authority[, or the Texas

1 ~~Department of Human Services~~] and that has four or more residents
2 who are unrelated to the proprietor of the facility, the [Texas]
3 Department of State Health Services [~~Mental Health and Mental~~
4 ~~Retardation~~] or the authority shall report the name, address, and
5 telephone number of the facility to the department [Texas
6 ~~Department of Human Services~~].

7 SECTION 3.0724. Section 247.0631, Health and Safety Code,
8 is amended to read as follows:

9 Sec. 247.0631. ACCESS. An employee of the [Texas]
10 Department of State Health Services [~~Mental Health and Mental~~
11 ~~Retardation~~] or an employee of a local mental health or
12 intellectual and developmental disability [~~and mental retardation~~]
13 authority may enter an assisted living facility as necessary to
14 provide services to a resident of the facility.

15 SECTION 3.0725. Section 247.066(e), Health and Safety Code,
16 is amended to read as follows:

17 (e) To facilitate obtaining the written statements required
18 under Subsections (b-1) and (c)(1)-(3), the department shall
19 develop standard forms that must be used under Subsections (b-1) or
20 (c)(1)-(3), as appropriate. The executive commissioner by rule
21 [~~department~~] shall develop criteria under which the department will
22 determine, based on a resident's specific situation, whether it
23 will grant or deny a request for a waiver under Subsection (b-1) or
24 (c)(4).

25 SECTION 3.0726. Section 247.094(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) The arbitrator may enter any order that may be entered

1 by the department, executive commissioner [board], commissioner,
2 or court under this chapter in relation to a dispute described by
3 Section 247.081.

4 SECTION 3.0727. Section 248.002, Health and Safety Code, is
5 amended by amending Subdivisions (1) and (2) and adding Subdivision
6 (2-a) to read as follows:

7 (1) "Commissioner" means the commissioner of state
8 health services [Board means the Texas Board of Health].

9 (2) "Department" means the [Texas] Department of State
10 Health Services.

11 (2-a) "Executive commissioner" means the executive
12 commissioner of the Health and Human Services Commission.

13 SECTION 3.0728. Section 248.003, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

16 (1) a home and community support services agency
17 required to be licensed under Chapter 142;

18 (2) a person required to be licensed under Chapter 241
19 (Texas Hospital Licensing Law);

20 (3) an institution required to be licensed under
21 Chapter 242;

22 (4) an ambulatory surgical center required to be
23 licensed under Chapter 243 (Texas Ambulatory Surgical Center
24 Licensing Act);

25 (5) a birthing center required to be licensed under
26 Chapter 244 (Texas Birthing Center Licensing Act);

27 (6) a facility required to be licensed under Chapter

1 245 (Texas Abortion Facility Reporting and Licensing Act);
2 (7) a general residential operation [~~child care~~
3 ~~institution~~], foster group home, foster [~~family~~] home, and
4 child-placing agency, for children in foster care or other
5 residential care who are under the conservatorship of the
6 Department of Family and Protective [~~and Regulatory~~] Services; or
7 (8) a person providing medical or nursing care or
8 services under a license or permit issued under other state law.

9 SECTION 3.0729. Sections 248.022(a) and (b), Health and
10 Safety Code, are amended to read as follows:

11 (a) An applicant for a license must submit an application to
12 the department on a form prescribed by the department and in
13 accordance with department [~~board~~] rules.

14 (b) Each application must be accompanied by a nonrefundable
15 license fee in an amount set by the executive commissioner by rule
16 [~~board~~].

17 SECTION 3.0730. Section 248.023, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 248.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The
20 department shall issue a license to an applicant if on inspection
21 and investigation it finds that the applicant meets the
22 requirements of this chapter and department [~~the~~] rules [~~adopted by~~
23 ~~the board~~].

24 (b) A license shall be renewed at the times and in
25 accordance with department [~~the~~] rules [~~established by the board~~].

26 SECTION 3.0731. Sections 248.024(a), (b), and (d), Health
27 and Safety Code, are amended to read as follows:

1 (a) The executive commissioner by rule [board] shall
2 establish a license application fee and a license renewal fee in
3 amounts as prescribed by Section 12.0111 [~~the amount of \$25 for each~~
4 ~~facility bed or \$200, whichever is greater, but the fees may not~~
5 ~~exceed \$1,000~~].

6 (b) The executive commissioner by rule [board] may
7 establish other reasonable and necessary fees in amounts that are
8 adequate, with the license application and license renewal fees, to
9 collect sufficient revenue to meet the expenses necessary to
10 administer this chapter. The fees may include construction plan
11 review and inspection fees.

12 (d) All fees received by the department shall be deposited
13 to the credit of the General Revenue Fund [~~and may be appropriated~~
14 ~~only to the department to administer this chapter~~].

15 SECTION 3.0732. Section 248.026, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 248.026. DUTIES OF EXECUTIVE COMMISSIONER [BOARD]. (a)
18 The executive commissioner [board] shall adopt rules necessary to
19 implement this chapter. The rules must establish minimum standards
20 for special care facilities relating to:

21 (1) the issuance, renewal, denial, suspension, and
22 revocation of the license required by this chapter;

23 (2) the qualifications, duties, and supervision of
24 professional and nonprofessional personnel and volunteers;

25 (3) residents' rights;

26 (4) medical and nursing care and services provided by
27 a license holder;

1 (5) the organizational structure, lines of authority,
2 delegation of responsibility, and operation of a special care
3 facility;

4 (6) records of care and services kept by the license
5 holder, including the disposal or destruction of those records;

6 (7) safety, fire prevention, and sanitary provisions;

7 (8) transfer of residents in a medically appropriate
8 manner from or to a special care facility;

9 (9) construction plan approval and inspection; and

10 (10) any aspects of a special care facility as
11 necessary to protect the public or residents of the facility.

12 (b) Subsection (a) does not authorize the executive
13 commissioner [board] to establish the qualifications of licensed
14 health care providers or permit the executive commissioner [board]
15 to authorize persons to provide health care services who are not
16 authorized to provide those services under other state law.

17 SECTION 3.0733. Section 248.027(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) If there are no local regulations in effect or enforced
20 in the area in which a special care facility is located, the
21 facility's construction must conform to the minimum standards
22 established by the executive commissioner [board].

23 SECTION 3.0734. Sections 248.029(a) and (b), Health and
24 Safety Code, are amended to read as follows:

25 (a) The executive commissioner [board] by rule shall adopt
26 standards for the designation of a special care facility licensed
27 under this chapter as a residential AIDS hospice. Those standards

1 shall be consistent with other standards adopted under this chapter
2 and consistent with the purposes for which special care facilities
3 are created.

4 (b) In adopting the standards, the executive commissioner
5 [board] shall consider rules adopted for the designation of a
6 hospice under Chapter 142 and shall establish specific standards
7 requiring:

8 (1) the provision of exclusively palliative care by a
9 facility;

10 (2) the provision of bereavement services;

11 (3) the provision of support services to the family of
12 a client;

13 (4) the participation of a registered nurse in the
14 development of an initial plan of care for a client and periodic
15 review of the plan of care by an interdisciplinary team of the
16 facility; and

17 (5) clinical and medical review of patient care
18 services by a physician who acts as a medical consultant.

19 SECTION 3.0735. Section 248.052, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 248.052. EMERGENCY SUSPENSION. The department may
22 issue an emergency order to suspend any license issued under this
23 chapter if the department has reasonable cause to believe that the
24 conduct of a license holder creates an immediate danger to the
25 public health and safety. An emergency suspension is effective
26 immediately without a hearing on notice to the license holder. On
27 written request of the license holder to the department for a

1 hearing, the department shall refer the matter to the State Office
2 of Administrative Hearings. An administrative law judge of that
3 office [, the department] shall conduct a hearing not earlier than
4 the 10th day or later than the 30th day after the date the hearing
5 request is received by the department to determine if the emergency
6 suspension is to be continued, modified, or rescinded. The hearing
7 and any appeal are governed by the department's rules for a
8 contested case hearing and Chapter 2001, Government Code.

9 SECTION 3.0736. Section 248.053, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 248.053. INJUNCTION. (a) The department may request
12 that the attorney general petition a district court to restrain a
13 license holder or other person from continuing to violate this
14 chapter or any rule adopted by the executive commissioner [~~board~~]
15 under this chapter. Venue for a suit for injunctive relief is in
16 Travis County.

17 (b) On application for injunctive relief and a finding that
18 a license holder or other person has violated this chapter or
19 department [~~board~~] rules, the district court shall grant the
20 injunctive relief that the facts warrant.

21 SECTION 3.0737. Section 248.054, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 248.054. CIVIL PENALTY. A license holder or person who
24 violates this chapter or a rule adopted by the executive
25 commissioner [~~board~~] under this chapter is liable for a civil
26 penalty, to be imposed by a district court, of not more than \$1,000
27 for each day of violation. All penalties collected under this

1 section shall be deposited to the credit of the General Revenue
2 Fund.

3 SECTION 3.0738. Section 248.101(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) The department [~~of health~~] may impose an administrative
6 penalty on a person licensed under this chapter who violates this
7 chapter or a rule or order adopted under this chapter.

8 SECTION 3.0739. Section 248.104(b), Health and Safety Code,
9 is amended to read as follows:

10 (b) If the person accepts the determination and recommended
11 penalty or if the person fails to respond to the notice, the
12 department [~~commissioner of public health~~] by order shall [~~approve~~
13 ~~the determination and~~] impose the recommended penalty.

14 SECTION 3.0740. Section 248.105, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 248.105. HEARING. (a) If the person requests a
17 hearing, the department [~~commissioner of public health~~] shall refer
18 the matter to the State Office of Administrative Hearings, which
19 shall promptly set a hearing date. The department shall [and] give
20 written notice of the time and place of the hearing to the person.
21 An administrative law judge of the State Office of Administrative
22 Hearings shall conduct the hearing.

23 (b) The administrative law judge shall make findings of fact
24 and conclusions of law and promptly issue to the department
25 [~~commissioner of public health~~] a written proposal for a decision
26 about the occurrence of the violation and the amount of a proposed
27 penalty.

1 SECTION 3.0741. Section 248.106, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 248.106. DECISION BY DEPARTMENT [~~COMMISSIONER~~]. (a)
4 Based on the findings of fact, conclusions of law, and proposal for
5 a decision, the department [~~commissioner of public health~~] by order
6 may:

7 (1) find that a violation occurred and impose a
8 penalty; or

9 (2) find that a violation did not occur.

10 (b) The notice of the department's [~~commissioner's~~] order
11 under Subsection (a) that is sent to the person in accordance with
12 Chapter 2001, Government Code, must include a statement of the
13 right of the person to judicial review of the order.

14 SECTION 3.0742. Section 248.107, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 248.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
17 Within 30 days after the date the order of the department
18 [~~commissioner of public health~~] under Section 248.106 that imposes
19 an administrative penalty becomes final, the person shall:

20 (1) pay the penalty; or

21 (2) file a petition for judicial review of the
22 department's [~~commissioner's~~] order contesting the occurrence of
23 the violation, the amount of the penalty, or both.

24 SECTION 3.0743. Section 248.108, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 248.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within
27 the 30-day period prescribed by Section 248.107, a person who files

1 a petition for judicial review may:

2 (1) stay enforcement of the penalty by:

3 (A) paying the penalty to the court for placement
4 in an escrow account; or

5 (B) giving the court a supersedeas bond approved
6 by the court that:

7 (i) is for the amount of the penalty; and

8 (ii) is effective until all judicial review
9 of the department's [~~commissioner's~~] order is final; or

10 (2) request the court to stay enforcement of the
11 penalty by:

12 (A) filing with the court a sworn affidavit of
13 the person stating that the person is financially unable to pay the
14 penalty and is financially unable to give the supersedeas bond; and
15 (B) sending a copy of the affidavit to the
16 department [~~commissioner of public health~~] by certified mail.

17 (b) If the department [~~commissioner of public health~~]
18 receives a copy of an affidavit under Subsection (a)(2), the
19 department [~~commissioner~~] may file with the court, within five days
20 after the date the copy is received, a contest to the affidavit.
21 The court shall hold a hearing on the facts alleged in the affidavit
22 as soon as practicable and shall stay the enforcement of the penalty
23 on finding that the alleged facts are true. The person who files an
24 affidavit has the burden of proving that the person is financially
25 unable to pay the penalty or to give a supersedeas bond.

26 SECTION 3.0744. Section 248A.052(a), Health and Safety
27 Code, is amended to read as follows:

1 (a) An applicant for a prescribed pediatric extended care
2 center license shall submit to the department in accordance with
3 department [~~executive commissioner~~] rules:

4 (1) a sworn application on the form prescribed by the
5 department;

6 (2) a letter of credit as prescribed by the department
7 to demonstrate the applicant's financial viability; and

8 (3) the required fees.

9 SECTION 3.0745. Section [248A.053\(b\)](#), Health and Safety
10 Code, is amended to read as follows:

11 (b) A person applying to renew a center license shall:

12 (1) submit a renewal application to the department on
13 the form prescribed by the department at least 60 days but not more
14 than 120 days before expiration of the license;

15 (2) submit the renewal fee in the amount required by
16 [~~the~~] department rule; and

17 (3) comply with any other requirements specified by
18 department [~~executive commissioner~~] rule.

19 SECTION 3.0746. Section [248A.101\(b\)](#), Health and Safety
20 Code, is amended to read as follows:

21 (b) To protect the health and safety of the public and
22 ensure the health, safety, and comfort of the minors served by a
23 center, the rules must establish minimum center standards,
24 including:

25 (1) standards relating to the issuance, renewal,
26 denial, suspension, probation, and revocation of a license to
27 operate a center;

1 (2) standards relating to the provision of
2 family-centered basic services that include individualized
3 medical, developmental, and family training services;

4 (3) based on the size of the building and the number of
5 minors served, building construction and renovation standards,
6 including standards for plumbing, electrical, glass, manufactured
7 buildings, accessibility for persons with physical disabilities
8 [~~the physically disabled~~], and fire protection;

9 (4) based on the size of the building and the number of
10 minors served, building maintenance conditions relating to
11 plumbing, heating, lighting, ventilation, adequate space, fire
12 protection, and other conditions;

13 (5) standards relating to the minimum number of and
14 qualifications required for personnel who provide personal care or
15 basic services to the minors served;

16 (6) standards relating to the sanitary conditions
17 within a center and its surroundings, including water supply,
18 sewage disposal, food handling, and general hygiene;

19 (7) standards relating to the programs offered by the
20 center to promote and maintain the health and development of the
21 minors served and to meet the training needs of the minors' parents
22 or legal guardians;

23 (8) standards relating to physician-prescribed
24 supportive services;

25 (9) standards relating to transportation services;
26 and

27 (10) standards relating to maintenance of patient

1 medical records and program records in accordance with other law
2 and with accepted professional standards and practices.

3 SECTION 3.0747. Sections [248A.103](#)(a) and (b), Health and
4 Safety Code, are amended to read as follows:

5 (a) The executive commissioner by rule shall set fees
6 imposed by this chapter in amounts reasonable and necessary to
7 cover the cost of administering this chapter.

8 (b) A fee collected under this chapter shall be deposited in
9 the state treasury to the credit of the general revenue fund [~~and~~
10 ~~shall be appropriated to the department to administer and enforce~~
11 ~~this chapter~~].

12 SECTION 3.0748. Section [248A.152](#)(b), Health and Safety
13 Code, is amended to read as follows:

14 (b) A center may not provide services other than services
15 regulated under this chapter and department [~~executive~~
16 ~~commissioner~~] rule.

17 SECTION 3.0749. Section [248A.251](#), Health and Safety Code,
18 is amended to read as follows:

19 Sec. 248A.251. IMPOSITION OF PENALTY. The department
20 [~~commissioner~~] may impose an administrative penalty on a person
21 licensed under this chapter who violates this chapter or a rule or
22 standard adopted or order issued under this chapter.

23 SECTION 3.0750. Section [248A.254](#)(b), Health and Safety
24 Code, is amended to read as follows:

25 (b) If the person accepts the determination and recommended
26 penalty or if the person fails to respond to the notice, the
27 department [~~commissioner~~] by order shall approve the determination

1 and impose the recommended penalty.

2 SECTION 3.0751. Section **248A.255**, Health and Safety Code,
3 is amended to read as follows:

4 Sec. 248A.255. HEARING. (a) If the person requests a
5 hearing, the department [~~commissioner~~] shall refer the matter to
6 the State Office of Administrative Hearings, which shall promptly
7 set a hearing date and give written notice of the time and place of
8 the hearing to the person. An administrative law judge of the State
9 Office of Administrative Hearings shall conduct the hearing.

10 (b) The administrative law judge shall make findings of fact
11 and conclusions of law and promptly issue to the department
12 [~~commissioner~~] a proposal for a decision about the occurrence of
13 the violation and the amount of a proposed penalty.

14 SECTION 3.0752. Section **248A.256**, Health and Safety Code,
15 is amended to read as follows:

16 Sec. 248A.256. DECISION BY DEPARTMENT [~~COMMISSIONER~~]. (a)
17 Based on the findings of fact, conclusions of law, and proposal for
18 a decision, the department [~~commissioner~~] by order may:

19 (1) find that a violation occurred and impose a
20 penalty; or

21 (2) find that a violation did not occur.

22 (b) The notice of the department's [~~commissioner's~~] order
23 under Subsection (a) that is sent to the person in accordance with
24 Chapter 2001, Government Code, must include a statement of the
25 right of the person to judicial review of the order.

26 SECTION 3.0753. Section **248A.257**, Health and Safety Code,
27 is amended to read as follows:

1 Sec. 248A.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
2 Not later than the 30th day after the date the order of the
3 department [~~commissioner~~] imposing an administrative penalty under
4 Section 248A.256 becomes final, the person shall:

- 5 (1) pay the penalty; or
6 (2) file a petition for judicial review of the
7 department's [~~commissioner's~~] order contesting the occurrence of
8 the violation, the amount of the penalty, or both.

9 SECTION 3.0754. Section 248A.258, Health and Safety Code,
10 is amended to read as follows:

11 Sec. 248A.258. STAY OF ENFORCEMENT OF PENALTY. (a) Within
12 the period prescribed by Section 248A.257, a person who files a
13 petition for judicial review may:

- 14 (1) stay enforcement of the penalty by:
15 (A) paying the penalty to the court for placement
16 in an escrow account in the court registry; or
17 (B) giving the court a supersedeas bond approved
18 by the court that:

19 (i) is for the amount of the penalty; and
20 (ii) is effective until all judicial review
21 of the department's [~~commissioner's~~] order is final; or

- 22 (2) request the court to stay enforcement of the
23 penalty by:

24 (A) filing with the court a sworn affidavit of
25 the person stating that the person is financially unable to pay the
26 penalty and is financially unable to give the supersedeas bond; and
27 (B) sending a copy of the affidavit to the

1 department [~~commissioner~~] by certified mail.

2 (b) If the department [~~commissioner~~] receives a copy of an
3 affidavit under Subsection (a)(2), the department [~~commissioner~~]
4 may file with the court, not later than the fifth day after the date
5 the copy is received, a contest to the affidavit. The court shall
6 hold a hearing on the facts alleged in the affidavit as soon as
7 practicable and shall stay the enforcement of the penalty on
8 finding that the alleged facts are true. The person who files an
9 affidavit has the burden of proving that the person is financially
10 unable to pay the penalty and to give a supersedeas bond.

11 SECTION 3.0755. Section 250.001(3), Health and Safety Code,
12 as amended by Chapters 605 (S.B. 944) and 1168 (S.B. 492), Acts of
13 the 83rd Legislature, Regular Session, 2013, is reenacted and
14 amended to read as follows:

15 (3) "Facility" means:

16 (A) a nursing facility [~~home~~], custodial care
17 home, or other institution licensed by the Department of Aging and
18 Disability Services under Chapter 242;

19 (B) an assisted living facility licensed by the
20 Department of Aging and Disability Services under Chapter 247;

21 (C) a home and community support services agency
22 licensed under Chapter 142;

23 (D) an adult day care facility licensed by the
24 Department of Aging and Disability Services under Chapter 103,
25 Human Resources Code;

26 (E) an ICF-IID [~~a facility for persons with~~
27 ~~mental retardation~~] licensed under Chapter 252;

1 (F) an adult foster care provider that contracts
2 with the Department of Aging and Disability Services;

3 (G) a facility that provides mental health
4 services and that is operated by or contracts with the Department of
5 State Health Services;

6 (H) a local mental health [~~or mental retardation~~]
7 authority designated under Section 533.035 or a local intellectual
and developmental disability authority designated under Section
533.035;

10 (I) a person exempt from licensing under Section
11 142.003(a)(19);

12 (J) a special care facility licensed by the
13 Department of State Health Services under Chapter 248; [~~or~~]

14 (K) a mental health service unit of a hospital
15 licensed under Chapter 241; or

16 (L) [~~(K)~~] a prescribed pediatric extended care
17 center licensed by the Department of Aging and Disability Services
18 under Chapter 248A.

19 SECTION 3.0756. Section 250.002(d), Health and Safety Code,
20 is amended to read as follows:

21 (d) The executive commissioner of the Health and Human
22 Services Commission [~~A regulatory agency~~] may adopt rules relating
23 to the processing of information requested or obtained under this
24 chapter.

25 SECTION 3.0757. Sections 250.006(a) and (b), Health and
26 Safety Code, are amended to read as follows:

27 (a) A person for whom the facility or the individual

1 employer is entitled to obtain criminal history record information
2 may not be employed in a facility or by an individual employer if
3 the person has been convicted of an offense listed in this
4 subsection:

5 (1) an offense under Chapter 19, Penal Code (criminal
6 homicide);

7 (2) an offense under Chapter 20, Penal Code
8 (~~kidnapping, [and] unlawful restraint, and smuggling of persons~~);

9 (3) an offense under Section [21.02](#), Penal Code
10 (continuous sexual abuse of young child or children), or Section
11 [21.11](#), Penal Code (indecency with a child);

12 (4) an offense under Section [22.011](#), Penal Code
13 (sexual assault);

14 (5) an offense under Section [22.02](#), Penal Code
15 (aggravated assault);

16 (6) an offense under Section [22.04](#), Penal Code (injury
17 to a child, elderly individual, or disabled individual);

18 (7) an offense under Section [22.041](#), Penal Code
19 (abandoning or endangering child);

20 (8) an offense under Section [22.08](#), Penal Code (aiding
21 suicide);

22 (9) an offense under Section [25.031](#), Penal Code
23 (agreement to abduct from custody);

24 (10) an offense under Section [25.08](#), Penal Code (sale
25 or purchase of [~~a~~] child);

26 (11) an offense under Section [28.02](#), Penal Code
27 (arson);

1 (12) an offense under Section [29.02](#), Penal Code
2 (robbery);
3 (13) an offense under Section [29.03](#), Penal Code
4 (aggravated robbery);
5 (14) an offense under Section [21.08](#), Penal Code
6 (indecent exposure);
7 (15) an offense under Section [21.12](#), Penal Code
8 (improper relationship between educator and student);
9 (16) an offense under Section [21.15](#), Penal Code
10 (improper photography or visual recording);
11 (17) an offense under Section [22.05](#), Penal Code
12 (deadly conduct);
13 (18) an offense under Section [22.021](#), Penal Code
14 (aggravated sexual assault);
15 (19) an offense under Section [22.07](#), Penal Code
16 (terroristic threat);
17 (20) an offense under Section [32.53](#), Penal Code
18 (exploitation of [a] child, elderly individual, or disabled
19 individual);
20 (21) an offense under Section [33.021](#), Penal Code
21 (online solicitation of a minor);
22 (22) an offense under Section [34.02](#), Penal Code (money
23 laundering);
24 (23) an offense under Section [35A.02](#), Penal Code
25 (Medicaid fraud);
26 (24) an offense under Section [36.06](#), Penal Code
27 (obstruction or retaliation);

1 (25) an offense under Section [42.09](#), Penal Code
2 (cruelty to livestock animals), or under Section [42.092](#), Penal Code
3 (cruelty to nonlivestock animals); or

4 (26) a conviction under the laws of another state,
5 federal law, or the Uniform Code of Military Justice for an offense
6 containing elements that are substantially similar to the elements
7 of an offense listed by this subsection.

8 (b) A person may not be employed in a position the duties of
9 which involve direct contact with a consumer in a facility or may
10 not be employed by an individual employer before the fifth
11 anniversary of the date the person is convicted of:

12 (1) an offense under Section [22.01](#), Penal Code
13 (assault), that is punishable as a Class A misdemeanor or as a
14 felony;

15 (2) an offense under Section [30.02](#), Penal Code
16 (burglary);

17 (3) an offense under Chapter 31, Penal Code (theft),
18 that is punishable as a felony;

19 (4) an offense under Section [32.45](#), Penal Code
20 (misapplication of fiduciary property or property of [a] financial
21 institution), that is punishable as a Class A misdemeanor or a
22 felony;

23 (5) an offense under Section [32.46](#), Penal Code
24 (securing execution of [a] document by deception), that is
25 punishable as a Class A misdemeanor or a felony;

26 (6) an offense under Section [37.12](#), Penal Code (false
27 identification as peace officer; misrepresentation of property);

1 or

2 (7) an offense under Section 42.01(a)(7), (8), or (9),
3 Penal Code (disorderly conduct).

4 SECTION 3.0758. Section 251.001, Health and Safety Code, is
5 amended by amending Subdivisions (2), (3), and (8) and adding
6 Subdivision (7-a) to read as follows:

7 (2) "Commissioner" means the commissioner of state
8 [~~public~~] health services.

9 (3) "Department" means the [~~Texas~~] Department of State
10 Health Services.

11 (7-a) "Executive commissioner" means the executive
12 commissioner of the Health and Human Services Commission.

13 (8) "Medical review board" means a medical review
14 board that:

15 (A) is appointed by a renal disease network
16 organization which includes this state; and

17 (B) has a contract with the Centers for Medicare
18 and Medicaid Services [~~Health Care Financing Administration of the~~
19 ~~United States Department of Health and Human Services~~] under
20 Section 1881, Title XVIII, Social Security Act (42 U.S.C. Section
21 1395rr).

22 SECTION 3.0759. Sections 251.002(a) and (b), Health and
23 Safety Code, are amended to read as follows:

24 (a) The executive commissioner by rule [~~board~~] shall set
25 fees imposed by this chapter in amounts reasonable and necessary to
26 defray the cost of administering this chapter and as prescribed by
27 Section 12.0111.

1 (b) In setting fees under this section, the executive
2 commissioner [~~board~~] shall consider setting a range of license and
3 renewal fees based on the number of dialysis stations at each end
4 stage renal disease facility and the patient census.

5 SECTION 3.0760. Section 251.003, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 251.003. ADOPTION OF RULES. The executive
8 commissioner [~~board~~] shall adopt rules to implement this chapter,
9 including requirements for the issuance, renewal, denial,
10 suspension, and revocation of a license to operate an end stage
11 renal disease facility.

12 SECTION 3.0761. Sections 251.013(a), (f), and (g), Health
13 and Safety Code, are amended to read as follows:

14 (a) An applicant for a license under this chapter must
15 submit an application to the department on a form prescribed by the
16 department [~~board~~].

17 (f) The license is renewable every two years [~~annually~~]
18 after submission of:

19 (1) the renewal application and fee; and
20 (2) a [~~an annual~~] report on a form prescribed by the
21 department [~~board~~].

22 (g) The [~~annual~~] report required under Subsection (f) must
23 include information related to the quality of care at the end stage
24 renal disease facility. The report must be in the form and
25 documented by evidence as required by department [~~board~~] rule.

26 SECTION 3.0762. Section 251.015(a), Health and Safety Code,
27 is amended to read as follows:

1 (a) A medical review board shall advise the executive
2 commissioner and the department [board] on minimum standards and
3 rules to be adopted by the executive commissioner under this
4 chapter.

5 SECTION 3.0763. Section 251.032, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 251.032. MINIMUM REQUIREMENTS; TRAINING. The
8 department rules adopted [by the board] under Section 251.003 shall
9 establish:

10 (1) minimum standards for the curricula and
11 instructors used to train individuals to act as dialysis
12 technicians;

13 (2) minimum standards for the determination of the
14 competency of individuals who have been trained as dialysis
15 technicians;

16 (3) minimum requirements for documentation that an
17 individual has been trained and determined to be competent as a
18 dialysis technician and the acceptance of that documentation by
19 another end stage renal disease facility that may later employ the
20 individual; and

21 (4) the acts and practices that are allowed or
22 prohibited for dialysis technicians.

23 SECTION 3.0764. Section 251.052(b), Health and Safety Code,
24 is amended to read as follows:

25 (b) In this section, "unauthorized person" does not
26 include:

27 (1) the department;

1 (2) the Health and Human Services Commission,
2 including the office of the inspector general;
3 (3) the office of the attorney general; or
4 (4) (-3) any other person authorized by law to make
5 an inspection or to accompany an inspector.

6 SECTION 3.0765. Section 251.0621, Health and Safety Code,
7 is amended to read as follows:

8 Sec. 251.0621. EMERGENCY SUSPENSION. The department may
9 issue an emergency order to suspend a license issued under this
10 chapter if the department has reasonable cause to believe that the
11 conduct of a license holder creates an immediate danger to the
12 public health and safety. An emergency suspension is effective
13 immediately without a hearing on notice to the license holder. On
14 written request of the license holder, the department shall refer
15 the matter to the State Office of Administrative Hearings, and an
16 administrative law judge of that office [~~the department~~] shall
17 conduct a hearing not earlier than the 10th day or later than the
18 30th day after the date the hearing request is received to determine
19 if the emergency suspension is to be continued, modified, or
20 rescinded. The hearing and any appeal are governed by the
21 department's rules for a contested case hearing and Chapter 2001,
22 Government Code.

23 SECTION 3.0766. Section 251.067(c), Health and Safety Code,
24 is amended to read as follows:

25 (c) If the person notified of the violation accepts the
26 determination of the department, the department [~~commissioner or~~
27 ~~the commissioner's designee~~] shall [~~issue an~~] order [~~approving the~~

1 ~~determination and ordering that~~] the person to pay the recommended
2 penalty.

3 SECTION 3.0767. Section 251.068, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 251.068. HEARING; ORDER. (a) If the person notified
6 fails to respond in a timely manner to the notice under Section
7 251.067(b) or if the person requests a hearing, the department
8 shall refer the matter to the State Office of Administrative
9 Hearings and an administrative law judge of that office shall
10 conduct the hearing.

11 (a-1) The department [~~commissioner or the commissioner's~~
12 ~~designee~~] shall[~~+~~

13 [~~(1) set a hearing,~~

14 [~~(2)~~] give written notice of the hearing to the
15 person[~~, and~~

16 [~~(3) designate a hearings examiner to conduct the~~
17 ~~hearing~~].

18 (b) The administrative law judge [~~hearings examiner~~] shall
19 make findings of fact and conclusions of law and shall promptly
20 issue to the department [~~commissioner~~] a written proposal for
21 decision as to the occurrence of the violation and a recommendation
22 as to the amount of the proposed penalty if a penalty is determined
23 to be warranted.

24 (c) Based on the findings of fact and conclusions of law and
25 the recommendations of the administrative law judge [~~hearings~~
26 ~~examiner~~], the department [~~commissioner~~] by order may find that a
27 violation has occurred and may assess a penalty, or may find that no

1 violation has occurred.

2 SECTION 3.0768. Sections 251.069(a), (c), and (f), Health
3 and Safety Code, are amended to read as follows:

4 (a) The department [~~commissioner or the commissioner's~~
5 ~~designee~~] shall give notice of the department's [~~commissioner's~~]
6 order under Section 251.068(c) to the person notified. The notice
7 must include:

8 (1) separate statements of the findings of fact and
9 conclusions of law;

10 (2) the amount of any penalty assessed; and

11 (3) a statement of the right of the person to judicial
12 review of the department's [~~commissioner's~~] order.

13 (c) Within the 30-day period, a person who acts under
14 Subsection (b)(3) may:

15 (1) stay enforcement of the penalty by:

16 (A) paying the amount of the penalty to the court
17 for placement in an escrow account; or

18 (B) giving to the court a supersedeas bond that
19 is approved by the court for the amount of the penalty and that is
20 effective until all judicial review of the department's [~~board's~~]
21 order is final; or

22 (2) request the court to stay enforcement of the
23 penalty by:

24 (A) filing with the court a sworn affidavit of
25 the person stating that the person is financially unable to pay the
26 amount of the penalty and is financially unable to give the
27 supersedeas bond; and

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(B) giving a copy of the affidavit to the department by certified mail.

3 (f) Judicial review of the department's order [of the
4 ~~board~~]:

8 SECTION 3.0769. Section 251.071(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) The department may assess reasonable expenses and costs
11 against a person in an administrative hearing if, as a result of the
12 hearing, the person's license is denied, suspended, or revoked or
13 if administrative penalties are assessed against the person. The
14 person shall pay expenses and costs assessed under this subsection
15 not later than the 30th day after the date a department [of a board]
16 order requiring the payment of expenses and costs is final. The
17 department may refer the matter to the attorney general for
18 collection of the expenses and costs.

19 SECTION 3.0770. The heading to Chapter 252, Health and
20 Safety Code, is amended to read as follows:

21 CHAPTER 252. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN
22 INTELLECTUAL DISABILITY [~~THE MENTALLY RETARDED~~]

23 SECTION 3.0771. Section 252.001, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 252.001. PURPOSE. The purpose of this chapter is to
26 promote the public health, safety, and welfare by providing for the
27 development, establishment, and enforcement of standards for the

1 provision of services to individuals residing in intermediate care
2 facilities for individuals with an intellectual disability [~~the~~
3 ~~mentally retarded~~] and the establishment, construction,
4 maintenance, and operation of facilities providing this service
5 that, in light of advancing knowledge, will promote quality in the
6 delivery of services and treatment of residents.

7 SECTION 3.0772. Section 252.002, Health and Safety Code, is
8 amended by amending Subdivisions (1), (2), (4), and (7) and adding
9 Subdivisions (1-a) and (3-a) to read as follows:

10 (1) "Commission" means the Health and Human Services
11 Commission [~~Board~~ means the Texas Board of Human Services].

12 (1-a) "Commissioner" means the commissioner of aging
13 and disability services.

14 (2) "Department" means the [Texas] Department of Aging
15 and Disability [~~Human~~] Services.

16 (3-a) "Executive commissioner" means the executive
17 commissioner of the Health and Human Services Commission.

18 (4) "Facility" means a home or an establishment that:
19 (A) furnishes food, shelter, and treatment or
20 services to four or more individuals [~~persons~~] unrelated to the
21 owner;

22 (B) is primarily for the diagnosis, treatment, or
23 rehabilitation of individuals [~~persons~~] with an intellectual
24 disability [~~mental retardation~~] or related conditions; and

25 (C) provides in a protected setting continuous
26 evaluation, planning, 24-hour supervision, coordination, and
27 integration of health or rehabilitative services to help each

1 resident function at the resident's greatest ability.

2 (7) "Resident" means an individual, including a
3 client, with an intellectual disability [~~mental retardation~~] or a
4 related condition who is residing in a facility licensed under this
5 chapter.

6 SECTION 3.0773. Section 252.003, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 252.003. EXEMPTIONS. Except as otherwise provided by
9 this chapter, this chapter does not apply to:

10 (1) an establishment that:

11 (A) [(-1)] provides training, habilitation,
12 rehabilitation, or education to individuals with an intellectual
13 disability [~~mental retardation~~] or [a] related conditions
14 [~~condition~~];

15 (B) [(-2)] is operated under the jurisdiction of a
16 state or federal agency, including the department, commission,
17 Department of Assistive and Rehabilitative Services, [~~Department~~
18 ~~of Aging and Disability Services,~~] Department of State Health
19 Services, [~~Health and Human Services Commission,~~] Texas Department
20 of Criminal Justice, and United States Department of Veterans
21 Affairs; and

22 (C) [(-3)] is certified through inspection or
23 evaluation as meeting the standards established by the state or
24 federal agency; or [~~and~~]

25 (2) an establishment that [(-4)] is conducted by or for
26 the adherents of a well-recognized church or religious denomination
27 for the purpose of providing facilities for the care or treatment of

1 individuals who are ill and [~~the sick~~] who depend exclusively on
2 prayer or spiritual means for healing, without the use of any drug
3 or material remedy, if the establishment complies with safety,
4 sanitary, and quarantine laws and rules.

5 SECTION 3.0774. Section 252.007, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 252.007. PAPERWORK REDUCTION RULES. (a) The
8 executive commissioner [~~department and any designee of the~~
9 ~~department~~] shall[~~+~~

10 [~~(1)~~] adopt rules to reduce the amount of paperwork a
11 facility must complete and retain.

12 (a-1) The department shall[~~,~~~~and~~

13 [~~(2)~~] attempt to reduce the amount of paperwork to the
14 minimum amount required by state and federal law unless the
15 reduction would jeopardize resident safety.

16 (b) The department[~~, any designee of the department,~~] and
17 each facility shall work together to review rules and propose
18 changes in paperwork requirements so that additional time is
19 available for direct resident care.

20 SECTION 3.0775. Section 252.008, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 252.008. RULES GENERALLY. [~~(a)~~] The executive
23 commissioner [~~board~~] shall adopt rules related to the
24 administration and implementation of this chapter.

25 [~~(b)~~] The department and the Texas Department of Mental
26 Health and Mental Retardation shall cooperate in developing
27 proposed rules under this section. Before the board adopts a rule

1 ~~applicable to a facility, the board shall present the proposed rule~~
2 ~~to the commissioner of mental health and mental retardation for~~
3 ~~review of the effects of the proposed rule. Not later than the 31st~~
4 ~~day after the date the proposed rule is received, the commissioner~~
5 ~~of mental health and mental retardation shall provide the board a~~
6 ~~written statement of the effects of the proposed rule. The board~~
7 ~~shall consider the statement in adopting a rule under this~~
8 ~~section.]~~

9 SECTION 3.0776. Section 252.009(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) Whenever possible, the department shall:

12 (1) use the services of and consult with state and
13 local agencies in carrying out the department's functions under
14 this chapter; and

15 (2) use the facilities of the department [~~or a~~
16 ~~designee of the department~~], particularly in establishing and
17 maintaining standards relating to the humane treatment of
18 residents.

19 SECTION 3.0777. Section 252.0311(c), Health and Safety
20 Code, is amended to read as follows:

21 (c) The executive commissioner [~~of the Health and Human~~
22 ~~Services Commission~~] may adopt rules that specify the ownership
23 interests and other relationships that qualify a person as a
24 controlling person.

25 SECTION 3.0778. Sections 252.033(e), (f), and (h), Health
26 and Safety Code, are amended to read as follows:

27 (e) The renewal report required under Subsection (d)(2)

1 must be filed in accordance with rules adopted by the executive
2 commissioner [~~department~~] that specify the form of the report, the
3 date it must be submitted, and the information it must contain.

4 (f) The department may not issue a license for new beds or an
5 expansion of an existing facility under this chapter unless the
6 addition of new beds or the expansion is included in the plan
7 approved by the commission [~~Health and Human Services Commission~~]
8 in accordance with Section 533A.062 [~~533.062~~].

9 (h) The executive commissioner [~~department~~] by rule shall
10 define specific, appropriate, and objective criteria on which the
11 department [~~it~~] may deny an initial license application or license
12 renewal or revoke a license.

13 SECTION 3.0779. Sections 252.034(a) and (d), Health and
14 Safety Code, are amended to read as follows:

15 (a) The executive commissioner [~~board~~] by rule may adopt a
16 fee for a license issued under this chapter. The fee may not exceed
17 \$150 plus \$5 for each unit of capacity or bed space for which the
18 license is sought.

19 (d) The executive commissioner by rule [~~board~~] may adopt an
20 additional fee for the approval of an increase in bed space.

21 SECTION 3.0780. Section 252.036, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 252.036. MINIMUM STANDARDS. (a) The executive
24 commissioner [~~board~~] may adopt [~~, publish, and enforce~~] minimum
25 standards relating to:

26 (1) the construction or remodeling of a facility,
27 including plumbing, heating, lighting, ventilation, and other

1 housing conditions, to ensure the residents' health, safety,
2 comfort, and protection from fire hazard;

3 (2) sanitary and related conditions in a facility and
4 its surroundings, including water supply, sewage disposal, food
5 handling, and general hygiene in order to ensure the residents'
6 health, safety, and comfort;

7 (3) equipment essential to the residents' health and
8 welfare;

9 (4) the reporting and investigation of injuries,
10 incidents, and unusual accidents and the establishment of other
11 policies and procedures necessary to ensure resident safety;

12 (5) behavior management, including use of seclusion
13 and physical restraints;

14 (6) policies and procedures for the control of
15 communicable diseases in employees and residents;

16 (7) the use and administration of medication in
17 conformity with applicable law and rules for pharmacy services;

18 (8) specialized nutrition support such as delivery of
19 enteral feedings and parenteral nutrients;

20 (9) requirements for in-service education of each
21 employee who has any contact with residents;

22 (10) the regulation of the number and qualification of
23 all personnel, including management and professional support
24 personnel, responsible for any part of the care given to residents;
25 and

26 (11) the quality of life and the provision of active
27 treatment to residents.

1 (b) The department shall enforce the adopted minimum
2 standards.

3 SECTION 3.0781. Section 252.037, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 252.037. REASONABLE TIME TO COMPLY. The executive
6 commissioner [board] by rule shall give a facility that is in
7 operation when a rule or standard is adopted under this chapter a
8 reasonable time to comply with the rule or standard.

9 SECTION 3.0782. Sections 252.0375(a) and (d), Health and
10 Safety Code, are amended to read as follows:

11 (a) The executive commissioner [~~department~~] by rule shall
12 adopt a procedure under which a person proposing to construct or
13 modify a facility may submit building plans to the department for
14 review for compliance with the department's architectural
15 requirements before beginning construction or modification. In
16 adopting the procedure, the executive commissioner [~~department~~]
17 shall set reasonable deadlines by which the department must
18 complete review of submitted plans.

19 (d) A fee collected under this section shall be deposited in
20 the general revenue fund [~~and may be appropriated only to the~~
21 ~~department to conduct reviews under this section~~].

22 SECTION 3.0783. Sections 252.038(b) and (d), Health and
23 Safety Code, are amended to read as follows:

24 (b) The executive commissioner [~~board~~] by rule shall adopt
25 the fire safety standards applicable to the facility. The fire
26 safety standards must be the same as the fire safety standards
27 established by an edition of the Life Safety Code of the National

1 Fire Protection Association. If required by federal law or
2 regulation, the edition selected may be different for facilities or
3 portions of facilities operated or approved for construction at
4 different times.

5 (d) The rules adopted under this section do not prevent a
6 facility licensed under this chapter from voluntarily conforming to
7 fire safety standards that are compatible with, equal to, or more
8 stringent than those adopted by the executive commissioner [board].

9 SECTION 3.0784. Sections 252.040(a) and (h), Health and
10 Safety Code, are amended to read as follows:

11 (a) The department or the department's designee may make any
12 inspection, survey, or investigation that it considers necessary
13 and may enter the premises of a facility at reasonable times to make
14 an inspection, survey, or investigation in accordance with
15 department [board] rules.

16 (h) The executive commissioner [department] shall establish
17 proper procedures to ensure that copies of all forms and reports
18 under this section are made available to consumers, service
19 recipients, and the relatives of service recipients as the
20 department considers proper.

21 SECTION 3.0785. Section 252.041(d), Health and Safety Code,
22 is amended to read as follows:

23 (d) As considered appropriate and necessary by the
24 department, the department may invite at least one person as a
25 citizen advocate to participate in inspections. The invited
26 advocate must be an individual who has an interest in or who is
27 employed by or affiliated with an organization or entity that

1 represents, advocates for, or serves individuals with an
2 intellectual disability [~~mental retardation~~] or a related
3 condition.

4 SECTION 3.0786. Section 252.061(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) The executive commissioner [board] by rule shall
7 provide for the placement of residents during the facility's
8 suspension or closing to ensure their health and safety.

9 SECTION 3.0787. Sections 252.065(c), (d), (e), and (g),
10 Health and Safety Code, are amended to read as follows:

11 (c) The executive commissioner [department] by rule shall
12 specify each violation for which an administrative penalty may be
13 assessed. In determining which violations warrant penalties, the
14 executive commissioner [department] shall consider:

15 (1) the seriousness of the violation, including the
16 nature, circumstances, extent, and gravity of the violation and the
17 hazard of the violation to the health or safety of clients; and

18 (2) whether the affected facility had identified the
19 violation as a part of its internal quality assurance process and
20 had made appropriate progress on correction.

21 (d) The executive commissioner [department] by rule shall
22 establish a specific and detailed schedule of appropriate and
23 graduated penalties for each violation based on:

24 (1) the seriousness of the violation, including the
25 nature, circumstances, extent, and gravity of the violation and the
26 hazard of the violation to the health or safety of clients;

27 (2) the history of previous violations;

1 (3) whether the affected facility had identified the
2 violation as a part of its internal quality assurance process and
3 had made appropriate progress on correction;

4 (4) the amount necessary to deter future violations;

5 (5) efforts made to correct the violation;

6 (6) the size of the facility; and

7 (7) any other matters that justice may require.

8 (e) The executive commissioner [department] by rule shall
9 provide the facility with a reasonable period of time, not less than
10 45 days, following the first day of a violation to correct the
11 violation before the department may assess [~~assessing~~] an
12 administrative penalty if a plan of correction has been
13 implemented. This subsection does not apply to a violation
14 described by Subsections (a)(2)-(8) or to a violation that the
15 department determines:

16 (1) has resulted in serious harm to or the death of a
17 resident;

18 (2) constitutes a serious threat to the health or
19 safety of a resident; or

20 (3) substantially limits the institution's capacity to
21 provide care.

22 (g) The executive commissioner [department] shall establish
23 a system to ensure standard and consistent application of penalties
24 regardless of the facility location.

25 SECTION 3.0788. Section 252.066(c), Health and Safety Code,
26 is amended to read as follows:

27 (c) If the person notified under this section of the

1 violation accepts the determination of the department or if the
2 person fails to respond in a timely manner to the notice, the
3 department [commissioner of human services or the commissioner's
4 designee] shall issue an order approving the determination and
5 ordering that the person pay the proposed penalty.

6 SECTION 3.0789. Section 252.067, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 252.067. HEARING; ORDER. (a) If the person notified
9 under Section 252.066 requests a hearing, an administrative law
10 judge [~~the department~~] shall[+]

11 [+(1)] set a hearing and the department shall[+]

12 [+(2)] give written notice of the hearing to the
13 person[, and]

14 [+(3)] designate a hearings examiner to conduct the
15 hearing .

16 (b) The administrative law judge [~~hearings examiner~~] shall
17 make findings of fact and conclusions of law and shall promptly
18 issue to the department [commissioner of human services or the
19 commissioner's designee] a proposal for decision as to the
20 occurrence of the violation and a recommendation as to the amount of
21 the proposed penalty if a penalty is determined to be warranted.

22 (c) Based on the findings of fact and conclusions of law and
23 the recommendations of the administrative law judge [~~hearings~~
24 ~~examiner~~], the department [commissioner of human services or the
25 commissioner's designee] by order may find that a violation has
26 occurred and may assess a penalty or may find that no violation has
27 occurred.

1 SECTION 3.0790. Section [252.071](#), Health and Safety Code, as
2 amended by Chapters 619 (S.B. 1376) and 1284 (S.B. 1839), Acts of
3 the 77th Legislature, Regular Session, 2001, is reenacted and
4 amended to read as follows:

5 Sec. 252.071. AMELIORATION OF VIOLATION. (a) In lieu of
6 demanding payment of an administrative penalty authorized by this
7 subchapter, the department may allow a person subject to the
8 penalty to use, under the supervision of the department, all or part
9 of the amount of the penalty to ameliorate the violation or to
10 improve services, other than administrative services, in the
11 facility affected by the violation.

12 (b) The department shall offer amelioration to a person for
13 a charged violation if the department determines that the violation
14 does not constitute immediate jeopardy to the health and safety of a
15 facility resident.

16 (c) The department may not offer amelioration to a person if
17 the department determines that the charged violation constitutes
18 immediate jeopardy to the health and safety of a facility resident.

19 (d) The department shall offer amelioration to a person
20 under this section not later than the 10th day after the date the
21 person receives from the department a final notification of
22 assessment of administrative penalty that is sent to the person
23 after an informal dispute resolution process but before an
24 administrative hearing under Section [252.067](#).

25 (e) A person to whom amelioration has been offered must file
26 a plan for amelioration not later than the 45th day after the date
27 the person receives the offer of amelioration from the department.

1 In submitting the plan, the person must agree to waive the person's
2 right to an administrative hearing under Section [252.067](#) if the
3 department approves the plan.

4 (f) At a minimum, a plan for amelioration must:

5 (1) propose changes to the management or operation of
6 the facility that will improve services to or quality of care of
7 residents of the facility;

8 (2) identify, through measurable outcomes, the ways in
9 which and the extent to which the proposed changes will improve
10 services to or quality of care of residents of the facility;

11 (3) establish clear goals to be achieved through the
12 proposed changes;

13 (4) establish a timeline for implementing the proposed
14 changes; and

15 (5) identify specific actions necessary to implement
16 the proposed changes.

17 (g) The department may require that an amelioration plan
18 propose changes that would result in conditions that exceed the
19 requirements of this chapter or the rules adopted under this
20 chapter.

21 (h) The department shall approve or deny an amelioration
22 plan not later than the 45th day after the date the department
23 receives the plan. On approval of a person's plan, the commission
24 or the State Office of Administrative Hearings, as appropriate,
25 [department] shall deny a pending request for a hearing submitted
26 by the person under Section [252.066\(b\)](#).

27 (i) The department may not offer amelioration to a person:

1 (1) more than three times in a two-year period; or
2 (2) more than one time in a two-year period for the
3 same or similar violation.

4 (j) In this section, "immediate jeopardy to health and
5 safety" means a situation in which immediate corrective action is
6 necessary because the facility's noncompliance with one or more
7 requirements has caused, or is likely to cause, serious injury,
8 harm, impairment, or death to a resident receiving care in the
9 facility.

10 SECTION 3.0791. Section [252.093](#)(d), Health and Safety Code,
11 is amended to read as follows:

12 (d) If possible, the court shall appoint as trustee an
13 individual whose background includes intellectual disability
14 [~~mental retardation~~] service administration.

15 SECTION 3.0792. Section [252.095](#)(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) The fee collected under this section shall be in the
18 amount prescribed by Section [242.097\(c\)](#) [~~242.097(b)~~] and shall be
19 deposited to the credit of the nursing and convalescent home trust
20 fund established under Section [242.096](#).

21 SECTION 3.0793. Sections [252.096](#)(b) and (d), Health and
22 Safety Code, are amended to read as follows:

23 (b) Interest on unreimbursed amounts begins to accrue on the
24 date on which the money is disbursed to the facility. The rate of
25 interest is the rate determined under Section 304.003, Finance Code
26 [~~Section 2, Article 1.05, Title 79, Revised Statutes (Article~~
27 ~~5069-1.05, Vernon's Texas Civil Statutes)~~], to be applicable to

1 judgments rendered during the month in which the money is disbursed
2 to the facility.

3 (d) The amount that remains unreimbursed on the first
4 anniversary of the date on which the money is received is delinquent
5 and the commission [~~Texas Department of Mental Health and Mental~~
6 ~~Retardation~~] may determine that the facility is ineligible for a
7 Medicaid provider contract.

8 SECTION 3.0794. Section 252.151, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 252.151. ADMINISTRATION OF MEDICATION. The executive
11 commissioner [~~department~~] shall adopt rules relating to the
12 administration of medication in facilities.

13 SECTION 3.0795. Section 252.152(b), Health and Safety Code,
14 is amended to read as follows:

15 (b) The executive commissioner [~~department~~] shall specify
16 the details of the examination.

17 SECTION 3.0796. Section 252.182, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 252.182. RESPITE CARE. (a) A facility licensed under
20 this chapter may provide respite care for an individual who has a
21 diagnosis of an intellectual disability [~~mental retardation~~] or a
22 related condition without regard to whether the individual is
23 eligible to receive intermediate care services under federal law.

24 (b) The executive commissioner [~~board~~] may adopt rules for
25 the regulation of respite care provided by a facility licensed
26 under this chapter.

27 SECTION 3.0797. Section 252.185, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 252.185. INSPECTIONS. The department, at the time of
3 an ordinary licensing inspection or at other times determined
4 necessary by the department, shall inspect a facility's records of
5 respite care services, physical accommodations available for
6 respite care, and the plan of care records to ensure that the
7 respite care services comply with the licensing standards of this
8 chapter and with any rules the executive commissioner [board] may
9 adopt to regulate respite care services.

10 SECTION 3.0798. Sections 252.202(a) and (b), Health and
11 Safety Code, are amended to read as follows:

12 (a) A quality assurance fee is imposed on each facility for
13 which a license fee must be paid under Section 252.034, on each
14 facility owned by a community mental health and intellectual
15 disability [~~mental retardation~~] center, as described by Subchapter
16 A, Chapter 534, and on each facility owned by the department [~~Texas~~
17 ~~Department of Mental Health and Mental Retardation~~]. The fee:

18 (1) is an amount established under Subsection (b)
19 multiplied by the number of patient days as determined in
20 accordance with Section 252.203;

21 (2) is payable monthly; and

22 (3) is in addition to other fees imposed under this
23 chapter.

24 (b) The commission [~~Health and Human Services Commission~~]
25 or the department at the direction of the commission shall set the
26 quality assurance fee for each day in the amount necessary to
27 produce annual revenues equal to an amount that is not more than six

1 percent of the facility's total annual gross receipts in this
2 state. The fee is subject to a prospective adjustment as necessary.

3 SECTION 3.0799. Section 252.204, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 252.204. REPORTING AND COLLECTION. (a) The
6 commission [~~Health and Human Services Commission~~] or the department
7 at the direction of the commission shall collect the quality
8 assurance fee.

9 (b) Each facility shall:

10 (1) not later than the 20th day after the last day of a
11 month file a report with the commission [~~Health and Human Services~~
12 ~~Commission~~] or the department, as appropriate, stating the total
13 patient days for the month; and

14 (2) not later than the 30th day after the last day of
15 the month pay the quality assurance fee.

16 SECTION 3.0800. Sections 252.205(a) and (b), Health and
17 Safety Code, are amended to read as follows:

18 (a) The executive commissioner [~~Health and Human Services~~
19 ~~Commission~~] shall adopt rules for the administration of this
20 subchapter, including rules related to the imposition and
21 collection of the quality assurance fee.

22 (b) The executive commissioner [~~Health and Human Services~~
23 ~~Commission~~] may not adopt rules granting any exceptions from the
24 quality assurance fee.

25 SECTION 3.0801. Section 252.206, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 252.206. QUALITY ASSURANCE FUND. (a) The quality

1 assurance fund is an account in the general revenue fund [~~a fund~~
2 ~~outside the state treasury held by the Texas Treasury Safekeeping~~
3 ~~Trust Company~~]. Notwithstanding any other law, the comptroller
4 shall deposit fees collected under this subchapter to the credit of
5 the fund.

6 (b) The quality assurance fund is composed of [+]
7 [+(1)] fees deposited to the credit of the fund under
8 this subchapter [+, and
9 [-(2) ~~the earnings of the fund~~].

10 (c) Money deposited to the quality assurance fund [~~remains~~
11 ~~the property of the fund and~~] may be appropriated [~~used~~] only for
12 the purposes of this subchapter.

13 SECTION 3.0802. Sections 252.207(a) and (c), Health and
14 Safety Code, are amended to read as follows:

15 (a) Subject to legislative appropriation and state and
16 federal law, the commission [~~Health and Human Services Commission~~]
17 may use money in the quality assurance fund, together with any
18 federal money available to match that money:

19 (1) to offset expenses incurred to administer the
20 quality assurance fee under this chapter;

21 (2) to increase reimbursement rates paid under the
22 Medicaid program to facilities or waiver programs for individuals
23 [~~persons~~] with an intellectual disability [~~mental retardation~~]
24 operated in accordance with 42 U.S.C. Section 1396n(c) and its
25 subsequent amendments; or

26 (3) for any other health and human services purpose
27 approved by the governor and Legislative Budget Board.

1 (c) If money in the quality assurance fund is used to
2 increase a reimbursement rate in the Medicaid program, the
3 commission [~~Health and Human Services Commission~~] shall ensure that
4 the reimbursement methodology used to set that rate describes how
5 the money in the fund will be used to increase the rate and provides
6 incentives to increase direct care staffing and direct care wages
7 and benefits.

8 SECTION 3.0803. Section 252.208, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 252.208. INVALIDITY; FEDERAL FUNDS. If any portion of
11 this subchapter is held invalid by a final order of a court that is
12 not subject to appeal, or if the commission [~~Health and Human~~
13 ~~Services Commission~~] determines that the imposition of the fee and
14 the expenditure as prescribed by this subchapter of amounts
15 collected will not entitle the state to receive additional federal
16 funds under the Medicaid program, the commission shall stop
17 collection of the quality assurance fee and shall return, not later
18 than the 30th day after the date collection is stopped, any money
19 collected, but not spent, under this subchapter to the facilities
20 that paid the fees in proportion to the total amount paid by those
21 facilities.

22 SECTION 3.0804. Section 253.002(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) If the department [~~Department of Aging and Disability~~
25 ~~Services~~] receives a report that an employee of a facility licensed
26 under Chapter 252 or of an individual employer committed reportable
27 conduct, the department shall forward that report to the Department

1 of Family and Protective Services for investigation.

2 SECTION 3.0805. Section 253.003(c), Health and Safety Code,
3 is amended to read as follows:

4 (c) If the employee notified of the violation accepts the
5 determination of the department or fails to timely respond to the
6 notice, the department [~~commissioner or the commissioner's~~
7 ~~designee~~] shall [~~issue an~~] order [~~approving the determination and~~
8 ~~ordering~~] that the reportable conduct be recorded in the registry
9 under Section 253.007.

10 SECTION 3.0806. Section 253.004, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 253.004. HEARING; ORDER. (a) If the employee
13 requests a hearing, an administrative law judge of the State Office
14 of Administrative Hearings shall conduct a hearing and the
15 department shall[~~+~~

16 [~~(1) set a hearing,~~

17 [~~(2)~~] give written notice of the hearing to the
18 employee[~~; and~~

19 [~~(3) designate a hearings examiner to conduct the~~
20 ~~hearing~~].

21 (a-1) The administrative law judge [~~department~~] must
22 complete the hearing and the hearing record not later than the 120th
23 day after the date the department receives a request for a hearing.

24 (b) The hearings examiner shall make findings of fact and
25 conclusions of law and shall promptly issue to the department
26 [~~commissioner or the commissioner's designee~~] a proposal for
27 decision as to the occurrence of the reportable conduct.

1 (c) Based on the findings of fact and conclusions of law and
2 the recommendations of the hearings examiner, the department
3 [~~commissioner or the commissioner's designee~~] by order may find
4 that the reportable conduct has occurred. If the department
5 [~~commissioner or the commissioner's designee~~] finds that the
6 reportable conduct has occurred, the department [~~commissioner or~~
7 ~~the commissioner's designee~~] shall issue an order on that
8 [~~approving the~~] determination.

9 SECTION 3.0807. Section 253.0055, Health and Safety Code,
10 is amended to read as follows:

11 Sec. 253.0055. REMOVAL OF NURSE AIDE FINDING. If a finding
12 of reportable conduct is the basis for an entry in the nurse aide
13 registry maintained under Chapter 250 and the entry is subsequently
14 removed from the nurse aide registry, the department [~~commissioner~~
15 ~~or the commissioner's designee~~] shall immediately remove the record
16 of reportable conduct from the employee misconduct registry
17 maintained under Section 253.007.

18 SECTION 3.0808. Section 253.009(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) Each facility or individual employer as defined in this
21 chapter and each agency as defined in Section 48.401, Human
22 Resources Code, shall notify its employees in a manner prescribed
23 by the department [~~Department of Aging and Disability Services~~]:

24 (1) about the employee misconduct registry; and
25 (2) that an employee may not be employed if the
26 employee is listed in the registry.

27 SECTION 3.0809. Section 254.001(5), Health and Safety Code,

1 is amended to read as follows:

2 (5) "Freestanding emergency medical care facility"
3 means a facility, structurally separate and distinct from a
4 hospital, that receives an individual and provides emergency care,
5 as defined by Subdivision [Subsection] (2).

6 SECTION 3.0810. Sections 254.051(b) and (e), Health and
7 Safety Code, are amended to read as follows:

8 (b) Except as provided by Section 254.052, a facility or
9 person may not hold itself out to the public as a freestanding
10 emergency medical care facility or use any similar term, as defined
11 by department rule, that would give the impression that the
12 facility or person is providing emergency care unless the facility
13 or person holds a license issued under this chapter. [The use of
14 the term "emergency" or a similar term is also subject to Section
15 254.152.]

16 (e) A license may be issued only for the establishment or
17 operation of [The executive commissioner by rule shall establish a
18 classification for] a facility that is in continuous operation 24
19 hours per day and 7 days per week [and a classification for a
20 facility that is in operation 7 days per week and at least 12 hours
21 per day].

22 SECTION 3.0811. Section 254.053(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) Each application must be accompanied by a nonrefundable
25 license fee in an amount set by the executive commissioner by rule.

26 SECTION 3.0812. Section 254.102, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 254.102. FEES. The executive commissioner by rule
2 shall set fees imposed by this chapter in amounts reasonable and
3 necessary to defray the cost of administering this chapter.

4 SECTION 3.0813. Section 254.151(c), Health and Safety Code,
5 is amended to read as follows:

6 (c) The minimum standards under this section shall apply to
7 all facilities licensed under this chapter [operating 24 hours a
8 day and 7 days per week and facilities operating less than 24 hours
9 a day and 7 days per week].

10 SECTION 3.0814. Section 254.202(c), Health and Safety Code,
11 is amended to read as follows:

12 (c) On written request of the license holder to the
13 department for a hearing, the department shall refer the matter to
14 the State Office of Administrative Hearings. An administrative law
15 judge of that office [, the department] shall conduct a hearing not
16 earlier than the 10th day or later than the 30th day after the date
17 the hearing request is received by the department to determine if
18 the emergency suspension is to be continued, modified, or
19 rescinded.

20 SECTION 3.0815. Sections 254.205(h), (i), (j), and (k),
21 Health and Safety Code, are amended to read as follows:

22 (h) If the person accepts the determination and recommended
23 penalty or if the person fails to respond to the notice, the
24 department [commissioner of state health services] by order shall
25 [approve the determination and] impose the recommended penalty.

26 (i) If the person requests a hearing, the department
27 [commissioner of state health services] shall refer the matter to

1 the State Office of Administrative Hearings, which shall promptly
2 set a hearing date. The department shall [~~and~~] give written notice
3 of the time and place of the hearing to the person. An
4 administrative law judge of that office [~~the State Office of~~
5 ~~Administrative Hearings~~] shall conduct the hearing.

6 (j) The administrative law judge shall make findings of fact
7 and conclusions of law and promptly issue to the department
8 [~~commissioner of state health services~~] a written proposal for [~~a~~]
9 decision about the occurrence of the violation and the amount of a
10 proposed penalty.

11 (k) Based on the findings of fact, conclusions of law, and
12 proposal for [~~a~~] decision, the department [~~commissioner of state~~
13 ~~health services~~] by order may:

14 (1) find that a violation occurred and impose a
15 penalty; or

16 (2) find that a violation did not occur.

17 SECTION 3.0816. Sections 254.206(a), (b), (c), and (g),
18 Health and Safety Code, are amended to read as follows:

19 (a) Within 30 days after the date an order of the department
20 [~~commissioner of state health services~~] under Section 254.205(k)
21 that imposes an administrative penalty becomes final, the person
22 shall:

23 (1) pay the penalty; or

24 (2) file a petition for judicial review of the
25 department's [~~commissioner's~~] order contesting the occurrence of
26 the violation, the amount of the penalty, or both.

27 (b) Within the 30-day period prescribed by Subsection (a), a

1 person who files a petition for judicial review may:

2 (1) stay enforcement of the penalty by:

3 (A) paying the penalty to the court for placement
4 in an escrow account; or

5 (B) giving the court a supersedeas bond approved
6 by the court that:

7 (i) is for the amount of the penalty; and

8 (ii) is effective until all judicial review
9 of the department's [~~commissioner's~~] order is final; or

10 (2) request the court to stay enforcement of the
11 penalty by:

12 (A) filing with the court a sworn affidavit of
13 the person stating that the person is financially unable to pay the
14 penalty and is financially unable to give the supersedeas bond; and
15 (B) sending a copy of the affidavit to the
16 department [~~executive commissioner~~] by certified mail.

17 (c) If the department [~~commissioner of state health~~
18 ~~services~~] receives a copy of an affidavit under Subsection (b)(2),
19 the department [~~commissioner~~] may file with the court, within five
20 days after the date the copy is received, a contest to the
21 affidavit. The court shall hold a hearing on the facts alleged in
22 the affidavit as soon as practicable and shall stay the enforcement
23 of the penalty on finding that the alleged facts are true. The
24 person who files an affidavit has the burden of proving that the
25 person is financially unable to pay the penalty or to give a
26 supersedeas bond.

27 (g) If the person paid the penalty and if the amount of the

1 penalty is reduced or the penalty is not upheld by the court, the
2 court shall order, when the court's judgment becomes final, that
3 the appropriate amount plus accrued interest be remitted to the
4 person within 30 days after the date that the judgment [~~judgement~~]
5 of the court becomes final. The interest accrues at the rate
6 charged on loans to depository institutions by the New York Federal
7 Reserve Bank. The interest shall be paid for the period beginning
8 on the date the penalty is paid and ending on the date the penalty is
9 remitted.

10 SECTION 3.0817. Section 255.001(2), Health and Safety Code,
11 is amended to read as follows:

12 (2) "Long-term care facility" means a nursing
13 institution, an assisted living facility, or an ICF-IID
14 [~~intermediate care facility for the mentally retarded~~] licensed
15 under Chapter 242, 247, or 252, or certified under Chapter 32, Human
16 Resources Code.

17 SECTION 3.0818. Section 259.006(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) The executive commissioner of the Health and Human
20 Services Commission [~~department~~] may adopt rules to administer and
21 enforce this chapter.

22 SECTION 3.0819. Section 260A.007(d), Health and Safety
23 Code, is amended to read as follows:

24 (d) The executive commissioner [~~department~~] shall adopt
25 rules governing the conduct of investigations, including
26 procedures to ensure that the complainant and the resident, the
27 resident's next of kin, and any person designated to receive

1 information concerning the resident receive periodic information
2 regarding the investigation.

3 SECTION 3.0820. Subchapter A, Chapter 263, Health and
4 Safety Code, is amended by adding Section 263.0001 to read as
5 follows:

6 Sec. 263.0001. DEFINITION. In this chapter, "executive
7 commissioner" means the executive commissioner of the Health and
8 Human Services Commission.

9 SECTION 3.0821. Section 263.001(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) Two or more adjacent counties may act together to carry
12 out the purposes of this chapter and construct one or more hospitals
13 for their joint use as provided by this chapter for a single county
14 if:

15 (1) each of the counties has fewer than 15,000
16 inhabitants; and

17 (2) the executive commissioner [~~Texas Board of Health~~]
18 approves.

19 SECTION 3.0822. Section 263.002, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 263.002. ADDITIONAL HOSPITAL. A county may maintain
22 more than one county hospital if considered advisable by the
23 commissioners court of the county and approved by the executive
24 commissioner [~~Texas Board of Health~~].

25 SECTION 3.0823. Section 263.023(b), Health and Safety Code,
26 is amended to read as follows:

27 (b) The commissioners court shall provide for the

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1 construction of the hospital within six months after the date the
2 number of inhabitants of the municipality exceeds 10,000 except
3 that the executive commissioner [~~Texas Board of Health~~] may, for
4 good cause, extend this period.

5 SECTION 3.0824. Section [263.027](#), Health and Safety Code, is
6 amended to read as follows:

7 Sec. 263.027. APPROVAL OF CONSTRUCTION OR REPAIR [~~BY BOARD~~
8 ~~OF HEALTH~~]. If requested by the commissioners court of a county,
9 the executive commissioner [~~Texas Board of Health~~] must approve
10 plans for the construction, alteration, or repair of a hospital or
11 facility under this chapter before the construction, alteration, or
12 repair may begin.

13 SECTION 3.0825. Section [263.101\(c\)](#), Health and Safety Code,
14 is amended to read as follows:

15 (c) A hospital established or maintained under this chapter
16 is subject to inspection by an authorized representative of:

17 (1) the Department [~~Texas Board~~] of State Health
18 Services;

19 (2) the commissioners court; or

20 (3) a state board of charities, if such a board is
21 created.

22 SECTION 3.0826. The heading to Section [263.102](#), Health and
23 Safety Code, is amended to read as follows:

24 Sec. 263.102. [~~TEXAS BOARD OF HEALTH~~] RULES AND
25 PUBLICATIONS.

26 SECTION 3.0827. Section [263.102\(a\)](#), Health and Safety Code,
27 is amended to read as follows:

1 (a) The board of managers shall print, or purchase from the
2 Department [~~Texas Board~~] of State Health Services at the actual
3 cost of printing:

4 (1) rules adopted by the executive commissioner [~~Texas~~
5 ~~Board of Health~~] for the care of persons having a communicable
6 disease and for the prevention and spread of communicable disease;
7 and

8 (2) bulletins and other publications prepared by the
9 department [~~Texas Department of Health~~] providing information
10 about the cause, nature, treatment, and prevention of disease.

11 SECTION 3.0828. Section 281.001, Health and Safety Code, is
12 amended by adding Subdivision (3) to read as follows:

13 (3) "Executive commissioner" means the executive
14 commissioner of the Health and Human Services Commission.

15 SECTION 3.0829. Section 281.0515, Health and Safety Code,
16 is amended to read as follows:

17 Sec. 281.0515. PROCEDURES FOR HEALTH MAINTENANCE
18 ORGANIZATION. A district may establish a health maintenance
19 organization in accordance with Chapter 843, Insurance Code, [~~the~~
20 ~~Texas Health Maintenance Organization Act (Chapter 20A, Vernon's~~
21 ~~Texas Insurance Code)~~] to provide or arrange for health care
22 services for the residents of the district.

23 SECTION 3.0830. Section 281.053(a), Health and Safety Code,
24 is amended to read as follows:

25 (a) The district may be inspected by a representative of the
26 commissioners court or [~~or~~] the Department [~~Texas Board~~] of State
27 Health Services [~~, or the Texas Department of Human Services~~].

1 SECTION 3.0831. Section 281.073(b), Health and Safety Code,
2 is amended to read as follows:

3 (b) The period that medical records are retained shall be in
4 accordance with rules relating to the retention of medical records
5 adopted by the executive commissioner [~~Texas Department of Health~~]
6 and with other applicable federal and state laws and rules.

7 SECTION 3.0832. Section 281.092(a), Health and Safety Code,
8 is amended to read as follows:

9 (a) As soon as practicable after the close of the fiscal
10 year, the administrator shall make a report to the board,
11 commissioners court, executive commissioner [~~Texas Board of~~
12 ~~Health~~], and comptroller.

13 SECTION 3.0833. Section 283.049(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) The district facilities may be inspected by a
16 representative of the Department [~~Texas Board~~] of State Health
17 Services or any other state agency or board authorized to supervise
18 a hospital.

19 SECTION 3.0834. Section 283.082(a), Health and Safety Code,
20 is amended to read as follows:

21 (a) As soon as practicable after the close of the fiscal
22 year, the administrator shall make a report to the commissioners
23 court, executive commissioner of the [~~Texas Board of~~] Health and
24 Human Services Commission, and comptroller.

25 SECTION 3.0835. Section 311.001(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) A hospital may not, as a condition to beginning a

1 hospital internship or residency, require a United States citizen
2 who resides in this state and who holds a diploma from a medical
3 school outside the United States that is listed in the AVICENNA
4 ~~[World] Directory for Medicine [of Medical Schools]~~ published by
5 the University of Copenhagen, in collaboration with the World
6 Health Organization and the World Federation for Medical Education,
7 to:

- 8 (1) take an examination other than an examination
9 required by the Texas Medical [State] Board ~~[of Medical Examiners]~~
10 to be taken by a graduate of a medical school in the United States
11 before allowing that graduate to begin an internship or residency;
12 (2) complete a period of internship or graduate
13 clinical training; or
14 (3) be certified by the Educational Commission
15 ~~[Council]~~ for Foreign Medical Graduates.

16 SECTION 3.0836. Section 311.002(g), Health and Safety Code,
17 is amended to read as follows:

18 (g) The ~~[Texas]~~ Department of State Health Services or other
19 appropriate licensing agency may enforce this section by assessing
20 an administrative penalty, obtaining an injunction, or providing
21 any other appropriate remedy, including suspending, revoking, or
22 refusing to renew a hospital's license.

23 SECTION 3.0837. Sections 311.003(c) and (d), Health and
24 Safety Code, are amended to read as follows:

25 (c) The ~~[Texas]~~ Department of State Health Services shall
26 administer the state funds for reimbursement under this section,
27 and may spend not more than \$100,000 each fiscal year from earned

1 federal funds or private donations to implement this section.

2 (d) The executive commissioner of the Health and Human
3 Services Commission [~~Texas Board of Health~~] shall adopt rules that
4 establish qualifications for reimbursement and provide procedures
5 for applying for reimbursement.

6 SECTION 3.0838. Section 311.004(a), Health and Safety Code,
7 is amended by adding Subdivision (1-a) to read as follows:

8 (1-a) "Executive commissioner" means the executive
9 commissioner of the Health and Human Services Commission.

10 SECTION 3.0839. Sections 311.004(c) and (f), Health and
11 Safety Code, are amended to read as follows:

12 (c) Unless the department authorizes an exemption for the
13 reason stated in Subsection (d), the [~~The~~] department shall require
14 each hospital to implement and enforce the statewide standardized
15 patient risk identification system under which a patient with a
16 specific medical risk may be readily identified through the use of
17 the system to communicate to hospital personnel the existence of
18 that risk [~~developed under Subsection (b) unless the department~~
19 ~~authorizes an exemption for the reason stated in Subsection (d)~~].

20 (f) The executive commissioner [~~of the Health and Human~~
21 ~~Services Commission~~] may adopt rules to implement this section.

22 SECTION 3.0840. Section 311.031, Health and Safety Code, is
23 amended by amending Subdivision (4) and adding Subdivision (6-a) to
24 read as follows:

25 (4) "Department" means the [~~Texas~~] Department of State
26 Health Services.

27 (6-a) "Executive commissioner" means the executive

1 commissioner of the Health and Human Services Commission.

2 SECTION 3.0841. Section 311.032(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) The executive commissioner [board] shall adopt
5 necessary rules consistent with this subchapter to govern the
6 reporting and collection of data.

7 SECTION 3.0842. Sections 311.033(a) and (c), Health and
8 Safety Code, are amended to read as follows:

9 (a) A hospital shall submit to the department financial and
10 utilization data for that hospital, including data relating to the
11 hospital's:

12 (1) total gross revenue, including:
13 (A) Medicare gross revenue;
14 (B) Medicaid gross revenue;

15 (C) other revenue from state programs;

16 (D) revenue from local government programs;

17 (E) local tax support;

18 (F) charitable contributions;

19 (G) other third party payments;

20 (H) gross inpatient revenue; and

21 (I) gross outpatient revenue;

22 (2) total deductions from gross revenue, including:

23 (A) contractual allowance; and

24 (B) any other deductions;

25 (3) charity care;

26 (4) bad debt expense;

27 (5) total admissions, including:

1 (A) education of physicians, nurses,
2 technicians, and other medical professionals and health care
3 providers;

4 (B) scholarships and funding to medical schools,
5 colleges, and universities for health professions education;

6 (C) education of patients concerning diseases
7 and home care in response to community needs;

8 (D) community health education through
9 informational programs, publications, and outreach activities in
10 response to community needs; and

11 (E) other educational services that satisfy the
12 definition of "education-related costs" under Section 311.031(6).

13 (c) The data must be submitted in the form prescribed by the
14 department and at the time established by [the] department rule.

15 SECTION 3.0843. Section 311.0335, Health and Safety Code,
16 is amended to read as follows:

17 Sec. 311.0335. MENTAL HEALTH AND CHEMICAL DEPENDENCY DATA.

18 (a) A hospital that provides mental health or chemical dependency
19 services shall submit to the department financial and utilization
20 data relating to the mental health and chemical dependency services
21 provided by the hospital, including data for inpatient and
22 outpatient services relating to:

23 (1) patient demographics, including race, ethnicity,
24 age, gender, and county of residence;

25 (2) admissions;

26 (3) discharges, including length of inpatient
27 treatment;

1 (4) specific diagnoses and procedures according to
2 criteria prescribed by the Diagnostic and Statistical Manual of
3 Mental Disorders, 3rd Edition, Revised, or a later version
4 prescribed by [the] department rule;

5 (5) total charges and the components of the charges;

6 (6) payor sources; and

7 (7) use of mechanical restraints.

8 (b) The data must be submitted in the form prescribed by the
9 department and at the time established by [the] department rule.

10 SECTION 3.0844. Section 311.035(c), Health and Safety Code,
11 is amended to read as follows:

12 (c) The department shall enter into an interagency
13 agreement with the [Texas Department of Mental Health and Mental
14 Retardation, Texas Commission on Alcohol and Drug Abuse, and] Texas
15 Department of Insurance relating to the mental health and chemical
16 dependency data collected under Section 311.0335. The agreement
17 shall address the collection, analysis, and sharing of the data by
18 the agencies.

19 SECTION 3.0845. Section 311.042, Health and Safety Code, is
20 amended by adding Subdivision (3-a) and amending Subdivisions (7),
21 (11), (13), and (14) to read as follows:

22 (3-a) "Department" means the Department of State
23 Health Services.

24 (7) "Government-sponsored program unreimbursed costs"
25 means the unreimbursed cost to the hospital of providing health
26 care services to the beneficiaries of Medicare, the TRICARE program
27 of the United States Department of Defense [Civilian Health and

1 ~~Medical Program of the Uniformed Services~~, and other federal,
2 state, or local government health care programs.

3 (11) "Research-related costs" means those amounts
4 defined as research-related costs in Section 311.031(14)
5 [~~311.031~~(12)].

6 (13) "Subsidized health services" means those amounts
7 defined as subsidized health services in Section 311.031(15)
8 [~~311.031~~(13)].

9 (14) "Unreimbursed costs" means costs as defined in
10 Section 311.031(16) [~~311.031~~(14)].

11 SECTION 3.0846. Section 311.045(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) A nonprofit hospital or hospital system shall annually
14 satisfy the requirements of this subchapter and of Sections
15 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1), Tax Code, to
16 provide community benefits which include charity care and
17 government-sponsored indigent health care by complying with one or
18 more of the standards set forth in Subsection (b). The hospital or
19 hospital system shall file a statement with the Center for [Bureau
20 ~~of State~~] Health Statistics [~~Data and Policy Analysis~~] at the
21 department and the chief appraiser of the local appraisal district
22 no later than the 120th day after the hospital's or hospital
23 system's fiscal year ends, stating which of the standards in
24 Subsection (b) have been satisfied, provided, however, that the
25 first report shall be filed no later than the 120th day after the
26 end of the hospital's or hospital system's fiscal year ending during
27 1994. For hospitals in a hospital system, the corporate parent may

1 elect to satisfy the charity care requirements of this subchapter
2 for each of the hospitals within the system on a consolidated basis.

3 SECTION 3.0847. Sections 311.0456(a) and (e), Health and
4 Safety Code, are amended to read as follows:

5 (a) In this section, "nonprofit" [•]

6 [•] "Department" means the Department of State Health
7 Services.

8 [•] "Nonprofit" hospital" has the meaning assigned by
9 Section 311.042(9)(A).

10 (e) For the purposes of Subsection (b), a corporation
11 certified by the Texas [State Board of] Medical Board [Examiners]
12 as a nonprofit organization under Section 162.001, Occupations
13 Code, whose sole member is a qualifying hospital or hospital system
14 is considered a nonprofit hospital or hospital system.

15 SECTION 3.0848. Section 311.046(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) A nonprofit hospital shall file the annual report of the
18 community benefits plan with the Center for [Bureau of State]
19 Health Statistics [Data and Policy Analysis] at the department.

20 The report shall be filed no later than April 30 of each year. In
21 addition to the annual report, a completed worksheet as required by
22 Subsection (a)(5) shall be filed no later than 10 working days after
23 the date the hospital files its Medicare cost report.

24 SECTION 3.0849. Section 312.002, Health and Safety Code, is
25 amended by amending Subdivision (3) and adding Subdivision (3-a) to
26 read as follows:

27 (3) "Coordinating entity" means a nonprofit

1 corporation under the Texas Nonprofit Corporation Law as described
2 by Section 1.008(d), Business Organizations Code, [~~Non-Profit~~
3 ~~Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil~~
4 ~~Statutes~~)] that is a health organization approved and certified by
5 the Texas Medical [~~State~~] Board [~~of Medical Examiners~~] under
6 Chapter 162, Occupations Code.

7 (3-a) "Department" means the Department of State
8 Health Services.

9 SECTION 3.0850. Section 312.005, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 312.005. APPROVAL OF CONTRACTS. (a) To be effective,
12 a contract under Section 312.004 must be submitted to the
13 department [~~board~~].

14 (b) [~~The commissioner shall review the contract on behalf of~~
15 ~~the board.~~] The department [~~commissioner~~] shall approve the
16 contract if the [~~commissioner finds the~~] contract furthers the
17 purposes of this chapter.

18 (c) The department [~~commissioner~~] may disapprove a contract
19 only after notice to all parties and a hearing.

20 (d) The department [~~commissioner~~] may not modify a
21 contract.

22 (e) The contract takes effect:

23 (1) when it is approved by the department
24 [~~commissioner~~]; or

25 (2) on the 31st day after the date on which the
26 contract is filed with the department [~~board~~] by a medical and
27 dental unit, supported medical or dental school, or coordinating

1 entity that is a party to the contract, if the department
2 [commissioner] does not approve or disapprove the contract within
3 30 days after the date on which the contract is filed.

4 SECTION 3.0851. Section 314.001, Health and Safety Code, is
5 amended by amending Subdivision (3) and adding Subdivision (3-a) to
6 read as follows:

7 (3) "Department" means the [Texas] Department of State
8 Health Services.

9 (3-a) "Executive commissioner" means the executive
10 commissioner of the Health and Human Services Commission.

11 SECTION 3.0852. Section 314.002(c), Health and Safety Code,
12 is amended to read as follows:

13 (c) The department shall review the application in
14 accordance with the standards set forth in Subsections (e) and (f)
15 and shall, if requested, hold a public hearing in accordance with
16 rules adopted by the executive commissioner [department]. The
17 department shall grant or deny the application within 120 days of
18 the date of filing of the application and that decision must be in
19 writing and set forth the basis for the decision. The department
20 shall furnish a copy of the decision to the applicants, the attorney
21 general, and any intervenor within 10 days of its issuance.

22 SECTION 3.0853. Section 314.008, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 314.008. EXCLUSIONS; AUTHORITY TO ADOPT RULES [+
25 EFFECTIVE DATE]. (a) This chapter [Act] specifically excludes
26 ground and/or air ambulance services.

27 (b) The executive commissioner [department] shall have the

1 authority to adopt rules to implement the requirements of this
2 chapter. [~~Such rules shall be adopted by March 1, 1994, at which~~
3 ~~time hospitals may file an application with the department for a~~
4 ~~certification of public advantage.~~]

5 SECTION 3.0854. Section 321.001, Health and Safety Code, is
6 amended by adding Subdivision (1-a) to read as follows:

7 (1-a) "Executive commissioner" means the executive
8 commissioner of the Health and Human Services Commission.

9 SECTION 3.0855. Sections 321.002(a) and (b), Health and
10 Safety Code, are amended to read as follows:

11 (a) The executive commissioner [~~Texas Board of Mental~~
12 ~~Health and Mental Retardation, Texas Board of Health, and Texas~~
13 ~~Commission on Alcohol and Drug Abuse~~] by rule shall [~~each~~] adopt a
14 "patient's bill of rights" that includes the applicable rights
15 included in this chapter, Subtitle C of Title 7, Chapters 241, 462,
16 464, and 466, and any other provisions the executive commissioner
17 considers [~~agencies consider~~] necessary to protect the health,
18 safety, and rights of a patient receiving voluntary or involuntary
19 mental health, chemical dependency, or comprehensive medical
20 rehabilitation services in an inpatient facility. In addition, the
21 executive commissioner [~~each agency~~] shall adopt rules that:

22 (1) provide standards to prevent the admission of a
23 minor to a facility for treatment of a condition that is not
24 generally recognized as responsive to treatment in an inpatient
25 treatment setting; and

26 (2) prescribe the procedure for presenting the
27 applicable bill of rights and obtaining each necessary signature

1 if:

2 (A) the patient cannot comprehend the
3 information because of illness, age, or other factors; or
4 (B) an emergency exists that precludes immediate
5 presentation of the information.

6 (b) The executive commissioner [Board of Protective and
7 ~~Regulatory Services~~] by rule shall adopt a "children's bill of
8 rights" for a minor receiving treatment in a child-care facility
9 for an emotional, mental health, or chemical dependency problem.

10 SECTION 3.0856. Section 322.001(1), Health and Safety Code,
11 is amended to read as follows:

12 (1) "Facility" means:

13 (A) a general residential operation [~~child-care~~
14 ~~institution~~], as defined by Section 42.002, Human Resources Code,
15 including a state-operated facility, [~~that is a residential~~
16 ~~treatment center or a child-care institution~~] serving children with
17 an intellectual disability [~~mental retardation~~];

18 (B) an ICF-IID [~~intermediate care facility~~]
19 licensed by the Department of Aging and Disability Services under
20 Chapter 252 or operated by that department and exempt under Section
21 252.003 from the licensing requirements of that chapter;

22 (C) a mental hospital or mental health facility,
23 as defined by Section 571.003;

24 (D) an institution, as defined by Section
25 242.002;

26 (E) an assisted living facility, as defined by
27 Section 247.002; or

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1 (F) a treatment facility, as defined by Section
2 464.001.

3 SECTION 3.0857. Section 323.002(b), Health and Safety Code,
4 is amended to read as follows:

5 (b) The executive commissioner of the Health and Human
6 Services Commission [department] shall adopt procedures for
7 submission, approval, and modification of a plan required under
8 this section.

9 SECTION 3.0858. Section [341.001](#), Health and Safety Code, is
10 amended by amending Subdivision (2) and adding Subdivision (3-a) to
11 read as follows:

12 (2) "Department" means the [Texas] Department of State
13 Health Services.

16 SECTION 3.0859. Section 341.002, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 341-002. RULES FOR SANITATION AND HEALTH PROTECTION.

19 The executive commissioner [board] may:

20 (1) adopt rules consistent with the purposes of this
21 chapter; and

22 (2) establish standards and procedures for the
23 management and control of sanitation and for health protection
24 measures.

25 SECTION 3.0860. Sections 341.014(c) and (e), Health and
26 Safety Code, are amended to read as follows:

(c) A privy may not be constructed within 75 feet of a

1 drinking water well or of a human habitation, other than a
2 habitation to which the privy is appurtenant, without approval by
3 the local health authority or the department [board]. A privy may
4 not be constructed or maintained over an abandoned well or over a
5 stream.

6 (e) Material and human excreta removed from a privy vault or
7 from any other place shall be handled in a manner that does not
8 create a public health nuisance. The material and human excreta may
9 not be deposited within 300 feet of a highway unless buried or
10 treated in accordance with the instructions of the local health
11 authority or the department [board].

12 SECTION 3.0861. Section 341.017(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) The executive commissioner [board] shall adopt
15 reasonable rules to require railroads to provide adequate
16 sanitation facilities for railroad maintenance-of-way employees.

17 SECTION 3.0862. Section 341.018(c), Health and Safety Code,
18 is amended to read as follows:

19 (c) The department [board] shall promote rodent control
20 programs in rat-infested areas and in localities in which typhus
21 fever has appeared.

22 SECTION 3.0863. Sections 341.064(b) and (l), Health and
23 Safety Code, are amended to read as follows:

24 (b) The bacterial content of the water in a public swimming
25 pool may not exceed the safe limits prescribed by department [~~the~~
26 ~~board's~~] standards. A minimum free residual chlorine of 2.0 parts
27 for each one million units of water in a public spa and a minimum

1 free residual chlorine of 1.0 part for each one million units of
2 water in other public swimming pools, or any other method of
3 disinfectant approved by the department, must be maintained in a
4 public swimming pool in use.

5 (1) In adopting rules governing lifesaving equipment to be
6 maintained by a public swimming pool, the executive commissioner
7 [board] may not require a separate throwing line longer than
8 two-thirds the maximum width of the pool.

9 SECTION 3.0864. Section 341.0645(b), Health and Safety
10 Code, is amended to read as follows:

11 (b) The executive commissioner [of the Health and Human
12 Services Commission] shall adopt by rule pool safety standards
13 necessary to prevent drowning. The standards must be at least as
14 stringent as those imposed under the federal Virginia Graeme Baker
15 Pool and Spa Safety Act (15 U.S.C. Section 8001 et seq.).

16 SECTION 3.0865. Sections 341.068(b) and (d), Health and
17 Safety Code, are amended to read as follows:

18 (b) The executive commissioner [board] shall adopt rules to
19 implement Subsection (a), including a rule that in providing
20 sufficient restrooms a ratio of not less than 2:1 women's-to-men's
21 restrooms or other minimum standards established in consultation
22 with the Texas State Board of Plumbing Examiners shall be
23 maintained if the use of the restrooms is designated by gender. The
24 rules shall apply to facilities where the public congregates and on
25 which construction is started on or after January 1, 1994, or on
26 which structural alterations, repairs, or improvements exceeding
27 50 percent of the entire facility are undertaken on or after January

1 1, 1994.

2 (d) The executive commissioner [board] may adopt rules
3 consistent with Subsection (c)(1) to define "facilities where the
4 public congregates."

5 SECTION 3.0866. Section 341.0695, Health and Safety Code,
6 is amended by amending Subsection (f) and adding Subsection (i-1)
7 to read as follows:

8 (f) The executive commissioner [department] may by rule
9 adopt methods other than chlorination for the purpose of
10 disinfecting interactive water features and fountains.

11 (i-1) The executive commissioner by rule shall prescribe
12 the amount of the fee the department may collect under Subsection
13 (i).

14 SECTION 3.0867. Sections 341.082(b) and (c), Health and
15 Safety Code, are amended to read as follows:

16 (b) The environmental health officer must be a registered
17 professional engineer. The officer must file a copy of the
18 officer's oath and appointment with the department [board].

19 (c) The environmental health officer shall assist the
20 department [board] in enforcing this chapter and is subject to:

21 (1) the authority of the department [board]; and

22 (2) removal from office in the same manner as a
23 municipal health authority.

24 SECTION 3.0868. Section 345.001, Health and Safety Code, is
25 amended by amending Subdivisions (2) and (2-a) and adding
26 Subdivisions (2-b) and (2-c) to read as follows:

27 (2) "Commissioner" means the commissioner of state

1 health services.

2 (2-a) "Department" means the [Texas] Department of
3 State Health Services.

4 (2-b) "Executive commissioner" means the executive
5 commissioner of the Health and Human Services Commission.

6 (2-c) [~~(2-a)~~] "Floor model" means new bedding placed in
7 a retail sales area for display purposes.

8 SECTION 3.0869. Section 345.0055(a), Health and Safety
9 Code, is amended to read as follows:

10 (a) The executive commissioner [department] may adopt rules
11 relating to material used in new or renovated bedding, including
12 rules:

13 (1) requiring the use of burn resistant material; and
14 (2) prohibiting or restricting the use of secondhand
15 or recycled material.

16 SECTION 3.0870. Section 345.007, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 345.007. ADVISORY COMMISSION. The executive
19 commissioner [Texas Board of Health] may appoint an advisory
20 commission composed of representatives of consumers and the bedding
21 industry to assist the executive commissioner and the department
22 [board] in implementing this chapter.

23 SECTION 3.0871. Section 345.022(f), Health and Safety Code,
24 is amended to read as follows:

25 (f) The executive commissioner [department] may adopt rules
26 that:

27 (1) require that the label state conformity with burn

1 resistant material requirements or identify any chemical treatment
2 applied to the bedding; and

3 (2) exempt from the requirements of this section a
4 custom upholstery business that does not repair or renovate bedding
5 for resale.

6 SECTION 3.0872. Section [345.024](#)(c), Health and Safety Code,
7 is amended to read as follows:

8 (c) A person may not use in the manufacture, repair, or
9 renovation of bedding a material that has not been cleaned and
10 germicidally treated by a process or treatment approved by the
11 department if the material:

12 (1) has been used by a person with a communicable
13 disease; or

14 (2) is filthy, oily, or stained, or harbors
15 [leathsome] insects or pathogenic organisms.

16 SECTION 3.0873. Section [345.027](#), Health and Safety Code, is
17 amended to read as follows:

18 Sec. 345.027. COLOR OF LABEL AND LETTERING. The executive
19 commissioner [~~department~~] may adopt rules governing the color of
20 label required under this subchapter and the color of the lettering
21 on the label.

22 SECTION 3.0874. Section [345.041](#)(c), Health and Safety Code,
23 is amended to read as follows:

24 (c) The executive commissioner [~~Texas Board of Health~~] by
25 rule may exempt from the permit requirement of this section a custom
26 upholstery business that does not repair or renovate bedding for
27 resale.

1 SECTION 3.0875. Sections 345.043(a) and (c), Health and
2 Safety Code, are amended to read as follows:

3 (a) The executive commissioner by rule [~~Texas Board of~~
4 ~~Health~~] shall set the fees for an initial permit issued under this
5 chapter and for renewal of a permit issued under this chapter in
6 amounts reasonable and necessary to defray the cost of
7 administering this chapter.

8 (c) A permit expires two years [~~one year~~] after the date of
9 issuance.

10 SECTION 3.0876. Section 345.0435(a), Health and Safety
11 Code, is amended to read as follows:

12 (a) The executive commissioner [~~of the Health and Human~~
13 ~~Services Commission~~] shall adopt rules necessary to implement this
14 subchapter, including requirements for the issuance, renewal,
15 denial, suspension, and revocation of a permit issued under this
16 subchapter.

17 SECTION 3.0877. Section 345.045(b), Health and Safety Code,
18 is amended to read as follows:

19 (b) The executive commissioner [~~of the Health and Human~~
20 ~~Services Commission,~~] by rule[~~r~~] may establish additional
21 requirements regulating the sanitary condition of a permit holder's
22 place of business. The holder of a germicidal treatment permit who
23 germicidally treats not more than 10 items at the permit holder's
24 place of business each week is exempt from any additional
25 requirements regulating the sanitary condition of a permit holder's
26 place of business adopted under this subsection.

27 SECTION 3.0878. Section 345.082, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 345.082. RULEMAKING AUTHORITY. The executive
3 commissioner [department] may adopt rules to implement and enforce
4 this chapter.

5 SECTION 3.0879. Section 345.102(c), Health and Safety Code,
6 is amended to read as follows:

7 (c) If the person notified of the violation accepts the
8 determination of the department or if the person fails to respond in
9 a timely manner to the notice, the department [commissioner of
10 public health or the commissioner's designee] shall [issue an]
11 order [approving the determination and ordering that] the person to
12 pay the proposed penalty.

13 SECTION 3.0880. Section 345.103, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 345.103. HEARING; ORDER. (a) If the person notified
16 requests a hearing, the department shall refer the matter to the
17 State Office of Administrative Hearings. The department shall[+
18 (1) set a hearing;

19 [(2)] give written notice of the hearing to the
20 person[; and

21 [(3) designate a hearings examiner to conduct the
22 hearing].

23 (b) An administrative law judge of the State of Office of
24 Administrative Hearings [The hearings examiner] shall make
25 findings of fact and conclusions of law and shall promptly issue to
26 the department [commissioner of public health or the commissioner's
27 designee] a written proposal for decision as to the occurrence of

1 the violation and a recommendation as to the amount of the proposed
2 penalty if a penalty is determined to be warranted.

3 (c) Based on the findings of fact and conclusions of law and
4 the recommendations of the administrative law judge [hearings
5 examiner], the department [~~commissioner of public health or the~~
6 ~~commissioner's designee~~] by order may find that a violation has
7 occurred and may assess a penalty or may find that no violation has
8 occurred.

9 SECTION 3.0881. Section 345.106(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) At the request of the department [~~commissioner of public~~
12 ~~health~~], the attorney general may petition the district court for a
13 temporary restraining order to restrain a continuing violation of
14 this chapter or a threat of a continuing violation of this chapter
15 if the department [~~commissioner of public health~~] finds that:

16 (1) a person has violated, is violating, or is
17 threatening to violate this chapter; and

18 (2) the violation or threatened violation creates an
19 immediate threat to the health and safety of the public.

20 SECTION 3.0882. Section 345.107(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) The department may assess reasonable expenses and costs
23 against a person in an administrative hearing if, as a result of the
24 hearing, the person's permit is denied, suspended, or revoked or if
25 administrative penalties are assessed against the person. The
26 person shall pay expenses and costs assessed under this subsection
27 not later than the 30th day after the date on which the order issued

1 by the department [~~commissioner of public health or the~~
2 ~~commissioner's designee~~] requiring the payment of expenses and
3 costs is final. The department may refer the matter to the attorney
4 general for collection of the expenses and costs.

5 SECTION 3.0883. Section 345.131(1), Health and Safety Code,
6 is amended to read as follows:

7 (1) "Authorized agent" means an employee of the
8 department who is designated by the commissioner [~~of public health~~]
9 to enforce the provisions of this chapter.

10 SECTION 3.0884. Section 345.132, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 345.132. DETAINED OR EMBARGOED BEDDING. (a) The
13 department [~~commissioner of public health or an authorized agent~~]
14 may detain or embargo bedding under this section if the department
15 [~~commissioner or the authorized agent~~] finds or has probable cause
16 to believe that the article violates this chapter or a rule or
17 standard adopted under this chapter.

18 (b) The department [~~commissioner of public health or an~~
19 ~~authorized agent~~] shall affix to detained or embargoed bedding a
20 tag or other appropriate marking that gives notice that:

21 (1) the bedding violates or is suspected of violating
22 this chapter or a rule or standard adopted under this chapter; and
23 (2) the bedding has been detained or embargoed.

24 (c) The tag or marking on detained or embargoed bedding must
25 warn all persons not to use the bedding, remove the bedding from the
26 premises, or dispose of the bedding by sale or otherwise until
27 permission for use, removal, or disposal is given by the department

1 [commissioner of public health, the authorized agent,] or a court.

2 (d) A person may not use detained or embargoed bedding,
3 remove detained or embargoed bedding from the premises, or dispose
4 of detained or embargoed bedding by sale or otherwise without
5 permission of the department [commissioner of public health, the
6 authorized agent,] or a court.

7 (e) The department [commissioner of public health or an
8 authorized agent] shall remove the tag or other marking from
9 detained or embargoed bedding if the department [commissioner or an
10 authorized agent] finds that the bedding does not violate this
11 chapter or a rule or standard adopted under this chapter.

12 SECTION 3.0885. Sections 345.133(a), (b), and (d), Health
13 and Safety Code, are amended to read as follows:

14 (a) If the claimant of the detained or embargoed bedding or
15 the claimant's agent fails or refuses to transfer the bedding to a
16 secure place after the tag or other appropriate marking has been
17 affixed as provided by Section 345.132, the department
18 [commissioner of public health or an authorized agent] may order
19 the transfer of the bedding to one or more secure storage areas to
20 prevent unauthorized use, removal, or disposal.

21 (b) The department [commissioner of public health or an
22 authorized agent] may provide for the transfer of the bedding if the
23 claimant of the bedding or the claimant's agent does not carry out
24 the transfer order in a timely manner.

25 (d) The commissioner [of public health] may request the
26 attorney general to bring an action in the district court in Travis
27 County to recover the costs of the transfer. In a judgment in favor

1 of the state, the court may award costs, attorney's fees, court
2 costs, and interest from the time the expense was incurred through
3 the date the department is reimbursed.

4 SECTION 3.0886. Sections [345.135\(a\), \(b\), \(c\), \(e\), \(g\),](#)
5 and (h), Health and Safety Code, are amended to read as follows:

6 (a) In conjunction with the detention or embargo of bedding
7 under this subchapter, the commissioner [~~of public health~~] may
8 order bedding to be recalled from commerce.

9 (b) The commissioner's [~~commissioner of public health's~~]
10 recall order may require the bedding to be removed to one or more
11 secure areas approved by the commissioner or an authorized agent.

12 (c) The recall order must be in writing and signed by the
13 commissioner [~~of public health~~].

14 (e) The recall order is effective until the order:

15 (1) expires on its own terms;

16 (2) is withdrawn by the commissioner [~~of public~~
17 ~~health~~]; or

18 (3) is reversed by a court in an order denying
19 condemnation under Section [345.134](#).

20 (g) If the claimant or the claimant's agent fails or refuses
21 to carry out the recall order in a timely manner, the commissioner
22 [~~of public health~~] may provide for the recall of the bedding. The
23 costs of the recall shall be assessed against the claimant of the
24 bedding or the claimant's agent.

25 (h) The commissioner [~~of public health~~] may request the
26 attorney general to bring an action in the district court of Travis
27 County to recover the costs of the recall. In a judgment in favor of

1 the state, the court may award costs, attorney's fees, court costs,
2 and interest from the time the expense was incurred through the date
3 the department is reimbursed.

4 SECTION 3.0887. Section 345.137, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 345.137. CORRECTION BY PROPER LABELING OR PROCESSING.
7 (a) A court may order the delivery of detained or embargoed bedding
8 that violates this chapter or a rule or standard adopted under this
9 chapter to the claimant of the bedding for labeling or processing
10 under the supervision of an agent of the commissioner [or public
11 health] or an authorized agent if:

12 (1) the decree has been entered in the suit relating to
13 the detained or embargoed bedding;

14 (2) the claimant has paid the costs, fees, and
15 expenses of the suit;

16 (3) the violation can be corrected by proper labeling
17 or processing; and

18 (4) a good and sufficient bond, conditioned on the
19 correction of the violation by proper labeling or processing, has
20 been executed.

21 (b) The claimant shall pay the costs of the supervision of
22 the labeling or processing by the agent of the commissioner [or
23 public health] or an authorized agent.

24 (c) The court shall order that the bedding be returned to
25 the claimant and the bond discharged on the representation to the
26 court by the commissioner [or public health] or an authorized agent
27 that the article no longer violates this chapter or a rule or

1 standard adopted under this chapter and that the expenses of the
2 supervision are paid.

3 SECTION 3.0888. Section 361.003(5), Health and Safety Code,
4 is amended to read as follows:

5 (5) "Commission" means the Texas [Natural Resource
6 Conservation] Commission on Environmental Quality.

7 SECTION 3.0889. Sections 361.018(a) and (b), Health and
8 Safety Code, are amended to read as follows:

9 (a) The commission has the powers under this chapter
10 necessary or convenient to carry out its responsibilities
11 concerning the regulation of the management of hazardous waste
12 components of radioactive waste under the jurisdiction of the
13 [Texas] Department of State Health Services.

14 (b) The commission shall consult with the [Texas]
15 Department of State Health Services concerning regulation and
16 management under this section, except for activities solely under
17 the commission's jurisdiction.

18 SECTION 3.0890. Section 361.039, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 361.039. CONSTRUCTION OF OTHER LAWS. Except as
21 specifically provided by this chapter, this chapter does not
22 diminish or limit the authority of the commission, the [Texas]
23 Department of State Health Services, or a local government in
24 performing the powers, functions, and duties vested in those
25 governmental entities by other law.

26 SECTION 3.0891. The heading to Subchapter B, Chapter 361,
27 Health and Safety Code, is amended to read as follows:

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SUBCHAPTER B. POWERS AND DUTIES OF [TEXAS NATURAL RESOURCE
CONSERVATION] COMMISSION

SECTION 3.0892. Section 361.560(3), Health and Safety Code,

4 is amended to read as follows:

16 SECTION 3.0893. Section 382.002(b), Health and Safety Code,
17 is amended to read as follows:

18 (b) It is intended that this chapter be vigorously enforced
19 and that violations of this chapter or any rule or order of the
20 Texas [Natural Resource Conservation] Commission on Environmental
21 Quality result in expeditious initiation of enforcement actions as
22 provided by this chapter.

23 SECTION 3.0894. Section 382.003(4), Health and Safety Code,
24 is amended to read as follows:

25 (4) "Commission" means the Texas [Natural Resource
26 Conservation] Commission on Environmental Quality.

27 SECTION 3.0895. Section 382.019(c), Health and Safety Code.

1 is amended to read as follows:

2 (c) The commission or any other state agency may not adopt a
3 rule requiring the use of Stage II vapor recovery systems that
4 control motor vehicle refueling emissions at a gasoline dispensing
5 facility in this state until the United States Environmental
6 Protection Agency determines that the use of the system is required
7 for compliance with the federal Clean Air Act (42 U.S.C. 7401 et
8 seq.), except the commission may adopt rules requiring such vapor
9 recovery systems installed in nonattainment areas if it can be
10 demonstrated to be necessary for the attainment of federal ozone
11 ambient air quality standards or, following appropriate health
12 studies and in consultation with the [Texas] Department of State
13 Health Services, it is determined to be necessary for the
14 protection of public health.

15 SECTION 3.0896. Section 385.001(2), Health and Safety Code,
16 is amended to read as follows:

17 (2) "Executive commissioner" [~~Board~~] means the
18 executive commissioner of the Health and Human Services Commission
19 [~~Texas Board of Health~~].

20 SECTION 3.0897. The heading to Section 385.002, Health and
21 Safety Code, is amended to read as follows:

22 Sec. 385.002. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
23 [~~BOARD~~].

24 SECTION 3.0898. Sections 385.002(a), (b), and (d), Health
25 and Safety Code, are amended to read as follows:

26 (a) The executive commissioner [~~board~~] by rule shall
27 establish voluntary guidelines for indoor air quality in government

1 buildings, including guidelines for ventilation and indoor air
2 pollution control systems. The executive commissioner [board] may
3 adopt other rules necessary to implement this chapter.

4 (b) In establishing the guidelines, the executive
5 commissioner [board] shall consider:

6 (1) the potential chronic effects of air contaminants
7 on human health;

8 (2) the potential effects of insufficient ventilation
9 of the indoor environment on human health;

10 (3) the potential costs of health care for the
11 short-term and long-term effects on human health that may result
12 from exposure to indoor air contaminants; and

13 (4) the potential costs of compliance with a proposed
14 guideline.

15 (d) The executive commissioner's [board's] guidelines may
16 differ for different pollution sources or different areas of the
17 state and may differ for buildings that are regularly occupied or
18 visited by children.

19 SECTION 3.0899. Section 401.003, Health and Safety Code, is
20 amended by amending Subdivision (6) and adding Subdivision (9-a) to
21 read as follows:

22 (6) "Department" means the Department of State Health
23 Services or other department designated by the executive
24 commissioner [~~of the Health and Human Services Commission~~].

25 (9-a) "Executive commissioner" means the executive
26 commissioner of the Health and Human Services Commission.

27 SECTION 3.0900. Section 401.004(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) Except as provided by Subsection (b), "low-level
3 radioactive waste" means radioactive material that:

4 (1) is discarded or unwanted and is not exempt by
5 department [board] rule adopted under Section [401.106](#);

6 (2) is waste, as that term is defined by 10 C.F.R.
7 Section 61.2; and

8 (3) is subject to:

9 (A) concentration limits established under 10
10 C.F.R. Section 61.55, or compatible rules established by the
11 executive commissioner [~~department~~] or commission, as applicable;
12 and

13 (B) disposal criteria established under Title
14 10, Code of Federal Regulations, or established by the department
15 or commission, as applicable.

16 SECTION 3.0901. Section [401.015](#)(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) The radiation advisory board is composed of the
19 following 18 members appointed by the governor:

20 (1) one representative from industry who is trained in
21 nuclear physics, science, or nuclear engineering;

22 (2) one representative from labor;

23 (3) one representative from agriculture;

24 (4) one representative from the insurance industry;

25 (5) one individual who is engaged in the use and
26 application of nuclear physics in medicine and is certified by the
27 American Board of Radiology or licensed by the Texas Board of

1 Licensure for Professional Medical Physicists;

2 (6) one hospital administrator;

3 (7) one individual licensed by the Texas Medical

4 [State] Board [~~of Medical Examiners~~] who specializes in nuclear

5 medicine;

6 (8) one individual licensed by the Texas Medical

7 [State] Board [~~of Medical Examiners~~] who specializes in pathology;

8 (9) one individual licensed by the Texas Medical

9 [State] Board [~~of Medical Examiners~~] who specializes in radiology;

10 (10) one representative from the nuclear utility

11 industry;

12 (11) one representative from the radioactive waste

13 industry;

14 (12) one representative from the petroleum industry;

15 (13) one health physicist certified by the American

16 Board of Health Physics;

17 (14) one individual licensed by the State Board of

18 Dental Examiners;

19 (15) one representative from the uranium mining

20 industry; and

21 (16) three representatives of the public.

22 SECTION 3.0902. Section 401.0152, Health and Safety Code,
23 is amended to read as follows:

24 Sec. 401.0152. INFORMATION ABOUT STANDARDS OF CONDUCT. The
25 department [~~commissioner or the commissioner's designee~~] shall
26 provide to members of the advisory board, as often as necessary,
27 information regarding the requirements for office under this

1 subchapter, including information regarding a person's
2 responsibilities under applicable laws relating to standards of
3 conduct for state officers.

4 SECTION 3.0903. Section 401.019, Health and Safety Code, as
5 amended by Chapters 553 (H.B. 212) and 554 (H.B. 213), Acts of the
6 75th Legislature, Regular Session, 1997, is reenacted and amended
7 to read as follows:

8 Sec. 401.019. ADVISORY BOARD DUTIES. The advisory board
9 shall:

10 (1) review and evaluate state radiation policies and
11 programs;

12 (2) make recommendations and furnish technical advice
13 to the department, the commission, the Railroad Commission of
14 Texas, and other state agencies that may be required on matters
15 relating to development, use, and regulation of sources of
16 radiation [~~to the department, the Texas Natural Resource~~
~~Conservation Commission, the Railroad Commission of Texas, and~~
~~other state agencies~~]; and

19 (3) review proposed rules and guidelines of any state
20 agency [~~of the department, the Texas Natural Resource Conservation~~
~~Commission, the Railroad Commission of Texas, and other state~~
~~agencies~~] relating to regulation of sources of radiation and
23 recommend changes in proposed or existing rules and guidelines
24 relating to those matters.

25 SECTION 3.0904. Section 401.051, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 401.051. ADOPTION OF RULES AND GUIDELINES. The

1 executive commissioner [board] and commission each within the [its]
2 jurisdiction of that officer or agency may adopt rules and
3 guidelines relating to control of sources of radiation.

4 SECTION 3.0905. Sections 401.052(a), (b), (c), and (e),
5 Health and Safety Code, are amended to read as follows:

6 (a) The executive commissioner [board] shall adopt rules
7 that provide for transportation and routing of radioactive material
8 and waste in this state.

9 (b) Rules adopted under this section for low-level
10 radioactive waste must:

11 (1) to the extent practicable, be compatible with
12 United States Department of Transportation and federal commission
13 [United States Nuclear Regulatory Commission] regulations relating
14 to the transportation of low-level radioactive waste;

15 (2) require each shipper and carrier [~~transporter~~] of
16 low-level radioactive waste to adopt an emergency plan approved by
17 the department for responding to transportation accidents;

18 (3) require the notification and reporting of
19 accidents to the department and to local emergency planning
20 committees in the county where the accident occurs;

21 (4) require each shipper to adopt a quality control
22 program approved by the department to verify that shipping
23 containers are suitable for shipment to a licensed disposal
24 facility;

25 (5) assess a fee on shippers for shipments to a Texas
26 low-level radioactive waste disposal facility of low-level
27 radioactive waste originating in Texas or out-of-state; and

1 (6) require a carrier [~~transporter~~] to carry liability
2 insurance in an amount the executive commissioner [~~board~~]
3 determines is sufficient to cover damages likely to be caused by a
4 shipping accident in accordance with regulations imposed by the
5 United States Department of Transportation and the federal
6 commission [~~United States Nuclear Regulatory Commission~~].

7 (c) In adopting rules under this section, the executive
8 commissioner [~~board~~] shall consult with the advisory board and the
9 commission.

10 (e) Money expended from the perpetual care account to
11 respond to accidents involving low-level radioactive waste must be
12 reimbursed to the perpetual care account by the responsible shipper
13 or carrier [~~transporter~~] according to rules adopted by the
14 executive commissioner [~~board~~].

15 SECTION 3.0906. Section 401.057(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) The executive commissioner [~~board~~] or commission by
18 rule may provide exemptions to the records requirements under
19 Subsections (a)(1) and (3).

20 SECTION 3.0907. Section 401.064, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 401.064. INSPECTION OF X-RAY EQUIPMENT. (a) The
23 executive commissioner [~~board~~] shall adopt rules relating to the
24 frequency of department inspections of electronic products.

25 (b) In adopting the rules, the executive commissioner
26 [~~board~~] shall consider the threat to human health and safety that
27 the electronic products may present.

1 (c) The executive commissioner [board] shall adopt an
2 inspection interval of five years for routine inspections of
3 electronic products that present a minimal threat to human health
4 and safety.

5 (d) The executive commissioner [board] by rule shall
6 require a person who inspects medical, podiatric medical, dental,
7 veterinary, or chiropractic electronic products to have special
8 training in the design and uses of the products.

9 (e) The department shall conduct inspections of medical,
10 podiatric medical, dental, veterinary, and chiropractic electronic
11 products in a manner designed to cause as little disruption of a
12 medical, podiatric medical, dental, veterinary, or chiropractic
13 practice as is practicable.

14 (f) In adopting rules under this section relating to the
15 inspection of medical, podiatric medical, dental, veterinary, and
16 chiropractic electronic products, the executive commissioner
17 [board] shall solicit and follow the recommendations of the State
18 Board of Dental Examiners for the inspections of dental electronic
19 products, the Texas State Board of Podiatric Medical Examiners for
20 the inspection of podiatric medical electronic products, the Texas
21 Medical [~~State~~] Board [~~of Medical Examiners~~] for the inspection of
22 medical electronic products, the [~~Texas~~] State Board of Veterinary
23 Medical Examiners for the inspection of medical electronic products
24 used in the practice of veterinary medicine, and the Texas [~~State~~]
25 Board of Chiropractic Examiners for the inspection of chiropractic
26 electronic products, unless in conflict with federal statutes or
27 federal rules.

1 SECTION 3.0908. Section 401.069, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 401.069. MEMORANDUM OF UNDERSTANDING. The executive
4 commissioner [board] or commission must adopt as a rule any
5 memorandum of understanding between the department or commission,
6 as appropriate, and another state agency.

7 SECTION 3.0909. Section 401.103, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 401.103. RULES AND GUIDELINES FOR LICENSING AND
10 REGISTRATION. (a) The executive commissioner [board] shall adopt
11 rules and guidelines that provide for licensing and registration
12 for the transportation of sources of radiation.

13 (b) The executive commissioner [board] and commission each
14 within the [its] jurisdiction of that officer or agency shall adopt
15 rules and guidelines that provide for licensing and registration
16 for the control of sources of radiation.

17 (c) In adopting rules and guidelines, the executive
18 commissioner [board] and commission shall consider the
19 compatibility of those rules and guidelines with federal regulatory
20 programs.

21 SECTION 3.0910. Sections 401.104(a), (c), (d), and (e),
22 Health and Safety Code, are amended to read as follows:

23 (a) Except as provided by Subsections (b) and (e), the
24 executive commissioner [board] by rule shall provide for the
25 general or specific licensing of:

- 26 (1) radioactive material; or
27 (2) devices or equipment using radioactive material.

1 (c) The executive commissioner [board] or commission shall
2 provide in [~~its~~] rules of the appropriate agency for the issuance,
3 amendment, suspension, and revocation of licenses.

4 (d) The executive commissioner [board] or commission,
5 within the [~~its~~] jurisdiction of that officer or agency, may
6 require the registration or licensing of other sources of
7 radiation.

8 (e) The executive commissioner [board] or commission may
9 not require a license for a person that is a party to an order issued
10 under Section 361.188 or 361.272 for sites subject to Subchapter F,
11 Chapter 361, or an agreement entered into under Section 361.606.
12 This subsection does not exempt the person from complying with
13 technical standards that a holder of a license otherwise required
14 by this chapter for the particular activity is required to meet.
15 The exemption granted by this subsection applies only to the
16 assessment and remediation of the contamination at the site.

17 SECTION 3.0911. Section 401.105, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 401.105. RECOGNITION OF OTHER LICENSES. The executive
20 commissioner [board] or commission, each within the [~~its~~]
21 jurisdiction of that officer or agency, by rule may recognize other
22 federal or state licenses the executive commissioner [board] or
23 commission, as appropriate, considers desirable, subject to
24 registration requirements the executive commissioner [board] or
25 commission, as appropriate, may prescribe.

26 SECTION 3.0912. Sections 401.106(a) and (b), Health and
27 Safety Code, are amended to read as follows:

1 (a) The executive commissioner [board] or commission by
2 rule may exempt a source of radiation or a kind of use or user from
3 the licensing or registration requirements provided by this chapter
4 and under the agency's jurisdiction if the executive commissioner
5 [board] or commission finds that the exemption of that source of
6 radiation or kind of use or user will not constitute a significant
7 risk to the public health and safety and the environment.

8 (b) The department or commission, as applicable, may exempt
9 a source of radiation or a kind of use or user from the application
10 of a rule adopted by the executive commissioner [department] or
11 commission under this chapter if the department or commission,
12 respectively, determines that the exemption:

13 (1) is not prohibited by law; and
14 (2) will not result in a significant risk to public
15 health and safety and the environment.

16 SECTION 3.0913. Section 401.107(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) An application for a specific license issued by the
19 department [board] or commission must be in writing and must state
20 the information that the executive commissioner [board] or
21 commission, as appropriate, by rule determines to be necessary to
22 decide the technical, insurance, and financial qualifications or
23 any other of the applicant's qualifications the issuing agency
24 considers reasonable or necessary to protect the occupational and
25 public health and safety and the environment.

26 SECTION 3.0914. Section 401.108(b), Health and Safety Code,
27 is amended to read as follows:

1 (b) A license holder shall submit to the department or
2 commission, as appropriate, at intervals required by department
3 [~~board~~] or commission rules or the license, proof that the license
4 holder has updated, as appropriate, the security posted under
5 Subsection (a).

6 SECTION 3.0915. Section 401.109(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) The executive commissioner [~~department~~] or commission
9 may require a holder of a license issued by the applicable agency to
10 provide security acceptable to the applicable agency to assure
11 performance of the license holder's obligations under this
12 chapter. The department shall deposit security provided to the
13 department under this section to the credit of the perpetual care
14 account. The executive commissioner [~~department~~] by rule shall
15 provide that any evidence of security must be made payable to the
16 credit of the perpetual care account. The commission shall deposit
17 security provided to the commission under this section to the
18 credit of the environmental radiation and perpetual care
19 account. The commission shall provide that security must be made
20 payable to the credit of the environmental radiation and perpetual
21 care account.

22 SECTION 3.0916. Section 401.116(d), Health and Safety Code,
23 is amended to read as follows:

24 (d) The agency shall give notice and provide for [~~hold~~] a
25 hearing to be conducted to consider the license amendment if a
26 person affected files a written complaint with the agency before
27 the 31st day after the date on which notice is published under

1 Subsection (b). The agency shall give notice of the hearing as
2 provided by Section [401.114](#).

3 SECTION 3.0917. Section [401.118](#)(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) The department [~~board~~] or commission shall prescribe
6 the form and the terms for each license it issues.

7 SECTION 3.0918. Section [401.224](#), Health and Safety Code, is
8 amended to read as follows:

9 Sec. 401.224. PACKAGING OF RADIOACTIVE WASTE. The
10 executive commissioner [~~department~~] shall adopt rules relating to
11 the packaging of radioactive waste.

12 SECTION 3.0919. Sections [401.301](#)(b) and (d), Health and
13 Safety Code, are amended to read as follows:

14 (b) The commission and the executive commissioner [~~board~~]
15 each by rule shall set the fee in an amount that may not exceed the
16 actual expenses annually incurred to:

17 (1) process applications for licenses or
18 registrations;

19 (2) amend or renew licenses or registrations;

20 (3) make inspections of license holders and
21 registrants; and

22 (4) enforce this chapter and rules, orders, licenses,
23 and registrations under this chapter.

24 (d) The commission and executive commissioner [~~department~~]
25 shall require that each person who holds a specific license issued
26 by the commission or department [~~agency~~] pay to the applicable
27 agency an additional five percent of the appropriate fee set under

1 Subsection (b). Fees collected by the department under this
2 subsection shall be deposited to the credit of the perpetual care
3 account. Fees collected by the commission under this subsection
4 shall be deposited to the environmental radiation and perpetual
5 care account. The fees are not refundable. The holder of a
6 specific license authorizing the extraction, processing, or
7 concentration of uranium or thorium from ore is not required to pay
8 the additional fee described by this subsection before the
9 beginning of operations under the license.

10 SECTION 3.0920. Section 401.302(a), Health and Safety Code,
11 is amended to read as follows:

12 (a) The executive commissioner [department], in
13 coordination with the commission, by rule may set [~~and collect~~] an
14 annual fee to be collected by the department from the operator of
15 each nuclear reactor or other fixed nuclear facility in the state
16 that uses special nuclear material.

17 SECTION 3.0921. Section 401.303(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) The executive commissioner [department] or commission
20 may require the holder of a license issued by the agency to pay
21 annually to the issuing agency an amount determined by the issuing
22 agency if continuing or perpetual maintenance, surveillance, or
23 other care is required after termination of a licensed activity.

24 SECTION 3.0922. Section 401.342(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) The attorney general, at the request of the department
27 regarding an activity under its jurisdiction, shall institute an

1 action in a district court in Travis County or in any county in
2 which a violation occurs or is about to occur if in the department's
3 judgment a person has engaged in or is about to engage in an act or
4 practice that violates or will violate this chapter, ~~or~~ a rule
5 adopted by the executive commissioner under this chapter, or a
6 license, registration, or order ~~adopted or~~ issued by the
7 department under this chapter. The attorney general may determine
8 the court in which suit will be instituted.

9 SECTION 3.0923. Section 401.343(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) The department or commission shall seek reimbursement,
12 either by an order of the department or commission or a suit filed
13 by the attorney general at the request of the department or
14 commission, of security from the perpetual care account used by the
15 department or commission to pay for actions, including corrective
16 measures, to remedy spills or contamination by radioactive
17 substances resulting from a violation of this chapter relating to
18 an activity under the jurisdiction of the department or commission,
19 ~~or~~ a violation of a rule adopted under this chapter, or a
20 violation of a license, registration, or order ~~adopted or~~ issued
21 by the department or commission under this chapter.

22 SECTION 3.0924. Section 401.384(a), Health and Safety Code,
23 is amended to read as follows:

24 (a) The department may assess an administrative penalty as
25 provided by this section and Sections 401.385-401.390 against a
26 person who causes, suffers, allows, or permits a violation of a
27 provision of this chapter relating to an activity under the

1 department's jurisdiction, a rule adopted by the executive
2 commissioner under this chapter, an [or] order issued [adopted] by
3 the department under this chapter, or a condition of a license or
4 registration issued by the department under this chapter.

5 SECTION 3.0925. Section 401.387, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 401.387. CONSENT TO PENALTY. (a) If the person
8 charged with the violation consents to the penalty recommended by
9 the department or does not respond to the notice on time, the
10 department [~~commissioner or the commissioner's designee,~~] by order
11 shall assess that penalty or order a hearing to be held on the
12 findings and recommendations in the report.

13 (b) If the department [~~commissioner or the commissioner's~~
14 ~~designee~~] assesses the recommended penalty, the department shall
15 give written notice to the person charged of the decision and that
16 person must pay the penalty.

17 SECTION 3.0926. Section 401.388, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 401.388. HEARING AND DECISION. (a) If the person
20 charged requests a hearing, the department [~~commissioner~~] shall
21 refer the matter to the State Office of Administrative Hearings
22 [~~order a hearing~~] and shall give notice of a [~~that~~] hearing to be
23 held by that office.

24 (b) The hearing shall be held by an administrative law judge
25 of the State Office of Administrative Hearings [~~a hearing examiner~~
26 ~~designated by the commissioner~~].

27 (c) The administrative law judge [~~hearing examiner~~] shall

1 make findings of fact and promptly issue to the department
2 [~~commissioner~~] a written proposal for decision as to the occurrence
3 of the violation and a recommendation of the amount of the proposed
4 penalty if a penalty is warranted.

5 (d) Based on the findings of fact and the recommendations of
6 the administrative law judge [~~hearing examiner~~], the department
7 [~~commissioner~~] by order may find that a violation has occurred and
8 assess an administrative penalty or may find that no violation
9 occurred.

10 (e) All proceedings under Subsections (a)-(d) are subject
11 to Chapter 2001, Government Code.

12 (f) The department [~~commissioner~~] shall give notice to the
13 person charged of the department's [~~commissioner's~~] decision, and
14 if the department [~~commissioner~~] finds that a violation has
15 occurred and an administrative penalty has been assessed, the
16 department [~~commissioner~~] shall give to the person charged written
17 notice of:

18 (1) the department's [~~commissioner's~~] findings;
19 (2) the amount of the penalty; and
20 (3) the person's right to judicial review of the
21 department's [~~commissioner's~~] order.

22 SECTION 3.0927. Section 401.389, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 401.389. DISPOSITION OF PENALTY; JUDICIAL REVIEW.
25 (a) Not later than the 30th day after the date on which the
26 department's [~~commissioner's~~] order is final, the person charged
27 with the penalty shall pay the full amount of the penalty or file a

1 petition for judicial review.

2 (b) If the person seeks judicial review of the violation,
3 the amount of the penalty, or both, the person, within the time
4 provided by Subsection (a), shall:

5 (1) stay enforcement of the penalty by:

6 (A) paying [~~send the amount of~~] the penalty to
7 the court [~~commissioner~~] for placement in an escrow account; or

8 (B) posting [~~(2) post~~] with the court
9 [~~commissioner~~] a supersedeas bond in a form approved by the court
10 [~~commissioner~~] for the amount of the penalty; or

11 (2) request that the department stay enforcement of
12 the penalty by:

13 (A) filing with the court a sworn affidavit of
14 the person stating that the person is financially unable to pay the
15 penalty and is financially unable to give the supersedeas bond; and

16 (B) sending a copy of the affidavit to the
17 department.

18 (b-1) If the department receives a copy of an affidavit
19 under Subsection (b)(2), the department may file with the court,
20 within five days after the date the copy is received, a contest to
21 the affidavit. The court shall hold a hearing on the facts alleged
22 in the affidavit as soon as practicable and shall stay the
23 enforcement of the penalty on finding that the alleged facts are
24 true. The person who files an affidavit has the burden of proving
25 that the person is financially unable to pay the penalty or to give
26 a supersedeas bond [, the bond to be effective until judicial review
27 of the order or decision is final].

1 (c) The department [~~commissioner~~] may request enforcement
2 by the attorney general if the person charged fails to comply with
3 this section.

4 (d) Judicial review of the order or decision of the
5 department [~~commissioner~~] assessing the penalty shall be under
6 Subchapter G, Chapter 2001, Government Code.

7 SECTION 3.0928. Section 401.390, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 401.390. REMITTING PENALTY PAYMENTS; RELEASING BONDS.

10 (a) On the date the court's judgment that an administrative penalty
11 against a person should be [~~If a penalty is~~] reduced or not assessed
12 becomes final, the court [~~commissioner~~] shall order that:

13 (1) [~~remit to the person charged~~] the appropriate
14 amount of any penalty payment plus accrued interest be remitted to
15 the person not later than the 30th day after that date; or

16 (2) [~~execute a release of~~] the bond be released, if a
17 supersedeas bond has been posted.

18 (b) Accrued interest on amounts remitted by the department
19 [~~commissioner~~] shall be paid:

20 (1) at a rate equal to the rate charged on loans to
21 depository institutions by the New York Federal Reserve Bank; and

22 (2) for the period beginning on the date the penalty is
23 paid to the department [~~commissioner~~] under Section 401.389(a) and
24 ending on the date the penalty is remitted.

25 SECTION 3.0929. Section 401.412(c), Health and Safety Code,
26 is amended to read as follows:

27 (c) The commission may adopt any rules and guidelines

1 reasonably necessary to exercise its authority under this section.
2 In adopting rules and guidelines, the commission shall consider the
3 compatibility of those rules and guidelines with federal regulatory
4 programs and the rules and guidelines of the executive commissioner
5 [board].

6 SECTION 3.0930. Section 401.414, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 401.414. MEMORANDA OF UNDERSTANDING. The Texas
9 Commission on Environmental Quality, the executive commissioner
10 for the Health and Human Services Commission, and the Railroad
11 Commission of Texas by rule shall adopt memoranda of understanding
12 defining their respective duties under this chapter.

13 SECTION 3.0931. Section 401.415(e), Health and Safety Code,
14 is amended to read as follows:

15 (e) To ensure that the State of Texas retains its Agreement
16 Status with the federal commission [~~U.S. Nuclear Regulatory~~
17 ~~Commission~~], and to ensure that radioactive materials are managed
18 consistently to protect the public health and safety and the
19 environment, the Railroad Commission of Texas shall issue rules on
20 the management of oil and gas NORM waste and in so doing shall
21 consult with the commission [~~Texas Natural Resource Conservation~~
22 ~~Commission~~] and the department [~~Department of Health~~] regarding
23 protection of the public health and the environment. The rules of
24 the railroad commission shall provide protection for public health,
25 safety, and the environment equivalent to the protection provided
26 by rules applicable to disposal of other NORM wastes having similar
27 properties, quantities, and distribution, although the approved

1 methods and sites for disposing of oil and gas NORM wastes may be
2 different from those approved for other NORM wastes.

3 SECTION 3.0932. Section [401.421](#)(3), Health and Safety Code,
4 is amended to read as follows:

5 (3) "Mammography system" includes the following:

6 (A) an x-ray unit used as a source of radiation in
7 producing images of breast tissue;

8 (B) an imaging system used for the formation of a
9 latent image of breast tissue;

10 (C) an imaging processing device for changing a
11 latent image of breast tissue to a visual image that can be used for
12 diagnostic purposes;

13 (D) a viewing device used for the visual
14 evaluation of an image of breast tissue if the image is produced in
15 interpreting visual data captured on an image receptor;

16 (E) a medical radiological technologist who
17 performs a mammography; and

18 (F) a physician who engages in, and who meets the
19 requirements provided ~~[adopted]~~ by department ~~[board]~~ rule
20 relating to, the reading, evaluation, and interpretation of
21 mammograms.

22 SECTION 3.0933. The heading to Section [401.423](#), Health and
23 Safety Code, is amended to read as follows:

24 Sec. 401.423. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
25 AND DEPARTMENT ~~[BOARD]~~.

26 SECTION 3.0934. Section [401.423](#), Health and Safety Code, is
27 amended by amending Subsection (a) and adding Subsection (a-1) to

1 read as follows:

2 (a) The department [board] shall:

3 (1) prescribe application forms for original and
4 renewal certifications; and

5 (2) ~~[adopt rules for the administration of this~~
6 ~~subchapter; and~~

7 [+3]) take other action necessary to enforce this
8 subchapter.

9 (a-1) The executive commissioner shall adopt rules for the
10 administration of this subchapter.

11 SECTION 3.0935. Sections 401.424(b), (c), and (d), Health
12 and Safety Code, are amended to read as follows:

13 (b) To protect the public health, the executive
14 commissioner [board] by rule may adopt more stringent or additional
15 requirements for:

16 (1) the certification of mammography systems; and
17 (2) the retention of original mammograms.

18 (c) To protect the public health, the executive
19 commissioner [board] by rule shall adopt qualifications for a
20 physician who reads, evaluates, and interprets a mammogram that are
21 no less stringent than the standards of the American College of
22 Radiology.

23 (d) The department [board] shall make available to the
24 public copies of the criteria of the American College of Radiology
25 mammography accreditation program or the modified criteria
26 provided [adopted] by department [board] rule.

27 SECTION 3.0936. Section 401.426(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) A person who owns, leases, or uses or the agent of a
3 person who owns, leases, or uses a mammography system must file a
4 written application for certification under Section [401.424](#) on a
5 form prescribed by the department [board].

6 SECTION 3.0937. Section [401.427](#), Health and Safety Code, is
7 amended to read as follows:

8 Sec. 401.427. CERTIFICATION RENEWAL; FEES. (a) A
9 certification is valid for three years.

10 (b) The executive commissioner [board] by rule may adopt a
11 system under which certifications under this subchapter expire on
12 various dates during the year.

13 (c) The executive commissioner by rule [board] shall set and
14 the department shall collect an annual fee for certification
15 holders in an amount reasonable and necessary to administer this
16 subchapter. A certification holder who fails to pay the annual fee
17 before the date set by the executive commissioner [board] shall pay
18 the annual fee and a late fee set by the executive commissioner
19 [board]. The department [board] may revoke the certification of a
20 certification holder who does not pay the annual fee and late fee
21 before the required date.

22 (d) A certification holder may renew the certification by
23 filing an application for renewal and paying the annual fee before
24 the date the certification expires. If a certification holder
25 fails to renew the certification by the required date, the
26 certification holder may renew the certification on payment of the
27 annual fee and a late fee set by the executive commissioner [board].

1 If the certification is not renewed before the 181st day after the
2 date on which the certification expired, the certification holder
3 must apply for an original certification under this subchapter.

4 (e) A mammography system may not be used after the
5 expiration date of the certification unless the holder of the
6 expired certification has made a timely and sufficient application
7 for renewal of the certification as provided under Section
8 [2001.054](#), Government Code, and a final determination of the
9 application by the department [board] has not been made.

10 SECTION 3.0938. Section [401.428](#)(b), Health and Safety Code,
11 is amended to read as follows:

12 (b) The executive commissioner [board] shall adopt rules
13 establishing the grounds for denial, suspension, revocation, or
14 reinstatement of a certification and establishing procedures for
15 disciplinary actions.

16 SECTION 3.0939. Sections [401.430](#)(b) and (h), Health and
17 Safety Code, are amended to read as follows:

18 (b) The executive commissioner [board] by rule shall
19 establish the routine inspection frequency for mammography systems
20 that receive certification under this subchapter.

21 (h) To protect the public health, the executive
22 commissioner [board] may adopt rules concerning the grounds for
23 posting a failure notice and the placement and size of the failure
24 notice, and for patient notification under Subsections (f) and (g),
25 as appropriate.

26 SECTION 3.0940. Subtitle A, Title 6, Health and Safety
27 Code, is amended by adding Chapter 430 to read as follows:

1 CHAPTER 430. GENERAL PROVISIONS

2 Sec. 430.001. DEFINITIONS. In this subtitle:

3 (1) "Commissioner" means the commissioner of state
4 health services.

5 (2) "Department" means the Department of State Health
6 Services.

7 (3) "Executive commissioner" means the executive
8 commissioner of the Health and Human Services Commission.

9 SECTION 3.0941. Section 431.002(8), Health and Safety Code,
10 is reenacted to read as follows:

11 (8) "Consumer commodity," except as otherwise
12 provided by this subdivision, means any food, drug, device, or
13 cosmetic, as those terms are defined by this chapter or by the
14 federal Act, and any other article, product, or commodity of any
15 kind or class that is customarily produced or distributed for sale
16 through retail sales agencies or instrumentalities for consumption
17 by individuals, or for use by individuals for purposes of personal
18 care or in the performance of services ordinarily rendered within
19 the household, and that usually is consumed or expended in the
20 course of the consumption or use. The term does not include:

21 (A) a meat or meat product, poultry or poultry
22 product, or tobacco or tobacco product;

23 (B) a commodity subject to packaging or labeling
24 requirements imposed under the Federal Insecticide, Fungicide, and
25 Rodenticide Act (7 U.S.C. 136), or The Virus-Serum-Toxin Act (21
26 U.S.C. 151 et seq.);

27 (C) a drug subject to the provisions of Section

S.B. No. 219

8 SECTION 3.0942. Section 431.002(17), Health and Safety
9 Code, is amended to read as follows:

24 (A) a pesticide chemical in or on a raw
25 agricultural commodity;

1 transportation of any raw agricultural commodity;
2 (C) a color additive;
3 (D) any substance used in accordance with a
4 sanction or approval granted prior to the enactment of the Food
5 Additives Amendment of 1958, Pub. L. No. 85-929, 52 Stat. 1041
6 (codified as amended in various sections of 21 U.S.C.), pursuant to
7 the federal Act, the Poultry Products Inspection Act (21 U.S.C. 451
8 et seq.) or the Meat Inspection Act of 1906 [~~1907~~] (21 U.S.C. 601 et
9 seq. [~~603~~]); or

10 (E) a new animal drug.
11 SECTION 3.0943. Section [431.021](#), Health and Safety Code, is
12

13 Sec. 431.021. PROHIBITED ACTS. The following acts and the
14 causing of the following acts within this state are unlawful and
15 prohibited:

16 (a) the introduction or delivery for introduction into
17 commerce of any food, drug, device, or cosmetic that is adulterated
18 or misbranded:

19 (b) the adulteration or misbranding of any food, drug,
20 device, or cosmetic in commerce;

21 (c) the receipt in commerce of any food, drug, device, or
22 cosmetic that is adulterated or misbranded, and the delivery or
23 proffered delivery thereof for pay or otherwise;

24 (d) the distribution in commerce of a consumer commodity, if
25 such commodity is contained in a package, or if there is affixed to
26 that commodity a label that does not conform to the provisions of
27 this chapter and of rules adopted under the authority of this

1 chapter; provided, however, that this prohibition shall not apply
2 to persons engaged in business as wholesale or retail distributors
3 of consumer commodities except to the extent that such persons:

4 (1) are engaged in the packaging or labeling of such
5 commodities; or

6 (2) prescribe or specify by any means the manner in
7 which such commodities are packaged or labeled;

8 (e) the introduction or delivery for introduction into
9 commerce of any article in violation of Section [431.084](#), [431.114](#),
10 or [431.115](#);

11 (f) the dissemination of any false advertisement;

12 (g) the refusal to permit entry or inspection, or to permit
13 the taking of a sample or to permit access to or copying of any
14 record as authorized by Sections 431.042-431.044; or the failure to
15 establish or maintain any record or make any report required under
16 Section 512(j), (l), or (m) of the federal Act, or the refusal to
17 permit access to or verification or copying of any such required
18 record;

19 (h) the manufacture within this state of any food, drug,
20 device, or cosmetic that is adulterated or misbranded;

21 (i) the giving of a guaranty or undertaking referred to in
22 Section [431.059](#), which guaranty or undertaking is false, except by
23 a person who relied on a guaranty or undertaking to the same effect
24 signed by, and containing the name and address of the person
25 residing in this state from whom the person received in good faith
26 the food, drug, device, or cosmetic; or the giving of a guaranty or
27 undertaking referred to in Section [431.059](#), which guaranty or

1 undertaking is false;

2 (j) the use, removal, or disposal of a detained or embargoed
3 article in violation of Section [431.048](#);

4 (k) the alteration, mutilation, destruction, obliteration,
5 or removal of the whole or any part of the labeling of, or the doing
6 of any other act with respect to a food, drug, device, or cosmetic,
7 if such act is done while such article is held for sale after
8 shipment in commerce and results in such article being adulterated
9 or misbranded;

10 (l)(1) forging, counterfeiting, simulating, or falsely
11 representing, or without proper authority using any mark, stamp,
12 tag, label, or other identification device authorized or required
13 by rules adopted under this chapter or the regulations promulgated
14 under the provisions of the federal Act;

15 (2) making, selling, disposing of, or keeping in
16 possession, control, or custody, or concealing any punch, die,
17 plate, stone, or other thing designed to print, imprint, or
18 reproduce the trademark, trade name, or other identifying mark,
19 imprint, or device of another or any likeness of any of the
20 foregoing on any drug or container or labeling thereof so as to
21 render such drug a counterfeit drug;

22 (3) the doing of any act that causes a drug to be a
23 counterfeit drug, or the sale or dispensing, or the holding for sale
24 or dispensing, of a counterfeit drug;

25 (m) the using by any person to the person's own advantage,
26 or revealing, other than to the department [~~commissioner, an~~
27 ~~authorized agent~~], to a health authority, or to the courts when

1 relevant in any judicial proceeding under this chapter, of any
2 information acquired under the authority of this chapter concerning
3 any method or process that as a trade secret is entitled to
4 protection;

5 (n) the using, on the labeling of any drug or device or in
6 any advertising relating to such drug or device, of any
7 representation or suggestion that approval of an application with
8 respect to such drug or device is in effect under Section 431.114 or
9 Section 505, 515, or 520(g) of the federal Act, as the case may be,
10 or that such drug or device complies with the provisions of such
11 sections;

12 (o) the using, in labeling, advertising or other sales
13 promotion of any reference to any report or analysis furnished in
14 compliance with Sections 431.042-431.044 or Section 704 of the
15 federal Act;

16 (p) in the case of a prescription drug distributed or
17 offered for sale in this state, the failure of the manufacturer,
18 packer, or distributor of the drug to maintain for transmittal, or
19 to transmit, to any practitioner licensed by applicable law to
20 administer such drug who makes written request for information as
21 to such drug, true and correct copies of all printed matter that is
22 required to be included in any package in which that drug is
23 distributed or sold, or such other printed matter as is approved
24 under the federal Act. Nothing in this subsection shall be
25 construed to exempt any person from any labeling requirement
26 imposed by or under other provisions of this chapter;

27 (q)(1) placing or causing to be placed on any drug or device

1 or container of any drug or device, with intent to defraud, the
2 trade name or other identifying mark, or imprint of another or any
3 likeness of any of the foregoing;

4 (2) selling, dispensing, disposing of or causing to be
5 sold, dispensed, or disposed of, or concealing or keeping in
6 possession, control, or custody, with intent to sell, dispense, or
7 dispose of, any drug, device, or any container of any drug or
8 device, with knowledge that the trade name or other identifying
9 mark or imprint of another or any likeness of any of the foregoing
10 has been placed thereon in a manner prohibited by Subdivision (1)
11 [of this subsection]; or

12 (3) making, selling, disposing of, causing to be made,
13 sold, or disposed of, keeping in possession, control, or custody,
14 or concealing with intent to defraud any punch, die, plate, stone,
15 or other thing designed to print, imprint, or reproduce the
16 trademark, trade name, or other identifying mark, imprint, or
17 device of another or any likeness of any of the foregoing on any
18 drug or container or labeling of any drug or container so as to
19 render such drug a counterfeit drug;

20 (r) dispensing or causing to be dispensed a different drug
21 in place of the drug ordered or prescribed without the express
22 permission in each case of the person ordering or prescribing;

23 (s) the failure to register in accordance with Section 510
24 of the federal Act, the failure to provide any information required
25 by Section 510(j) or (k) of the federal Act, or the failure to
26 provide a notice required by Section 510(j)(2) of the federal Act;

27 (t)(1) the failure or refusal to:

- 1 (A) comply with any requirement prescribed under
2 Section 518 or 520(g) of the federal Act; or
3 (B) furnish any notification or other material or
4 information required by or under Section 519 or 520(g) of the
5 federal Act;
- 6 (2) with respect to any device, the submission of any
7 report that is required by or under this chapter that is false or
8 misleading in any material respect;
- 9 (u) the movement of a device in violation of an order under
10 Section 304(g) of the federal Act or the removal or alteration of
11 any mark or label required by the order to identify the device as
12 detained;
- 13 (v) the failure to provide the notice required by Section
14 412(b) or 412(c), the failure to make the reports required by
15 Section 412(d)(1)(B), or the failure to meet the requirements
16 prescribed under Section 412(d) of the federal Act;
- 17 (w) except as provided under Subchapter M of this chapter
18 and Section [562.1085](#), Occupations Code, the acceptance by a person
19 of an unused prescription or drug, in whole or in part, for the
20 purpose of resale, after the prescription or drug has been
21 originally dispensed, or sold;
- 22 (x) engaging in the wholesale distribution of drugs or
23 operating as a distributor or manufacturer of devices in this state
24 without obtaining a license issued by the department under
25 Subchapter I, L, or N, as applicable;
- 26 (y) engaging in the manufacture of food in this state or
27 operating as a warehouse operator in this state without having a

1 license as required by Section [431.222](#) or operating as a food
2 wholesaler in this state without having a license under Section
3 [431.222](#) or being registered under Section [431.2211](#), as appropriate;

4 (z) unless approved by the United States Food and Drug
5 Administration pursuant to the federal Act, the sale, delivery,
6 holding, or offering for sale of a self-testing kit designed to
7 indicate whether a person has a human immunodeficiency virus
8 infection, acquired immune deficiency syndrome, or a related
9 disorder or condition;

10 (aa) making a false statement or false representation in an
11 application for a license or in a statement, report, or other
12 instrument to be filed with or requested by the department under
13 this chapter;

14 (bb) failing to comply with a requirement or request to
15 provide information or failing to submit an application, statement,
16 report, or other instrument required by the department;

17 (cc) performing, causing the performance of, or aiding and
18 abetting the performance of an act described by Subsection
19 [~~Subdivision~~] (x);

20 (dd) purchasing or otherwise receiving a prescription drug
21 from a pharmacy in violation of Section [431.411\(a\)](#);

22 (ee) selling, distributing, or transferring a prescription
23 drug to a person who is not authorized under state or federal law to
24 receive the prescription drug in violation of Section [431.411\(b\)](#);

25 (ff) failing to deliver prescription drugs to specified
26 premises as required by Section [431.411\(c\)](#);

27 (gg) failing to maintain or provide pedigrees as required by

1 Section 431.412 or 431.413;

2 (hh) failing to obtain, pass, or authenticate a pedigree as
3 required by Section 431.412 or 431.413;

4 (ii) the introduction or delivery for introduction into
5 commerce of a drug or prescription device at a flea market;

6 (jj) the receipt of a prescription drug that is adulterated,
7 misbranded, stolen, obtained by fraud or deceit, counterfeit, or
8 suspected of being counterfeit, and the delivery or proffered
9 delivery of such a drug for payment or otherwise; or

10 (kk) the alteration, mutilation, destruction,
11 obliteration, or removal of all or any part of the labeling of a
12 prescription drug or the commission of any other act with respect to
13 a prescription drug that results in the prescription drug being
14 misbranded.

15 SECTION 3.0944. Section 431.022(c), Health and Safety Code,
16 is amended to read as follows:

17 (c) A product containing ephedrine that is not described in
18 Subsection (a)(3) must be labeled in accordance with department
19 rules [~~adopted by the Texas Department of Health~~] to indicate that
20 sale to persons 17 years of age or younger is prohibited.

21 SECTION 3.0945. Sections 431.042(a), (f), (g), and (h),
22 Health and Safety Code, are amended to read as follows:

23 (a) To enforce this chapter, the department [~~commissioner,~~
24 ~~an authorized agent,~~] or a health authority may, on presenting
25 appropriate credentials to the owner, operator, or agent in charge:

26 (1) enter at reasonable times an establishment,
27 including a factory or warehouse, in which a food, drug, device, or

1 cosmetic is manufactured, processed, packed, or held for
2 introduction into commerce or held after the introduction;

3 (2) enter a vehicle being used to transport or hold the
4 food, drug, device, or cosmetic in commerce; or

5 (3) inspect at reasonable times, within reasonable
6 limits, and in a reasonable manner, the establishment or vehicle
7 and all equipment, finished and unfinished materials, containers,
8 and labeling of any item and obtain samples necessary for the
9 enforcement of this chapter.

10 (f) The executive commissioner [board] may exempt a class of
11 persons from inspection under this section if the executive
12 commissioner [board] finds that inspection as applied to the class
13 is not necessary for the protection of the public health.

14 (g) The department [~~An authorized agent~~] or a health
15 authority who makes an inspection under this section to enforce the
16 provisions of this chapter applicable to infant formula shall be
17 permitted, at all reasonable times, to have access to and to copy
18 and verify records:

19 (1) in order to determine whether the infant formula
20 manufactured or held in the inspected facility meets the
21 requirements of this chapter; or

22 (2) that are required by this chapter.

23 (h) If the department [~~An authorized agent~~] or a health
24 authority while inspecting [~~who makes an inspection of~~] an
25 establishment, including a factory or warehouse, [and] obtains a
26 sample, the department or health authority [~~during or on completion~~
27 ~~of the inspection and~~] before leaving the establishment[~~r~~] shall

1 give to the owner, operator, or the owner's or operator's agent a
2 receipt describing the sample.

3 SECTION 3.0946. Section 431.043, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 431.043. ACCESS TO RECORDS. A person who is required
6 to maintain records under this chapter or Section 519 or 520(g) of
7 the federal Act or a person who is in charge or custody of those
8 records shall, at the request of the department [an authorized
9 ~~agent~~] or a health authority, permit the department [~~authorized~~
10 ~~agent~~] or health authority at all reasonable times access to and to
11 copy and verify the records.

12 SECTION 3.0947. Section 431.044(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) To enforce this chapter, a carrier engaged in commerce
15 or other person receiving a food, drug, device, or cosmetic in
16 commerce or holding a food, drug, device, or cosmetic received in
17 commerce shall, at the request of the department [an authorized
18 ~~agent~~] or a health authority, permit the department [~~authorized~~
19 ~~agent~~] or health authority at all reasonable times to have access to
20 and to copy all records showing:

21 (1) the movement in commerce of the food, drug,
22 device, or cosmetic;

23 (2) the holding of the food, drug, device, or cosmetic
24 after movement in commerce; and

25 (3) the quantity, shipper, and consignee of the food,
26 drug, device, or cosmetic.

27 SECTION 3.0948. Section 431.045(c), Health and Safety Code,

1 is amended to read as follows:

2 (c) If an emergency order is issued without a hearing, the
3 department shall propose [~~determine~~] a time and place for a hearing
4 and refer the matter to the State Office of Administrative
5 Hearings. An administrative law judge of that office shall set the
6 time and place for the hearing at which the emergency order is
7 affirmed, modified, or set aside. The hearing shall be held under
8 the contested case provisions of Chapter 2001, Government Code, and
9 the department's [~~board's~~] formal hearing rules.

10 SECTION 3.0949. Sections 431.047(a), (b), and (d), Health
11 and Safety Code, are amended to read as follows:

12 (a) The department [~~commissioner, an authorized agent,~~] or
13 a health authority may petition the district court for a temporary
14 restraining order to restrain a continuing violation of Subchapter
15 B or a threat of a continuing violation of Subchapter B if the
16 department [~~commissioner, authorized agent,~~] or health authority
17 finds that:

18 (1) a person has violated, is violating, or is
19 threatening to violate Subchapter B; and

20 (2) the violation or threatened violation creates an
21 immediate threat to the health and safety of the public.

22 (b) A district court, on petition of the department
23 [~~commissioner, an authorized agent,~~] or a health authority, and on
24 a finding by the court that a person is violating or threatening to
25 violate Subchapter B shall grant any injunctive relief warranted by
26 the facts.

27 (d) The department [~~commissioner~~] and the attorney general

1 may each recover reasonable expenses incurred in obtaining
2 injunctive relief under this section, including investigative
3 costs, court costs, reasonable attorney fees, witness fees, and
4 deposition expenses. The expenses recovered by the department may
5 be used by [commissioner are hereby appropriated to] the department
6 for the administration and enforcement of this chapter. The
7 expenses recovered by the attorney general may be used by [are
8 hereby appropriated to] the attorney general.

9 SECTION 3.0950. Section 431.048, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 431.048. DETAINED OR EMBARGOED ARTICLE. (a) The
12 department [~~commissioner or an authorized agent~~] shall affix to an
13 article that is a food, drug, device, cosmetic, or consumer
14 commodity a tag or other appropriate marking that gives notice that
15 the article is, or is suspected of being, adulterated or misbranded
16 and that the article has been detained or embargoed if the
17 department [~~commissioner or the authorized agent~~] finds or has
18 probable cause to believe that the article:

19 (1) is adulterated;
20 (2) is misbranded so that the article is dangerous or
21 fraudulent under this chapter; or
22 (3) violates Section 431.084, 431.114, or 431.115.

23 (b) The tag or marking on a detained or embargoed article
24 must warn all persons not to use the article, remove the article
25 from the premises, or dispose of the article by sale or otherwise
26 until permission for use, removal, or disposal is given by the
27 department [~~commissioner, the authorized agent,~~] or a court.

1 (c) A person may not use a detained or embargoed article,
2 remove a detained or embargoed article from the premises, or
3 dispose of a detained or embargoed article by sale or otherwise
4 without permission of the department [~~commissioner, the authorized~~
5 ~~agent,~~] or a court. The department [~~commissioner or the authorized~~
6 ~~agent~~] may permit perishable goods to be moved to a place suitable
7 for proper storage.

8 (d) The department [~~commissioner or an authorized agent~~]
9 shall remove the tag or other marking from an embargoed or detained
10 article if the department [~~commissioner or an authorized agent~~]
11 finds that the article is not adulterated or misbranded.

12 (e) The department [~~commissioner or an authorized agent~~]
13 may not detain or embargo an article, including an article that is
14 distressed merchandise, that is in the possession of a person
15 licensed under Chapter 432 and that is being held for the purpose of
16 reconditioning in accordance with Chapter 432, unless the
17 department [~~commissioner or an authorized agent~~] finds or has
18 probable cause to believe that the article cannot be adequately
19 reconditioned in accordance with that chapter and applicable rules.

20 SECTION 3.0951. Sections [431.049\(a\), \(b\), and \(d\)](#), Health
21 and Safety Code, are amended to read as follows:

22 (a) If the claimant of the detained or embargoed articles or
23 the claimant's agent fails or refuses to transfer the articles to a
24 secure place after the tag or other appropriate marking has been
25 affixed as provided by Section [431.048](#), the department
26 [~~commissioner or an authorized agent~~] may order the transfer of the
27 articles to one or more secure storage areas to prevent their

1 unauthorized use, removal, or disposal.

2 (b) The department [~~commissioner or an authorized agent~~]
3 may provide for the transfer of the article if the claimant of the
4 article or the claimant's agent does not carry out the transfer
5 order in a timely manner. The costs of the transfer shall be
6 assessed against the claimant of the article or the claimant's
7 agent.

8 (d) The department [~~commissioner~~] may request the attorney
9 general to bring an action in the district court in Travis County to
10 recover the costs of the transfer. In a judgment in favor of the
11 state, the court may award costs, attorney fees, court costs, and
12 interest from the time the expense was incurred through the date the
13 department is reimbursed.

14 SECTION 3.0952. Section 431.0495(b), Health and Safety
15 Code, is amended to read as follows:

16 (b) The commissioner's recall order may require the
17 articles to be removed to one or more secure areas approved by the
18 department [~~commissioner or an authorized agent~~].

19 SECTION 3.0953. Sections 431.052(a) and (c), Health and
20 Safety Code, are amended to read as follows:

21 (a) A court may order the delivery of a sampled article or a
22 detained or embargoed article that is adulterated or misbranded to
23 the claimant of the article for labeling or processing under the
24 supervision of [~~an agent of~~] the department [~~commissioner or an~~
25 ~~authorized agent~~] if:

26 (1) the decree has been entered in the suit;
27 (2) the costs, fees, and expenses of the suit have been

1 paid;

2 (3) the adulteration or misbranding can be corrected
3 by proper labeling or processing; and

4 (4) a good and sufficient bond, conditioned on the
5 correction of the adulteration or misbranding by proper labeling or
6 processing, has been executed.

7 (c) The court shall order that the article be returned to
8 the claimant and the bond discharged on the representation to the
9 court by the department [~~commissioner or an authorized agent~~] that
10 the article no longer violates this chapter and that the expenses of
11 the supervision are paid.

12 SECTION 3.0954. Section [431.053\(a\)](#), Health and Safety Code,
13 is amended to read as follows:

14 (a) The department [~~commissioner or an authorized agent~~]
15 shall immediately condemn or render by any means unsalable as human
16 food an article that is a nuisance under Subsection (b) and that the
17 department [~~commissioner or authorized agent~~] finds in any room,
18 building, or other structure or in a vehicle.

19 SECTION 3.0955. Sections [431.054\(a\)](#) and (b), Health and
20 Safety Code, are amended to read as follows:

21 (a) The department [~~commissioner~~] may assess an
22 administrative penalty against a person who violates Subchapter B
23 or an order adopted or registration issued under this chapter.

24 (b) In determining the amount of the penalty, the department
25 [~~commissioner~~] shall consider:

26 (1) the person's previous violations;
27 (2) the seriousness of the violation;

- 1 (3) any hazard to the health and safety of the public;
2 (4) the person's demonstrated good faith; and
3 (5) such other matters as justice may require.

4 SECTION 3.0956. Sections [431.055](#)(b), (c), and (d), Health
5 and Safety Code, are amended to read as follows:

6 (b) If a hearing is held, an administrative law judge of the
7 State Office of Administrative Hearings [~~the commissioner~~] shall
8 make findings of fact and shall issue to the department a written
9 proposal for decision regarding the occurrence of the violation and
10 the amount of the penalty that may be warranted.

11 (c) If the person charged with the violation does not
12 request a hearing, the department [~~commissioner~~] may assess a
13 penalty after determining that a violation has occurred and the
14 amount of the penalty that may be warranted.

15 (d) After making a determination under this section that a
16 penalty is to be assessed against a person, the department
17 [~~commissioner~~] shall issue an order requiring that the person pay
18 the penalty.

19 SECTION 3.0957. Section [431.056](#), Health and Safety Code, is
20 amended to read as follows:

21 Sec. 431.056. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
22 later than the 30th day after the date an order finding that a
23 violation has occurred is issued, the department [~~commissioner~~]
24 shall inform the person against whom the order is issued of the
25 amount of the penalty for the violation.

26 (b) Not later than the 30th day after the date on which a
27 decision or order charging a person with a penalty is final, the

1 person shall:

2 (1) pay the penalty in full; or

3 (2) file a petition for [~~if the person seeks~~] judicial
4 review of the department's order contesting the amount of the
5 penalty, the fact of the violation, or both.

6 (b-1) If the person seeks judicial review within the period
7 prescribed by Subsection (b), the person may:

8 (1) stay enforcement of the penalty by:

9 (A) paying [~~send~~] the amount of the penalty to
10 the court [~~commissioner~~] for placement in an escrow account; or
11 (B) posting [~~post~~] with the court [~~commissioner~~]
12 a supersedeas bond for the amount of the penalty; or

13 (2) request that the department stay enforcement of
14 the penalty by:

15 (A) filing with the court a sworn affidavit of
16 the person stating that the person is financially unable to pay the
17 penalty and is financially unable to give the supersedeas bond; and
18 (B) sending a copy of the affidavit to the
19 department.

20 (b-2) If the department receives a copy of an affidavit
21 under Subsection (b-1)(2), the department may file with the court,
22 within five days after the date the copy is received, a contest to
23 the affidavit. The court shall hold a hearing on the facts alleged
24 in the affidavit as soon as practicable and shall stay the
25 enforcement of the penalty on finding that the alleged facts are
26 true. The person who files an affidavit has the burden of proving
27 that the person is financially unable to pay the penalty or to give

1 a supersedeas bond.

2 (c) A bond posted under this section must be in a form
3 approved by the court [commissioner] and be effective until all
4 judicial review of the order or decision is final.

5 (d) A person who does not send money to, [~~the commissioner~~
6 ~~or~~] post the bond with, or file the affidavit with the court within
7 the period prescribed by Subsection (b) waives all rights to
8 contest the violation or the amount of the penalty.

9 SECTION 3.0958. Section 431.057, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 431.057. REFUND OF ADMINISTRATIVE PENALTY. On [Not
12 ~~later than the 30th day after~~] the date the court's judgment [~~of a~~
13 ~~judicial determination~~] that an administrative penalty against a
14 person should be reduced or not assessed becomes final, the court
15 [~~commissioner~~] shall order that:

16 (1) [~~remit to the person~~] the appropriate amount of
17 any penalty payment plus accrued interest be remitted to the person
18 not later than the 30th day after that date; or

19 (2) [~~execute a release of~~] the bond be released, if the
20 person has posted a bond.

21 SECTION 3.0959. Section 431.058, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 431.058. RECOVERY OF ADMINISTRATIVE PENALTY BY
24 ATTORNEY GENERAL. The attorney general at the request of the
25 department [~~commissioner~~] may bring a civil action to recover an
26 administrative penalty under this subchapter.

27 SECTION 3.0960. Section 431.0585(a), Health and Safety

1 Code, is amended to read as follows:

2 (a) At the request of the department [~~commissioner~~], the
3 attorney general or a district, county, or city attorney shall
4 institute an action in district court to collect a civil penalty
5 from a person who has violated Section 431.021.

6 SECTION 3.0961. Sections 431.059(a), (b), and (c), Health
7 and Safety Code, are amended to read as follows:

8 (a) A person commits an offense if the person violates any
9 of the provisions of Section 431.021 relating to unlawful or
10 prohibited acts. A first offense under this subsection is a Class
11 A misdemeanor unless it is shown on the trial of an offense under
12 this subsection that the defendant was previously convicted of an
13 offense under this subsection, in which event the offense is a state
14 jail felony. In a criminal proceeding under this section, it is
15 not necessary to prove intent, knowledge, recklessness, or criminal
16 negligence of the defendant beyond the degree of culpability, if
17 any, stated in [~~Subsection (a-2) or~~] Section 431.021[, as
18 applicable,] to establish criminal responsibility for the
19 violation.

20 (b) A person is not subject to the penalties of Subsection
21 (a):

22 (1) for having received an article in commerce and
23 having delivered or offered delivery of the article, if the
24 delivery or offer was made in good faith, unless the person refuses
25 to furnish, on request of the department [~~commissioner, an~~
26 ~~authorized agent,~~] or a health authority, the name and address of
27 the person from whom the article was received and copies of any

1 documents relating to the receipt of the article;

2 (2) for having violated Section 431.021(a) or (e) if

3 the person establishes a guaranty or undertaking signed by, and

4 containing the name and address of, the person residing in this

5 state from whom the person received in good faith the article, to

6 the effect that:

7 (A) in the case of an alleged violation of

8 Section 431.021(a), the article is not adulterated or misbranded

9 within the meaning of this chapter; and

10 (B) in the case of an alleged violation of

11 Section 431.021(e), the article is not an article that may not,

12 under the provisions of Section 404 or 405 of the federal Act or

13 Section 431.084 or 431.114, be introduced into commerce;

14 (3) for having violated Section 431.021, if the

15 violation exists because the article is adulterated by reason of

16 containing a color additive not from a batch certified in

17 accordance with regulations promulgated under the federal Act, if

18 the person establishes a guaranty or undertaking signed by, and

19 containing the name and address of, the manufacturer of the color

20 additive, to the effect that the color additive was from a batch

21 certified in accordance with the applicable regulations

22 promulgated under the federal Act;

23 (4) for having violated Section 431.021(b), (c), or

24 (k) by failure to comply with Section 431.112(i) with respect to an

25 article received in commerce to which neither Section 503(a) nor

26 Section 503(b)(1) of the federal Act applies if the delivery or

27 offered delivery was made in good faith and the labeling at the time

1 of the delivery or offer contained the same directions for use and
2 warning statements as were contained in the labeling at the same
3 time of the receipt of the article; or

4 (5) for having violated Section [431.021](#)(1)(2) if the
5 person acted in good faith and had no reason to believe that use of
6 the punch, die, plate, stone, or other thing would result in a drug
7 being a counterfeit drug, or for having violated Section
8 [431.021](#)(1)(3) if the person doing the act or causing it to be done
9 acted in good faith and had no reason to believe that the drug was a
10 counterfeit drug.

11 (c) A publisher, radio-broadcast licensee, or agency or
12 medium for the dissemination of an advertisement, except the
13 manufacturer, packer, distributor, or seller of the article to
14 which a false advertisement relates, is not liable under this
15 section for the dissemination of the false advertisement, unless
16 the person has refused, on the request of the department,
17 [~~commissioner~~] to furnish the department [~~commissioner~~] the name
18 and post-office address of the manufacturer, packer, distributor,
19 seller, or advertising agency, residing in this state who caused
20 the person to disseminate the advertisement.

21 SECTION 3.0962. Section [431.060](#), Health and Safety Code, is
22 amended to read as follows:

23 Sec. 431.060. INITIATION OF PROCEEDINGS. (a) The attorney
24 general, or a district, county, or municipal attorney to whom the
25 department [~~commissioner, an authorized agent,~~] or a health
26 authority reports a violation of this chapter, shall initiate and
27 prosecute appropriate proceedings without delay.

1 (b) The department [commissioner, the commissioner's
2 ~~authorized agent,~~] or [~~the~~] attorney general may, as authorized by
3 Section 307 of the federal Act, bring in the name of this state a
4 suit for civil penalties or to restrain a violation of Section 401
5 or Section 403(b) through (i), (k), (q), or (r) of the federal Act
6 if the food that is the subject of the proceedings is located in
7 this state.

8 (c) The department [commissioner, the commissioner's
9 ~~authorized agent,~~] or [~~the~~] attorney general may not bring a
10 proceeding under Subsection (b):

11 (1) before the 31st day after the date on which the
12 state has given notice to the secretary of its intent to bring a
13 suit;

14 (2) before the 91st day after the date on which the
15 state has given notice to the secretary of its intent to bring a
16 suit if the secretary has, not later than the 30th day after
17 receiving notice from the state, commenced an informal or formal
18 enforcement action pertaining to the food that would be the subject
19 of the suit brought by the state; or

20 (3) if the secretary is diligently prosecuting a suit
21 in court pertaining to that food, has settled a suit pertaining to
22 that food, or has settled the informal or formal enforcement action
23 pertaining to that food.

24 SECTION 3.0963. Section 431.061, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 431.061. MINOR VIOLATION. This chapter does not
27 require the department [commissioner, an ~~authorized agent,~~] or a

1 health authority to report for prosecution or the institution of
2 proceedings under this chapter a minor violation of this chapter if
3 the department [~~commissioner, authorized agent,~~] or health
4 authority believes that the public interest is adequately served by
5 a suitable written notice or warning.

6 SECTION 3.0964. Section [431.081](#), Health and Safety Code, is
7 amended to read as follows:

8 Sec. 431.081. ADULTERATED FOOD. A food shall be deemed to
9 be adulterated:

10 (a) if:

11 (1) it bears or contains any poisonous or deleterious
12 substance which may render it injurious to health; but in case the
13 substance is not an added substance the food shall not be considered
14 adulterated under this subdivision if the quantity of the substance
15 in the food does not ordinarily render it injurious to health; [~~or~~]

16 (2) it:

17 (A) bears or contains any added poisonous or
18 added deleterious substance, other than one that is a pesticide
19 chemical in or on a raw agricultural commodity, a food additive, a
20 color additive, or a new animal drug which is unsafe within the
21 meaning of Section [431.161](#); [~~or~~]

22 (B) is a raw agricultural commodity and it bears
23 or contains a pesticide chemical which is unsafe within the meaning
24 of Section [431.161\(a\)](#); [~~or~~]

25 (C) is, or it bears or contains, any food
26 additive which is unsafe within the meaning of Section [431.161\(a\)](#);
27 provided, that where a pesticide chemical has been used in or on a

1 raw agricultural commodity in conformity with an exemption granted
2 or a tolerance prescribed under Section 431.161(a), and such raw
3 agricultural commodity has been subjected to processing such as
4 canning, cooking, freezing, dehydrating, or milling, the residue of
5 such pesticide chemical remaining in or on such processed food
6 shall, notwithstanding the provisions of Section 431.161 and
7 Section 409 of the federal Act, not be deemed unsafe if such residue
8 in or on the raw agricultural commodity has been removed to the
9 extent possible in good manufacturing practice, and the
10 concentration of such residue in the processed food, when ready to
11 eat, is not greater than the tolerance prescribed for the raw
12 agricultural commodity; or

13 (D) is, or it bears or contains, a new animal
14 drug, or a conversion product of a new animal drug, that is unsafe
15 under Section 512 of the federal Act; [ex]

16 (3) it consists in whole or in part of a diseased,
17 contaminated, filthy, putrid, or decomposed substance, or if it is
18 otherwise unfit for foods; [ex]

19 (4) it has been produced, prepared, packed or held
20 under unsanitary conditions whereby it may have become contaminated
21 with filth, or whereby it may have been rendered diseased,
22 unwholesome, or injurious to health; [ex]

23 (5) it is, in whole or in part, the product of a
24 diseased animal, an animal which has died otherwise than by
25 slaughter, or an animal that has been fed upon the uncooked offal
26 from a slaughterhouse; [ex]

27 (6) its container is composed, in whole or in part, of

1 any poisonous or deleterious substance which may render the
2 contents injurious to health; or

3 (7) it has been intentionally subjected to radiation,
4 unless the use of the radiation was in conformity with a regulation
5 or exemption in effect in accordance with Section 409 of the federal
6 Act;

7 (b) if:

8 (1) any valuable constituent has been in whole or in
9 part omitted or abstracted therefrom; [or]

10 (2) any substance has been substituted wholly or in
11 part therefor; [or]

12 (3) damage or inferiority has been concealed in any
13 manner; [or]

14 (4) any substance has been added thereto or mixed or
15 packed therewith so as to increase its bulk or weight, or reduce its
16 quality or strength or make it appear better or of greater value
17 than it is; [or]

18 (5) it contains saccharin, dulcin, glucin, or other
19 sugar substitutes except in dietary foods, and when so used shall be
20 declared; or

21 (6) it be fresh meat and it contains any chemical
22 substance containing sulphites, sulphur dioxide, or any other
23 chemical preservative which is not approved by the United States
24 Department of Agriculture, the Animal and Plant Health Inspection
25 Service (A.P.H.I.S.) or by department rules [~~of the board~~];

26 (c) if it is, or it bears or contains, a color additive that
27 is unsafe under Section 431.161(a); or

1 (d) if it is confectionery and:

2 (1) has any nonnutritive object partially or
3 completely imbedded in it; provided, that this subdivision does
4 not apply if, in accordance with department rules [~~of the board~~],
5 the object is of practical, functional value to the confectionery
6 product and would not render the product injurious or hazardous to
7 health;

8 (2) bears or contains any alcohol, other than alcohol
9 not in excess of five percent by volume. Any confectionery that
10 bears or contains any alcohol in excess of one-half of one percent
11 by volume derived solely from the use of flavoring extracts and less
12 than five percent by volume:

13 (A) may not be sold to persons under the legal age
14 necessary to consume an alcoholic beverage in this state;

15 (B) must be labeled with a conspicuous, readily
16 legible statement that reads, "Sale of this product to a person
17 under the legal age necessary to consume an alcoholic beverage is
18 prohibited";

19 (C) may not be sold in a form containing liquid
20 alcohol such that it is capable of use for beverage purposes as that
21 term is used in the Alcoholic Beverage Code;

22 (D) may not be sold through a vending machine;

23 (E) must be labeled with a conspicuous, readily
24 legible statement that the product contains not more than five
25 percent alcohol by volume; and

26 (F) may not be sold in a business establishment
27 which derives less than 50 percent of its gross sales from the sale

1 of confectioneries; or
2 (3) bears or contains any nonnutritive substance;
3 provided, that this subdivision does not apply to a nonnutritive
4 substance that is in or on the confectionery by reason of its use
5 for a practical, functional purpose in the manufacture, packaging,
6 or storage of the confectionery if the use of the substance does not
7 promote deception of the consumer or otherwise result in
8 adulteration or misbranding in violation of this chapter; and
9 provided further, that the executive commissioner [board] may, for
10 the purpose of avoiding or resolving uncertainty as to the
11 application of this subdivision, adopt rules allowing or
12 prohibiting the use of particular nonnutritive substances.

13 SECTION 3.0965. Section 431.082, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 431.082. MISBRANDED FOOD. A food shall be deemed to be
16 misbranded:

17 (a) if its labeling is false or misleading in any
18 particular or fails to conform with the requirements of Section
19 431.181;

20 (b) if, in the case of a food to which Section 411 of
21 the federal Act applies, its advertising is false or misleading in a
22 material respect or its labeling is in violation of Section
23 411(b)(2) of the federal Act;

24 (c) if it is offered for sale under the name of another
25 food;

26 (d) if it is an imitation of another food, unless its
27 label bears, in prominent type of uniform size, the word

1 "imitation" and immediately thereafter the name of the food
2 imitated;

3 (e) if its container is so made, formed, or filled as
4 to be misleading;

5 (f) if in package form unless it bears a label
6 containing:

7 (1) the name and place of business of the
8 manufacturer, packer, or distributor; and

9 (2) an accurate statement, in a uniform location
10 on the principal display panel of the label, of the quantity of the
11 contents in terms of weight, measure, or numerical count;
12 provided, that under this subsection reasonable variations shall be
13 permitted, and exemptions as to small packages shall be
14 established, by department rules [~~adopted by the board~~];

15 (g) if any word, statement, or other information
16 required by or under the authority of this chapter to appear on the
17 label or labeling is not prominently placed thereon with such
18 conspicuousness (as compared with other words, statements,
19 designs, or devices in the labeling) and in such terms as to render
20 it likely to be read and understood by the ordinary individual under
21 customary conditions of purchase and use;

22 (h) if it purports to be or is represented as a food
23 for which a definition and standard of identity has been prescribed
24 by federal regulations or department rules [~~of the board~~] as
25 provided by Section 431.245, unless:

26 (1) it conforms to such definition and standard;
27 and

6 (i) if it purports to be or is represented as:

(j) unless its label bears:

1 contained in the food; except that spices, flavorings, and colors
2 not required to be certified under Section 721(c) [~~706(c)~~] of the
3 federal Act, other than those sold as such, may be designated as
4 spices, flavorings, and colors, without naming each; provided
5 that, to the extent that compliance with the requirements of this
6 subdivision is impractical or results in deception or unfair
7 competition, exemptions shall be established by department rules
8 [~~of the board~~];

9 (k) if it purports to be or is represented for special
10 dietary uses, unless its label bears such information concerning
11 its vitamin, mineral, and other dietary properties as the executive
12 commissioner [~~board~~] determines to be, and by rule prescribed, as
13 necessary in order to fully inform purchasers as to its value for
14 such uses;

15 (l) if it bears or contains any artificial flavoring,
16 artificial coloring, or chemical preservative, unless it bears
17 labeling stating that fact; provided that, to the extent that
18 compliance with the requirements of this subsection is
19 impracticable, exemptions shall be established by department rules
20 [~~of the board~~]. The provisions of this subsection and Subsections
21 (h) and (j) with respect to artificial coloring do not apply in the
22 case of butter, cheese, and ice cream;

23 (m) if it is a raw agricultural commodity that is the
24 produce of the soil and bears or contains a pesticide chemical
25 applied after harvest, unless the shipping container of the
26 commodity bears labeling that declares the presence of the chemical
27 in or on the commodity and the common or usual name and the function

1 of the chemical, except that the declaration is not required while
2 the commodity, after removal from the shipping container, is being
3 held or displayed for sale at retail out of the container in
4 accordance with the custom of the trade;

5 (n) if it is a product intended as an ingredient of
6 another food and if used according to the directions of the purveyor
7 will result in the final food product being adulterated or
8 misbranded;

9 (o) if it is a color additive, unless its packaging and
10 labeling are in conformity with the packaging and labeling
11 requirements applicable to the color additive as may be contained
12 in regulations issued under Section 721 [706] of the federal Act;

13 (p) if its packaging or labeling is in violation of an
14 applicable regulation issued under Section 3 or 4 of the federal
15 [~~Federal~~] Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472
16 or 1473 [1491 et seq.]);

17 (q)(1) [~~(q)~~ if it contains saccharin, unless its label
18 and labeling and retail display comply with the requirements of
19 Sections 403(o) and 403(p) of the ~~federal~~ Act;

20 [~~(r)~~ if it contains saccharin and is offered for sale,
21 but not for immediate consumption, at a retail establishment,
22 unless the retail establishment displays prominently, where the
23 food is held for sale, notice that is provided by the manufacturer
24 of the food under Section 403(o)(2) of the ~~federal~~ Act for consumers
25 concerning the information required by Section 403(p) of the
26 ~~federal~~ Act to be on food labels and labeling;

27 [~~(s)(1)~~] if it is a food intended for human

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1 consumption and is offered for sale, unless its label or labeling
2 bears nutrition information that provides:

3 (A)(i) the serving size that is an amount
4 customarily consumed and that is expressed in a common household
5 measure that is appropriate to the food; or

(ii) if the use of the food is not typically expressed in a serving size, the common household unit of measure that expresses the serving size of the food;

(C) the total number of calories in each serving size or other unit of measure that are:

13 (i) derived from any source; and

14 (ii) derived from fat;

15 (D) the amount of total fat, saturated fat,
16 cholesterol, sodium, total carbohydrates, complex carbohydrates,
17 sugar, dietary fiber, and total protein contained in each serving
18 size or other unit of measure; and

19 (E) any vitamin, mineral, or other nutrient
20 required to be placed on the label and labeling of food under the
21 federal Act; or

25 (B) if the secretary determines it is
26 necessary, nutrition labeling will be mandatory for raw fruits,
27 vegetables, and fish, including freshwater or marine finfish.

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1 crustaceans, mollusks including shellfish, amphibians, and other
2 forms of aquatic animal life, except that:

5 (i) that is served in restaurants or
6 other establishments in which food is served for immediate human
7 consumption or that is sold for sale or use in those establishments;

14 (iii) that is an infant formula
15 subject to Section 412 of the federal Act;

19 (v) that is described in Section 405,
20 clause (2), of the federal Act:

21 (B) Subdivision (1) does not apply to the
22 label of a food if the secretary determines by regulation that
23 compliance with that subdivision is impracticable because the
24 package of the food is too small to comply with the requirements of
25 that subdivision and if the label of that food does not contain any
26 nutrition information:

(C) if the secretary determines that a food

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1 contains insignificant amounts of all the nutrients required by
2 Subdivision (1) to be listed in the label or labeling of food, the
3 requirements of Subdivision (1) do not apply to the food if the
4 label, labeling, or advertising of the food does not make any claim
5 with respect to the nutritional value of the food, provided that if
6 the secretary determines that a food contains insignificant amounts
7 of more than half the nutrients required by Subdivision (1) to be in
8 the label or labeling of the food, the amounts of those nutrients
9 shall be stated in a simplified form prescribed by the secretary;

10 (D) if a person offers food for sale and has
11 annual gross sales made or business done in sales to consumers that
12 is not more than \$500,000 or has annual gross sales made or business
13 done in sales of food to consumers that is not more than \$50,000,
14 the requirements of this subsection do not apply to food sold by
15 that person to consumers unless the label or labeling of food
16 offered by that person provides nutrition information or makes a
17 nutrition claim;

21 (F) if food is sold by a food distributor,
22 Subdivisions (1) and (2) do not apply if the food distributor
23 principally sells food to restaurants or other establishments in
24 which food is served for immediate human consumption and the food
25 distributor does not manufacture, process, or repackage the food it
26 sells;

27 (r) [+] if it is a food intended for human

1 consumption and is offered for sale, and a claim is made on the
2 label, labeling, or retail display relating to the nutrient content
3 or a nutritional quality of the food to a specific disease or
4 condition of the human body, except as permitted by Section 403(r)
5 of the federal Act; or

6 (s) [u] if it is a food intended for human
7 consumption and its label, labeling, and retail display do not
8 comply with the requirements of Section 403(r) of the federal Act
9 pertaining to nutrient content and health claims.

10 SECTION 3.0966. Section 431.083, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 431.083. FOOD LABELING EXEMPTIONS. (a) Except as
13 provided by Subsection (c), the executive commissioner [board]
14 shall adopt rules exempting from any labeling requirement of this
15 chapter:

16 (1) small open containers of fresh fruits and fresh
17 vegetables; and

18 (2) food that is in accordance with the practice of the
19 trade, to be processed, labeled, or repacked in substantial
20 quantities at establishments other than those where originally
21 processed or packed, on conditions that the food is not adulterated
22 or misbranded under the provisions of this chapter when removed
23 from the processing, labeling, or repacking establishment.

24 (b) Food labeling exemptions adopted under the federal Act
25 apply to food in this state except as modified or rejected by
26 department rules [adopted by the board].

27 (c) The executive commissioner [board] may not adopt rules

1 under Subsection (a) to exempt foods from the labeling requirements
2 of Sections 403(q) and (r) of the federal Act.

3 SECTION 3.0967. Section [431.084](#), Health and Safety Code, is
4 amended to read as follows:

5 Sec. 431.084. EMERGENCY PERMITS FOR FOODS CONTAMINATED WITH
6 MICROORGANISMS. (a) The department [~~commissioner~~] shall provide
7 for the issuance of temporary permits to a manufacturer, processor,
8 or packer of a class of food in any locality that provides
9 conditions for the manufacture, processing, or packing for the
10 class of food as necessary to protect the public health only if the
11 department [~~commissioner~~] finds after investigation that:

12 (1) the distribution in this state of a class of food
13 may, because the food is contaminated with microorganisms during
14 the manufacture, processing, or packing of the food in any
15 locality, be injurious to health; and

16 (2) the injurious nature of the food cannot be
17 adequately determined after the food has entered commerce.

18 (b) The executive commissioner [~~board~~] by rule shall
19 establish standards and procedures for the enforcement of this
20 section.

21 (c) During the period for which permits are issued for a
22 class of food determined by the department [~~commissioner~~] to be
23 injurious under Subsection (a), a person may not introduce or
24 deliver for introduction into commerce the food unless the person
25 is a manufacturer, processor, or packer who has a permit issued by
26 the department [~~commissioner~~] as authorized by rules adopted under
27 this section.

1 (d) The department [~~commissioner~~] may immediately suspend a
2 permit issued under this section if a condition of the permit is
3 violated. An immediate suspension is effective on notice to the
4 permit holder.

5 (e) A holder of a permit that has been suspended may at any
6 time apply for the reinstatement of the permit. Immediately after a
7 hearing and an inspection of the permit holder's establishment, the
8 department [~~commissioner~~] shall reinstate the permit if adequate
9 measures have been taken to comply with and maintain the conditions
10 of the permit as originally issued or as amended.

11 (f) A permit holder shall provide access to the permit
12 holder's factory or establishment to the department [~~an authorized~~
13 ~~agent~~] to allow the department [~~agent~~] to determine whether the
14 permit holder complies with the conditions of the permit. Denial of
15 access is grounds for suspension of the permit until the permit
16 holder freely provides the access.

17 SECTION 3.0968. Section 431.111, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 431.111. ADULTERATED DRUG OR DEVICE. A drug or device
20 shall be deemed to be adulterated:

21 (a)(1) if it consists in whole or in part of any filthy,
22 putrid, or decomposed substance; or

23 (2)(A) if it has been prepared, packed, or held under
24 insanitary conditions whereby it may have been contaminated with
25 filth, or whereby it may have been rendered injurious to health; or

26 (B) if it is a drug and the methods used in, or
27 the facilities or controls used for, its manufacture, processing,

1 packing, or holding do not conform to or are not operated or
2 administered in conformity with current good manufacturing
3 practice to assure that such drug meets the requirements of this
4 chapter as to safety and has the identity and strength, and meets
5 the quality and purity characteristics, which it purports or is
6 represented to possess; or

7 (3) if its container is composed, in whole or in part,
8 of any poisonous or deleterious substance which may render the
9 contents injurious to health; or

10 (4) if it:

11 (A) bears or contains, for purposes of coloring
12 only, a color additive that is unsafe under Section 431.161(a); or

13 (B) is a color additive, the intended use of
14 which in or on drugs or devices is for purposes of coloring only,
15 and is unsafe under Section 431.161(a); or

16 (5) if it is a new animal drug that is unsafe under
17 Section 512 of the federal Act;

18 (b) if it purports to be or is represented as a drug, the
19 name of which is recognized in an official compendium, and its
20 strength differs from, or its quality or purity falls below, the
21 standards set forth in such compendium. Such determination as to
22 strength, quality or purity shall be made in accordance with the
23 tests or methods of assay set forth in such compendium, or in the
24 absence of or inadequacy of such tests or methods of assay, those
25 prescribed under the authority of the federal Act. No drug defined
26 in an official compendium shall be deemed to be adulterated under
27 this subsection [paragraph] because it differs from the standards

1 of strength, quality, or purity therefor set forth in such
2 compendium, if its difference in strength, quality, or purity from
3 such standards is plainly stated on its label. Whenever a drug is
4 recognized in The [the] United States Pharmacopeia and The
5 [Pharmacopoeia] National Formulary (USP-NF), it shall be subject to
6 the requirements of the USP-NF [United States Pharmacopoeia
7 National Formulary];

8 (c) if it is not subject to Subsection [the provision of
9 Paragraph] (b) and its strength differs from, or its purity or
10 quality falls below, that which it purports or is represented to
11 possess;

12 (d) if it is a drug and any substance has been:

13 (1) mixed or packed therewith so as to reduce its
14 quality or strength; or

15 (2) substituted wholly or in part therefor;

16 (e) if it is, or purports to be or is represented as, a
17 device that is subject to a performance standard established under
18 Section 514 of the federal Act, unless the device is in all respects
19 in conformity with the standard;

20 (f)(1) if it is a class III device:

21 (A)(i) that is required by a regulation adopted
22 under Section 515(b) of the federal Act to have an approval under
23 that section of an application for premarket approval and that is
24 not exempt from Section 515 as provided by Section 520(g) of the
25 federal Act; and

26 (ii)(I) for which an application for
27 premarket approval or a notice of completion of a product

1 development protocol was not filed with the United States Food and
2 Drug Administration by the 90th day after the date of adoption of
3 the regulation; or

4 (II) for which that application was
5 filed and approval was denied or withdrawn, for which that notice
6 was filed and was declared incomplete, or for which approval of the
7 device under the protocol was withdrawn;

8 (B) that was classified under Section 513(f) of
9 the federal Act into class III, which under Section 515(a) of the
10 federal Act is required to have in effect an approved application
11 for premarket approval, that is not exempt from Section 515 as
12 provided by Section 520(g) of the federal Act, and that does not
13 have the application in effect; or

14 (C) that was classified under Section 520(1) of
15 the federal Act into class III, which under that section is required
16 to have in effect an approved application under Section 515 of the
17 federal Act, and that does not have the application in effect,
18 except that:

19 (2)(A) in the case of a device classified under Section
20 513(f) of the federal Act into class III and intended solely for
21 investigational use, Subdivision (1)(B) does not apply to the
22 device during the period ending on the 90th day after the date of
23 adoption of the regulations prescribing the procedures and
24 conditions required by Section 520(g)(2) of the federal Act; and

25 (B) in the case of a device subject to a
26 regulation adopted under Section 515(b) of the federal Act,
27 Subdivision (1) does not apply to the device during the period

1 ending on whichever of the following dates occurs later:

2 (i) the last day of the 30-day calendar

3 month beginning after the month in which the classification of the

4 device into class III became effective under Section 513 of the

5 federal Act; or

6 (ii) the 90th day after the date of adoption

7 of the regulation;

8 (g) if it is a banned device;

9 (h) if it is a device and the methods used in, or the

10 facilities or controls used for its manufacture, packing, storage,

11 or installations are not in conformity with applicable requirements

12 under Section 520(f)(1) of the federal Act or an applicable

13 condition as prescribed by an order under Section 520(f)(2) of the

14 federal Act; or

15 (i) if it is a device for which an exemption has been granted

16 under Section 520(g) of the federal Act for investigational use and

17 the person who was granted the exemption or any investigator who

18 uses the device under the exemption fails to comply with a

19 requirement prescribed by or under that section.

20 SECTION 3.0969. Sections [431.113\(a\)](#) and [\(b\)](#), Health and
21 Safety Code, are amended to read as follows:

22 (a) The executive commissioner shall [board is directed to]
23 adopt rules exempting from any labeling or packaging requirement of
24 this chapter drugs and devices that are, in accordance with the
25 practice of the trade, to be processed, labeled, or repacked in
26 substantial quantities at establishments other than those where
27 originally processed or packaged on condition that such drugs and

1 devices are not adulterated or misbranded under the provisions of
2 this chapter on removal from such processing, labeling, or
3 repacking establishment.

4 (b) Drugs and device labeling or packaging exemptions
5 adopted under the federal Act shall apply to drugs and devices in
6 this state except insofar as modified or rejected by department
7 rules [~~of the board~~].

8 SECTION 3.0970. Section 431.114, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 431.114. NEW DRUGS. (a) A person shall not sell,
11 deliver, offer for sale, hold for sale or give away any new drug
12 unless:

13 (1) an application with respect thereto has been
14 approved and the approval has not been withdrawn under Section 505
15 of the federal Act; and

16 (2) a copy of the letter of approval or approvability
17 issued by the United States [~~Federal~~] Food and Drug Administration
18 is on file with the department [~~commissioner~~] if the product is
19 manufactured in this state.

20 (b) A person shall not use in or on human beings or animals a
21 new drug or new animal drug limited to investigational use unless
22 the person has filed with the United States [~~Federal~~] Food and Drug
23 Administration a completed and signed investigational new drug
24 (IND) application [~~"Notice of claimed investigational exemption~~
25 ~~for a new drug" form~~] in accordance with 21 C.F.R. 312.20-312.38
26 [~~312.1 (1980)~~] and the exemption has not been terminated. The drug
27 shall be plainly labeled in compliance with Section 505(i) of the

1 federal Act.

2 (c) This section shall not apply:

3 (1) to any drug that is not a new drug as defined in the
4 federal Act;

5 (2) to any drug that is licensed under the Public
6 Health Service [Services] Act [~~of July 1, 1944~~] (42 U.S.C. 201 et
7 seq.); or

8 (3) to any drug approved by the department
9 [~~commissioner~~] by the authority of any prior law.

10 SECTION 3.0971. Section 431.115(c), Health and Safety Code,
11 is amended to read as follows:

12 (c) This section does not apply to any drug:

13 (1) licensed under the virus-serum-toxin law of March
14 4, 1913 (21 U.S.C. 151-159);

15 (2) approved by the United States Department of
16 Agriculture; or

17 (3) approved by the department [~~commissioner~~] by the
18 authority of any prior law.

19 SECTION 3.0972. Section 431.116(f), Health and Safety Code,
20 is amended to read as follows:

21 (f) Notwithstanding any other state law, pricing
22 information disclosed by manufacturers or labelers under this
23 section may be provided by the department only to the Medicaid
24 vendor drug [~~purchase~~] program for its sole use. The Medicaid
25 vendor drug [~~purchase~~] program may use the information only as
26 necessary to administer its drug programs, including Medicaid drug
27 programs.

1 SECTION 3.0973. Section [431.117](#), Health and Safety Code, is
2 amended to read as follows:

3 Sec. 431.117. PRIORITY FOR HEALTH CARE PROVIDERS IN
4 DISTRIBUTION OF INFLUENZA VACCINE. The executive commissioner [~~of~~
5 ~~the Health and Human Services Commission~~] shall study the wholesale
6 distribution of influenza vaccine in this state to determine the
7 feasibility of implementing a system that requires giving a
8 priority in filling orders for influenza vaccine to physicians and
9 other licensed health care providers authorized to administer
10 influenza vaccine over retail establishments. The executive
11 commissioner may implement such a system if it is determined to be
12 feasible.

13 SECTION 3.0974. Section [431.142](#), Health and Safety Code, is
14 amended to read as follows:

15 Sec. 431.142. MISBRANDED COSMETIC. (1) A cosmetic shall be
16 deemed to be misbranded:

17 (a) if:

18 (1) its labeling is false or misleading in any
19 particular; and

20 (2) its labeling or packaging fails to conform
21 with the requirements of Section [431.181](#);

22 (b) if in package form unless it bears a label
23 containing (1) the name and place of business of the manufacturer,
24 packer, or distributor; and (2) an accurate statement of the
25 quantity of the contents in terms of weight, measure or numerical
26 count, which statement shall be separately and accurately stated in
27 a uniform location on the principal display panel of the label;

1 provided, that under Subdivision (2) reasonable variations shall be
2 permitted, and exemptions as to small packages shall be established
3 by regulations prescribed by department rules [~~adopted by the~~
4 ~~board~~];

5 (c) if any word, statement, or other information
6 required by or under authority of this chapter to appear on the
7 label or labeling is not prominently placed thereon with such
8 conspicuousness (as compared with other words, statements,
9 designs, or devices, in the labeling) and in such terms as to render
10 it likely to be read and understood by the ordinary individual under
11 customary conditions of purchase and use;

12 (d) if its container is so made, formed, or filled as
13 to be misleading;

14 (e) if it is a color additive, unless its packaging and
15 labeling are in conformity with the packaging and labeling
16 requirements, applicable to the color additive, prescribed under
17 Section 721 [~~706~~] of the federal Act. This subsection shall not
18 apply to packages of color additives which, with respect to their
19 use for cosmetics, are marketed and intended for use only in or on
20 hair dyes, as defined by Section [431.141\(a\)](#); or

21 (f) if its packaging or labeling is in violation of an
22 applicable regulation issued pursuant to Section 3 or 4 of the
23 federal [~~Federal~~] Poison Prevention Packaging Act of 1970 (15
24 U.S.C. 1472 or 1473).

25 (2) The executive commissioner [~~board~~] shall adopt rules
26 exempting from any labeling requirement of this chapter cosmetics
27 that are in accordance with the practice of the trade, to be

1 processed, labeled, or repacked in substantial quantities at an
2 establishment other than the establishment where it was originally
3 processed or packed, on condition that the cosmetics are not
4 adulterated or misbranded under the provisions of this chapter on
5 removal from the processing, labeling, or repacking establishment.
6 Cosmetic labeling exemptions adopted under the federal Act shall
7 apply to cosmetics in this state except insofar as modified or
8 rejected by department rules [~~adopted by the board~~].

9 SECTION 3.0975. Sections 431.161(b) and (c), Health and
10 Safety Code, are amended to read as follows:

11 (b) The executive commissioner [~~board~~], whenever public
12 health or other considerations in the state so require or on the
13 petition of an interested party, may adopt rules prescribing
14 tolerances for any added, poisonous, or deleterious substances,
15 food additives, pesticide chemicals in or on raw agricultural
16 commodities, or color additives, including zero tolerances and
17 exemptions from tolerances in the case of pesticide chemicals in or
18 on raw agricultural commodities. The rules [~~rule~~] may prescribe
19 the conditions under which a food additive or a color additive may
20 be safely used and may prescribe exemptions if the food additive or
21 color additive is to be used solely for investigational or
22 experimental purposes. Rules adopted under this section limiting
23 the quantity of poisonous or deleterious substances in food must
24 provide equal or stricter standards than those adopted by the
25 federal Food and Drug Administration or its successor. A person
26 petitioning for the adoption of a rule shall establish by data
27 submitted to the executive commissioner [~~board~~] that a necessity

1 exists for the rule and that its effect will not be detrimental to
2 the public health. If the data furnished by the petitioner are not
3 sufficient to allow the executive commissioner [board] to determine
4 whether the rules should be adopted, the executive commissioner
5 [board] may require additional data to be submitted. The
6 petitioner's failure to comply with the request is sufficient
7 grounds to deny the request. In adopting rules relating to those
8 substances, the executive commissioner [board] shall consider,
9 among other relevant factors, the following information furnished
10 by the petitioner, if any:

11 (1) the name and all pertinent information concerning
12 the substance, including, if available, its chemical identity and
13 composition, a statement of the conditions of the proposed use,
14 directions, recommendations, and suggestions, specimens of
15 proposed labeling, all relevant data bearing on the physical or
16 other technical effect, and the quantity required to produce that
17 effect;

18 (2) the probable composition of any substance formed
19 in or on a food, drug, or cosmetic resulting from the use of that
20 substance;

21 (3) the probable consumption of that substance in the
22 diet of man and animals, taking into account any chemically or
23 pharmacologically related substance in the diet;

24 (4) safety factors that, in the opinion of experts
25 qualified by scientific training and experience to evaluate the
26 safety of those substances for the use or uses for which they are
27 proposed to be used, are generally recognized as appropriate for

1 the use of animal experimentation data;

2 (5) the availability of any needed practicable methods
3 of analysis for determining the identity and quantity of:

4 (A) that substance in or on an article;

5 (B) any substance formed in or on an article

6 because of the use of that substance; and

7 (C) the pure substance and all intermediates and
8 impurities; and

9 (6) facts supporting a contention that the proposed
10 use of that substance will serve a useful purpose.

11 (c) The executive [Notwithstanding Sections 11.013 and
12 12.001, the] commissioner may adopt emergency rules under Chapter
13 2001, Government Code, to establish tolerance levels of poisonous
14 or deleterious substances in food.

15 SECTION 3.0976. Section 431.181(d), Health and Safety Code,
16 is amended to read as follows:

17 (d) Whenever the executive commissioner [board] determines
18 that rules containing prohibitions or requirements other than those
19 prescribed by Subsection (a) are necessary to prevent the deception
20 of consumers or to facilitate value comparisons as to any consumer
21 commodity, the executive commissioner [board] shall adopt with
22 respect to that commodity rules effective to:

23 (1) establish and define standards for the
24 characterization of the size of a package enclosing any consumer
25 commodity, which may be used to supplement the label statement of
26 net quantity of contents of packages containing such commodity, but
27 this subdivision [paragraph] shall not be construed as authorizing

1 any limitation on the size, shape, weight, dimensions, or number of
2 packages that may be used to enclose any commodity;

3 (2) regulate the placement on any package containing
4 any commodity, or on any label affixed to the commodity, of any
5 printed matter stating or representing by implication that such
6 commodity is offered for retail sale at a price lower than the
7 ordinary and customary retail sale price or that a retail sale price
8 advantage is accorded to purchasers thereof by reason of the size of
9 that package or the quantity of its contents;

10 (3) require that the label on each package of a
11 consumer commodity (other than one which is a food within the
12 meaning of Section 431.002 [~~431.002(15)~~]) bear:

13 (A) the common or usual name of the consumer
14 commodity, if any; and

15 (B) in case the consumer commodity consists of
16 two or more ingredients, the common or usual name of each ingredient
17 listed in order of decreasing predominance, but nothing in this
18 paragraph shall be deemed to require that any trade secret be
19 divulged; or

20 (4) prevent the nonfunctional slack-fill of packages
21 containing consumer commodities. For the purpose of this
22 subdivision, a package shall be deemed to be nonfunctionally
23 slack-filled if it is filled of substantially less than its
24 capacity for reasons other than:

25 (A) protection of the contents of the package; or

26 (B) the requirements of the machine used for
27 enclosing the contents in the package.

1 SECTION 3.0977. Section 431.183(c), Health and Safety Code,
2 is amended to read as follows:

3 (c) The executive commissioner [board] by rule shall
4 authorize the advertisement of a drug having a curative or
5 therapeutic effect for a disease listed under Subsection (a) if the
6 executive commissioner [board] determines that an advance in
7 medical science has made any type of self-medication safe for the
8 disease. The executive commissioner [board] may impose conditions
9 and restrictions on the advertisement of the drug necessary in the
10 interest of public health.

11 SECTION 3.0978. Section 431.2031(c), Health and Safety
12 Code, is amended to read as follows:

13 (c) The department may issue a license to a person who
14 engages in the wholesale distribution of drugs outside this state
15 to engage in the wholesale distribution of drugs in this state, if
16 after an examination of the reports of the person's compliance
17 history and current compliance record, the department determines
18 that the person is in compliance with this subchapter and
19 department [~~the board's~~] rules.

20 SECTION 3.0979. Section 431.204(b), Health and Safety Code,
21 is amended to read as follows:

22 (b) The executive commissioner [~~of the Health and Human~~
23 ~~Services Commission~~] by rule shall set the fees in amounts that
24 allow the department to recover the biennial expenditures of state
25 funds by the department in:

- 26 (1) reviewing and acting on a license;
27 (2) amending and renewing a license;

1 (3) inspecting a licensed facility; and
2 (4) implementing and enforcing this subchapter,
3 including a rule or order adopted or a license issued under this
4 subchapter.

5 SECTION 3.0980. Sections [431.207\(a\)](#) and (b), Health and
6 Safety Code, are amended to read as follows:

7 (a) The department [~~commissioner of state health services~~]
8 may refuse an application for a license or may suspend or revoke a
9 license if the applicant or licensee:

10 (1) has been convicted of a felony or misdemeanor that
11 involves moral turpitude;

12 (2) is an association, partnership, or corporation and
13 the managing officer has been convicted of a felony or misdemeanor
14 that involves moral turpitude;

15 (3) has been convicted in a state or federal court of
16 the illegal use, sale, or transportation of intoxicating liquors,
17 narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their
18 compounds or derivatives, or any other dangerous or habit-forming
19 drugs;

20 (4) is an association, partnership, or corporation and
21 the managing officer has been convicted in a state or federal court
22 of the illegal use, sale, or transportation of intoxicating
23 liquors, narcotic drugs, barbiturates, amphetamines,
24 desoxyephedrine, their compounds or derivatives, or any other
25 dangerous or habit-forming drugs;

26 (5) has not complied with this chapter or the rules
27 implementing this chapter;

1 (6) has violated Section 431.021(1)(3), relating to
2 the counterfeiting of a drug or the sale or holding for sale of a
3 counterfeit drug;

4 (7) has violated Chapter 481 or 483;

5 (8) has violated the rules of the public safety
6 director of the Department of Public Safety, including being
7 responsible for a significant discrepancy in the records that state
8 law requires the applicant or licensee to maintain; or

9 (9) fails to complete a license application or submits
10 an application that contains false, misleading, or incorrect
11 information or contains information that cannot be verified by the
12 department.

13 (b) The executive commissioner [~~of the Health and Human~~
14 ~~services Commission~~] by rule shall establish minimum standards
15 required for the issuance or renewal of a license under this
16 subchapter.

17 SECTION 3.0981. Section 431.208(b), Health and Safety Code,
18 is amended to read as follows:

19 (b) The executive commissioner [~~department~~] shall adopt
20 rules to implement this section.

21 SECTION 3.0982. Sections 431.2211(b) and (e), Health and
22 Safety Code, are amended to read as follows:

23 (b) An exemption from the licensing requirements prescribed
24 by this subchapter does not exempt the person from other provisions
25 prescribed by this subchapter or from rules adopted by the
26 executive commissioner [~~board~~] to administer and enforce those
27 provisions.

1 (e) A food wholesaler that is not required to obtain a
2 license for a place of business under Subsection (d) shall register
3 that place of business with the department. The executive
4 commissioner [~~department~~] shall adopt rules for the registration of
5 food wholesalers under this section.

6 SECTION 3.0983. Section [431.222](#)(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) Except as provided by Section [431.2211](#), a food
9 manufacturer, food wholesaler, or warehouse operator in this state
10 must apply for and obtain from the department every two years [~~each~~
11 ~~year~~] a license for each place of business that the food
12 manufacturer, food wholesaler, or warehouse operator operates in
13 this state. The food manufacturer, food wholesaler, or warehouse
14 operator must pay a licensing fee for each establishment.

15 SECTION 3.0984. Section [431.223](#)(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) The license application must be signed, verified, and
18 filed on a form furnished by the department according to department
19 [~~the~~] rules [~~adopted by the board~~].

20 SECTION 3.0985. Sections [431.224](#)(a), (b), (c), and (e),
21 Health and Safety Code, are amended to read as follows:

22 (a) The department [~~board~~] shall collect fees for:
23 (1) a license that is filed or renewed;
24 (2) a license that is amended, including a
25 notification of a change in the location of a licensed place of
26 business required under Section [431.2251](#); and
27 (3) an inspection performed to enforce this subchapter

1 and rules adopted under this subchapter.

2 (b) The department [~~board~~] may charge [~~annual~~] fees every
3 two years.

4 (c) The executive commissioner [~~board~~] by rule shall set the
5 fees in amounts that allow the department to recover the biennial
6 [~~at least 50 percent of the annual~~] expenditures of state funds by
7 the department in:

8 (1) reviewing and acting on a license;
9 (2) amending and renewing a license;
10 (3) inspecting a licensed facility; and
11 (4) implementing and enforcing this subchapter,
12 including a rule or order adopted or a license issued under this
13 subchapter.

14 (e) All license fees received by the department under this
15 subchapter shall be deposited in the state treasury to the credit of
16 the food and drug registration account [~~license fee fund~~].

17 SECTION 3.0986. Sections 431.2245(a) and (c), Health and
18 Safety Code, are amended to read as follows:

19 (a) The department [~~commissioner~~] shall establish a system
20 for processing licensing fees under this chapter, including vended
21 water facility licensing fees.

22 (c) The comptroller shall cooperate with the department
23 [~~commissioner~~] in developing the fee processing system.

24 SECTION 3.0987. Section 431.225, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 431.225. EXPIRATION DATE. (a) The executive
27 commissioner [~~board~~] by rule may provide that licenses expire on

1 different dates [~~during the year~~].

2 (b) If [~~For the year in which~~] the license expiration date
3 is changed, license fees [~~payable on or before September 1~~] shall be
4 prorated so that each license holder pays only that portion of the
5 license fee allocable to the number of months during which the
6 license is valid. On renewal of the license on the new expiration
7 date, the total license renewal fee is payable.

8 SECTION 3.0988. Section [431.2251](#), Health and Safety Code,
9 is amended to read as follows:

10 Sec. 431.2251. CHANGE IN LOCATION OF PLACE OF BUSINESS. Not
11 later than the 31st day before the date of the change, the license
12 holder shall notify in writing the department [~~commissioner or the~~
13 ~~commissioner's designee~~] of the license holder's intent to change
14 the location of a licensed place of business. The notice shall
15 include the address of the new location and the name and residence
16 address of the individual in charge of the place of business. Not
17 later than the 10th day after the completion of the change of
18 location, the license holder shall forward to the department
19 [~~commissioner or the commissioner's designee~~] the name and
20 residence address of the individual in charge of the new place of
21 business. Notice is considered adequate if the license holder
22 provides the intent and verification notices to the department
23 [~~commissioner or the commissioner's designee~~] by certified mail,
24 return receipt requested, mailed to the central office of the
25 department.

26 SECTION 3.0989. Section [431.226](#), Health and Safety Code, is
27 amended to read as follows:

1 Sec. 431.226. REFUSAL TO GRANT LICENSE; SUSPENSION OR
2 REVOCATION OF LICENSE. (a) The department [~~commissioner~~] may
3 refuse an application for a license or may suspend or revoke a
4 license.

5 (b) The executive commissioner [~~board~~] by rule shall
6 establish minimum standards for granting and maintaining a license.
7 In adopting rules under this section, the executive commissioner
8 [~~board~~] shall:

9 (1) ensure that the minimum standards prioritize safe
10 handling of fruits and vegetables based on known safety risks,
11 including any history of outbreaks of food-borne communicable
12 diseases; and

13 (2) consider acceptable produce safety standards
14 developed by a federal agency, state agency, or university.

15 (c) The refusal or the suspension or revocation of a license
16 by the department [~~commissioner~~] and the appeal from that action
17 are governed by the procedures for a contested case hearing under
18 Chapter 2001, Government Code.

19 SECTION 3.0990. Section 431.227(d), Health and Safety Code,
20 is amended to read as follows:

21 (d) The executive commissioner [~~of the Health and Human~~
22 ~~Services Commission~~] shall adopt rules to implement this section.

23 SECTION 3.0991. Sections 431.241(a), (b), (c), (d), (e),
24 and (g), Health and Safety Code, are amended to read as follows:

25 (a) The executive commissioner [~~board~~] may adopt rules for
26 the efficient enforcement of this chapter.

27 (b) The executive commissioner [~~board~~] may conform [~~its~~]

1 rules adopted under this chapter, if practicable, with regulations
2 adopted under the federal Act.

3 (c) The enumeration of specific federal laws and
4 regulations in Sections 431.244 and 431.245 does not limit the
5 general authority granted to the executive commissioner [board] in
6 Subsection (b) to conform [~~its~~] rules adopted under this chapter to
7 those adopted under the federal Act.

8 (d) The executive commissioner [board] may adopt the
9 federal regulations issued by the secretary pursuant to the
10 Prescription Drug Marketing Act of 1987 (21 U.S.C. Sections 331,
11 333, 353, and 381), as necessary or desirable so that the state
12 wholesale drug distributor licensing program in Subchapter N [~~to~~
13 ~~this chapter~~] may achieve compliance with that Act.

14 (e) The executive commissioner [board and the Texas
15 Department of Human Services] shall not establish a drug formulary
16 that restricts by any prior or retroactive approval process a
17 physician's ability to treat a patient with a prescription drug
18 that has been approved and designated as safe and effective by the
19 United States Food and Drug Administration, in compliance with
20 federal law and subject to review by the executive commissioner
21 [~~Texas Department of Human Services, Vendor Drug Advisory~~
22 ~~Subcommittee~~].

23 (g) The department may assess a fee for the issuance of a
24 certificate of free sale and another certification issued under
25 this chapter. The executive commissioner [board] by rule shall set
26 each fee in an amount sufficient to recover the cost to the
27 department of issuing the particular certificate.

1 SECTION 3.0992. Section 431.244, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 431.244. FEDERAL REGULATIONS ADOPTED AS STATE RULES.

4 (a) A regulation adopted by the secretary under the federal Act
5 concerning pesticide chemicals, food additives, color additives,
6 special dietary use, processed low acid food, acidified food,
7 infant formula, bottled water, or vended bottled water is a rule for
8 the purposes of this chapter, unless the executive commissioner
9 [~~board~~] modifies or rejects the rule.

10 (b) A regulation adopted under the Fair Packaging and
11 Labeling Act (15 U.S.C. 1451 et seq.) is a rule for the purposes of
12 this chapter, unless the executive commissioner [~~board~~] modifies or
13 rejects the rule. The executive commissioner [~~board~~] may not adopt
14 a rule that conflicts with the labeling requirements for the net
15 quantity of contents required under Section 4 of the Fair Packaging
16 and Labeling Act (15 U.S.C. 1453) and the regulations adopted under
17 that Act.

18 (c) A regulation adopted by the secretary under Sections
19 403(b) through (i) of the federal Act is a rule for the purposes of
20 this chapter unless the executive commissioner [~~board~~] modifies or
21 rejects the rule. The executive commissioner [~~board~~] may not adopt
22 a rule that conflicts with the limitations provided by Sections
23 403(q) and (r) of the federal Act.

24 (d) A federal regulation that this section provides as a
25 rule for the purposes of this chapter is effective:

26 (1) on the date that the regulation becomes effective
27 as a federal regulation; and

1 (2) whether or not the executive commissioner or
2 department has fulfilled the rulemaking provisions of Chapter 2001,
3 Government Code.

4 (e) If the executive commissioner [board] modifies or
5 rejects a federal regulation, the executive commissioner [board]
6 shall comply with the rulemaking provisions of Chapter 2001,
7 Government Code.

8 (f) For any federal regulation adopted as a state rule under
9 this chapter, including a regulation considered to be a rule for
10 purposes of this chapter under Subsection (a), (b), or (c), the
11 department [Department of State Health Services] shall provide on
12 its Internet website:

13 (1) a link to the text of the federal regulation;
14 (2) a clear explanation of the substance of and
15 purpose for the regulation; and
16 (3) information on providing comments in response to
17 any proposed or pending federal regulation, including an address to
18 which and the manner in which comments may be submitted.

19 SECTION 3.0993. Sections 431.245(a), (b), (d), and (e),
20 Health and Safety Code, are amended to read as follows:

21 (a) A definition or standard of identity, quality, or fill
22 of container of the federal Act is a definition or standard of
23 identity, quality, or fill of container in this chapter, except as
24 modified by department [board] rules.

25 (b) The executive commissioner [board] by rule may
26 establish definitions and standards of identity, quality, and fill
27 of container for a food if:

1 (1) a federal regulation does not apply to the food;
2 and

3 (2) the executive commissioner [board] determines
4 that adopting the rules will promote honest and fair dealing in the
5 interest of consumers.

6 (d) The department [~~commissioner~~] may issue additional
7 permits if the department [~~commissioner~~] determines that:

8 (1) it is necessary for the completion of an otherwise
9 adequate investigation; and

10 (2) the interests of consumers are safeguarded.

11 (e) A permit issued under Subsection (d) is subject to the
12 terms and conditions of department [board] rules.

13 SECTION 3.0994. Section [431.246](#), Health and Safety Code, is
14 amended to read as follows:

15 Sec. 431.246. REMOVAL OF ADULTERATED ITEM FROM STORES. The
16 executive commissioner [board] shall adopt rules that provide a
17 system for removing adulterated items from the shelves of a grocery
18 store or other retail establishment selling those items.

19 SECTION 3.0995. Section [431.248\(b\)](#), Health and Safety Code,
20 is amended to read as follows:

21 (b) The executive commissioner [~~department~~] and the
22 Department of Agriculture shall adopt the memorandum of
23 understanding as a rule.

24 SECTION 3.0996. Section [431.249](#), Health and Safety Code, is
25 amended to read as follows:

26 Sec. 431.249. DISSEMINATION OF INFORMATION. (a) The
27 department [~~commissioner~~] may publish reports summarizing the

1 judgments, decrees, and court orders rendered under this chapter,
2 including the nature and disposition of the charge.

3 (b) The department [commissioner] may disseminate
4 information regarding a food, drug, device, or cosmetic in a
5 situation that the department [commissioner] determines to involve
6 imminent danger to health or gross deception of consumers.

7 (c) This section does not prohibit the department
8 [commissioner] from collecting, reporting, and illustrating the
9 results of an investigation by the department [commissioner].

10 SECTION 3.0997. Section 431.272(a), Health and Safety Code,
11 is amended to read as follows:

12 (a) Except as provided by Section 431.273, a person may not
13 operate as a distributor or manufacturer of devices in this state
14 unless the person has a license from the department [commissioner]
15 for each place of business.

16 SECTION 3.0998. Section 431.273(b), Health and Safety Code,
17 is amended to read as follows:

18 (b) An exemption from the licensing requirements under this
19 section does not constitute an exemption from the other provisions
20 of this chapter or the rules adopted by the executive commissioner
21 [board] to administer and enforce this chapter.

22 SECTION 3.0999. Sections 431.274(a) and (b), Health and
23 Safety Code, are amended to read as follows:

24 (a) A person applying for a license under this subchapter
25 shall provide, at a minimum, the following information on a license
26 application form furnished by the department [commissioner]:

27 (1) the name under which the business is conducted;

1 (2) the address of each place of business that is
2 licensed;

3 (3) the name and residence address of:
4 (A) the proprietor, if the business is a
5 proprietorship;
6 (B) all partners, if the business is a
7 partnership; or
8 (C) all principals, if the business is an
9 association;

10 (4) the date and place of incorporation if the
11 business is a corporation;

12 (5) the names and residence addresses of the
13 individuals in an administrative capacity showing:
14 (A) the managing proprietor, if the business is a
15 proprietorship;
16 (B) the managing partner, if the business is a
17 partnership;
18 (C) the officers and directors, if the business
19 is a corporation; or
20 (D) the persons in a managerial capacity, if the
21 business is an association; and
22 (6) the residence address of an individual in charge
23 of each place of business.

24 (b) The license application must be signed, verified, and
25 completed in a manner described in department [~~the~~] rules [~~adopted~~
26 ~~by the board~~].

27 SECTION 3.1000. Sections [431.276](#)(b) and (c), Health and

1 Safety Code, are amended to read as follows:

2 (b) The department [board] may charge [annual] fees every
3 two years.

4 (c) The executive commissioner [board] by rule shall set the
5 fees in amounts that allow the department to recover the biennial
6 [~~at least 50 percent of the annual~~] expenditures of state funds by
7 the department in:

8 (1) reviewing and acting on a license or renewal
9 license;

10 (2) amending a license;

11 (3) inspecting a licensed facility; and

12 (4) implementing and enforcing this subchapter,
13 including a rule or order adopted or a license issued under this
14 subchapter.

15 SECTION 3.1001. Section 431.278, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 431.278. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a)
18 Not fewer than 30 days in advance of the change, the licensee shall
19 notify the department [~~commissioner or the commissioner's~~
20 ~~designee~~] in writing of the licensee's intent to change the
21 location of a licensed place of business. The notice shall include
22 the address of the new location and the name and residence address
23 of the individual in charge of the business at the new location.

24 (b) Not later than the 10th day after the date of completion
25 of the change of location, the licensee shall notify the department
26 [~~commissioner or the commissioner's designee~~] in writing to verify
27 the change of location, the address of the new location, and the

1 name and residence address of the individual in charge of the
2 business at the new address.

3 (c) Notice is adequate if the licensee provides the intent
4 and verification notices to the department [~~commissioner or the~~
5 ~~commissioner's designee~~] by certified mail, return receipt
6 requested, mailed to the central office of the department.

7 SECTION 3.1002. Section 431.279, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 431.279. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION
10 OF LICENSE. (a) The department [~~commissioner~~] may refuse an
11 application or may suspend or revoke a license if the applicant or
12 licensee:

13 (1) has been convicted of a felony or misdemeanor that
14 involves moral turpitude;

15 (2) is an association, partnership, or corporation and
16 the managing officer has been convicted of a felony or misdemeanor
17 that involves moral turpitude;

18 (3) has been convicted in a state or federal court of
19 the illegal use, sale, or transportation of intoxicating liquors,
20 narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their
21 compounds or derivatives, or any other dangerous or habit-forming
22 drugs;

23 (4) is an association, partnership, or corporation and
24 the managing officer has been convicted in a state or federal court
25 of the illegal use, sale, or transportation of intoxicating
26 liquors, narcotic drugs, barbiturates, amphetamines,
27 desoxyephedrine, their compounds or derivatives, or any other

1 dangerous or habit-forming drugs; or

2 (5) has not complied with this chapter or the [board's]
3 rules implementing this chapter.

4 (b) The department [commissioner] may refuse an application
5 for a license or may suspend or revoke a license if the department
6 [commissioner] determines from evidence presented during a hearing
7 that the applicant or licensee:

8 (1) has violated Section 431.021(1)(3), relating to
9 the counterfeiting of a drug or the sale or holding for sale of a
10 counterfeit drug;

11 (2) has violated Chapter 481 (Texas Controlled
12 Substances Act) or 483 (Dangerous Drugs); or

13 (3) has violated the rules of the public safety
14 director of the Department of Public Safety, including being
15 responsible for a significant discrepancy in the records that state
16 law requires the applicant or licensee to maintain.

17 (c) The refusal to license an applicant or the suspension or
18 revocation of a license by the department [commissioner] and the
19 appeal from that action are governed by the department's [board's]
20 formal hearing procedures and the procedures for a contested case
21 hearing under Chapter 2001, Government Code.

22 SECTION 3.1003. Section 431.322(c), Health and Safety Code,
23 is amended to read as follows:

24 (c) The charitable drug donor shall use appropriate
25 safeguards established by department rule [~~the board~~] to ensure
26 that the drugs are not compromised or illegally diverted while
27 being stored or transported to the charitable medical clinic.

1 SECTION 3.1004. Section 431.323(e), Health and Safety Code,
2 is amended to read as follows:

3 (e) The donated drugs may be accepted and dispensed or
4 administered by the charitable medical clinic only in accordance
5 with department rules [~~adopted by the department~~].

6 SECTION 3.1005. Section 431.324, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 431.324. RULES. The executive commissioner
9 [~~department~~] shall adopt rules to implement this subchapter that
10 are designed to protect the public health and safety.

11 SECTION 3.1006. Section 431.4031(c), Health and Safety
12 Code, is amended to read as follows:

13 (c) The executive commissioner [~~of the Health and Human~~
14 ~~Services Commission~~] by rule may exempt specific purchases of
15 prescription drugs by state agencies and political subdivisions of
16 this state if the executive commissioner determines that the
17 requirements of this subchapter would result in a substantial cost
18 to the state or a political subdivision of the state.

19 SECTION 3.1007. Section 431.404(d), Health and Safety Code,
20 is amended to read as follows:

21 (d) An applicant or license holder shall submit to the
22 department any change in or correction to the information required
23 under this section in the form and manner prescribed by [~~the~~]
24 department rule.

25 SECTION 3.1008. Section 431.409(b), Health and Safety Code,
26 is amended to read as follows:

27 (b) The executive commissioner [~~of the Health and Human~~

1 Services Commission] by rule shall set the fees in amounts that are
2 reasonable and necessary and allow the department to recover the
3 biennial expenditures of state funds by the department in:

- 4 (1) reviewing and acting on a license;
5 (2) amending and renewing a license;
6 (3) inspecting a licensed facility; and
7 (4) implementing and enforcing this subchapter,
8 including a rule or order adopted or a license issued under this
9 subchapter.

10 SECTION 3.1009. Section 431.411(a), Health and Safety Code,
11 is amended to read as follows:

12 (a) A wholesale distributor shall receive prescription drug
13 returns or exchanges from a pharmacy or pharmacy warehouse in
14 accordance with the terms and conditions of the agreement between
15 the wholesale distributor and the pharmacy or pharmacy warehouse.
16 An expired, damaged, recalled, or otherwise nonsalable
17 prescription drug that is returned to the wholesale distributor may
18 be distributed by the wholesale distributor only to either the
19 original manufacturer or a third-party returns processor. The
20 returns or exchanges, salable or otherwise, received by the
21 wholesale distributor as provided by this subsection, including any
22 redistribution of returns or exchanges by the wholesale
23 distributor, are not subject to the pedigree requirement under
24 Section 431.412 if the returns or exchanges are exempt from
25 pedigree under:

- 26 (1) Section 4 [503], Prescription Drug Marketing Act
27 of 1987 (21 U.S.C. Section 353(c)(3)(B));

1 (2) the regulations adopted by the secretary to
2 administer and enforce that Act; or

3 (3) the interpretations of that Act set out in the
4 compliance policy guide of the United States Food and Drug
5 Administration.

6 SECTION 3.1010. Section [431.413](#)(d), Health and Safety Code,
7 is amended to read as follows:

8 (d) The executive commissioner [~~of the Health and Human~~
9 ~~Services Commission~~] shall adopt rules to implement this section.

10 SECTION 3.1011. Sections [431.414](#)(a), (a-1), and (b), Health
11 and Safety Code, are amended to read as follows:

12 (a) The department [~~commissioner of state health services~~]
13 may refuse an application for a license or may suspend or revoke a
14 license if the applicant or license holder:

15 (1) has been convicted of a felony or misdemeanor that
16 involves moral turpitude;

17 (2) is an association, partnership, or corporation and
18 the managing officer has been convicted of a felony or misdemeanor
19 that involves moral turpitude;

20 (3) has been convicted in a state or federal court of
21 the illegal use, sale, or transportation of intoxicating liquors,
22 narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their
23 compounds or derivatives, or any other dangerous or habit-forming
24 drugs;

25 (4) is an association, partnership, or corporation and
26 the managing officer has been convicted in a state or federal court
27 of the illegal use, sale, or transportation of intoxicating

1 liquors, narcotic drugs, barbiturates, amphetamines,
2 desoxyephedrine, their compounds or derivatives, or any other
3 dangerous or habit-forming drugs;

4 (5) has not complied with this subchapter or the rules
5 implementing this subchapter;

6 (6) has violated Section 431.021(1)(3), relating to
7 the counterfeiting of a drug or the sale or holding for sale of a
8 counterfeit drug;

9 (7) has violated Chapter 481 or 483; or

10 (8) has violated the rules of the public safety
11 director of the Department of Public Safety, including being
12 responsible for a significant discrepancy in the records that state
13 law requires the applicant or license holder to maintain.

14 (a-1) The department [~~commissioner of state health~~
15 ~~services~~] may suspend or revoke a license if the license holder no
16 longer meets the qualifications for obtaining a license under
17 Section 431.405.

18 (b) The executive commissioner [~~of the Health and Human~~
19 ~~Services Commission~~] by rule shall establish minimum standards
20 required for the issuance or renewal of a license under this
21 subchapter.

22 SECTION 3.1012. Sections 431.415(a) and (c), Health and
23 Safety Code, are amended to read as follows:

24 (a) The department [~~commissioner of state health services~~]
25 shall issue an order requiring a person, including a manufacturer,
26 distributor, or retailer of a prescription drug, to immediately
27 cease distribution of the drug if the department [~~commissioner~~]

1 determines there is a reasonable probability that:

2 (1) a wholesale distributor has:

3 (A) violated this subchapter;

4 (B) falsified a pedigree; or

5 (C) sold, distributed, transferred,
6 manufactured, repackaged, handled, or held a counterfeit
7 prescription drug intended for human use that could cause serious
8 adverse health consequences or death; and

9 (2) other procedures would result in unreasonable
10 delay.

11 (c) If, after providing an opportunity for a hearing, the
12 department [~~commissioner of state health services~~] determines that
13 inadequate grounds exist to support the actions required by the
14 order, the commissioner shall vacate the order.

15 SECTION 3.1013. Sections 432.003(6) and (7), Health and
16 Safety Code, are amended to read as follows:

17 (6) "Distressed merchandise" means any food, drug,
18 device, or cosmetic that is adulterated or misbranded for purposes
19 of Section 431.081 (Adulterated Food), 431.082 (Misbranded Food),
20 431.111 (Adulterated Drug or Device), 431.112 (Misbranded Drug or
21 Device), 431.141 (Adulterated Cosmetic), or 431.142 (Misbranded
22 Cosmetic), as interpreted by department [~~board~~] rule and judicial
23 decision. The term includes a food, drug, device, or cosmetic that:

24 (A) has lost its label or is otherwise
25 unidentified;

26 (B) has been subjected to prolonged or improper
27 storage;

1 (C) has been subjected for any reason to abnormal
2 environmental conditions, including temperature extremes,
3 humidity, smoke, water, fumes, pressure, or radiation;

4 (D) has been subjected to conditions that result
5 in either its strength, purity, or quality falling below that which
6 it purports or is represented to possess; or

7 (E) may have been rendered unsafe or unsuitable
8 for human consumption or use for any reason other than those
9 specified by this subdivision.

10 (7) "Drug" means an article or substance, other than a
11 device, that is:

12 (A) recognized in The [the official] United
13 States Pharmacopeia and The National Formulary (USP-NF) or
14 [Pharmacopeia] the Homoeopathic [official Homeopathic]
15 Pharmacopoeia of the United States (HPUS), [the official National
16 Formulary] or a supplement to [any of] those publications;

17 (B) designed or intended for use in the
18 diagnosis, cure, mitigation, treatment, or prevention of disease in
19 humans or other animals;

20 (C) intended to affect the structure or any
21 function of the body of a human or other animal, excluding food; or

22 (D) intended for use as a component of an article
23 or substance specified by this subdivision.

24 SECTION 3.1014. Sections 432.007(a), (b), and (e), Health
25 and Safety Code, are amended to read as follows:

26 (a) The department shall issue a license to an applicant who
27 complies with Section 432.006 and who meets the minimum

1 qualifications established by department rule [~~the board~~].

2 (b) A license issued under this chapter expires two years
3 [~~one year~~] after the date of issuance.

4 (e) A salvage operator or salvage broker shall display the
5 license in accordance with department [~~board~~] rules.

6 SECTION 3.1015. Section 432.008(b), Health and Safety Code,
7 is amended to read as follows:

8 (b) After an inspection to determine the license holder's
9 compliance with department [~~the~~] rules [~~adopted by the board~~], the
10 department shall renew the license of a license holder who submits a
11 renewal application and pays the renewal fee.

12 SECTION 3.1016. Sections 432.009(a) and (b), Health and
13 Safety Code, are amended to read as follows:

14 (a) The executive commissioner by rule [~~board~~] shall adopt,
15 and the department shall [~~charge, and~~] collect, fees for each
16 license application or renewal application submitted under this
17 chapter and for inspections performed to enforce this chapter and
18 the department rules adopted under this chapter. [~~The board may~~
19 ~~charge the fees annually.~~]

20 (b) The executive commissioner [~~board~~] by rule shall set the
21 fees in amounts that are reasonable and necessary and allow
22 [~~sufficient for~~] the department to recover the biennial [~~not less~~
23 ~~than half of the actual annual~~] expenditures of state funds by the
24 department to:

- 25 (1) review and act on licenses;
26 (2) amend and renew licenses;
27 (3) inspect establishments operated by license

1 holders; and

2 (4) implement and enforce this chapter and rules and
3 orders adopted and licenses issued under this chapter.

4 SECTION 3.1017. Section [432.010](#), Health and Safety Code, is
5 amended to read as follows:

6 Sec. 432.010. DEPOSIT OF FEES [~~FUND~~]. A fee collected by
7 the department under this chapter shall be deposited in the state
8 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.~~]

11 SECTION 3.1018. Section [432.011](#)(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) The executive commissioner [~~board~~] shall adopt rules
14 prescribing minimum standards or related requirements for:

15 (1) the operation of salvage establishments and
16 salvage warehouses; and

17 (2) qualifications for licenses issued under this
18 chapter.

19 SECTION 3.1019. Sections [432.013](#)(b) and (c), Health and
20 Safety Code, are amended to read as follows:

21 (b) When there is an imminent threat to the health or safety
22 of the public, the department may suspend a license without notice
23 in accordance with rules adopted by the executive commissioner
24 [~~board~~] for the emergency suspension of licenses.

25 (c) The department's hearing rules and the applicable
26 provisions of Chapter 2001, Government Code, govern a hearing
27 [~~before the department~~] for the denial, suspension, emergency

1 suspension, or revocation of a license and any appeal from that
2 hearing.

3 SECTION 3.1020. Sections [432.021](#)(a) and (b), Health and
4 Safety Code, are amended to read as follows:

5 (a) The department [~~commissioner~~] may assess an
6 administrative penalty against a person who violates a rule adopted
7 under Section [432.011](#) or an order adopted or license issued under
8 this chapter.

9 (b) In determining the amount of the penalty, the department
10 [~~commissioner~~] shall consider:

- 11 (1) the person's previous violations;
12 (2) the seriousness of the violation;
13 (3) any hazard to the health and safety of the public;
14 (4) the person's demonstrated good faith; and
15 (5) other matters as justice may require.

16 SECTION 3.1021. Sections [432.022](#)(b), (c), and (d), Health
17 and Safety Code, are amended to read as follows:

18 (b) If a hearing is held, an administrative law judge of the
19 State Office of Administrative Hearings [~~the commissioner~~] shall
20 make findings of fact and shall issue a written proposal for
21 decision regarding the occurrence of the violation and the amount
22 of the penalty.

23 (c) If the person charged with the violation does not
24 request a hearing, the department [~~commissioner~~] may assess a
25 penalty after determining that a violation has occurred and the
26 amount of the penalty.

27 (d) After making a determination under this section that a

1 penalty is to be assessed, the department [~~commissioner~~] shall
2 issue an order requiring that the person pay the penalty.

3 SECTION 3.1022. Section 432.023, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 432.023. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
6 later than the 30th day after the date of issuance of an order
7 finding that a violation has occurred, the department
8 [~~commissioner~~] shall inform the person against whom the order is
9 issued of the amount of the penalty.

10 (b) Not later than the 30th day after the date on which a
11 decision or order charging a person with a penalty is final, the
12 person shall:

13 (1) pay the penalty in full; or
14 (2) file a petition for [~~if the person seeks~~] judicial
15 review of the department's order contesting the amount of the
16 penalty, the fact of the violation, or both.

17 (b-1) Within the period prescribed by Subsection (b), a
18 person who files a petition for judicial review may:

19 (1) stay enforcement of the penalty by:
20 (A) paying [~~send the amount of~~] the penalty to
21 the court [~~commissioner~~] for placement in an escrow account; or
22 (B) posting [~~post~~] with the court [~~commissioner~~]
23 a supersedeas bond for the amount of the penalty; or
24 (2) request that the department stay enforcement of
25 the penalty by:

26 (A) filing with the court a sworn affidavit of
27 the person stating that the person is financially unable to pay the

1 penalty and is financially unable to give the supersedeas bond; and
2 (B) sending a copy of the affidavit to the
3 department.

4 (b-2) If the department receives a copy of an affidavit
5 under Subsection (b-1)(2), the department may file with the court,
6 within five days after the date the copy is received, a contest to
7 the affidavit. The court shall hold a hearing on the facts alleged
8 in the affidavit as soon as practicable and shall stay the
9 enforcement of the penalty on finding that the alleged facts are
10 true. The person who files an affidavit has the burden of proving
11 that the person is financially unable to pay the penalty or to give
12 a supersedeas bond.

13 (c) A bond posted under this section must be in a form
14 approved by the court [commissioner] and be effective until all
15 judicial review of the order or decision is final.

16 (d) A person who does not send money to, [the commissioner
17 ~~or]~~ post the bond with, or file the affidavit with the court within
18 the period prescribed by Subsection (b) waives all rights to
19 contest the violation or the amount of the penalty.

20 SECTION 3.1023. Section 432.024, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 432.024. REFUND OF ADMINISTRATIVE PENALTY. On [Not
23 later than the 30th day after] the date the court's judgment [of a
24 judicial determination] that an administrative penalty against a
25 person should be reduced or not assessed becomes final, the court
26 [commissioner] shall order that:

27 (1) [Remit to the person] the appropriate amount of

1 any penalty payment plus accrued interest be remitted to the person
2 not later than the 30th day after that date; or
3 (2) ~~[execute a release of]~~ the bond be released, if the
4 person has posted a bond.

5 SECTION 3.1024. Section 433.002(b), Health and Safety Code,
6 is amended to read as follows:

7 (b) Regulation by the department [~~commissioner~~] and
8 cooperation by this state and the United States as provided by this
9 chapter are appropriate to protect the health and welfare of
10 consumers and otherwise accomplish the purposes of this chapter.

11 SECTION 3.1025. Sections 433.003(2), (5), (13), (14), (15),
12 (16), (17), (18), and (21), Health and Safety Code, are amended to
13 read as follows:

14 (2) "Capable of use as human food" means:

15 (A) not naturally inedible by humans; or
16 (B) not denatured or otherwise identified as
17 required by department rule [~~of the commissioner~~] to deter its use
18 as human food.

19 (5) "Exotic animal" means a member of a species of game
20 not indigenous to this state, including an axis deer, nilgai
21 [~~nilga~~] antelope, red sheep, or other cloven-hooved ruminant
22 animal.

23 (13) "Meat food product" means a product that is
24 capable of use as human food and that is made in whole or part from
25 meat or other portion of the carcass of livestock, except a product
26 that:

27 (A) contains meat or other portions of the

1 carcass only in a relatively small proportion or that historically
2 has not been considered by consumers as a product of the meat food
3 industry; and

4 (B) is exempted from the definition of meat food
5 product by department rule [~~the commissioner~~] under conditions
6 assuring [~~that the commissioner prescribes to assure~~] that the meat
7 or other portions of the carcass contained in the product are
8 unadulterated and that the product is not represented as a meat food
9 product.

1 (21) "Poultry product" means a poultry carcass, part
2 of a poultry carcass, or a product any part of which is made from a
3 poultry carcass or part of a poultry carcass, except a product that:

4 (A) contains poultry ingredients only in a
5 relatively small proportion or that historically has not been
6 considered by consumers as a product of the poultry food industry;
7 and

8 (B) is exempted from the definition of poultry
9 product by department rule [~~the commissioner~~] under conditions
10 assuring [~~that the commissioner prescribes to assure~~] that the
11 poultry ingredients in the product are unadulterated and that the
12 product is not represented as a poultry product.

13 SECTION 3.1026. Section 433.004, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 433.004. ADULTERATION. A carcass, part of a carcass,
16 meat, or a meat food product is adulterated if:

17 (1) it bears or contains a poisonous or deleterious
18 substance that may render it injurious to health unless:

19 (A) the substance is not an added substance; and
20 (B) the quantity of the substance in or on the
21 article does not ordinarily render it injurious to health;

22 (2) it bears or contains, because of administration of
23 a substance to a live animal or otherwise, an added poisonous or
24 deleterious substance that the department has reason to believe
25 [~~commissioner believes~~] makes the article unfit for human food,
26 other than a:

27 (A) pesticide chemical in or on a raw

1 (10) it is intentionally subjected to radiation,
2 unless the use of the radiation is in conformity with a regulation
3 or exemption under Section 409, Federal Food, Drug, and Cosmetic
4 Act (21 U.S.C. Section 348);

5 (11) any part of a valuable constituent is omitted or
6 abstracted from it, or a substance is substituted for all or part of
7 it;

8 (12) damage or inferiority is concealed;

9 (13) a substance has been added to or mixed or packed
10 with it in a manner that:

11 (A) increases its bulk or weight;

12 (B) reduces its quality or strength; or

13 (C) makes it appear better or of greater value
14 than it is; or

15 (14) it is margarine containing animal fat and any
16 part of the raw material used in it consists of a filthy, putrid, or
17 decomposed substance.

18 SECTION 3.1027. Section [433.005](#), Health and Safety Code, is
19 amended to read as follows:

20 Sec. 433.005. MISBRANDING. (a) A livestock or poultry
21 product is misbranded if:

22 (1) any part of its labeling is false or misleading;

23 (2) it is offered for sale under the name of another
24 food;

25 (3) it is an imitation of another food, unless its
26 label bears, in prominent type of uniform size, the word
27 "imitation" immediately followed by the name of the food imitated;

1 (4) its container is made, formed, or filled so as to
2 be misleading;

3 (5) except as provided by Subsection (b), it does not
4 bear a label showing:

5 (A) the manufacturer's, packer's, or
6 distributor's name and place of business; and

7 (B) an accurate statement of the quantity of the
8 product by weight, measure, or numerical count;

9 (6) a word, statement, or other information required
10 by or under the authority of this chapter to appear on the label or
11 labeling is not prominently placed on the label or labeling in
12 sufficient terms and with sufficient conspicuousness, compared
13 with other words, statements, designs, or devices in the label or
14 labeling, to make it likely to be read and understood by the
15 ordinary individual under customary conditions of purchase and use;

16 (7) it purports to be or is represented as a food for
17 which a definition and standard of identity or composition has been
18 prescribed by department rule [~~of the commissioner~~] under Section
19 **433.043** unless:

20 (A) it conforms to the definition and standard;
21 or

22 (B) its label bears:

23 (i) the name of the food specified in the
24 definition and standard; and

25 (ii) to the extent required by department
26 rule [~~of the commissioner~~], the common names of optional
27 ingredients present in the food, other than spices, flavoring, and

1 coloring;

2 (8) it purports to be or is represented as a food for
3 which a standard of fill of container has been prescribed by
4 department rule [~~of the commissioner~~] under Section 433.043 and the
5 food does not meet the standard of fill of container, unless its
6 label bears, in the manner and form prescribed by department rule
7 [~~of the commissioner~~], a statement that it does not meet the
8 standard;

9 (9) except as provided by Subsection (c), it does not
10 purport to be or is not represented as a food for which a standard of
11 identity or composition has been prescribed by department rule [~~of~~
12 ~~the commissioner~~] unless its label bears:

13 (A) any common or usual name of the food; and

14 (B) if it is fabricated from two or more
15 ingredients, the common or usual name of each ingredient;

16 (10) it purports to be or is represented for special
17 dietary uses and its label does not bear the information concerning
18 its vitamin, mineral, and other dietary properties that the
19 department [~~commissioner~~], after the executive commissioner or
20 department consults [~~consultation~~] with the United States
21 Secretary of Agriculture, has determined, and the executive
22 commissioner has prescribed by rule, to be necessary to fully
23 inform purchasers of its value for those uses;

24 (11) it bears or contains artificial flavoring,
25 artificial coloring, or a chemical preservative unless it bears
26 labeling stating that fact, except as otherwise prescribed by
27 department rule [~~of the commissioner~~] for situations in which

1 compliance with this subdivision is impracticable; or
2 (12) it does not bear on itself or its container, as
3 prescribed by department rule [~~of the commissioner~~]:
4 (A) the inspection legend and establishment
5 number of the establishment in which the product was prepared; and
6 (B) notwithstanding any other provision of this
7 section, other information required [~~the commissioner~~] by
8 department rule [~~requires~~] to assure that the product will not have
9 false or misleading labeling and that the public will be informed of
10 the manner of handling required to keep the product in wholesome
11 condition.

12 (b) The executive commissioner may adopt rules:
13 (1) exempting from Subsection (a)(5) livestock
14 products not in containers; and
15 (2) providing reasonable variations from Subsection
16 (a)(5)(B) and exempting from that subsection small packages of
17 livestock products or poultry products.

18 (c) For products subject to Subsection (a)(9), the
19 department [~~commissioner~~] may authorize the designation of spices,
20 flavorings, and colorings without naming them. The executive
21 commissioner may adopt rules establishing exemptions from
22 Subsection (a)(9)(B) to the extent that compliance with that
23 subsection is impracticable or would result in deception or unfair
24 competition.

25 SECTION 3.1028. Section 433.008, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 433.008. RULES. (a) The executive commissioner shall

1 adopt rules necessary for the efficient execution of this chapter.

2 (b) The executive commissioner shall adopt and use federal
3 rules, regulations, and procedures for meat and poultry inspection,
4 as applicable.

5 (c) The executive commissioner [department] may adopt rules
6 requiring a processing establishment that processes livestock
7 under Section 433.006(a)(2) to obtain a grant of custom exemption
8 for that activity.

9 SECTION 3.1029. Section 433.009, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 433.009. FEES. The department [~~Texas Department of~~
12 ~~Health~~] may collect fees for overtime and special services rendered
13 to establishments, and may collect a fee for services required to be
14 performed under this chapter relating to the inspection of animals,
15 birds, or products that are not regulated under the Federal Meat
16 Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal
17 Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.).
18 The executive commissioner [~~Texas Board of Health~~] by rule shall
19 set the inspection fee in an amount sufficient to recover the
20 department's costs of providing those services.

21 SECTION 3.1030. Section 433.021, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 433.021. INSPECTION BEFORE SLAUGHTER. (a) To prevent
24 the use in intrastate commerce of adulterated meat and meat food
25 products, the department [~~commissioner, through livestock~~
26 ~~inspectors,~~] shall examine and inspect each livestock animal before
27 it is allowed to enter a processing establishment in this state in

1 which slaughtering and preparation of meat and meat food products
2 of livestock are conducted solely for intrastate commerce.

3 (b) Any livestock animal found on inspection to show
4 symptoms of disease shall be set apart and slaughtered separately
5 from other livestock. The carcass of the animal shall be carefully
6 examined and inspected as provided by department rule [~~of the~~
7 ~~commissioner~~].

8 SECTION 3.1031. Sections 433.022(a), (d), and (e), Health
9 and Safety Code, are amended to read as follows:

10 (a) To prevent the use in intrastate commerce of adulterated
11 meat and meat food products, the department [~~commissioner, through~~
12 ~~livestock inspectors,~~] shall inspect each livestock carcass or part
13 of a carcass capable of use as human food that is to be prepared at a
14 processing establishment in this state in which those articles are
15 prepared solely for intrastate commerce. If a carcass or part of a
16 carcass is brought into the processing establishment, the
17 inspection shall be made before a carcass or part of a carcass is
18 allowed to enter a department in which it is to be treated and
19 prepared for meat food products. The department [~~commissioner~~]
20 shall also inspect products that have left a processing
21 establishment and are returned to a processing establishment in
22 which inspection is maintained.

23 (d) The processing establishment, in the presence of an
24 inspector, shall destroy for food purposes each condemned carcass
25 or part of a carcass. If the establishment fails to destroy a
26 condemned carcass or part of a carcass, the department
27 [~~commissioner~~] may remove the inspectors from the establishment.

1 (e) The executive commissioner may adopt rules that limit
2 the entry of carcasses, parts of carcasses, meat, or meat food
3 products into an establishment in which inspection under this
4 chapter is maintained[, under conditions the commissioner
5 prescribes] to assure that entry of the article into the
6 establishment is consistent with the purposes of this chapter.

7 SECTION 3.1032. Section 433.023(a), Health and Safety Code,
8 is amended to read as follows:

9 (a) The department [commissioner] may investigate a disease
10 finding by a livestock inspector if the department [commissioner]
11 determines that the investigation is in the best interest of public
12 health.

13 SECTION 3.1033. Section 433.024, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 433.024. INSPECTION OF PROCESSING AND SLAUGHTERING
16 ESTABLISHMENTS. (a) The department [commissioner, through
17 sanitation experts and other competent inspectors,] shall inspect
18 each processing establishment in which livestock is slaughtered and
19 meat and meat food products of the livestock are prepared solely for
20 intrastate commerce as necessary to obtain information about the
21 establishment's sanitary conditions.

22 (b) The department [commissioner, through sanitation
23 experts and other competent inspectors,] shall inspect each
24 slaughtering establishment whose primary business is the selling of
25 livestock to be slaughtered by the purchaser on premises owned or
26 operated by the seller. This subsection does not nullify the
27 provisions in Section 433.006 [of the Health and Safety Code]

1 relating to personal use exemption.

2 (c) The executive commissioner shall adopt rules governing
3 sanitation maintenance in processing and slaughtering
4 establishments as defined by this section.

5 (d) If sanitary conditions of a processing establishment
6 render meat or meat food products adulterated, the department
7 [~~commissioner~~] shall prohibit the meat or meat food products from
8 being labeled, marked, stamped, or tagged as "Texas inspected and
9 passed."

10 SECTION 3.1034. Sections 433.0245(b) and (d), Health and
11 Safety Code, are amended to read as follows:

12 (b) A low-volume livestock processing establishment that is
13 exempt from federal inspection shall register with the department
14 [~~Texas Department of Health~~] in accordance with rules adopted by
15 the executive commissioner for registration.

16 (d) If contaminated livestock can be reasonably traced to a
17 low-volume livestock processing establishment that is exempt from
18 federal inspection, the department [~~commissioner~~] may request the
19 attorney general or the district or county attorney in the
20 jurisdiction where the facility is located to institute a civil
21 suit to enjoin the operation of the establishment until the
22 department [~~commissioner~~] determines that the establishment has
23 been sanitized and is operating safely.

24 SECTION 3.1035. Sections 433.025(a) and (c), Health and
25 Safety Code, are amended to read as follows:

26 (a) To prevent the use in intrastate commerce of adulterated
27 meat food products, the department [~~commissioner, through~~

1 ~~inspectors,~~] shall examine and inspect all meat food products
2 prepared in a processing establishment solely for intrastate
3 commerce. To make the examination and inspection, an inspector
4 shall be given access at all times to each part of the
5 establishment, regardless of whether the establishment is being
6 operated.

7 (c) The establishment shall, in the manner provided for
8 condemned livestock or carcasses, destroy for food purposes each
9 condemned meat food product. If the establishment does not destroy
10 a condemned meat food product, the department [~~commissioner~~] may
11 remove inspectors from the establishment.

12 SECTION 3.1036. Section [433.026](#), Health and Safety Code, is
13 amended to read as follows:

14 Sec. 433.026. NIGHT INSPECTION; HOURS OF OPERATION. (a)
15 The department [~~commissioner~~] shall provide for inspection at night
16 of livestock slaughtered at night and food products prepared at
17 night for the purposes of intrastate commerce.

18 (b) If the department [~~commissioner~~] determines that a
19 person's operating hours are capricious or unnecessarily
20 difficult, the department [~~commissioner~~] may set the person's time
21 and duration of operation.

22 SECTION 3.1037. Sections [433.027\(a\), \(b\), \(c\), and \(d\)](#),
23 Health and Safety Code, are amended to read as follows:

24 (a) The department [~~commissioner~~] shall hire [~~appoint the~~]
25 inspectors of livestock that is subject to inspection under this
26 chapter, and of carcasses, parts of carcasses, meat, meat food
27 products, and sanitary conditions of establishments in which meat

1 and meat food products are prepared. An inspector is an employee of
2 the department [~~Texas Department of Health~~] and is under
3 supervision of the chief officer in charge of inspection.

4 (b) The department [~~commissioner~~] shall designate at least
5 one state inspector for each state representative district.

6 (c) The chief officer in charge of inspection is [~~a person~~
7 ~~designated by the commissioner as~~] responsible for animal health as
8 it relates to public health. The chief officer in charge of
9 inspection must be licensed to practice veterinary medicine in this
10 state or must be eligible for such a license when employed and must
11 obtain the license not later than two years after the date of
12 employment. [~~The chief officer in charge of inspection is directly~~
13 ~~responsible to the commissioner.~~]

14 (d) An inspector shall perform the duties provided by this
15 chapter and department rules [~~of the commissioner~~]. An inspection
16 or examination must be performed as provided by department rules
17 [~~of the commissioner~~].

18 SECTION 3.1038. Sections 433.028(a) and (b), Health and
19 Safety Code, are amended to read as follows:

20 (a) The department [~~commissioner~~] may withdraw or refuse to
21 provide inspection service under this subchapter from an
22 establishment for the period the department [~~commissioner~~]
23 determines necessary to carry out the purposes of this chapter if
24 the department [~~commissioner~~] determines after opportunity for
25 hearing that the applicant for or recipient of the service is unfit
26 to engage in a business requiring inspection under this subchapter
27 because the applicant or recipient, or a person responsibly

1 connected with the applicant or recipient, has been convicted in a
2 federal or state court of a felony or more than one violation of
3 another law based on:

4 (1) acquiring, handling, or distributing unwholesome,
5 mislabeled, or deceptively packaged food; or

6 (2) fraud in connection with a transaction in food.

7 (b) The department's [~~commissioner's~~] determination and
8 order under this section is final unless, not later than the 30th
9 day after the effective date of the order, the affected applicant or
10 recipient files an application for judicial review in the
11 appropriate court as provided by Section [433.082](#). Judicial review
12 of the order is on the record from which the determination and order
13 was made.

14 SECTION 3.1039. Section [433.029](#), Health and Safety Code, is
15 amended to read as follows:

16 Sec. 433.029. ARTICLES NOT INTENDED FOR HUMAN CONSUMPTION.

17 (a) Under this subchapter, the department [~~commissioner~~] may not
18 inspect an establishment for the slaughter of livestock or the
19 preparation of carcasses, parts of carcasses, or products of
20 livestock if the articles are not intended for use as human food.
21 Before offered for sale or transportation in intrastate commerce,
22 those articles, unless naturally inedible by humans, shall be
23 denatured or identified as provided by department rule [~~of the~~
24 ~~commissioner~~] to deter their use for human food.

25 (b) A person may not buy, sell, transport, offer for sale or
26 transportation, or receive for transportation in intrastate
27 commerce a carcass, part of a carcass, meat, or a meat food product

1 that is not intended for use as human food unless the article is
2 naturally inedible by humans, denatured, or identified as required
3 by department rule [~~of the commissioner~~].

4 SECTION 3.1040. Sections [433.030\(a\), \(c\), and \(d\)](#), Health
5 and Safety Code, are amended to read as follows:

6 (a) The department [~~A representative of the commissioner~~] may detain a carcass, part of a carcass, meat, a meat food product
7 of livestock, a product exempted from the definition of meat food
8 product, or a dead, dying, disabled, or diseased livestock animal
9 if the department [~~representative~~] finds the article on premises
10 where it is held for purposes of intrastate commerce, or during or
11 after distribution in intrastate commerce, and there is reason to
12 believe that the article:
13

14 (1) is adulterated or misbranded and is capable of use
15 as human food; or

16 (2) has not been inspected as required by, or has been
17 or is intended to be distributed in violation of:

18 (A) this subchapter;

19 (B) the Federal Meat Inspection Act (21 U.S.C.
20 Section 601 et seq.);

21 (C) the Federal Poultry Products Inspection Act
22 (21 U.S.C. Section 451 et seq.); or

23 (D) the Federal Food, Drug, and Cosmetic Act (21
24 U.S.C. Section 301 et seq.).

25 (c) A person may not move a detained article from the place
26 where it is detained until the article is released by the department
27 [~~commissioner's representative~~].

1 (d) The department [~~commissioner's representative~~] may
2 require that each official mark be removed from the article before
3 it is released, unless the department [~~commissioner~~] determines
4 that the article is eligible to bear the official mark.

5 SECTION 3.1041. Section 433.031(c), Health and Safety Code,
6 is amended to read as follows:

7 (c) After entry of the decree, a condemned article shall be
8 destroyed or sold as the court directs. If the article is sold, the
9 proceeds, minus court costs, court fees, and storage and other
10 proper expenses, shall be deposited in the state treasury. An
11 article may not be sold in violation of this chapter, the Federal
12 Meat Inspection Act (21 U.S.C. Section 601 et seq.), the Federal
13 Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.), or
14 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et
15 seq.). On execution and delivery of a good and sufficient bond
16 conditioned that the article will not be disposed of in violation of
17 this chapter or federal law, the court may direct the article to be
18 delivered to its owner by the department [~~commissioner's~~
19 ~~representative~~] subject to supervision as necessary to ensure
20 compliance with applicable laws.

21 SECTION 3.1042. Section 433.032(a), Health and Safety Code,
22 is amended to read as follows:

23 (a) The executive commissioner may adopt rules prescribing
24 conditions under which carcasses, parts of carcasses, meat, and
25 meat food products of livestock must be stored and handled by a
26 person in the business of buying, selling, freezing, storing, or
27 transporting those articles in or for intrastate commerce if the

1 executive commissioner considers the rules necessary to prevent
2 adulterated or misbranded articles from being delivered to a
3 consumer.

4 SECTION 3.1043. Section 433.033, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 433.033. EQUINE PRODUCTS. A person may not sell,
7 transport, offer for sale or transportation, or receive for
8 transportation, in intrastate commerce, a carcass, part of a
9 carcass, meat, or a meat food product of a horse, mule, or other
10 equine unless the article is plainly and conspicuously marked or
11 labeled or otherwise identified, as required by department rule [~~or~~
~~the commissioner~~], to show the kind of animal from which the article
13 was derived. The department [~~commissioner~~] may require an
14 establishment at which inspection is maintained under this chapter
15 to prepare those articles in an establishment separate from one in
16 which livestock other than equines is slaughtered or carcasses,
17 parts of carcasses, meat, or meat food products of livestock other
18 than equines are prepared.

19 SECTION 3.1044. Sections 433.034(b) and (c), Health and
20 Safety Code, are amended to read as follows:

21 (b) On notice by the department [~~commissioner's~~
~~representative~~], a person required to keep records shall at all
23 reasonable times give the department [~~commissioner's~~
~~representative~~] and any representative of the United States
25 Secretary of Agriculture accompanying the department staff
26 [~~commissioner's representative~~]:

27 (1) access to the person's place of business; and

8 (c) The person shall maintain a record required by this
9 section for the period prescribed [~~the commissioner~~] by department
10 rule [~~prescribes~~].

11 SECTION 3.1045. Sections 433.035(a), (b), and (d), Health
12 and Safety Code, are amended to read as follows:

13 (a) The department [~~commissioner~~] has the same rights of
14 examination, inspection, condemnation, and detention of live
15 exotic animals and carcasses, parts of carcasses, meat, and meat
16 food products of exotic animals slaughtered and prepared for
17 shipment in interstate commerce as the department [~~commissioner~~]
18 has with respect to exotic animals slaughtered and prepared for
19 shipment in intrastate commerce.

20 (b) The department [~~commissioner~~] has the same rights of
21 inspection of establishments handling exotic animals slaughtered
22 and prepared for shipment in interstate commerce as the department
23 [~~commissioner~~] has with respect to establishments handling exotic
24 animals slaughtered and prepared for intrastate commerce.

25 (d) A rulemaking power of the executive commissioner
26 relating to animals in intrastate commerce applies to exotic
27 animals in interstate commerce.

1 SECTION 3.1046. Section 433.041(b), Health and Safety Code,
2 is amended to read as follows:

3 (b) When an inspected carcass, part of a carcass, meat, or a
4 meat food product is found to be unadulterated and leaves the
5 establishment, it must bear legible information on itself or its
6 container, as required by department rule, [~~the commissioner~~
7 ~~requires, that is necessary~~] to prevent it from being misbranded.

8 SECTION 3.1047. Section 433.042, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 433.042. SALE OF MISLABLED ARTICLES PROHIBITED. A
11 person may not sell an article subject to this chapter or offer the
12 article for sale, in intrastate commerce, under a false or
13 misleading name or other marking or in a container of a misleading
14 form or size. An established trade name, other marking and
15 labeling, or a container that is not false or misleading and that is
16 approved by the department [~~commissioner~~] is permitted.

17 SECTION 3.1048. Section 433.043, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 433.043. STANDARDS OF LABELING, COMPOSITION, AND FILL.
20 (a) If the executive commissioner determines that standards are
21 necessary to protect the public, the executive commissioner may
22 adopt rules prescribing [~~prescribe~~]:

23 (1) the style and type size that must be used for
24 material required to be incorporated in labeling to avoid false or
25 misleading labeling of an article subject to this subchapter or
26 Subchapter B; and

27 (2) subject to Subsection (b), a definition or

1 standard of identity or composition or a standard of fill of
2 container for an article subject to this subchapter.

3 (b) A standard prescribed under Subsection (a)(2) must be
4 consistent with standards established under the Federal Meat
5 Inspection Act (21 U.S.C. Section 601 et seq.), the Federal Poultry
6 Products Inspection Act (21 U.S.C. Section 451 et seq.), and the
7 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et
8 seq.). To avoid inconsistency, the department [commissioner] shall
9 consult with the United States Secretary of Agriculture before
10 [prescribing] the standard is prescribed.

11 SECTION 3.1049. Section 433.044, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 433.044. ORDER TO CEASE FALSE OR MISLEADING PRACTICE.
14 (a) If the department [commissioner] has reason to believe that a
15 marking or labeling or the size or form of a container in use or
16 proposed for use in relation to an article subject to this
17 subchapter is false or misleading, the department [commissioner]
18 may prohibit the use until the marking, labeling, or container is
19 modified in the manner the department [commissioner] prescribes to
20 prevent it from being false or misleading.

21 (b) The person using or proposing to use the marking,
22 labeling, or container may request a hearing [by the commissioner].
23 The department [commissioner] may prohibit the use pending a final
24 determination by the department [commissioner].

25 (c) A hearing and any appeal under this section are governed
26 by the department's rules for a contested case hearing and Chapter
27 2001, Government Code.

1 SECTION 3.1050. Section 433.045, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 433.045. PROTECTION OF OFFICIAL DEVICE, MARK, AND
4 CERTIFICATE. A person may not:

5 (1) cast, print, lithograph, or make in any other
6 manner, except as authorized by the department in accordance with
7 department rules [~~commissioner~~]:

8 (A) a device containing or label bearing an
9 official mark or a simulation of an official mark; or

10 (B) a form of official certificate or simulation
11 of an official certificate;

12 (2) forge an official device, mark, or certificate;

13 (3) without the department's [~~commissioner's~~]
14 authorization, use, alter, detach, deface, or destroy an official
15 device, mark, or certificate or use a simulation of an official
16 device, mark, or certificate;

17 (4) detach, deface, destroy, or fail to use an
18 official device, mark, or certificate, in violation of a department
19 rule [~~of the commissioner~~];

20 (5) knowingly possess, without promptly notifying the
21 department [~~commissioner or the commissioner's representative~~]:

22 (A) an official device;

23 (B) a counterfeit, simulated, forged, or
24 improperly altered official certificate; or

25 (C) a device, label, animal carcass, or part or
26 product of an animal carcass, bearing a counterfeit, simulated,
27 forged, or improperly altered official mark;

1 (6) knowingly make a false statement in a shipper's
2 certificate or other certificate provided for by department rule
3 [~~of the commissioner~~]; or

4 (7) knowingly represent that an article has been
5 inspected and passed, when it has not, or is exempted, when it is
6 not.

7 SECTION 3.1051. Section 433.053, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 433.053. SALE, RECEIPT, OR TRANSPORTATION OF POULTRY.
10 A person may not sell, transport, offer for sale or transportation,
11 or receive for transportation, in intrastate commerce or from an
12 official establishment, slaughtered poultry from which blood,
13 feathers, feet, head, or viscera have not been removed as provided
14 by department rule [~~of the commissioner~~], except as authorized by
15 department rule [~~of the commissioner~~].

16 SECTION 3.1052. Sections 433.054(a) and (c), Health and
17 Safety Code, are amended to read as follows:

18 (a) If registration is required by department rule [~~of the~~
19 ~~commissioner~~], a person may not engage in any of the following
20 businesses, in or for intrastate commerce, unless the person has
21 registered with the department [~~commissioner~~]:

- 22 (1) meat brokering or rendering;
23 (2) manufacturing animal food;
24 (3) wholesaling or warehousing for the public
25 livestock or any part of a carcass of livestock, regardless of
26 whether it is intended for human food; or
27 (4) buying, selling, or transporting dead, dying,

1 disabled, or diseased livestock or part of a carcass of livestock.

2 (c) A person may not engage in the business of selling,
3 buying, or transporting in intrastate commerce dead, dying,
4 disabled, or diseased livestock or part of the carcass of livestock
5 that died otherwise than by slaughter unless the transaction or
6 transportation complies with department rules adopted [~~by the~~
7 ~~commissioner~~] to assure that the animals or unwholesome parts or
8 products of the animals are not used for human food.

9 SECTION 3.1053. Section 433.071, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 433.071. RESPONSIBLE AGENCY. (a) The department
12 [~~Texas Department of Health~~] is the state agency responsible for
13 cooperating with the United States Secretary of Agriculture under
14 Section 301, Federal Meat Inspection Act (21 U.S.C. Section 661),
15 and Section 5, Federal Poultry Products Inspection Act (21 U.S.C.
16 Section 454).

17 (b) The department shall cooperate with the secretary of
18 agriculture in developing and administering the meat and poultry
19 inspection program of this state under this chapter in a manner that
20 will achieve the purposes of this chapter and federal law and that
21 will ensure that the requirements will be at least equal to those
22 imposed under Titles I and IV, Federal Meat Inspection Act (21
23 U.S.C. Sections 601 et seq. and 671 et seq.), and Sections 1-4,
24 6-10, and 12-22, Federal Poultry Products Inspection Act (21 U.S.C.
25 Sections 451-453, 455-459, and 461-467d [~~461-467b~~]), not later than
26 the dates prescribed by federal law.

27 SECTION 3.1054. Section 433.073, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 433.073. TECHNICAL AND LABORATORY ASSISTANCE AND
3 TRAINING PROGRAM. The department [~~commissioner~~] may accept from
4 the United States Secretary of Agriculture:

5 (1) advisory assistance in planning and otherwise
6 developing the state program;

7 (2) technical and laboratory assistance;

8 (3) training, including necessary curricular and
9 instructional materials and equipment; and

10 (4) financial and other aid for administration of the
11 program.

12 SECTION 3.1055. Section [433.074](#), Health and Safety Code, is
13 amended to read as follows:

14 Sec. 433.074. FINANCING. The department [~~commissioner~~] may
15 spend state funds appropriated for administration of this chapter
16 to pay 50 percent of the estimated total cost of cooperation with
17 the federal government under this subchapter, and all of the costs
18 of performing services in relation to the inspection of animals or
19 products not regulated under the Federal Meat Inspection Act (21
20 U.S.C. Section 601 et seq.) or the Federal Poultry Products
21 Inspection Act (21 U.S.C. Section 451 et seq.).

22 SECTION 3.1056. Sections [433.081](#)(d) and (e), Health and
23 Safety Code, are amended to read as follows:

24 (d) A person does not commit an offense under this section
25 by receiving for transportation an article in violation of this
26 chapter if the receipt is in good faith and if the person furnishes,
27 on request of [~~a representative of~~] the department [~~commission~~]:

1 (1) the name and address of the person from whom the
2 article is received; and

3 (2) any document pertaining to the delivery of the
4 article.

5 (e) This chapter does not require the department
6 [~~commissioner~~] to report for prosecution, or for institution of
7 complaint or injunction proceedings, a minor violation of this
8 chapter if the department [~~commissioner~~] believes that the public
9 interest will be adequately served by a suitable written warning
10 notice.

11 SECTION 3.1057. Section [433.083](#), Health and Safety Code, is
12 amended to read as follows:

13 Sec. 433.083. INVESTIGATION BY DEPARTMENT [~~COMMISSIONER~~].
14 The department [~~commissioner~~] may investigate and gather and
15 compile information concerning the organization, business,
16 conduct, practices, and management of a person engaged in
17 intrastate commerce and the person's relation to other persons.

18 SECTION 3.1058. Section [433.084](#), Health and Safety Code, is
19 amended to read as follows:

20 Sec. 433.084. EVIDENCE AND TESTIMONY. (a) For the purposes
21 of this chapter, the department [~~commissioner~~] at all reasonable
22 times shall be given access to documentary evidence of a person
23 being investigated or proceeded against to examine or copy the
24 evidence. The department [~~commissioner~~] by subpoena may require
25 the attendance and testimony of a witness and the production of
26 documentary evidence relating to a matter under investigation, at a
27 designated place of hearing in a county in which the witness

1 resides, is employed, or has a place of business.

2 (b) The commissioner or the commissioner's designee may
3 sign subpoenas, administer oaths and affirmations, examine
4 witnesses, and receive evidence. On disobedience of a subpoena,
5 the department [~~commissioner~~] may request the district court to
6 require attendance and testimony of a witness and the production of
7 documentary evidence, and the district court having jurisdiction
8 over the inquiry may order the compliance. Failure to obey the
9 court's order is punishable as contempt.

10 SECTION 3.1059. Section 433.085, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 433.085. REPORT TO DEPARTMENT [~~COMMISSIONER~~]. The
13 department [~~commissioner~~], by general or special order, may require
14 a person engaged in intrastate commerce to file with the department
15 [~~commissioner~~] an annual report, special report, or both, or
16 answers in writing to specific questions furnishing the department
17 [~~commissioner~~] information that the department [~~commissioner~~]
18 requires concerning the person's organization, business, conduct,
19 practices, management, and relation to other persons filing written
20 answers and reports. The department [~~commissioner~~] may prescribe
21 the form of the report or answers, require the report or answers to
22 be given under oath, and prescribe a reasonable deadline for filing
23 the report or answers, subject to the granting of additional time by
24 the department [~~commissioner~~].

25 SECTION 3.1060. Section 433.086, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 433.086. MANDAMUS TO COMPEL COMPLIANCE. On

1 application of the attorney general at the request of the
2 department [~~commissioner~~], the district court may issue a writ of
3 mandamus ordering a person to comply with this chapter or an order
4 [~~of the commissioner~~] under this chapter.

5 SECTION 3.1061. Section 433.087(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) The department [~~commissioner~~] may order testimony to be
8 taken before a person designated by the department [~~commissioner~~]
9 and having power to administer oaths at any stage of a proceeding or
10 investigation under this chapter. A person may be compelled to
11 appear and depose or produce documentary evidence at a deposition
12 in the same manner as a witness may be compelled to appear and
13 testify and produce documentary evidence before the department
14 [~~commissioner~~] under this chapter.

15 SECTION 3.1062. Section 433.088, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 433.088. COMPENSATION OF WITNESS OR REPORTER. A
18 witness summoned before the department [~~commissioner~~] is entitled
19 to the same fees and mileage paid a witness in a state court. A
20 witness whose deposition is taken and the person taking the
21 deposition are each entitled to the same fees paid for similar
22 services in a state court.

23 SECTION 3.1063. Section 433.089(a), Health and Safety Code,
24 is amended to read as follows:

25 (a) A person is not excused from attending and testifying or
26 producing documentary evidence before the department
27 [~~commissioner~~] or in obedience to the department's [~~commissioner's~~]

1 subpoena, whether signed by the commissioner or the commissioner's
2 designee [~~delegate~~], or in a cause or proceeding based on or growing
3 out of an alleged violation of this chapter, on the ground that the
4 required testimony or evidence may tend to incriminate the person
5 or subject the person to penalty or forfeiture.

6 SECTION 3.1064. Section 433.090(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) A person commits an offense if the person neglects or
9 refuses to attend and testify or answer a lawful inquiry or to
10 produce documentary evidence, if the person has the power to do so,
11 in obedience to a subpoena or lawful requirement of the department
12 [~~commissioner~~].

13 SECTION 3.1065. Section 433.091(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) A person commits an offense if the person intentionally:
16 (1) makes or causes to be made a false entry in an
17 account, record, or memorandum kept by a person subject to this
18 chapter;

19 (2) neglects or fails to make or cause to be made full
20 entries in an account, record, or memorandum kept by a person
21 subject to this chapter of all facts and transactions pertaining to
22 the person's business;

23 (3) removes from the jurisdiction of this state or
24 mutilates, alters, or otherwise falsifies documentary evidence of a
25 person subject to this chapter; or

26 (4) refuses to submit to the department [~~commissioner~~
27 or to the ~~commissioner's authorized agent~~], for inspection and

1 copying, documentary evidence in the person's possession or control
2 of a person subject to this chapter.

3 SECTION 3.1066. Section 433.092(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) If a person required by this chapter to file an annual or
6 special report does not file the report before the deadline for
7 filing set by the department [~~commissioner~~] and the failure
8 continues for 30 days after notice of the default, the person
9 forfeits to the state \$100 for each day the failure continues.

10 SECTION 3.1067. Section 433.093(a), Health and Safety Code,
11 is amended to read as follows:

12 (a) A state officer or employee commits an offense if the
13 officer or employee, without the approval of the commissioner,
14 makes public information obtained by the department [~~commissioner~~
15 ~~without the approval of the commissioner~~].

16 SECTION 3.1068. Sections 433.094(a) and (b), Health and
17 Safety Code, are amended to read as follows:

18 (a) The department [~~commissioner~~] may assess an
19 administrative penalty against a person who violates this chapter,
20 a rule adopted [~~by the board~~] under the authority of this chapter,
21 or an order or license issued under this chapter.

22 (b) In determining the amount of the penalty, the department
23 [~~commissioner~~] shall consider:

- 24 (1) the person's previous violations;
25 (2) the seriousness of the violation;
26 (3) any hazard to the health and safety of the public;
27 (4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

2 SECTION 3.1069. Sections 433.095(b), (c), and (d), Health
3 and Safety Code, are amended to read as follows:

4 (b) If a hearing is held, the administrative law judge
5 [commissioner] shall make findings of fact and shall issue to the
6 department a written proposal for decision regarding the occurrence
7 of the violation and the amount of the penalty that may be
8 warranted.

9 (c) If the person charged with the violation does not
10 request a hearing, the department [~~commissioner~~] may assess a
11 penalty after determining that a violation has occurred and the
12 amount of the penalty that may be warranted.

13 (d) After making a determination under this section that a
14 penalty is to be assessed against a person, the department
15 [commissioner] shall issue an order requiring that the person pay
16 the penalty.

17 SECTION 3.1070. Section 433.096, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 433.096. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
20 later than the 30th day after the date an order finding that a
21 violation has occurred is issued, the department [commissioner]
22 shall inform the person against whom the order is issued of the
23 amount of the penalty for the violation.

24 (b) Not later than the 30th day after the date on which a
25 decision or order charging a person with a penalty is final, the
26 person shall:

27 (1) pay the penalty in full; or

1 (2) file a petition for [~~if the person seeks~~] judicial
2 review of the department's order contesting the amount of the
3 penalty, the fact of the violation, or both.

4 (b-1) Within the period prescribed by Subsection (b), a
5 person who files a petition for judicial review may:

6 (1) stay the enforcement of the penalty by:

7 (A) paying [~~send the amount off~~] the penalty to
8 the court [~~commissioner~~] for placement in an escrow account; or

9 (B) posting [~~post~~] with the court [~~commissioner~~]
10 a supersedeas bond for the amount of the penalty; or

11 (2) request that the department stay enforcement of
12 the penalty by:

13 (A) filing with the court a sworn affidavit of
14 the person stating that the person is financially unable to pay the
15 penalty and is financially unable to give the supersedeas bond; and
16 (B) sending a copy of the affidavit to the
17 department.

18 (b-2) If the department receives a copy of an affidavit
19 under Subsection (b-1)(2), the department may file with the court,
20 within five days after the date the copy is received, a contest to
21 the affidavit. The court shall hold a hearing on the facts alleged
22 in the affidavit as soon as practicable and shall stay the
23 enforcement of the penalty on finding that the alleged facts are
24 true. The person who files an affidavit has the burden of proving
25 that the person is financially unable to pay the penalty or to give
26 a supersedeas bond.

27 (c) A bond posted under this section must be in a form

1 approved by the court [~~commissioner~~] and be effective until all
2 judicial review of the order or decision is final.

3 (d) A person who does not send money to, [~~the commissioner~~
4 ~~or~~] post the bond with, or file the affidavit with the court within
5 the period prescribed by Subsection (b) waives all rights to
6 contest the violation or the amount of the penalty.

7 SECTION 3.1071. Section 433.097, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 433.097. REFUND OF ADMINISTRATIVE PENALTY. On [~~Not~~
10 ~~later than the 30th day after~~] the date the court's judgment [~~of a~~
11 ~~judicial determination~~] that an administrative penalty against a
12 person should be reduced or not assessed becomes final, the court
13 [~~commissioner~~] shall order that:

14 (1) [~~remit to the person~~] the appropriate amount of
15 any penalty payment plus accrued interest be remitted to the person
16 not later than the 30th day after that date; or

17 (2) [~~execute a release of~~] the bond be released if the
18 person has posted a bond.

19 SECTION 3.1072. Section 433.098, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 433.098. RECOVERY OF ADMINISTRATIVE PENALTY BY
22 ATTORNEY GENERAL. The attorney general at the request of the
23 department [~~commissioner~~] may bring a civil action to recover an
24 administrative penalty under this subchapter.

25 SECTION 3.1073. Sections 433.099(a) and (c), Health and
26 Safety Code, are amended to read as follows:

27 (a) If it appears that a person has violated or is violating

1 this chapter or a rule adopted under this chapter, the department
2 [commissioner] may request the attorney general or the district
3 attorney or county attorney in the jurisdiction where the violation
4 is alleged to have occurred, is occurring, or may occur to institute
5 a civil suit for:

6 (1) an order enjoining the violation; or
7 (2) a permanent or temporary injunction, a temporary
8 restraining order, or other appropriate remedy, if the department
9 [commissioner] shows that the person has engaged in or is engaging
10 in a violation.

11 (c) The department [commissioner] or the attorney general
12 may recover reasonable expenses incurred in obtaining injunctive
13 relief under this section, including investigation and court costs,
14 reasonable attorney's fees, witness fees, and other expenses. The
15 expenses recovered by the department [commissioner] under this
16 section may be used for the administration and enforcement of this
17 chapter. The expenses recovered by the attorney general may be used
18 by the attorney general for any purpose.

19 SECTION 3.1074. Section 433.100, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 433.100. EMERGENCY WITHDRAWAL OF MARK OR SUSPENSION OF
22 INSPECTION SERVICES. (a) The department [commissioner or the
23 commissioner's designee] may immediately withhold the mark of
24 inspection or suspend or withdraw inspection services if:

25 (1) the department [commissioner or the commissioner's
26 designee] determines that a violation of this chapter presents an
27 imminent threat to public health and safety; or

1 (2) a person affiliated with the processing
2 establishment impedes an inspection under this chapter.

3 (b) An affected person is entitled to a review of an action
4 of the department [~~commissioner or the commissioner's designee~~] under Subsection (a) in the same manner that a refusal or withdrawal
5 of inspection services may be reviewed under Section [433.028](#).

6 SECTION 3.1075. Sections [435.001](#)(1) and (2), Health and
7 Safety Code, are amended to read as follows:

8 (1) [~~"Board" means the Texas Board of Health.~~

9 [~~(2)~~] "Department" means the [~~Texas~~] Department of
10 State Health Services.

11 (2) "Executive commissioner" means the executive
12 commissioner of the Health and Human Services Commission.

13 SECTION 3.1076. Section [435.002](#), Health and Safety Code, is
14 amended to read as follows:

15 Sec. 435.002. GRADING OF MILK AND MILK PRODUCTS. [~~(a)~~] The
16 executive commissioner [~~board~~] may [~~supervise and~~] regulate the
17 grading and labeling of milk and milk products. The department
18 shall supervise the grading and labeling of milk and milk products
19 according to the standards, specifications, and requirements
20 adopted by the executive commissioner [~~it adopts~~] for each grade
21 and in conformity with this subchapter.

22 SECTION 3.1077. Section [435.003](#)(a), Health and Safety Code,
23 is amended to read as follows:

24 (a) The executive commissioner [~~board~~] by rule may:

25 (1) define what constitutes Grade "A" raw milk, Grade
26 "A" raw milk products, Grade "A" pasteurized milk, Grade "A"

1 pasteurized milk products, milk for manufacturing purposes, and
2 dairy products; and

3 (2) provide specifications for the production and
4 handling of milk and milk products listed in Subdivision (1)
5 according to the safety and food value of the milk or milk products
6 and the sanitary conditions under which they are produced and
7 handled.

8 SECTION 3.1078. The heading to Section [435.004](#), Health and
9 Safety Code, is amended to read as follows:

10 Sec. 435.004. INSPECTION OF MILK AND MILK PRODUCTS BY
11 DEPARTMENT [~~BOARD~~].

12 SECTION 3.1079. Section [435.004](#)(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) The department [~~board or its representative~~] shall
15 sample, test, or inspect Grade "A" pasteurized milk and milk
16 products, Grade "A" raw milk and milk products for pasteurization,
17 milk for manufacturing purposes, and dairy products that are
18 offered for sale.

19 SECTION 3.1080. Section [435.005](#)(a), Health and Safety Code,
20 is amended to read as follows:

21 (a) The department [~~board~~] may contract with a county or
22 municipality to act as the agent of the department [~~board~~] to
23 inspect milk and milk products and to perform other regulatory
24 functions necessary to enforce this subchapter.

25 SECTION 3.1081. Section [435.006](#), Health and Safety Code, is
26 amended to read as follows:

27 Sec. 435.006. PERMIT TO SELL MILK. (a) A person who offers

1 milk or milk products for sale or to be sold in this state must hold
2 a permit issued by the department [board]. The person must apply to
3 the department [board or the board's representative] for a permit.

4 (b) After receiving the application, the department [board
5 or the board's representative] may determine and award the grade of
6 milk or milk products offered for sale by each applicant according
7 to the specifications for grades established under this chapter.

8 (c) The department [board] shall maintain a list of the
9 names of all applicants to whom the department [board] has awarded
10 permission to use a Grade "A" label and remove from the list the
11 name of a person whose permit is revoked.

12 (d) The department [board] may not issue a permit to a
13 person for a producer dairy located in an area infected with or at a
14 high risk for bovine tuberculosis, as determined epidemiologically
15 and defined by rule of the Texas Animal Health Commission.

16 SECTION 3.1082. Section 435.007(b), Health and Safety Code,
17 is amended to read as follows:

18 (b) A person may not represent, publish, label, or advertise
19 milk or milk products as being Grade "A" unless the milk or milk
20 products are:

21 (1) produced or processed by a person having a permit
22 to use a Grade "A" label as provided by this subchapter; and

23 (2) produced, treated, and handled in accordance with
24 the specifications and requirements adopted by the executive
25 commissioner [board] for Grade "A" milk and milk products.

26 SECTION 3.1083. Section 435.009(c), Health and Safety Code,
27 is amended to read as follows:

1 (c) The executive commissioner [board] shall adopt rules
2 for the department to assess and collect the fees imposed by
3 Subsections (b)(5) and (6) monthly, quarterly, semiannually, or
4 annually according to amounts due by the plant. Monthly fees shall
5 be assessed and collected in accordance with department [board]
6 rules.

7 SECTION 3.1084. Section 435.010, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 435.010. RECORDS. The executive commissioner [board]
10 by rule shall establish minimum standards for recordkeeping by
11 persons required to pay a fee under this subchapter. Those persons
12 shall make the records available to the department on request.

13 SECTION 3.1085. Section 435.011(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) The executive commissioner [board] shall establish a
16 procedure by which a person aggrieved by the application of a
17 department [board] rule may receive a hearing under Chapter 2001,
18 Government Code.

19 SECTION 3.1086. Sections 435.012(b) and (c), Health and
20 Safety Code, are amended to read as follows:

21 (b) The department [board and its representative] may
22 revoke and regrade permits if on inspection the department [board
23 or its representative] finds that the use of the grade label does
24 not conform to the specifications or requirements adopted by the
25 executive commissioner [board] under this chapter.

26 (c) The executive commissioner [board] by rule shall:

27 (1) provide for the denial, suspension, or revocation

1 of a permit; and

2 (2) establish reasonable minimum standards for
3 granting and maintaining a permit issued under this chapter.

4 SECTION 3.1087. Sections [436.002](#)(2), (22), (24), and (27),
5 Health and Safety Code, are amended to read as follows:

6 (2) "Approved source" means a source of molluscan
7 shellfish acceptable to the department [~~director~~].

8 (22) "National Shellfish Sanitation Program" means
9 the cooperative program by the states, the United States Food and
10 Drug Administration, and the shellfish industry that classifies
11 molluscan shellfish growing areas and certifies interstate
12 molluscan shellfish shippers according to the National Shellfish
13 Sanitation Program Guide for the Control of Molluscan Shellfish
14 [Manual of Operations] or its successor program and documents.

15 (24) "Pasteurization plant" means a place where
16 crabmeat is heat-treated in compliance with department rules
17 [~~adopted by the board~~], without complete sterilization, to improve
18 the keeping qualities of the meat.

19 (27) "Prohibited area" means an area where the
20 department [~~director~~] finds, according to a sanitary, chemical, or
21 bacteriological survey, that the area contains aquatic life that is
22 unfit for human consumption. A prohibited area for molluscan
23 shellfish means a molluscan shellfish growing area determined to be
24 unacceptable for transplanting, gathering for depuration, or
25 harvesting of molluscan shellfish. The only molluscan shellfish
26 removal permitted from a prohibited area is for the purpose of
27 depletion.

1 SECTION 3.1088. Section 436.003, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 436.003. HEALTH AUTHORITY POWER TO DELEGATE [POWERS
4 ~~AND DUTIES]~~. [(a) ~~The board by rule may delegate a power or duty~~
5 ~~imposed on the director in this chapter, including the power or duty~~
6 ~~to issue emergency rules or orders or to render a final~~
7 ~~administrative decision.~~

8 [(b)] A health authority may delegate any power or duty
9 imposed on the health authority in this chapter to an employee of
10 the local health department, the local health unit, or the public
11 health district in which the health authority serves, unless
12 otherwise restricted by law.

13 SECTION 3.1089. Section 436.011, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 436.011. PROHIBITED ACTS. The following acts and the
16 causing of the following acts within this state are unlawful and
17 prohibited:

18 (1) taking, selling, offering for sale, or holding for
19 sale molluscan shellfish from a closed area;

20 (2) taking, selling, offering for sale, or holding for
21 sale molluscan shellfish from a restricted or conditionally
22 restricted area without complying with a department rule [~~adopted~~
23 ~~by the board~~] to ensure that the molluscan shellfish have been
24 purified, unless:

25 (A) permission is first obtained from the Parks
26 and Wildlife Department and the transplanting is supervised by that
27 department; and

1 (B) the Parks and Wildlife Department furnishes a
2 copy of the transplant permit to the department [~~director~~] before
3 transplanting activities begin;

4 (3) possessing a species of aquatic life taken from a
5 prohibited area while the area was prohibited for that species;

6 (4) operating as a molluscan shellfish processor
7 without a shellfish certificate for each plant or place of
8 business;

9 (5) operating as a crabmeat processor without a
10 crabmeat processing license for each plant;

11 (6) selling, offering for sale, or holding for sale
12 molluscan shellfish or crabmeat that has not been picked, handled,
13 packaged, or pasteurized in accordance with department [~~the~~] rules
14 [~~adopted by the board~~];

15 (7) selling, offering for sale, or holding for sale
16 molluscan shellfish or crabmeat from facilities for the handling
17 and packaging of molluscan shellfish or crabmeat that do not comply
18 with department [~~the~~] rules [~~adopted by the board~~];

19 (8) selling, offering for sale, or holding for sale
20 molluscan shellfish or crabmeat that is not labeled in accordance
21 with department [~~the~~] rules [~~adopted by the board~~];

22 (9) selling, offering for sale, or holding for sale
23 molluscan shellfish that is not in a container bearing a valid
24 certificate number from a state or nation whose molluscan shellfish
25 certification program conforms to the current National Shellfish
26 Sanitation Program Guide for the Control of Molluscan Shellfish
27 [~~Manual of Operations for Sanitary Control of the Shellfish~~

1 ~~Industry~~] issued by the Food and Drug Administration or its
2 successor, except selling molluscan shellfish removed from a
3 container bearing a valid certificate number for on-premises
4 consumption; in the event the Texas Molluscan Shellfish Program is
5 found to be out of conformity with the current guide [~~Manual of~~
6 ~~Operations~~], selling, offering for sale, or holding for sale
7 molluscan shellfish in a container bearing a valid Texas
8 certificate number shall not be considered a violation of this
9 chapter provided all other requirements of this chapter are
10 complied with and the shellfish have come from an approved source;

11 (10) processing, transporting, storing for sale,
12 possessing with intent to sell, offering for sale, or selling
13 molluscan shellfish or crabmeat for human consumption that is
14 adulterated or misbranded;

15 (11) removing or disposing of a detained or embargoed
16 article in violation of Section **436.028**;

17 (12) altering, mutilating, destroying, obliterating,
18 or removing all or part of the labeling of a container;

19 (13) adulterating or misbranding molluscan shellfish
20 or crabmeat in commerce;

21 (14) refusing to permit entry or inspection, to permit
22 the taking of a sample, or to permit access to or copying by the
23 department as [~~an authorized agent of a record~~] required by this
24 chapter;

25 (15) failing to establish or maintain a record or
26 report required by this chapter or by a department rule [~~adopted by~~
27 ~~the board~~]; or

1 (16) violating a department rule [~~adopted by the~~
2 ~~board~~] or [~~an emergency rule or~~] order [~~adopted by the director~~].

3 SECTION 3.1090. Section 436.022, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 436.022. INSPECTION. (a) The department [~~director~~,
6 ~~an authorized agent~~] or a health authority may, on presenting
7 appropriate credentials to the owner, operator, or agent in charge:

8 (1) enter at reasonable times, including when
9 processing is conducted, an establishment or location in which
10 molluscan shellfish or crabmeat is processed, packed, pasteurized,
11 or held for introduction into commerce or held after introduction
12 into commerce;

13 (2) enter a vehicle being used to transport or hold the
14 molluscan shellfish or crabmeat in commerce; or

15 (3) inspect the establishment, location, or vehicle,
16 including equipment, records, files, papers, materials,
17 containers, labels, or other items, and obtain samples necessary
18 for enforcement of this chapter.

19 (b) The inspection of an establishment or location is to
20 determine whether the molluscan shellfish or crabmeat:

21 (1) is adulterated or misbranded;

22 (2) may not be processed, introduced into commerce,
23 sold, or offered for sale under this chapter or department [~~the~~
24 rules [~~adopted by the board~~] ; or

25 (3) is otherwise in violation of this chapter.

26 (c) The department [~~director~~, ~~an authorized agent~~] or a
27 health authority may not inspect:

7 SECTION 3.1091. Section 436.023, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 436.023. ACCESS TO RECORDS. A person who is required
10 to maintain records under this chapter or a department rule
11 [~~adopted by the board~~] or a person who is in charge or custody of
12 those records on request shall permit the department [~~director~~,
13 ~~authorized agent,~~] or health authority at all reasonable times to
14 have access to and to copy the records.

15 SECTION 3.1092. Section 436.024(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) A commercial carrier or other person receiving or
18 holding molluscan shellfish or crabmeat in commerce on request
19 shall permit the department [~~director, authorized agent,~~] or health
20 authority at all reasonable times to have access to and to copy all
21 records showing:

22 (1) the movement in commerce of the molluscan
23 shellfish or crabmeat;

24 (2) the holding after movement in commerce of the
25 molluscan shellfish or crabmeat; or

26 (3) the quantity, shipper, and consignee of the
27 molluscan shellfish or crabmeat.

1 SECTION 3.1093. Section 436.025, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 436.025. EMERGENCY ORDER. (a) The department
4 [director] may issue an emergency order that mandates or prohibits
5 the taking, processing, or sale of molluscan shellfish or crabmeat
6 in the department's jurisdiction if:

7 (1) the processing or sale of the molluscan shellfish
8 or crabmeat creates or poses an immediate threat to human life or
9 health; and

10 (2) other procedures available to the department to
11 remedy or prevent the threat will result in unreasonable delay.

12 (b) The department [director] may issue the emergency order
13 without notice and hearing if the department [director] or a person
14 designated by the department [director] determines that issuing the
15 emergency order without notice and hearing is necessary under the
16 circumstances.

17 (c) If an emergency order is issued without a hearing, the
18 department shall determine the earliest time and place for a
19 hearing at which the emergency order shall be affirmed, modified,
20 or set aside. The hearing shall be held under department [board]
21 rules.

22 (d) This section prevails over Section [Sections 11.013
23 and] 12.001.

24 SECTION 3.1094. Section 436.026(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) The department [director, an authorized agent,] or a
27 health authority may petition the district court for a temporary

1 restraining order to restrain a continuing violation or a threat of
2 a continuing violation of Section 436.011 if the department
3 [~~director, authorized agent,~~] or health authority believes that:

4 (1) a person has violated, is violating, or is
5 threatening to violate a provision of Section 436.011; and

6 (2) the violation or threatened violation creates an
7 immediate threat to the health and safety of the public.

8 SECTION 3.1095. Section 436.027(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) At the request of the department [~~director~~], the
11 attorney general or a district, county, or municipal attorney shall
12 institute an action in district or county court to collect a civil
13 penalty from a person who has violated Section 436.011.

14 SECTION 3.1096. Section 436.028, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 436.028. DETAINED OR EMBARGOED ARTICLE. (a) The
17 department [~~director or an authorized agent~~] may detain or embargo
18 molluscan shellfish or crabmeat if the department [~~director or~~
19 ~~authorized agent~~] believes or has probable cause to believe that
20 the molluscan shellfish or crabmeat:

21 (1) is adulterated; or

22 (2) is misbranded so that the molluscan shellfish or
23 crabmeat is dangerous or fraudulent under this chapter.

24 (b) The department [~~director or an authorized agent~~] shall
25 affix to any molluscan shellfish or crabmeat a tag or other
26 appropriate marking that gives notice that the molluscan shellfish
27 or crabmeat is, or is suspected of being, adulterated or misbranded

1 and that the molluscan shellfish or crabmeat has been detained or
2 embargoed.

3 (c) The tag or marking on a detained or embargoed article
4 must prohibit the removal or disposal of the article unless
5 permission is given by the department [~~director, the authorized~~
6 ~~agent,~~] or a court.

7 (d) A person may not remove a detained or embargoed article
8 from the premises or dispose of it without permission of the
9 department [~~director, the authorized agent,~~] or a court. The
10 department [~~director or the authorized agent~~] may permit perishable
11 goods to be moved to a place suitable for proper storage.

12 (e) The department [~~director or an authorized agent~~] shall
13 remove the tag or other marking from a detained or embargoed article
14 if the department [~~director or an authorized agent~~] believes that
15 the article is not adulterated or misbranded.

16 (f) The claimant of a detained or embargoed article may move
17 the article to a secure storage area with the permission of the
18 department [~~director or an authorized agent~~].

19 SECTION 3.1097. Section 436.029, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 436.029. REMOVAL ORDER FOR DETAINED OR EMBARGOED
22 ARTICLE. (a) The department [~~director or authorized agent~~] may
23 order the claimant or the claimant's agent to move a detained or
24 embargoed article to a secure place to prevent the unauthorized
25 disposal or removal of the article.

26 (b) If the claimant fails to carry out the order, the
27 department [~~director or the authorized agent~~] may move the article.

1 (c) If the department [director or the authorized agent]
2 moves the article, the department [director] shall assess the cost
3 of removal against the claimant.

4 (d) The department [director] may request the attorney
5 general to bring an action in the district court in Travis County to
6 recover the costs of removal. In a judgment in favor of the state,
7 the court may award costs, attorney fees, and interest from the date
8 the expense was incurred until the date the department is
9 reimbursed.

10 SECTION 3.1098. Section 436.030, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 436.030. RECALL FROM COMMERCE. (a) The department
13 [director] may order a recall of molluscan shellfish or crabmeat
14 with:

15 (1) the detention or embargo of molluscan shellfish or
16 crabmeat;

17 (2) the issuance of an emergency order under Section
18 436.025; or

19 (3) both.

20 (b) The [director's] recall order may require that the
21 molluscan shellfish or crabmeat be removed to one or more secure
22 areas approved by the department [director or authorized agent].

23 (c) The recall order must be in writing and be signed by the
24 commissioner [director] and may be issued:

25 (1) before or in conjunction with a tag or other
26 marking as provided by Section 436.028;

27 (2) with an emergency order authorized by Section

1 436.025; or

2 (3) both.

3 (d) The recall order is effective until it expires by its
4 own terms, is withdrawn by the department [director], is reversed
5 by a court in an order denying condemnation, or is set aside at a
6 hearing authorized by Section 436.025.

7 (e) The claimant shall pay the costs of the removal and
8 storage of a recalled product. If the claimant or the claimant's
9 agent fails to carry out the recall order, the department
10 [director] may recall the product. The department [director] shall
11 assess the costs of the recall against the claimant.

12 (f) The department [director] may request the attorney
13 general to bring an action in a district court in Travis County to
14 recover the costs of recall. In a judgment in favor of the state,
15 the court may award costs, attorney fees, and interest from the date
16 the expense was incurred until the date the department is
17 reimbursed.

18 SECTION 3.1099. Section 436.032(b), Health and Safety Code,
19 is amended to read as follows:

20 (b) After entry of the court's order, the department [~~an~~
21 ~~authorized agent~~] shall supervise the destruction of the article.

22 SECTION 3.1100. Sections 436.033(a) and (c), Health and
23 Safety Code, are amended to read as follows:

24 (a) A court may order the delivery of sampled, detained, or
25 embargoed molluscan shellfish or crabmeat that is misbranded to the
26 claimant for relabeling under the supervision of the department
27 [director or an authorized agent] if:

1 (1) the court costs and other expenses have been paid;
2 (2) proper labeling can correct the misbranding; and
3 (3) the claimant executes a bond, conditioned on the
4 correction of the misbranding by proper labeling.

5 (c) The court shall order the return of the molluscan
6 shellfish or crabmeat to the claimant if the department [director]
7 ~~or an authorized agent~~] represents to the court that the molluscan
8 shellfish or crabmeat no longer violates this chapter and that the
9 expenses of supervision are paid.

10 SECTION 3.1101. Sections [436.034](#)(a) and (b), Health and
11 Safety Code, are amended to read as follows:

12 (a) The department [director] may assess an administrative
13 penalty against a person who violates Section [436.011](#) or an order
14 issued under this chapter.

15 (b) In determining the amount of the penalty, the department
16 [director] shall consider:

17 (1) the person's previous violations;
18 (2) the seriousness of the violation;
19 (3) the hazard to the health and safety of the public;
20 (4) the person's demonstrated good faith; and
21 (5) other matters as justice may require.

22 SECTION 3.1102. Section [436.035](#), Health and Safety Code, is
23 amended to read as follows:

24 Sec. 436.035. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.
25 (a) The department [director] may assess an administrative penalty
26 only after a person charged with a violation is given an opportunity
27 for a hearing.

1 (b) If a hearing is to be held, the department shall refer
2 the matter to the State Office of Administrative Hearings, and an
3 administrative law judge of that office [director] shall make
4 findings of fact and shall issue a written proposal for decision
5 regarding the violation and the amount of the penalty.

6 (c) If the person charged with the violation does not
7 request a hearing, the department [~~director~~] may assess a penalty
8 after determining that a violation has occurred and the amount of
9 the penalty.

10 (d) The department [~~director~~] shall issue an order
11 requiring a person to pay a penalty assessed under this section.

12 ~~(e) The director may consolidate a hearing held under this~~
13 ~~section with another proceeding.]~~

14 SECTION 3.1103. Section 436.036, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 436.036. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
17 later than the 30th day after the date an order is issued under
18 Section 436.035(d), the department [~~director~~] shall notify the
19 person against whom the penalty is assessed of the order and the
20 amount of the penalty.

21 (b) Not later than the 30th day after the date notice of the
22 order is given to the person, the person shall:

23 (1) pay the penalty in full; or
24 (2) file a petition for [~~seek~~] judicial review of the
25 department's order contesting the amount of the penalty, the
26 findings of the department [~~director~~], or both.

27 (c) If the person seeks judicial review within the period

1 prescribed by Subsection (b), the person may [shall]:

2 (1) stay enforcement of the penalty by:

3 (A) paying [~~send the amount of~~] the penalty to
4 the court [~~director~~] for placement in an escrow account; or

5 (B) posting [~~(2) post~~] with the court [~~director~~]
6 a supersedeas bond for the amount of the penalty; or

7 (2) request that the department stay enforcement of
8 the penalty by:

9 (A) filing with the court a sworn affidavit of
10 the person stating that the person is financially unable to pay the
11 penalty and is financially unable to give the supersedeas bond; and
12 (B) sending a copy of the affidavit to the
13 department.

14 (c-1) If the department receives a copy of an affidavit
15 under Subsection (c)(2), the department may file with the court,
16 within five days after the date the copy is received, a contest to
17 the affidavit. The court shall hold a hearing on the facts alleged
18 in the affidavit as soon as practicable and shall stay the
19 enforcement of the penalty on finding that the alleged facts are
20 true. The person who files an affidavit has the burden of proving
21 that the person is financially unable to pay the penalty or to give
22 a supersedeas bond.

23 (d) A bond posted under this section must be in a form
24 approved by the court [~~director~~] and must be effective until
25 judicial review of the order or decision is final.

26 (e) A person who does not send the money to, [~~the director~~
27 ~~or~~] post the bond with, or file the affidavit with the court within

1 the period described by Subsection (b) waives all rights to contest
2 the violation or the amount of the penalty.

3 (f) The attorney general, at the request of the department
4 [director], may bring a civil action to recover an administrative
5 penalty assessed under this subchapter.

6 SECTION 3.1104. Section 436.037, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 436.037. REFUND OF ADMINISTRATIVE PENALTY. On [Not
9 later than the 30th day after] the date the court's judgment [~~of a~~
10 ~~judicial determination~~] that an administrative penalty against a
11 person should be reduced or not assessed becomes final, the court
12 [director] shall order that:

13 (1) [~~remit to the person~~] the appropriate amount of
14 any penalty payment plus accrued interest be remitted to the person
15 not later than the 30th day after that date; or

16 (2) [~~execute a release of~~] the bond be released, if the
17 person has posted a bond.

18 SECTION 3.1105. Sections 436.038(f) and (g), Health and
19 Safety Code, are amended to read as follows:

20 (f) A person is not subject to the penalties of Subsection
21 (e) if the person received molluscan shellfish or crabmeat in
22 commerce and delivered or offered to deliver the molluscan
23 shellfish or crabmeat in good faith, unless the person refuses to
24 furnish on request of the department [director, an authorized
25 agent,] or a health authority the name and address of the person
26 from whom the product was received and copies of any documents
27 relating to the receipt of the product.

1 (g) A publisher, radiobroadcast licensee, or agency or
2 medium for the publication or broadcast of an advertisement, except
3 the harvester, processor, distributor, or seller of molluscan
4 shellfish or crabmeat to which a false advertisement relates, is
5 not liable under this section for the publication or broadcast of
6 the false advertisement unless the person has refused to furnish,
7 on the request of the department [~~director~~], the name and address of
8 the harvester, processor, distributor, seller, or advertising
9 agency residing in this state who caused the person to publish or
10 broadcast the advertisement.

11 SECTION 3.1106. Section 436.039, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 436.039. INITIATION OF PROCEEDINGS. The attorney
14 general or a district, county, or municipal attorney to whom the
15 department [~~director, an authorized agent,~~] or a health authority
16 reports a violation of this chapter shall prosecute without delay.

17 SECTION 3.1107. Section 436.040, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 436.040. MINOR VIOLATION. This chapter does not
20 require the department [~~director, an authorized agent,~~] or a health
21 authority to report for prosecution a minor violation of this
22 chapter if the department [~~director, authorized agent,~~] or health
23 authority believes that the public interest is adequately served by
24 a written warning.

25 SECTION 3.1108. Section 436.061, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 436.061. ADULTERATED AQUATIC LIFE. (a) A species of

1 aquatic life is adulterated if it has been taken from an area
2 declared prohibited for that species by the department [~~director~~].

3 (b) Molluscan shellfish or crabmeat is adulterated if:

4 (1) it bears or contains a poisonous or deleterious
5 substance that may render it injurious to health unless the
6 substance is a naturally occurring substance and the quantity of
7 the substance in the molluscan shellfish or crabmeat does not
8 ordinarily render the substance injurious to health;

9 (2) it consists in whole or in part of a diseased,
10 contaminated, filthy, or putrid substance or if it is otherwise
11 unfit for human consumption;

12 (3) it has been produced, prepared, packed, or held
13 under unsanitary conditions whereby it may have become contaminated
14 with filth or may have been rendered diseased, unwholesome, or
15 injurious to health;

16 (4) it is in whole or in part the product of diseased
17 aquatic life or has died otherwise than by taking;

18 (5) its container is made in whole or in part of a
19 poisonous or deleterious substance that may render the contents
20 injurious to health;

21 (6) it has been intentionally exposed to radiation,
22 unless the use of the radiation complied with a regulation or an
23 exemption under Section 409, Federal Food, Drug, and Cosmetic Act
24 (21 U.S.C. Section 348);

25 (7) a substance has been substituted in whole or in
26 part for it;

27 (8) damage to or inferiority of the product has been

1 concealed;

2 (9) a substance has been added, mixed, or packed to
3 increase its bulk or weight, to reduce its quality or strength, or
4 to make it appear better or of greater value than it is;

5 (10) it contains a chemical substance containing
6 sulphites, sulphur dioxide, or any other chemical preservative that
7 is not approved by the Animal and Plant Health Inspection Service or
8 by department rules [~~of the board~~];

9 (11) the molluscan shellfish have been taken from a
10 closed area;

11 (12) the molluscan shellfish have been taken from a
12 restricted or conditionally restricted area and have not been
13 purified under department [~~the~~] rules [~~adopted by the board~~];

14 (13) the molluscan shellfish have been processed by a
15 person without a shellfish certificate;

16 (14) the molluscan shellfish have not been handled and
17 packaged in accordance with department [~~the~~] rules [~~adopted by the~~
18 ~~board~~];

19 (15) the crabmeat has been processed by a person
20 without a crabmeat processing license; or

21 (16) the crabmeat was not picked, packed, or
22 pasteurized in accordance with department [~~the~~] rules [~~adopted by~~
23 ~~the board~~].

24 SECTION 3.1109. Section 436.071, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 436.071. MISBRANDED MOLLUSCAN SHELLFISH AND CRABMEAT.

27 Molluscan shellfish or crabmeat is misbranded if:

1 (1) its labeling is false, misleading, or fails to
2 conform with the requirements of Section **436.081**;

3 (2) it is offered for sale under the name of another
4 food;

5 (3) its container is made, formed, or filled so as to
6 be misleading;

7 (4) a word, statement, or other information required
8 by this chapter or a rule adopted under this chapter to appear on a
9 label is not prominently and conspicuously placed on the label and
10 is not likely to be read and understood by the ordinary individual
11 under customary conditions of purchase and use; or

12 (5) it does not have a label containing:

13 (A) the name, address, and certification or
14 license number of the processor;

15 (B) an accurate statement in a uniform location
16 on the principal display panel of the quantity of the contents in
17 terms of weight, measure, or numerical count; and

18 (C) a date as provided by department rules
19 [~~adopted by the board~~].

20 SECTION 3.1110. Section **436.091**, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 436.091. DECLARATION OF PROHIBITED AREAS. (a) The
23 department [~~director~~] by order shall declare a body of public water
24 to be a prohibited area if:

25 (1) the department [~~director~~] finds, according to a
26 sanitary, chemical, or bacteriological survey, that the area
27 contains aquatic life that is unfit for human consumption; or

1 (2) aquatic life from a prohibited area may have been
2 transferred to that body of public water.

3 (b) The department ~~[director]~~ shall modify or revoke an
4 order according to the results of a sanitary, chemical, or
5 bacteriological survey conducted by the department. The department
6 ~~[director]~~ shall file the order in the department's office and
7 shall furnish without charge a copy of the order describing
8 prohibited areas on request.

9 (c) The department ~~[director]~~ shall conspicuously outline
10 prohibited areas on maps and shall furnish the maps without charge
11 on request. The failure of a person to obtain that information does
12 not relieve that person from liability under this chapter.

13 SECTION 3.1111. Section 436.101, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 436.101. CLASSIFICATION OF GROWING AREAS. (a) The
16 department ~~[director]~~ by order shall designate an area that is
17 coastal water according to the rules of the Parks and Wildlife
18 Commission as an approved area, a conditionally approved area, a
19 restricted area, a conditionally restricted area, or a prohibited
20 area, according to the classification categories in the current
21 National Shellfish Sanitation Program Guide for the Control of
22 Molluscan Shellfish ~~[Manual of Operations]~~ or its successor.
23 Coastal water is a prohibited area for the taking of molluscan
24 shellfish unless designated otherwise by the department
25 ~~[director]~~.

26 (b) The department ~~[director]~~ shall prohibit the taking of
27 molluscan shellfish for a specified period from water to which

1 molluscan shellfish may have been transferred from a restricted or
2 conditionally restricted area.

3 (c) The department [director] by order shall designate
4 growing areas as closed areas or open areas. The department
5 [director] shall modify or revoke an order according to the results
6 of sanitary and bacteriological surveys conducted by the
7 department. The department [director] shall file the order in the
8 department's office and shall furnish without charge a copy of the
9 order describing the open or closed area on request.

10 (d) The department [director] shall conspicuously outline
11 the classifications of areas for the taking of molluscan shellfish
12 on maps and shall furnish the maps without charge on request. The
13 failure of a person to obtain that information does not relieve that
14 person from liability under this chapter.

15 SECTION 3.1112. Section 436.102, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 436.102. DEPURATION. (a) The department [director]
18 may allow depuration by artificial means of molluscan shellfish
19 taken from a restricted or conditionally restricted area, subject
20 to department [the] rules [~~adopted by the board~~] and under the
21 supervision the department [director] considers necessary to
22 protect public health.

23 (b) A molluscan shellfish plant operator may employ an
24 off-duty peace officer to monitor the gathering of shellfish for
25 depuration from a restricted or conditionally restricted area as
26 provided by the rules adopted [~~by the board~~] under Subsection (a).
27 In this subsection, "peace officer" includes those persons listed

1 in Article 2.12, Code of Criminal Procedure.

2 SECTION 3.1113. Section 436.107(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) The council is composed of:

5 (1) two members appointed by the executive
6 commissioner [board] as nominated by the Texas Oyster Growers and
7 Dealers Association or a successor organization;

8 (2) one member appointed by the executive commissioner
9 [board] as nominated by the Coastal Oyster Leaseholder's
10 Association;

11 (3) two members appointed by the executive
12 commissioner [board] from a list of oyster dealers who have held a
13 shellfish certificate in this state for not less than six months of
14 each of the three years preceding the nomination and who are
15 certified at the time of appointment;

16 (4) one representative appointed by the chairman of
17 the Interstate Shellfish Sanitation Conference; and

18 (5) three consumer members, including one person
19 professionally licensed or with work experience in the field of
20 environmental survey, environmental sanitation, environmental
21 engineering, or a similar field related to environmental or
22 pollution conditions and their effect on molluscan shellfish
23 harvest areas, appointed by the speaker of the house of
24 representatives.

25 SECTION 3.1114. Section 436.108(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) The Texas Oyster Council shall:

1 (1) advise the department [board] on the criteria used
2 by the department [~~director~~] under Section 436.101 to designate
3 growing areas as open or closed areas;

4 (2) advise the department [board] on the development
5 of standards and procedures relating to the licensing of molluscan
6 shellfish processors under this chapter;

7 (3) advise the department [board] on the content of
8 the rules adopted by the executive commissioner to implement the
9 provisions of this chapter relating to molluscan shellfish;

10 (4) perform any other functions requested by the
11 department [board] in implementing and administering the
12 provisions of this chapter relating to molluscan shellfish; and

13 (5) review information brought before the council
14 relating to molluscan shellfish.

15 SECTION 3.1115. Section 436.112, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 436.112. RULEMAKING AUTHORITY. The executive
18 commissioner [board] may adopt rules for the enforcement of this
19 chapter. The executive commissioner [board] shall adopt rules
20 establishing specifications for molluscan shellfish processing and
21 crabmeat processing, and the department shall furnish without
22 charge printed copies of the rules on request.

23 SECTION 3.1116. Sections 436.113(a), (b), (c), (d), and
24 (e), Health and Safety Code, are amended to read as follows:

25 (a) A person may not operate as a molluscan shellfish or
26 crabmeat processor unless the person submits an application for a
27 certificate or a license to the department according to department

1 rules [~~adopted by the board~~] and receives a certificate or license
2 for each plant or place of business.

3 (b) When an application has been properly filed with the
4 department, the department [~~director or an authorized agent~~] shall
5 inspect the property identified in the application, including
6 buildings and equipment, and the operating procedures under which
7 the product is processed.

8 (c) The department [~~director~~] shall issue a certificate or
9 license to a person who operates a plant or place of business that
10 conforms to the requirements of this chapter and department rules
11 [~~adopted by the board~~].

12 (d) A certificate is nontransferrable and expires at 11:59
13 p.m. on August 31 of the second [~~each~~] year of issuance.

14 (e) A license is nontransferrable and expires at 11:59 p.m.
15 on the last day of February of the second [~~each~~] year of issuance.

16 SECTION 3.1117. Section 436.114(b), Health and Safety Code,
17 is amended to read as follows:

18 (b) The executive commissioner [~~board~~] by rule shall
19 establish minimum standards for a certificate or license and
20 criteria for the refusal to issue a certificate or license and the
21 suspension or revocation of a certificate or license.

22 SECTION 3.1118. Section 436.115(a), Health and Safety Code,
23 is amended to read as follows:

24 (a) A hearing under this chapter is governed by the
25 procedures for a contested case hearing under Chapter 2001,
26 Government Code, and the department's [~~board's~~] formal hearing
27 rules.

1 SECTION 3.1119. Section 437.001(4), Health and Safety Code,
2 is amended to read as follows:

3 (4) "Food," "food service establishment," "retail
4 food store," "mobile food unit," "roadside food vendor," [~~"roadside~~
5 ~~food vendor"~~,] and "temporary food service establishment" have the
6 meanings assigned to those terms by rules adopted [by the board]
7 under this chapter.

8 SECTION 3.1120. Section 437.0055(b), Health and Safety
9 Code, is amended to read as follows:

10 (b) A person required to obtain a permit under Subsection
11 (a) must apply every two years [~~annually~~] for the permit and must
12 pay any fees required by the department.

13 SECTION 3.1121. Section 437.0056, Health and Safety Code,
14 is amended to read as follows:

15 Sec. 437.0056. RULEMAKING AUTHORITY. The executive
16 commissioner [~~board~~] may adopt rules for the efficient enforcement
17 of this chapter by the department in an area not regulated under
18 this chapter by a county or public health district. The executive
19 commissioner [~~board~~] by rule shall establish minimum standards for
20 granting and maintaining a permit in an area not regulated under
21 this chapter by a county or public health district. The
22 commissioner may refuse an application for a permit or suspend or
23 revoke a permit in an area not regulated under this chapter by a
24 county or public health district.

25 SECTION 3.1122. Section 437.0057(e), Health and Safety
26 Code, is amended to read as follows:

27 (e) A county, a public health district, or the department

1 may require a food service establishment to:

2 (1) post a sign in a place conspicuous to employees, in
3 a form adopted by the executive commissioner [of the Health and
4 Human Services Commission], describing a food service employee's
5 responsibilities to report certain health conditions to the permit
6 holder under rules adopted by the executive commissioner; or

7 (2) require that each food service employee sign a
8 written agreement in a form adopted by the executive commissioner
9 to report those health conditions.

10 SECTION 3.1123. Sections 437.0076(b) and (d), Health and
11 Safety Code, are amended to read as follows:

12 (b) The executive commissioner [board] may require each
13 fixed or mobile location retail establishment in which food is
14 prepared on-site for sale to the public that is required to be
15 operated under a permit under Section 437.0055 to employ a food
16 manager certified under Subchapter G, Chapter 438.

17 (d) The executive commissioner [board] by rule may exempt
18 establishments other than the establishments described by
19 Subsection (c) from the requirement imposed under this section if
20 the executive commissioner [board] determines that the application
21 of the requirement to those establishments is not necessary to
22 protect public health and safety.

23 SECTION 3.1124. Section 437.0123(a), Health and Safety
24 Code, is amended to read as follows:

25 (a) A county that has a population of at least 2.8 million or
26 a public health district at least part of which is in a county that
27 has a population of at least 2.8 million may require the payment of

1 a fee for issuing or renewing a permit or for performing an
2 inspection to enforce this chapter or a rule adopted under this
3 chapter. A county with a population of at least 2.8 million may
4 require a trained food manager to be on duty during each day of
5 operation of a food service establishment. The training required
6 of food managers can be no more extensive than the training offered
7 by an education or training program accredited [that specified]
8 under Subchapter D, Chapter 438. A food service establishment that
9 handles only prepackaged food and does not prepare or package food
10 may not be required to have a certified food manager under this
11 section.

12 SECTION 3.1125. Sections [437.0125\(b\)](#), (c), and (e), Health
13 and Safety Code, are amended to read as follows:

14 (b) The department may charge [~~annual~~] fees every two years.
15 (c) The executive commissioner [~~board~~] by rule shall set the
16 fees for issuing and renewing permits in amounts as prescribed by
17 Section 12.0111 and other fees in amounts that allow the department
18 to recover at least 50 percent of the [~~annual~~] expenditures by the
19 department for:

20 (1) reviewing and acting on a permit;
21 (2) amending [~~and renewing~~] a permit;
22 (3) inspecting a facility as provided by this chapter
23 and rules adopted under this chapter; and
24 (4) implementing and enforcing this chapter,
25 including a department rule or an order adopted or a license issued
26 by the department.

27 (e) All permit fees collected by the department under this

1 chapter shall be deposited in the state treasury to the credit of
2 the food and drug retail fee account [~~fund~~].

3 SECTION 3.1126. Section 437.013(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) A county or public health district shall file an audited
6 statement with the department [~~Texas Department of Health~~] on or
7 before January 15 of each year.

8 SECTION 3.1127. Section 437.017, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 437.017. CONFLICT WITH ALCOHOLIC BEVERAGE CODE. The
11 Alcoholic Beverage Code and rules adopted by the Texas Alcoholic
12 Beverage Commission control to the extent of a conflict between
13 this chapter or an order adopted under this chapter.

14 SECTION 3.1128. Sections 437.018(a), (d), (e), (f), (g),
15 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
16 amended to read as follows:

17 (a) The department [~~commissioner~~] may impose an
18 administrative penalty against a person who holds a permit or who is
19 regulated under this chapter and who violates this chapter or a rule
20 or order adopted under this chapter.

21 (d) If the department [~~commissioner~~] determines that a
22 violation has occurred, the department [~~commissioner~~] shall issue
23 an order that states the facts on which the determination is based,
24 including an assessment of the penalty.

25 (e) Within 14 days after the date the order is issued, the
26 department [~~commissioner~~] shall give written notice of the order to
27 the person. The notice may be given by certified mail. The notice

1 must include a brief summary of the alleged violation and a
2 statement of the amount of the recommended penalty and must inform
3 the person that the person has a right to a hearing on the
4 occurrence of the violation, the amount of the penalty, or both the
5 occurrence of the violation and the amount of the penalty.

6 (f) Within 20 days after the date the person receives the
7 notice, the person in writing may accept the determination and
8 recommended penalty of the department [~~commissioner~~] or may make a
9 written request for a hearing on the occurrence of the violation,
10 the amount of the penalty, or both the occurrence of the violation
11 and the amount of the penalty.

12 (g) If the person accepts the determination and recommended
13 penalty [~~of the commissioner~~], the department [~~commissioner~~] by
14 order shall [~~approve the determination and~~] impose the recommended
15 penalty.

16 (h) If the person requests a hearing or fails to respond
17 timely to the notice, the department [~~commissioner~~] shall refer the
18 matter to the State Office of Administrative Hearings and an
19 administrative law judge of that office shall hold the hearing. The
20 department shall [~~set a hearing and~~] give written notice of the
21 hearing to the person. The [~~An~~] administrative law judge shall make
22 findings of fact and conclusions of law and promptly issue to the
23 department [~~commissioner~~] a written proposal for a decision about
24 the occurrence of the violation and the amount of a proposed
25 penalty. Based on the findings of fact, conclusions of law, and
26 proposal for a decision, the department [~~commissioner~~] by order may
27 find that a violation has occurred and impose a penalty or may find

1 that no violation occurred.

2 (i) The notice of the department's [~~commissioner's~~] order
3 given to the person under Chapter 2001, Government Code_ must
4 include a statement of the right of the person to judicial review of
5 the order.

6 (j) Within 30 days after the date the department's [~~board's~~]
7 order is final as provided by Subchapter F, Chapter 2001,
8 Government Code, the person shall:

9 (1) pay the amount of the penalty;

10 (2) pay the amount of the penalty and file a petition
11 for judicial review contesting the occurrence of the violation, the
12 amount of the penalty, or both the occurrence of the violation and
13 the amount of the penalty; or

14 (3) without paying the amount of the penalty, file a
15 petition for judicial review contesting the occurrence of the
16 violation, the amount of the penalty, or both the occurrence of the
17 violation and the amount of the penalty.

18 (k) Within the 30-day period, a person who acts under
19 Subsection (j)(3) of this section may:

20 (1) stay enforcement of the penalty by:

21 (A) paying the amount of the penalty to the court
22 for placement in an escrow account; or

23 (B) giving to the court a supersedeas bond that
24 is approved by the court for the amount of the penalty and that is
25 effective until all judicial review of the department's [~~board's~~]
26 order is final; or

27 (2) request the court to stay enforcement of the

1 penalty by:

2 (A) filing with the court a sworn affidavit of
3 the person stating that the person is financially unable to pay the
4 amount of the penalty and is financially unable to give the
5 supersedeas bond; and

6 (B) giving a copy of the affidavit to the
7 department [~~commissioner~~] by certified mail.

8 (1) The department [~~commissioner~~] on receipt of a copy of an
9 affidavit under Subsection (k)(2) [~~of this section~~] may file with
10 the court, within five days after the date the copy is received, a
11 contest to the affidavit. The court shall hold a hearing on the
12 facts alleged in the affidavit as soon as practicable and shall stay
13 the enforcement of the penalty on finding that the alleged facts are
14 true. The person who files an affidavit has the burden of proving
15 that the person is financially unable to pay the amount of the
16 penalty and to give a supersedeas bond.

17 (m) If the person does not pay the amount of the penalty and
18 the enforcement of the penalty is not stayed, the department
19 [~~commissioner~~] may refer the matter to the attorney general for
20 collection of the amount of the penalty.

21 (n) Judicial review of the order of the department
22 [~~commissioner~~]:

23 (1) is instituted by filing a petition as provided by
24 Subchapter G, Chapter 2001, Government Code; and
25 (2) is under the substantial evidence rule.

26 SECTION 3.1129. Section 437.019(b), Health and Safety Code,
27 is amended to read as follows:

1 (b) Except as provided by Subsection (c), a bed and
2 breakfast establishment that has more than seven rooms for rent, or
3 that provides food service other than breakfast to its overnight
4 guests, is a food service establishment for purposes of this
5 chapter but may not be required to meet all criteria applicable to a
6 larger food service establishment such as a restaurant. The
7 executive commissioner [board], commissioners court, governing
8 body, or administrative board, as applicable, shall adopt minimum
9 standards for a bed and breakfast establishment covered by this
10 subsection.

11 SECTION 3.1130. Section 438.004(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) The executive commissioner [~~Texas Board of Health~~] by
14 rule may establish requirements stricter than the requirements
15 prescribed by Section 438.003 for the display and sale of
16 unpackaged foods if the transmission of a disease infestation or
17 contamination is directly related to a method of displaying and
18 selling unpackaged food authorized by this subchapter.

19 SECTION 3.1131. Section 438.014(a), Health and Safety Code,
20 is amended to read as follows:

21 (a) After cleaning dishes, receptacles, utensils,
22 food-grinding machines, and implements as required by Section
23 438.012 or 438.013, the items shall be:

24 (1) placed in a wire cage and immersed in a still bath
25 of clear water for at least:

26 (A) three minutes in water heated to a minimum
27 temperature of 170 degrees Fahrenheit; or

1 (B) two minutes in water heated to a minimum
2 temperature of 180 degrees Fahrenheit;

3 (2) immersed for at least two minutes in a lukewarm
4 chlorine bath made up at a strength of 100 parts per milliliter or
5 more of hypochlorites and not reduced to less than 50 parts per
6 milliliter available chlorine, or a concentration of equal
7 bacteriacidal strength if chloramines are used; or

8 (3) sterilized by any other chemical method approved
9 by the department [~~Texas Board of Health~~].

10 SECTION 3.1132. Section 438.033(a), Health and Safety Code,
11 is amended to read as follows:

12 (a) On the request of an employer, the department [~~Texas~~
13 ~~Board of Health~~] or the department's [~~board's~~] representative, or
14 the local health authority or the local health authority's
15 representative, a person employed or seeking employment in an
16 activity regulated under Section 438.032:

17 (1) shall be examined by a licensed physician; and
18 (2) must receive a certificate signed by the physician
19 stating that the examination has been performed and that to the best
20 of the physician's knowledge the person examined did not have on the
21 date of the examination a transmissible condition of a communicable
22 disease or a local infection commonly transmitted through the
23 handling of food.

24 SECTION 3.1133. The heading to Section 438.042, Health and
25 Safety Code, is amended to read as follows:

26 Sec. 438.042. DUTIES OF EXECUTIVE COMMISSIONER [~~BOARD~~].

27 SECTION 3.1134. Section 438.042(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) The executive commissioner [Texas Board of Health]
3 shall adopt standards and procedures for the accreditation of
4 education and training programs for persons employed in the food
5 service industry.

6 SECTION 3.1135. Section 438.042(b), Health and Safety Code,
7 as added by Chapter 539 (S.B. 873), Acts of the 72nd Legislature,
8 Regular Session, 1991, is amended to read as follows:

9 (b) The executive commissioner [Texas Board of Health]
10 shall adopt standards and procedures for the accreditation of
11 education and training programs for recertification of persons
12 employed in the food service industry who have previously completed
13 a program accredited in accordance with this subchapter or have
14 been certified by a local health jurisdiction and have completed
15 training and testing requirements substantially similar to those
16 required by this subchapter for program accreditation. The
17 requirements for accreditation in Section 438.043 need not be met
18 by an education or training program for recertification.

19 SECTION 3.1136. Section 438.0431(b), Health and Safety
20 Code, is amended to read as follows:

21 (b) The executive commissioner [~~of the Health and Human~~
22 ~~Services Commission~~] shall by rule define the basic food safety
23 training or education required to be included in a course
24 curriculum. The course length may not exceed two hours.

25 SECTION 3.1137. Section 438.047, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 438.047. FEES. The department in accordance with

1 department rules shall charge an application fee and an audit fee
2 sufficient to cover the entire cost of accreditation, audit, and
3 maintenance of the registry.

4 SECTION 3.1138. Section 438.102, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 438.102. CERTIFICATION PROGRAM. (a) The executive
7 commissioner [board] shall establish a certification program for
8 food managers in accordance with this subchapter.

9 (b) The executive commissioner [board] by rule shall
10 prescribe the requirements for issuance and renewal of a food
11 manager certificate under this subchapter.

12 SECTION 3.1139. Section 438.104, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 438.104. APPROVAL OF EXAMINATIONS; SELECTION OF
15 EXAMINATION SITES. (a) The executive commissioner [board] shall
16 adopt criteria to approve examinations.

17 (b) In administering this subchapter, the department
18 [board] shall consider the impact of the traveling distance and
19 time required for a food manager to obtain certification. The
20 department [board] shall give particular consideration to
21 mitigating the impact of this subchapter on food managers in rural
22 areas. The department [board] shall use the Internet to implement
23 the certification and may develop a system to permit administration
24 of the examination using the Internet.

25 SECTION 3.1140. Section 438.106, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 438.106. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER

1 [BOARD]; FEES. (a) The executive commissioner [board] by rule may
2 adopt a fee for issuance or renewal of a food manager certificate
3 under this subchapter in amounts reasonable and necessary to
4 administer this subchapter, but not to exceed \$35.

5 (b) The executive commissioner [board] by rule may adopt a
6 fee, in an amount not to exceed \$10, for an examination administered
7 by the department under this subchapter.

8 (c) The executive commissioner [board] may adopt rules for
9 the denial, suspension, and revocation of a food manager
10 certificate issued under this subchapter.

11 (d) The executive commissioner [board] by rule may
12 prescribe standards for:

13 (1) examination sites;

14 (2) expenses of administration of examinations under
15 this subchapter; and

16 (3) site audits for administration of this subchapter.

17 SECTION 3.1141. Section 439.002, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 439.002. MANUFACTURE AND SALE. Unless prohibited by
20 federal law, laetrile [Laetrile] may be manufactured in this state
21 in accordance with Chapter 431 (Texas Food, Drug, and Cosmetic Act)
22 and may be sold in this state for distribution by licensed
23 physicians.

24 SECTION 3.1142. Sections 439.003(a) and (b), Health and
25 Safety Code, are amended to read as follows:

26 (a) Unless prohibited by federal law, a [A] licensed
27 physician may prescribe or administer laetrile in the treatment of

1 cancer.

2 (b) A physician acting in accordance with federal and state
3 law is not subject to disciplinary action by the Texas [State Board
4 ~~of~~] Medical Board [~~Examiners~~] for prescribing or administering
5 laetrile to a patient under the physician's care who has requested
6 the substance unless that board makes a formal finding that the
7 substance is harmful.

8 SECTION 3.1143. Sections 439.005(b) and (c), Health and
9 Safety Code, are amended to read as follows:

10 (b) The Texas [State Board of] Medical Board [~~Examiners~~] may
11 suspend, cancel, or revoke the license of any physician who:

12 (1) fails to keep complete and accurate records of
13 purchases and disposals of laetrile;

14 (2) prescribes or dispenses laetrile to a person known
15 to be a habitual user of narcotic or dangerous drugs or to a person
16 who the physician should have known was a habitual user of narcotic
17 or dangerous drugs;

18 (3) uses any advertising that tends to mislead or
19 deceive the public; or

20 (4) is unable to practice medicine with reasonable
21 skill and safety to patients because of any mental or physical
22 condition, including age, illness, or drunkenness, or because of
23 excessive use of drugs, narcotics, chemicals, or any other type of
24 material.

25 (c) Subsection (b)(2) does not apply to a person being
26 treated by the physician for narcotic use after the physician
27 notifies the Texas [State Board of] Medical Board [~~Examiners~~] in

1 writing of the name and address of the patient being treated.

2 SECTION 3.1144. Sections **439.015**(b) and (c), Health and
3 Safety Code, are amended to read as follows:

4 (b) The Texas ~~State Board of~~ Medical Board ~~Examiners~~ may
5 suspend, cancel, or revoke the license of any physician who:

6 (1) fails to keep complete and accurate records of
7 purchases and disposals of DMSO in a formulation not approved for
8 human use; or

9 (2) prescribes or administers DMSO in a manner that
10 has been proven, in a formal hearing held by the board, to be
11 harmful to the patient.

12 (c) The Texas ~~State Board of~~ Medical Board ~~Examiners~~ may
13 temporarily suspend the license of a physician who prescribes or
14 administers DMSO in a manner that, in the board's opinion, creates
15 an immediate danger to the public. The board must conduct a hearing
16 on the temporary suspension as soon as practicable after the
17 suspension.

18 SECTION 3.1145. Section **439.021**(d), Health and Safety Code,
19 is amended to read as follows:

20 (d) The consulting pharmacist shall account to the
21 department ~~Texas Department of Health~~ for all drugs selected for
22 shipment under this subchapter.

23 SECTION 3.1146. Section **439.022**, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 439.022. ADMINISTRATION. (a) The executive
26 commissioner ~~Texas Board of Health~~ shall adopt rules consistent
27 with federal and state law to implement this subchapter, including

1 rules relating to:

2 (1) the packaging and inventory of drugs for shipment;
3 (2) the manner of shipment of the drugs from original
4 shipment under this subchapter until the final destination; and
5 (3) safeguards to ensure the proper handling of and
6 accounting for all drugs shipped.

7 (b) The executive commissioner [~~Texas Board of Health~~] by
8 rule shall determine, in consultation with the United States
9 Department of State and other appropriate federal agencies, the
10 foreign countries to receive the drugs.

11 (c) The salvaging of drugs under this subchapter is not
12 subject to Chapter 431 (Texas Food, Drug, and Cosmetic Act).

13 SECTION 3.1147. Section [439.023](#)(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) The department [~~Texas Department of Health~~] may
16 contract with other entities, including local governments and civic
17 organizations, to implement this subchapter.

18 SECTION 3.1148. Section [440.003](#)(9), Health and Safety Code,
19 is amended to read as follows:

20 (9) "Health authority" means the department, the
21 municipal or[or] county[~~or state~~] health officer or the officer's
22 representative, or any other agency having jurisdiction or control
23 over the matters embraced within the specifications and
24 requirements of this chapter.

25 SECTION 3.1149. Section [440.005](#), Health and Safety Code, is
26 amended to read as follows:

27 Sec. 440.005. HEARINGS. [~~(a)~~] A hearing conducted [~~by the~~

1 ~~board~~] in the administration of this chapter is governed by Chapter
2 2001, Government Code.

3 ~~[(b) Based on the record of a hearing conducted under this~~
4 ~~chapter, the department shall make a finding and shall sustain,~~
5 ~~change, or rescind an official notice or order considered in the~~
6 ~~hearing.]~~

7 SECTION 3.1150. Section 440.006, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 440.006. POWERS ~~[AND DUTIES]~~ OF EXECUTIVE COMMISSIONER
10 [~~BOARD~~]. The executive commissioner [~~board~~] may:

11 (1) adopt rules prescribing standards or related
12 requirements for the operation of establishments for the
13 manufacture of frozen desserts, imitation frozen desserts,
14 products sold in semblance of frozen desserts, or mixes for those
15 products, including standards or requirements for the:

16 (A) health, cleanliness, education, and training
17 of personnel who are employed in the establishments;

18 (B) protection of raw materials, manufactured
19 merchandise, and merchandise held for sale;

20 (C) design, construction, installation, and
21 cleanliness of equipment and utensils;

22 (D) sanitary facilities and controls of the
23 establishments;

24 (E) establishment construction and maintenance,
25 including vehicles;

26 (F) production processes and controls; and

27 (G) institution and content of a system of

1 records to be maintained by the establishment; and

2 (2) adopt rules prescribing procedures for the
3 enforcement of the standards or related requirements prescribed
4 under Subdivision (1), including procedures for the:

5 (A) requirement of a valid license to operate an
6 establishment;

7 (B) issuance, suspension, revocation, and
8 reinstatement of licenses;

9 (C) administrative hearings held under this
10 chapter [before the board or its designee];

11 (D) institution of certain court proceedings by
12 the department [~~board~~] or its designee;

13 (E) inspection of establishments and securing of
14 samples of frozen desserts, imitation frozen desserts, products
15 sold in semblance of frozen desserts, or mixes for those products;

16 (F) access to the establishments and to the
17 vehicles used in operations;

18 (G) compliance by manufacturers outside the
19 jurisdiction of the state; and

20 (H) review of plans for future construction.

21 SECTION 3.1151. Sections 440.012(a), (c), and (d), Health
22 and Safety Code, are amended to read as follows:

23 (a) A person desiring to operate an establishment for the
24 manufacture of a frozen dessert, imitation frozen dessert, product
25 sold in semblance of a frozen dessert, or a mix for one of those
26 products may apply to the department for a license. A license shall
27 be granted under the department's procedural rules [~~adopted by the~~

1 ~~board~~] and shall be issued only for the purpose and use as stated on
2 the application for a license.

3 (c) A license may not be issued to a person who does not
4 comply with the standards prescribed by department rule [~~the board~~]
5 under this chapter.

6 (d) A license issued under this chapter must be renewed
7 every two years [~~on or before September 1 of each year~~] in
8 accordance with department rules [~~adopted by the board~~].

9 SECTION 3.1152. Sections 440.013(a), (b), and (c), Health
10 and Safety Code, are amended to read as follows:

11 (a) A [~~\$200~~] nonrefundable fee for each establishment in an
12 amount set by the executive commissioner by rule as prescribed by
13 Section 12.0111 must accompany each application for a license.

14 (b) The department also shall assess the following fees in
15 the amounts set by the executive commissioner by rule as prescribed
16 by Section 12.0111:

17 (1) a fee for a frozen dessert manufacturer located in
18 this state in an [~~the~~] amount [~~of one cent~~] per 100 pounds of
19 manufactured or processed frozen dessert manufactured or processed
20 and distributed in this state by that manufacturer;

21 (2) a fee for a frozen dessert manufacturer not
22 located in this state in an [~~the~~] amount [~~of one cent~~] per 100
23 pounds of frozen desserts manufactured or processed by the
24 manufacturer in another state and imported for sale in this state;
25 and

26 (3) a fee for the actual cost of analyzing samples of
27 frozen desserts for a frozen dessert manufacturer not located in

1 this state.

2 (c) The executive commissioner [board] shall adopt rules to
3 collect fees imposed under this section monthly[, quarterly,
4 semiannually, or annually] based on amounts due by the frozen
5 dessert manufacturer.

6 SECTION 3.1153. Section 440.014, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 440.014. RECORDKEEPING [RECORD KEEPING]. The
9 executive commissioner [board] shall adopt rules establishing
10 minimum standards for recordkeeping [record keeping] by persons
11 required to pay fees under this chapter and the records shall be
12 made available to the department on request.

13 SECTION 3.1154. Section 440.017, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 440.017. REFUSAL TO GRANT LICENSE; SUSPENSION OR
16 REVOCATION OF LICENSE. In accordance with rules adopted under
17 Section 440.006, the department [commissioner] may refuse an
18 application for a license under this chapter or may suspend or
19 revoke a license issued under this chapter.

20 SECTION 3.1155. Section 440.031(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) Under rules adopted by the executive commissioner
23 [board], the department's authorized representatives have free
24 access at all reasonable hours to any establishment for the
25 manufacture of a frozen dessert, imitation frozen dessert, product
26 sold in semblance of a frozen dessert, or a mix for one of those
27 products or to any vehicle being used to transport in commerce a

1 frozen dessert, imitation frozen dessert, product sold in semblance
2 of a frozen dessert, or a mix for one of those products for the
3 purpose of:

4 (1) inspecting the establishment or vehicle to
5 determine compliance with the standards or related requirements
6 prescribed [by the board] under this chapter; or

7 (2) securing samples of frozen desserts, imitation
8 frozen desserts, products sold in semblance of frozen desserts, or
9 a mix for one of those products for the purpose of making or causing
10 to be made an examination of the samples to determine compliance
11 with the standards or related requirements prescribed [by the
12 board] under this chapter.

13 SECTION 3.1156. Section 440.032(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) A person commits an offense if the person knowingly or
16 intentionally violates Section 440.011 or a rule adopted [by the
17 board] under this chapter.

18 SECTION 3.1157. Section 441.003, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 441.003. RULES. The executive commissioner
21 [department] may adopt rules that are necessary to implement this
22 chapter that promote the public health and safety. The rules may
23 include rules relating to certificate suspension, revocation, or
24 other disciplinary action and relating to certificate renewal.

25 SECTION 3.1158. Subtitle B, Title 6, Health and Safety
26 Code, is amended to conform to Chapter 461, Health and Safety Code,
27 as it existed on August 31, 2009, and to Section 1.19(a)(3), Chapter

1 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session,
2 2003, by adding Chapter 461A to read as follows:

3 CHAPTER 461A. DEPARTMENT OF STATE HEALTH SERVICES: CHEMICAL
4 DEPENDENCY SERVICES AND RELATED PROGRAMS

5 SUBCHAPTER A. GENERAL PROVISIONS

6 Sec. 461A.001. POLICY. Chemical dependency is a
7 preventable and treatable illness and public health problem
8 affecting the general welfare and the economy of this state. The
9 legislature recognizes the need for proper and sufficient
10 facilities, programs, and procedures for prevention, intervention,
11 treatment, and rehabilitation. It is the policy of this state that
12 a person with a chemical dependency shall be offered a continuum of
13 services that will enable the person to lead a normal life as a
14 productive member of society.

15 Sec. 461A.002. DEFINITIONS. In this chapter:

16 (1) "Chemical dependency" means:

17 (A) abuse of alcohol or a controlled substance;

18 (B) psychological or physical dependence on
19 alcohol or a controlled substance; or

20 (C) addiction to alcohol or a controlled
21 substance.

22 (2) "Commission" means the Health and Human Services
23 Commission.

24 (3) "Commissioner" means the commissioner of state
25 health services.

26 (4) "Controlled substance" means a:

27 (A) toxic inhalant; or

1 (B) substance designated as a controlled
2 substance by Chapter 481.

3 (5) "Department" means the Department of State Health
4 Services.

5 (6) "Executive commissioner" means the executive
6 commissioner of the Health and Human Services Commission.

7 (7) "Intervention" means the interruption of the onset
8 or progression of chemical dependency in the early stages.

9 (8) "Prevention" means the reduction of a person's
10 risk of abusing alcohol or a controlled substance or becoming
11 chemically dependent.

12 (9) "Rehabilitation" means the reestablishment of the
13 social and vocational life of a person after treatment.

14 (10) "Toxic inhalant" means a gaseous substance that
15 is inhaled by a person to produce a desired physical or
16 psychological effect and that may cause personal injury or illness
17 to the person.

18 (11) "Treatment" means the initiation and promotion,
19 in a planned, structured, and organized manner, of a person's
20 chemical-free status or the maintenance of a person free of illegal
21 drugs.

22 (12) "Treatment facility" means a public or private
23 hospital, a detoxification facility, a primary care facility, an
24 intensive care facility, a long-term care facility, an outpatient
25 care facility, a community mental health center, a health
26 maintenance organization, a recovery center, a halfway house, an
27 ambulatory care facility, another facility that is required to be

1 licensed and approved by the department under Chapter 464, or a
2 facility licensed or operated under Title 7 that provides treatment
3 services. The term does not include an educational program for
4 intoxicated drivers or the individual office of a private, licensed
5 health care practitioner who personally renders private individual
6 or group services within the scope of the practitioner's license
7 and in the practitioner's office.

8 Sec. 461A.003. IMPLEMENTATION BY DEPARTMENT. The
9 department shall implement this chapter for the purpose of
10 preventing broken homes and the loss of lives.

11 Sec. 461A.004. COOPERATION WITH DEPARTMENT. (a) Each
12 department, agency, officer, and employee of the state, when
13 requested by the department, shall cooperate with the department in
14 appropriate activities to implement this chapter.

15 (b) This section does not give the department control over
16 existing facilities, institutions, or agencies or require the
17 facilities, institutions, or agencies to serve the department in a
18 manner that is inconsistent with the functions, the authority, or
19 the laws and rules governing the activities of the facilities,
20 institutions, or agencies.

21 (c) This section does not authorize the department to use a
22 private institution or agency without its consent or to pay a
23 private institution or agency for services that a public
24 institution or agency is willing and able to provide.

25 Sec. 461A.005. CONFLICT WITH OTHER LAW. To the extent a
26 power or duty given to the department or commissioner by this
27 chapter conflicts with Section 531.0055, Government Code, Section

1 531.0055 controls.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT, COMMISSIONER, AND
EXECUTIVE COMMISSIONER

Sec. 461A.051. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER.

5 The executive commissioner shall:

17 Sec. 461A.052. POWERS AND DUTIES OF DEPARTMENT. (a) The
18 department shall:

19 (1) provide for research and study of the problems of
20 chemical dependency in this state and seek to focus public
21 attention on those problems through public information and
22 education programs;

1 funds, and consultation services for statewide and community-based
2 services;

3 (3) cooperate with and enlist the assistance of:

4 (A) other state, federal, and local agencies;

5 (B) hospitals and clinics;

6 (C) public health, welfare, and criminal justice

7 system authorities;

8 (D) educational and medical agencies and
9 organizations; and

10 (E) other related public and private groups and
11 persons;

12 (4) expand chemical dependency services for children
13 when funds are available because of the long-term benefits of those
14 services to this state and its citizens;

15 (5) sponsor, promote, and conduct educational
16 programs on the prevention and treatment of chemical dependency,
17 and maintain a public information clearinghouse to purchase and
18 provide books, literature, audiovisuals, and other educational
19 material for the programs;

20 (6) sponsor, promote, and conduct training programs
21 for persons delivering prevention, intervention, treatment, and
22 rehabilitation services and for persons in the criminal justice
23 system or otherwise in a position to identify the service needs of
24 persons with a chemical dependency and their families;

25 (7) require programs rendering services to persons
26 with a chemical dependency to safeguard those persons' legal rights
27 of citizenship and maintain the confidentiality of client records

1 as required by state and federal law;

2 (8) maximize the use of available funds for direct

3 services rather than administrative services;

4 (9) consistently monitor the expenditure of funds and

5 the provision of services by all grant and contract recipients to

6 assure that the services are effective and properly staffed and

7 meet the standards adopted under this chapter;

8 (10) make the monitoring reports prepared under

9 Subdivision (9) a matter of public record;

10 (11) license treatment facilities under Chapter 464;

11 (12) use funds appropriated to the department for

12 purposes of providing chemical dependency services and related

13 programs to carry out those purposes and maximize the overall state

14 allotment of federal funds;

15 (13) plan, develop, coordinate, evaluate, and

16 implement constructive methods and programs to provide healthy

17 alternatives for youth at risk of selling controlled substances;

18 (14) submit to the federal government reports and

19 strategies necessary to comply with Section 1926 of the federal

20 Alcohol, Drug Abuse, and Mental Health Administration

21 Reorganization Act, Pub. L. No. 102-321 (42 U.S.C. Section

22 300x-26), and coordinate the reports and strategies with

23 appropriate state governmental entities; and

24 (15) regulate, coordinate, and provide training for

25 alcohol awareness courses required under Section 106.115,

26 Alcoholic Beverage Code, and may charge a fee for an activity

27 performed by the department under this subdivision.

1 (b) The department may establish regional alcohol advisory
2 committees consistent with the regions established under Section
3 531.024, Government Code.

4 (c) The department may appoint advisory committees to
5 assist the department in performing its duties under this chapter.
6 A member of an advisory committee appointed under this subsection
7 may receive reimbursement for travel expenses as provided by
8 Section 2110.004, Government Code.

9 (d) The department shall comply with federal and state laws
10 related to program and facility accessibility.

11 (e) The commissioner shall prepare and maintain a written
12 plan that describes how a person who does not speak English can be
13 provided reasonable access to the department's programs and
14 services under this chapter.

15 (f) Subsection (a)(15) does not apply to a 12-step or
16 similar self-help alcohol dependency recovery program:

17 (1) that does not offer or purport to offer an alcohol
18 dependency treatment program;

19 (2) that does not charge program participants; and

20 (3) in which program participants may maintain
21 anonymity.

22 Sec. 461A.053. EMERGENCY TREATMENT RESOURCES. The
23 commissioner may develop emergency treatment resources for persons
24 who appear to be:

25 (1) chemically dependent;

26 (2) under the influence of alcohol or a controlled
27 substance and in need of medical attention; or

1 (3) undergoing withdrawal or experiencing medical
2 complications related to a chemical dependency.

3 Sec. 461A.054. REFERRAL SERVICES FOR PERSONS FROM CRIMINAL
4 JUSTICE SYSTEM. (a) The commissioner may establish programs for
5 the referral, treatment, or rehabilitation of persons from the
6 criminal justice system within the terms of bail, probation,
7 conditional discharge, parole, or other conditional release.

8 (b) A referral may not be inconsistent with medical or
9 clinical judgment or conflict with this chapter or Chapter 462 or
10 applicable federal regulations.

11 Sec. 461A.055. REPORTING OF CHILDREN INVOLVED IN SUBSTANCE
12 ABUSE OR FROM FAMILY INVOLVED IN SUBSTANCE ABUSE. (a) The
13 department in the context of mental health services, the
14 commission, the Department of Aging and Disability Services, and
15 the Texas Juvenile Justice Department shall:

16 (1) attempt to determine whether a child under the
17 agency's jurisdiction is involved in substance abuse or is from a
18 substance-abusing family;

19 (2) record its determination in the case record of the
20 child; and

21 (3) record the information for statistical reporting
22 purposes.

23 (b) The agencies shall revise their assessment forms, as
24 needed, to include a determination under this section.

25 (c) The department shall coordinate the efforts of the
26 agencies described by Subsection (a) in complying with this
27 section.

1 Sec. 461A.056. STATEWIDE SERVICE DELIVERY PLAN. (a) The
2 department shall develop and adopt a statewide service delivery
3 plan. The department shall update the plan not later than February
4 1 of each even-numbered year. The plan must include:

5 (1) a statement of the department's mission, goals,
6 and objectives regarding chemical dependency prevention,
7 intervention, and treatment;

8 (2) a statement of how chemical dependency services
9 and chemical dependency case management services should be
10 organized, managed, and delivered;

11 (3) a comprehensive assessment of:

12 (A) chemical dependency services available in
13 this state at the time the plan is prepared; and

14 (B) future chemical dependency services needs;

15 (4) a service funding process that ensures equity in
16 the availability of chemical dependency services across this state
17 and within each service region established under Section 531.024,
18 Government Code;

19 (5) a provider selection and monitoring process that
20 emphasizes quality in the provision of services;

21 (6) a description of minimum service levels for each
22 region;

23 (7) a mechanism for the department to obtain and
24 consider local public participation in identifying and assessing
25 regional needs for chemical dependency services;

26 (8) a process for coordinating and assisting
27 administration and delivery of services among federal, state, and

1 local public and private chemical dependency programs that provide
2 similar services; and

3 (9) a process for coordinating the department's
4 activities with those of other state health and human services
5 agencies and criminal justice agencies to avoid duplications and
6 inconsistencies in the efforts of the agencies in chemical
7 dependency prevention, intervention, treatment, rehabilitation,
8 research, education, and training.

9 (b) The department shall gather information needed for the
10 development of the plan through systematic methods designed to
11 include local, regional, and statewide perspectives.

12 (c) In developing the plan, the department shall analyze the
13 costs of implementation of proposed features of the plan by both the
14 department and service providers. The department shall use the
15 analysis to maximize the efficiency of service delivery under the
16 final plan.

17 (d) The plan must provide a priority for obtaining treatment
18 services for individuals in need of treatment who are parents of a
19 child in foster care.

20 Sec. 461A.057. STATE AGENCY SERVICES STANDARDS. (a) The
21 executive commissioner by rule shall develop model program
22 standards for substance abuse services for use by each state agency
23 that provides or pays for substance abuse services. The department
24 shall provide the model standards to each agency that provides
25 substance abuse services as identified by the commission.

26 (b) Model standards developed under Subsection (a) must be
27 designed to improve the consistency of substance abuse services

1 provided by or through a state agency.

2 (c) Biennially the department shall review the model
3 standards developed under Subsection (a) and determine whether each
4 standard contributes effectively to the consistency of service
5 delivery by state agencies.

6 SUBCHAPTER C. SERVICES AND PROGRAMS

7 Sec. 461A.101. LOCAL BEHAVIORAL HEALTH AUTHORITIES. The
8 department may designate and provide services through local
9 behavioral health authorities as provided by Section 533.0356 and
10 rules adopted by the executive commissioner.

11 Sec. 461A.102. EDUCATION AND RESEARCH PROGRAMS CONCERNING
12 CONTROLLED SUBSTANCES. (a) In this section, "controlled

13 substances" means those substances designated as controlled

14 substances by Chapter 481.

15 (b) The department, in cooperation with other appropriate
16 state agencies, shall carry out educational programs designed to
17 prevent or deter misuse and abuse of controlled substances. In
18 connection with those programs the department may:

19 (1) promote better recognition of the problems of
20 misuse and abuse of controlled substances within the regulated
21 industry and among interested groups and organizations;

22 (2) assist the regulated industry and interested
23 groups and organizations in contributing to the reduction of misuse
24 and abuse of controlled substances;

25 (3) consult with interested groups and organizations
26 to aid those groups in solving administrative and organizational
27 problems;

1 (4) evaluate procedures, projects, techniques, and
2 controls conducted or proposed as part of educational programs on
3 misuse and abuse of controlled substances;

4 (5) disseminate the results of research on misuse and
5 abuse of controlled substances to promote a better public
6 understanding of problems that exist and ways to combat those
7 problems; and

8 (6) assist in educating and training state and local
9 law enforcement officials in their efforts to control misuse and
10 abuse of controlled substances.

11 (c) The department shall encourage research on misuse and
12 abuse of controlled substances. In connection with research, and
13 in furtherance of the enforcement of Chapter 481, the commissioner
14 may:

15 (1) establish methods to assess accurately the effects
16 of controlled substances and identify and characterize those with
17 potential for abuse;

18 (2) make studies and undertake programs of research
19 to:

20 (A) develop new or improved approaches,
21 techniques, systems, equipment, and devices to strengthen the
22 enforcement of Chapter 481;

23 (B) determine patterns and social effects of
24 misuse and abuse of controlled substances; and

25 (C) improve methods for preventing, predicting,
26 understanding, and dealing with the misuse and abuse of controlled
27 substances; and

1 (3) contract with public agencies, institutions of
2 higher education, and private organizations or individuals to
3 conduct research, demonstrations, or special projects that
4 directly pertain to the misuse and abuse of controlled substances.

5 Sec. 461A.103. OUTREACH PROGRAMS FOR INTRAVENOUS DRUG
6 USERS. (a) In this section, "HIV" means human immunodeficiency
7 virus.

8 (b) The department may fund community outreach programs
9 that have direct contact with intravenous drug users.

10 (c) An outreach program funded by the department must:

11 (1) provide education on HIV infection based on the
12 model education program developed by the department;

13 (2) encourage behavior changes to reduce the
14 possibility of HIV transmission;

15 (3) promote other HIV risk reduction activities; and

16 (4) encourage behavior consistent with state criminal
17 laws.

18 Sec. 461A.104. MINIMUM PROGRAM REQUIREMENTS. (a) In this
19 section, "coping skills training" means instruction in the elements
20 and practice of and reasons for the skills of communication, stress
21 management, problem solving, daily living, and decision making.

22 (b) A chemical dependency intensive intervention,
23 outpatient, residential treatment, or rehabilitation program that
24 is provided by the department or that is funded wholly or partly by
25 funds allocated through the department must include:

26 (1) coping skills training;

27 (2) education regarding the manifestations and

1 dynamics of dysfunctional relationships within the family; and
2 (3) support group opportunities for children and
3 adults.

4 (c) This section does not apply to:
5 (1) a detoxification program or that part of a program
6 that provides detoxification; or
7 (2) a program provided by the Texas Juvenile Justice
8 Department.

9 Sec. 461A.105. RELAPSE RATE REPORTING. (a) A treatment
10 program provided or funded by the department shall report to the
11 department on the effectiveness of the chemical dependency
12 treatment program.

13 (b) The report must show to the extent possible, without
14 violating the confidentiality of information received by the
15 program, the rate of relapse of persons who have received treatment
16 services.

17 (c) The executive commissioner by rule may provide for the
18 content of a report and the procedure for reporting under this
19 section. Reports must be uniform in classifications of persons
20 receiving treatment according to the severity of addiction,
21 substance abused, age of person treated, and modality of treatment.
22 A report may not reveal the name of an individual subject to
23 treatment or of a family member or acquaintance of an individual
24 treated and may not describe circumstances from which any of those
25 individuals may be identified.

26 Sec. 461A.106. COMPULSIVE GAMBLING PROGRAM. (a) The
27 department shall establish a program for:

1 (1) public education, research, and training
2 regarding problem or compulsive gambling; and
3 (2) the treatment and prevention of problem or
4 compulsive gambling.

5 (b) The department's program under Subsection (a) must
6 include:

7 (1) establishing and maintaining a list of Internet
8 sites and toll-free "800" telephone numbers of nonprofit entities
9 that provide crisis counseling and referral services to families
10 experiencing difficulty as a result of problem or compulsive
11 gambling;

12 (2) promoting public awareness regarding the
13 recognition and prevention of problem or compulsive gambling;

14 (3) facilitating, through in-service training and
15 other means, the availability of effective assistance programs for
16 problem or compulsive gamblers; and

17 (4) conducting studies to identify adults and
18 juveniles in this state who are, or who are at risk of becoming,
19 problem or compulsive gamblers.

20 SUBCHAPTER D. SERVICE CONTRACTS

21 Sec. 461A.151. CLIENT SERVICE CONTRACT STANDARDS. (a) In
22 each contract for the purchase of chemical dependency
23 program-related client services, the department shall include:

24 (1) clearly defined contract goals, outputs, and
25 measurable outcomes that relate directly to program objectives;

26 (2) clearly defined sanctions or penalties for failure
27 to comply with or perform contract terms or conditions; and

1 (3) clearly specified accounting, reporting, and
2 auditing requirements applicable to money received under the
3 contract.

4 (b) Contract goals must include a standard developed by the
5 department that is based on a percentage of program clients who
6 Maintain long-term recovery for an extended period as defined by
7 the department.

8 Sec. 461A.152. CONTRACT MONITORING. The department shall
9 establish a formal program to monitor program-related client
10 services contracts made by the department. The department must:

11 (1) monitor compliance with financial and performance
12 requirements using a risk assessment methodology; and

13 (2) obtain and evaluate program cost information to
14 ensure that each cost, including an administrative cost, is
15 reasonable and necessary to achieve program objectives.

16 Sec. 461A.153. TECHNICAL ASSISTANCE PROGRAM. The
17 department shall adopt technical assistance policies and
18 procedures for a technical assistance program that:

19 (1) is clearly separate from the department's contract
20 monitoring activities;

21 (2) has a single office for technical assistance
22 requests; and

23 (3) includes explicit response time frames.

24 SUBCHAPTER E. FUNDING

25 Sec. 461A.201. FINANCES. (a) The department may accept
26 gifts and grants for the purposes of providing chemical dependency
27 services and related programs.

1 (b) The department is the state agency that receives and
2 administers federal funds for alcohol and drug abuse, including
3 applying for, administering, and disbursing funds under the federal
4 Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C.
5 Section 1101 et seq.). The executive commissioner prescribes all
6 necessary department policies relating to alcohol and drug abuse.

7 (c) An organization or other entity is not eligible for a
8 grant of state funds from the department under this chapter unless
9 the organization or entity provides matching funds in either cash
10 or in-kind contributions equal to at least five percent of the total
11 grant of state funds from the department. The department may waive
12 that requirement if the department determines that the requirement
13 may jeopardize the provision of needed services.

14 (d) In allocating grant funds, the department shall
15 consider the state facility hospitalization rate of substance
16 abusers who are from the service area of the entity requesting the
17 grant. An organization or other entity is not eligible for a grant
18 of state funds for a treatment or rehabilitation program unless the
19 program will, at a minimum, reduce state facility hospitalization
20 of substance abusers by a percentage established by the department.

21 (e) As a condition to receiving contract or grant funds
22 under this chapter, a public or private organization or entity must
23 provide to the department information relating to:

24 (1) the number of persons with a chemical dependency
25 the organization or entity served, if any, during the preceding
26 year, the municipalities and counties of residence of those
27 persons, and the number of persons served from each municipality

1 and county; and

2 (2) the number of persons with a chemical dependency
3 the organization or entity expects to serve during the term of the
4 requested grant or contract, the expected municipalities and
5 counties of residence for those persons, and the expected number of
6 persons served from each municipality and county.

7 Sec. 461A.202. SERVICES FUNDING. (a) The executive
8 commissioner by rule shall adopt a system of funding the provision
9 of chemical dependency services that includes competitive and
10 noncompetitive procedures to:

11 (1) maximize the range of treatment services available
12 in each service region;

13 (2) provide reasonable access in each region to
14 available services; and

15 (3) include local public participation in making
16 regional funding decisions and formal funding recommendations.

17 (b) The system must require that the department award each
18 proposed chemical dependency services contract to the applicant
19 that the department determines has made the bid that provides the
20 best value.

21 (c) In determining the best value bid for a contract under
22 this section, the department shall consider:

23 (1) the quality of the proposed service;

24 (2) cost;

25 (3) the applicant's ability to:

26 (A) perform the contract;

27 (B) provide the required services; and

1 (C) provide continuity of service;

2 (4) whether the applicant can perform the contract or

3 provide the services within the period required, without delay or

4 interference;

5 (5) the applicant's history of:

6 (A) contract performance; and

7 (B) compliance with the laws relating to the

8 applicant's business operations and the affected services;

9 (6) whether the applicant's financial resources are

10 sufficient to perform the contract and to provide the services;

11 (7) whether necessary or desirable support and

12 ancillary services are available to the applicant;

13 (8) the degree of community support for the applicant;

14 (9) the quality of the facilities and equipment

15 available to or proposed by the applicant;

16 (10) the ability of the applicant to meet all

17 applicable written department policies, principles, and rules;

18 (11) state investment in the applicant; and

19 (12) other factors the department determines

20 relevant.

21 (d) Rules adopted under this section must set out the

22 department's provider selection processes, including:

23 (1) service purchase methods;

24 (2) eligibility criteria;

25 (3) provider selection criteria; and

26 (4) selection determination procedures.

27 Sec. 461A.203. FUNDING POLICY MANUAL. (a) The department

1 shall publish a funding policy manual that explains:
2 (1) the department's funding priorities and provider
3 selection criteria; and
4 (2) the methods the department used to develop funding
5 policies.

6 (b) The department shall update the manual annually.

7 Sec. 461A.204. UNIT RATE REIMBURSEMENT. (a) In this
8 section, "unit rate reimbursement" means reimbursement for a
9 service paid at a specified rate for a unit of the service provided
10 to a client multiplied by the number of units provided.

11 (b) The department shall study the procurement of and
12 payment for chemical dependency treatment services on a unit rate
13 reimbursement basis.

14 (c) If the department determines, after consideration of
15 the study, that procurement of and payment for chemical dependency
16 treatment services on a unit rate reimbursement basis in
17 appropriate areas of the state would result in obtaining the
18 highest quality treatment services at the best price and the lowest
19 administrative cost to the department, the department shall adopt a
20 unit rate reimbursement system for those services. The system
21 must:

22 (1) include competitive procurement;
23 (2) monitor provider performance;
24 (3) monitor the reasonableness of provider costs and
25 expenditures;
26 (4) verify provider costs before and after a contract
27 term to ensure rates are set appropriately;

1 (5) ensure accountability of providers; and

2 (6) contain costs.

3 (d) The department may procure and pay for chemical
4 dependency prevention and intervention services under a unit rate
5 reimbursement system when the department determines it is
6 appropriate.

7 SUBCHAPTER F. ADVISORY COMMITTEE ON REDUCING DRUG DEMAND

8 Sec. 461A.251. ADVISORY COMMITTEE. (a) The Drug Demand
9 Reduction Advisory Committee is composed of the following members:

10 (1) five representatives of the public from different
11 geographic regions of the state who have knowledge and expertise in
12 issues relating to reducing drug demand and who are appointed by the
13 commissioner; and

14 (2) one representative of each of the following
15 agencies or offices who is appointed by the commissioner, executive
16 commissioner, or executive director of the agency or office and who
17 is directly involved in the agency's or office's policies,
18 programs, or funding activities relating to reducing drug demand:

19 (A) the department;

20 (B) the commission;

21 (C) the criminal justice division of the
22 governor's office;

23 (D) the Department of Family and Protective
24 Services;

25 (E) the Department of Public Safety of the State
26 of Texas;

27 (F) the Texas Alcoholic Beverage Commission;

1 (G) the Texas Correctional Office on Offenders
2 with Medical or Mental Impairments;
3 (H) the Texas Department of Criminal Justice;
4 (I) the Department of Aging and Disability
5 Services;
6 (J) the Texas Education Agency;
7 (K) the Texas Juvenile Justice Department;
8 (L) the Department of Assistive and
9 Rehabilitative Services;
10 (M) the Texas Workforce Commission;
11 (N) the Texas Department of Motor Vehicles;
12 (O) the comptroller of public accounts; and
13 (P) the adjutant general's department.

14 (b) The representative of the department shall serve as the
15 presiding officer of the Drug Demand Reduction Advisory Committee.
16 The department may provide administrative support to the committee.

17 Sec. 461A.252. MEETINGS. The Drug Demand Reduction
18 Advisory Committee shall meet at least once in each quarter of each
19 calendar year on dates determined by the committee.

20 Sec. 461A.253. DUTIES OF ADVISORY COMMITTEE. (a) The Drug
21 Demand Reduction Advisory Committee shall serve as a single source
22 of information for the governor, the legislature, and the public
23 about issues relating to reducing drug demand, including available
24 prevention programs and services.

25 (b) The Drug Demand Reduction Advisory Committee shall
26 develop a statewide strategy to reduce drug demand. The strategy
27 must:

1 (1) incorporate multidisciplinary approaches using
2 current empirical research;

3 (2) include performance-based measurement and
4 accountability standards, short-term objectives, and 10-year
5 targets for reducing drug demand;

6 (3) coordinate, to the extent possible, the efforts of
7 private sector entities and local, state, and federal agencies,
8 including the Office of National Drug Control Policy and the United
9 States Drug Enforcement Administration, to reduce drug demand; and

10 (4) provide opportunities for representatives from
11 the public and private sectors to comment on the committee's
12 activities and make recommendations related to the strategy.

13 (c) The Drug Demand Reduction Advisory Committee shall
14 identify lead or contributing agencies or offices that shall
15 implement the strategy described in Subsection (b). The committee
16 shall coordinate the implementation of the strategy by those
17 agencies or offices.

18 Sec. 461A.254. ADDITIONAL ADVISORY COMMITTEES. The Drug
19 Demand Reduction Advisory Committee may establish additional
20 advisory committees composed of representatives from governmental
21 entities and the private sector to assist the committee in carrying
22 out its duties.

23 Sec. 461A.255. REPORT. Not later than January 15 of each
24 odd-numbered year, the Drug Demand Reduction Advisory Committee
25 shall present to the governor, the lieutenant governor, and the
26 speaker of the house of representatives a report that states:

27 (1) the committee's progress in developing and

1 coordinating the strategy described in Section 461A.253(b);
2 (2) the status and funding of state programs relating
3 to reducing drug demand; and
4 (3) recommendations for legislation to address issues
5 involved in reducing drug demand.

6 SECTION 3.1159. The heading to Chapter 462, Health and
7 Safety Code, is amended to read as follows:

8 CHAPTER 462. TREATMENT OF [CHEMICALLY DEPENDENT] PERSONS WITH
9 CHEMICAL DEPENDENCIES

10 SECTION 3.1160. Section 462.001, Health and Safety Code, is
11 amended by amending Subdivisions (1) and (10) and adding
12 Subdivisions (5-a) and (5-b) to read as follows:

1 [commission], a facility licensed by the department under Title 7
2 [~~Texas Department of Mental Health and Mental Retardation~~], or a
3 facility operated by the department under Title 7 that [~~Texas~~
4 ~~Department of Mental Health and Mental Retardation which~~] has been
5 designated by the department [commission] to provide chemical
6 dependency treatment. The term does not include an educational
7 program for intoxicated drivers or the individual office of a
8 private, licensed health care practitioner who personally renders
9 private individual or group services within the scope of the
10 practitioner's license and in the practitioner's office.

11 SECTION 3.1161. Section 462.005(f), Health and Safety Code,
12 is amended to read as follows:

13 (f) The state or the county may not pay any costs for a
14 patient committed to a private hospital unless no public facilities
15 are available and unless authorized by the department [commission]
16 or the commissioners court of the county, as appropriate.

17 SECTION 3.1162. Section 462.009(e), Health and Safety Code,
18 is amended to read as follows:

19 (e) Consent given by a patient or by a person authorized by
20 law to consent to treatment on the patient's behalf for the
21 administration of a medication, therapy, or treatment is valid only
22 if:

23 (1) for consent to therapy or treatment:

24 (A) the consent is given voluntarily and without
25 coercive or undue influence; and

26 (B) before administration of the therapy or
27 treatment, the treating physician or the psychologist, social

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1 worker, professional counselor, or chemical dependency counselor
2 explains to the patient and to the person giving consent, in simple,
3 nontechnical language:

4 (i) the specific condition to be treated;

5 (ii) the beneficial effects on that
6 condition expected from the therapy or treatment;

9 (iv) the side effects and risks associated
10 with the therapy or treatment;

11 (v) the generally accepted alternatives to
12 the therapy or treatment, if any, and whether an alternative might
13 be appropriate for the patient; and

14 (vi) the proposed course of the therapy or
15 treatment;

16 (2) for consent to the administration of medication:

17 (A) the consent is given voluntarily and without
18 coercive or undue influence; and

19 (B) the treating physician provides each
20 explanation required by Subdivision (1)(B) to the patient and to
21 the person giving consent in simple, nontechnical language; and

24 by a signed form prescribed by the department [commission] for this
25 purpose or by a statement of the treating physician or the
26 psychologist, social worker, professional counselor, or chemical
27 dependency counselor who obtained the consent that documents that

1 consent was given by the appropriate person and the circumstances
2 under which the consent was obtained.

3 SECTION 3.1163. Section 462.021, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 462.021. VOLUNTARY ADMISSION OF ADULT. A facility may
6 admit an adult who requests admission for emergency or nonemergency
7 treatment or rehabilitation if:

8 (1) the facility is:

9 (A) a treatment facility licensed by the
10 department [~~commission~~] to provide the necessary services;
11 (B) a facility licensed by the department under
12 Title 7 [~~Texas Department of Mental Health and Mental Retardation~~];
13 or

14 (C) a facility operated by the department under
15 Title 7 that [~~Texas Department of Mental Health and Mental~~
16 ~~Retardation which~~] has been designated by the department
17 [~~commission~~] to provide chemical dependency treatment; and

18 (2) the admission is appropriate under the facility's
19 admission policies.

20 SECTION 3.1164. Section 462.022(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) A facility may admit a minor for treatment and
23 rehabilitation if:

24 (1) the facility is:

25 (A) a treatment facility licensed by the
26 department [~~commission~~] to provide the necessary services to
27 minors;

1 (B) a facility licensed by the department under
2 Title 7 [Texas Department of Mental Health and Mental Retardation]; or

4 (C) a facility operated by the department under
5 Title 7 that [Texas Department of Mental Health and Mental
6 Retardation which] has been designated by the department
7 [commission] to provide chemical dependency treatment;

8 (2) the admission is appropriate under the facility's
9 admission policies; and

10 (3) the admission is requested by:

11 (A) a parent, managing conservator, or guardian
12 of the minor; or

13 (B) the minor, without parental consent, if the
14 minor is 16 years of age or older.

15 SECTION 3.1165. Section 462.0235(c), Health and Safety
16 Code, is amended to read as follows:

17 (c) The certificate of medical examination placed in a
18 minor's medical record under Subsection (b)(2)(B) must include:

19 (1) the name and address of the examining physician;
20 (2) the name and address of the examined minor;
21 (3) the date and place of the examination;
22 (4) a brief diagnosis of the examined minor's physical
23 and mental condition;

24 (5) the period, if any, during which the examined
25 minor has been under the care of the examining physician;

26 (6) an accurate description of the chemical dependency
27 treatment, if any, administered to the examined minor by or under

1 the direction of the examining physician; and

2 (7) the examining physician's opinion that:

3 (A) the examined minor is a person with a
4 chemical dependency [chemically dependent];

5 (B) there is no reasonable alternative to the
6 treatment the physician recommends for the examined minor; and

7 (C) as a result of the examined minor's chemical
8 dependency, the minor, if released, is likely to cause serious harm
9 to the minor or others or:

10 (i) would suffer severe and abnormal
11 mental, emotional, or physical distress;

12 (ii) would experience a substantial mental
13 or physical deterioration of the minor's ability to function
14 independently that would be manifested by the minor's inability,
15 for reasons other than indigence, to provide for the minor's basic
16 needs, including food, clothing, health, and safety; and

17 (iii) would not be able to make a rational
18 and informed decision as to whether to submit to treatment.

19 SECTION 3.1166. Sections 462.025(a), (c), and (e), Health
20 and Safety Code, are amended to read as follows:

21 (a) The executive commissioner [~~commission~~] shall adopt
22 rules governing the voluntary admission of a patient to a treatment
23 facility, including rules governing the intake, screening, and
24 assessment procedures of the admission process.

25 (c) The assessment provided for by the rules may be
26 conducted only by a professional who meets the qualifications
27 prescribed by department [~~commission~~] rules.

1 (e) In accordance with department [~~commission~~] rule, a
2 treatment facility shall provide annually a minimum of two hours of
3 inservice training regarding intake and screening for persons who
4 will be conducting an intake or screening for the facility. A
5 person may not conduct intake or screenings without having
6 completed the initial and applicable annual inservice training.

7 SECTION 3.1167. Section 462.042(b), Health and Safety Code,
8 is amended to read as follows:

9 (b) The application must state:

10 (1) that the applicant has reason to believe and does
11 believe that the person who is the subject of the application is a
12 [~~chemically dependent~~] person with a chemical dependency;

13 (2) that the applicant has reason to believe and does
14 believe that the person evidences a substantial risk of serious
15 harm to the person [~~himself~~] or others;

16 (3) a specific description of the risk of harm;

17 (4) that the applicant has reason to believe and does
18 believe that the risk of harm is imminent unless the person is
19 immediately restrained;

20 (5) that the applicant's beliefs are derived from
21 specific recent behavior, overt acts, attempts, or threats;

22 (6) a detailed description of the specific behavior,
23 acts, attempts, or threats; and

24 (7) the relationship, if any, of the applicant to the
25 person.

26 SECTION 3.1168. Section 462.043(b), Health and Safety Code,
27 is amended to read as follows:

1 (b) The judge or magistrate shall deny the application
2 unless the judge or magistrate finds that there is reasonable cause
3 to believe that:

4 (1) the person who is the subject of the application is
5 a [chemically dependent] person with a chemical dependency;

6 (2) the person evidences a substantial risk of serious
7 harm to the person [himself] or others;

8 (3) the risk of harm is imminent unless the person is
9 immediately restrained; and

10 (4) the necessary restraint cannot be accomplished
11 without emergency detention.

12 SECTION 3.1169. Section 462.062(e), Health and Safety Code,
13 is amended to read as follows:

14 (e) The application must contain the following information
15 according to the applicant's information and belief:

16 (1) the proposed patient's name and address, including
17 the county in which the proposed patient resides, if known;

18 (2) a statement that the proposed patient is a
19 [chemically dependent] person with a chemical dependency who:

20 (A) is likely to cause serious harm to the person
21 [himself] or others; or

22 (B) will continue to suffer abnormal mental,
23 emotional, or physical distress, will continue to deteriorate in
24 ability to function independently if not treated, and is unable to
25 make a rational and informed choice as to whether to submit to
26 treatment; and

27 (3) a statement that the proposed patient is not

1 charged with a criminal offense that involves an act, attempt, or
2 threat of serious bodily injury to another person.

3 SECTION 3.1170. Section 462.064(c), Health and Safety Code,
4 is amended to read as follows:

5 (c) A certificate must be dated and signed by the examining
6 physician. The certificate must include:

7 (1) the name and address of the examining physician;

8 (2) the name and address of the proposed patient;

9 (3) the date and place of the examination;

10 (4) the period, if any, during which the proposed
11 patient has been under the care of the examining physician;

12 (5) an accurate description of the treatment, if any,
13 given by or administered under the direction of the examining
14 physician; and

15 (6) the examining physician's opinions whether the
16 proposed patient is a [chemically dependent] person with a chemical
17 dependency and:

18 (A) is likely to cause serious harm to the person
19 [~~himself~~];

20 (B) is likely to cause serious harm to others; or

21 (C) will continue to suffer abnormal mental,
22 emotional, or physical distress and to deteriorate in ability to
23 function independently if not treated and is unable to make a
24 rational and informed choice as to whether or not to submit to
25 treatment.

26 SECTION 3.1171. Section 462.065(e), Health and Safety Code,
27 is amended to read as follows:

1 (e) The judge or designated magistrate may issue a
2 protective custody order if the judge or magistrate determines
3 that:

4 (1) [that] a physician has stated the physician's
5 [his] opinion and the detailed basis for the physician's [his]
6 opinion that the proposed patient is a [~~chemically dependent~~]
7 person with a chemical dependency; and

11 SECTION 3.1172. Section 462.066(g), Health and Safety Code,
12 is amended to read as follows:

13 (g) The notification of probable cause hearing shall read as
14 follows:

15 (Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

17 On this the _____ day of _____, 20[19]____, the
18 undersigned hearing officer heard evidence concerning the need for
19 protective custody of _____ (hereinafter referred to as
20 proposed patient). The proposed patient was given the opportunity
21 to challenge the allegations that the proposed patient [-(s)he]
22 presents a substantial risk of serious harm to self or others.

23 The proposed patient and the proposed patient's attorney
24 _____ have been given written notice that the proposed
25 (attorney)

26 patient was placed under an order of protective custody and the
27 reasons for such order on .

1 (date of notice)

2 I have examined the certificate of medical examination for
3 chemical dependency and _____. Based on
4 (other evidence considered)

5 this evidence, I find that there is probable cause to believe that
6 the proposed patient presents a substantial risk of serious harm to
7 self (yes ____ or no ____) or others (yes ____ or no ____) such that the
8 proposed patient [~~(s)he~~] cannot be at liberty pending final hearing
9 because

11 (reasons for finding; type of risk found)

12 SECTION 3.1173. Section 462.068(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) The court shall enter an order denying an application
15 for court-ordered treatment if after a hearing the court or jury
16 fails to find, from clear and convincing evidence, that the
17 proposed patient is a [chemically dependent] person with a chemical
18 dependency and meets the criteria for court-ordered treatment.

19 SECTION 3.1174. Section 462.069(a), Health and Safety Code,
20 is amended to read as follows:

21 (a) The court shall commit the proposed patient to a
22 treatment facility approved by the department [commission] to
23 accept court commitments for not more than 90 days if:

24 (1) the proposed patient admits the allegations of the
25 application; or

26 (2) at the hearing on the merits, the court or jury
27 finds that the material allegations in the application have been

1 proved by clear and convincing evidence.

2 SECTION 3.1175. Section 462.0731(b), Health and Safety
3 Code, is amended to read as follows:

4 (b) The department [~~commission~~] shall arrange and furnish
5 alternative settings for outpatient care, treatment, and
6 supervision in the patient's county of residence. The services
7 must be provided as close as possible to the patient's residence.

8 SECTION 3.1176. Sections 462.075(e) and (f), Health and
9 Safety Code, are amended to read as follows:

10 (e) The court shall enter an order denying an application
11 for court-ordered treatment if the court or jury fails to find, from
12 clear and convincing evidence, that the proposed patient is a
13 [~~chemically dependent~~] person with a chemical dependency and meets
14 the criteria for court-ordered treatment. If the court denies the
15 application, the court shall order the discharge of a proposed
16 patient who is not at liberty.

17 (f) The court shall commit the proposed patient to a
18 treatment facility approved by the department [~~commission~~] to
19 accept commitments for not more than 90 days if:

20 (1) the proposed patient admits the allegations of the
21 application; or

22 (2) at the hearing on the merits, the court or jury
23 finds that the material allegations in the application have been
24 proved by clear and convincing evidence.

25 SECTION 3.1177. Section 462.079(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) A furlough may be revoked only after an administrative

1 hearing held in accordance with department [~~commission~~] rules. The
2 hearing must be held within 72 hours after the patient is returned
3 to the facility.

4 SECTION 3.1178. Sections [462.081\(a\), \(b\), and \(d\)](#), Health
5 and Safety Code, are amended to read as follows:

6 (a) The judge of a court with jurisdiction of misdemeanor
7 cases may remand the defendant to a treatment facility approved by
8 the department [~~commission~~] to accept court commitments for care
9 and treatment for not more than 90 days, instead of incarceration or
10 fine, if:

11 (1) the court or a jury has found the defendant guilty
12 of an offense classified as a Class A or B misdemeanor;

13 (2) the court finds that the offense resulted from or
14 was related to the defendant's chemical dependency;

15 (3) a treatment facility approved by the department
16 [~~commission~~] is available to treat the defendant; and

17 (4) the treatment facility agrees in writing to admit
18 the defendant under this section.

19 (b) A defendant who, in the opinion of the court, is a person
20 with mental illness [~~mentally ill~~] is not eligible for sentencing
21 under this section.

22 (d) A juvenile court may remand a child to a treatment
23 facility for care and treatment for not more than 90 days after the
24 date on which the child is remanded if:

25 (1) the court finds that the child has engaged in
26 delinquent conduct or conduct indicating a need for supervision and
27 that the conduct resulted from or was related to the child's

1 chemical dependency;

2 (2) a treatment facility approved by the department
3 [~~commission~~] to accept court commitments is available to treat the
4 child; and

5 (3) the facility agrees in writing to receive the
6 child under this section.

7 SECTION 3.1179. The heading to Chapter 464, Health and
8 Safety Code, is amended to read as follows:

9 CHAPTER 464. FACILITIES TREATING [~~ALCOHOLICS AND DRUG-DEPENDENT~~]

10 PERSONS WITH A CHEMICAL DEPENDENCY

11 SECTION 3.1180. Section 464.001, Health and Safety Code, is
12 amended by adding Subdivisions (3-a) and (3-b) to read as follows:

13 (3-a) "Department" means the Department of State
14 Health Services.

15 (3-b) "Executive commissioner" means the executive
16 commissioner of the Health and Human Services Commission.

17 SECTION 3.1181. Section 464.003, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 464.003. EXEMPTIONS. This subchapter does not apply
20 to:

21 (1) a facility maintained or operated by the federal
22 government;

23 (2) a facility directly operated by the state;

24 (3) a facility licensed by the department under
25 Chapter 241, 243, 248, 466, or 577 [Texas Department of Health];

26 (4) an educational program for intoxicated drivers;

27 (5) the individual office of a private, licensed

1 health care practitioner who personally renders private individual
2 or group services within the scope of the practitioner's license
3 and in the practitioner's office;

4 (6) an individual who personally provides counseling
5 or support services to a ~~chemically dependent~~ person with a
6 chemical dependency but does not offer or purport to offer a
7 chemical dependency treatment program; or

8 (7) a 12-step or similar self-help chemical dependency
9 recovery program:

10 (A) that does not offer or purport to offer a
11 chemical dependency treatment program;

12 (B) that does not charge program participants;
13 and

14 (C) in which program participants may maintain
15 anonymity.

16 SECTION 3.1182. Sections **464.004**(a), (b), and (e), Health
17 and Safety Code, are amended to read as follows:

18 (a) To receive a license to operate a treatment facility to
19 treat ~~chemically dependent~~ persons with a chemical dependency, a
20 person must:

21 (1) file a written application on a form prescribed by
22 the department [~~commission~~];

23 (2) cooperate with the review of the facility; and

24 (3) comply with the licensing standards.

25 (b) The department [~~commission~~] shall issue a license to an
26 applicant:

27 (1) whose application meets the content requirements

1 prescribed by [or] the department and by department rules
2 [commission]; [and]

3 (2) who receives approval of the facility after the
4 department's [commission's] review; and

5 (3) who timely complies with the licensing standards.

6 (e) A license may be issued without prior notice and an
7 opportunity for a hearing. A person other than the applicant or the
8 department [and commission] may not contest the issuance of a
9 license.

10 SECTION 3.1183. Section 464.005, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 464.005. LICENSE RENEWAL. (a) The department
13 [commission] shall provide renewal application forms and
14 information relating to renewal procedures to each license holder.

15 (b) The department [Department of State Health Services]
16 may require an inspection before renewing a license, unless the
17 applicant submits an accreditation review from the Commission on
18 Accreditation of Rehabilitation Facilities, The [the] Joint
19 Commission, or another national accreditation organization
20 recognized by the department in accordance with Section 464.0055.

21 (c) The executive commissioner [commission] may establish
22 deadlines for receiving and acting on renewal applications.

23 (d) A license may be renewed without prior notice and an
24 opportunity for a hearing. A person other than the applicant or the
25 department [and commission] may not contest the renewal of a
26 license.

27 SECTION 3.1184. Sections 464.0055(a) and (b), Health and

1 Safety Code, are amended to read as follows:

2 (a) In this section, "accreditation[~~+~~

3 [~~(1)~~] "~~Accreditation~~ commission" means the Commission
4 on Accreditation of Rehabilitation Facilities, The [~~the~~] Joint
5 Commission, or another national accreditation organization
6 recognized by the department [~~Department of State Health Services~~].

7 [~~(2)~~] "~~Department~~" means the ~~Department of State Health
Services.~~]

9 (b) The department shall accept an accreditation review
10 from an accreditation commission for a treatment facility instead
11 of an inspection by the department for renewal of a license under
12 Section 464.005, but only if:

13 (1) the treatment facility is accredited by that
14 accreditation commission [~~the Commission on Accreditation of~~
15 ~~Rehabilitation Facilities, the Joint Commission, or another~~
16 ~~national accreditation organization recognized by the department~~];

17 (2) the accreditation commission maintains and
18 updates an inspection or review program that, for each treatment
19 facility, meets the department's applicable minimum standards;

20 (3) the accreditation commission conducts a regular
21 on-site inspection or review of the treatment facility according to
22 the accreditation commission's guidelines; and

23 (4) the treatment facility submits to the department a
24 copy of its most recent accreditation review from the accreditation
25 commission in addition to the application, fee, and any report or
26 other document required for renewal of a license.

27 SECTION 3.1185. Section 464.006, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 464.006. INSPECTIONS. The department [~~commission~~] or
3 its representative may without notice enter the premises of a
4 treatment facility at reasonable times, including any time
5 treatment services are provided, to conduct an inspection or
6 investigation the department [~~commission~~] considers necessary.

7 SECTION 3.1186. Section 464.007, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 464.007. APPLICATION AND INSPECTION FEES. (a) The
10 department [~~commission~~] shall collect [~~charge~~] nonrefundable
11 application and review fees for a license or renewal license. The
12 department [~~commission~~] may collect [~~charge~~] a fee for approving a
13 facility to treat court committed clients.

14 (b) If the General Appropriations Act does not specify the
15 amount of the fee, the executive commissioner by rule [~~commission~~]
16 shall establish reasonable fees to administer this subchapter in
17 amounts necessary for the fees to cover at least 50 percent of the
18 costs of the licensing program.

19 (c) The department [~~commission~~] may not maintain
20 unnecessary fund balances under this chapter.

21 SECTION 3.1187. Section 464.008, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 464.008. APPLICABILITY OF OTHER LAW TO APPLICATION AND
24 INSPECTION FEES [~~ALCOHOL AND DRUG ABUSE TREATMENT LICENSURE FUND~~].
25 All application and inspection fees collected by the department
26 [~~commission~~] under this subchapter are subject to Subchapter F,
27 Chapter 404, Government Code.

1 SECTION 3.1188. Section 464.009, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 464.009. RULES AND STANDARDS. (a) The department
4 [~~commission~~] shall license treatment facilities in a manner
5 consistent with state and federal law and rules, including
6 department [~~commission~~] licensing standards.

7 (b) The executive commissioner [~~commission~~] shall adopt
8 rules for:

9 (1) a treatment facility's organization and structure,
10 policies and procedures, and minimum staffing requirements;

11 (2) the services to be provided by a facility,
12 including:

13 (A) the categories of services the facility may
14 provide;

15 (B) the client living environment the facility
16 requires; and

17 (C) the requirement that a facility provide
18 discharge planning and client follow-up contact;

19 (3) client rights and standards for medication,
20 nutrition, and emergency situations;

21 (4) the client records kept by a facility;

22 (5) the general physical plant requirements for a
23 facility, including environmental considerations, fire protection,
24 safety, and other conditions to ensure the health and comfort of the
25 clients;

26 (6) standards necessary to protect the client,
27 including standards required or authorized by federal or other

1 state law; and

2 (7) the approval of a facility to treat adult or minor
3 clients who are referred by the criminal justice system or by a
4 court order for involuntary civil or criminal commitment or
5 detention.

6 (c) The executive commissioner [commission] shall adopt
7 rules to protect the rights of individuals receiving services from
8 a treatment facility and to maintain the confidentiality of client
9 records as required by state and federal law.

10 (d) The executive commissioner [commission] by rule may not
11 restrict competitive bidding or advertising by a facility regulated
12 by the department under this chapter [commission] except to
13 prohibit false, misleading, or deceptive practices by the facility.
14 However, those rules may not:

15 (1) restrict the facility's use of any medium for
16 advertising;

17 (2) restrict in an advertisement the personal
18 appearance of a person representing the facility or the use of that
19 person's voice;

20 (3) regulate the size or duration of an advertisement
21 by the facility; or

22 (4) restrict the facility's advertisement under a
23 trade name.

24 SECTION 3.1189. Section 464.010, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 464.010. REPORTS OF ABUSE OR NEGLECT. (a) A person,
27 including treatment facility personnel, who believes that a

1 client's physical or mental health or welfare has been, is, or will
2 be adversely affected by abuse or neglect caused by any person shall
3 report the facts underlying that belief to the department
4 [~~commission~~]. This requirement is in addition to the requirements
5 prescribed by Chapter 261, Family Code, and Chapter 48, Human
6 Resources Code.

7 (b) The executive commissioner [~~commission~~] shall prescribe
8 procedures for the investigation of reports under Subsection (a)
9 and for coordination with law enforcement agencies or other
10 agencies.

11 (c) An individual who in good faith reports to the
12 department [~~commission~~] under this section is immune from civil or
13 criminal liability based on the report. That immunity extends to
14 participation in a judicial proceeding resulting from the report
15 but does not extend to an individual who caused the abuse or
16 neglect.

17 (d) The department [~~commission~~] may request the attorney
18 general's office to file a petition for temporary care and
19 protection of a client of a residential treatment facility if it
20 appears that immediate removal of the client is necessary to
21 prevent further abuse.

22 (e) All records made by the department [~~commission~~] during
23 its investigation of alleged abuse or neglect are confidential and
24 may not be released except that the release may be made:

25 (1) on court order;

26 (2) on written request and consent of the person under
27 investigation or that person's authorized attorney; or

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1 (3) as provided by Section 464.011.

2 SECTION 3.1190. Section [464.011](#), Health and Safety Code, is
3 amended to read as follows:

4 Sec. 464.011. DISCLOSURE OF DEPARTMENT [COMMISSION]
5 RECORDS. Unless prohibited or limited by federal or other state
6 law, the department [commission] may make its licensing and
7 investigatory records that identify a client available to a state
8 or federal agency or law enforcement authority on request and for
9 official purposes.

10 SECTION 3.1191. Sections 464.012(a) and (b), Health and
11 Safety Code, are amended to read as follows:

12 (a) A treatment facility licensed under this chapter shall
13 provide to employees of the facility education regarding methods of
14 transmitting and preventing human immunodeficiency virus infection
15 based on the model education program developed by the department
16 [~~Texas Department of Health~~] and shall make the education available
17 to facility clients.

18 (b) Employees of the facility who counsel clients shall
19 provide counseling in accordance with the model protocol for
20 counseling related to HIV infection developed by the department
21 [Texas Department of Health].

22 SECTION 3.1192. Section 464.014, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 464.014. DENIAL, REVOCATION, SUSPENSION, OR
25 NONRENEWAL OF LICENSE. (a) The department [commission] shall
26 deny, revoke, suspend, or refuse to renew a license, place on
27 probation a person whose license has been suspended, or reprimand a

1 license holder if the applicant or license holder or the owner,
2 director, administrator, or a clinical staff member of the
3 facility:

4 (1) has a documented history of client abuse or
5 neglect; or

6 (2) violates this subchapter or a department rule [~~or~~
7 ~~the commission~~].

8 (b) If a license suspension is probated, the department
9 [~~commission~~] may establish the conditions for completion or
10 violation of the probation.

11 (c) The denial, revocation, suspension, probation, or
12 nonrenewal takes effect on the 30th day after the date on which the
13 notice was mailed unless:

14 (1) the department [~~commission~~] secures an injunction
15 under Section 464.015; or

16 (2) an administrative appeal is requested.

17 (d) The department [~~commission~~] may restrict attendance at
18 an appeals hearing to the parties and their agents. A license
19 holder whose license is suspended or revoked may not admit new
20 clients until the license is reissued.

21 SECTION 3.1193. Sections 464.0145(a) and (c), Health and
22 Safety Code, are amended to read as follows:

23 (a) If the department [~~commission~~] proposes to suspend,
24 revoke, or refuse to renew a person's license, the person is
25 entitled to a hearing conducted by the State Office of
26 Administrative Hearings.

27 (c) Rules of practice adopted by the executive commissioner

1 [commission] under Section 2001.004, Government Code, applicable
2 to the proceedings for a disciplinary action may not conflict with
3 rules adopted by the State Office of Administrative Hearings.

4 SECTION 3.1194. Sections 464.015(a), (c), (d), and (e),
5 Health and Safety Code, are amended to read as follows:

6 (a) The department [commission] may petition a district
7 court to restrain a person or facility that violates the rules,
8 standards, or licensing requirements provided under this
9 subchapter in a manner that causes immediate threat to the health
10 and safety of individual clients.

11 (c) A district court, on petition of the department
12 [commission], the attorney general, or a district or county
13 attorney, and on a finding by the court that a person or facility is
14 violating or has violated this subchapter or a standard adopted
15 under this subchapter, shall grant any prohibitory or mandatory
16 injunctive relief warranted by the facts, including a temporary
17 restraining order, temporary injunction, or permanent injunction.

18 (d) The court granting injunctive relief shall order the
19 person or facility to reimburse the department [commission] and the
20 party bringing the suit for all costs of investigation and
21 litigation, including reasonable attorney's fees, reasonable
22 investigative expenses, court costs, witness fees, deposition
23 expenses, and civil administrative costs.

24 (e) At the request of the department [commission], the
25 attorney general or the appropriate district or county attorney
26 shall institute and conduct a suit authorized by Subsection (a) in
27 the name of this state.

1 SECTION 3.1195. Section 464.016(c), Health and Safety Code,
2 is amended to read as follows:

3 (c) A person commits an offense if the person has reasonable
4 grounds to suspect that abuse or neglect of a client may have
5 occurred and does not report the suspected or possible abuse or
6 neglect to the department as required by Section 464.010.

7 SECTION 3.1196. Sections 464.017(b), (c), (f), and (g),
8 Health and Safety Code, are amended to read as follows:

9 (b) The department [~~commission~~] may:

10 (1) combine a suit to assess and recover civil
11 penalties with a suit for injunctive relief brought under Section
12 464.015; or

13 (2) file a suit to assess and recover civil penalties
14 independently of a suit for injunctive relief.

15 (c) At the request of the department [~~commission~~], the
16 attorney general or the appropriate district or county attorney
17 shall institute and conduct the suit authorized by Subsection (b)
18 in the name of this state. The department [~~commission~~] and the
19 party bringing the suit may recover reasonable expenses incurred in
20 obtaining civil penalties, including investigation costs, court
21 costs, reasonable attorney fees, witness fees, and deposition
22 expenses.

23 (f) Penalties collected under this section by the attorney
24 general shall be deposited to the credit of the general revenue fund
25 [~~alcohol and drug abuse treatment licensure fund account~~].

26 Penalties collected under this section by a district or county
27 attorney shall be deposited to the credit of the general fund of the

1 county in which the suit was heard.

2 (g) The department [~~commission~~] and the party bringing the
3 suit may recover reasonable expenses incurred in obtaining civil
4 penalties, including investigation costs, court costs, reasonable
5 attorney fees, witness fees, and deposition expenses.

6 SECTION 3.1197. Section 464.018, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 464.018. NOTICE OF SUIT. Not later than the seventh
9 day before the date on which the attorney general intends to bring
10 suit on the attorney general's [~~his~~] own initiative under Section
11 464.015 or 464.017, the attorney general shall provide to the
12 department [~~commission~~] notice of the suit. The attorney general
13 is not required to provide notice of a suit if the attorney general
14 determines that waiting to bring suit until the notice is provided
15 will create an immediate threat to the health and safety of a
16 client. This section does not create a requirement that the
17 attorney general obtain the permission of or a referral from the
18 department [~~commission~~] before filing suit.

19 SECTION 3.1198. Sections 464.019(a), (d), (e), (f), (g),
20 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
21 amended to read as follows:

22 (a) The department [~~commission~~] may impose an
23 administrative penalty against a person licensed or regulated under
24 this chapter who violates this chapter or a rule or order adopted
25 under this chapter.

26 (d) If the department [~~executive director~~] determines that
27 a violation has occurred, the department [~~director~~] may issue [to

1 ~~the commission~~] a report that states the facts on which the
2 determination is based and the department's [~~director's~~]
3 recommendation on the imposition of a penalty, including a
4 recommendation on the amount of the penalty.

5 (e) Within 14 days after the date the report is issued, the
6 department [~~executive director~~] shall give written notice of the
7 report to the person. The notice may be given by certified mail.
8 The notice must include a brief summary of the alleged violation and
9 a statement of the amount of the recommended penalty and must inform
10 the person that the person has a right to a hearing on the
11 occurrence of the violation, the amount of the penalty, or both the
12 occurrence of the violation and the amount of the penalty.

13 (f) Within 20 days after the date the person receives the
14 notice, the person in writing may accept the determination and
15 recommended penalty of the department [~~commissioner~~] or may make a
16 written request for a hearing on the occurrence of the violation,
17 the amount of the penalty, or both the occurrence of the violation
18 and the amount of the penalty.

19 (g) If the person accepts the determination and recommended
20 penalty of the department [~~commissioner~~], the department [~~board~~] by
21 order shall [~~approve the determination and~~] impose the recommended
22 penalty.

23 (h) If the person requests a hearing or fails to respond
24 timely to the notice, an administrative law judge [~~the~~
25 ~~commissioner~~] shall set a hearing and the department shall give
26 notice of the hearing to the person. The administrative law judge
27 shall make findings of fact and conclusions of law and promptly

1 issue to the department [board] a proposal for a decision about the
2 occurrence of the violation and the amount of a proposed penalty.
3 Based on the findings of fact, conclusions of law, and proposal for
4 a decision, the department [board] by order may find that a
5 violation has occurred and impose a penalty or may find that no
6 violation occurred.

7 (i) The notice of the department's [board's] order given to
8 the person under Chapter 2001, Government Code, must include a
9 statement of the right of the person to judicial review of the
10 order.

11 (j) Within 30 days after the date the department's [board's]
12 order is final as provided by Subchapter F, Chapter 2001,
13 Government Code, the person shall:

14 (1) pay the amount of the penalty;
15 (2) pay the amount of the penalty and file a petition
16 for judicial review contesting the occurrence of the violation, the
17 amount of the penalty, or both the occurrence of the violation and
18 the amount of the penalty; or

19 (3) without paying the amount of the penalty, file a
20 petition for judicial review contesting the occurrence of the
21 violation, the amount of the penalty, or both the occurrence of the
22 violation and the amount of the penalty.

23 (k) Within the 30-day period, a person who acts under
24 Subsection (j)(3) may:

25 (1) stay enforcement of the penalty by:
26 (A) paying the amount of the penalty to the court
27 for placement in an escrow account; or

1 (B) giving to the court a supersedeas bond that
2 is approved by the court for the amount of the penalty and that is
3 effective until all judicial review of the department's [board's]
4 order is final; or

5 (2) request the court to stay enforcement of the
6 penalty by:

7 (A) filing with the court a sworn affidavit of
8 the person stating that the person is financially unable to pay the
9 amount of the penalty and is financially unable to give the
10 supersedeas bond; and

11 (B) giving a copy of the affidavit to the
12 department [~~commissioner~~] by certified mail.

13 (l) The department [~~commissioner~~] on receipt of a copy of an
14 affidavit under Subsection (k)(2) may file with the court within
15 five days after the date the copy is received a contest to the
16 affidavit. The court shall hold a hearing on the facts alleged in
17 the affidavit as soon as practicable and shall stay the enforcement
18 of the penalty on finding that the alleged facts are true. The
19 person who files an affidavit has the burden of proving that the
20 person is financially unable to pay the amount of the penalty and to
21 give a supersedeas bond.

22 (m) If the person does not pay the amount of the penalty and
23 the enforcement of the penalty is not stayed, the department
24 [~~commissioner~~] may refer the matter to the attorney general for
25 collection of the amount of the penalty.

26 (n) Judicial review of the order of the department [board]:

27 (1) is instituted by filing a petition as provided by

1 Subchapter G, Chapter 2001, Government Code; and

2 (2) is under the substantial evidence rule.

3 SECTION 3.1199. Section 464.020(c), Health and Safety Code,
4 is amended to read as follows:

5 (c) The department [~~commission~~] may not issue a license that
6 authorizes a disciplinary alternative education program to provide
7 detoxification or residential services.

8 SECTION 3.1200. Section 464.031(2), Health and Safety Code,
9 is amended to read as follows:

10 (2) "Department" means the Department of State Health
11 Services [~~Commission~~ means the Texas Commission on Alcohol and
12 Drug Abuse].

13 SECTION 3.1201. Sections 464.033(a) and (b), Health and
14 Safety Code, are amended to read as follows:

15 (a) To be eligible to contract with a county, an alcoholism
16 program or center providing prevention or intervention services
17 must submit an application to the regional alcoholism advisory
18 committee established by the department [~~commission~~] to serve the
19 area in which the program or center is located or in which the
20 program or center will provide services.

21 (b) To be eligible to contract with a county, an alcoholism
22 program or center providing treatment or rehabilitation services
23 must:

24 (1) submit an application as provided by Subsection
25 (a); and

26 (2) be licensed by the department [~~commission~~].

27 SECTION 3.1202. Section 464.034(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) A regional alcoholism advisory committee shall:

3 (1) review each application received; and

4 (2) rank the applications using guidelines for
5 reviewing funding applications established by the department in
6 accordance with department rules [~~commission for reviewing funding~~
7 ~~applications~~].

8 SECTION 3.1203. Section 464.051, Health and Safety Code, is
9 amended by amending Subdivision (2) and adding Subdivision (2-a) to
10 read as follows:

11 (2) "Department" [~~Commission~~] has the meaning
12 assigned by Section 464.001.

13 (2-a) "Executive commissioner" has the meaning
14 assigned by Section 464.001.

15 SECTION 3.1204. Section 464.052(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) The department [~~commission~~] may not prohibit the use, by
18 a program exempted under this subchapter, of the term "counseling,"
19 "treatment," or "rehabilitation."

20 SECTION 3.1205. Section 464.053, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 464.053. EXEMPT PROGRAM REGISTRATION. The executive
23 commissioner [~~commission~~] by rule shall establish a simple
24 procedure for a faith-based chemical dependency treatment program
25 to register the program's exemption under Section 464.052.

26 SECTION 3.1206. Section 464.055, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 464.055. REPRESENTATIONS IN PROGRAM ADVERTISING OR
2 LITERATURE. A program exempted under this subchapter shall
3 conspicuously include in any advertisement or literature that
4 promotes or describes the program or the program's chemical
5 dependency treatment services the following statement:

6 "The treatment and recovery services at (name of program) are
7 exclusively religious in nature and are not subject to licensure or
8 regulation by the Department of State Health Services [~~Texas~~
9 ~~Commission on Alcohol and Drug Abuse~~]. This program offers only
10 nonmedical treatment and recovery methods such as prayer, moral
11 guidance, spiritual counseling, and scriptural study."

12 SECTION 3.1207. Section [464.056\(a\)](#), Health and Safety Code,
13 is amended to read as follows:

14 (a) A program exempted under this subchapter may not admit a
15 person unless the person signs the following statement on
16 admission:

17 "DECLARATION:

18 "I understand that:

19 (1) the treatment and recovery services at (name of
20 program) are exclusively religious in nature and are not subject to
21 licensure or regulation by the Department of State Health Services
22 [~~Texas Commission on Alcohol and Drug Abuse~~]; and

23 (2) (name of program) offers only nonmedical treatment
24 and recovery methods, such as prayer, moral guidance, spiritual
25 counseling, and scriptural study."

26 signed _____ date _____

27 SECTION 3.1208. Section [464.057](#), Health and Safety Code, is

1 amended to read as follows:

2 Sec. 464.057. REVOCATION OF EXEMPTION. The department
3 [~~commission~~] may revoke the exemption after notice and hearing if:

4 (1) the organization conducting the program fails to
5 timely inform the department [~~commission~~] of any material change in
6 the program's registration information;

7 (2) any program advertisement or literature fails to
8 include the statements required by Section 464.055; or

9 (3) the organization violates this subchapter or a
10 department [~~commission~~] rule adopted under this subchapter.

11 SECTION 3.1209. Section 464.059, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 464.059. RELIGION NOT ENDORSED. This subchapter is
14 not intended to aid religion. This subchapter is intended to aid
15 [~~chemically dependent~~] persons with a chemical dependency by
16 supporting programs that serve the valid public purpose of
17 combating chemical dependency, regardless of whether the programs
18 are religious, spiritual, or ecclesiastical in nature. The
19 exemption of faith-based chemical dependency treatment programs
20 from licensure and regulation is not an endorsement or sponsorship
21 by the state of the religious character, expression, beliefs,
22 doctrines, or practices of the treatment programs.

23 SECTION 3.1210. Sections 466.001(a) and (c), Health and
24 Safety Code, are amended to read as follows:

25 (a) It is the intent of the legislature that the department
26 exercise its administrative powers and regulatory authority to
27 ensure the proper use of approved narcotic drugs in the treatment of

1 persons with a narcotic dependency [dependent persons].

2 (c) Short-term goals should have an emphasis of personal and
3 public health, crime prevention, reintegration of persons with a
4 narcotic addiction [~~addicted persons~~] into the public work force,
5 and social and medical stabilization. Narcotic treatment programs
6 are an important component of the state's effort to prevent the
7 further proliferation of the AIDS virus. Total drug abstinence is
8 recognized as a long-term goal of treatment, subject to medical
9 determination of the medical appropriateness and prognosis of the
10 person with a narcotic addiction [~~addicted person~~].

11 SECTION 3.1211. Section 466.002, Health and Safety Code, is
12 amended by amending Subdivisions (4) and (5) and adding Subdivision
13 (5-a) to read as follows:

14 (4) "Commissioner" means the commissioner of state
15 [~~public~~] health services.

16 (5) "Department" means the [~~Texas~~] Department of State
17 Health Services.

18 (5-a) "Executive commissioner" means the executive
19 commissioner of the Health and Human Services Commission.

20 SECTION 3.1212. Section 466.004, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 466.004. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
23 [~~BOARD~~] AND DEPARTMENT. (a) The executive commissioner [~~board~~]
24 shall adopt and the department shall administer and enforce rules
25 to ensure the proper use of approved narcotic drugs in the treatment
26 of persons with a narcotic drug dependency [~~drug-dependent~~
27 persons], including rules that:

1 (1) require an applicant or a permit holder to make
2 annual, periodic, and special reports that the department
3 determines are necessary;

4 (2) require an applicant or permit holder to keep
5 records that the department determines are necessary;

6 (3) provide for investigations that the department
7 determines are necessary; and

8 (4) provide for the coordination of the approval of
9 narcotic drug treatment programs by the United States Food and Drug
10 Administration and the United States Drug Enforcement
11 Administration.

12 (b) The executive commissioner [board] shall adopt rules
13 for the issuance of permits to operate narcotic drug treatment
14 programs including rules:

15 (1) governing the submission and review of
16 applications;

17 (2) establishing the criteria for the issuance and
18 renewal of permits; and

19 (3) establishing the criteria for the suspension and
20 revocation of permits.

21 SECTION 3.1213. Section [466.022](#), Health and Safety Code, is
22 amended to read as follows:

23 Sec. 466.022. LIMITATION ON PRESCRIPTION, ORDER, OR
24 ADMINISTRATION OF NARCOTIC DRUG. A physician may not prescribe,
25 order, or administer a narcotic drug for the purpose of treating
26 drug dependency unless the physician prescribes, orders, or
27 administers an approved narcotic drug for the maintenance or

1 detoxification of persons with a drug dependency [drug-dependent
2 persons] as part of a program permitted by the department.

3 SECTION 3.1214. Sections 466.023(a), (b), (e), and (f),
4 Health and Safety Code, are amended to read as follows:

5 (a) The department shall issue a permit to an applicant who
6 qualifies under rules and standards adopted by the executive
7 commissioner [board].

8 (b) A permit issued under this section is valid until
9 suspended or revoked by the department or surrendered by the permit
10 holder in accordance with department [board] rules.

11 (e) The executive commissioner [board] by rule shall
12 establish and the department shall collect a nonrefundable
13 application fee to defray the cost to the department of processing
14 each application for a permit. The application fee must be
15 submitted with the application. An application may not be
16 considered unless the application is accompanied by the application
17 fee.

18 (f) The executive commissioner [board] shall adopt rules
19 that set permit fees in amounts sufficient for the department to
20 recover not less than half of the actual annual expenditures of
21 state funds by the department to:

22 (1) amend permits;
23 (2) inspect facilities operated by permit holders; and
24 (3) implement and enforce this chapter.

25 SECTION 3.1215. Section 466.024(b), Health and Safety Code,
26 is amended to read as follows:

27 (b) The department may issue a permit to a person other than

1 a physician only if the person provides health care services under
2 the supervision of one or more physicians licensed by the Texas
3 Medical [~~State~~] Board [~~of Medical Examiners~~].

4 SECTION 3.1216. Sections 466.025(a) and (c), Health and
5 Safety Code, are amended to read as follows:

6 (a) The department [~~An authorized agent~~] may enter the
7 facility of a person who is an applicant for a permit or who is a
8 permit holder during any hours in which the facility is in operation
9 for the purpose of inspecting the facility to determine:

10 (1) if the person meets the standards set in
11 department [~~the~~] rules [~~of the board~~] for the issuance of a permit;
12 or

13 (2) if a person who holds a permit is in compliance
14 with this chapter, the standards set in department [~~the~~] rules [~~of~~
15 ~~the board~~] for the operation of a facility, any special provisions
16 contained in the permit, or an order of the commissioner or the
17 department.

18 (c) The department [~~authorized agent~~] shall provide the
19 applicant or permit holder with a copy of the inspection report. An
20 inspection report shall be made a part of the applicant's
21 submission file or the permit holder's compliance record.

22 SECTION 3.1217. Section 466.026, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 466.026. MULTIPLE ENROLLMENT PREVENTION. The
25 department shall work with representatives from permitted narcotic
26 treatment programs in this state to develop recommendations for a
27 plan to prevent the simultaneous multiple enrollment of persons in

1 narcotic treatment programs. The executive commissioner [board]
2 may adopt rules to implement these recommendations.

3 SECTION 3.1218. Sections 466.027(b) and (c), Health and
4 Safety Code, are amended to read as follows:

5 (b) The executive commissioner [board] may adopt rules that
6 establish the criteria for the denial, suspension, or revocation of
7 a permit.

8 (c) Hearings, appeals from, and judicial review of final
9 administrative decisions under this section shall be conducted
10 according to the contested case provisions of Chapter 2001,
11 Government Code, and the department's [board's] formal hearing
12 rules.

13 SECTION 3.1219. Sections 466.041(a), (b), and (c), Health
14 and Safety Code, are amended to read as follows:

15 (a) The department [~~commissioner or the commissioner's~~
16 ~~designee~~] may issue an emergency order, either mandatory or
17 prohibitory in nature, in relation to the operation of a permitted
18 facility or the treatment of patients by the facility staff, in the
19 department's jurisdiction. The order may be issued if the
20 department [~~commissioner or the commissioner's designee~~]
21 determines that the treatment of patients by the staff of the permit
22 holder creates or poses an immediate and serious threat to human
23 life or health and other procedures available to the department to
24 remedy or prevent the occurrence of the situation will result in an
25 unreasonable delay.

26 (b) The department [~~commissioner or the commissioner's~~
27 ~~designee~~] may issue the emergency order, including an emergency

1 order suspending or revoking a permit issued by the department,
2 without notice and hearing, if the department [~~commissioner or the~~
3 ~~commissioner's designee~~] determines that action to be practicable
4 under the circumstances.

5 (c) If an emergency order is issued without a hearing, the
6 department shall determine a time and place for a hearing at which
7 the emergency order is affirmed, modified, or set aside. The
8 hearing shall be held under the contested case provisions of
9 Chapter 2001, Government Code, and the department's [~~board's~~]
10 formal hearing rules.

11 SECTION 3.1220. Sections 466.042(a) and (b), Health and
12 Safety Code, are amended to read as follows:

13 (a) The department [~~commissioner, the commissioner's~~
14 ~~designee, or an authorized agent~~] may request the attorney general
15 or a district, county, or municipal attorney to petition the
16 district court for a temporary restraining order to restrain:

17 (1) a continuing violation of this chapter, a rule
18 adopted under this chapter, or an order or permit issued under this
19 chapter; or

20 (2) a threat of a continuing violation of this
21 chapter, a rule, or an order or permit.

22 (b) To request a temporary restraining order, the
23 department [~~commissioner, commissioner's designee, or an~~
24 ~~authorized agent~~] must find that a person has violated, is
25 violating, or is threatening to violate this chapter, a rule
26 adopted under this chapter, or an order or permit issued under this
27 chapter and:

1 (1) the violation or threatened violation creates an
2 immediate threat to the health and safety of the public; or

3 (2) there is reasonable cause to believe that the
4 permit holder or the staff of the permit holder is party to the
5 diversion of a narcotic drug or drugs in violation of Chapter 481
6 (Texas Controlled Substances Act).

7 SECTION 3.1221. Section 466.043, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 466.043. ADMINISTRATIVE PENALTY. If a person violates
10 this chapter, a rule adopted under this chapter, or an order or
11 permit issued under this chapter, the department [~~commissioner~~] may
12 assess an administrative penalty against the person as provided by
13 Chapter 431 (Texas Food, Drug, and Cosmetic Act).

14 SECTION 3.1222. Section 466.045(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) If it appears that a person has violated this chapter, a
17 rule adopted under this chapter, or an order or permit issued under
18 this chapter, the department [~~commissioner~~] may request the
19 attorney general or the district, county, or municipal attorney of
20 the municipality or county in which the violation occurred to
21 institute a civil suit for the assessment and recovery of a civil
22 penalty.

23 SECTION 3.1223. Section 467.001, Health and Safety Code, is
24 amended by amending Subdivisions (1) and (5) and adding Subdivision
25 (2-a) to read as follows:

26 (1) "Approved peer assistance program" means a program
27 that is designed to help an impaired professional and that is:

1 (A) established by a licensing or disciplinary
2 authority; or

3 (B) approved by a licensing or disciplinary
4 authority as meeting the criteria established by the executive
5 commissioner [department] and any additional criteria established
6 by that licensing or disciplinary authority.

7 (2-a) "Executive commissioner" means the executive
8 commissioner of the Health and Human Services Commission.

9 (5) "Professional" means an individual who:

10 (A) may incorporate under The Texas Professional
11 Corporation Law as described by Section 1.008(m), Business
12 Organizations Code [~~Act (Article 1528e, Vernon's Texas Civil~~
13 ~~Statutes)~~]; or

14 (B) is licensed, registered, certified, or
15 otherwise authorized by the state to practice as a licensed
16 vocational nurse, social worker, chemical dependency counselor,
17 occupational therapist, speech-language pathologist, audiologist,
18 licensed dietitian, or dental or dental hygiene school faculty
19 member.

20 SECTION 3.1224. Section 467.003, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 467.003. PROGRAMS. (a) A professional association or
23 licensing or disciplinary authority may establish a peer assistance
24 program to identify and assist impaired professionals in accordance
25 with the minimum criteria established by the executive commissioner
26 [department] and any additional criteria established by the
27 appropriate licensing or disciplinary authority.

1 (b) A peer assistance program established by a professional
2 association is not governed by or entitled to the benefits of this
3 chapter unless the association submits evidence to the appropriate
4 licensing or disciplinary authority showing that the association's
5 program meets the minimum criteria established by the executive
6 commissioner [department] and any additional criteria established
7 by that authority.

8 (c) If a licensing or disciplinary authority receives
9 evidence showing that a peer assistance program established by a
10 professional association meets the minimum criteria established by
11 the executive commissioner [department] and any additional
12 criteria established by that authority, the authority shall approve
13 the program.

14 (d) A licensing or disciplinary authority may revoke its
15 approval of a program established by a professional association
16 under this chapter if the authority determines that:

17 (1) the program does not comply with the criteria
18 established by the executive commissioner [department] or by that
19 authority; and

20 (2) the professional association does not bring the
21 program into compliance within a reasonable time, as determined by
22 that authority.

23 SECTION 3.1225. The heading to Section [467.0041](#), Health and
24 Safety Code, is amended to read as follows:

25 Sec. 467.0041. FUNDING FOR [TEXAS] STATE BOARD OF DENTAL
26 EXAMINERS.

27 SECTION 3.1226. Sections [467.0041\(a\), \(c\), and \(d\)](#), Health

1 and Safety Code, are amended to read as follows:

2 (a) Except as provided by this section, the [Texas] State
3 Board of Dental Examiners is subject to Section [467.004](#).

4 (c) The board may collect a fee of not more than \$50 each
5 month from a participant in an approved peer assistance program.
6 ~~[Fees collected under this subsection shall be remitted to the~~
7 ~~comptroller for deposit to the credit of the dental registration~~
8 ~~account.]~~

9 (d) Subject to the General Appropriations Act, the board may
10 use the fees and surcharges collected under this section and fines
11 collected in the enforcement of Subtitle D, Title 3, Occupations
12 Code [~~Chapter 9, Title 71, Revised Statutes, and that are deposited~~
13 ~~in the dental registration account~~], to fund an approved program
14 and to pay the administrative costs incurred by the board that are
15 related to the program.

16 SECTION 3.1227. Section [481.002](#), Health and Safety Code, is
17 amended by amending Subdivision (3) and adding Subdivision (55) to
18 read as follows:

19 (3) "Commissioner" means the commissioner of state
20 ~~public~~ health services or the commissioner's designee.

21 (55) "Executive commissioner" means the executive
22 commissioner of the Health and Human Services Commission.

23 SECTION 3.1228. Sections [481.034](#)(a), (b), and (e), Health
24 and Safety Code, are amended to read as follows:

25 (a) The commissioner shall annually establish the schedules
26 of controlled substances. These annual schedules shall include the
27 complete list of all controlled substances from the previous

1 schedules and modifications in the federal schedules of controlled
2 substances as required by Subsection (g). Any further additions to
3 and deletions from these schedules, any rescheduling of substances
4 and any other modifications made by the commissioner to these
5 schedules of controlled substances shall be made:

- 6 (1) in accordance with Section [481.035](#);
7 (2) in a manner consistent with this subchapter; and
8 (3) with approval of the executive commissioner [~~Texas~~
9 ~~Board of Health~~].

10 (b) Except for alterations in schedules required by
11 Subsection (g), the commissioner may not make an alteration in a
12 schedule unless the commissioner holds a public hearing on the
13 matter in Austin and obtains approval from the executive
14 commissioner [~~Texas Board of Health~~].

15 (e) After considering the factors listed in Subsection (d),
16 the commissioner shall make findings with respect to those factors.
17 If [~~and adopt a rule controlling the substance if~~] the commissioner
18 finds the substance has a potential for abuse, the executive
19 commissioner shall adopt a rule controlling the substance.

20 SECTION 3.1229. Section [481.062](#)(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) The following persons are not required to register and
23 may possess a controlled substance under this chapter:

24 (1) an agent or employee of a registered manufacturer,
25 distributor, analyzer, or dispenser of the controlled substance
26 acting in the usual course of business or employment;

27 (2) a common or contract carrier, a warehouseman, or

1 an employee of a carrier or warehouseman whose possession of the
2 controlled substance is in the usual course of business or
3 employment;

4 (3) an ultimate user or a person in possession of the
5 controlled substance under a lawful order of a practitioner or in
6 lawful possession of the controlled substance if it is listed in
7 Schedule V;

8 (4) an officer or employee of this state, another
9 state, a political subdivision of this state or another state, or
10 the United States who is lawfully engaged in the enforcement of a
11 law relating to a controlled substance or drug or to a customs law
12 and authorized to possess the controlled substance in the discharge
13 of the person's official duties; or

14 (5) if the substance is tetrahydrocannabinol or one of
15 its derivatives:

16 (A) a [Texas] Department of State Health Services
17 official, a medical school researcher, or a research program
18 participant possessing the substance as authorized under
19 Subchapter G; or

20 (B) a practitioner or an ultimate user possessing
21 the substance as a participant in a federally approved therapeutic
22 research program that the commissioner has reviewed and found, in
23 writing, to contain a medically responsible research protocol.

24 SECTION 3.1230. Section [481.068\(b\)](#), Health and Safety Code,
25 is amended to read as follows:

26 (b) Except as provided by Sections [481.074](#) and [481.075](#), a
27 practitioner engaged in authorized medical practice or research may

1 not be required to furnish the name or identity of a patient or
2 research subject to the department, the Department of State Health
3 Services [~~director of the Texas Commission on Alcohol and Drug~~
4 ~~Abuse~~], or any other agency, public official, or law enforcement
5 officer. A practitioner may not be compelled in a state or local
6 civil, criminal, administrative, legislative, or other proceeding
7 to furnish the name or identity of an individual that the
8 practitioner is obligated to keep confidential.

9 SECTION 3.1231. Section 481.073(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) Only a practitioner defined by Section 481.002(39)(A)
12 and an agent designated in writing by the practitioner in
13 accordance with rules adopted by the department may communicate a
14 prescription by telephone. A pharmacy that receives a
15 telephonically communicated prescription shall promptly write the
16 prescription and file and retain the prescription in the manner
17 required by this subchapter. A practitioner who designates an
18 agent to communicate prescriptions shall maintain the written
19 designation of the agent in the practitioner's usual place of
20 business and shall make the designation available for inspection by
21 investigators for the Texas Medical [~~State~~] Board [~~of Medical~~
22 ~~Examiners~~], the State Board of Dental Examiners, the State Board of
23 Veterinary Medical Examiners, and the department. A practitioner
24 who designates a different agent shall designate that agent in
25 writing and maintain the designation in the same manner in which the
26 practitioner initially designated an agent under this section.

27 SECTION 3.1232. Sections 481.201(a) and (b), Health and

1 Safety Code, are amended to read as follows:

2 (a) The executive commissioner [~~Texas Board of Health~~] may
3 establish a controlled substance therapeutic research program for
4 the supervised use of tetrahydrocannabinols for medical and
5 research purposes to be conducted in accordance with this chapter.

6 (b) If the executive commissioner [~~Texas Board of Health~~]
7 establishes the program, the executive commissioner [~~board~~] shall
8 create a research program review board. The review board members
9 are appointed by the executive commissioner [~~Texas Board of Health~~]
10 and serve at the will of the executive commissioner [~~board~~].

11 SECTION 3.1233. Sections [481.202](#)(b) and (d), Health and
12 Safety Code, are amended to read as follows:

13 (b) The review board, after approval of the executive
14 commissioner [~~Texas Board of Health~~], may seek authorization to
15 expand the research program to include diseases not covered by this
16 subchapter.

17 (d) The executive commissioner [~~Texas Board of Health~~] may
18 terminate the distribution of tetrahydrocannabinols and their
19 derivatives to a research program as the executive commissioner
20 [~~it~~] determines necessary.

21 SECTION 3.1234. Section [481.203](#)(a), Health and Safety Code,
22 is amended to read as follows:

23 (a) A person may not be considered for participation as a
24 recipient of tetrahydrocannabinols and their derivatives through a
25 research program unless the person is recommended to a person in
26 charge of an approved research program and the review board by a
27 physician who is licensed by the Texas Medical [~~State~~] Board [~~or~~

1 ~~Medical Examiners~~] and is attending the person.

2 SECTION 3.1235. Section 481.204, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 481.204. ACQUISITION AND DISTRIBUTION OF CONTROLLED
5 SUBSTANCES. (a) The executive commissioner [~~Texas Board of~~
6 ~~Health~~] shall acquire the tetrahydrocannabinols and their
7 derivatives for use in the research program by contracting with the
8 National Institute on Drug Abuse to receive tetrahydrocannabinols
9 and their derivatives that are safe for human consumption according
10 to the regulations adopted by the institute, the United States Food
11 and Drug Administration, and the Federal Drug Enforcement
12 Administration.

13 (b) The executive commissioner [~~Texas Board of Health~~]
14 shall supervise the distribution of the tetrahydrocannabinols and
15 their derivatives to program participants. The
16 tetrahydrocannabinols and derivatives of tetrahydrocannabinols may
17 be distributed only by the person in charge of the research program
18 to physicians caring for program participant patients, under rules
19 adopted by the executive commissioner [~~Texas Board of Health~~] in
20 such a manner as to prevent unauthorized diversion of the
21 substances and in compliance with all requirements of the Federal
22 Drug Enforcement Administration. The physician is responsible for
23 dispensing the substances to patients.

24 SECTION 3.1236. Section 481.205, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 481.205. RULES; REPORTS. (a) The executive
27 commissioner [~~Texas Board of Health~~] shall adopt rules necessary

1 for implementing the research program.

2 (b) If the executive commissioner [~~Texas Board of Health~~]
3 establishes a program under this subchapter, the commissioner shall
4 publish a report not later than January 1 of each odd-numbered year
5 on the medical effectiveness of the use of tetrahydrocannabinols
6 and their derivatives and any other medical findings of the
7 research program.

8 SECTION 3.1237. Section [483.003](#), Health and Safety Code, is
9 amended to read as follows:

10 Sec. 483.003. DEPARTMENT [~~BOARD~~] OF STATE HEALTH SERVICES
11 HEARINGS REGARDING CERTAIN DANGEROUS DRUGS. (a) The Department
12 [~~Texas Board~~] of State Health Services may hold public hearings in
13 accordance with Chapter 2001, Government Code, to determine whether
14 there is compelling evidence that a dangerous drug has been abused,
15 either by being prescribed for nontherapeutic purposes or by the
16 ultimate user.

17 (b) On [~~making that~~] finding that a dangerous drug has been
18 abused, the Department [~~Texas Board~~] of State Health Services may
19 limit the availability of the abused drug by permitting its
20 dispensing only on the prescription of a practitioner described by
21 Section [483.001](#)(12)(A), (B), or (D).

22 SECTION 3.1238. Section [483.004](#), Health and Safety Code, is
23 amended to read as follows:

24 Sec. 483.004. COMMISSIONER OF STATE HEALTH SERVICES
25 EMERGENCY AUTHORITY RELATING TO DANGEROUS DRUGS. If the
26 commissioner of state health services has compelling evidence that
27 an immediate danger to the public health exists as a result of the

1 prescription of a dangerous drug by practitioners described by
2 Section 483.001(12)(C), the commissioner may use the
3 commissioner's existing emergency authority to limit the
4 availability of the drug by permitting its prescription only by
5 practitioners described by Section 483.001(12)(A), (B), or (D).

6 SECTION 3.1239. Section 483.024, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 483.024. RECORDS OF ACQUISITION OR DISPOSAL. The
9 following persons shall maintain a record of each acquisition and
10 each disposal of a dangerous drug for two years after the date of
11 the acquisition or disposal:

12 (1) a pharmacy;

13 (2) a practitioner;

14 (3) a person who obtains a dangerous drug for lawful
15 research, teaching, or testing purposes, but not for resale;

16 (4) a hospital that obtains a dangerous drug for
17 lawful administration by a practitioner; and

18 (5) a manufacturer or wholesaler licensed by
19 [~~registered with~~] the Department [~~commissioner~~] of State Health
20 Services [~~health~~] under Chapter 431 (Texas Food, Drug, and Cosmetic
21 Act).

22 SECTION 3.1240. Section 483.041(c), Health and Safety Code,
23 is amended to read as follows:

24 (c) Subsection (a) does not apply to the possession of a
25 dangerous drug in the usual course of business or practice or in the
26 performance of official duties by the following persons or an agent
27 or employee of the person:

1 (1) a pharmacy licensed by the board;

2 (2) a practitioner;

3 (3) a person who obtains a dangerous drug for lawful

4 research, teaching, or testing, but not for resale;

5 (4) a hospital that obtains a dangerous drug for

6 lawful administration by a practitioner;

7 (5) an officer or employee of the federal, state, or

8 local government;

9 (6) a manufacturer or wholesaler licensed by the

10 Department of State Health Services under Chapter 431 (Texas Food,

11 Drug, and Cosmetic Act);

12 (7) a carrier or warehouseman;

13 (8) a home and community support services agency

14 licensed under and acting in accordance with Chapter 142;

15 (9) a licensed midwife who obtains oxygen for

16 administration to a mother or newborn or who obtains a dangerous

17 drug for the administration of prophylaxis to a newborn for the

18 prevention of ophthalmia neonatorum in accordance with Section

19 **203.353**, Occupations Code;

20 (10) a salvage broker or salvage operator licensed

21 under Chapter 432; or

22 (11) a certified laser hair removal professional under

23 Subchapter M, Chapter 401, who possesses and uses a laser or pulsed

24 light device approved by and registered with the Department of

25 State Health Services [department] and in compliance with

26 department rules for the sole purpose of cosmetic nonablative hair

27 removal.

1 SECTION 3.1241. Section 485.001, Health and Safety Code, is
2 amended by amending Subdivisions (4) and (7) and adding Subdivision
3 (7-a) to read as follows:

4 (4) "Commissioner" means the commissioner of state
5 health services.

6 (7) "Department" means the [Texas] Department of State
7 Health Services.

8 (7-a) "Executive commissioner" means the executive
9 commissioner of the Health and Human Services Commission.

10 SECTION 3.1242. Section 485.002, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 485.002. RULES. The executive commissioner [~~board~~]
13 may adopt rules necessary to comply with any labeling requirements
14 concerning precautions against inhalation of an abusable volatile
15 chemical established under the Federal Hazardous Substances Act (15
16 U.S.C. Section 1261 et seq.), as amended, or under regulations
17 adopted under that Act.

18 SECTION 3.1243. Sections 485.012(b) and (d), Health and
19 Safety Code, are amended to read as follows:

20 (b) The executive commissioner [~~board~~] shall adopt rules as
21 necessary to administer this chapter, including application
22 procedures and procedures by which the department shall give each
23 permit holder reasonable notice of permit expiration and renewal
24 requirements.

25 (d) A permit issued or renewed under this chapter is valid
26 for two years [~~one year~~] from the date of issuance or renewal.

27 SECTION 3.1244. Section 485.013, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 485.013. FEE. The executive commissioner [board] by
3 rule may establish fees in amounts as prescribed by Section 12.0111
4 [~~not to exceed \$25 for the issuance of a permit under this chapter~~].

5 SECTION 3.1245. Section 485.104(b), Health and Safety Code,
6 is amended to read as follows:

7 (b) If the person accepts the determination and recommended
8 penalty or if the person fails to respond to the notice, the
9 department [~~commissioner~~] by order shall [~~approve the~~
10 ~~determination and~~] impose the recommended penalty.

11 SECTION 3.1246. Section 485.105, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 485.105. HEARING. (a) If the person requests a
14 hearing, the department [~~commissioner~~] shall refer the matter to
15 the State Office of Administrative Hearings, which shall promptly
16 set a hearing date. The department shall [~~and~~] give written notice
17 of the time and place of the hearing to the person. An
18 administrative law judge of the State Office of Administrative
19 Hearings shall conduct the hearing.

20 (b) The administrative law judge shall make findings of fact
21 and conclusions of law and promptly issue to the department
22 [~~commissioner~~] a written proposal for a decision about the
23 occurrence of the violation and the amount of a proposed penalty.

24 SECTION 3.1247. Section 485.106, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 485.106. DECISION BY DEPARTMENT [~~COMMISSIONER~~]. (a)
27 Based on the findings of fact, conclusions of law, and proposal for

1 a decision, the department [~~commissioner~~] by order may:

2 (1) find that a violation occurred and impose a
3 penalty; or

4 (2) find that a violation did not occur.

5 (b) The notice of the department's [~~commissioner's~~] order
6 under Subsection (a) that is sent to the person in accordance with
7 Chapter 2001, Government Code, must include a statement of the
8 right of the person to judicial review of the order.

9 SECTION 3.1248. Section [485.107](#), Health and Safety Code, is
10 amended to read as follows:

11 Sec. 485.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
12 Within 30 days after the date the order of the department
13 [~~commissioner~~] under Section [485.106](#) that imposes an
14 administrative penalty becomes final, the person shall:

15 (1) pay the penalty; or

16 (2) file a petition for judicial review of the
17 department's [~~commissioner's~~] order contesting the occurrence of
18 the violation, the amount of the penalty, or both.

19 SECTION 3.1249. Section [485.108](#), Health and Safety Code, is
20 amended to read as follows:

21 Sec. 485.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within
22 the 30-day period prescribed by Section [485.107](#), a person who files
23 a petition for judicial review may:

24 (1) stay enforcement of the penalty by:

25 (A) paying the penalty to the court for placement
26 in an escrow account; or

27 (B) giving the court a supersedeas bond approved

1 by the court that:

2 (i) is for the amount of the penalty; and
3 (ii) is effective until all judicial review

4 of the department's [~~commissioner's~~] order is final; or

5 (2) request the court to stay enforcement of the
6 penalty by:

7 (A) filing with the court a sworn affidavit of
8 the person stating that the person is financially unable to pay the
9 penalty and is financially unable to give the supersedeas bond; and

10 (B) sending a copy of the affidavit to the
11 department [~~commissioner~~] by certified mail.

12 (b) If the department [~~commissioner~~] receives a copy of an
13 affidavit under Subsection (a)(2), the department [~~commissioner~~]
14 may file with the court, within five days after the date the copy is
15 received, a contest to the affidavit. The court shall hold a
16 hearing on the facts alleged in the affidavit as soon as practicable
17 and shall stay the enforcement of the penalty on finding that the
18 alleged facts are true. The person who files an affidavit has the
19 burden of proving that the person is financially unable to pay the
20 penalty or to give a supersedeas bond.

21 SECTION 3.1250. Section 486.001(a), Health and Safety Code,
22 is amended by adding Subdivision (4-a) to read as follows:

23 (4-a) "Executive commissioner" means the executive
24 commissioner of the Health and Human Services Commission.

25 SECTION 3.1251. Section 486.003, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 486.003. RULES. The executive commissioner [~~council~~]

1 shall adopt rules necessary to implement and enforce this chapter.

2 SECTION 3.1252. Section 486.004(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) The executive commissioner by rule shall set the fees in
5 amounts that allow the department to recover the biennial
6 expenditures of state funds by the department in:

7 (1) reviewing applications for the issuance of a
8 certificate of authority under this chapter;

9 (2) issuing certificates of authority under this
10 chapter;

11 (3) inspecting and auditing a business establishment
12 that is issued a certificate of authority under this chapter; and

13 (4) otherwise implementing and enforcing this
14 chapter.

15 SECTION 3.1253. Section 486.012(c), Health and Safety Code,
16 is amended to read as follows:

17 (c) The executive commissioner [department] by rule shall
18 establish requirements for the issuance of a certificate of
19 authority under this section. The rules must include a
20 consideration [by the department] of whether the establishment:

21 (1) complies with the requirements of the Texas State
22 Board of Pharmacy for the issuance of a license to operate a
23 pharmacy;

24 (2) sells a wide variety of healthcare products; and

25 (3) employs sales techniques and other measures
26 designed to deter the theft of products containing ephedrine,
27 pseudoephedrine, or norpseudoephedrine and other items used in the

1 manufacture of methamphetamine.

2 SECTION 3.1254. Section 486.0142(a), Health and Safety
3 Code, is amended to read as follows:

4 (a) On application by a business establishment that
5 operates a pharmacy and engages in over-the-counter sales of
6 products containing ephedrine, pseudoephedrine, or
7 norpseudoephedrine as authorized by Section 486.011, the Texas
8 State Board of Pharmacy may grant that business establishment a
9 temporary exemption, not to exceed 180 days, from the requirement
10 of using a real-time electronic logging system under this chapter.

11 SECTION 3.1255. Section 486.024(b), Health and Safety Code,
12 is amended to read as follows:

13 (b) If the person accepts the determination and recommended
14 penalty or if the person fails to respond to the notice, the
15 department [~~commissioner~~] by order shall impose the penalty
16 [~~approve the determination~~].

17 SECTION 3.1256. Section 486.025, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 486.025. HEARING. (a) If the person requests a
20 hearing, the department [~~commissioner~~] shall refer the matter to
21 the State Office of Administrative Hearings, which shall promptly
22 set a hearing date, and the department shall give written notice of
23 the time and place of the hearing to the person. An administrative
24 law judge of the State Office of Administrative Hearings shall
25 conduct the hearing.

26 (b) The administrative law judge shall make findings of fact
27 and conclusions of law and promptly issue to the department

1 [commissioner] a written proposal for a decision about the
2 occurrence of the violation and the amount of a proposed penalty.

3 SECTION 3.1257. Section 486.026, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 486.026. DECISION. (a) Based on the findings of fact,
6 conclusions of law, and proposal for a decision, the department
7 [commissioner] by order may:

8 (1) find that a violation occurred and impose a
9 penalty; or

10 (2) find that a violation did not occur.

11 (b) The notice of the department's [commissioner's] order
12 under Subsection (a) that is sent to the person in the manner
13 provided by Chapter 2001, Government Code, must include a statement
14 of the right of the person to judicial review of the order.

15 SECTION 3.1258. Section 486.028, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 486.028. STAY OF ENFORCEMENT OF PENALTY. (a) Within
18 the period prescribed by Section 486.027, a person who files a
19 petition for judicial review may:

20 (1) stay enforcement of the penalty by:

21 (A) paying the amount of the penalty to the court
22 for placement in an escrow account; or

23 (B) giving the court a supersedeas bond approved
24 by the court that:

25 (i) is for the amount of the penalty; and

26 (ii) is effective until all judicial review
27 of the order is final; or

1 (2) request the court to stay enforcement of the
2 penalty by:

3 (A) filing with the court an affidavit of the
4 person stating that the person is financially unable to pay the
5 penalty and is financially unable to give the supersedeas bond; and

6 (B) sending a copy of the affidavit to the
7 department [~~commissioner~~] by certified mail.

8 (b) Following receipt of a copy of an affidavit under
9 Subsection (a)(2), the department [~~commissioner~~] may file with the
10 court, before the sixth day after the date of receipt, a contest to
11 the affidavit. The court shall hold a hearing on the facts alleged
12 in the affidavit as soon as practicable and shall stay the
13 enforcement of the penalty on finding that the alleged facts are
14 true. The person who files an affidavit has the burden of proving
15 that the person is financially unable to pay the penalty or to give
16 a supersedeas bond.

17 SECTION 3.1259. Section 501.001, Health and Safety Code, is
18 amended by amending Subdivisions (3) and (4) and adding Subdivision
19 (4-a) to read as follows:

20 (3) "Commissioner" means the commissioner of state
21 [~~public~~] health services.

22 (4) "Department" means the [~~Texas~~] Department of State
23 Health Services.

24 (4-a) "Executive commissioner" means the executive
25 commissioner of the Health and Human Services Commission.

26 SECTION 3.1260. Sections 501.002(d) and (k), Health and
27 Safety Code, are amended to read as follows:

1 (d) A substance or article is extremely flammable,
2 flammable, or combustible if it is defined as extremely flammable,
3 flammable, or combustible by rule adopted by [or] the executive
4 commissioner [~~board~~]. The executive commissioner [~~board~~] shall
5 define the terms as they are defined by the Federal Hazardous
6 Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and by
7 federal regulations adopted under that Act. The terms each have the
8 meaning assigned by the Federal Hazardous Substances Act (15 U.S.C.
9 Section 1261 et seq.) and by federal regulations adopted under that
10 Act, as of September 1, 2001.

11 (k) The following are not hazardous substances:

12 (1) a pesticide subject to Chapter 76, Agriculture
13 Code, or to the Federal Insecticide, Fungicide, and Rodenticide Act
14 (7 U.S.C. Section 136 [~~135~~] et seq.);

15 (2) a food, drug, or cosmetic subject to the Federal
16 Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) or
17 Chapter 431 (Texas Food, Drug, and Cosmetic Act);

18 (3) a beverage complying with or subject to the
19 Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.);

20 (4) a substance intended for use as fuel that is stored
21 in a container and used in the heating, cooking, or refrigeration
22 system of a private residence; and

23 (5) source material, special nuclear material, or
24 by-product material as defined in the Atomic Energy Act of 1954 (42
25 U.S.C. Chapter 23) and regulations issued under that Act by the
26 United States Nuclear Regulatory Commission [~~Atomic Energy~~
27 ~~Commission~~].

1 SECTION 3.1261. Section 501.003, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 501.003. DESIGNATION OF RADIOACTIVE SUBSTANCE AS
4 HAZARDOUS. The executive commissioner [board] by rule shall
5 designate a radioactive substance to be a hazardous substance if,
6 with respect to the substance as used in a particular class of
7 article or as packaged, the executive commissioner [board] finds
8 that the substance is sufficiently hazardous as to require labeling
9 as a hazardous substance under this chapter in order to protect the
10 public health.

11 SECTION 3.1262. Sections 501.021(a) and (b), Health and
12 Safety Code, are amended to read as follows:

13 (a) The executive commissioner [board] by rule shall
14 establish the methods for determining the flammability of solids,
15 fabrics, children's clothing, household furnishings, and the
16 contents of self-pressurized containers that the executive
17 commissioner [board] finds are generally applicable to those
18 materials or containers.

19 (b) The executive commissioner [board] by rule shall
20 establish flammability standards for articles described by
21 Subsection (a). The standards must conform to standards prescribed
22 by federal regulations adopted under the federal Flammable Fabrics
23 Act (15 U.S.C. Section 1191 et seq.), as amended, the Federal
24 Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as
25 amended, and the federal Consumer Product Safety Act (15 U.S.C.
26 Section 2051 et seq.), as amended. Until the executive
27 commissioner [board] adopts standards, the flammability standards

1 for articles described by Subsection (a) are the standards
2 prescribed by federal regulations adopted under the federal
3 Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), the Federal
4 Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and the
5 federal Consumer Product Safety Act (15 U.S.C. Section 2051 et
6 seq.) as of September 1, 2001.

7 SECTION 3.1263. Sections 501.022(a), (b), (c), (d), and
8 (e), Health and Safety Code, are amended to read as follows:

9 (a) The executive commissioner [board] by rule shall
10 designate as a banned hazardous substance any article, including
11 clothing intended for the use of children, that is not properly
12 packaged or that does not comply with applicable flammability
13 standards established by the executive commissioner [board]. The
14 executive commissioner's [board's] determination that articles of
15 clothing of a specified range of sizes are intended for the use of a
16 child 14 years of age or younger is conclusive.

17 (b) The executive commissioner [board] by rule shall
18 designate as a banned hazardous substance any toy or other article,
19 other than clothing, intended for the use of children that is a
20 hazardous substance or bears or contains a hazardous substance in a
21 manner accessible by a child to whom the toy or other article is
22 entrusted.

23 (c) The executive commissioner [board] by rule shall
24 designate as a banned hazardous substance any hazardous substance
25 intended or packaged in a form suitable for use in a household that,
26 notwithstanding cautionary labeling required by this chapter, is
27 potentially so dangerous or hazardous when present or used in a

1 household that the protection of the public health and safety may be
2 adequately served only by keeping the substance out of commerce.

3 (d) The executive commissioner [board] by rule shall
4 designate as a banned hazardous substance any article subject to
5 this chapter that cannot be labeled adequately to protect the
6 public health and safety or that presents an imminent danger to the
7 public health and safety.

8 (e) This section does not apply to a toy or article such as a
9 chemical set that because of its functional purpose requires the
10 inclusion of a hazardous substance or necessarily presents an
11 electrical, mechanical, or thermal hazard if the toy or article:

12 (1) bears labeling that in the judgment of the
13 department [board] gives adequate directions and warnings for safe
14 use; and

15 (2) is intended for use by children who have attained
16 sufficient maturity and may reasonably be expected to read and heed
17 those directions and warnings.

18 SECTION 3.1264. Section 501.0231, Health and Safety Code,
19 is amended to read as follows:

20 Sec. 501.0231. LABELING OF CERTAIN TOYS AND GAMES. (a)
21 Toys or games intended for use by children, including the parts of
22 those toys or games, shall be labeled in the manner required by
23 department rule [~~of the board~~]. The [board's] rules adopted under
24 this subsection shall be consistent with federal guidelines and
25 regulations adopted under the Federal Hazardous Substances Act (15
26 U.S.C. Section 1261 et seq.), as amended. Until the executive
27 commissioner [board] adopts rules under this subsection, the toys,

1 games, and parts shall be labeled in the manner required by federal
2 guidelines and regulations adopted under the Federal Hazardous
3 Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1,
4 2001.

5 (b) Latex balloons, small balls, marbles, and any toy or
6 game that contains such a balloon, ball, or marble shall be labeled
7 in the manner required by department rule [~~of the board~~]. The
8 [board's] rules adopted under this subsection shall be consistent
9 with federal guidelines and regulations adopted under the Federal
10 Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as
11 amended. Until the executive commissioner [~~board~~] adopts rules
12 under this subsection, latex balloons, small balls, marbles, and
13 any toy or game that contains such a balloon, ball, or marble shall
14 be labeled in the manner required by federal guidelines and
15 regulations adopted under the Federal Hazardous Substances Act (15
16 U.S.C. Section 1261 et seq.) as of September 1, 2001.

17 SECTION 3.1265. Section 501.0232(b), Health and Safety
18 Code, is amended to read as follows:

19 (b) Art materials shall be labeled in the manner required by
20 department rule [~~of the board~~]. The [board's] rules adopted under
21 this subsection shall be consistent with the Federal Hazardous
22 Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and
23 federal regulations adopted under that Act. Until the executive
24 commissioner [~~board~~] adopts rules under this subsection, art
25 materials shall be labeled in the manner required by the Federal
26 Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and
27 federal regulations adopted under that Act, as of September 1,

1 2001.

2 SECTION 3.1266. Section 501.0233, Health and Safety Code,
3 is amended to read as follows:

4 Sec. 501.0233. PACKAGING OF HAZARDOUS SUBSTANCES.
5 Hazardous substances shall be packaged in the manner required by
6 special packaging rules adopted by the executive commissioner
7 [~~board~~]. The [~~board's~~] rules adopted under this section shall be
8 consistent with federal special packaging regulations adopted
9 under the federal Poison Prevention Packaging Act of 1970 (15
10 U.S.C. Section 1471 et seq.), as amended. Until the executive
11 commissioner [~~board~~] adopts rules under this section, hazardous
12 substances shall be packaged in the manner required by federal
13 special packaging regulations adopted under the federal Poison
14 Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.),
15 as of September 1, 2001.

16 SECTION 3.1267. Sections 501.024(b) and (d), Health and
17 Safety Code, are amended to read as follows:

18 (b) The executive commissioner [~~board~~] by rule shall detail
19 the registration requirements and prescribe the contents of the
20 registration statement.

21 (d) The initial registration statement and each annual
22 registration statement must be accompanied by a fee prescribed by
23 the executive commissioner by rule [~~board~~].

24 SECTION 3.1268. Section 501.025, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 501.025. RULES. The executive commissioner [~~board~~]
27 may adopt reasonable rules necessary for the efficient

1 administration and enforcement of this chapter. The rules must
2 conform with regulations adopted under the Federal Hazardous
3 Substances Act (15 U.S.C. Section 1261 et seq.), as amended, the
4 federal Consumer Product Safety Act (15 U.S.C. Section 2051 et
5 seq.), as amended, the federal Flammable Fabrics Act (15 U.S.C.
6 Section 1191 et seq.), as amended, and the federal Poison
7 Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.),
8 as amended, as applicable.

9 SECTION 3.1269. Section 501.026, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 501.026. FEES. The executive commissioner [board] by
12 rule shall set reasonable registration fees in an amount as
13 prescribed by Section 12.0111 [designed to recover not more than
14 the costs to the department of administering, monitoring compliance
15 with, enforcing, and conducting tests under this chapter].

16 SECTION 3.1270. Section 501.104(b), Health and Safety Code,
17 is amended to read as follows:

18 (b) If the person accepts the determination and recommended
19 penalty or if the person fails to respond to the notice, the
20 department [commissioner of public health] by order shall [approve
21 the determination and] impose the recommended penalty.

22 SECTION 3.1271. Section 501.105, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 501.105. HEARING. (a) If the person requests a
25 hearing, the department [commissioner of public health] shall refer
26 the matter to the State Office of Administrative Hearings, which
27 shall promptly set a hearing date. The department shall [and] give

1 written notice of the time and place of the hearing to the person.
2 An administrative law judge of the State Office of Administrative
3 Hearings shall conduct the hearing.

4 (b) The administrative law judge shall make findings of fact
5 and conclusions of law and promptly issue to the department
6 [~~commissioner of public health~~] a written proposal for a decision
7 about the occurrence of the violation and the amount of a proposed
8 penalty.

9 SECTION 3.1272. Section 501.106, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 501.106. DECISION BY DEPARTMENT [~~COMMISSIONER~~]. (a)
12 Based on the findings of fact, conclusions of law, and proposal for
13 a decision, the department [~~commissioner of public health~~] by order
14 may:

15 (1) find that a violation occurred and impose a
16 penalty; or

17 (2) find that a violation did not occur.

18 (b) The notice of the department's [~~commissioner's~~] order
19 under Subsection (a) that is sent to the person in accordance with
20 Chapter 2001, Government Code, must include a statement of the
21 right of the person to judicial review of the order.

22 SECTION 3.1273. Section 501.107, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 501.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
25 Within 30 days after the date an order of the department
26 [~~commissioner of public health~~] under Section 501.106 that imposes
27 an administrative penalty becomes final, the person shall:

1 (1) pay the penalty; or
2 (2) file a petition for judicial review of the
3 department's [~~commissioner's~~] order contesting the occurrence of
4 the violation, the amount of the penalty, or both.

5 SECTION 3.1274. Section 501.108, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 501.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within
8 the 30-day period prescribed by Section 501.107, a person who files
9 a petition for judicial review may:

10 (1) stay enforcement of the penalty by:
11 (A) paying the penalty to the court for placement
12 in an escrow account; or
13 (B) giving the court a supersedeas bond approved
14 by the court that:

15 (i) is for the amount of the penalty; and
16 (ii) is effective until all judicial review
17 of the department's [~~commissioner's~~] order is final; or

18 (2) request the court to stay enforcement of the
19 penalty by:

20 (A) filing with the court a sworn affidavit of
21 the person stating that the person is financially unable to pay the
22 penalty and is financially unable to give the supersedeas bond; and
23 (B) giving a copy of the affidavit to the
24 department [~~commissioner of public health~~] by certified mail.

25 (b) If the department [~~commissioner of public health~~]
26 receives a copy of an affidavit under Subsection (a)(2), the
27 department [~~commissioner~~] may file with the court, within five days

1 after the date the copy is received, a contest to the affidavit.
2 The court shall hold a hearing on the facts alleged in the affidavit
3 as soon as practicable and shall stay the enforcement of the penalty
4 on finding that the alleged facts are true. The person who files an
5 affidavit has the burden of proving that the person is financially
6 unable to pay the penalty or to give a supersedeas bond.

7 SECTION 3.1275. Section 502.003, Health and Safety Code, is
8 amended by amending Subdivisions (3), (4), (6), (9), (11), (13),
9 (15), (18), and (20) and adding Subdivision (11-a) to read as
10 follows:

11 (3) "Chemical manufacturer" means an employer in North
12 American Industry Classification System (NAICS) [~~Standard~~
13 ~~Industrial Classification (SIC)~~] Codes 31-33 [~~20-39~~] with a
14 workplace where chemicals are produced for use or distribution.

15 (4) "Chemical name" means:

16 (A) the scientific designation of a chemical in
17 accordance with the nomenclature system developed by the
18 International Union of Pure and Applied Chemistry (IUPAC) or the
19 Chemical Abstracts Service (CAS) rules of nomenclature; or

20 (B) a name that clearly identifies the chemical
21 for the purpose of conducting a hazard classification [~~evaluation~~].

22 (6) "Department" means the [~~Texas~~] Department of State
23 Health Services.

24 (9) "Distributor" means a business in North American
25 Industry Classification System (NAICS) Code 424 or 425 [~~Standard~~
26 ~~Industrial Classification Major Industry Group 516 or 517~~] that
27 supplies hazardous chemicals to an employer who must comply with

1 this chapter [Act].

2 (11) "Employer" means a person engaged in private
3 business who is regulated by the federal Occupational Safety and
4 Health Act of 1970 (29 U.S.C. Section 651 et seq.) [~~(Pub. L. No.~~
~~91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub.~~
~~L. No. 91-173)~~] or the Federal Mine Safety and Health [Amendments]
7 Act of 1977 (30 U.S.C. Section 801 et seq.) [~~(Pub. L. No. 95-164)~~]
8 on September 1, 1993 [~~the effective date of this Act~~], or the state
9 or a political subdivision of the state, including a state, county,
10 or municipal agency, a public school, a college or university, a
11 river authority or publicly owned utility, a volunteer emergency
12 service organization, and other similar employers. The term does
13 not include any person to whom the federal Occupational Safety and
14 Health Act of 1970 (29 U.S.C. Section 651 et seq.) [~~(Pub. L. No.~~
~~91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub.~~
~~L. No. 91-173)~~] or the Federal Mine Safety and Health [Amendments]
17 Act of 1977 (30 U.S.C. Section 801 et seq.) [~~(Pub. L. No. 95-164)~~]
18 is applicable if that employer is covered by the OSHA standard or
19 the other two federal laws.

20 (11-a) "Executive commissioner" means the executive
21 commissioner of the Health and Human Services Commission.

22 (13) "Hazardous chemical" or "chemical" means an
23 element, compound, or mixture of elements or compounds that is a
24 physical hazard or health hazard as defined by the OSHA standard in
25 29 CFR Section 1910.1200(c), or a hazardous substance as classified
26 under [~~defined by~~] the OSHA standard in 29 CFR Section
27 1910.1200(d)(3), or by OSHA's written interpretations. A hazard

1 determination may be made by employers who choose not to rely on the
2 evaluations made by their suppliers if there are relevant
3 qualitative or quantitative differences. A hazard determination
4 shall involve the best professional judgment.

5 (15) "Identity" means a chemical or common name, or
6 alphabetical or numerical identification, that is indicated on the
7 [material] safety data sheet (SDS) [~~(MSDS)~~] for the chemical. The
8 identity used must permit cross-references to be made among the
9 workplace chemical list, the label, and the SDS [~~MSDS~~].

10 (18) "MSHA standard" means the Hazard Communication
11 Standard issued by the Mine [~~Mining~~] Safety and Health
12 Administration.

13 (20) "Physical hazard" means a chemical that is
14 classified as posing one of the following hazardous effects:
15 explosive; flammable (gases, aerosols, liquids, or solids);
16 oxidizer (liquid, solid, or gas); self-reactive; pyrophoric
17 (liquid or solid); self-heating; organic peroxide; corrosive to
18 metal; gas under pressure; or in contact with water emits flammable
19 gas [~~for which there is scientifically valid evidence that it is a~~
20 ~~combustible liquid, a compressed gas, explosive, flammable, an~~
21 ~~organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or~~
22 ~~water-reactive in terms defined in the OSHA standard~~].

23 SECTION 3.1276. Section 502.003(17), Health and Safety
24 Code, is redesignated as Section 502.003(20-a), Health and Safety
25 Code, and amended to read as follows:

26 (20-a) "Safety [~~(17) "Material Safety~~] Data Sheet"
27 ("SDS") [~~("MSDS")~~] means written or printed material concerning a

1 hazardous chemical [~~a document containing chemical hazard and safe~~
2 ~~handling information~~] that is prepared in accordance with the
3 requirements of the OSHA standard for that material [~~document~~].

4 SECTION 3.1277. Section 502.004(f), Health and Safety Code,
5 is amended to read as follows:

6 (f) This chapter does not apply to:

7 (1) any hazardous waste, as that term is defined by the
8 federal Solid Waste Disposal Act[~~, as amended by the Resource~~
9 ~~Conservation and Recovery Act of 1976, as amended~~] (42 U.S.C.
10 Section 6901 et seq.), when subject to regulations issued under
11 that Act by the Environmental Protection Agency;

12 (2) a chemical in a laboratory under the direct
13 supervision or guidance of a technically qualified individual if:

14 (A) labels on incoming containers of chemicals
15 are not removed or defaced;

16 (B) the employer complies with Sections 502.006
17 and 502.009 with respect to laboratory employees; and

18 (C) the laboratory is not used primarily to
19 produce hazardous chemicals in bulk for commercial purposes;

20 (3) tobacco or tobacco products;

21 (4) wood or wood products;

22 (5) articles;

23 (6) food, drugs, cosmetics, or alcoholic beverages in
24 a retail food sale establishment that are packaged for sale to
25 consumers;

26 (7) food, drugs, or cosmetics intended for personal
27 consumption by an employee while in the workplace;

1 (8) any consumer product or hazardous substance, as
2 those terms are defined in the Consumer Product Safety Act (15
3 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act
4 (15 U.S.C. Section 1261 et seq.), respectively, if the employer can
5 demonstrate it is used in the workplace in the same manner as normal
6 consumer use and if the use results in a duration and frequency of
7 exposure that is not greater than exposures experienced by
8 consumers;

9 (9) any drug, as that term is defined in the Federal
10 Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.); and

11 (10) radioactive waste.

12 SECTION 3.1278. Sections 502.005(a) and (d), Health and
13 Safety Code, are amended to read as follows:

14 (a) For the purpose of worker right-to-know, an employer
15 shall compile and maintain a workplace chemical list that contains
16 the following information for each hazardous chemical normally
17 present in the workplace or temporary workplace in excess of 55
18 gallons or 500 pounds or in excess of an amount that the executive
19 commissioner [board] determines by rule for certain highly toxic or
20 dangerous hazardous chemicals:

21 (1) the identity used on the SDS [~~MSDS~~] and container
22 label; and

23 (2) the work area in which the hazardous chemical is
24 normally present.

25 (d) An employer shall maintain a workplace chemical list for
26 at least 30 years. The employer shall send complete records to the
27 department [~~director~~] if the employer ceases to operate.

1 SECTION 3.1279. Section 502.006, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 502.006. [MATERIAL] SAFETY DATA SHEET. (a) A chemical
4 manufacturer or distributor shall provide appropriate [material]
5 safety data sheets to employers who acquire hazardous chemicals in
6 this state with each initial shipment and with the first shipment
7 after an SDS [MSDS] is updated. The SDSS [MSDSS] must conform to
8 the most current requirements of the OSHA standard.

9 (b) An employer shall maintain a legible copy of a current
10 SDS [MSDS] for each hazardous chemical purchased. If the employer
11 does not have a current SDS [MSDS] for a hazardous chemical when the
12 chemical is received at the workplace, the employer shall request
13 an SDS [MSDS] in writing from the manufacturer or distributor in a
14 timely manner or shall otherwise obtain a current SDS [MSDS]. The
15 manufacturer or distributor shall respond with an appropriate SDS
16 [MSDS] in a timely manner.

17 (c) Safety [Material safety] data sheets shall be readily
18 available, on request, for review by employees or designated
19 representatives at each workplace.

20 (d) A copy of an SDS [MSDS] maintained by an employer under
21 this section shall be provided to the department [director] on
22 request.

23 SECTION 3.1280. Section 502.007(a), Health and Safety Code,
24 is amended to read as follows:

25 (a) A label on an existing container of a hazardous chemical
26 may not be removed or defaced unless it is illegible, inaccurate, or
27 does not conform to the OSHA standard or other applicable labeling

1 requirement. Primary containers must be relabeled with at least
2 the identity appearing on the SDS [~~MSDS~~], the pertinent physical
3 and health hazards, including the organs that would be affected,
4 and the manufacturer's name and address. Except as provided by
5 Subsection (b), secondary containers must be relabeled with at
6 least the identity appearing on the SDS [~~MSDS~~] and appropriate
7 hazard warnings.

8 SECTION 3.1281. Section 502.008, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 502.008. OUTREACH PROGRAM. (a) The department
11 [~~director~~] shall develop an outreach program that:

12 (1) consists of an education and training program in
13 the form of instructional materials to assist employers in
14 fulfilling the requirements of Section 502.009; and

15 (2) includes the development and distribution of a
16 supply of informational leaflets concerning employer's duties,
17 employee rights, the outreach program, and the effects of hazardous
18 chemicals.

19 (b) The department [~~director~~] may contract with a public
20 institution of higher education or other public or private
21 organization to develop and implement the outreach program.

22 (c) The department [~~director~~] shall develop and provide to
23 each employer a suitable form of notice providing employees with
24 information relating to employee rights under this chapter.

25 (d) The department [~~director~~] shall publicize the
26 availability of information to answer inquiries from employees,
27 employers, or the public in this state concerning the effects of

1 hazardous chemicals.

2 (e) In cooperation with the department ~~[director]~~, an
3 employer may provide an outreach program in the community.

4 SECTION 3.1282. Sections 502.009(c) and (i), Health and
5 Safety Code, are amended to read as follows:

6 (c) An education and training program must include, as
7 appropriate:

8 (1) information on interpreting labels and SDSs
9 ~~[MSDSs]~~ and the relationship between those two methods of hazard
10 communication;

11 (2) the location by work area, acute and chronic
12 effects, and safe handling of hazardous chemicals known to be
13 present in the employees' work area and to which the employees may
14 be exposed;

15 (3) the proper use of protective equipment and first
16 aid treatment to be used with respect to the hazardous chemicals to
17 which the employees may be exposed; and

18 (4) general safety instructions on the handling,
19 cleanup procedures, and disposal of hazardous chemicals.

20 (i) As part of an outreach program created in accordance
21 with Section 502.008, the department ~~[director]~~ shall develop an
22 education and training assistance program to assist employers who
23 are unable to develop the programs because of size or other
24 practical considerations. The program shall be made available to
25 those employers on request.

26 SECTION 3.1283. Sections 502.011(a), (b), and (c), Health
27 and Safety Code, are amended to read as follows:

1 (a) The department [director] or the department's
2 [director's] representative shall investigate in a timely manner a
3 complaint received in writing from an employee or an employee's
4 designated representative relating to an alleged violation of this
5 chapter by an employer.

6 (b) A complaint received from a person relating to an
7 alleged violation shall be referred to the federal Occupational
8 Safety and Health Administration (OSHA) or to the federal Mine
9 Safety and Health Administration (MSHA) if the complaint is related
10 to an applicable OSHA or MSHA requirement and the applicable OSHA or
11 MSHA standard is in effect. The department [director] or the
12 department's [director's] representative shall investigate the
13 complaint if:

14 (1) the applicable OSHA or MSHA standard is not in
15 effect; or

16 (2) the complaint is based on a requirement of this
17 chapter.

18 (c) On presentation of appropriate credentials, a
19 department [an officer or] representative [of the director] may
20 enter a workplace at reasonable times to inspect and investigate
21 complaints.

22 SECTION 3.1284. Sections 502.014(a), (b), (k), and (l),
23 Health and Safety Code, are amended to read as follows:

24 (a) The department [director] may assess an administrative
25 penalty against an employer who violates this chapter, department
26 [board] rules adopted under this chapter, or an order issued under
27 this chapter.

1 (b) If the department finds one or more violations of this
2 chapter, the department [director] may issue a notice of violation
3 to the employer. The notice of violation shall specifically
4 describe the violation, refer to the applicable section or
5 subsection of the chapter, and state the amount of the penalty, if
6 any, to be assessed by the department [director].

7 (k) The department [director] may not assess an
8 administrative penalty for any violation that has been corrected
9 within 15 days after the date of receipt of the notice of violation,
10 the date of receipt of the department's response by the employer, or
11 10 days after the date of receipt by the employer of the
12 department's response to the informal conference provided for in
13 Subsection (g) [(e)], whichever is later.

14 (l) In determining the amount of the penalty, the department
15 [director] shall consider:

16 (1) the employer's previous violations;
17 (2) the seriousness of the violation;
18 (3) any hazard to the health and safety of the
19 employee;
20 (4) the employer's demonstrated good faith;
21 (5) the duration of the violation; and
22 (6) other matters as justice may require.

23 SECTION 3.1285. Sections 502.0141(b), (c), and (d), Health
24 and Safety Code, are amended to read as follows:

25 (b) If a hearing is to be held, the department shall refer
26 the matter to the State Office of Administrative Hearings and an
27 administrative law judge of that office [director] shall make

1 findings of fact and shall issue to the department a written
2 proposal for decision regarding the occurrence of the violation and
3 the amount of the penalty that may be warranted.

4 (c) If the employer charged with the violation does not
5 request a hearing in a timely manner, the department [~~director~~] may
6 assess a penalty after determining that a violation has occurred
7 and the amount of the penalty that may be warranted.

8 (d) After making a determination under this section that a
9 penalty is to be assessed against an employer, the department
10 [~~director~~] shall issue an order requiring that the employer pay the
11 penalty.

12 SECTION 3.1286. Sections 502.0142(a), (b), (c), (e), (f),
13 and (g), Health and Safety Code, are amended to read as follows:

14 (a) Not later than the 30th day after the date an order
15 finding that a violation has occurred is issued, the department
16 [~~director~~] shall inform the employer against whom the order is
17 issued of the amount of the penalty for the violation.

18 (b) Within 30 days after the date the department's
19 [~~director's~~] order is final as provided by Subchapter F, Chapter
20 2001, Government Code, the employer shall:

21 (1) pay the amount of the penalty;
22 (2) pay the amount of the penalty and file a petition
23 for judicial review contesting the occurrence of the violation, the
24 amount of the penalty, or both the occurrence of the violation and
25 the amount of the penalty; or

26 (3) without paying the amount of the penalty, file a
27 petition for judicial review contesting the occurrence of the

1 violation, the amount of the penalty, or both the occurrence of the
2 violation and the amount of the penalty.

3 (c) Within the 30-day period, an employer who acts under
4 Subsection (b)(3) may:

5 (1) stay enforcement of the penalty by:

6 (A) paying the amount of the penalty to the court
7 for placement in an escrow account; or

8 (B) giving to the court a supersedeas bond that
9 is approved by the court for the amount of the penalty and that is
10 effective until all judicial review of the department's
11 [~~director's~~] order is final; or

12 (2) request the court to stay enforcement of the
13 penalty by:

14 (A) filing with the court a sworn affidavit of
15 the employer stating that the employer is financially unable to pay
16 the amount of the penalty and is financially unable to give the
17 supersedeas bond; and

18 (B) giving a copy of the affidavit to the
19 department [~~director~~] by certified mail.

20 (e) If the department [~~director~~] receives a copy of an
21 affidavit under Subsection (c)(2), the department [~~director~~] may
22 file with the court, within five days after the date the copy is
23 received, a contest to the affidavit. The court shall hold a
24 hearing on the facts alleged in the affidavit as soon as practicable
25 and shall stay the enforcement of the penalty on finding that the
26 alleged facts are true. The employer who files an affidavit has the
27 burden of proving that the employer is financially unable to pay the

1 amount of the penalty and to give a supersedeas bond.

2 (f) If the employer does not pay the amount of the penalty
3 and the enforcement of the penalty is not stayed, the department
4 [director] may refer the matter to the attorney general for
5 collection of the amount of the penalty.

6 (g) Judicial review of the order of the department
7 [director]:

8 (1) is instituted by filing a petition as provided by
9 Subchapter G, Chapter 2001, Government Code; and

10 (2) is under the substantial evidence rule.

11 SECTION 3.1287. Section 502.015(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) If it appears that an employer has violated, is
14 violating, or is threatening to violate this chapter or any rule
15 adopted or order issued under this chapter, the department
16 [director] may request the attorney general or the district,
17 county, or city attorney of the municipality or county in which the
18 violation has occurred, is occurring, or may occur to institute a
19 civil suit for:

20 (1) injunctive relief to restrain the employer from
21 continuing the violation or threat of violation;

22 (2) the assessment and recovery of a civil penalty for
23 a violation; or

24 (3) both the injunctive relief and the civil penalty.

25 SECTION 3.1288. Section 502.017(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) An employer shall post and maintain adequate notice, at

1 locations where notices are normally posted, informing employees of
2 their rights under this chapter. If the department [director] does
3 not prepare the notice under Section 502.008, the employer shall
4 prepare the notice.

5 SECTION 3.1289. Section 502.018, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 502.018. STANDARD FOR PHYSICIAN TREATMENT. For the
8 purposes of this chapter, the requirements in the OSHA standard for
9 physicians treating employees (29 CFR Section 1910.1200(i)
10 [~~1910.1200(1)~~

11 SECTION 3.1290. Section 502.019, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 502.019. RULES. The executive commissioner [board]
14 may adopt rules and administrative procedures reasonably necessary
15 to carry out the purposes of this chapter.

16 SECTION 3.1291. Section 503.001(3), Health and Safety Code,
17 is amended to read as follows:

18 (3) "Department" means the [~~Texas~~] Department of State
19 Health Services.

20 SECTION 3.1292. Section 503.002(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) The Toxic Substances Coordinating Committee is composed
23 of one representative from the:

24 (1) department;

25 (2) Department of Agriculture;

26 (3) Texas [~~Natural Resource Conservation~~] Commission
27 on Environmental Quality;

1 (4) Parks and Wildlife Department;
2 (5) Department of Public Safety of the State of Texas;
3 and
4 (6) Railroad Commission of Texas.

5 SECTION 3.1293. Section 505.002(b), Health and Safety Code,
6 is amended to read as follows:

7 (b) It is the intent and purpose of this chapter to ensure
8 that accessibility to information regarding hazardous chemicals is
9 provided to:

10 (1) fire departments responsible for dealing with
11 chemical hazards during an emergency;

12 (2) local emergency planning committees and other
13 emergency planning organizations; and

14 (3) the department [~~director~~] to make the information
15 available to the public through specific procedures.

16 SECTION 3.1294. Section 505.003(b), Health and Safety Code,
17 is amended to read as follows:

18 (b) In this chapter, a reference to North American Industry
19 [~~Standard Industrial~~] Classification System (NAICS) [~~(SIC)~~], to
20 nomenclature systems developed by the International Union of Pure
21 and Applied Chemistry (IUPAC) or the Chemical Abstracts Service
22 (CAS), or to other information, including information such as
23 classification codes, performance standards, systematic names,
24 standards, and systems described in publications sponsored by
25 private technical or trade organizations, means a reference to the
26 most current version of the publication.

27 SECTION 3.1295. Section 505.004, Health and Safety Code, is

1 amended by adding Subdivisions (3-a) and (8-a) and amending
2 Subdivisions (5), (10), (13), (15), (20), (22), and (24) to read as
3 follows:

4 (3-a) "Commissioner" means the commissioner of state
5 health services.

6 (5) "Department" means the [~~Texas~~] Department of State
7 Health Services.

8 (8-a) "Executive commissioner" means the executive
9 commissioner of the Health and Human Services Commission.

10 (10) "Facility" means all buildings, equipment,
11 structures, and other stationary items that are located on a single
12 site or on contiguous or adjacent sites, that are owned or operated
13 by the same person, or by any person who controls, is controlled by,
14 or is under common control with that person, and that is in North
15 American Industry Classification System (NAICS) [~~Standard~~
16 Industrial] Codes 31-33 [~~(SIC) 20-39~~].

17 (13) "Hazardous chemical" has the meaning given that
18 term by 29 CFR 1910.1200(c), except that the term does not include:

19 (A) any food, food additive, color additive,
20 drug, or cosmetic regulated by the United States Food and Drug
21 Administration;

22 (B) any substance present as a solid in any
23 manufactured item to the extent exposure to the substance does not
24 occur under normal conditions of use;

25 (C) any substance to the extent it is used for
26 personal, family, or household purposes, or is present in the same
27 form and concentration as a product packaged for distribution and

1 use by the public;

2 (D) any substance to the extent it is used in a
3 research laboratory or a hospital or other medical facility under
4 the direct supervision of a technically qualified individual; and

5 (E) any substance to the extent it is used in
6 routine agricultural operations or is a fertilizer held for sale by
7 a retailer to the ultimate consumer.

8 (15) "Identity" means any chemical or common name, or
9 alphabetical or numerical identification, that is indicated on the
10 [material] safety data sheet (SDS) [~~(MSDS)~~] for the chemical. The
11 identity used must permit cross-references to be made among the
12 facility chemical list, the label, and the SDS [~~MSDS~~].

13 (20) "Physical hazard" means a chemical that is
14 classified as posing one of the following hazardous effects:
15 explosive; flammable (gases, aerosols, liquids, or solids);
16 oxidizer (liquid, solid, or gas); self-reactive; pyrophoric
17 (liquid or solid); self-heating; organic peroxide; corrosive to
18 metal; gas under pressure; or in contact with water emits flammable
19 gas [~~for which there is scientifically valid evidence that it is a~~
20 ~~combustible liquid, a compressed gas, explosive, flammable, an~~
21 ~~organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or~~
22 ~~water-reactive in terms defined in the OSHA standard~~].

23 (22) "Threshold planning quantity" means the minimum
24 quantity of an extremely hazardous substance for which a facility
25 owner or operator must participate in emergency planning, as
26 established [defined] by the EPA pursuant to EPCRA, Section 302.

27 (24) "Workplace chemical list" means a list of

1 hazardous chemicals developed under 29 CFR Section
2 1910.1200(e)(1)(i) [~~1910.1200(e)(1)~~].

3 SECTION 3.1296. Subdivision (18), Section [505.004](#), Health
4 and Safety Code, is redesignated as Subdivision (20-a), Section
5 [505.004](#), Health and Safety Code, and amended to read as follows:

6 (20-a) "Safety [~~(18)~~ "~~Material safety~~]" data sheet" or
7 "SDS" [~~MSDS~~] means a document containing chemical hazard and safe
8 handling information that is prepared in accordance with the
9 requirements of the OSHA standard for that document.

10 SECTION 3.1297. Sections [505.005\(a\)](#) and (d), Health and
11 Safety Code, are amended to read as follows:

12 (a) Facility operators whose facilities are in NAICS [~~SIC~~]
13 Codes 31-33 [~~20-39~~] shall comply with this chapter.

14 (d) The department [~~director~~] shall develop an outreach
15 program concerning the public's ability to obtain information under
16 this chapter similar to the outreach program under Section [502.008](#).

17 SECTION 3.1298. Sections [505.006\(a\)](#), (c), and (f), Health
18 and Safety Code, are amended to read as follows:

19 (a) For the purpose of community right-to-know, a facility
20 operator covered by this chapter shall compile and maintain a tier
21 two form that contains information on hazardous chemicals present
22 in the facility in quantities that meet or exceed thresholds
23 determined by the EPA in 40 CFR Part 370, or at any other reporting
24 thresholds as determined by department [~~board~~] rule for certain
25 highly toxic or extremely hazardous substances.

26 (c) Each tier two form shall be filed annually with the
27 appropriate fee according to the procedures specified by department

1 [board] rules. The facility operator shall furnish a copy of each
2 tier two form to the fire chief of the fire department having
3 jurisdiction over the facility and to the appropriate local
4 emergency planning committee.

5 (f) A facility operator shall file a [material] safety data
6 sheet with the department on the department's request.

7 SECTION 3.1299. Sections 505.008(b) and (c), Health and
8 Safety Code, are amended to read as follows:

9 (b) A facility operator, on request, shall give the fire
10 chief or the local emergency planning committee such additional
11 information on types and amounts of hazardous chemicals present at
12 a facility as the requestor may need for emergency planning
13 purposes. A facility operator, on request, shall give the
14 commissioner [~~director~~], the fire chief, or the local emergency
15 planning committee a copy of the SDS [MSDS] for any chemical on the
16 tier two form furnished under Section 505.006 or for any chemical
17 present at the facility.

18 (c) The executive commissioner [board] by rule may require
19 certain categories of facility operators under certain
20 circumstances to implement the National Fire Protection
21 Association 704 identification system if an equivalent system is
22 not in use.

23 SECTION 3.1300. Section 505.009, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 505.009. COMPLAINTS AND INVESTIGATIONS. On
26 presentation of appropriate credentials, a department [~~an officer~~
27 or] representative [~~of the director~~] may enter a facility at

1 reasonable times to inspect and investigate complaints.

2 SECTION 3.1301. Sections 505.010(a), (b), (k), (l), and
3 (m), Health and Safety Code, are amended to read as follows:

4 (a) The department [director] may assess an administrative
5 penalty against an operator who violates this chapter, [board]
6 rules adopted under this chapter, or an order issued under this
7 chapter.

8 (b) If the department finds one or more violations of this
9 chapter, the department [director] may issue a notice of violation
10 to the operator. The notice of violation shall specifically
11 describe the violation, refer to the applicable section or
12 subsection of this chapter, and state the amount of the penalty, if
13 any, to be assessed by the department [director].

14 (k) Except as provided in Subsection (l), the department
15 [director] may not assess an administrative penalty for any
16 violation that has been corrected within 15 days of the date of the
17 notice of violation, the date of receipt of the department's
18 response by the employer, or 10 days after the date of receipt by
19 the operator of the department's response to the informal
20 conference provided for in Subsection (d), whichever is later.

21 (l) If a violation involves a failure to make a good faith
22 effort to comply with this chapter, the department [director] may
23 assess the administrative penalty at any time.

24 (m) In determining the amount of the penalty, the department
25 [director] shall consider:

- 26 (1) the operator's previous violations;
27 (2) the seriousness of the violation;

- 1 (3) any hazard to the health and safety of the public;
2 (4) the employer's demonstrated good faith;
3 (5) the duration of the violation; and
4 (6) other matters as justice may require.

5 SECTION 3.1302. Sections 505.011(b), (c), and (d), Health
6 and Safety Code, are amended to read as follows:

7 (b) If a hearing is held, the department shall refer the
8 matter to the State Office of Administrative Hearings. An
9 administrative law judge of that office [director] shall make
10 findings of fact and shall issue a written proposal for decision
11 regarding the occurrence of the violation and the amount of the
12 penalty that may be warranted.

13 (c) If the facility operator charged with the violation does
14 not request a hearing, the department [director] may assess a
15 penalty after determining that a violation has occurred and the
16 amount of the penalty that may be warranted.

17 (d) After [making] a determination under this section is
18 made that a penalty is to be assessed against a facility operator,
19 the department [director] shall issue an order requiring that the
20 facility operator pay the penalty.

21 SECTION 3.1303. Sections 505.012(a), (b), (c), (d), (e),
22 and (f), Health and Safety Code, are amended to read as follows:

23 (a) Not later than the 30th day after the date an order
24 finding that a violation has occurred is issued, the department
25 [director] shall inform the facility operator against whom the
26 order is issued of the amount of the penalty for the violation.

27 (b) Except as provided by in Section 505.011(e), within 30

1 days after the date the department's [director's] order is final as
2 provided by Subchapter F, Chapter 2001, Government Code, the
3 facility operator shall:

4 (1) pay the amount of the penalty;
5 (2) pay the amount of the penalty and file a petition
6 for judicial review contesting the occurrence of the violation, the
7 amount of the penalty, or both the occurrence of the violation and
8 the amount of the penalty; or

9 (3) without paying the amount of the penalty, file a
10 petition for judicial review contesting the occurrence of the
11 violation, the amount of the penalty, or both the occurrence of the
12 violation and the amount of the penalty.

13 (c) Within the 30-day period, a facility operator who acts
14 under Subsection (b)(3) may:

15 (1) stay enforcement of the penalty by:
16 (A) paying the amount of the penalty to the court
17 for placement in an escrow account; or
18 (B) giving to the court a supersedeas bond that
19 is approved by the court for the amount of the penalty and that is
20 effective until all judicial review of the department's
21 [director's] order is final; or

22 (2) request the court to stay enforcement of the
23 penalty by:

24 (A) filing with the court a sworn affidavit of
25 the facility operator stating that the facility operator is
26 financially unable to pay the amount of the penalty and is
27 financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department [director] by certified mail.

3 (d) If the department [~~director~~] receives a copy of an
4 affidavit under Subsection (c)(2), the department [~~director~~] may
5 file with the court, within five days after the date the copy is
6 received, a contest to the affidavit. The court shall hold a
7 hearing on the facts alleged in the affidavit as soon as practicable
8 and shall stay the enforcement of the penalty on finding that the
9 alleged facts are true. The facility operator who files an
10 affidavit has the burden of proving that the facility operator is
11 financially unable to pay the amount of the penalty and to give a
12 supersedeas bond.

13 (e) If the facility operator does not pay the amount of the
14 penalty and the enforcement of the penalty is not stayed, the
15 department [director] may refer the matter to the attorney general
16 for collection of the amount of the penalty.

17 (f) Judicial review of the order of the department
18 [director]:

21 (2) is under the substantial evidence rule.

22 SECTION 3.1304. Sections 505.016(a), (b), and (c), Health
23 and Safety Code, are amended to read as follows:

24 (a) The executive commissioner [board] may adopt rules and
25 administrative procedures reasonably necessary to carry out the
26 purposes of this chapter.

27 (b) The executive commissioner by rule [board] may

1 authorize the collection of annual fees from facility operators for
2 the filing of tier two forms required by this chapter. Except as
3 provided by Subsection (d), fees may be used only to fund activities
4 under this chapter. The fee for facilities may not exceed:

5 (1) \$100 for each required submission having no more
6 than 25 hazardous chemicals or hazardous chemical categories;

7 (2) \$200 for each required submission having no more
8 than 50 hazardous chemicals or hazardous chemical categories;

9 (3) \$300 for each required submission having no more
10 than 75 hazardous chemicals or hazardous chemical categories;

11 (4) \$400 for each required submission having no more
12 than 100 hazardous chemicals or hazardous chemical categories; or

13 (5) \$500 for each required submission having more than
14 100 hazardous chemicals or chemical categories.

15 (c) To minimize the fees, the executive commissioner
16 ~~board~~ by rule shall provide for consolidated filings of multiple
17 tier two forms for facility operators covered by Subsection (b) if
18 each of the tier two forms contains fewer than 25 items.

19 SECTION 3.1305. Section 506.002(b), Health and Safety Code,
20 is amended to read as follows:

21 (b) It is the intent and purpose of this chapter to ensure
22 that accessibility to information regarding hazardous chemical is
23 provided to:

24 (1) fire departments responsible for dealing with
25 chemical hazards during an emergency;

26 (2) local emergency planning committees and other
27 emergency planning organizations; and

1 (3) the department [~~director~~] to make the information
2 available to the public through specific procedures.

3 SECTION 3.1306. Section 506.004, Health and Safety Code, is
4 amended by adding Subdivisions (3-a) and (8-a) and amending
5 Subdivisions (5), (13), (15), (20), and (23) to read as follows:

6 (3-a) "Commissioner" means the commissioner of state
7 health services.

8 (5) "Department" means the [~~Texas~~] Department of State
9 Health Services.

10 (8-a) "Executive commissioner" means the executive
11 commissioner of the Health and Human Services Commission.

12 (13) "Hazardous chemical" has the meaning given that
13 term by 29 CFR 1910.1200(c), except that the term does not include:

14 (A) any food, food additive, color additive,
15 drug, or cosmetic regulated by the United States Food and Drug
16 Administration;

17 (B) any substance present as a solid in any
18 manufactured item to the extent exposure to the substance does not
19 occur under normal conditions of use;

20 (C) any substance to the extent that it is used
21 for personal, family, or household purposes, or is present in the
22 same form and concentration as a product packaged for distribution
23 and use by the public;

24 (D) any substance to the extent it is used in a
25 research laboratory or a hospital or other medical facility under
26 the direct supervision of a technically qualified individual; and

27 (E) any substance to the extent it is used in

1 routine agricultural operations or is a fertilizer held for sale by
2 a retailer to the ultimate consumer.

3 (15) "Identity" means any chemical or common name, or
4 alphabetical or numerical identification, that is indicated on the
5 [material] safety data sheet (SDS) [~~(MSDS)~~] for the chemical. The
6 identity used must permit cross-references to be made among the
7 facility chemical list, the label, and the SDS [~~MSDS~~].

8 (20) "Physical hazard" means a chemical that is
9 classified as posing one of the following hazardous effects:
10 explosive; flammable (gases, aerosols, liquids, or solids);
11 oxidizer (liquid, solid, or gas); self-reactive; pyrophoric
12 (liquid or solid); self-heating; organic peroxide; corrosive to
13 metal; gas under pressure; or in contact with water emits flammable
14 gas [~~for which there is scientifically valid evidence that it is a~~
15 ~~combustible liquid, a compressed gas, explosive, flammable, an~~
16 ~~organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or~~
17 ~~water-reactive in terms defined in the OSHA standard~~].

18 (23) "Threshold planning quantity" means the minimum
19 quantity of an extremely hazardous substance for which a facility
20 owner or operator must participate in emergency planning, as
21 established [~~defined~~] by the EPA pursuant to EPCRA, Section 302.

22 SECTION 3.1307. Section 506.004(18), Health and Safety
23 Code, is redesignated as Section 506.004(21-a), Health and Safety
24 Code, and amended to read as follows:

25 (21-a) "Safety [~~(+18)~~ ~~"Material safety~~] data sheet" or
26 "SDS" [~~"MSDS"~~] means a document containing chemical hazard and safe
27 handling information that is prepared in accordance with the

1 requirements of the OSHA standard for that document.

2 SECTION 3.1308. Section 506.005(d), Health and Safety Code,
3 is amended to read as follows:

4 (d) The department [director] shall develop an outreach
5 program concerning the public's ability to obtain information under
6 this chapter similar to the outreach program under Section 502.008.

7 SECTION 3.1309. Sections 506.006(a), (c), and (e), Health
8 and Safety Code, are amended to read as follows:

9 (a) For the purpose of community right-to-know, a facility
10 operator covered by this chapter shall compile and maintain a tier
11 two form that contains information on hazardous chemicals present
12 in the facility in quantities that meet or exceed thresholds
13 determined by the EPA in 40 CFR Part 370, or at any other reporting
14 thresholds as determined by department [board] rule for certain
15 highly toxic or extremely hazardous substances.

16 (c) Each tier two form shall be filed annually with the
17 appropriate fee according to the procedures specified by department
18 [board] rules. The facility operator shall furnish a copy of each
19 tier two form to the fire chief of the fire department having
20 jurisdiction over the facility and to the appropriate local
21 emergency planning committee.

22 (e) A facility operator shall file a [material] safety data
23 sheet with the department on the department's request.

24 SECTION 3.1310. Sections 506.008(b) and (c), Health and
25 Safety Code, are amended to read as follows:

26 (b) A facility operator, on request, shall give the fire
27 chief or the local emergency planning committee such additional

1 information on types and amounts of hazardous chemicals present at
2 a facility as the requestor may need for emergency planning
3 purposes. A facility operator, on request, shall give the
4 commissioner [~~director~~], the fire chief, or the local emergency
5 planning committee a copy of the SDS [~~MSDS~~] for any chemical on the
6 tier two form furnished under Section [506.006](#) or for any chemical
7 present at the facility.

8 (c) The executive commissioner [~~board~~] by rule may require
9 certain categories of facility operators under certain
10 circumstances to implement the National Fire Protection
11 Association 704 identification system if an equivalent system is
12 not in use.

13 SECTION 3.1311. Section [506.009](#), Health and Safety Code, is
14 amended to read as follows:

15 Sec. 506.009. COMPLAINTS AND INVESTIGATIONS. On
16 presentation of appropriate credentials, a department [~~an officer~~
17 ~~or~~] representative [~~of the director~~] may enter a facility at
18 reasonable times to inspect and investigate complaints.

19 SECTION 3.1312. Sections [506.010\(a\), \(b\), \(k\), and \(l\)](#),
20 Health and Safety Code, are amended to read as follows:

21 (a) The department [~~director~~] may assess an administrative
22 penalty against an operator who violates this chapter, [~~board~~]
23 rules adopted under this chapter, or an order issued under this
24 chapter.

25 (b) If the department finds one or more violations of this
26 chapter, the department [~~director~~] may issue a notice of violation
27 to the operator. The notice of violation shall specifically

1 describe the violation, refer to the applicable section or
2 subsection of this chapter, and state the amount of the penalty, if
3 any, to be assessed by the department ~~[director]~~.

4 (k) The department ~~[director]~~ may not assess an
5 administrative penalty for any violation that has been corrected
6 within 15 days of the date of receipt of the notice of violation,
7 the date of receipt of the department's response by the employer, or
8 10 days after the date of receipt by the operator of the
9 department's response to the informal conference provided for in
10 Subsection (d), whichever is later.

11 (l) In determining the amount of the penalty, the department
12 ~~[director]~~ shall consider:

13 (1) the operator's previous violations;
14 (2) the seriousness of the violation;
15 (3) any hazard to the health and safety of the public;
16 (4) the employer's demonstrated good faith;
17 (5) the duration of the violation; and
18 (6) other matters as justice may require.

19 SECTION 3.1313. Sections 506.011(b), (c), and (d), Health
20 and Safety Code, are amended to read as follows:

21 (b) If a hearing is held, the department shall refer the
22 matter to the State Office of Administrative Hearings. An
23 administrative law judge of that office ~~[director]~~ shall make
24 findings of fact and shall issue a written proposal for decision
25 regarding the occurrence of the violation and the amount of the
26 penalty that may be warranted.

27 (c) If the facility operator charged with the violation does

1 not request a hearing, the department [director] may assess a
2 penalty after determining that a violation has occurred and the
3 amount of the penalty that may be warranted.

4 (d) After [making] a determination is made under this
5 section that a penalty is to be assessed against a facility
6 operator, the department [director] shall issue an order requiring
7 that the facility operator pay the penalty.

8 SECTION 3.1314. Section 506.012, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 506.012. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL
11 REVIEW. (a) Not later than the 30th day after the date an order
12 finding that a violation has occurred is issued, the department
13 [director] shall inform the facility operator against whom the
14 order is issued of the amount of the penalty for the violation.

15 (b) Except as provided in Section 506.011(e), not later than
16 the 30th day after the date on which a decision or order charging a
17 facility operator with a penalty is final, the facility operator
18 shall pay the penalty in full, unless the facility operator seeks
19 judicial review of the amount of the penalty, the fact of the
20 violation, or both. The executive commissioner [board] may by rule
21 provide for appeals by the state and political subdivisions of the
22 state.

23 SECTION 3.1315. Section 506.013, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 506.013. REFUND OF ADMINISTRATIVE PENALTY. Not later
26 than the 30th day after the date of a judicial determination that an
27 administrative penalty against a facility operator should be

1 reduced or not assessed, the department [director] shall remit to
2 the facility operator the appropriate amount of any penalty payment
3 already paid plus accrued interest.

4 SECTION 3.1316. Section 506.014, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 506.014. RECOVERY OF ADMINISTRATIVE PENALTY BY
7 ATTORNEY GENERAL. The attorney general at the request of the
8 department [director] may bring a civil action to recover an
9 administrative penalty under this chapter.

10 SECTION 3.1317. Sections 506.017(a), (b), and (c), Health
11 and Safety Code, are amended to read as follows:

12 (a) The executive commissioner [board] may adopt rules and
13 administrative procedures reasonably necessary to carry out the
14 purposes of this chapter.

15 (b) The executive commissioner by rule [board] may
16 authorize the collection of annual fees from facility operators for
17 the filing of tier two forms required by this chapter. The fee may
18 not exceed:

19 (1) \$50 for each required submission having no more
20 than 75 hazardous chemicals or hazardous chemical categories; or

21 (2) \$100 for each required submission having more than
22 75 hazardous chemicals or chemical categories.

23 (c) To minimize the fees, the executive commissioner
24 [board] by rule shall provide for consolidated filings of multiple
25 tier two forms for facility operators covered by Subsection (b) if
26 each of the tier two forms contains fewer than 25 items.

27 SECTION 3.1318. Section 507.002(b), Health and Safety Code,

1 is amended to read as follows:

2 (b) It is the intent and purpose of this chapter to ensure
3 that accessibility to information regarding hazardous chemicals is
4 provided to:

5 (1) fire departments responsible for dealing with
6 chemical hazards during an emergency;

7 (2) local emergency planning committees and other
8 emergency planning organizations; and

9 (3) the department [~~director~~] to make the information
10 available to the public through specific procedures.

11 SECTION 3.1319. Section 507.004, Health and Safety Code, is
12 amended by adding Subdivisions (3-a) and (8-a) and amending
13 Subdivisions (5), (13), (15), (20), and (22) to read as follows:

14 (3-a) "Commissioner" means the commissioner of state
15 health services.

16 (5) "Department" means the [~~Texas~~] Department of State
17 Health Services.

18 (8-a) "Executive commissioner" means the executive
19 commissioner of the Health and Human Services Commission.

20 (13) "Hazardous chemical" has the meaning given that
21 term by 29 CFR 1910.1200(c), except that the term does not include:

22 (A) any food, food additive, color additive,
23 drug, or cosmetic regulated by the United States Food and Drug
24 Administration;

25 (B) any substance present as a solid in any
26 manufactured item to the extent exposure to the substance does not
27 occur under normal conditions of use;

1 (C) any substance to the extent that it is used
2 for personal, family, or household purposes, or is present in the
3 same form and concentration as a product packaged for distribution
4 and use by the general public;

5 (D) any substance to the extent it is used in a
6 research laboratory or a hospital or other medical facility under
7 the direct supervision of a technically qualified individual; and

8 (E) any substance to the extent it is used in
9 routine agricultural operations or is a fertilizer held for sale by
10 a retailer to the ultimate consumer.

11 (15) "Identity" means a chemical or common name, or
12 alphabetical or numerical identification, that is indicated on the
13 [material] safety data sheet (SDS) [~~(MSDS)~~] for the chemical. The
14 identity used must permit cross-references to be made among the
15 facility chemical list, the label, and the SDS [~~MSDS~~].

16 (20) "Physical hazard" means a chemical that is
17 classified as posing one of the following hazardous effects:
18 explosive; flammable (gases, aerosols, liquids, or solids);
19 oxidizer (liquid, solid, or gas); self-reactive; pyrophoric
20 (liquid or solid); self-heating; organic peroxide; corrosive to
21 metal; gas under pressure; or in contact with water emits flammable
22 gas [~~for which there is scientifically valid evidence that it is a~~
23 ~~combustible liquid, a compressed gas, explosive, flammable, an~~
24 ~~organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or~~
25 ~~water-reactive in terms defined in the OSHA standard~~].

26 (22) "Threshold planning quantity" means the minimum
27 quantity of an extremely hazardous substance for which a facility

1 owner or operator must participate in emergency planning, as
2 established [~~defined~~] by the EPA pursuant to EPCRA, Section 302.

3 SECTION 3.1320. Subdivision (18), Section 507.004, Health
4 and Safety Code, is redesignated as Subdivision (20-a), Section
5 507.004, Health and Safety Code, and amended to read as follows:

6 (20-a) "Safety [~~(18)~~ "~~Material safety~~]" data sheet" or
7 "SDS" [~~"MSDS"~~] means a document containing chemical hazard and safe
8 handling information that is prepared in accordance with the
9 requirements of the OSHA standard for that document.

10 SECTION 3.1321. Section 507.005(d), Health and Safety Code,
11 is amended to read as follows:

12 (d) The department [~~director~~] shall develop an outreach
13 program concerning the public's ability to obtain information under
14 this chapter similar to the outreach program under Section 502.008.

15 SECTION 3.1322. Sections 507.006(a), (c), and (f), Health
16 and Safety Code, are amended to read as follows:

17 (a) For the purpose of community right-to-know, a facility
18 operator covered by this chapter shall compile and maintain a tier
19 two form that contains information on hazardous chemicals present
20 in the facility in quantities that meet or exceed thresholds
21 determined by the EPA in 40 CFR Part 370, or at any other reporting
22 thresholds as determined by department [~~board~~] rule for certain
23 highly toxic or extremely hazardous substances.

24 (c) Each tier two form shall be filed annually with the
25 appropriate fee according to the procedures specified by department
26 [~~board~~] rules. The facility operator shall furnish a copy of each
27 tier two form to the fire chief of the fire department having

1 jurisdiction over the facility and to the appropriate local
2 emergency planning committee.

3 (f) A facility operator shall file a [material] safety data
4 sheet with the department on the department's request.

5 SECTION 3.1323. Sections 507.007(b) and (c), Health and
6 Safety Code, are amended to read as follows:

7 (b) A facility operator, on request, shall give the fire
8 chief or the local emergency planning committee such additional
9 information on types and amounts of hazardous chemicals present at
10 a facility as the requestor may need for emergency planning
11 purposes. A facility operator, on request, shall give the
12 commissioner [~~director~~], the fire chief, or the local emergency
13 planning committee a copy of the SDS [~~MSDS~~] for any chemical on the
14 tier two form furnished under Section 507.006 or for any chemical
15 present at the facility.

16 (c) The executive commissioner [~~board~~] by rule may require
17 certain categories of facility operators under certain
18 circumstances to implement the National Fire Protection
19 Association 704 identification system if an equivalent system is
20 not in use.

21 SECTION 3.1324. Section 507.008, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 507.008. COMPLAINTS AND INVESTIGATIONS. On
24 presentation of appropriate credentials, a department [~~an officer~~
25 ~~or~~] representative [~~of the director~~] may enter a facility at
26 reasonable times to inspect and investigate complaints.

27 SECTION 3.1325. Sections 507.009(a), (b), (k), (l), and

1 (m), Health and Safety Code, are amended to read as follows:

2 (a) The department [director] may assess an administrative
3 penalty against a facility operator who violates this chapter,
4 [board] rules adopted under this chapter, or an order issued under
5 this chapter.

6 (b) If the department finds one or more violations of this
7 chapter, the department [director] may issue a notice of violation
8 to the operator. The notice of violation shall specifically
9 describe the violation, refer to the applicable section or
10 subsection of this chapter, and state the amount of the penalty, if
11 any, to be assessed by the department [director].

12 (k) Except as provided in Subsection (l), the department
13 [director] may not assess an administrative penalty for any
14 violation that has been corrected within 15 days of the date of
15 receipt of the notice of violation, the date of receipt of the
16 department's response by the employer, or 10 days after the date of
17 receipt by the operator of the department's response to the
18 informal conference provided for in Subsection (d), whichever is
19 later.

20 (l) If a violation involves a failure to make a good-faith
21 effort to comply with this chapter, the department [director] may
22 assess the administrative penalty at any time.

23 (m) In determining the amount of the penalty, the department
24 [director] shall consider:

- 25 (1) the operator's previous violations;
26 (2) the seriousness of the violation;
27 (3) any hazard to the health and safety of the public;

- 1 (4) the operator's demonstrated good faith;
2 (5) the duration of the violation; and
3 (6) other matters as justice may require.

4 SECTION 3.1326. Sections 507.010(b), (c), and (d), Health
5 and Safety Code, are amended to read as follows:

6 (b) If a hearing is held, the department shall refer the
7 matter to the State Office of Administrative Hearings. An
8 administrative law judge of that office [director] shall make
9 findings of fact and shall issue a written proposal for decision
10 regarding the occurrence of the violation and the amount of the
11 penalty that may be warranted.

12 (c) If the facility operator charged with the violation does
13 not request a hearing, the department [director] may assess a
14 penalty after determining that a violation has occurred and the
15 amount of the penalty that may be warranted.

16 (d) After [making] a determination is made under this
17 section that a penalty is to be assessed against a facility
18 operator, the department [director] shall issue an order requiring
19 that the facility operator pay the penalty.

20 SECTION 3.1327. Sections 507.011(a), (b), (c), (d), (e),
21 and (f), Health and Safety Code, are amended to read as follows:

22 (a) Not later than the 30th day after the date an order
23 finding that a violation has occurred is issued, the department
24 [director] shall inform the facility operator against whom the
25 order is issued of the amount of the penalty for the violation.

26 (b) Except as provided by Section 507.010(e), within 30 days
27 after the date the department's [director's] order is final as

1 provided by Subchapter F, Chapter 2001, Government Code, the
2 facility operator shall:

3 (1) pay the amount of the penalty;

4 (2) pay the amount of the penalty and file a petition
5 for judicial review contesting the occurrence of the violation, the
6 amount of the penalty, or both the occurrence of the violation and
7 the amount of the penalty; or

8 (3) without paying the amount of the penalty, file a
9 petition for judicial review contesting the occurrence of the
10 violation, the amount of the penalty, or both the occurrence of the
11 violation and the amount of the penalty.

12 (c) Within the 30-day period, a facility operator who acts
13 under Subsection (b)(3) may:

14 (1) stay enforcement of the penalty by:

15 (A) paying the amount of the penalty to the court
16 for placement in an escrow account; or

17 (B) giving to the court a supersedeas bond that
18 is approved by the court for the amount of the penalty and that is
19 effective until all judicial review of the department's
20 [director's] order is final; or

21 (2) request the court to stay enforcement of the
22 penalty by:

23 (A) filing with the court a sworn affidavit of
24 the facility operator stating that the facility operator is
25 financially unable to pay the amount of the penalty and is
26 financially unable to give the supersedeas bond; and

27 (B) giving a copy of the affidavit to the

1 department [~~executive director~~] by certified mail.

2 (d) If the department [~~director~~] receives a copy of an
3 affidavit under Subsection (c)(2), the department [~~director~~] may
4 file with the court, within five days after the date the copy is
5 received, a contest to the affidavit. The court shall hold a
6 hearing on the facts alleged in the affidavit as soon as practicable
7 and shall stay the enforcement of the penalty on finding that the
8 alleged facts are true. The facility operator who files an
9 affidavit has the burden of proving that the facility operator is
10 financially unable to pay the amount of the penalty and to give a
11 supersedeas bond.

12 (e) If the facility operator does not pay the amount of the
13 penalty and the enforcement of the penalty is not stayed, the
14 department [~~director~~] may refer the matter to the attorney general
15 for collection of the amount of the penalty.

16 (f) Judicial review of the order of the department
17 [~~director~~]:

18 (1) is instituted by filing a petition as provided by
19 Subchapter G, Chapter 2001, Government Code; and
20 (2) is under the substantial evidence rule.

21 SECTION 3.1328. Sections 507.013(a), (b), and (c), Health
22 and Safety Code, are amended to read as follows:

23 (a) The executive commissioner [~~board~~] may adopt rules and
24 administrative procedures reasonably necessary to carry out the
25 purposes of this chapter.

26 (b) The executive commissioner by rule [~~board~~] may
27 authorize the collection of annual fees from facility operators for

1 the filing of tier two forms required by this chapter. Except as
2 provided by Subsection (d), fees may be used only to fund activities
3 under this chapter. The fee may not exceed:

- 4 (1) \$50 for each required submission having no more
5 than 75 hazardous chemicals or hazardous chemical categories; or
6 (2) \$100 for each required submission having more than
7 75 hazardous chemicals or chemical categories.

8 (c) To minimize the fees, the executive commissioner
9 ~~[board]~~ by rule shall provide for consolidated filings of multiple
10 tier two forms for facility operators covered by Subsection (b) if
11 each of the tier two forms contains fewer than 25 items.

12 SECTION 3.1329. Section 508.003, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 508.003. AREA QUARANTINE. (a) If the commissioner of
15 state ~~[public]~~ health services or one or more health authorities
16 determine that the introduction of an environmental or toxic agent
17 into the environment has occurred, the commissioner or authorities
18 may impose an area quarantine in the manner and subject to the
19 procedures provided for an area quarantine imposed under Section
20 81.085. The commissioner of state ~~[public]~~ health services or a
21 health authority may, with respect to an area quarantine imposed
22 under this chapter, exercise any power for a response to the
23 introduction of an environmental or toxic agent into the
24 environment under this section that is authorized by Section 81.085
25 for a response to an outbreak of a communicable disease. The area
26 quarantine must be accomplished by the least restrictive means
27 necessary to protect public health considering the availability of

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1 resources.

2 (b) A quarantine imposed by a health authority under this
3 section expires at the earlier of:

10 SECTION 3.1330. Section 508.004, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 508.004. CRIMINAL PENALTY. A person commits an
13 offense if the person knowingly fails or refuses to obey an order or
14 instruction of the commissioner of state [public] health services
15 or a health authority issued under this chapter and published
16 during an area quarantine under this section. An offense under this
17 subsection is a felony of the third degree.

18 SECTION 3.1331. The heading to Title 7, Health and Safety
19 Code, is amended to read as follows:

20 TITLE 7. MENTAL HEALTH AND INTELLECTUAL DISABILITY [MENTAL
21 RETARDATION]

22 SECTION 3.1332. The heading to Subtitle A, Title 7, Health
23 and Safety Code, is amended to read as follows:

24 SUBTITLE A. SERVICES FOR PERSONS WITH MENTAL ILLNESS OR AN
25 INTELLECTUAL DISABILITY

26 [TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION]

27 SECTION 3.1333. Chapter 531, Health and Safety Code, is

1 amended to read as follows:

2 CHAPTER 531. PROVISIONS GENERALLY APPLICABLE TO MENTAL HEALTH AND
3 INTELLECTUAL DISABILITY SERVICES [~~THE TEXAS DEPARTMENT OF MENTAL~~
4 ~~HEALTH AND MENTAL RETARDATION~~]

5 Sec. 531.001. PURPOSE; POLICY. (a) It is the purpose of
6 this subtitle to provide for the effective administration and
7 coordination of mental health and intellectual disability [~~mental~~
8 ~~retardation~~] services at the state and local levels.

9 (b) Recognizing that a variety of alternatives for serving
10 persons with mental illness or an intellectual disability [~~the~~
11 ~~mentally disabled~~] exists, it is the purpose of this subtitle to
12 ensure that a continuum of services is provided. The continuum of
13 services includes:

14 (1) mental health facilities operated by the [~~Texas~~
15 Department of State Health Services [~~Mental Health and Mental~~
16 ~~Retardation~~] and community services for persons with mental illness
17 provided by the department and other entities through contracts
18 with the department; or

19 (2) state supported living centers operated by the
20 Department of Aging and Disability Services and community services
21 for persons with an intellectual disability provided by the
22 department and other entities through contracts with the
23 department.

24 (c) It is the goal of this state to provide a comprehensive
25 range of services for persons with mental illness or an
26 intellectual disability [~~mental retardation~~] who need publicly
27 supported care, treatment, or habilitation. In providing those

1 services, efforts will be made to coordinate services and programs
2 with services and programs provided by other governmental entities
3 to minimize duplication and to share with other governmental
4 entities in financing those services and programs.

5 (d) It is the policy of this state that, when appropriate
6 and feasible, persons with mental illness or an intellectual
7 disability [~~mental retardation~~] shall be afforded treatment in
8 their own communities.

9 (e) It is the public policy of this state that mental health
10 and intellectual disability [~~mental retardation~~] services be the
11 responsibility of local agencies and organizations to the greatest
12 extent possible. The Department of State Health Services
13 [~~department~~] shall assist the local agencies and organizations by
14 coordinating the implementation of a statewide system of mental
15 health services. The Department of Aging and Disability Services
16 shall assist the local agencies and organizations by coordinating
17 the implementation of a statewide system of intellectual disability
18 services. Each [~~The~~] department shall ensure that mental health
19 and intellectual disability [~~mental retardation~~] services, as
20 applicable, are provided. Each [~~The~~] department shall provide
21 technical assistance for and regulation of the programs that
22 receive funding through contracts with that [~~the~~] department.

23 (f) It is the public policy of this state to offer services
24 first to those persons who are most in need. Therefore, funds
25 appropriated by the legislature for mental health and intellectual
26 disability [~~mental retardation~~] services may be spent only to
27 provide services to the priority populations identified in the

1 applicable department's long-range plan.

2 (g) It is the goal of this state to establish at least one
3 special officer for mental health assignment in each county. To
4 achieve this goal, the Department of State Health Services
5 ~~department~~ shall assist a local law enforcement agency that
6 desires to have an officer certified under Section 1701.404,
7 Occupations Code.

8 (h) It is the policy of this state that the Department of
9 State Health Services ~~[board]~~ serves as the state's mental health
10 authority and the Department of Aging and Disability Services
11 serves as the state's intellectual disability ~~[mental retardation]~~
12 authority. The executive commissioner ~~[and]~~ is responsible for the
13 planning, policy development, and resource development and
14 allocation for and oversight of mental health and intellectual
15 disability ~~[mental retardation]~~ services in this state. It is the
16 policy of this state that, when appropriate and feasible, the
17 executive commissioner ~~[board]~~ may delegate the executive
18 commissioner's ~~[board's]~~ authority to a single entity in each
19 region of the state that may function as the local mental health or
20 intellectual and developmental disability ~~[mental retardation]~~
21 authority for one or more service areas in the region.

22 Sec. 531.002. DEFINITIONS. In this subtitle:

23 (1) ~~["Board" means the Texas Board of Mental Health~~
24 ~~and Mental Retardation.]~~

25 ~~[+2]~~ "Business entity" means a sole proprietorship,
26 partnership, firm, corporation, holding company, joint-stock
27 company, receivership, trust, or any other entity recognized by

1 law.

2 (2) [+] "Chemical dependency" means:

3 (A) abuse of alcohol or a controlled substance;

4 (B) psychological or physical dependence on

5 alcohol or a controlled substance; or

6 (C) addiction to alcohol or a controlled

7 substance [has the meaning assigned by Section 461.002].

8 (3) "Commission" means the Health and Human Services
9 Commission.

10 (4) "Commissioner" means:

11 (A) the commissioner of state health services in
12 relation to mental health services; and

13 (B) the commissioner of aging and disability

14 services in relation to intellectual disability services [mental
15 health and mental retardation].

16 (5) "Community center" means a center established
17 under Subchapter A, Chapter 534.

18 (6) "Department" means:

19 (A) the [Texas] Department of State Health
20 Services in relation to mental health services; and

21 (B) the Department of Aging and Disability

22 Services in relation to intellectual disability services [Mental
23 Health and Mental Retardation].

24 (7) "Effective administration" includes continuous
25 planning and evaluation within the system that result in more
26 efficient fulfillment of the purposes and policies of this
27 subtitle.

1 (8) "Executive commissioner" means the executive
2 commissioner of the Health and Human Services Commission.

3 (9) "ICF-IID" [~~(8) "ICF-MR"~~] means the medical
4 assistance program serving individuals with intellectual and
5 developmental disabilities [~~persons with mental retardation~~] who
6 receive care in intermediate care facilities.

7 (10) "Intellectual disability services"
8 [~~(13) "Mental retardation services"~~] includes all services
9 concerned with research, prevention, and detection of intellectual
10 disabilities [~~mental retardation~~], and all services related to the
11 education, training, habilitation, care, treatment, and
12 supervision[~~, and control~~] of persons with an intellectual
13 disability [~~mental retardation~~], but does not include the education
14 of school-age persons that the public educational system is
15 authorized to provide.

16 (11) [49] "Local agency" means:

17 (A) a municipality, county, hospital district,
18 rehabilitation district, school district, state-supported
19 institution of higher education, or state-supported medical
20 school; or

21 (B) any organizational combination of two or more
22 of those entities.

23 (12) [41] "Local intellectual and developmental
24 disability [~~mental retardation~~] authority" means an entity to which
25 the executive commissioner [~~board~~] delegates the executive
26 commissioner's [~~its~~] authority and responsibility within a
27 specified region for planning, policy development, coordination,

1 including coordination with criminal justice entities, and
2 resource development and allocation and for supervising and
3 ensuring the provision of intellectual disability [~~mental~~
4 ~~retardation~~] services to persons with intellectual and
5 developmental disabilities [~~mental retardation~~] in the most
6 appropriate and available setting to meet individual needs in one
7 or more local service areas.

8 (13) [~~(10)~~] "Local mental health authority" means an
9 entity to which the executive commissioner [~~board~~] delegates the
10 executive commissioner's [~~its~~] authority and responsibility within
11 a specified region for planning, policy development, coordination,
12 including coordination with criminal justice entities, and
13 resource development and allocation and for supervising and
14 ensuring the provision of mental health services to persons with
15 mental illness in the most appropriate and available setting to
16 meet individual needs in one or more local service areas.

17 (14) [~~(12)~~] "Mental health services" includes all
18 services concerned with research, prevention, and detection of
19 mental disorders and disabilities, and all services necessary to
20 treat, care for [~~, control~~], supervise, and rehabilitate persons who
21 have a mental disorder or disability, including persons whose
22 mental disorders or disabilities result from a substance abuse
23 disorder [~~alcoholism or drug addiction~~].

24 (15) [~~(13-a)~~] "Person with a developmental
25 disability" means an individual with a severe, chronic disability
26 attributable to a mental or physical impairment or a combination of
27 mental and physical impairments that:

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(B) is likely to continue indefinitely;

4 (C) reflects the individual's need for a
5 combination and sequence of special, interdisciplinary, or generic
6 services, individualized supports, or other forms of assistance
7 that are of a lifelong or extended duration and are individually
8 planned and coordinated; and

9 (D) results in substantial functional
10 limitations in three or more of the following categories of major
11 life activity:

(i) self-care;

13 (ii) receptive and expressive language;

14 (iii) learning;

(iv) mobility;

(v) self-direction;

17 (vi) capacity for independent living; and

(vii) economic self-sufficiency.

19 (16) [(14)] "Person with an intellectual disability"
20 [~~mental retardation~~] means a person, other than a person with a
21 mental disorder, whose mental deficit requires the person to have
22 special training, education, supervision, treatment, or care [~~or~~
23 ~~control~~] in the person's home or community or in a state supported
24 living center [~~school~~].

25 (17) [15] "Priority population" means those groups
26 of persons with mental illness or an intellectual disability
27 [~~mental retardation~~] identified by the applicable department as

1 being most in need of mental health or intellectual disability
2 [mental retardation] services.

3 (18) [~~(16)~~] "Region" means the area within the
4 boundaries of the local agencies participating in the operation of
5 community centers established under Subchapter A, Chapter 534.

6 (19) [~~(17)~~] "State supported living center" means a
7 state-supported and structured residential facility operated by
8 the Department of Aging and Disability Services to provide to
9 clients with an intellectual disability [mental retardation] a
10 variety of services, including medical treatment, specialized
11 therapy, and training in the acquisition of personal, social, and
12 vocational skills.

13 Sec. 531.0021. REFERENCE TO STATE SCHOOL, [~~OR~~]
14 SUPERINTENDENT, OR LOCAL MENTAL RETARDATION AUTHORITY. (a) A
15 reference in law to a "state school" means a state supported living
16 center.

17 (b) A reference in law to a "superintendent," to the extent
18 the term is intended to refer to the person in charge of a state
19 supported living center, means the director of a state supported
20 living center.

21 (c) A reference in law to a "local mental retardation
22 authority" means a local intellectual and developmental disability
23 authority.

24 SECTION 3.1334. Subtitle A, Title 7, Health and Safety
25 Code, is amended by amending Chapter 532 and adding Chapter 532A to
26 read as follows:

27 CHAPTER 532. GENERAL PROVISIONS RELATING TO DEPARTMENT OF STATE

HEALTH SERVICES [ORGANIZATION OF TEXAS DEPARTMENT OF MENTAL HEALTH
AND MENTAL RETARDATION]

Sec. 532.001. DEFINITIONS; MENTAL HEALTH COMPONENTS

[COMPOSITION] OF DEPARTMENT. (a) In this chapter:

(2) "Department" means the Department of State Health

8 Services [The Texas Department of Mental Health and Mental
9 Retardation is composed of:]

10 [(1) the Texas Board of Mental Health and Mental
11 Petardation.

12 [(2) the commissioner of mental health and mental
13 retardation; and

[(3) a staff under the direction of the commissioner].

15 (b) The department includes [Department of Aging and
16 Disability Services and the Department of State Health Services
17 also include] community services operated by the department [those
18 departments] and the following facilities[, as appropriate]:

19 (1) the central office of the [each] department;

20 (2) the Austin State Hospital;

21 (3) the Big Spring State Hospital;

22 (4) the Kerrville State Hospital;

23 (5) the Rusk State Hospital;

24 (6) the San Antonio State Hospital

25 (7) the Terrell State Hospital;

26 (8) the North Texas State Hospital;

27 (9) [the Abilene State Supported Living Cen

1 [~~(10)~~ the Austin State Supported Living Center;
2 [~~(11)~~ the Brenham State Supported Living Center;
3 [~~(12)~~ the Corpus Christi State Supported Living
4 Center;
5 [~~(13)~~ the Denton State Supported Living Center;
6 [~~(14)~~ the Lubbock State Supported Living Center;
7 [~~(15)~~ the Lufkin State Supported Living Center;
8 [~~(16)~~ the Mexia State Supported Living Center;
9 [~~(17)~~ the Richmond State Supported Living Center;
10 [~~(18)~~ the San Angelo State Supported Living Center;
11 [~~(19)~~ the San Antonio State Supported Living Center;
12 [~~(20)~~ the El Paso State Supported Living Center;
13 [~~(21)~~] the Rio Grande State Center;
14 (10) [~~(22)~~] the Waco Center for Youth; and
15 (11) [~~(23)~~] the El Paso Psychiatric Center.

16 Sec. 532.002. [~~SUNSET PROVISION~~. The Texas Department of
17 Mental Health and Mental Retardation was abolished by Section 1.26,
18 Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular
19 Session, 2003, and the powers and duties of that agency under this
20 chapter were transferred to other agencies, which are subject to
21 Chapter 325, Government Code (Texas Sunset Act). Unless the
22 agencies to which those powers and duties are transferred are
23 continued in existence as provided by that Act, this chapter
24 expires September 1, 2015.

25 [Sec. 532.003. COMPOSITION OF BOARD. (a) The board is
26 composed of nine members appointed by the governor with the advice
27 and consent of the senate.

1 [~~(b) The members must be representatives of the public who~~
2 ~~have demonstrated interest in mental health, mental retardation,~~
3 ~~developmental disabilities, or the health and human services~~
4 ~~system. At least one member must be a consumer of services for~~
5 ~~persons with mental illness or mental retardation or a family~~
6 ~~member of a consumer of those services.~~

7 [~~(c) Appointments to the board shall be made without regard~~
8 ~~to the race, color, handicap, sex, religion, age, or national~~
9 ~~origin of the appointees.~~

10 [~~Sec. 532.0035. BOARD TRAINING.~~ ([a](#)) A person who is
11 ~~appointed to and qualifies for office as a member of the board may~~
12 ~~not vote, deliberate, or be counted as a member in attendance at a~~
13 ~~meeting of the board until the person completes a training session~~
14 ~~that complies with this section.~~

15 [~~(b) The training program must provide the person with~~
16 ~~information regarding:~~

17 [~~(1) the legislation that created the department and~~
18 ~~board;~~

19 [~~(2) the programs operated by the department;~~
20 [~~(3) the roles and functions of the department;~~

21 [~~(4) the rules of the department with an emphasis on~~
22 ~~the rules that relate to disciplinary and investigatory authority;~~

23 [~~(5) the current budget for the department;~~
24 [~~(6) the results of the most recent formal audit of the~~

25 ~~department;~~

26 [~~(7) the requirements of:~~

27 [~~(A) the open meetings law, Chapter 551,~~

1 ~~Government Code;~~

2 [(B) ~~the public information law, Chapter 552,~~

3 ~~Government Code;~~

4 [(C) ~~the administrative procedure law, Chapter~~

5 ~~2001, Government Code; and~~

6 [(D) ~~other laws relating to public officials,~~

7 ~~including conflict-of-interest laws; and~~

8 [(8) ~~any applicable ethics policies adopted by the~~
9 ~~department or the Texas Ethics Commission.~~

10 [(c) ~~A person appointed to the board is entitled to~~
11 ~~reimbursement, as provided by the General Appropriations Act, for~~
12 ~~the travel expenses incurred in attending the training program~~
13 ~~regardless of whether the attendance at the program occurs before~~
14 ~~or after the person qualifies for office.~~

15 [Sec. 532.004. RESTRICTIONS ON BOARD APPOINTMENT AND
16 ~~MEMBERSHIP AND ON DEPARTMENT EMPLOYMENT.~~ (a) ~~A person is not~~
17 ~~eligible for appointment as a board member if the person or the~~
18 ~~person's spouse:~~

19 [(1) ~~owns or controls, directly or indirectly, more~~
20 ~~than a 10 percent interest in a business entity or other~~
21 ~~organization regulated by the department or receiving funds from~~
22 ~~the department; or~~

23 [(2) ~~uses or receives a substantial amount of tangible~~
24 ~~goods, services, or funds from the department, other than:~~

25 [(A) ~~compensation or reimbursement authorized by~~
26 ~~law for board membership, attendance, or expenses; or~~

27 [(B) ~~as a parent or guardian of a client or~~

1 ~~patient receiving services from the department.~~

2 [(b) ~~An officer, employee, or paid consultant of a trade~~
3 ~~association in the field of mental health or mental retardation may~~
4 ~~not be a member of the board or an employee of the department.~~

5 [(c) ~~A person who is the spouse of an officer, employee, or~~
6 ~~paid consultant of a trade association in the field of mental health~~
7 ~~or mental retardation may not be a board member or a department~~
8 ~~employee grade 17 or over, including exempt employees, according to~~
9 ~~the position classification schedule under the General~~
10 ~~Appropriations Act.~~

11 [(d) ~~A person may not serve as a member of the board or act~~
12 ~~as the general counsel to the department if the person is required~~
13 ~~to register as a lobbyist under Chapter 305, Government Code,~~
14 ~~because of the person's activities for compensation on behalf of a~~
15 ~~profession related to the operation of the department.~~

16 [(e) ~~For purposes of this section, a trade association is a~~
17 ~~nonprofit, cooperative, voluntarily joined association of business~~
18 ~~or professional competitors designed to assist its members and its~~
19 ~~industry or profession in dealing with mutual business or~~
20 ~~professional problems and in promoting their common interest.~~

21 [Sec. 532.005. TERMS. Board members serve six-year terms.

22 [Sec. 532.006. CHAIRMAN. The governor shall designate a
23 ~~board member as chairman.~~

24 [Sec. 532.007. REMOVAL OF BOARD MEMBERS. (a) It is a
25 ~~ground for removal from the board if a member:~~

26 [(1) ~~is not eligible for appointment to the board at~~
27 ~~the time of appointment as provided by Section 532.004(a);~~

1 [~~(2) does not maintain during service on the board the~~
2 ~~qualifications required by Section 532.004(a);~~

3 [~~(3) violates a prohibition established by Section~~
4 ~~532.004(b), (c), or (d);~~

5 [~~(4) cannot discharge the member's duties for a~~
6 ~~substantial part of the term for which the member is appointed~~
7 ~~because of illness or disability; or~~

8 [~~(5) is absent from more than half of the regularly~~
9 ~~scheduled board meetings that the member is eligible to attend~~
10 ~~during a calendar year unless the absence is excused by majority~~
11 ~~vote of the board.~~

12 [~~(b) The validity of an action of the board is not affected~~
13 ~~by the fact that it is taken when a ground for removal of a board~~
14 ~~member exists.~~

15 [~~(c) If the commissioner has knowledge that a potential~~
16 ~~ground for removal exists, the commissioner shall notify the~~
17 ~~chairman of the board of the ground. The chairman shall then notify~~
18 ~~the governor that a potential ground for removal exists.~~

19 [~~Sec. 532.009. REIMBURSEMENT FOR EXPENSES; PER DIEM. A~~
20 ~~board member is entitled to receive.~~

21 [~~(1) reimbursement for actual and necessary expenses~~
22 ~~incurred in discharging the member's duties; and~~

23 [~~(2) the per diem compensation as provided by~~
24 ~~appropriation for each day the member actually performs official~~
25 ~~duties.~~

26 [~~Sec. 532.010. BOARD MEETINGS. (a) The board shall hold at~~
27 ~~least four regular meetings each year in the city of Austin on dates~~

1 set by board rule. The board shall adopt rules that provide for
2 holding special meetings.

3 [(b) A board meeting, other than a meeting to deliberate the
4 appointment of the commissioner, is open to the public.

5 [(c) The board shall adopt policies that provide the public
6 with a reasonable opportunity to appear before the board and to
7 speak on any issue under the board's jurisdiction.

8 [Sec. 532.011. COMMISSIONER. (a) The commissioner of
9 health and human services shall employ a commissioner in accordance
10 with Section 531.0056, Government Code.

11 [(b) To be qualified for employment as commissioner, a
12 person must have:

13 [(1) professional training and experience in the
14 administration or management of comprehensive health care or human
15 service operations; and

16 [(2) proven administrative and management ability,
17 preferably in the health care area.

18 [(d) The commissioner:

19 [(1) has the administrative and decisional powers
20 granted under this subtitle; and

21 [(2) shall administer the department and this subtitle
22 and ensure the effective administration of the department and its
23 programs and services.

24 [(e) The commissioner shall:

25 [(1) establish qualifications for department
26 personnel that balance clinical and programmatic knowledge and
27 management experience; and

1 [~~(2) standardize qualifications for personnel~~
2 ~~positions throughout the department.~~

3 [~~(f) The commissioner shall:~~

4 [~~(1) establish an organizational structure within the~~
5 ~~department that will promote the effective administration of this~~
6 ~~subtitle; and~~

7 [~~(2) establish the duties and functions of the~~
8 ~~department's staff.~~

9 [~~(g) The commissioner is responsible for implementation of~~
10 ~~the board's planning, policy, resource development and allocation,~~
11 ~~and oversight related to mental health and mental retardation~~
12 ~~services.~~

13 [~~Sec. 532.012.~~] MEDICAL DIRECTOR. (a) The commissioner
14 shall appoint a medical director.

15 (b) To be qualified for appointment as the medical director
16 under this section, a person must:

17 (1) be a physician licensed to practice in this state;
18 and

19 (2) have proven administrative experience and ability
20 in comprehensive health care or human service operations.

21 (c) The medical director reports to the commissioner and is
22 responsible for the following duties under this title:

23 (1) oversight of the quality and appropriateness of
24 clinical services delivered in department mental health facilities
25 or under contract to the department in relation to mental health
26 services; and

27 (2) leadership in physician recruitment and retention

1 and peer review.

2 Sec. 532.003 [~~532.014~~]. HEADS OF DEPARTMENTAL MENTAL HEALTH
3 FACILITIES. (a) The commissioner shall appoint the head of each
4 mental health facility the department administers.

5 (b) The head of a facility serves at the will of the
6 commissioner.

7 [Sec. 532.015. RULES AND POLICIES.] (a) The board shall
8 adopt rules and develop basic and general policies to guide the
9 department in administering this subtitle. The rules and policies
10 must be consistent with the purposes, policies, principles, and
11 standards stated in this subtitle.

12 [(b) The board shall adopt policies that clearly define the
13 respective responsibilities of the board and the staff of the
14 department.]

15 [Sec. 532.016. PERSONNEL.] (a) The commissioner shall
16 develop an intra-agency career ladder program. The program shall
17 require intra-agency posting of all nonentry level positions
18 concurrently with any public posting.

19 [(b) The commissioner shall develop a system of annual job
20 performance evaluations. All merit pay for department employees
21 must be based on the system established under this subsection.]

22 [(c) The department shall provide to its members and
23 employees, as often as necessary, information regarding their
24 qualifications under this subtitle and their responsibilities
25 under applicable laws relating to standards of conduct for state
officers or employees.]

27 [(d) The commissioner or the commissioner's designee shall

1 ~~prepare and maintain a written policy statement that implements a~~
2 ~~program of equal employment opportunity to ensure that all~~
3 ~~personnel decisions are made without regard to race, color,~~
4 ~~disability, sex, religion, age, or national origin. The policy~~
5 ~~statement must include:~~

6 ~~[(1) personnel policies, including policies relating~~
7 ~~to recruitment, evaluation, selection, training, and promotion of~~
8 ~~personnel, that show the intent of the department to avoid the~~
9 ~~unlawful employment practices described by Chapter 21, Labor Code;~~

10 ~~[(2) an analysis of the extent to which the~~
11 ~~composition of the department's personnel is in accordance with~~
12 ~~state and federal law and a description of reasonable methods to~~
13 ~~achieve compliance with state and federal law; and~~

14 ~~[(3) procedures by which a determination can be made~~
15 ~~of significant underutilization in the department work force of all~~
16 ~~persons for whom federal or state guidelines encourage a more~~
17 ~~equitable balance and reasonable methods to appropriately address~~
18 ~~those areas of significant underutilization.~~

19 ~~[(e) The policy statement must:~~

20 ~~[(1) be updated annually;~~

21 ~~[(2) be reviewed by the Commission on Human Rights for~~
22 ~~compliance with Subsection (d)(1); and~~

23 ~~[(3) be filed with the governor's office.~~

24 ~~[(f) The governor shall deliver a biennial report to the~~
25 ~~legislature based on the information received under Subsection~~
26 ~~(e)(3). The report may be made separately or as a part of other~~
27 ~~biennial reports made to the legislature.~~

1 [Sec. 532.018. AUDITS. (a) The financial transactions of
2 the department are subject to audit by the state auditor in
3 accordance with Chapter 321, Government Code.

4 [(b) The director of the internal audit unit shall report
5 directly to the commissioner.]

6 [(c) Each audit report shall be submitted directly to the
7 board.]

8 [Sec. 532.019. PUBLIC INTEREST INFORMATION AND COMPLAINTS.]

9 (a) The department shall prepare information of public interest
10 describing the functions of the department and the procedures by
11 which complaints are filed with and resolved by the department. The
12 department shall make the information available to the public and
13 appropriate state agencies.

14 [(b) The board by rule shall establish methods by which
15 consumers and service recipients are notified of the name, mailing
16 address, and telephone number of the department for the purpose of
17 directing complaints to the department. The board may provide for
18 that notification.]

19 [(1) on each registration form, application, or
20 written contract for services of an entity regulated under this
21 subtitle or of an entity the creation of which is authorized by this
22 subtitle;]

23 [(2) on a sign that is prominently displayed in the
24 place of business of each entity regulated under this subtitle or of
25 each entity the creation of which is authorized by this subtitle; or

26 [(3) in a bill for service provided by an entity
27 regulated under this subtitle or by an entity the creation of which

1 ~~is authorized by this subtitle.~~

2 ~~[(c) If a written complaint is filed with the department~~
3 ~~relating to an entity regulated by the department, the department,~~
4 ~~at least quarterly and until final disposition of the complaint,~~
5 ~~shall notify the complainant and the entity regulated by the~~
6 ~~department of the status of the complaint unless notice would~~
7 ~~jeopardize an undercover investigation.~~

8 ~~[(d) The department shall keep an information file about~~
9 ~~each complaint filed with the department relating to an entity~~
10 ~~regulated by the department.]~~

11 Sec. 532.004 [~~532.020~~]. ADVISORY COMMITTEES. (a) The
12 executive commissioner [board] shall appoint [~~a medical advisory~~
13 ~~committee and~~] any [~~other~~] advisory committees the executive
14 commissioner [~~board~~] considers necessary to assist in the effective
15 administration of the department's mental health [~~and mental~~
16 ~~retardation~~] programs.

17 (b) The department may reimburse committee members for
18 travel costs incurred in performing their duties as provided by
19 Section 2110.004, Government Code [~~at the rates authorized for~~
20 ~~state officers and employees under the General Appropriations Act~~].

21 ~~[Sec. 532.021. CITIZENS' PLANNING ADVISORY COMMITTEE. (a)~~
22 ~~The board shall appoint a citizens' planning advisory committee~~
23 ~~that is composed of.~~

24 ~~[(1) three persons who have demonstrated an interest~~
25 ~~in and knowledge of the department system and the legal, political,~~
26 ~~and economic environment in which the department operates;~~

27 ~~[(2) three persons who have expertise in the~~

1 ~~development and implementation of long-range plans; and~~

2 [+(3) ~~three members of the public.~~

3 [+(b) ~~In addition to the requirements of Subsection (a), at~~
4 ~~least one member must be a consumer of services for persons with~~
5 ~~mental illness or a family member of a consumer of those services,~~
6 ~~and at least one member must be a consumer of services for persons~~
7 ~~with mental retardation or a family member of a consumer of those~~
8 ~~services.~~

9 [+(c) ~~The committee shall:~~

10 [+(1) ~~advise the department on all stages of the~~
11 ~~development and implementation of the long-range plan required by~~
12 ~~Section 533.032;~~

13 [+(2) ~~review the development, implementation, and any~~
14 ~~necessary revisions of the long-range plan;~~

15 [+(3) ~~review the department's biennial budget request~~
16 ~~and assess the degree to which the request allows for~~
17 ~~implementation of the long-range plan; and~~

18 [+(4) ~~advise the board on:~~

19 [+(A) ~~the appropriateness of the long-range plan;~~
20 [+(B) ~~any identified problems related to the~~
21 ~~implementation of the plan;~~

22 [+(C) ~~any necessary revisions to the plan; and~~

23 [+(D) ~~the adequacy of the department's budget~~
24 ~~request.~~

25 [+(d) ~~The board shall review the committee's reports in~~
26 ~~conjunction with information provided by the department on the~~
27 ~~long-range plan or the biennial budget request.~~

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[e) The board shall allow the committee opportunities to appear before the board as needed.

3 [(f) Before a board meeting relating to the development,
4 implementation, or revision of the department's long-range plan,
5 the department shall, in a timely manner, provide the committee
6 with any information that will be presented to the board.

7 [(g) Before submitting the department's biennial budget
8 request to the board for discussion or approval, the department
9 shall, in a timely manner, provide the committee with a copy of the
10 budget request.

11 [(h) The department shall provide the committee with the
12 staff support necessary to allow the committee to fulfill its
13 duties.]

CHAPTER 532A. GENERAL PROVISIONS RELATING TO DEPARTMENT OF AGING
AND DISABILITY SERVICES

16 Sec. 532A.001. DEFINITIONS; INTELLECTUAL DISABILITY

17 COMPONENTS OF DEPARTMENT. (a) In this chapter:

18 (1) "Commissioner" means the commissioner of aging and
19 disability services.

22 (b) The department includes community services operated by
23 the department and the following facilities:

24 (1) the central office of the department;

25 (2) the Abilene State Supported Living Center;

(3) the Austin State Supported Living Center;

27 (4) the Brenham State Supported Living Center;

1 (5) the Corpus Christi State Supported Living Center;
2 (6) the Denton State Supported Living Center;
3 (7) the Lubbock State Supported Living Center;
4 (8) the Lufkin State Supported Living Center;
5 (9) the Mexia State Supported Living Center;
6 (10) the Richmond State Supported Living Center;
7 (11) the San Angelo State Supported Living Center;
8 (12) the San Antonio State Supported Living Center;
9 and
10 (13) the El Paso State Supported Living Center.

11 Sec. 532A.002. MEDICAL DIRECTOR. (a) The commissioner
12 shall appoint a medical director.

13 (b) To be qualified for appointment as the medical director
14 under this section, a person must:

15 (1) be a physician licensed to practice in this state;
16 and

17 (2) have proven administrative experience and ability
18 in comprehensive health care or human service operations.

19 (c) The medical director reports to the commissioner and is
20 responsible for the following duties under this title:

21 (1) oversight of the quality and appropriateness of
22 clinical services delivered in state supported living centers or
23 under contract to the department in relation to intellectual
24 disability services; and

25 (2) leadership in physician recruitment and retention
26 and peer review.

27 Sec. 532A.003. HEADS OF STATE SUPPORTED LIVING CENTERS.

1 (a) The commissioner shall appoint the head of each state supported
2 living center the department administers.

3 (b) The head of a state supported living center serves at
4 the will of the commissioner.

5 Sec. 532A.004. ADVISORY COMMITTEES. (a) The executive
6 commissioner shall appoint any advisory committees the executive
7 commissioner considers necessary to assist in the effective
8 administration of the department's intellectual disability
9 programs.

10 (b) The department may reimburse committee members for
11 travel costs incurred in performing their duties as provided by
12 Section 2110.004, Government Code.

13 SECTION 3.1335. Subtitle A, Title 7, Health and Safety
14 Code, is amended by amending Chapter 533 and adding Chapter 533A to
15 read as follows:

16 CHAPTER 533. POWERS AND DUTIES OF DEPARTMENT OF STATE HEALTH
17 SERVICES

18 SUBCHAPTER A. GENERAL POWERS AND DUTIES

19 Sec. 533.0001. DEFINITIONS. In this chapter:

20 (1) "Commissioner" means the commissioner of state
21 health services.

22 (2) "Department" means the Department of State Health
23 Services.

24 (3) "Department facility" means a facility listed in
25 Section 532.001(b).

26 Sec. 533.0002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
27 CONFLICT WITH OTHER LAW [POWERS AND DUTIES OF COMMISSIONER OF

1 ~~HEALTH AND HUMAN SERVICES.~~ The commissioner of health and human
2 services has the powers and duties relating to the board and
3 commissioner as provided by Section 531.0055, Government Code]. To
4 the extent a power or duty given to the [board or] commissioner by
5 this title or another law conflicts with Section 531.0055,
6 Government Code, Section 531.0055 controls.

7 Sec. 533.001. GIFTS AND GRANTS. (a) The department may
8 negotiate with a federal agency to obtain grants to assist in
9 expanding and improving mental health [~~and mental retardation~~] services in this state.

11 (b) The department may accept gifts and grants of money,
12 personal property, and real property to expand and improve the
13 mental health [~~and mental retardation~~] services available to the
14 people of this state.

15 (c) The department may accept gifts and grants of money,
16 personal property, and real property on behalf of a department
17 facility to expand and improve the mental health [~~or mental~~
18 ~~retardation~~] services available at the facility.

19 (d) The department shall use a gift or grant made for a
20 specific purpose in accordance with the purpose expressly
21 prescribed by the donor. The department may decline the gift or
22 grant if the department determines that it cannot be economically
23 used for that purpose.

24 (e) The department shall keep a record of each gift or grant
25 in the department's central office in the city of Austin.

26 [Sec. 533.002. COMPETITIVE REVIEW REQUIREMENT.] The
27 department shall establish procedures to:

1 [~~(1) promote more efficient use of public funds;~~
2 [~~(2) ensure periodic review of department management~~
3 ~~and support activities in order to:~~
4 [~~(A) improve department operations;~~
5 [~~(B) improve the determination of costs;~~
6 [~~(C) increase department productivity; and~~
7 [~~(D) remain competitive with the private sector,~~
8 ~~and~~
9 [~~(3) ensure that the state not provide a service that~~
10 ~~is available through the private sector unless the state can~~
11 ~~provide the service at a lower cost.]~~

12 Sec. 533.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL
13 AUTHORITIES AND COMMUNITY CENTERS. (a) To develop or expand a
14 volunteer mental health program in a local mental health [~~or mental~~
15 ~~retardation~~] authority or a community center, the department may
16 allocate available funds appropriated for providing volunteer
17 mental health services.

18 (b) The department shall develop formal policies that
19 encourage the growth and development of volunteer mental health
20 services in local mental health [~~or mental retardation~~] authorities
21 and community centers.

22 Sec. 533.004. LIENS. (a) The department and each community
23 center has a lien to secure reimbursement for the cost of providing
24 support, maintenance, and treatment to a patient with mental
25 illness [~~or client with mental retardation~~] in an amount equal to
26 the amount of reimbursement sought.

27 (b) The amount of the reimbursement sought may not exceed:

1 (1) the amount the department is authorized to charge
2 under Section 552.017 [~~or under Subchapter D, Chapter 593,~~] if the
3 patient [~~or client~~] received the services in a department facility;
4 or

5 (2) the amount the community center is authorized to
6 charge under Section 534.017 if the patient [~~or client~~] received
7 the services in a community center.

8 (c) The lien attaches to:

9 (1) all nonexempt real and personal property owned or
10 later acquired by the patient [~~or client~~] or by a person legally
11 responsible for the patient's [~~or client's~~] support;

12 (2) a judgment of a court in this state or a decision
13 of a public agency in a proceeding brought by or on behalf of the
14 patient [~~or client~~] to recover damages for an injury for which the
15 patient [~~or client~~] was admitted to a department facility or
16 community center; and

17 (3) the proceeds of a settlement of a cause of action
18 or a claim by the patient [~~or client~~] for an injury for which the
19 patient [~~or client~~] was admitted to a department facility or
20 community center.

21 (d) To secure the lien, the department or community center
22 must file written notice of the lien with the county clerk of the
23 county in which:

24 (1) the patient [~~or client~~], or the person legally
25 responsible for the patient's [~~or client's~~] support, owns property;
26 or

27 (2) the patient [~~or client~~] received or is receiving

1 services.

2 (e) The notice must contain:

3 (1) the name and address of the patient [or client];

4 (2) the name and address of the person legally
5 responsible for the patient's [or client's] support, if applicable;

6 (3) the period during which the department facility or
7 community center provided services or a statement that services are
8 currently being provided; and

9 (4) the name and location of the department facility
10 or community center.

11 (f) Not later than the 31st day before the date on which the
12 department files the notice of the lien with the county clerk, the
13 department shall notify by certified mail the patient [or client]
14 and the person legally responsible for the patient's [or client's]
15 support. The notice must contain a copy of the charges, the
16 statutory procedures relating to filing a lien, and the procedures
17 to contest the charges. The executive commissioner [board] by rule
18 shall prescribe the procedures to contest the charges.

19 (g) The county clerk shall record on the written notice the
20 name of the patient [or client], the name and address of the
21 department facility or community center, and, if requested by the
22 person filing the lien, the name of the person legally responsible
23 for the patient's [or client's] support. The clerk shall index the
24 notice record in the name of the patient [or client] and, if
25 requested by the person filing the lien, in the name of the person
26 legally responsible for the patient's [or client's] support.

27 (h) The notice record must include an attachment that

1 contains an account of the charges made by the department facility
2 or community center and the amount due to the facility or center.
3 The superintendent or director of the facility or center must swear
4 to the validity of the account. The account is presumed to be
5 correct, and in a suit to cancel the debt and discharge the lien or
6 to foreclose on the lien, the account is sufficient evidence to
7 authorize a court to render a judgment for the facility or center.

8 (i) To discharge the lien, the superintendent or director of
9 the department facility or community center or a claims
10 representative of the facility or center must execute and file with
11 the county clerk of the county in which the lien notice is filed a
12 certificate stating that the debt covered by the lien has been paid,
13 settled, or released and authorizing the clerk to discharge the
14 lien. The county clerk shall record a memorandum of the certificate
15 and the date on which it is filed. The filing of the certificate and
16 recording of the memorandum discharge the lien.

17 Sec. 533.005. EASEMENTS. The department, in coordination
18 with the executive commissioner, may grant a temporary or permanent
19 easement or right-of-way on land held by the department that
20 relates to services provided under this title. The department, in
21 coordination with the executive commissioner, must grant an
22 easement or right-of-way on terms and conditions the executive
23 commissioner [department] considers to be in the state's best
24 interest.

25 Sec. 533.006. REPORTING OF ALLEGATIONS AGAINST PHYSICIAN.
26 (a) The department shall report to the Texas Medical [~~State~~] Board
27 [~~of Medical Examiners~~] any allegation received by the department

1 that a physician employed by or under contract with the department
2 in relation to services provided under this title has committed an
3 action that constitutes a ground for the denial or revocation of the
4 physician's license under Section [164.051](#), Occupations Code. The
5 report must be made in the manner provided by Section [154.051](#),
6 Occupations Code.

7 (b) The department shall provide to the Texas Medical
8 [State] Board [~~of Medical Examiners~~] a copy of any report or finding
9 relating to an investigation of an allegation reported to that
10 board.

11 Sec. 533.007. USE OF [ACCESS TO] CRIMINAL HISTORY RECORD
12 INFORMATION[~~, CRIMINAL PENALTY FOR UNLAWFUL DISCLOSURE~~]. (a)
13 Subject to the requirements of Chapter 250, the [The] department,
14 in relation to services provided under this title, or a local mental
15 health [or mental retardation] authority[, or [~~a~~] community
16 center~~,~~ may deny employment or volunteer status to an applicant if:

17 (1) the department, authority, or community center
18 determines that the applicant's criminal history record
19 information indicates that the person is not qualified or suitable;
20 or

21 (2) the applicant fails to provide a complete set of
22 fingerprints if the department establishes that method of obtaining
23 criminal history record information.

24 (b) The executive commissioner [~~board~~] shall adopt rules
25 relating to the use of information obtained under this section,
26 including rules that prohibit an adverse personnel action based on
27 arrest warrant or wanted persons information received by the

1 department.

2 Sec. 533.0075. EXCHANGE OF EMPLOYMENT RECORDS. The
3 department, in relation to services provided under this title, or a
4 local mental health ~~[or mental retardation]~~ authority~~[,]~~ or ~~[a]~~
5 community center, may exchange with one another the employment
6 records of an employee or former employee who applies for
7 employment at the department, authority, or community center.

8 Sec. 533.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS
9 WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY ~~[AND MENTAL~~
10 ~~RETARDATION]~~. (a) Each department facility and community center
11 shall annually assess the feasibility of converting entry level
12 support positions into employment opportunities for individuals
13 with mental illness or an intellectual disability ~~[and mental~~
14 ~~retardation]~~ in the facility's or center's service area.

15 (b) In making the assessment, the department facility or
16 community center shall consider the feasibility of using an array
17 of job opportunities that may lead to competitive employment,
18 including sheltered employment and supported employment.

19 (c) Each department facility and community center shall
20 annually submit to the department a report showing that the
21 facility or center has complied with Subsection (a).

22 (d) The department shall compile information from the
23 reports and shall make the information available to each designated
24 provider in a service area.

25 (e) Each department facility and community center shall
26 ensure that designated staff are trained to:

27 (1) assist clients through the Social Security

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9 Sec. 533.009. EXCHANGE OF PATIENT [AND CLIENT] RECORDS.

10 (a) Department facilities, local mental health [or mental

11 retardation] authorities, community centers, other designated

12 providers, and subcontractors [subcontractees] of mental health

13 [and mental retardation] services are component parts of one

14 service delivery system within which patient [or client] records

15 may be exchanged without the patient's [or client's] consent.

16 (b) The executive commissioner [board] shall adopt rules to
17 carry out the purposes of this section.

18 Sec. 533.0095. COLLECTION AND MAINTENANCE OF INFORMATION
19 REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The
20 executive commissioner [of the Health and Human Services
21 Commission] by rule shall require the department to collect
22 information and maintain current records regarding a person found
23 not guilty of an offense by reason of insanity under Chapter 46C,
24 Code of Criminal Procedure, who is:

1 (2) [committed by a court for long-term placement in a
2 ~~residential care facility under Chapter 593 or under Chapter 46C,~~
3 ~~Code of Criminal Procedure; or~~

4 [~~(3)~~] ordered by a court to receive outpatient or
5 community-based treatment and supervision.

6 (b) Information maintained by the department under this
7 section must include the name and address of any facility to which
8 the person is committed, the length of the person's commitment to
9 the facility, and any post-release outcome.

10 (c) The department shall file annually with the presiding
11 officer of each house of the legislature a written report
12 containing the name of each person described by Subsection (a), the
13 name and address of any facility to which the person is committed,
14 the length of the person's commitment to the facility, and any
15 post-release outcome.

16 Sec. 533.010. INFORMATION RELATING TO [PATIENT'S]
17 CONDITION. (a) A person, including a hospital, [~~sanitarium~~,]
18 nursing facility [~~or rest home~~], medical society, or other
19 organization, may provide to the department or a medical
20 organization, hospital, or hospital committee any information,
21 including interviews, reports, statements, or memoranda relating
22 to a person's condition and treatment for use in a study to reduce
23 mental illness [~~disorders~~] and intellectual [~~mental~~] disabilities.

24 (b) The department or a medical organization, hospital, or
25 hospital committee receiving the information may use or publish the
26 information only to advance mental health and intellectual
27 disability [~~mental retardation~~] research and education in order to

1 reduce mental illness [disorders] and intellectual [mental]
2 disabilities. A summary of the study may be released for general
3 publication.

4 (c) The identity of a person whose condition or treatment is
5 studied is confidential and may not be revealed under any
6 circumstances. Information provided under this section and any
7 finding or conclusion resulting from the study is privileged
8 information.

9 (d) A person is not liable for damages or other relief if the
10 person:

11 (1) provides information under this section;
12 (2) releases or publishes the findings and conclusions
13 of the person or organization to advance mental health and
14 intellectual disability [mental retardation] research and
15 education; or
16 (3) releases or publishes generally a summary of a
17 study.

18 Sec. 533.012. COOPERATION OF STATE AGENCIES. [(a)] At the
19 department's request and in coordination with the executive
20 commissioner, all state departments, agencies, officers, and
21 employees shall cooperate with the department in activities that
22 are consistent with their functions and that relate to services
23 provided under this title.

24 [Sec. 533.013. DUPLICATION OF REHABILITATION SERVICES. The
25 department shall enter into an agreement with the Texas
26 Rehabilitation Commission that defines the roles and
27 responsibilities of the department and the commission regarding the

1 ~~agencies' shared client populations. The agreement must establish~~
2 ~~methods to prevent the duplication and fragmentation of employment~~
3 ~~services provided by the agencies.]~~

4 Sec. 533.014. RESPONSIBILITY OF LOCAL MENTAL HEALTH
5 AUTHORITIES IN MAKING TREATMENT RECOMMENDATIONS. (a) The
6 executive commissioner [board] shall adopt rules that:

7 (1) relate to the responsibility of the local mental health
8 health authorities to make recommendations relating to the most
9 appropriate and available treatment alternatives for individuals
10 in need of mental health services, including individuals who are in
11 contact with the criminal justice system and individuals detained
12 in local jails and juvenile detention facilities;

13 (2) govern commitments to a local mental health
14 authority;

15 (3) govern transfers of patients that involve a local
16 mental health authority; and

17 (4) provide for emergency admission to a department
18 mental health facility if obtaining approval from the authority
19 could result in a delay that might endanger the patient or others.

20 (b) The executive commissioner's [board's] first
21 consideration in developing rules under this section must be to
22 satisfy individual patient treatment needs in the most appropriate
23 setting. The executive commissioner [board] shall also consider
24 reducing patient inconvenience resulting from admissions and
25 transfers between providers.

26 (c) The department shall notify each judge who has probate
27 jurisdiction in the service area and any other person the local

1 mental health authority considers necessary of the responsibility
2 of the local mental health authority to make recommendations
3 relating to the most appropriate and available treatment
4 alternatives and the procedures required in the area.

5 Sec. 533.015. UNANNOUNCED INSPECTIONS. The department may
6 make any inspection of a department facility or program under the
7 department's jurisdiction under this title without announcing the
8 inspection.

9 Sec. 533.016. CERTAIN PROCUREMENTS OF GOODS AND SERVICES BY
10 SERVICE PROVIDERS. (a) This section does not apply to a "health
and human services agency," as that term is defined by Section
12 531.001, Government Code.

13 (a-1) A state agency, local agency, or local mental health
14 authority [, or local mental retardation authority] that expends
15 public money to acquire goods or services in connection with
16 providing or coordinating the provision of mental health [or mental
17 retardation] services may satisfy the requirements of any state law
18 requiring procurements by competitive bidding or competitive
19 sealed proposals by procuring goods or services with the public
20 money in accordance with Section 533.017 or in accordance with:

21 (1) [Section 2155.144, Government Code, if the entity
22 is a state agency subject to that law,

23 [(2)] Section 32.043 or 32.044, Human Resources Code,
24 if the entity is a public hospital subject to those laws; or

25 (2) [(3)] this section, if the entity is not covered
26 by Subdivision (1) [or (2)].

27 (b) An agency or authority under Subsection (a-1)(2)

1 [+(a)(3)] may acquire goods or services by any procurement method
2 that provides the best value to the agency or authority. The agency
3 or authority shall document that the agency or authority considered
4 all relevant factors under Subsection (c) in making the
5 acquisition.

6 (c) Subject to Subsection (d), the agency or authority may
7 consider all relevant factors in determining the best value,
8 including:

9 (1) any installation costs;
10 (2) the delivery terms;
11 (3) the quality and reliability of the vendor's goods
12 or services;

13 (4) the extent to which the goods or services meet the
14 agency's or authority's needs;

15 (5) indicators of probable vendor performance under
16 the contract such as past vendor performance, the vendor's
17 financial resources and ability to perform, the vendor's experience
18 and responsibility, and the vendor's ability to provide reliable
19 maintenance agreements;

20 (6) the impact on the ability of the agency or
21 authority to comply with laws and rules relating to historically
22 underutilized businesses or relating to the procurement of goods
23 and services from persons with disabilities;

24 (7) the total long-term cost to the agency or
25 authority of acquiring the vendor's goods or services;

26 (8) the cost of any employee training associated with
27 the acquisition;

1 (9) the effect of an acquisition on the agency's or
2 authority's productivity;

3 (10) the acquisition price; and

4 (11) any other factor relevant to determining the best
5 value for the agency or authority in the context of a particular
6 acquisition.

7 (d) If a state agency to which this section applies acquires
8 goods or services with a value that exceeds \$100,000, the state
9 agency shall consult with and receive approval from the commission
10 [~~Health and Human Services Commission~~] before considering factors
11 other than price and meeting specifications.

12 (e) The state auditor or the executive commissioner
13 [~~department~~] may audit the agency's or authority's acquisitions of
14 goods and services under this section to the extent state money or
15 federal money appropriated by the state is used to make the
16 acquisitions.

17 (f) The agency or authority may adopt rules and procedures
18 for the acquisition of goods and services under this section.

19 Sec. 533.017. PARTICIPATION IN [~~DEPARTMENT~~] PURCHASING
20 CONTRACTS OR GROUP PURCHASING PROGRAM. (a) This section does not
21 apply to a "health and human services agency," as that term is
22 defined by Section 531.001, Government Code.

23 (b) The executive commissioner [~~department~~] may allow a
24 state agency, local agency, or local mental health authority[~~or~~
25 ~~local mental retardation authority~~] that expends public money to
26 purchase goods or services in connection with providing or
27 coordinating the provision of mental health [~~or mental retardation~~]

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1 services to purchase goods or services with the public money by
2 participating in:

9 SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF MENTAL
10 HEALTH SERVICES

11 Sec. 533.031. DEFINITIONS. In this subchapter:

23 [(4) "Commission" means the Health and Human Services
24 Commission.

25 [(5) "Executive commissioner" means the executive
26 commissioner of the Health and Human Services Commission.

[(6) "ICE-MR and related waiver programs" includes

1 ~~ICF-MR Section 1915(c) waiver programs, home and community-based services, Texas home living waiver services, or another Medicaid program serving persons with mental retardation.~~

4 [(7) "Section 1915(c) waiver program" means a
5 ~~federally funded Medicaid program of the state that is authorized~~
6 ~~under Section 1915(c) of the federal Social Security Act (42 U.S.C.~~
7 ~~Section 1396n(c)).~~

8 [(8) "Qualified service provider" means an entity that
9 ~~meets requirements for service providers established by the~~
10 ~~executive commissioner.]~~

11 Sec. 533.032. LONG-RANGE PLANNING. (a) The department
12 shall have a long-range plan relating to the provision of services
13 under this title covering at least six years that includes at least
14 the provisions required by Sections 531.022 and 531.023, Government
15 Code, and Chapter 2056, Government Code. The plan must cover the
16 provision of services in and policies for state-operated
17 institutions and ensure that the medical needs of the most
18 medically fragile persons with mental illness the department serves
19 are met.

20 (b) In developing the plan, the department shall:

21 (1) solicit input from:

22 (A) local mental health authorities [~~for mental~~
23 ~~health and mental retardation~~];

24 (B) community representatives;

25 (C) consumers of mental health [~~and mental~~
26 ~~retardation~~] services, including consumers of campus-based and
27 community-based services, and family members of consumers of those

1 services; and

2 (D) other interested persons; and

3 (2) consider the report developed under Subsection
4 (c).

5 (c) The department shall develop a report containing
6 information and recommendations regarding the most efficient
7 long-term use and management of the department's campus-based
8 facilities. The report must:

9 (1) project future bed requirements for [state schools
10 and] state hospitals;

11 (2) document the methodology used to develop the
12 projection of future bed requirements;

13 (3) project maintenance costs for institutional
14 facilities;

15 (4) recommend strategies to maximize the use of
16 institutional facilities; and

17 (5) specify how each [state school and] state hospital
18 will:

19 (A) serve and support the communities and
20 consumers in its service area; and

21 (B) fulfill statewide needs for specialized
22 services.

23 (d) In developing the report under Subsection (c), the
24 department shall:

25 (1) conduct two public meetings, one meeting to be
26 held at the beginning of the process and the second meeting to be
27 held at the end of the process, to receive comments from interested

1 parties; and

2 (2) consider:

3 (A) the medical needs of the most medically
4 fragile of its patients with mental illness [~~clients~~]; and

5 (B) [~~the provision of services to clients with~~
6 ~~severe and profound mental retardation and to persons with mental~~
7 ~~retardation who are medically fragile or have behavioral problems;~~

8 [(C) the program and service preference
9 ~~information collected under Section 533.038~~; and

10 [(D)] input solicited from consumers of services
11 of [~~state schools and~~] state hospitals.

12 (g) The department shall:

13 (1) attach the report required by Subsection (c) to
14 the department's legislative appropriations request for each
15 biennium;

16 (2) at the time the department presents its
17 legislative appropriations request, present the report to the:

18 (A) governor;

19 (B) governor's budget office;

20 (C) lieutenant governor;

21 (D) speaker of the house of representatives;

22 (E) Legislative Budget Board; and

23 (F) commission [~~Health and Human Services~~
24 ~~Commission~~]; and

25 (3) update the department's long-range plan biennially
26 and include the report in the plan.

27 (h) The department shall, in coordination with the

1 commission [~~Health and Human Services Commission~~], evaluate the
2 current and long-term costs associated with serving inpatient
3 psychiatric needs of persons living in counties now served by at
4 least three state hospitals within 120 miles of one another. This
5 evaluation shall take into consideration the condition of the
6 physical plants and other long-term asset management issues
7 associated with the operation of the hospitals, as well as other
8 issues associated with quality psychiatric care. After such
9 determination is made, the commission [~~Health and Human Services~~
10 ~~Commission~~] shall begin to take action to influence the utilization
11 of these state hospitals in order to ensure efficient service
12 delivery.

13 Sec. 533.0325. CONTINUUM OF SERVICES IN CAMPUS FACILITIES.
14 The executive commissioner [~~board~~] by rule shall establish criteria
15 regarding the uses of the department's campus-based facilities as
16 part of a full continuum of services under this title.

17 Sec. 533.033. DETERMINATION OF REQUIRED RANGE OF MENTAL
18 HEALTH SERVICES. (a) Consistent with the purposes and policies of
19 this subtitle, the commissioner biennially shall determine:

20 (1) the types of mental health services that can be
21 most economically and effectively provided at the community level
22 for persons exhibiting various forms of mental disability; and

23 (2) the types of mental health services that can be
24 most economically and effectively provided by department
25 facilities.

26 (b) In the determination, the commissioner shall assess the
27 limits, if any, that should be placed on the duration of mental

1 health services provided at the community level or at a department
2 facility.

3 (c) The department biennially shall review the types of
4 services the department provides and shall determine if a community
5 provider can provide services of a comparable quality at a lower
6 cost than the department's costs.

7 (d) The commissioner's findings shall guide the department
8 in planning and administering services for persons with mental
9 illness.

10 Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED
11 SERVICES. [a] The department may cooperate, negotiate, and
12 contract with local agencies, hospitals, private organizations and
13 foundations, community centers, physicians, and other persons to
14 plan, develop, and provide community-based mental health [and
15 ~~mental retardation~~] services.

16 Sec. 533.0345. STATE AGENCY SERVICES STANDARDS. (a) The
17 executive commissioner [department] by rule shall develop model
18 program standards for mental health [and ~~mental retardation~~]
19 services for use by each state agency that provides or pays for
20 mental health [~~or mental retardation~~] services. The department
21 shall provide the model standards to each agency that provides
22 mental health [~~or mental retardation~~] services as identified by the
23 commission [~~Health and Human Services Commission~~].

24 (b) Model standards developed under Subsection (a) must be
25 designed to improve the consistency of mental health [and ~~mental~~
26 ~~retardation~~] services provided by or through a state agency.

27 (c) Biennially the department shall review the model

1 standards developed under Subsection (a) and determine whether each
2 standard contributes effectively to the consistency of service
3 delivery by state agencies.

4 [Sec. 533.0346. AUTHORITY TO TRANSFER SERVICES TO COMMUNITY
5 CENTERS. (a) The department may transfer operations of and
6 services provided at the Amarillo State Center, Beaumont State
7 Center, and Laredo State Center to a community center established
8 under Chapter 534, including a newly established center providing
9 mental retardation services or mental health and mental retardation
10 services.]

11 [(b) The transfer may occur only on the department's
12 approval of a plan submitted in accordance with Section 534.001(d)
13 or of an amendment to a previously approved plan. In developing the
14 plan or plan amendment, the center or proposed center proposing to
15 accept the state center operation and service responsibilities
16 shall consider input from consumers of mental health and mental
17 retardation services and family members of and advocates for those
18 consumers, organizations that represent affected employees, and
19 other providers of mental health and mental retardation services.]

20 [(c) The center or proposed center proposing to accept the
21 state center operation and service responsibilities shall publish
22 notice of the initial planning meeting regarding the content of the
23 plan or plan amendment and of the meeting to review the content of
24 the proposed plan or plan amendment before it is submitted under
25 Section 534.001(d). The notices must include the time and location
26 of the meeting. The notice of the meeting to review the content of
27 the plan or amendment must include information regarding how to

1 obtain a copy of the proposed plan or amendment. The notices must
2 be published not fewer than 30 days and not more than 90 days before
3 the date set for the meeting in a newspaper of general circulation
4 in each county containing any part of the proposed service area. If
5 a county in which notice is required to be published does not have a
6 newspaper of general circulation, the notices shall be published in
7 a newspaper of general circulation in the nearest county in which a
8 newspaper of general circulation is published.

9 [(d) At the time the operations and services are transferred
10 to the community center, money supporting the cost of providing
11 operations and services at a state center shall be transferred to
12 the community center to ensure continuity of services.

13 [(e) The Amarillo State Center is exempt from the
14 requirements listed in Subsections (b) and (c).]

15 Sec. 533.035. LOCAL MENTAL HEALTH [AND MENTAL RETARDATION]
16 AUTHORITIES. (a) The executive commissioner shall designate a
17 local mental health authority [and a local mental retardation
18 authority] in one or more local service areas. The executive
19 commissioner may delegate to the local authority [authorities] the
20 authority and responsibility of the executive commissioner, the
21 commission, or a department of the commission related to planning,
22 policy development, coordination, including coordination with
23 criminal justice entities, resource allocation, and resource
24 development for and oversight of mental health [and mental
25 retardation] services in the most appropriate and available setting
26 to meet individual needs in that service area. The executive
27 commissioner may designate a single entity as both the local mental

1 health authority under this chapter and the local intellectual and
2 developmental disability [~~mental retardation~~] authority under
3 Chapter 533A for a service area.

4 (b) The department by contract or other method of
5 allocation, including a case-rate or capitated arrangement, may
6 disburse to a local mental health [~~and mental retardation~~]
7 authority department federal and department state funds to be spent
8 in the local service area for:

9 (1) community mental health and intellectual
10 disability [~~mental retardation~~] services; and
11 (2) chemical dependency services for persons who are
12 dually diagnosed as having both chemical dependency and mental
13 illness or an intellectual disability [~~mental retardation~~].

14 (c) A local mental health [~~and mental retardation~~]
15 authority, with the approval of the department [~~Department of State~~
16 ~~Health Services or the Department of Aging and Disability Services,~~
17 ~~or both, as applicable~~], shall use the funds received under
18 Subsection (b) to ensure mental health[~~, mental retardation~~] and
19 chemical dependency services are provided in the local service
20 area. The local authority shall consider public input, ultimate
21 cost-benefit, and client care issues to ensure consumer choice and
22 the best use of public money in:

23 (1) assembling a network of service providers;
24 (2) making recommendations relating to the most
25 appropriate and available treatment alternatives for individuals
26 in need of mental health [~~or mental retardation~~] services; and
27 (3) procuring services for a local service area,

1 including a request for proposal or open-enrollment procurement
2 method.

3 (d) A local mental health [~~and mental retardation~~]
4 authority shall demonstrate to the department that the services
5 that the authority provides directly or through subcontractors and
6 that involve state funds comply with relevant state standards.

7 (e) Subject to Section 533.0358, in assembling a network of
8 service providers, a local mental health authority may serve as a
9 provider of services only as a provider of last resort and only if
10 the local authority demonstrates to the department in the local
11 authority's local network development plan that:

12 (1) the local authority has made every reasonable
13 attempt to solicit the development of an available and appropriate
14 provider base that is sufficient to meet the needs of consumers in
15 its service area; and

16 (2) there is not a willing provider of the relevant
17 services in the local authority's service area or in the county
18 where the provision of the services is needed.

19 [~~(e-1) A local mental retardation authority may serve as a~~
20 ~~provider of ICF-MR and related waiver programs only if:~~

21 [~~(1) the local authority complies with the limitations~~
22 ~~prescribed by Section 533.0355(d); or~~

23 [~~(2) the ICF-MR and related waiver programs are~~
24 ~~necessary to ensure the availability of services and the local~~
25 ~~authority demonstrates to the commission that there is not a~~
26 ~~willing ICF-MR and related waiver program qualified service~~
27 ~~provider in the local authority's service area where the service is~~

1 needed.]

2 Sec. 533.0351. LOCAL AUTHORITY NETWORK ADVISORY COMMITTEE.

3 (a) The executive commissioner shall establish a local authority
4 network advisory committee to advise the executive commissioner and
5 the department [~~Department of State Health Services~~] on technical
6 and administrative issues that directly affect local mental health
7 authority responsibilities.

8 (b) The committee is composed of equal numbers of
9 representatives of local mental health authorities, community
10 mental health service providers, private mental health service
11 providers, local government officials, advocates for individuals
12 with mental health needs, consumers of mental health services,
13 family members of individuals with mental health needs, and other
14 individuals with expertise in the field of mental health appointed
15 by the executive commissioner. In addition, the executive
16 commissioner may appoint facilitators to the committee as
17 necessary. In appointing the members, the executive commissioner
18 shall also ensure a balanced representation of:

19 (1) different regions of this state;
20 (2) rural and urban counties; and
21 (3) single-county and multicounty local mental health
22 authorities.

23 (c) Members appointed to the advisory committee must have
24 some knowledge of, familiarity with, or understanding of the
25 day-to-day operations of a local mental health authority.

26 (d) The advisory committee shall:

27 (1) review rules and proposed rules and participate in

1 any negotiated rulemaking process related to local mental health
2 authority operations;

3 (2) advise the executive commissioner and the
4 department [Department of State Health Services] regarding
5 evaluation and coordination of initiatives related to local mental
6 health authority operations;

7 (3) advise the executive commissioner and the
8 department [Department of State Health Services] in developing a
9 method of contracting with local mental health authorities that
10 will result in contracts that are flexible and responsive to:

11 (A) the needs and services of local communities;
12 and

13 (B) the department's performance expectations;

14 (4) coordinate with work groups whose actions may
15 affect local mental health authority operations;

16 (5) report to the executive commissioner and the
17 department [Department of State Health Services] on the committee's
18 activities and recommendations at least once each fiscal quarter;
19 and

20 (6) work with the executive commissioner or the
21 department [Department of State Health Services] as the executive
22 commissioner directs.

23 (e) For any written recommendation the committee makes to
24 the department [Department of State Health Services], the
25 department shall provide to the committee a written response
26 regarding any action taken on the recommendation or the reasons for
27 the department's inaction on the subject of the recommendation.

1 (f) The committee is subject to Chapter 2110, Government
2 Code, except that the committee is not subject to Section 2110.004
3 or 2110.008, Government Code. The committee is abolished on
4 September 1, 2017, unless the executive commissioner adopts a rule
5 continuing the committee in existence beyond that date.

6 (g) The department [Department of State Health Services]
7 may reimburse consumers of mental health services and family
8 members of individuals with mental health needs appointed to the
9 committee for travel costs incurred in performing their duties as
10 provided in the General Appropriations Act.

11 Sec. 533.0352. LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE
12 AREA. (a) Each local mental health [or mental retardation]
13 authority shall develop a local service area plan to maximize the
14 authority's services by using the best and most cost-effective
15 means of using federal, state, and local resources to meet the needs
16 of the local community according to the relative priority of those
17 needs. Each local mental health [or mental retardation] authority
18 shall undertake to maximize federal funding.

19 (b) A local service area plan must be consistent with the
20 purposes, goals, and policies stated in Section 531.001 and the
21 department's long-range plan developed under Section 533.032.

22 (c) The department and a local mental health [or mental
23 retardation] authority shall use the local authority's local
24 service plan as the basis for contracts between the department and
25 the local authority and for establishing the local authority's
26 responsibility for achieving outcomes related to the needs and
27 characteristics of the authority's local service area.

1 (d) In developing the local service area plan, the local
2 mental health [~~or mental retardation~~] authority shall:

3 (1) solicit information regarding community needs
4 from:

5 (A) representatives of the local community;

6 (B) consumers of community-based mental health
7 [~~and mental retardation~~] services and members of the families of
8 those consumers; and

9 (C) [~~consumers of services of state schools for~~
10 ~~persons with mental retardation, members of families of those~~
11 ~~consumers, and members of state school volunteer services councils,~~
12 ~~if a state school is located in the local service area of the local~~
13 ~~authority, and~~

14 [~~(D)~~] other interested persons; and

15 (2) consider:

16 (A) criteria for assuring accountability for,
17 cost-effectiveness of, and relative value of service delivery
18 options;

19 (B) goals to minimize the need for state hospital
20 and community hospital care;

21 (C) [~~goals to ensure a client with mental~~
22 ~~retardation is placed in the least restrictive environment~~
23 ~~appropriate to the person's care,~~

24 [~~(D) opportunities for innovation to ensure that~~
25 ~~the local authority is communicating to all potential and incoming~~
26 ~~consumers about the availability of services of state schools for~~
27 ~~persons with mental retardation in the local service area of the~~

1 ~~local authority,~~

2 [~~(E)~~] goals to divert consumers of services from
3 the criminal justice system;

4 (D) [~~(F)~~] goals to ensure that a child with
5 mental illness remains with the child's parent or guardian as
6 appropriate to the child's care; and

7 (E) [~~(G)~~] opportunities for innovation in
8 services and service delivery.

9 (e) The department and the local mental health [~~or mental~~
10 ~~retardation~~] authority by contract shall enter into a performance
11 agreement that specifies required standard outcomes for the
12 programs administered by the local authority. Performance related
13 to the specified outcomes must be verifiable by the department. The
14 performance agreement must include measures related to the outputs,
15 costs, and units of service delivered. Information regarding the
16 outputs, costs, and units of service delivered shall be recorded in
17 the local authority's automated data systems, and reports regarding
18 the outputs, costs, and units of service delivered shall be
19 submitted to the department at least annually as provided by
20 department rule.

21 (f) The department and the local mental health [~~or mental~~
22 ~~retardation~~] authority shall provide an opportunity for community
23 centers and advocacy groups to provide information or assistance in
24 developing the specified performance outcomes under Subsection
25 (e).

26 Sec. 533.03521. LOCAL NETWORK DEVELOPMENT PLAN CREATION AND
27 APPROVAL. (a) A local mental health authority shall develop a

1 local network development plan regarding the configuration and
2 development of the local mental health authority's provider
3 network. The plan must reflect local needs and priorities and
4 maximize consumer choice and access to qualified service providers.

5 (b) The local mental health authority shall submit the local
6 network development plan to the department [Department of State
7 Health Services] for approval.

8 (c) On receipt of a local network development plan under
9 this section, the department shall review the plan to ensure that
10 the plan:

11 (1) complies with the criteria established by Section
12 533.0358 if the local mental health authority is providing services
13 under that section; and

14 (2) indicates that the local mental health authority
15 is reasonably attempting to solicit the development of a provider
16 base that is:

17 (A) available and appropriate; and

18 (B) sufficient to meet the needs of consumers in
19 the local authority's local service area.

20 (d) If the department determines that the local network
21 development plan complies with Subsection (c), the department shall
22 approve the plan.

23 (e) At least biennially, the department shall review a local
24 mental health authority's local network development plan and
25 determine whether the plan complies with Subsection (c).

26 (f) As part of a local network development plan, a local
27 mental health authority annually shall post on the local

1 authority's website a list of persons with whom the local authority
2 had a contract or agreement in effect during all or part of the
3 previous year, or on the date the list is posted, related to the
4 provision of mental health services.

5 Sec. 533.0354. DISEASE MANAGEMENT PRACTICES AND JAIL
6 DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES. (a) A local
7 mental health authority shall ensure the provision of assessment
8 services, crisis services, and intensive and comprehensive
9 services using disease management practices for adults with bipolar
10 disorder, schizophrenia, or clinically severe depression and for
11 children with serious emotional illnesses. The local mental health
12 authority shall ensure that individuals are engaged with treatment
13 services that are:

14 (1) ongoing and matched to the needs of the individual
15 in type, duration, and intensity;

16 (2) focused on a process of recovery designed to allow
17 the individual to progress through levels of service;

18 (3) guided by evidence-based protocols and a
19 strength-based paradigm of service; and

20 (4) monitored by a system that holds the local
21 authority accountable for specific outcomes, while allowing
22 flexibility to maximize local resources.

23 (a-1) In addition to the services required under Subsection
24 (a) and using money appropriated for that purpose or money received
25 under the Texas Health Care Transformation and Quality Improvement
26 Program waiver issued under Section 1115 of the federal Social
27 Security Act (42 U.S.C. Section 1315), a local mental health

1 authority may ensure, to the extent feasible, the provision of
2 assessment services, crisis services, and intensive and
3 comprehensive services using disease management practices for
4 children with serious emotional, behavioral, or mental disturbance
5 not described by Subsection (a) and adults with severe mental
6 illness who are experiencing significant functional impairment due
7 to a mental health disorder not described by Subsection (a) that is
8 defined by the Diagnostic and Statistical Manual of Mental
9 Disorders, 5th Edition (DSM-5), including:

- 10 (1) major depressive disorder, including single
11 episode or recurrent major depressive disorder;
12 (2) post-traumatic stress disorder;
13 (3) schizoaffective disorder, including bipolar and
14 depressive types;
15 (4) obsessive-compulsive disorder;
16 (5) anxiety disorder;
17 (6) attention deficit disorder;
18 (7) delusional disorder;
19 (8) bulimia nervosa, anorexia nervosa, or other eating
20 disorders not otherwise specified; or
21 (9) any other diagnosed mental health disorder.

22 (a-2) The local mental health authority shall ensure that
23 individuals described by Subsection (a-1) are engaged with
24 treatment services in a clinically appropriate manner.

25 (b) The department shall require each local mental health
26 authority to incorporate jail diversion strategies into the
27 authority's disease management practices for managing adults with

1 schizophrenia and bipolar disorder to reduce the involvement of
2 those client populations with the criminal justice system.

3 (b-1) The department shall require each local mental health
4 authority to incorporate jail diversion strategies into the
5 authority's disease management practices to reduce the involvement
6 of the criminal justice system in managing adults with the
7 following disorders as defined by the Diagnostic and Statistical
8 Manual of Mental Disorders, 5th Edition (DSM-5), who are not
9 described by Subsection (b):

- 10 (1) post-traumatic stress disorder;
11 (2) schizoaffective disorder, including bipolar and
12 depressive types;
13 (3) anxiety disorder; or
14 (4) delusional disorder.

15 [~~(c) The department shall enter into performance contracts~~
16 ~~between the department and each local mental health authority for~~
17 ~~the fiscal years ending August 31, 2004, and August 31, 2005, that~~
18 ~~specify measurable outcomes related to their success in using~~
19 ~~disease management practices to meet the needs of the target~~
20 ~~populations.~~

21 [~~(e) The department may use the fiscal year ending August~~
22 ~~31, 2004, as a transition period for implementing the requirements~~
23 ~~of Subsections (a)-(c).]~~

24 Sec. 533.0356. LOCAL BEHAVIORAL HEALTH AUTHORITIES. (a)
25 [In this section, "commission" means the Texas Commission on
26 Alcohol and Drug Abuse.]

27 [(b)] The department [~~and the commission jointly~~] may

1 designate a local behavioral health authority in a local service
2 area to provide mental health and chemical dependency services in
3 that area. The department [board and the commission] may delegate
4 to an authority designated under this section the authority and
5 responsibility for planning, policy development, coordination,
6 resource allocation, and resource development for and oversight of
7 mental health and chemical dependency services in that service
8 area. An authority designated under this section has:

9 (1) all the responsibilities and duties of a local
10 mental health authority provided by Section [533.035](#) and by
11 Subchapter B, Chapter 534; and

12 (2) the responsibility and duty to ensure that
13 chemical dependency services are provided in the service area as
14 described by the statewide service delivery plan adopted under
15 Section 461A.056 [[461.0124](#)].

16 (c) In the planning and implementation of services, the
17 authority shall give proportionate priority to mental health
18 services and chemical dependency services that ensures that funds
19 purchasing services are used in accordance with specific regulatory
20 and statutory requirements that govern the respective funds.

21 (d) A local mental health authority may apply to the
22 department [and commission] for designation as a local behavioral
23 health authority.

24 (e) The department [and commission], by contract or by a
25 case-rate or capitated arrangement or another method of allocation,
26 may disburse money, including federal money, to a local behavioral
27 health authority for services.

1 (f) A local behavioral health authority, with the approval
2 of the department [~~or the commission~~] as provided by contract,
3 shall use money received under Subsection (e) to ensure that mental
4 health and chemical dependency services are provided in the local
5 service area at the same level as the level of services previously
6 provided through:

- 7 (1) the local mental health authority; and
8 (2) the department [~~commission~~].

9 (g) In determining whether to designate a local behavioral
10 health authority for a service area and in determining the
11 functions of the authority if designated, the department [~~and~~
12 ~~commission~~] shall solicit and consider written comments from any
13 interested person including community representatives, persons who
14 are consumers of the proposed services of the authority, and family
15 members of those consumers.

16 (h) An authority designated under this section shall
17 demonstrate to the department [~~and the commission~~] that services
18 involving state funds that the authority oversees comply with
19 relevant state standards.

20 (i) The executive commissioner [~~board and the commission~~
21 ~~jointly~~] may adopt rules to govern the operations of local
22 behavioral health authorities. The department [~~and the commission~~
23 ~~jointly~~] may assign the local behavioral health authority the duty
24 of providing a single point of entry for mental health and chemical
25 dependency services.

26 Sec. 533.0357. BEST PRACTICES CLEARINGHOUSE FOR LOCAL
27 MENTAL HEALTH AUTHORITIES. (a) In coordination with local mental

1 health authorities, the department shall establish an online
2 clearinghouse of information relating to best practices of local
3 mental health authorities regarding the provision of mental health
4 services, development of a local provider network, and achievement
5 of the best return on public investment in mental health services.

6 (b) The department shall solicit and collect from local
7 mental health authorities that meet established outcome and
8 performance measures, community centers, consumers and advocates
9 with expertise in mental health or in the provision of mental health
10 services, and other local entities concerned with mental health
11 issues examples of best practices related to:

12 (1) developing and implementing a local network
13 development plan;

14 (2) assembling and expanding a local provider network
15 to increase consumer choice;

16 (3) creating and enforcing performance standards for
17 providers;

18 (4) managing limited resources;

19 (5) maximizing available funding;

20 (6) producing the best client outcomes;

21 (7) ensuring consumers of mental health services have
22 control over decisions regarding their health;

23 (8) developing procurement processes to protect
24 public funds;

25 (9) achieving the best mental health consumer outcomes
26 possible; and

27 (10) implementing strategies that effectively

1 incorporate consumer and family involvement to develop and evaluate
2 the provider network.

3 (c) The department may contract for the services of one or
4 more contractors to develop, implement, and maintain a system of
5 collecting and evaluating the best practices of local mental health
6 authorities as provided by this section.

7 (d) The department shall encourage local mental health
8 authorities that successfully implement best practices in
9 accordance with this section to mentor local mental health
10 authorities that have service deficiencies.

11 (e) Before the executive commissioner may remove a local
12 mental health authority's designation under Section 533.035(a) as a
13 local mental health authority, the executive commissioner shall:

14 (1) assist the local mental health authority in
15 attaining training and mentorship in using the best practices
16 established in accordance with this section; and

17 (2) track and document the local mental health
18 authority's improvements in the provision of service or continued
19 service deficiencies.

20 (f) Subsection (e) does not apply to the removal of a local
21 mental health authority's designation initiated at the request of a
22 local government official who has responsibility for the provision
23 of mental health services.

24 (g) The department shall implement this section using only
25 existing resources.

26 (h) The Department of State Health Services
27 shall ensure that a local mental health authority providing best

1 practices information to the department or mentoring another local
2 mental health authority complies with Section [533.03521\(f\)](#).

3 Sec. 533.0358. LOCAL MENTAL HEALTH AUTHORITY'S PROVISION OF
4 SERVICES AS PROVIDER OF LAST RESORT. (a) A local mental health
5 authority may serve as a provider of services under Section
6 [533.035\(e\)](#) only if, through the local network development plan
7 process, the local authority determines that at least one of the
8 following applies:

9 (1) interested qualified service providers are not
10 available to provide services or no service provider meets the
11 local authority's procurement requirements;

12 (2) the local authority's network of providers does
13 not provide a minimum level of consumer choice by:

14 (A) presenting consumers with two or more
15 qualified service providers in the local authority's network for
16 service packages; and

17 (B) presenting consumers with two or more
18 qualified service providers in the local authority's network for
19 specific services within a service package;

20 (3) the local authority's provider network does not
21 provide consumers in the local service area with access to services
22 at least equal to the level of access provided as of a date the
23 executive commissioner specifies;

24 (4) the combined volume of services delivered by
25 qualified service providers in the local network does not meet all
26 of the local authority's service capacity for each service package
27 identified in the local network development plan;

1 (5) the performance of the services by the local
2 authority is necessary to preserve critical infrastructure and
3 ensure continuous provision of services; or

4 (6) existing contracts or other agreements restrict
5 the local authority from contracting with qualified service
6 providers for services in the local network development plan.

7 (b) If a local mental health authority continues to provide
8 services in accordance with this section, the local authority shall
9 identify in the local authority's local network development plan:

10 (1) the proportion of its local network services that
11 the local authority will provide; and

12 (2) the local authority's basis for its determination
13 that the local authority must continue to provide services.

14 Sec. 533.0359. RULEMAKING FOR LOCAL MENTAL HEALTH
15 AUTHORITIES. (a) In developing rules governing local mental
16 health authorities under Sections [533.035](#), [533.0351](#), [533.03521](#),
17 [533.0357](#), and [533.0358](#), the executive commissioner shall use
18 rulemaking procedures under Subchapter B, Chapter 2001, Government
19 Code.

20 (b) The executive commissioner by rule shall prohibit a
21 trustee or employee of a local mental health authority from
22 soliciting or accepting from another person a benefit, including a
23 security or stock, a gift, or another item of value, that is
24 intended to influence the person's conduct of authority business.

25 Sec. 533.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS.

26 (a) The department may provide mental health [~~and mental~~
27 ~~retardation~~] services through halfway houses, sheltered workshops,

1 community centers, and other mental health [and mental retardation]
2 services programs.

3 (b) The department may operate or contract for the provision
4 of part or all of the sheltered workshop services and may contract
5 for the sale of goods produced and services provided by a sheltered
6 workshop program. The goods and services may be sold for cash or on
7 credit.

8 (c) An operating fund may be established for each sheltered
9 workshop the department operates. Each operating fund must be in a
10 national or state bank that is a member of the Federal Deposit
11 Insurance Corporation.

12 (d) Money derived from gifts or grants received for
13 sheltered workshop purposes and the proceeds from the sale of
14 sheltered workshop goods and services shall be deposited to the
15 credit of the operating fund. The money in the fund may be spent
16 only in the operation of the sheltered workshop to:

17 (1) purchase supplies, materials, services, and
18 equipment;

19 (2) pay salaries of and wages to participants and
20 employees;

21 (3) construct, maintain, repair, and renovate
22 facilities and equipment; and

23 (4) establish and maintain a petty cash fund of not
24 more than \$100.

25 (e) Money in an operating fund that is used to pay salaries
26 of and wages to participants in the sheltered workshop program is
27 money the department holds in trust for the participants' benefit.

1 (f) This section does not affect the authority or
2 jurisdiction of a community center as prescribed by Chapter 534.

3 [Sec. 533.039. CLIENT SERVICES OMBUDSMAN.] (a) The
4 ~~commissioner shall employ an ombudsman responsible for assisting a~~
5 ~~person, or a parent or guardian of a person, who has been denied~~
6 ~~service by the department, a department program or facility, or a~~
7 ~~local mental health or mental retardation authority.~~

8 [(b) The ombudsman shall:

9 [(1) ~~explain and provide information on department and~~
10 ~~local mental health or mental retardation authority services,~~
11 ~~facilities, and programs and the rules, procedures, and guidelines~~
12 ~~applicable to the person denied services; and~~

13 [(2) ~~assist the person in gaining access to an~~
14 ~~appropriate program or in placing the person on an appropriate~~
15 ~~waiting list.]~~

16 Sec. 533.040. SERVICES FOR CHILDREN AND YOUTH. (a) The
17 department shall ensure the development of programs and the
18 expansion of services at the community level for children with
19 mental illness, or with a dual diagnosis of mental illness and an
20 intellectual disability [mental retardation, or both], and for
21 their families. The department shall:

22 (1) prepare and review budgets for services for
23 children;

24 (2) develop departmental policies relating to
25 children's programs and service delivery; and

26 (3) increase interagency coordination activities to
27 enhance the provision of services for children.

1 (b) The department shall designate an employee authorized
2 in the department's schedule of exempt positions to be responsible
3 for planning and coordinating services and programs for children
4 and youth. The employee shall perform budget and policy review and
5 provide interagency coordination of services for children and
6 youth.

7 (c) The department shall designate an employee as a youth
8 suicide prevention officer. The officer shall serve as a liaison to
9 the Texas Education Agency and public schools on matters relating
10 to the prevention of and response to suicide or attempted suicide by
11 public school students.

12 (d) The department and the Department of Assistive and
13 Rehabilitative Services [~~Interagency Council on Early Childhood~~
14 ~~Intervention~~] shall:

15 (1) jointly develop:

16 (A) a continuum of care for children younger than
17 seven years of age who have mental illness; and

18 (B) a plan to increase the expertise of the
19 department's service providers in mental health issues involving
20 children younger than seven years of age; and

21 (2) coordinate, if practicable, the departments'
22 [~~department and council~~] activities and services involving
23 children with mental illness and their families.

24 [~~Sec. 533.041. SERVICES FOR EMOTIONALLY DISTURBED CHILDREN~~
25 ~~AND YOUTH.~~ (a) At each department mental health facility, the
26 ~~department shall make short-term evaluation and diagnostic~~
27 ~~services available for emotionally disturbed children and youth who~~

1 ~~are referred to the department by the Texas Department of Human
2 Services if evaluation and diagnostic services for the children and
3 youth are not immediately available through a local mental health
4 authority.~~

5 ~~[(b) The Texas Department of Human Services may pay for the
6 services according to fees jointly agreed to by both agencies. The
7 department may use payments received under the agreement to
8 contract for community-based residential placements for
9 emotionally disturbed children and youth.]~~

10 ~~[(c) The department shall maintain computerized information
11 on emotionally disturbed children and youth that contains both
12 individual and aggregate information. The purpose of the
13 information is to allow the department to track services and
14 placements and to conduct research on the treatment of the children
15 and youth. The department may coordinate activities with the Texas
16 Department of Human Services in developing the information. The
17 department shall make the information available to the department's
18 mental health facilities and to community centers.]~~

19 Sec. 533.0415. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY
20 TRAINING. (a) The executive commissioner ~~[department, the Texas
21 Department of Human Services]~~, the Texas Juvenile Justice
22 Department ~~[Youth Commission, the Texas Juvenile Probation
23 Commission]~~, and the Texas Education Agency by rule shall adopt a
24 joint memorandum of understanding to develop interagency training
25 for the staffs of the department, the Texas Juvenile Justice
26 Department, the Department of Family and Protective Services, and
27 the Texas Education Agency who are ~~[agencies]~~ involved in the

1 functions of assessment, case planning, case management, and
2 in-home or direct delivery of services to children, youth, and
3 their families under this title. The memorandum must:

4 (1) outline the responsibility of each agency in
5 coordinating and developing a plan for interagency training on
6 individualized assessment and effective intervention and treatment
7 services for children and dysfunctional families; and

8 (2) provide for the establishment of an interagency
9 task force to:

10 (A) develop a training program to include
11 identified competencies, content, and hours for completion of the
12 training with at least 20 hours of training required each year until
13 the program is completed;

14 (B) design a plan for implementing the program,
15 including regional site selection, frequency of training, and
16 selection of experienced clinical public and private professionals
17 or consultants to lead the training; and

18 (C) monitor, evaluate, and revise the training
19 program, including the development of additional curricula based on
20 future training needs identified by staff and professionals.

21 (b) The task force consists of:

22 (1) one clinical professional and one training staff
23 member from each agency, appointed by that agency; and

24 (2) 10 private sector clinical professionals with
25 expertise in dealing with troubled children, youth, and
26 dysfunctional families, two of whom are appointed by each agency.

27 (c) The task force shall meet at the call of the department.

1 (d) The commission [department] shall act as the lead agency
2 in coordinating the development and implementation of the
3 memorandum.

4 (e) The executive commissioner and the agencies shall
5 review and by rule revise the memorandum not later than August each
6 year.

7 Sec. 533.042. EVALUATION OF ELDERLY RESIDENTS. (a) The
8 department shall evaluate each elderly resident at least annually
9 to determine if the resident can be appropriately served in a less
10 restrictive setting.

11 (b) The department shall consider the proximity to the
12 resident of family, friends, and advocates concerned with the
13 resident's well-being in determining whether the resident should be
14 moved from a department facility or to a different department
15 facility. The department shall recognize that a nursing facility
16 [home] may not be able to meet the special needs of an elderly
17 resident.

18 (c) In evaluating an elderly resident under this section and
19 to ensure appropriate placement, the department shall identify the
20 special needs of the resident, the types of services that will best
21 meet those needs, and the type of facility that will best provide
22 those services.

23 (d) The treating physician shall conduct the evaluation of
24 an elderly resident of a department [mental health] facility. [The
25 appropriate interdisciplinary team shall conduct the evaluation of
26 an elderly resident of a department mental retardation facility.]

27 (e) The department shall attempt to place an elderly

1 resident in a less restrictive setting if the department determines
2 that the resident can be appropriately served in that setting. The
3 department shall coordinate the attempt with the local mental
4 health [and mental retardation] authority.

5 (f) A local mental health [or mental retardation] authority
6 shall provide continuing care for an elderly resident placed in the
7 authority's service area under this section.

8 (g) The local mental health [or mental retardation]
9 authority shall have the right of access to all residents and
10 records of residents who request continuing care services.

11 Sec. 533.043. PROPOSALS FOR GERIATRIC, EXTENDED, AND
12 TRANSITIONAL CARE. (a) The department shall solicit proposals
13 from community providers to operate:

14 (1) community residential programs that will provide
15 at least the same services that an extended care unit provides for
16 the population the provider proposes to serve; or

17 (2) transitional living units that will provide at
18 least the same services that the department traditionally provides
19 in facility-based transitional care units.

20 (b) The department shall solicit proposals from community
21 providers to operate community residential programs for elderly
22 residents at least every two years.

23 (c) A proposal for extended care services may be designed to
24 serve all or part of an extended care unit's population.

25 (d) A proposal to operate transitional living units may
26 provide that the community provider operate the transitional living
27 unit in a community setting or on the grounds of a department

1 facility.

2 (e) The department shall require each provider to:

3 (1) offer adequate assurances of ability to:

4 (A) provide the required services;

5 (B) meet department standards; and

6 (C) safeguard the safety and well-being of each
7 resident; and

8 (2) sign a memorandum of agreement with the local
9 mental health [or mental retardation] authority[, as appropriate,]
10 outlining the responsibilities for continuity of care and
11 monitoring, if the provider is not the local authority.

12 (f) The department may fund a proposal through a contract if
13 the provider agrees to meet the requirements prescribed by
14 Subsection (e) and agrees to provide the services at a cost that is
15 equal to or less than the cost to the department to provide the
16 services.

17 (g) The appropriate local mental health [or mental
18 retardation] authority shall monitor the services provided to a
19 resident placed in a program funded under this section. The
20 department may monitor any service for which it contracts.

21 (h) The department is responsible for the care of a patient
22 in an extended care program funded under this section. The
23 department may terminate a contract for extended care services if
24 the program ends or does not provide the required services. The
25 department shall provide the services or find another program to
26 provide the services if the department terminates a contract.

27 [Sec. 533.044. MEMORANDUM OF UNDERSTANDING ON ASSESSMENT

1 ~~TOOLS.~~ (a) ~~The department and Texas Department of Human Services~~
2 ~~by rule shall adopt a joint memorandum of understanding that~~
3 ~~requires the use of a uniform assessment tool to assess whether an~~
4 ~~elderly person, a person with mental retardation, a person with a~~
5 ~~developmental disability, or a person who is suspected of being a~~
6 ~~person with mental retardation or a developmental disability and~~
7 ~~who is receiving services in a facility regulated or operated by the~~
8 ~~department or Texas Department of Human Services needs a guardian~~
9 ~~of the person or estate, or both.~~

10 [(b) ~~The memorandum must prescribe:~~

11 [(1) ~~the facilities that must use the assessment; and~~
12 [(2) ~~the circumstances in which the facilities must~~
13 ~~use the assessment.~~

14 [(c) ~~Each agency shall review and modify the memorandum as~~
15 ~~necessary not later than the last month of each state fiscal year.~~

16 [Sec. 533.045. USE OF CERTAIN DRUGS FOR CERTAIN PATIENTS.]

17 (a) ~~The department may place on a clozapine treatment plan each~~
18 ~~patient in a state hospital for whom the treatment is medically~~
19 ~~feasible and appropriate. The department may place a patient on a~~
20 ~~treatment plan using a drug other than clozapine if the drug~~
21 ~~produces results that are similar to or better than clozapine in~~
22 ~~treating schizophrenics.~~

23 [(b) ~~If a patient in a state hospital responds to a~~
24 ~~treatment plan required or authorized by Subsection (a) to the~~
25 ~~extent that the patient can be discharged from the hospital, the~~
26 ~~department may:~~

27 [(1) ~~assist the patient in applying for disability~~

1 ~~benefits and for Medicaid if the patient is potentially eligible,~~
2 ~~[+2) place the patient in a community setting with~~
3 ~~continuing drug treatments and with medical monitoring,~~
4 ~~[+3) provide or ensure that the patient is provided~~
5 ~~supportive housing, rehabilitation services, and job placement, as~~
6 ~~appropriate; and~~
7 ~~[+4) provide outpatient care at state hospitals or~~
8 ~~require a local mental health authority to provide outpatient care,~~
9 ~~as appropriate.~~

10 ~~[+c) The department may use facility beds vacated by~~
11 ~~patients discharged through the use of a treatment plan allowed by~~
12 ~~Subsection (a) for other appropriate uses.~~

13 ~~[Sec. 533.046. FEDERAL FUNDING FOR MENTAL HEALTH SERVICES~~
14 ~~FOR CHILDREN AND FAMILIES. (a) The department shall enter into an~~
15 ~~interagency agreement with the Texas Department of Human Services~~
16 ~~to:~~

17 ~~[+1) amend the eligibility requirements of the state's~~
18 ~~emergency assistance plan under Title IV-A, Social Security Act (42~~
19 ~~U.S.C. Section 601 et seq.), to include mental health emergencies,~~
20 ~~and~~

21 ~~[+2) prescribe the procedures the agencies will use to~~
22 ~~delegate to the department and to local mental health and mental~~
23 ~~retardation authorities the administration of mental health~~
24 ~~emergency assistance.~~

25 ~~[+b) The interagency agreement must provide that:~~
26 ~~[+1) the department certify to the Texas Department of~~
27 ~~Human Services the nonfederal expenditures for which the state will~~

1 ~~claim federal matching funds; and~~

2 [+(2) ~~the Texas Department of Human Services retain responsibility for making final eligibility decisions.~~

4 [+(c) ~~The department shall allocate to local mental health and mental retardation authorities 66 percent of the federal funds received under this section.~~

7 [Sec. 533.047. ~~MANAGED CARE ORGANIZATIONS: MEDICAID PROGRAM.~~ The department shall develop performance, operation, quality of care, marketing, and financial standards for the provision by managed care organizations of mental health and mental retardation services to Medicaid clients.

12 [Sec. 533.048. ~~GUARDIANSHIP ADVISORY COMMITTEE.~~ (a) In this section, "institution" means:

14 [+(1) ~~an ICF-MR; or~~

15 [+(2) ~~a state hospital, state school, or state center maintained and managed by the department.~~

17 [+(b) ~~The commissioner shall appoint a guardianship advisory committee composed of nine members, five of whom must be parents of residents of institutions.~~

20 [+(c) ~~The commissioner shall designate a member of the advisory committee to serve as presiding officer. The members of the advisory committee shall elect any other necessary officers.~~

23 [+(d) ~~The advisory committee shall meet at the call of the presiding officer.~~

25 [+(e) ~~A member of the advisory committee serves at the will of the commissioner.~~

27 [+(f) ~~A member of the advisory committee may not receive~~

1 compensation for serving on the advisory committee but is entitled
2 to reimbursement for travel expenses incurred by the member while
3 conducting the business of the advisory committee as provided by
4 the General Appropriations Act.

5 [(g) The advisory committee shall develop a plan and make
6 specific recommendations to the department regarding methods to
7 facilitate the appointment of relatives of residents of
8 institutions as guardians of those residents to make decisions
9 regarding appropriate care settings for the residents.

10 [Sec. 533.049. PRIVATIZATION OF STATE SCHOOL. (a) After
11 August 31, 2004, and before September 1, 2005, the department may
12 contract with a private service provider to operate a state school
13 only if:

14 [(1) the Health and Human Services Commission
15 determines that the private service provider will operate the state
16 school at a cost that is at least 25 percent less than the cost to
17 the department to operate the state school;

18 [(2) the Health and Human Services Commission approves
19 the contract;

20 [(3) the private service provider is required under
21 the contract to operate the school at a quality level at least equal
22 to the quality level achieved by the department when the department
23 operated the school, as measured by the school's most recent
24 applicable ICF-MR survey; and

25 [(4) the state school, when operated under the
26 contract, treats a population with the same characteristics and
27 need levels as the population treated by the state school when

1 ~~operated by the department.~~

2 ~~[c) If the department contracts with a private service~~
3 ~~provider to operate a state school, the department, the Governor's~~
4 ~~Office of Budget and Planning, and the Legislative Budget Board~~
5 ~~shall identify sources of funding that must be transferred to the~~
6 ~~department to fund the contract.~~

7 ~~[d) The department may renew a contract under this section.~~
8 The conditions listed in Subsections (a)(1)-(3) apply to the
9 ~~renewal of the contract.~~

10 ~~[Sec. 533.050. PRIVATIZATION OF STATE MENTAL HOSPITAL.] (a)~~
11 ~~After August 31, 2004, and before September 1, 2005, the department~~
12 ~~may contract with a private service provider to operate a state~~
13 ~~mental hospital owned by the department only if:~~

14 ~~[1) the Health and Human Services Commission~~
15 ~~determines that the private service provider will operate the~~
16 ~~hospital at a cost that is at least 25 percent less than the cost to~~
17 ~~the department to operate the hospital;~~

18 ~~[2) the Health and Human Services Commission approves~~
19 ~~the contract;~~

20 ~~[3) the hospital, when operated under the contract,~~
21 ~~treats a population with the same characteristics and acuity levels~~
22 ~~as the population treated at the hospital when operated by the~~
23 ~~department; and~~

24 ~~[4) the private service provider is required under~~
25 ~~the contract to operate the hospital at a quality level at least~~
26 ~~equal to the quality level achieved by the department when the~~
27 ~~department operated the hospital, as measured by the hospital's~~

1 ~~most recent applicable accreditation determination from the Joint~~
2 ~~Commission on Accreditation of Healthcare Organizations (JCAHO).~~

3 ~~((c) If the department contracts with a private service~~
4 ~~provider to operate a state mental hospital, the department, the~~
5 ~~Governor's Office of Budget and Planning, and the Legislative~~
6 ~~Budget Board shall identify sources of funding that must be~~
7 ~~transferred to the department to fund the contract.~~

8 ~~((d) The department may renew a contract under this section.~~
9 ~~The conditions listed in Subsections (a)(1)-(3) apply to the~~
10 ~~renewal of the contract.]~~

11 Sec. 533.051. ALLOCATION OF OUTPATIENT MENTAL HEALTH
12 SERVICES AND BEDS IN STATE HOSPITALS. (a) To ensure the
13 appropriate and timely provision of mental health services to
14 patients who voluntarily receive those services or who are ordered
15 by a court to receive those services in civil or criminal
16 proceedings, the department, in conjunction with the commission,
17 shall plan for the proper and separate allocation of outpatient or
18 community-based mental health services provided by secure and
19 nonsecure outpatient facilities that provide residential care
20 alternatives and mental health services and for the proper and
21 separate allocation of beds in the state hospitals for the
22 following two groups of patients:

23 (1) patients who are voluntarily receiving outpatient
24 or community-based mental health services, voluntarily admitted to
25 a state hospital under Chapter 572, admitted to a state hospital for
26 emergency detention under Chapter 573, or ordered by a court under
27 Chapter 574 to receive inpatient mental health services at a state

1 hospital or outpatient mental health services from an outpatient
2 facility that provides residential care alternatives and mental
3 health services; and

4 (2) patients who are ordered to participate in an
5 outpatient treatment program to attain competency to stand trial
6 under Chapter 46B, Code of Criminal Procedure, or committed to a
7 state hospital or other facility to attain competency to stand
8 trial under Chapter 46B, Code of Criminal Procedure, or to receive
9 inpatient mental health services following an acquittal by reason
10 of insanity under Chapter 46C, Code of Criminal Procedure.

11 (b) The plan developed by the department under Subsection
12 (a) must include:

13 (1) a determination of the needs for outpatient mental
14 health services of the two groups of patients described by
15 Subsection (a);

16 (2) a determination of the minimum number of beds that
17 the state hospital system must maintain to adequately serve the two
18 groups of patients;

19 (3) a statewide plan for and the allocation of
20 sufficient funds for meeting the outpatient mental health service
21 needs of and for the maintenance of beds by the state hospitals for
22 the two groups of patients; and

23 (4) a process to address and develop, without adverse
24 impact to local service areas, the accessibility and availability
25 of sufficient outpatient mental health services provided to and
26 beds provided by the state hospitals to the two groups of patients
27 based on the success of contractual outcomes with mental health

1 service providers and facilities under Sections [533.034](#) and
2 [533.052](#).

3 (c) To assist in the development of the plan under
4 Subsection (a), the department shall establish and meet at least
5 monthly with an advisory panel composed of the following persons:

6 (1) one representative designated by the Texas
7 Department of Criminal Justice;

8 (2) one representative designated by the Texas
9 Association of Counties;

10 (3) two representatives designated by the Texas
11 Council of Community Centers, including one representative of an
12 urban local service area and one representative of a rural local
13 service area;

14 (4) two representatives designated by the County
15 Judges and Commissioners Association of Texas, including one
16 representative who is the presiding judge of a court with
17 jurisdiction over mental health matters;

18 (5) one representative designated by the Sheriffs'
19 Association of Texas;

20 (6) two representatives designated by the Texas
21 Municipal League, including one representative who is a municipal
22 law enforcement official;

23 (7) one representative designated by the Texas
24 Conference of Urban Counties;

25 (8) two representatives designated by the Texas
26 Hospital Association, including one representative who is a
27 physician;

1 (9) one representative designated by the Texas
2 Catalyst for Empowerment; and

3 (10) four representatives designated by the
4 department's [~~Department of State Health Services'~~] Council for
5 Advising and Planning for the Prevention and Treatment of Mental
6 and Substance Use Disorders, including:

7 (A) the chair of the council;

8 (B) one representative of the council's members
9 who is a consumer of or advocate for mental health services;

10 (C) one representative of the council's members
11 who is a consumer of or advocate for substance abuse treatment; and

12 (D) one representative of the council's members
13 who is a family member of or advocate for persons with mental health
14 and substance abuse disorders.

15 (d) In developing the plan under Subsection (a), the
16 department and advisory panel shall consider:

17 (1) needs for outpatient mental health services of the
18 two groups of patients described by Subsection (a);

19 (2) the frequency of use of beds and the historical
20 patterns of use of beds in the state hospitals and other facilities
21 by the two groups of patients;

22 (3) local needs and demands for outpatient mental
23 health services by the two groups of patients;

24 (4) local needs and demands for beds in the state
25 hospitals and other facilities for the two groups of patients;

26 (5) the availability of outpatient mental health
27 service providers and inpatient mental health facilities that may

1 be contracted with to provide outpatient mental health services and
2 beds for the two groups of patients;

3 (6) the differences between the two groups of patients
4 with regard to:

5 (A) admission to and discharge from a state
6 hospital or outpatient facility;

7 (B) rapid stabilization and discharge to the
8 community;

9 (C) length of stay in a state hospital or
10 outpatient facility;

11 (D) disputes arising from the determination of a
12 patient's length of stay in a state hospital by a health maintenance
13 organization or a managed care organization;

14 (E) third-party billing; and

15 (F) legal challenges or requirements related to
16 the examination and treatment of the patients; and

17 (7) public input provided to the department or
18 advisory panel in a form and at a time and place that is effective
19 and appropriate and in a manner that complies with any applicable
20 laws, including administrative rules.

21 (e) The department shall update the plan biennially.

22 [~~(f) Not later than December 31, 2013, the department, in
23 conjunction with the advisory panel, shall develop the initial
24 version of the plan required by Subsection (a).~~]

25 [~~(g) Not later than August 31, 2014, the department shall:~~]

26 [~~(1) identify standards and methodologies for the
27 implementation of the plan required by Subsection (a); and~~]

1 [~~(2) begin implementing the plan.~~

2 [(h) ~~Not later than December 1, 2014, the department shall~~
3 ~~submit a report to the legislature and governor that includes the~~
4 ~~initial version of the plan, the status of the plan's~~
5 ~~implementation, and the impact of the plan on the delivery of~~
6 ~~services.]~~

7 (i) While the plan required by Subsection (a) is being
8 developed and implemented, the department may not, pursuant to any
9 rule, contract, or directive, impose a sanction, penalty, or fine
10 on a local mental health authority for the authority's
11 noncompliance with any methodology or standard adopted or applied
12 by the department relating to the allocation of beds by authorities
13 for the two groups of patients described by Subsection (a).

14 Sec. 533.052. CONTRACTING WITH CERTAIN MENTAL HEALTH
15 SERVICE PROVIDERS AND FACILITIES TO PROVIDE SERVICES AND BEDS FOR
16 CERTAIN PERSONS. The department shall make every effort, through
17 collaboration and contractual arrangements with local mental
18 health authorities, to contract with and use a broad base of local
19 community outpatient mental health service providers and inpatient
20 mental health facilities, as appropriate, to make available a
21 sufficient and appropriately located amount of outpatient mental
22 health services and a sufficient and appropriately located number
23 of beds in inpatient mental health facilities, as specified in the
24 plan developed by the department under Section 533.051, to ensure
25 the appropriate and timely provision of mental health services to
26 the two groups of patients described by Section 533.051(a).

27 Sec. 533.053. INFORMING COURTS OF COMMITMENT OPTIONS. The

1 department shall develop and implement a procedure through which a
2 court that has the authority to commit a person who is incompetent
3 to stand trial or who has been acquitted by reason of insanity under
4 Chapters 46B and 46C, Code of Criminal Procedure, is aware of all of
5 the commitment options for the person, including jail diversion and
6 community-based programs.

7 SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

8 Sec. 533.081. DEVELOPMENT OF FACILITY BUDGETS. The
9 department, in budgeting for a facility, shall use uniform costs
10 for specific types of services a facility provides unless a
11 legitimate reason exists and is documented for the use of other
12 costs.

13 Sec. 533.082. DETERMINATION OF SAVINGS IN FACILITIES. (a)
14 The department shall determine the degree to which the costs of
15 operating department facilities for persons with mental illness [~~or~~
16 ~~mental retardation~~] in compliance with applicable standards are
17 affected as populations in the facilities fluctuate.

18 (b) In making the determination, the department shall:

19 (1) assume that the current level of services and
20 necessary state of repair of the facilities will be maintained; and
21 (2) include sufficient funds to allow the department
22 to comply with the requirements of litigation and applicable
23 standards.

24 (c) The department shall allocate to community-based mental
25 health programs any savings realized in operating department
26 facilities for persons with mental illness.

27 [~~(d) The department shall allocate to community-based~~

1 ~~mental retardation programs any savings realized in operating~~
2 ~~department facilities for persons with mental retardation.]~~

3 Sec. 533.083. CRITERIA FOR EXPANSION, CLOSURE, OR
4 CONSOLIDATION OF FACILITY. The department shall establish
5 objective criteria for determining when a new facility may be
6 needed and when a facility may be expanded, closed, or
7 consolidated.

8 Sec. 533.084. MANAGEMENT OF SURPLUS REAL PROPERTY. (a) To
9 the extent provided by this subtitle, the department, in
10 coordination with the executive commissioner, may lease, transfer,
11 or otherwise dispose of any surplus real property related to the
12 provision of services under this title, including any improvements
13 under its management and control, or authorize the lease, transfer,
14 or disposal of the property. Surplus property is property the
15 executive commissioner [board] designates as having minimal value
16 to the present service delivery system and projects to have minimal
17 value to the service delivery system as described in the
18 department's long-range plan.

19 (b) The proceeds from the lease, transfer, or disposal of
20 surplus real property, including any improvements, shall be
21 deposited to the credit of the department in the Texas capital trust
22 fund established under Chapter 2201, Government Code. The proceeds
23 [~~and any interest from the proceeds~~] may be appropriated only for
24 improvements to the department's system of mental health
25 facilities.

26 (c) A lease proposal shall be advertised at least once a
27 week for four consecutive weeks in at least two newspapers. One

1 newspaper must be a newspaper published in the municipality in
2 which the property is located or the daily newspaper published
3 nearest to the property's location. The other newspaper must have
4 statewide circulation. Each lease is subject to the attorney
5 general's approval as to substance and form. The executive
6 commissioner [board] shall adopt forms, rules, and contracts that,
7 in the executive commissioner's [board's] best judgment, will
8 protect the state's interests. The executive commissioner [board]
9 may reject any or all bids.

10 (d) This section does not authorize the executive
11 commissioner or department to close or consolidate a facility used
12 to provide mental health [~~or mental retardation~~] services without
13 first obtaining legislative approval.

14 (e) Notwithstanding Subsection (c), the executive
15 commissioner, in coordination with the department, may enter into a
16 written agreement with the General Land Office to administer lease
17 proposals. If the General Land Office administers a lease proposal
18 under the agreement, notice that the property is offered for lease
19 must be published in accordance with Section 32.107, Natural
20 Resources Code.

21 Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES ACCOUNT.
22 (a) The mental health community services account is an account in
23 the general revenue fund that may be appropriated only for the
24 provision of mental health services by or under contract with the
25 department.

26 (b) The department shall deposit to the credit of the mental
27 health community services account any money donated to the state

1 for inclusion in the account, including life insurance proceeds
2 designated for deposit to the account.

3 [(c) Interest earned on the mental health community
4 services account shall be credited to the account. The account is
5 exempt from the application of Section 403.095, Government Code.]

6 Sec. 533.085. FACILITIES FOR INMATE AND PAROLEE CARE. (a)
7 With the written approval of the governor, the department may
8 contract with the Texas Department of Criminal Justice to transfer
9 facilities to the Texas Department of Criminal Justice [~~that~~
10 ~~department~~] or otherwise provide facilities for:

11 (1) inmates with mental illness [~~or mental~~
12 ~~retardation~~] in the custody of the Texas Department of Criminal
13 Justice [~~that department~~

14 (2) persons with mental illness [~~or mental~~
15 ~~retardation~~] paroled or released under the [~~that department's~~
16 supervision of the Texas Department of Criminal Justice.]

17 (b) An agency must report to the governor the agency's
18 reasons for proposing to enter into a contract under this section
19 and request the governor's approval.

20 [Sec. 533.086. USE OF DEPARTMENT FACILITIES BY SUBSTANCE
21 ABUSERS. (a) The department shall annually provide the Texas
22 Commission on Alcohol and Drug Abuse with an analysis by county of
23 the hospitalization rates of persons with substance abuse problems.
24 The analysis must include information indicating which admissions
25 were for persons with only substance abuse problems and which
26 admissions were for persons with substance abuse problems but whose
27 primary diagnoses were other types of mental health problems.]

1 [~~(b) Not later than September 1 of each even-numbered year,~~
2 ~~the department and the Texas Commission on Alcohol and Drug Abuse~~
3 ~~shall jointly estimate the number of facility beds that should be~~
4 ~~maintained for persons with substance abuse problems who cannot be~~
5 ~~treated in the community.]~~

6 Sec. 533.087. LEASE OF REAL PROPERTY. (a) The department,
7 in coordination with the executive commissioner, may lease real
8 property related to the provision of services under this title,
9 including any improvements under the department's management and
10 control, regardless of whether the property is surplus property.
11 Except as provided by Subsection (c), the department, in
12 coordination with the executive commissioner, may award a lease of
13 real property only:

14 (1) at the prevailing market rate; and
15 (2) by competitive bid.

16 (b) The commission [~~department~~] shall advertise a proposal
17 for lease at least once a week for four consecutive weeks in:

18 (1) a newspaper published in the municipality in which
19 the property is located or the daily newspaper published nearest to
20 the property's location; and
21 (2) a newspaper of statewide circulation.

22 (c) The department, in coordination with the executive
23 commissioner, may lease real property related to the provision of
24 services under this title or an improvement for less than the
25 prevailing market rate, without advertisement or without
26 competitive bidding, if:

27 (1) the executive commissioner [~~board~~] determines

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1 that sufficient public benefit will be derived from the lease; and

2 (2) the property is leased to:

3 (A) a federal or state agency;

4 (B) a unit of local government;

5 (C) a not-for-profit organization; or

6 (D) an entity related to the department by a

7 service contract

8 (d) The executive commissioner [board] shall adopt leasing
9 rules, forms, and contracts that will protect the state's
10 interests.

11 (e) The executive commissioner [board] may reject any bid.

12 (f) This section does not authorize the executive
13 commissioner or department to close or consolidate a facility used
14 to provide mental health [~~or mental retardation~~] services without
15 legislative approval.

16 (g) Notwithstanding Subsections (a) and (b), the executive
17 commissioner, in coordination with the department, may enter into a
18 written agreement with the General Land Office to administer lease
19 proposals. If the General Land Office administers a lease proposal
20 under the agreement, notice that the property is offered for lease
21 must be published in accordance with Section [32.107](#), Natural
22 Resources Code.

SUBCHAPTER E. JAIL DIVERSION PROGRAM

24 Sec. 533.108. PRIORITIZATION OF FUNDING FOR DIVERSION OF
25 PERSONS FROM INCARCERATION IN CERTAIN COUNTIES. (a) A local mental
26 health [or mental retardation] authority may develop and may
27 prioritize its available funding for:

6 (A) screening and assessment services; and

7 (B) treatment services, including:

8 (i) assertive community treatment
9 services;

(ii) inpatient crisis respite services;

11 (iii) medication management services;

12 (iv) short-term residential services;

13 (v) shelter care services;

14 (vi) crisis respite residential services;

15 (vii) outpatient integrated mental health

16 services;

17 (viii) co-occurring substance abuse

18 treatment services;
19 (ix) psychiatric rehabilitation and
20

(v) continuity of core services and

(vi) services consistent with the Texas

23 Correctional Office [~~Council~~] on Offenders with Medical or Mental
24 Impairments model;

1 (3) other model programs for offenders and suspects
2 who may be members of the priority population, including crisis
3 intervention training for law enforcement personnel.

4 (b) A local mental health [~~or mental retardation~~] authority
5 developing a system, training, or a model program under Subsection
6 (a) shall collaborate with other local resources, including local
7 law enforcement and judicial systems and local personnel.

8 (c) A local mental health [~~or mental retardation~~] authority
9 may not implement a system, training, or a model program developed
10 under this section until the system, training, or program is
11 approved by the department.

12 CHAPTER 533A. POWERS AND DUTIES OF DEPARTMENT OF AGING AND

13 DISABILITY SERVICES

14 SUBCHAPTER A. GENERAL POWERS AND DUTIES

15 Sec. 533A.001. DEFINITIONS. In this chapter:

16 (1) "Commissioner" means the commissioner of aging and
17 disability services.

18 (2) "Department" means the Department of Aging and
19 Disability Services.

20 (3) "Department facility" means a facility listed in
21 Section 532A.001(b).

22 Sec. 533A.002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
23 CONFLICT WITH OTHER LAW. To the extent a power or duty given to the
24 commissioner by this title or another law conflicts with Section
25 531.0055, Government Code, Section 531.0055 controls.

26 Sec. 533A.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL
27 AUTHORITIES AND COMMUNITY CENTERS. (a) To develop or expand a

1 volunteer intellectual disability program in a local intellectual
2 and developmental disability authority or a community center, the
3 department may allocate available funds appropriated for providing
4 volunteer intellectual disability services.

5 (b) The department shall develop formal policies that
6 encourage the growth and development of volunteer intellectual
7 disability services in local intellectual and developmental
8 disability authorities and community centers.

9 Sec. 533A.004. LIENS. (a) In this section, "department
10 facility" includes the ICF-IID component of the Rio Grande State
11 Center.

12 (a-1) The department and each community center has a lien to
13 secure reimbursement for the cost of providing support,
14 maintenance, and treatment to a client with an intellectual
15 disability in an amount equal to the amount of reimbursement
16 sought.

17 (b) The amount of the reimbursement sought may not exceed:
18 (1) the amount the department is authorized to charge
19 under Subchapter D, Chapter 593, if the client received the
20 services in a department facility; or

21 (2) the amount the community center is authorized to
22 charge under Section 534.017 if the client received the services in
23 a community center.

24 (c) The lien attaches to:
25 (1) all nonexempt real and personal property owned or
26 later acquired by the client or by a person legally responsible for
27 the client's support;

1 (2) a judgment of a court in this state or a decision
2 of a public agency in a proceeding brought by or on behalf of the
3 client to recover damages for an injury for which the client was
4 admitted to a department facility or community center; and

5 (3) the proceeds of a settlement of a cause of action
6 or a claim by the client for an injury for which the client was
7 admitted to a department facility or community center.

8 (d) To secure the lien, the department or community center
9 must file written notice of the lien with the county clerk of the
10 county in which:

11 (1) the client, or the person legally responsible for
12 the client's support, owns property; or

13 (2) the client received or is receiving services.

14 (e) The notice must contain:

15 (1) the name and address of the client;

16 (2) the name and address of the person legally
17 responsible for the client's support, if applicable;

18 (3) the period during which the department facility or
19 community center provided services or a statement that services are
20 currently being provided; and

21 (4) the name and location of the department facility
22 or community center.

23 (f) Not later than the 31st day before the date on which the
24 department files the notice of the lien with the county clerk, the
25 department shall notify by certified mail the client and the person
26 legally responsible for the client's support. The notice must
27 contain a copy of the charges, the statutory procedures relating to

1 filing a lien, and the procedures to contest the charges. The
2 executive commissioner by rule shall prescribe the procedures to
3 contest the charges.

4 (g) The county clerk shall record on the written notice the
5 name of the client, the name and address of the department facility
6 or community center, and, if requested by the person filing the
7 lien, the name of the person legally responsible for the client's
8 support. The clerk shall index the notice record in the name of the
9 client and, if requested by the person filing the lien, in the name
10 of the person legally responsible for the client's support.

11 (h) The notice record must include an attachment that
12 contains an account of the charges made by the department facility
13 or community center and the amount due to the facility or center.
14 The director or superintendent of the facility or center must swear
15 to the validity of the account. The account is presumed to be
16 correct, and in a suit to cancel the debt and discharge the lien or
17 to foreclose on the lien, the account is sufficient evidence to
18 authorize a court to render a judgment for the facility or center.

19 (i) To discharge the lien, the director or superintendent of
20 the department facility or community center or a claims
21 representative of the facility or center must execute and file with
22 the county clerk of the county in which the lien notice is filed a
23 certificate stating that the debt covered by the lien has been paid,
24 settled, or released and authorizing the clerk to discharge the
25 lien. The county clerk shall record a memorandum of the certificate
26 and the date on which it is filed. The filing of the certificate and
27 recording of the memorandum discharge the lien.

1 Sec. 533A.005. EASEMENTS. The department, in coordination
2 with the executive commissioner, may grant a temporary or permanent
3 easement or right-of-way on land held by the department that
4 relates to services provided under this title. The department, in
5 coordination with the executive commissioner, must grant an
6 easement or right-of-way on terms and conditions the executive
7 commissioner considers to be in the state's best interest.

8 Sec. 533A.006. REPORTING OF ALLEGATIONS AGAINST PHYSICIAN.

9 (a) The department shall report to the Texas Medical Board any
10 allegation received by the department that a physician employed by
11 or under contract with the department in relation to services
12 provided under this title has committed an action that constitutes
13 a ground for the denial or revocation of the physician's license
14 under Section 164.051, Occupations Code. The report must be made in
15 the manner provided by Section 154.051, Occupations Code.

16 (b) The department shall provide to the Texas Medical Board
17 a copy of any report or finding relating to an investigation of an
18 allegation reported to that board.

19 Sec. 533A.007. USE OF CRIMINAL HISTORY RECORD INFORMATION.

20 (a) Subject to any applicable requirements of Chapter 250, the
21 department, in relation to services provided under this title, or a
22 local intellectual and developmental disability authority or
23 community center, may deny employment or volunteer status to an
24 applicant if:

25 (1) the department, authority, or community center
26 determines that the applicant's criminal history record
27 information indicates that the person is not qualified or suitable;

1 or

2 (2) the applicant fails to provide a complete set of
3 fingerprints if the department establishes that method of obtaining
4 criminal history record information.

5 (b) The executive commissioner shall adopt rules relating
6 to the use of information obtained under this section, including
7 rules that prohibit an adverse personnel action based on arrest
8 warrant or wanted persons information received by the department.

9 Sec. 533A.0075. EXCHANGE OF EMPLOYMENT RECORDS. The
10 department, in relation to services provided under this title, or a
11 local intellectual and developmental disability authority or
12 community center, may exchange with one another the employment
13 records of an employee or former employee who applies for
14 employment at the department, authority, or community center.

15 Sec. 533A.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS
16 WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY. (a) Each
17 department facility and community center shall annually assess the
18 feasibility of converting entry level support positions into
19 employment opportunities for individuals with mental illness or an
20 intellectual disability in the facility's or center's service area.

21 (b) In making the assessment, the department facility or
22 community center shall consider the feasibility of using an array
23 of job opportunities that may lead to competitive employment,
24 including sheltered employment and supported employment.

25 (c) Each department facility and community center shall
26 annually submit to the department a report showing that the
27 facility or center has complied with Subsection (a).

1 (d) The department shall compile information from the
2 reports and shall make the information available to each designated
3 provider in a service area.

4 (e) Each department facility and community center shall
5 ensure that designated staff are trained to:

6 (1) assist clients through the Social Security
7 Administration disability determination process;

8 (2) provide clients and their families information
9 related to the Social Security Administration Work Incentive
10 Provisions; and

11 (3) assist clients in accessing and utilizing the
12 Social Security Administration Work Incentive Provisions to
13 finance training, services, and supports needed to obtain career
14 goals.

15 Sec. 533A.009. EXCHANGE OF CLIENT RECORDS. (a) Department
16 facilities, local intellectual and developmental disability
17 authorities, community centers, other designated providers, and
18 subcontractors of intellectual disability services are component
19 parts of one service delivery system within which client records
20 may be exchanged without the client's consent.

21 (b) The executive commissioner shall adopt rules to carry
22 out the purposes of this section.

23 Sec. 533A.0095. COLLECTION AND MAINTENANCE OF INFORMATION
24 REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The
25 executive commissioner by rule shall require the department to
26 collect information and maintain current records regarding a person
27 found not guilty of an offense by reason of insanity under Chapter

1 46C, Code of Criminal Procedure, who is:

2 (1) committed by a court for long-term placement in a
3 residential care facility under Chapter 593 or under Chapter 46C,
4 Code of Criminal Procedure; or
5 (2) ordered by a court to receive outpatient or
6 community-based treatment and supervision.

7 (b) Information maintained by the department under this
8 section must include the name and address of any facility to which
9 the person is committed, the length of the person's commitment to
10 the facility, and any post-release outcome.

11 (c) The department shall file annually with the presiding
12 officer of each house of the legislature a written report
13 containing the name of each person described by Subsection (a), the
14 name and address of any facility to which the person is committed,
15 the length of the person's commitment to the facility, and any
16 post-release outcome.

17 Sec. 533A.010. INFORMATION RELATING TO CONDITION. (a) A
18 person, including a hospital, nursing facility, medical society, or
19 other organization, may provide to the department or a medical
20 organization, hospital, or hospital committee any information,
21 including interviews, reports, statements, or memoranda relating
22 to a person's condition and treatment for use in a study to reduce
23 mental illness and intellectual disabilities.

24 (b) The department or a medical organization, hospital, or
25 hospital committee receiving the information may use or publish the
26 information only to advance mental health and intellectual
27 disability research and education in order to reduce mental illness

1 and intellectual disabilities. A summary of the study may be
2 released for general publication.

3 (c) The identity of a person whose condition or treatment is
4 studied is confidential and may not be revealed under any
5 circumstances. Information provided under this section and any
6 finding or conclusion resulting from the study is privileged
7 information.

8 (d) A person is not liable for damages or other relief if the
9 person:

10 (1) provides information under this section;
11 (2) releases or publishes the findings and conclusions
12 of the person or organization to advance mental health and
13 intellectual disability research and education; or
14 (3) releases or publishes generally a summary of a
15 study.

16 Sec. 533A.011 [533.011]. RETURN OF PERSON WITH AN
17 INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~] TO STATE OF
18 RESIDENCE. (a) In this section, "department facility" includes
19 the ICF-IID component of the Rio Grande State Center.

20 (a-1) The department may return a nonresident person with an
21 intellectual disability [~~mental retardation~~] who is committed to a
22 department facility [~~for persons with mental retardation~~] in this
23 state to the proper agency of the person's state of residence.

24 (b) The department may permit the return of a resident of
25 this state who is committed to a facility for persons with an
26 intellectual disability [~~mental retardation~~] in another state.

27 (c) The department may enter into reciprocal agreements

1 with the proper agencies of other states to facilitate the return of
2 persons committed to department facilities [~~for persons with mental~~
3 ~~retardation~~] in this state, or facilities for persons with an
4 intellectual disability in another state, to the state of their
5 residence.

6 (d) The director [~~superintendent~~] of a department facility
7 [~~for persons with mental retardation~~] may detain for not more than
8 96 hours pending a court order in a commitment proceeding in this
9 state a person with an intellectual disability [~~mental retardation~~]
10 returned to this state.

11 (e) The state returning a person with an intellectual
12 disability [~~mental retardation~~] to another state shall bear the
13 expenses of returning the person.

14 Sec. 533A.012. COOPERATION OF STATE AGENCIES. At the
15 department's request and in coordination with the executive
16 commissioner, all state departments, agencies, officers, and
17 employees shall cooperate with the department in activities that
18 are consistent with their functions and that relate to services
19 provided under this title.

20 Sec. 533A.015. UNANNOUNCED INSPECTIONS. The department may
21 make any inspection of a department facility or program under the
22 department's jurisdiction under this title without announcing the
23 inspection.

24 Sec. 533A.016. CERTAIN PROCUREMENTS OF GOODS AND SERVICES
25 BY SERVICE PROVIDERS. (a) This section does not apply to a "health
26 and human services agency," as that term is defined by Section
27 531.001, Government Code.

1 (a-1) A state agency, local agency, or local intellectual
2 and developmental disability authority that expends public money to
3 acquire goods or services in connection with providing or
4 coordinating the provision of intellectual disability services may
5 satisfy the requirements of any state law requiring procurements by
6 competitive bidding or competitive sealed proposals by procuring
7 goods or services with the public money in accordance with Section
8 533A.017 or in accordance with:

9 (1) Section 32.043 or 32.044, Human Resources Code, if
10 the entity is a public hospital subject to those laws; or
11 (2) this section, if the entity is not covered by
12 Subdivision (1).

13 (b) An agency or authority under Subsection (a-1)(2) may
14 acquire goods or services by any procurement method that provides
15 the best value to the agency or authority. The agency or authority
16 shall document that the agency or authority considered all relevant
17 factors under Subsection (c) in making the acquisition.

18 (c) Subject to Subsection (d), the agency or authority may
19 consider all relevant factors in determining the best value,
20 including:

21 (1) any installation costs;
22 (2) the delivery terms;
23 (3) the quality and reliability of the vendor's goods
24 or services;
25 (4) the extent to which the goods or services meet the
26 agency's or authority's needs;
27 (5) indicators of probable vendor performance under

1 the contract such as past vendor performance, the vendor's
2 financial resources and ability to perform, the vendor's experience
3 and responsibility, and the vendor's ability to provide reliable
4 maintenance agreements;

5 (6) the impact on the ability of the agency or
6 authority to comply with laws and rules relating to historically
7 underutilized businesses or relating to the procurement of goods
8 and services from persons with disabilities;

9 (7) the total long-term cost to the agency or
10 authority of acquiring the vendor's goods or services;

11 (8) the cost of any employee training associated with
12 the acquisition;

13 (9) the effect of an acquisition on the agency's or
14 authority's productivity;

15 (10) the acquisition price; and

16 (11) any other factor relevant to determining the best
17 value for the agency or authority in the context of a particular
18 acquisition.

19 (d) If a state agency to which this section applies acquires
20 goods or services with a value that exceeds \$100,000, the state
21 agency shall consult with and receive approval from the commission
22 before considering factors other than price and meeting
23 specifications.

24 (e) The state auditor or the executive commissioner may
25 audit the agency's or authority's acquisitions of goods and
26 services under this section to the extent state money or federal
27 money appropriated by the state is used to make the acquisitions.

1 (f) The agency or authority may adopt rules and procedures
2 for the acquisition of goods and services under this section.

3 Sec. 533A.017. PARTICIPATION IN PURCHASING CONTRACTS OR
4 GROUP PURCHASING PROGRAM. (a) This section does not apply to a
5 "health and human services agency," as that term is defined by
6 Section 531.001, Government Code.

7 (b) The executive commissioner may allow a state agency,
8 local agency, or local intellectual and developmental disability
9 authority that expends public money to purchase goods or services
10 in connection with providing or coordinating the provision of
11 intellectual disability services to purchase goods or services with
12 the public money by participating in:

13 (1) a contract the executive commissioner has made to
14 purchase goods or services; or

15 (2) a group purchasing program established or
16 designated by the executive commissioner that offers discounts to
17 providers of intellectual disability services.

18 Sec. 533A.018 [533.018]. REVENUE FROM SPECIAL OLYMPICS
19 TEXAS LICENSE PLATES [ACCOUNT]. [(a) The Texas Department of
20 Mental Health and Mental Retardation Special Olympics Texas account
21 is a separate account in the general revenue fund. The account is
22 composed of money deposited to the credit of the account under
23 Section 502.2922, Transportation Code. Money in the account may be
24 used only for the purposes of this section.

25 [(b) The department administers the account.] Annually,
26 the department shall distribute the money deposited under Section
27 504.621, Transportation Code, to the credit of the account created

1 in the trust fund created under Section 504.6012, Transportation
2 Code, to Special Olympics Texas to be used only to pay for costs
3 associated with training and with area and regional competitions of
4 the Special Olympics Texas.

5 SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF

6 INTELLECTUAL DISABILITY SERVICES

7 Sec. 533A.031. DEFINITIONS. In this subchapter:

8 (1) "Elderly resident" means a person 65 years of age
9 or older residing in a department facility.

10 (2) "ICF-IID and related waiver programs" includes
11 ICF-IID Section 1915(c) waiver programs, home and community-based
12 services, Texas home living waiver services, or another Medicaid
13 program serving persons with an intellectual disability.

14 (3) "Qualified service provider" means an entity that
15 meets requirements for service providers established by the
16 executive commissioner.

17 (4) "Section 1915(c) waiver program" means a federally
18 funded Medicaid program of the state that is authorized under
19 Section 1915(c) of the federal Social Security Act (42 U.S.C.
20 Section 1396n(c)).

21 Sec. 533A.032. LONG-RANGE PLANNING. (a) The department
22 shall have a long-range plan relating to the provision of services
23 under this title covering at least six years that includes at least
24 the provisions required by Sections 531.022 and 531.023, Government
25 Code, and Chapter 2056, Government Code. The plan must cover the
26 provision of services in and policies for state-operated
27 institutions and ensure that the medical needs of the most

1 medically fragile persons with an intellectual disability the
2 department serves are met.

3 **(b) In developing the plan, the department shall:**

4 **(1) solicit input from:**

5 **(A) local intellectual and developmental**
6 disability authorities;

7 **(B) community representatives;**

8 **(C) consumers of intellectual disability**
9 services, including consumers of campus-based and community-based
10 services, and family members of consumers of those services; and

11 **(D) other interested persons; and**

12 **(2) consider the report developed under Subsection**
13 **(c).**

14 **(c) The department shall develop a report containing**
15 information and recommendations regarding the most efficient
16 long-term use and management of the department's campus-based
17 facilities. The report must:

18 **(1) project future bed requirements for state**
19 supported living centers;

20 **(2) document the methodology used to develop the**
21 projection of future bed requirements;

22 **(3) project maintenance costs for institutional**
23 facilities;

24 **(4) recommend strategies to maximize the use of**
25 institutional facilities; and

26 **(5) specify how each state supported living center**
27 will:

1 (A) serve and support the communities and
2 consumers in its service area; and
3 (B) fulfill statewide needs for specialized
4 services.

5 (d) In developing the report under Subsection (c), the
6 department shall:

7 (1) conduct two public meetings, one meeting to be
8 held at the beginning of the process and the second meeting to be
9 held at the end of the process, to receive comments from interested
10 parties; and

11 (2) consider:

12 (A) the medical needs of the most medically
13 fragile of its clients with an intellectual disability;

14 (B) the provision of services to clients with a
15 severe and profound intellectual disability and to persons with an
16 intellectual disability who are medically fragile or have
17 behavioral problems;

18 (C) the program and service preference
19 information collected under Section 533A.038; and

20 (D) input solicited from consumers of services of
21 state supported living centers.

22 (g) The department shall:

23 (1) attach the report required by Subsection (c) to
24 the department's legislative appropriations request for each
25 biennium;

26 (2) at the time the department presents its
27 legislative appropriations request, present the report to the:

1 (A) governor;
2 (B) governor's budget office;
3 (C) lieutenant governor;
4 (D) speaker of the house of representatives;
5 (E) Legislative Budget Board; and
6 (F) commission; and
7 (3) update the department's long-range plan biennially
8 and include the report in the plan.

9 Sec. 533A.0325. CONTINUUM OF SERVICES IN DEPARTMENT
10 FACILITIES. The executive commissioner by rule shall establish
11 criteria regarding the uses of department facilities as part of a
12 full continuum of services under this title.

13 Sec. 533A.0335 [~~533.0335~~]. COMPREHENSIVE ASSESSMENT AND
14 RESOURCE ALLOCATION PROCESS. (a) In this section:

15 (1) "Advisory committee" means the Intellectual and
16 Developmental Disability System Redesign Advisory Committee
17 established under Section 534.053, Government Code.

18 (2) [~~Department~~] means the ~~Department of Aging and~~
19 ~~Disability Services.~~

20 [~~(3)~~] "Functional need," "ICF-IID program," and
21 "Medicaid waiver program" have the meanings assigned those terms by
22 Section 534.001, Government Code.

23 (b) Subject to the availability of federal funding, the
24 department shall develop and implement a comprehensive assessment
25 instrument and a resource allocation process for individuals with
26 intellectual and developmental disabilities as needed to ensure
27 that each individual with an intellectual or developmental

1 disability receives the type, intensity, and range of services that
2 are both appropriate and available, based on the functional needs
3 of that individual, if the individual receives services through one
4 of the following:

- 5 (1) a Medicaid waiver program;
6 (2) the ICF-IID program; or
7 (3) an intermediate care facility operated by the
8 state and providing services for individuals with intellectual and
9 developmental disabilities.

10 (b-1) In developing a comprehensive assessment instrument
11 for purposes of Subsection (b), the department shall evaluate any
12 assessment instrument in use by the department. In addition, the
13 department may implement an evidence-based, nationally recognized,
14 comprehensive assessment instrument that assesses the functional
15 needs of an individual with an intellectual or [and] developmental
16 disability [disabilities] as the comprehensive assessment
17 instrument required by Subsection (b). This subsection expires
18 September 1, 2015.

19 (c) The department, in consultation with the advisory
20 committee, shall establish a prior authorization process for
21 requests for supervised living or residential support services
22 available in the home and community-based services (HCS) Medicaid
23 waiver program. The process must ensure that supervised living or
24 residential support services available in the home and
25 community-based services (HCS) Medicaid waiver program are
26 available only to individuals for whom a more independent setting
27 is not appropriate or available.

1 (d) The department shall cooperate with the advisory
2 committee to establish the prior authorization process required by
3 Subsection (c). This subsection expires January 1, 2024.

4 Sec. 533A.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED
5 SERVICES. The department may cooperate, negotiate, and contract
6 with local agencies, hospitals, private organizations and
7 foundations, community centers, physicians, and other persons to
8 plan, develop, and provide community-based intellectual disability
9 services.

10 Sec. 533A.0345. STATE AGENCY SERVICES STANDARDS. (a) The
11 executive commissioner by rule shall develop model program
12 standards for intellectual disability services for use by each
13 state agency that provides or pays for intellectual disability
14 services. The department shall provide the model standards to each
15 agency that provides intellectual disability services as
16 identified by the commission.

17 (b) Model standards developed under Subsection (a) must be
18 designed to improve the consistency of intellectual disability
19 services provided by or through a state agency.

20 (c) Biennially the department shall review the model
21 standards developed under Subsection (a) and determine whether each
22 standard contributes effectively to the consistency of service
23 delivery by state agencies.

24 Sec. 533A.035. LOCAL INTELLECTUAL AND DEVELOPMENTAL
25 DISABILITY AUTHORITIES. (a) The executive commissioner shall
26 designate a local intellectual and developmental disability
27 authority in one or more local service areas. The executive

1 commissioner may delegate to the local authority the authority and
2 responsibility of the executive commissioner, the commission, or a
3 department of the commission related to planning, policy
4 development, coordination, including coordination with criminal
5 justice entities, resource allocation, and resource development
6 for and oversight of intellectual disability services in the most
7 appropriate and available setting to meet individual needs in that
8 service area. The executive commissioner may designate a single
9 entity as both the local mental health authority under Chapter 533
10 and the local intellectual and developmental disability authority
11 under this chapter for a service area.

12 (b) The department by contract or other method of
13 allocation, including a case-rate or capitated arrangement, may
14 disburse to a local intellectual and developmental disability
15 authority department federal and department state funds to be spent
16 in the local service area for community intellectual disability
17 services.

18 (c) A local intellectual and developmental disability
19 authority, with the approval of the department, shall use the funds
20 received under Subsection (b) to ensure intellectual disability
21 services are provided in the local service area. The local
22 authority shall consider public input, ultimate cost-benefit, and
23 client care issues to ensure consumer choice and the best use of
24 public money in:

25 (1) assembling a network of service providers;
26 (2) making recommendations relating to the most
27 appropriate and available treatment alternatives for individuals

1 in need of intellectual disability services; and
2 (3) procuring services for a local service area,
3 including a request for proposal or open-enrollment procurement
4 method.

5 (d) A local intellectual and developmental disability
6 authority shall demonstrate to the department that the services
7 that the authority provides directly or through subcontractors and
8 that involve state funds comply with relevant state standards.

9 (e) A local intellectual and developmental disability
10 authority may serve as a provider of ICF-IID and related waiver
11 programs only if:

12 (1) the local authority complies with the limitations
13 prescribed by Section 533A.0355(d); or
14 (2) the ICF-IID and related waiver programs are
15 necessary to ensure the availability of services and the local
16 authority demonstrates to the commission that there is not a
17 willing ICF-IID and related waiver program qualified service
18 provider in the local authority's service area where the service is
19 needed.

20 Sec. 533A.0352. LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE
21 AREA. (a) Each local intellectual and developmental disability
22 authority shall develop a local service area plan to maximize the
23 authority's services by using the best and most cost-effective
24 means of using federal, state, and local resources to meet the needs
25 of the local community according to the relative priority of those
26 needs. Each local intellectual and developmental disability
27 authority shall undertake to maximize federal funding.

1 (b) A local service area plan must be consistent with the
2 purposes, goals, and policies stated in Section 531.001 and the
3 department's long-range plan developed under Section 533A.032.

4 (c) The department and a local intellectual and
5 developmental disability authority shall use the local authority's
6 local service plan as the basis for contracts between the
7 department and the local authority and for establishing the local
8 authority's responsibility for achieving outcomes related to the
9 needs and characteristics of the authority's local service area.

10 (d) In developing the local service area plan, the local
11 intellectual and developmental disability authority shall:

12 (1) solicit information regarding community needs
13 from:

14 (A) representatives of the local community;
15 (B) consumers of community-based intellectual
16 disability services and members of the families of those consumers;
17 (C) consumers of services of state supported
18 living centers, members of families of those consumers, and members
19 of state supported living center volunteer services councils, if a
20 state supported living center is located in the local service area
21 of the local authority; and

22 (D) other interested persons; and

23 (2) consider:

24 (A) criteria for assuring accountability for,
25 cost-effectiveness of, and relative value of service delivery
26 options;

27 (B) goals to ensure a client with an intellectual

1 disability is placed in the least restrictive environment
2 appropriate to the person's care;

3 (C) opportunities for innovation to ensure that
4 the local authority is communicating to all potential and incoming
5 consumers about the availability of services of state supported
6 living centers for persons with an intellectual disability in the
7 local service area of the local authority;

8 (D) goals to divert consumers of services from
9 the criminal justice system; and

10 (E) opportunities for innovation in services and
11 service delivery.

12 (e) The department and the local intellectual and
13 developmental disability authority by contract shall enter into a
14 performance agreement that specifies required standard outcomes
15 for the programs administered by the local authority. Performance
16 related to the specified outcomes must be verifiable by the
17 department. The performance agreement must include measures
18 related to the outputs, costs, and units of service delivered.
19 Information regarding the outputs, costs, and units of service
20 delivered shall be recorded in the local authority's automated data
21 systems, and reports regarding the outputs, costs, and units of
22 service delivered shall be submitted to the department at least
23 annually as provided by department rule.

24 (f) The department and the local intellectual and
25 developmental disability authority shall provide an opportunity
26 for community centers and advocacy groups to provide information or
27 assistance in developing the specified performance outcomes under

1 Subsection (e).

2 Sec. 533A.0355 [~~533.0355~~]. LOCAL INTELLECTUAL AND
3 DEVELOPMENTAL DISABILITY [~~MENTAL~~ ~~RETARDATION~~] AUTHORITY
4 RESPONSIBILITIES. (a) The executive commissioner shall adopt
5 rules establishing the roles and responsibilities of local
6 intellectual and developmental disability [~~mental retardation~~]
7 authorities.

8 (b) In adopting rules under this section, the executive
9 commissioner must include rules regarding the following local
10 intellectual and developmental disability [~~mental retardation~~]
11 authority responsibilities:

- 12 (1) access;
- 13 (2) intake;
- 14 (3) eligibility functions;
- 15 (4) enrollment, initial person-centered assessment,
16 and service authorization;
- 17 (5) utilization management;
- 18 (6) safety net functions, including crisis management
19 services and assistance in accessing facility-based care;
- 20 (7) service coordination functions;
- 21 (8) provision and oversight of state general revenue
22 services;
- 23 (9) local planning functions, including stakeholder
24 involvement, technical assistance and training, and provider
25 complaint and resolution processes; and
- 26 (10) processes to assure accountability in
27 performance, compliance, and monitoring.

1 (c) In determining eligibility under Subsection (b)(3), a
2 local intellectual and developmental disability [~~mental~~
3 ~~retardation~~] authority must offer a state supported living center
4 [~~school~~] as an option among the residential services and other
5 community living options available to an individual who is eligible
6 for those services and who meets the department's criteria for
7 state supported living center [~~school~~] admission, regardless of
8 whether other residential services are available to the individual.

9 (d) In establishing a local intellectual and developmental
10 disability [~~mental retardation~~] authority's role as a qualified
11 service provider of ICF-IID [~~ICF-MR~~] and related waiver programs
12 under Section 533A.035(e) [~~533.035(e-1)~~], the executive
13 commissioner shall require the local intellectual and
14 developmental disability [~~mental retardation~~] authority to:

15 (1) base the local authority's provider capacity on
16 the local authority's August 2004 enrollment levels for the waiver
17 programs the local authority operates and, if the local authority's
18 enrollment levels exceed those levels, to reduce the levels by
19 attrition; and

20 (2) base any increase in the local authority's
21 provider capacity on:

22 (A) the local authority's state-mandated
23 conversion from an ICF-IID [~~ICF-MR~~] program to a Section 1915(c)
24 waiver program allowing for a permanent increase in the local
25 authority's provider capacity in accordance with the number of
26 persons who choose the local authority as their provider;

27 (B) the local authority's voluntary conversion

1 from an ICF-IID [~~ICF-MR~~] program to a Section 1915(c) waiver
2 program allowing for a temporary increase in the local authority's
3 provider capacity, to be reduced by attrition, in accordance with
4 the number of persons who choose the local authority as their
5 provider;

6 (C) the local authority's refinancing from
7 services funded solely by state general revenue to a Medicaid
8 program allowing for a temporary increase in the local authority's
9 provider capacity, to be reduced by attrition, in accordance with
10 the number of persons who choose the local authority as their
11 provider; or

12 (D) other extenuating circumstances that:

13 (i) are monitored and approved by the
14 department [~~Department of Aging and Disability Services~~];
15 (ii) do not include increases that
16 unnecessarily promote the local authority's provider role over its
17 role as a local intellectual and developmental disability [~~mental~~
18 ~~retardation~~] authority; and

19 (iii) may include increases necessary to
20 accommodate a family-specific or consumer-specific circumstance
21 and choice.

22 (e) Any increase based on extenuating circumstances under
23 Subsection (d)(2)(D) is considered a temporary increase in the
24 local intellectual and developmental disability [~~mental~~
25 ~~retardation~~] authority's provider capacity, to be reduced by
26 attrition.

27 (f) At least biennially, the department [~~Department of~~

1 ~~Aging and Disability Services~~] shall review and determine the local
2 intellectual and developmental disability [~~mental retardation~~]
3 authority's status as a qualified service provider in accordance
4 with criteria that includes the consideration of the local
5 authority's ability to assure the availability of services in its
6 area, including:

- 7 (1) program stability and viability;
8 (2) the number of other qualified service providers in
9 the area; and
10 (3) the geographical area in which the local authority
11 is located.

12 (g) The department [~~Department of Aging and Disability~~
13 ~~Services~~] shall ensure that local services delivered further the
14 following goals:

- 15 (1) to provide individuals with the information,
16 opportunities, and support to make informed decisions regarding the
17 services for which the individual is eligible;
18 (2) to respect the rights, needs, and preferences of
19 an individual receiving services; and
20 (3) to integrate individuals with intellectual
21 [~~mental retardation~~] and developmental disabilities into the
22 community in accordance with relevant independence initiatives and
23 permanency planning laws.

24 (h) The department [~~Department of Aging and Disability~~
25 ~~Services~~] shall ensure that local intellectual and developmental
26 disability [~~mental retardation~~] authorities are informing and
27 counseling individuals and their legally authorized

1 representatives, if applicable, about all program and service
2 options for which the individuals are eligible in accordance with
3 Section 533A.038(d) [~~533.038(d)~~], including options such as the
4 availability and types of ICF-IID [~~ICF-MR~~] placements for which an
5 individual may be eligible while the individual is on a department
6 interest list or other waiting list for other services.

7 Sec. 533A.03551 [~~533.03551~~]. FLEXIBLE, LOW-COST HOUSING
8 OPTIONS. (a) To the extent permitted under federal law and
9 regulations, the executive commissioner shall adopt or amend rules
10 as necessary to allow for the development of additional housing
11 supports for individuals with disabilities, including individuals
12 with intellectual and developmental disabilities, in urban and
13 rural areas, including:

14 (1) a selection of community-based housing options
15 that comprise a continuum of integration, varying from most to
16 least restrictive, that permits individuals to select the most
17 integrated and least restrictive setting appropriate to the
18 individual's needs and preferences;

19 (2) provider-owned and non-provider-owned residential
20 settings;

21 (3) assistance with living more independently; and
22 (4) rental properties with on-site supports.

23 (b) The department [~~Department of Aging and Disability~~
24 ~~Services~~], in cooperation with the Texas Department of Housing and
25 Community Affairs, the Department of Agriculture, the Texas State
26 Affordable Housing Corporation, and the Intellectual and
27 Developmental Disability System Redesign Advisory Committee

1 established under Section 534.053, Government Code, shall
2 coordinate with federal, state, and local public housing entities
3 as necessary to expand opportunities for accessible, affordable,
4 and integrated housing to meet the complex needs of individuals
5 with disabilities, including individuals with intellectual and
6 developmental disabilities.

7 (c) The department [Department of Aging and Disability
8 Services] shall develop a process to receive input from statewide
9 stakeholders to ensure the most comprehensive review of
10 opportunities and options for housing services described by this
11 section.

12 Sec. 533A.03552 [533.03552]. BEHAVIORAL SUPPORTS FOR
13 INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES AT
14 RISK OF INSTITUTIONALIZATION; INTERVENTION TEAMS. (a) [In this
15 section, "department" means the Department of Aging and Disability
16 Services.]

17 [(b)] Subject to the availability of federal funding, the
18 department shall develop and implement specialized training for
19 providers, family members, caregivers, and first responders
20 providing direct services and supports to individuals with
21 intellectual and developmental disabilities and behavioral health
22 needs who are at risk of institutionalization.

23 (b) [(e)] Subject to the availability of federal funding,
24 the department shall establish one or more behavioral health
25 intervention teams to provide services and supports to individuals
26 with intellectual and developmental disabilities and behavioral
27 health needs who are at risk of institutionalization. An

1 intervention team may include a:

- 2 (1) psychiatrist or psychologist;
- 3 (2) physician;
- 4 (3) registered nurse;
- 5 (4) pharmacist or representative of a pharmacy;
- 6 (5) behavior analyst;
- 7 (6) social worker;
- 8 (7) crisis coordinator;
- 9 (8) peer specialist; and
- 10 (9) family partner.

11 (c) [~~d~~] In providing services and supports, a behavioral
12 health intervention team established by the department shall:

13 (1) use the team's best efforts to ensure that an
14 individual remains in the community and avoids
15 institutionalization;

16 (2) focus on stabilizing the individual and assessing
17 the individual for intellectual, medical, psychiatric,
18 psychological, and other needs;

19 (3) provide support to the individual's family members
20 and other caregivers;

21 (4) provide intensive behavioral assessment and
22 training to assist the individual in establishing positive
23 behaviors and continuing to live in the community; and

24 (5) provide clinical and other referrals.

25 (d) [~~e~~] The department shall ensure that members of a
26 behavioral health intervention team established under this section
27 receive training on trauma-informed care, which is an approach to

1 providing care to individuals with behavioral health needs based on
2 awareness that a history of trauma or the presence of trauma
3 symptoms may create the behavioral health needs of the individual.

4 Sec. 533A.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS.

5 (a) The department may provide intellectual disability services
6 through halfway houses, sheltered workshops, community centers,
7 and other intellectual disability services programs.

8 (b) The department may operate or contract for the provision
9 of part or all of the sheltered workshop services and may contract
10 for the sale of goods produced and services provided by a sheltered
11 workshop program. The goods and services may be sold for cash or on
12 credit.

13 (c) An operating fund may be established for each sheltered
14 workshop the department operates. Each operating fund must be in a
15 national or state bank that is a member of the Federal Deposit
16 Insurance Corporation.

17 (d) Money derived from gifts or grants received for
18 sheltered workshop purposes and the proceeds from the sale of
19 sheltered workshop goods and services shall be deposited to the
20 credit of the operating fund. The money in the fund may be spent
21 only in the operation of the sheltered workshop to:

22 (1) purchase supplies, materials, services, and
23 equipment;

24 (2) pay salaries of and wages to participants and
25 employees;

26 (3) construct, maintain, repair, and renovate
27 facilities and equipment; and

1 (4) establish and maintain a petty cash fund of not
2 more than \$100.

3 (e) Money in an operating fund that is used to pay salaries
4 of and wages to participants in the sheltered workshop program is
5 money the department holds in trust for the participants' benefit.

6 (f) This section does not affect the authority or
7 jurisdiction of a community center as prescribed by Chapter 534.

8 Sec. 533A.038 [~~533.038~~]. FACILITIES AND SERVICES FOR
9 CLIENTS WITH AN INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]. (a)
10 In this section, "department facility" includes the ICF-IID
11 component of the Rio Grande State Center.

12 (a-1) The department may designate all or any part of a
13 department facility as a special facility for the diagnosis,
14 special training, education, supervision, treatment, or care[or
15 control] of clients with an intellectual disability [~~mental~~
16 ~~retardation~~].

17 (b) The department may specify the facility in which a
18 client with an intellectual disability [~~mental retardation~~] under
19 the department's jurisdiction is placed.

20 (c) The department may maintain day classes at a department
21 facility for the convenience and benefit of clients with an
22 intellectual disability [~~mental retardation~~] of the community in
23 which the facility is located and who are not capable of enrollment
24 in a public school system's regular or special classes.

25 (d) A person with an intellectual disability [~~mental~~
26 ~~retardation~~], or a person's legally authorized representative,
27 seeking residential services shall receive a clear explanation of

1 programs and services for which the person is determined to be
2 eligible, including state supported living centers [~~schools~~],
3 community ICF-IID [~~ICF-MR~~] programs, waiver services under Section
4 1915(c) of the federal Social Security Act (42 U.S.C. Section
5 1396n(c)), or other services. The preferred programs and services
6 chosen by the person or the person's legally authorized
7 representative shall be documented in the person's record. If the
8 preferred programs or services are not available, the person or the
9 person's legally authorized representative shall be given
10 assistance in gaining access to alternative services and the
11 selected waiting list.

12 (e) The department shall ensure that the information
13 regarding program and service preferences collected under
14 Subsection (d) is documented and maintained in a manner that
15 permits the department to access and use the information for
16 planning activities conducted under Section 533A.032 [~~533.032~~].

17 (f) The department may spend money appropriated for the
18 state supported living center [~~school~~] system only in accordance
19 with limitations imposed by the General Appropriations Act.

20 (g) In addition to the explanation required under
21 Subsection (d), the department shall ensure that each person
22 inquiring about residential services receives:

23 (1) a pamphlet or similar informational material
24 explaining that any programs and services for which the person is
25 determined to be eligible, including state supported living
26 centers, community ICF-IID [~~ICF-MR~~] programs, waiver services
27 under Section 1915(c) of the federal Social Security Act (42 U.S.C.

1 Section 1396n(c)), or other services, may be an option available to
2 an individual who is eligible for those services; and

3 (2) information relating to whether appropriate
4 residential services are available in each program and service for
5 which the person is determined to be eligible, including state
6 supported living centers, community ICF-IID [~~ICF-MR~~] programs,
7 waiver services under Section 1915(c) of the federal Social
8 Security Act (42 U.S.C. Section 1396n(c)), or other services
9 located nearest to the residence of the proposed resident.

10 Sec. 533A.040. SERVICES FOR CHILDREN AND YOUTH. The
11 department shall ensure the development of programs and the
12 expansion of services at the community level for children with an
13 intellectual disability, or with a dual diagnosis of an
14 intellectual disability and mental illness, and for their families.

15 The department shall:

16 (1) prepare and review budgets for services for
17 children;

18 (2) develop departmental policies relating to
19 children's programs and service delivery; and

20 (3) increase interagency coordination activities to
21 enhance the provision of services for children.

22 Sec. 533A.0415. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY
23 TRAINING. (a) The executive commissioner, the Texas Juvenile
24 Justice Department, and the Texas Education Agency by rule shall
25 adopt a joint memorandum of understanding to develop interagency
26 training for the staffs of the department, the Texas Juvenile
27 Justice Department, and the Texas Education Agency who are involved

1 in the functions of assessment, case planning, case management, and
2 in-home or direct delivery of services to children, youth, and
3 their families under this title. The memorandum must:

4 (1) outline the responsibility of each agency in
5 coordinating and developing a plan for interagency training on
6 individualized assessment and effective intervention and treatment
7 services for children and dysfunctional families; and
8 (2) provide for the establishment of an interagency
9 task force to:

10 (A) develop a training program to include
11 identified competencies, content, and hours for completion of the
12 training with at least 20 hours of training required each year until
13 the program is completed;

14 (B) design a plan for implementing the program,
15 including regional site selection, frequency of training, and
16 selection of experienced clinical public and private professionals
17 or consultants to lead the training; and

18 (C) monitor, evaluate, and revise the training
19 program, including the development of additional curricula based on
20 future training needs identified by staff and professionals.

21 (b) The task force consists of:

22 (1) one clinical professional and one training staff
23 member from each agency, appointed by that agency; and

24 (2) 10 private sector clinical professionals with
25 expertise in dealing with troubled children, youth, and
26 dysfunctional families, two of whom are appointed by each agency.

27 (c) The task force shall meet at the call of the department.

1 (d) The commission shall act as the lead agency in
2 coordinating the development and implementation of the memorandum.

3 (e) The executive commissioner and the agencies shall
4 review and by rule revise the memorandum not later than August each
5 year.

6 Sec. 533A.042. EVALUATION OF ELDERLY RESIDENTS. (a) The
7 department shall evaluate each elderly resident at least annually
8 to determine if the resident can be appropriately served in a less
9 restrictive setting.

10 (b) The department shall consider the proximity to the
11 resident of family, friends, and advocates concerned with the
12 resident's well-being in determining whether the resident should be
13 moved from a department facility or to a different department
14 facility. The department shall recognize that a nursing facility
15 may not be able to meet the special needs of an elderly resident.

16 (c) In evaluating an elderly resident under this section and
17 to ensure appropriate placement, the department shall identify the
18 special needs of the resident, the types of services that will best
19 meet those needs, and the type of facility that will best provide
20 those services.

21 (d) The appropriate interdisciplinary team shall conduct
22 the evaluation of an elderly resident of a department facility.

23 (e) The department shall attempt to place an elderly
24 resident in a less restrictive setting if the department determines
25 that the resident can be appropriately served in that setting. The
26 department shall coordinate the attempt with the local intellectual
27 and developmental disability authority.

1 (f) A local intellectual and developmental disability
2 authority shall provide continuing care for an elderly resident
3 placed in the authority's service area under this section.

4 (g) The local intellectual and developmental disability
5 authority shall have the right of access to all residents and
6 records of residents who request continuing care services.

7 Sec. 533A.043. PROPOSALS FOR GERIATRIC CARE. (a) The
8 department shall solicit proposals from community providers to
9 operate community residential programs for elderly residents at
10 least every two years.

11 (b) The department shall require each provider to:

12 (1) offer adequate assurances of ability to:

13 (A) provide the required services;

14 (B) meet department standards; and

15 (C) safeguard the safety and well-being of each
16 resident; and

17 (2) sign a memorandum of agreement with the local
18 intellectual and developmental disability authority outlining the
19 responsibilities for continuity of care and monitoring, if the
20 provider is not the local authority.

21 (c) The department may fund a proposal through a contract if
22 the provider agrees to meet the requirements prescribed by
23 Subsection (b) and agrees to provide the services at a cost that is
24 equal to or less than the cost to the department to provide the
25 services.

26 (d) The appropriate local intellectual and developmental
27 disability authority shall monitor the services provided to a

1 resident placed in a program funded under this section. The
2 department may monitor any service for which it contracts.

3 SUBCHAPTER C. POWERS AND DUTIES RELATING TO ICF-IID [~~ICF-MR~~]

4 PROGRAM

5 Sec. 533A.062 [~~533.062~~]. PLAN ON LONG-TERM CARE FOR PERSONS
6 WITH AN INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]. (a) The
7 department shall biennially develop a proposed plan on long-term
8 care for persons with an intellectual disability [~~mental~~
9 ~~retardation~~].

10 (b) The proposed plan must specify the capacity of the HCS
11 waiver program for persons with an intellectual disability [~~mental~~
12 ~~retardation~~] and the number and levels of new ICF-IID [~~ICF-MR~~] beds
13 to be authorized in each region. In developing the proposed plan,
14 the department shall consider:

- 15 (1) the needs of the population to be served;
16 (2) projected appropriation amounts for the biennium;
17 and
18 (3) the requirements of applicable federal law.

19 (c) Each proposed plan shall cover the subsequent fiscal
20 biennium. The department shall conduct a public hearing on the
21 proposed plan. Not later than July 1 of each even-numbered year,
22 the department shall submit the plan to the commission [~~Health and~~
23 ~~Human Services Commission~~] for approval.

24 (d) The commission [~~Health and Human Services Commission~~]
25 may modify the proposed plan as necessary before its final
26 approval. [~~In determining the appropriate number of ICF-MR~~
27 ~~facilities for persons with a related condition, the department and~~

1 ~~the Health and Human Services Commission shall consult with the~~
2 ~~Texas Department of Human Services.]~~

3 (e) The commission [~~Health and Human Services Commission~~] shall submit the proposed plan as part of the consolidated health
4 and human services budget recommendation required under Section
5 531.026, Government Code [13, Article 4413(502), Revised
6 Statutes].

7 (f) After legislative action on the appropriation for
8 long-term care services for persons with an intellectual disability
9 [~~mental retardation~~], the commission [~~Health and Human Services~~
10 ~~Commission~~] shall adjust the plan to ensure that the number of
11 ICF-IID [~~ICF-MR~~] beds licensed or approved as meeting license
12 requirements and the capacity of the HCS waiver program are within
13 appropriated funding amounts.

14 (g) After any necessary adjustments, the commission [~~Health~~
15 ~~and Human Services Commission~~] shall approve the final biennial
16 plan and publish the plan in the Texas Register.

17 (h) The department may submit proposed amendments to the
18 plan to the commission [~~Health and Human Services Commission~~].

19 (i) In this section, "HCS waiver program" means services
20 under the state Medicaid home and community-based services waiver
21 program for persons with an intellectual disability [~~mental~~
22 ~~retardation~~] adopted in accordance with 42 U.S.C. Section 1396n(c).

23 [Sec. 533.063. REVIEW OF ICF-MR RULES. (a) The department
24 and the Texas Department of Human Services shall meet as necessary
25 to discuss proposed changes in the rules or the interpretation of
26 the rules that govern the ICF-MR program.]

1 [(b) The departments shall jointly adopt a written policy
2 interpretation letter that describes the proposed change and shall
3 make a copy of the letter available to providers.]

4 [Sec. 533.065. ICF-MR APPLICATION CONSOLIDATION LIST. (a)
5 The department shall maintain a consolidated list of applications
6 for certification for participation in the ICF-MR program.]

7 [(b) The department shall list the applications in
8 descending order using the date on which the department received
9 the completed application.]

10 [(c) The department shall approve applications in the order
11 in which the applications are listed.]

12 [(d) The department shall notify the Texas Department of
13 Human Services of each application for a license or for compliance
14 with licensing standards the department approves.]

15 Sec. 533A.066 [533.066]. INFORMATION RELATING TO ICF-IID
16 [~~ICF-MR~~] PROGRAM. (a) At least annually, the department [and the
17 Texas Department of Human Services] shall [jointly] sponsor a
18 conference on the ICF-IID [~~ICF-MR~~] program to:

19 (1) assist providers in understanding survey rules;
20 (2) review deficiencies commonly found in ICF-IID
21 [~~ICF-MR~~] facilities; and

22 (3) inform providers of any recent changes in the
23 rules or in the interpretation of the rules relating to the ICF-IID
24 [~~ICF-MR~~] program.

25 (b) The department [~~departments~~] also may use any other
26 method to provide necessary information to providers, including
27 publications.

1 SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

2 Sec. 533A.081. DEVELOPMENT OF FACILITY BUDGETS. The
3 department, in budgeting for a facility, shall use uniform costs
4 for specific types of services a facility provides unless a
5 legitimate reason exists and is documented for the use of other
6 costs.

7 Sec. 533A.082. DETERMINATION OF SAVINGS IN FACILITIES. (a)
8 The department shall determine the degree to which the costs of
9 operating department facilities for persons with an intellectual
10 disability in compliance with applicable standards are affected as
11 populations in the facilities fluctuate.

12 (b) In making the determination, the department shall:

13 (1) assume that the current level of services and
14 necessary state of repair of the facilities will be maintained; and
15 (2) include sufficient funds to allow the department
16 to comply with the requirements of litigation and applicable
17 standards.

18 (c) The department shall allocate to community-based
19 intellectual disability programs any savings realized in operating
20 department facilities for persons with an intellectual disability.

21 Sec. 533A.083. CRITERIA FOR EXPANSION, CLOSURE, OR
22 CONSOLIDATION OF FACILITY. The department shall establish
23 objective criteria for determining when a new facility may be
24 needed and when a state supported living center may be expanded,
25 closed, or consolidated.

26 Sec. 533A.084. MANAGEMENT OF SURPLUS REAL PROPERTY. (a) To
27 the extent provided by this subtitle, the department, in

1 coordination with the executive commissioner, may lease, transfer,
2 or otherwise dispose of any surplus real property related to the
3 provision of services under this title, including any improvements
4 under its management and control, or authorize the lease, transfer,
5 or disposal of the property. Surplus property is property the
6 executive commissioner designates as having minimal value to the
7 present service delivery system and projects to have minimal value
8 to the service delivery system as described in the department's
9 long-range plan.

10 (b) The proceeds from the lease, transfer, or disposal of
11 surplus real property, including any improvements, shall be
12 deposited to the credit of the department in the Texas capital trust
13 fund established under Chapter 2201, Government Code. The proceeds
14 may be appropriated only for improvements to the department's
15 system of intellectual disability facilities.

16 (c) A lease proposal shall be advertised at least once a
17 week for four consecutive weeks in at least two newspapers. One
18 newspaper must be a newspaper published in the municipality in
19 which the property is located or the daily newspaper published
20 nearest to the property's location. The other newspaper must have
21 statewide circulation. Each lease is subject to the attorney
22 general's approval as to substance and form. The executive
23 commissioner shall adopt forms, rules, and contracts that, in the
24 executive commissioner's best judgment, will protect the state's
25 interests. The executive commissioner may reject any or all bids.

26 (d) This section does not authorize the executive
27 commissioner or department to close or consolidate a state

1 supported living center without first obtaining legislative
2 approval.

3 (e) Notwithstanding Subsection (c), the executive
4 commissioner, in coordination with the department, may enter into a
5 written agreement with the General Land Office to administer lease
6 proposals. If the General Land Office administers a lease proposal
7 under the agreement, notice that the property is offered for lease
8 must be published in accordance with Section 32.107, Natural
9 Resources Code.

10 Sec. 533A.0846 [533.0846]. INTELLECTUAL DISABILITY [MENTAL
11 ~~RETARDATION~~] COMMUNITY SERVICES ACCOUNT. (a) The intellectual
12 disability [~~mental retardation~~] community services account is an
13 account in the general revenue fund that may be appropriated only
14 for the provision of intellectual disability [~~mental retardation~~]
15 services by or under contract with the department.

16 (b) The department shall deposit to the credit of the
17 intellectual disability [~~mental retardation~~] community services
18 account any money donated to the state for inclusion in the account,
19 including life insurance proceeds designated for deposit to the
20 account.

21 [(c) Interest earned on the ~~mental retardation~~ community
22 ~~services account~~ shall be credited to the account. The account is
23 exempt from the application of Section 403.095, Government Code.]

24 Sec. 533A.085. FACILITIES FOR INMATE AND PAROLEE CARE. (a)
25 With the written approval of the governor, the department may
26 contract with the Texas Department of Criminal Justice to transfer
27 facilities to the Texas Department of Criminal Justice or otherwise

1 provide facilities for:

2 (1) inmates with an intellectual disability in the
3 custody of the Texas Department of Criminal Justice; or
4 (2) persons with an intellectual disability paroled or
5 released under the supervision of the Texas Department of Criminal
6 Justice.

7 (b) An agency must report to the governor the agency's
8 reasons for proposing to enter into a contract under this section
9 and request the governor's approval.

10 Sec. 533A.087. LEASE OF REAL PROPERTY. (a) The department,
11 in coordination with the executive commissioner, may lease real
12 property related to the provision of services under this title,
13 including any improvements under the department's management and
14 control, regardless of whether the property is surplus property.
15 Except as provided by Subsection (c), the department, in
16 coordination with the executive commissioner, may award a lease of
17 real property only:

18 (1) at the prevailing market rate; and
19 (2) by competitive bid.

20 (b) The commission shall advertise a proposal for lease at
21 least once a week for four consecutive weeks in:

22 (1) a newspaper published in the municipality in which
23 the property is located or the daily newspaper published nearest to
24 the property's location; and

25 (2) a newspaper of statewide circulation.

26 (c) The department, in coordination with the executive
27 commissioner, may lease real property related to the provision of

1 services under this title or an improvement for less than the
2 prevailing market rate, without advertisement or without
3 competitive bidding, if:

4 (1) the executive commissioner determines that
5 sufficient public benefit will be derived from the lease; and

6 (2) the property is leased to:

7 (A) a federal or state agency;

8 (B) a unit of local government;

9 (C) a not-for-profit organization; or

10 (D) an entity related to the department by a
11 service contract.

12 (d) The executive commissioner shall adopt leasing rules,
13 forms, and contracts that will protect the state's interests.

14 (e) The executive commissioner may reject any bid.

15 (f) This section does not authorize the executive
16 commissioner or department to close or consolidate a facility used
17 to provide intellectual disability services without legislative
18 approval.

19 (g) Notwithstanding Subsections (a) and (b), the executive
20 commissioner, in coordination with the department, may enter into a
21 written agreement with the General Land Office to administer lease
22 proposals. If the General Land Office administers a lease proposal
23 under the agreement, notice that the property is offered for lease
24 must be published in accordance with Section 32.107, Natural
25 Resources Code.

26 SUBCHAPTER E. JAIL DIVERSION PROGRAM

27 Sec. 533A.108. PRIORITIZATION OF FUNDING FOR DIVERSION OF

1 PERSONS FROM INCARCERATION IN CERTAIN COUNTIES. (a) A local
2 intellectual and developmental disability authority may develop
3 and may prioritize its available funding for:

4 (1) a system to divert members of the priority
5 population, including those members with co-occurring substance
6 abuse disorders, before their incarceration or other contact with
7 the criminal justice system, to services appropriate to their
8 needs, including:

9 (A) screening and assessment services; and

10 (B) treatment services, including:

11 (i) short-term residential services;

12 (ii) crisis respite residential services;

13 and

14 (iii) continuity of care services;

15 (2) specialized training of local law enforcement and
16 court personnel to identify and manage offenders or suspects who
17 may be members of the priority population; and

18 (3) other model programs for offenders and suspects
19 who may be members of the priority population, including crisis
20 intervention training for law enforcement personnel.

21 (b) A local intellectual and developmental disability
22 authority developing a system, training, or a model program under
23 Subsection (a) shall collaborate with other local resources,
24 including local law enforcement and judicial systems and local
25 personnel.

26 (c) A local intellectual and developmental disability
27 authority may not implement a system, training, or a model program

1 developed under this section until the system, training, or program
2 is approved by the department.

3 SECTION 3.1336. Chapter 534, Health and Safety Code, is
4 amended to read as follows:

5 CHAPTER 534. COMMUNITY SERVICES

6 SUBCHAPTER A. COMMUNITY CENTERS

7 Sec. 534.0001. DEFINITIONS. In this subchapter:

8 (1) "Commissioner" means:

9 (A) the commissioner of state health services in
10 relation to:

11 (i) a community mental health center; or

12 (ii) the mental health services component
13 of a community mental health and intellectual disability center;
14 and

15 (B) the commissioner of aging and disability
16 services in relation to:

17 (i) a community intellectual disability
18 center; or

19 (ii) the intellectual disability services
20 component of a community mental health and intellectual disability
21 center.

22 (2) "Department" means:

23 (A) the Department of State Health Services in
24 relation to:

25 (i) a community mental health center; or

26 (ii) the mental health services component
27 of a community mental health and intellectual disability center;

1 and

2 (B) the Department of Aging and Disability

3 Services in relation to:

4 (i) a community intellectual disability

5 center; or

6 (ii) the intellectual disability services

7 component of a community mental health and intellectual disability

8 center.

9 Sec. 534.001. ESTABLISHMENT. (a) A county, municipality,
10 hospital district, or school district, or an organizational
11 combination of two or more of those local agencies, may establish
12 and operate a community center.

13 (b) In accordance with this subtitle, a community center may
14 be:

15 (1) a community mental health center that provides
16 mental health services;

17 (2) a community intellectual disability [~~mental~~
18 ~~retardation~~] center that provides intellectual disability [~~mental~~
19 ~~retardation~~] services; or

20 (3) a community mental health and intellectual
21 disability [~~mental retardation~~] center that provides mental health
22 and intellectual disability [~~mental retardation~~] services.

23 (c) A community center is:

24 (1) an agency of the state, a governmental unit, and a
25 unit of local government, as defined and specified by Chapters 101
26 and 102, Civil Practice and Remedies Code;

27 (2) a local government, as defined by Section 791.003,

1 Government Code;

2 (3) a local government for the purposes of Chapter
3 2259, Government Code; and

4 (4) a political subdivision for the purposes of
5 Chapter 172, Local Government Code.

6 (d) A community center may be established only if:

7 (1) the proposed center submits a copy of the contract
8 between the participating local agencies, if applicable, to:

9 (A) the Department of State Health Services for a
10 proposed center that will provide mental health services;

11 (B) the Department of Aging and Disability
12 Services for a proposed center that will provide intellectual
13 disability services; or

14 (C) both departments if the proposed center will
15 provide mental health and intellectual disability services
16 ~~[department a copy of the contract between the participating local~~
17 ~~agencies, if applicable];~~

18 (2) each appropriate [the] department approves the
19 proposed center's plan to develop and make available to the region's
20 residents an effective mental health or intellectual disability
21 ~~[mental retardation]~~ program, or both, through a community center
22 that is appropriately structured to include the financial,
23 physical, and personnel resources necessary to meet the region's
24 needs; and

25 (3) each [the] department from which the proposed
26 center seeks approval determines that the center can appropriately,
27 effectively, and efficiently provide those services in the region.

1 (e) Except as provided by this section, a community center
2 operating under this subchapter may operate only for the purposes
3 and perform only the functions defined in the center's plan. The
4 executive commissioner by rule shall specify the elements that must
5 be included in a plan and shall prescribe the procedure for
6 submitting, approving, and modifying a center's plan. In addition
7 to the services described in a center's plan, the center may provide
8 other health and human services and supports as provided by a
9 contract with or a grant received from a local, state, or federal
10 agency.

11 (f) Each function performed by a community center under this
12 title is a governmental function if the function is required or
13 affirmatively approved by any statute of this state or of the United
14 States or by a regulatory agency of this state or of the United
15 States duly acting under any constitutional or statutory authority
16 vesting the agency with such power. Notwithstanding any other law,
17 a community center is subject to Chapter 554, Government Code.

18 (g) An entity is, for the purpose of operating a psychiatric
19 center, a governmental unit and a unit of local government under
20 Chapter 101, Civil Practice and Remedies Code, and a local
21 government under Chapter 102, Civil Practice and Remedies Code, if
22 the entity:

23 (1) is not operated to make a profit;
24 (2) is created through an intergovernmental agreement
25 between a community mental health center and any other governmental
26 unit; and

27 (3) contracts with the community mental health center

1 and any other governmental unit that created it to operate a
2 psychiatric center.

3 Sec. 534.0015. PURPOSE AND POLICY. (a) A community center
4 created under this subchapter is intended to be a vital component in
5 a continuum of services for persons in this state with mental
6 illness or an intellectual disability [~~who are mentally ill or~~
7 ~~mentally retarded~~].

8 (b) It is the policy of this state that community centers
9 strive to develop services for persons with mental illness or an
10 intellectual disability [~~who are mentally ill or mentally~~
11 ~~retarded~~], and may provide requested services to persons with
12 developmental disabilities or with chemical dependencies, that are
13 effective alternatives to treatment in a large residential
14 facility.

15 Sec. 534.002. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY
16 ONE LOCAL AGENCY. The board of trustees of a community center
17 established by one local agency is composed of:

18 (1) the members of the local agency's governing body;
19 or
20 (2) not fewer than five or more than nine qualified
21 voters who reside in the region to be served by the center and who
22 are appointed by the local agency's governing body.

23 Sec. 534.003. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY
24 AT LEAST TWO LOCAL AGENCIES. (a) The board of trustees of a
25 community center established by an organizational combination of
26 local agencies is composed of not fewer than five or more than 13
27 members.

1 (b) The governing bodies of the local agencies shall appoint
2 the board members either from among the membership of the governing
3 bodies or from among the qualified voters who reside in the region
4 to be served by the center.

5 (c) When the center is established, the governing bodies
6 shall enter into a contract that stipulates the number of board
7 members and the group from which the members are chosen. They may
8 renegotiate or amend the contract as necessary to change the:

9 (1) method of choosing the members; or
10 (2) membership of the board of trustees to more
11 accurately reflect the ethnic and geographic diversity of the local
12 service area.

13 Sec. 534.004. PROCEDURES RELATING TO BOARD OF TRUSTEES
14 MEMBERSHIP. (a) The local agency or organizational combination of
15 local agencies that establishes a community center shall prescribe:
16 (1) the application procedure for a position on the
17 board of trustees;

18 (2) the procedure and criteria for making appointments
19 to the board of trustees;

20 (3) the procedure for posting notice of and filling a
21 vacancy on the board of trustees; and

22 (4) the grounds and procedure for removing a member of
23 the board of trustees.

24 (b) The local agency or organizational combination of local
25 agencies that appoints the board of trustees shall, in appointing
26 the members, attempt to reflect the ethnic and geographic diversity
27 of the local service area the community center serves. The local

1 agency or organizational combination shall include on the board of
2 trustees one or more persons otherwise qualified under this chapter
3 who are consumers of the types of services the center provides or
4 who are family members of consumers of the types of services the
5 center provides.

6 Sec. 534.005. TERMS; VACANCIES. (a) Appointed members of
7 the board of trustees who are not members of a local agency's
8 governing body serve staggered two-year terms. In appointing the
9 initial members, the appointing authority shall designate not less
10 than one-third or more than one-half of the members to serve
11 one-year terms and shall designate the remaining members to serve
12 two-year terms.

13 (b) A vacancy on a board of trustees composed of qualified
14 voters is filled by appointment for the remainder of the unexpired
15 term.

16 Sec. 534.006. TRAINING. (a) The executive commissioner
17 [board] by rule shall establish:

18 (1) an annual training program for members of a board
19 of trustees administered by the professional staff of that
20 community center, including the center's legal counsel; and

21 (2) an advisory committee to develop training
22 guidelines that includes representatives of advocates for persons
23 with mental illness or an intellectual disability [mental
24 retardation] and representatives of boards of trustees.

25 (b) Before a member of a board of trustees may assume
26 office, the member shall attend at least one training session
27 administered by that center's professional staff to receive

1 information relating to:

2 (1) the enabling legislation that created the
3 community center;

4 (2) the programs the community center operates;
5 (3) the community center's budget for that program
6 year;

7 (4) the results of the most recent formal audit of the
8 community center;

9 (5) the requirements of Chapter 551, Government Code,
10 and Chapter 552, Government Code;

11 (6) the requirements of conflict of interest laws and
12 other laws relating to public officials; and

13 (7) any ethics policies adopted by the community
14 center.

15 Sec. 534.0065. QUALIFICATIONS; CONFLICT OF INTEREST;
16 REMOVAL. (a) As a local public official, a member of the board of
17 trustees of a community center shall uphold the member's position
18 of public trust by meeting and maintaining the applicable
19 qualifications for membership and by complying with the applicable
20 requirements relating to conflicts of interest.

21 (b) A person is not eligible for appointment as a member of a
22 board of trustees if the person or the person's spouse:

23 (1) owns or controls, directly or indirectly, more
24 than a 10 percent interest in a business entity or other
25 organization receiving funds from the community center by contract
26 or other method; or

27 (2) uses or receives a substantial amount of tangible

1 goods or funds from the community center, other than:

2 (A) compensation or reimbursement authorized by
3 law for board of trustees membership, attendance, or expenses; or
4 (B) as a consumer or as a family member of a
5 client or patient receiving services from the community center.

6 (c) The primary residence of a member of the board of
7 trustees must be in the local service area the member represents.

8 (d) A member of the board of trustees is subject to Chapter
9 171, Local Government Code.

10 (e) A member of the board of trustees may not:

11 (1) refer for services a client or patient to a
12 business entity owned or controlled by a member of the board of
13 trustees, unless the business entity is the only business entity
14 that provides the needed services within the jurisdiction of the
15 community center;

16 (2) use a community center facility in the conduct of a
17 business entity owned or controlled by that member;

18 (3) solicit, accept, or agree to accept from another
19 person or business entity a benefit in return for the member's
20 decision, opinion, recommendation, vote, or other exercise of
21 discretion as a local public official or for a violation of a duty
22 imposed by law;

23 (4) receive any benefit for the referral of a client or
24 a patient to the community center or to another business entity;

25 (5) appoint, vote for, or confirm the appointment of a
26 person to a paid office or position with the community center if the
27 person is related to a member of the board of trustees by affinity

1 within the second degree or by consanguinity within the third
2 degree; or

3 (6) solicit or receive a political contribution from a
4 supplier to or contractor with the community center.

5 (f) Not later than the date on which a member of the board of
6 trustees takes office by appointment or reappointment and not later
7 than the anniversary of that date, each member shall annually
8 execute and file with the community center an affidavit
9 acknowledging that the member has read the requirements for
10 qualification, conflict of interest, and removal prescribed by this
11 chapter.

12 (g) In addition to any grounds for removal adopted under
13 Section 534.004(a), it is a ground for removal of a member of a
14 board of trustees if the member:

15 (1) violates Chapter 171, Local Government Code;

16 (2) is not eligible for appointment to the board of
17 trustees at the time of appointment as provided by Subsections (b)
18 and (c);

19 (3) does not maintain during service on the board of
20 trustees the qualifications required by Subsections (b) and (c);

21 (4) violates a provision of Subsection (e);

22 (5) violates a provision of Section 534.0115; or

23 (6) does not execute the affidavit required by
24 Subsection (f).

25 (h) If a board of trustees is composed of members of the
26 governing body of a local agency or organizational combination of
27 local agencies, this section applies only to the qualifications for

1 and removal from membership on the board of trustees.

2 Sec. 534.007. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR
3 EMPLOYEES; OFFENSE. (a) A former officer or employee of a
4 community center who ceases service or employment with the center
5 may not represent any person or receive compensation for services
6 rendered on behalf of any person regarding a particular matter in
7 which the former officer or employee participated during the period
8 of employment, either through personal involvement or because the
9 case or proceeding was a matter within the officer's or employee's
10 official responsibility.

11 (b) This section does not apply to:

12 (1) a former employee who is compensated on the last
13 date of service or employment below the amount prescribed by the
14 General Appropriations Act for salary group 17, Schedule A, or
15 salary group 9, Schedule B, of the position classification salary
16 schedule; or

17 (2) a former officer or employee who is employed by a
18 state agency or another community center.

19 (c) Subsection (a) does not apply to a proceeding related to
20 policy development that was concluded before the officer's or
21 employee's service or employment ceased.

22 (d) A former officer or employee of a community center
23 commits an offense if the former officer or employee violates this
24 section. An offense under this section is a Class A misdemeanor.

25 (e) In this section:

26 (1) "Participated" means to have taken action as an
27 officer or employee through decision, approval, disapproval,

1 recommendation, giving advice, investigation, or similar action.

2 (2) "Particular matter" means a specific
3 investigation, application, request for a ruling or determination,
4 proceeding related to the development of policy, contract, claim,
5 charge, accusation, arrest, or judicial or other proceeding.

6 Sec. 534.008. ADMINISTRATION BY BOARD. (a) The board of
7 trustees is responsible for the effective administration of the
8 community center.

9 (b) The board of trustees shall make policies that are
10 consistent with the applicable [department's] rules and standards
11 of each appropriate department.

12 Sec. 534.009. MEETINGS. (a) The board of trustees shall
13 adopt rules for the holding of regular and special meetings.

14 (b) Board meetings are open to the public to the extent
15 required by and in accordance with Chapter 551, Government Code.

16 (c) The board of trustees shall keep a record of its
17 proceedings in accordance with Chapter 551, Government Code. The
18 record is open for public inspection in accordance with that law.

19 (d) The board of trustees shall send to each appropriate
20 [the] department and each local agency that appoints the members a
21 copy of the approved minutes of board of trustees meetings by:

22 (1) mailing a copy appropriately addressed and with
23 the necessary postage paid using the United States Postal Service
24 [~~postal service~~]; or

25 (2) another method agreed to by the board of trustees
26 and the local agency.

27 Sec. 534.010. EXECUTIVE DIRECTOR. (a) The board of

1 trustees shall appoint an executive director for the community
2 center.

3 (b) The board of trustees shall:

4 (1) adopt a written policy governing the powers that
5 may be delegated to the executive director; and

6 (2) annually report to each local agency that appoints
7 the members the executive director's total compensation and
8 benefits.

9 Sec. 534.011. PERSONNEL. (a) The executive director, in
10 accordance with the policies of the board of trustees, shall employ
11 and train personnel to administer the community center's programs
12 and services. The community center may recruit those personnel and
13 contract for recruiting and training purposes.

14 (b) The board of trustees shall provide employees of the
15 community center with appropriate rights, privileges, and
16 benefits.

17 (c) The board of trustees may provide workers' compensation
18 benefits.

19 [(d) ~~The board of trustees shall prescribe the number of~~
20 ~~employees and their salaries. The board of trustees may choose to~~
21 ~~set salaries and benefits in compliance with a market analysis or~~
22 ~~internal salary study. If an internal salary study is used, the~~
23 ~~board of trustees shall conduct the study in accordance with the~~
24 ~~guidelines established by the commissioner.~~]

25 [(e) ~~Instead of using a market analysis or internal salary~~
26 ~~study to establish salaries and benefits, the board of trustees may~~
27 ~~use the state position classification plan and the General~~]

1 ~~Appropriations Act to determine the appropriate classification and~~
2 ~~relative compensation of officers and employees. The board of~~
3 ~~trustees may pay salaries in amounts less than those provided by the~~
4 ~~General Appropriations Act. For a position not on the~~
5 ~~classification plan, the board of trustees shall set the~~
6 ~~compensation according to guidelines adopted by the commissioner.~~
7 ~~The board of trustees may petition the department for approval to~~
8 ~~exclude a position from the position classification plan and to~~
9 ~~provide a stated salary for that position that exceeds the amount~~
10 ~~prescribed by the General Appropriations Act for the classified~~
11 ~~position.~~

12 [f) ~~During a management audit of a community center, the~~
13 ~~department is entitled to confirm the method the center used to~~
14 ~~determine salaries and benefits.]~~

15 Sec. 534.0115. NEPOTISM. (a) The board of trustees or
16 executive director may not hire as a paid officer or employee of the
17 community center a person who is related to a member of the board of
18 trustees by affinity within the second degree or by consanguinity
19 within the third degree.

20 (b) An officer or employee who is related to a member of the
21 board of trustees in a prohibited manner may continue to be employed
22 if the person began the employment not later than the 31st day
23 before the date on which the member was appointed.

24 (c) The officer or employee or the member of the board of
25 trustees shall resign if the officer or employee began the
26 employment later than the 31st day before the date on which the
27 member was appointed.

1 (d) If an officer or employee is permitted to remain in
2 employment under Subsection (b), the related member of the board of
3 trustees may not participate in the deliberation of or voting on an
4 issue that is specifically applicable to the officer or employee
5 unless the issue affects an entire class or category of employees.

6 Sec. 534.012. ADVISORY COMMITTEES. (a) The board of
7 trustees may appoint committees, including medical committees, to
8 advise the board of trustees on matters relating to mental health
9 and intellectual disability [~~mental retardation~~] services.

10 (b) Each committee must be composed of at least three
11 members.

12 (c) The appointment of a committee does not relieve the
13 board of trustees of the final responsibility and accountability as
14 provided by this subtitle.

15 Sec. 534.013. COOPERATION OF DEPARTMENTS [~~DEPARTMENT~~].
16 Each appropriate [~~The~~] department shall provide assistance,
17 advice, and consultation to local agencies, boards of trustees, and
18 executive directors in the planning, development, and operation of
19 a community center.

20 Sec. 534.014. BUDGET; REQUEST FOR FUNDS. (a) Each
21 community center shall annually provide to each local agency that
22 appoints members to the board of trustees a copy of the center's:

23 (1) approved fiscal year operating budget;
24 (2) most recent annual financial audit; and
25 (3) staff salaries by position.

26 (b) The board of trustees shall annually submit to each
27 local agency that appoints the members a request for funds or

1 in-kind assistance to support the center.

2 Sec. 534.015. PROVISION OF SERVICES. (a) The board of
3 trustees may adopt rules to regulate the administration of mental
4 health or intellectual disability [~~mental retardation~~] services by
5 a community center. The rules must be consistent with the purposes,
6 policies, principles, and standards prescribed by this subtitle.

7 (b) The board of trustees may contract with a local agency
8 or a qualified person or organization to provide a portion of the
9 mental health or intellectual disability [~~mental retardation~~]
10 services.

11 (c) With the approval of each appropriate commissioner
12 [~~commissioner's approval~~], the board of trustees may contract with
13 the governing body of another county or municipality to provide
14 mental health and intellectual disability [~~mental retardation~~]
15 services to residents of that county or municipality.

16 (d) A community center may provide services to a person who
17 voluntarily seeks assistance or who has been committed to that
18 center.

19 Sec. 534.0155. FOR WHOM SERVICES MAY BE PROVIDED. (a) This
20 subtitle does not prevent a community center from providing
21 services to:

22 (1) a person with a chemical dependency;

23 (2) [~~or~~ to] a person with a developmental
24 disability; [~~or~~] or

25 (3) [~~or~~] a person younger than four years of age who is
26 eligible for early childhood intervention services [~~with a mental~~
27 ~~disability, as defined by Section 535.001~~].

1 (b) A community center may provide those services by
2 contracting with a public or private agency in addition to the
3 appropriate department.

4 Sec. 534.016. SCREENING AND CONTINUING CARE SERVICES. (a)
5 A community center shall provide screening services for:

6 (1) a person who requests voluntary admission to a
7 Department of State Health Services [~~department~~] facility for
8 persons with mental illness; and

9 (2) [~~and for~~] a person for whom proceedings for
10 involuntary commitment to a Department of State Health Services or
11 Department of Aging and Disability Services [~~department~~] facility
12 for persons with mental illness or an intellectual disability have
13 been initiated.

14 (b) A community center shall provide continuing mental
15 health and physical care services for a person referred to the
16 center by a Department of State Health Services [~~department~~]
17 facility and for whom the facility superintendent has recommended a
18 continuing care plan.

19 (c) Services provided under this section must be consistent
20 with the applicable [~~department's~~] rules and standards of each
21 appropriate department.

22 (d) The appropriate commissioner may designate a facility
23 other than the community center to provide the screening or
24 continuing care services if:

25 (1) local conditions indicate that the other facility
26 can provide the services more economically and effectively; or
27 (2) the commissioner determines that local conditions

1 may impose an undue burden on the community center.

2 Sec. 534.017. FEES FOR SERVICES. (a) A community center
3 shall charge reasonable fees for services the center provides,
4 unless prohibited by other service contracts or law.

5 (b) The community center may not deny services to a person
6 because of inability to pay for the services.

7 (c) The community center has the same rights, privileges,
8 and powers for collecting fees for treating patients or [and]
9 clients that each appropriate [~~the~~] department has by law.

10 (d) The county or district attorney of the county in which
11 the community center is located shall represent the center in
12 collecting fees when the center's executive director requests the
13 assistance.

14 Sec. 534.0175. TRUST EXEMPTION. (a) If a patient or client
15 is the beneficiary of a trust that has an aggregate principal of
16 \$250,000 or less, the corpus or income of the trust is not
17 considered to be the property of the patient or client or the
18 patient's or client's estate and is not liable for the patient's or
19 client's support. If the aggregate principal of the trust exceeds
20 \$250,000, only the portion of the corpus of the trust that exceeds
21 that amount and the income attributable to that portion are
22 considered to be the property of the patient or client or the
23 patient's or client's estate and are liable for the patient's or
24 client's support.

25 (b) To qualify for the exemption provided by Subsection (a),
26 the trust and the trustee must comply with the requirements
27 prescribed by Sections 552.018 and 593.081.

1 Sec. 534.018. GIFTS AND GRANTS. A community center may
2 accept gifts and grants of money, personal property, and real
3 property to use in providing the center's programs and services.

4 Sec. 534.019. CONTRIBUTION BY LOCAL AGENCY. A
5 participating local agency may contribute land, buildings,
6 facilities, other real and personal property, personnel, and funds
7 to administer the community center's programs and services.

8 Sec. 534.020. ACQUISITION AND CONSTRUCTION OF PROPERTY AND
9 FACILITIES BY COMMUNITY CENTER. (a) A community center may
10 purchase or lease-purchase real and personal property and may
11 construct buildings and facilities.

12 (b) The board of trustees shall require that an appraiser
13 certified by the Texas Appraiser Licensing and Certification Board
14 conduct an independent appraisal of real estate the community
15 center intends to purchase. The board of trustees may waive this
16 requirement if the purchase price is less than the value listed for
17 the property by the local appraisal district and the property has
18 been appraised by the local appraisal district within the preceding
19 two years. A community center may not purchase or lease-purchase
20 property for an amount that is greater than the property's
21 appraised value unless:

22 (1) the purchase or lease-purchase of that property at
23 that price is necessary;

24 (2) the board of trustees documents in the official
25 minutes the reasons why the purchase or lease-purchase is necessary
26 at that price; and

27 (3) a majority of the board approves the transaction.

1 (c) The board of trustees shall establish in accordance with
2 relevant [department] rules of each appropriate department
3 competitive bidding procedures and practices for capital purchases
4 and for purchases involving department funds or required local
5 matching funds.

6 Sec. 534.021. APPROVAL AND NOTIFICATION REQUIREMENTS. (a)
7 A community center must receive from each appropriate [~~the~~]
8 department prior written approval to acquire real property,
9 including a building, if the acquisition involves the use of
10 [department] funds of that department or local funds required to
11 match funds of that department [~~funds~~]. In addition, for
12 acquisition of nonresidential property, the community center must
13 notify each local agency that appoints members to the board of
14 trustees not later than the 31st day before it enters into a binding
15 obligation to acquire the property.

16 (b) A community center must notify each appropriate [~~the~~]
17 department and each local agency that appoints members to the board
18 of trustees not later than the 31st day before it enters into a
19 binding obligation to acquire real property, including a building,
20 if the acquisition does not involve the use of [department] funds of
21 that department or local funds required to match funds of that
22 department [~~funds~~]. Each appropriate [~~The~~] commissioner, on
23 request, may waive the 30-day requirement on a case-by-case basis.

24 (c) The executive commissioner [~~board~~] shall adopt rules
25 relating to the approval and notification process.

26 Sec. 534.022. FINANCING OF PROPERTY AND IMPROVEMENTS. (a)
27 To acquire or to refinance the acquisition of real and personal

1 property, to construct improvements to property, or to finance all
2 or part of a payment owed or to be owed on a credit agreement, a
3 community center may contract in accordance with Subchapter A,
4 Chapter 271, Local Government Code, or issue, execute, refinance,
5 or refund bonds, notes, obligations, or contracts. The community
6 center may secure the payment of the bonds, notes, obligations, or
7 contracts with a security interest in or pledge of its revenues or
8 by granting a mortgage on any of its properties.

9 (a-1) For purposes of Subsection (a), "revenues" includes
10 the following, as those terms are defined by Section [9.102](#),
11 Business & Commerce Code:

- 12 (1) an account;
- 13 (2) a chattel paper;
- 14 (3) a commercial tort claim;
- 15 (4) a deposit account;
- 16 (5) a document;
- 17 (6) a general intangible;
- 18 (7) a health care insurance receivable;
- 19 (8) an instrument;
- 20 (9) investment property;
- 21 (10) a letter-of-credit right; and
- 22 (11) proceeds.

23 (b) Except as provided by Subsection (f), the community
24 center shall issue the bonds, notes, or obligations in accordance
25 with Chapters 1201 and 1371, Government Code. The attorney general
26 must approve before issuance:

- 27 (1) notes issued in the form of public securities, as

1 that term is defined by Section 1201.002, Government Code;
2 (2) obligations, as that term is defined by Section
3 1371.001, Government Code; and
4 (3) bonds.

5 (c) A limitation prescribed in Subchapter A, Chapter 271,
6 Local Government Code, relating to real property and the
7 construction of improvements to real property, does not apply to a
8 community center.

9 (e) A county or municipality acting alone or two or more
10 counties or municipalities acting jointly pursuant to interlocal
11 contract may create a public facility corporation to act on behalf
12 of one or more community centers pursuant to Chapter 303, Local
13 Government Code. Such counties or municipalities may exercise the
14 powers of a sponsor under that chapter, and any such corporation may
15 exercise the powers of a corporation under that chapter (including
16 but not limited to the power to issue bonds). The corporation may
17 exercise its powers on behalf of community centers in such manner as
18 may be prescribed by the articles and bylaws of the corporation,
19 provided that in no event shall one community center ever be liable
20 to pay the debts or obligation or be liable for the acts, actions,
21 or undertakings of another community center.

22 (f) The board of trustees of a community center may
23 authorize the issuance of an anticipation note in the same manner,
24 using the same procedure, and with the same rights under which an
25 eligible school district may authorize issuance under Chapter 1431,
26 Government Code, except that anticipation notes issued for the
27 purposes described by Section 1431.004(a)(2), Government Code, may

1 not, in the fiscal year in which the attorney general approves the
2 notes for a community center, exceed 50 percent of the revenue
3 anticipated to be collected in that year.

4 Sec. 534.023. SALE OF REAL PROPERTY ACQUIRED SOLELY THROUGH
5 PRIVATE GIFT OR GRANT. (a) Except as provided by Subsection (d), a
6 community center may sell center real property, including a
7 building, without the approval of each appropriate [the] department
8 or any local agency that appoints members to the board of trustees,
9 only if the real property was acquired solely through a gift or
10 grant of money or real property from a private entity, including an
11 individual.

12 (b) A community center that acquires real property by gift
13 or grant shall, on the date the center acquires the gift or grant,
14 notify the private entity providing the gift or grant that:

15 (1) the center may subsequently sell the real
16 property; and

17 (2) the sale is subject to the provisions of this
18 section.

19 (c) Except as provided by Subsection (d), real property sold
20 under Subsection (a) must be sold for the property's fair market
21 value.

22 (d) Real property sold under Subsection (a) may be sold for
23 less than fair market value only if the board of trustees adopts a
24 resolution stating:

25 (1) the public purpose that will be achieved by the
26 sale; and

27 (2) the conditions and circumstances for the sale,

1 including conditions to accomplish and maintain the public purpose.

2 (e) A community center must notify each appropriate [~~the~~]
3 department and each local agency that appoints members to the board
4 of trustees not later than the 31st day before the date the center
5 enters into a binding obligation to sell real property under this
6 section. Each appropriate [~~The~~] commissioner, on request, may
7 waive the 30-day notice requirement on a case-by-case basis.

8 (f) The executive commissioner [~~board~~] shall adopt rules
9 relating to the notification process.

10 (g) A community center may use proceeds received from a sale
11 of real property under this section only for a purpose authorized by
12 this subchapter or for a public purpose authorized for a community
13 center by state or federal law.

14 Sec. 534.031. SURPLUS PERSONAL PROPERTY. The executive
15 commissioner, in coordination with the appropriate department, may
16 transfer, with or without reimbursement, ownership and possession
17 of surplus personal property under that [~~the~~] department's control
18 or jurisdiction to a community center for use in providing mental
19 health or intellectual disability [~~mental retardation~~] services,
20 as appropriate.

21 Sec. 534.032. RESEARCH. A community center may engage in
22 research and may contract for that purpose.

23 Sec. 534.033. LIMITATION ON DEPARTMENT CONTROL AND REVIEW.

24 (a) It is the intent of the legislature that each [~~the~~] department
25 limit its control over, and routine reviews of, community center
26 programs to those programs that:

27 (1) use [~~department~~] funds from that department or use

1 required local funds that are matched with [department] funds from
2 that department;

3 (2) provide core or required services;

4 (3) provide services to former clients or patients of
5 a [department] facility of that department; or

6 (4) are affected by litigation in which that [~~the~~]
7 department is a defendant.

8 (b) Each appropriate [~~the~~] department may review any
9 community center program if the department has reason to suspect
10 that a violation of a department rule has occurred or if the
11 department receives an allegation of patient or client abuse.

12 (c) Each appropriate [~~the~~] department may determine whether
13 a particular program uses [department] funds from that department
14 or uses required local matching funds.

15 Sec. 534.035. REVIEW, AUDIT, AND APPEAL PROCEDURES. (a)
16 The executive commissioner [~~department~~] by rule shall establish
17 review, audit, and appeal procedures for community centers. The
18 procedures must ensure that reviews and audits are conducted in
19 sufficient quantity and type to provide reasonable assurance that a
20 community center has adequate and appropriate fiscal controls.

21 (b) In a community center plan approved under Section
22 534.001, the center must agree to comply with the review and audit
23 procedures established under this section.

24 (c) If, by a date prescribed by each appropriate [~~the~~]
25 commissioner, the community center fails to respond to a deficiency
26 identified in a review or audit to the satisfaction of that [~~the~~]
27 commissioner, that [~~the~~] department may sanction the center in

1 accordance with department [board] rules.

2 Sec. 534.036. FINANCIAL AUDIT. (a) The executive
3 commissioner [department] shall prescribe procedures for financial
4 audits of community centers. The executive commissioner
5 [department] shall develop the procedures with the assistance of
6 the state agencies and departments that contract with community
7 centers. The executive commissioner [department] shall coordinate
8 with each of those state agencies and departments to incorporate
9 each agency's financial and compliance requirements for a community
10 center into a single audit that meets the requirements of Section
11 534.068 or 534.121, as appropriate. Before prescribing or amending
12 the procedures, the executive commissioner [department] shall set a
13 deadline for those state agencies and departments to submit to the
14 executive commissioner [department] proposals relating to the
15 financial audit procedures. The procedures must be consistent with
16 any requirements connected with federal funding received by the
17 community center. [The department may not implement the procedures
18 without the approval of the Health and Human Services Commission.]

19 (b) Each state agency or department that contracts with a
20 community center shall comply with the procedures developed under
21 this section.

22 (c) The executive commissioner [department] shall develop
23 protocols for a state agency or department to conduct additional
24 financial audit activities of a community center. [A state agency
25 or department may not conduct additional financial audit activities
26 of a community center without the approval of the Health and Human
27 Services Commission.]

1 Sec. 534.037. PROGRAM AUDIT. (a) The executive
2 commissioner [~~department~~] shall coordinate with each state agency
3 or department that contracts with a community center to prescribe
4 procedures based on risk assessment for coordinated program audits
5 of the activities of a community center. [~~The department may not~~
6 ~~implement the procedures without the approval of the Health and~~
7 ~~Human Services Commission.~~] The procedures must be consistent with
8 any requirements connected with federal funding received by the
9 community center.

10 (b) A program audit of a community center must be performed
11 in accordance with procedures developed under this section.

12 (c) This section does not prohibit a state agency or
13 department or an entity providing funding to a community center
14 from investigating a complaint against or performing additional
15 contract monitoring of a community center.

16 (d) A program audit under this section must evaluate:

17 (1) the extent to which the community center is
18 achieving the desired results or benefits established by the
19 legislature or by a state agency or department;

20 (2) the effectiveness of the community center's
21 organizations, programs, activities, or functions; and

22 (3) whether the community center is in compliance with
23 applicable laws.

24 Sec. 534.038. APPOINTMENT OF MANAGER OR MANAGEMENT TEAM.

25 (a) Each appropriate [~~The~~] commissioner may appoint a manager or
26 management team to manage and operate a community center if the
27 commissioner finds that the center or an officer or employee of the

1 center:

2 (1) intentionally, recklessly, or negligently failed
3 to discharge the center's duties under a contract with that [~~the~~]
4 department;

5 (2) misused state or federal money;
6 (3) engaged in a fraudulent act, transaction,
7 practice, or course of business;

8 (4) endangers or may endanger the life, health, or
9 safety of a person served by the center;

10 (5) failed to keep fiscal records or maintain proper
11 control over center assets as prescribed by Chapter 783, Government
12 Code;

13 (6) failed to respond to a deficiency in a review or
14 audit;

15 (7) substantially failed to operate within the
16 functions and purposes defined in the center's plan; or

17 (8) otherwise substantially failed to comply with this
18 subchapter or rules of that department [~~rules~~].

19 (b) Each appropriate [~~The~~] department shall give written
20 notification to the center and local agency or combination of
21 agencies responsible for making appointments to the local board of
22 trustees regarding:

23 (1) the appointment of the manager or management team;
24 and

25 (2) the circumstances on which the appointment is
26 based.

27 (c) Each appropriate [~~The~~] commissioner may require the

1 center to pay costs incurred by the manager or management team.

2 (d) The center may appeal a [~~the~~] commissioner's decision to
3 appoint a manager or management team as prescribed by rules of that
4 department [~~board rule~~]. The filing of a notice of appeal stays the
5 appointment unless the commissioner based the appointment on a
6 finding under Subsection (a)(2) or (4).

7 Sec. 534.039. POWERS AND DUTIES OF MANAGEMENT TEAM. (a) AS
8 each appropriate [~~the~~] commissioner determines for each
9 appointment, a manager or management team appointed under Section
10 534.038 may:

11 (1) evaluate, redesign, modify, administer,
12 supervise, or monitor a procedure, operation, or the management of
13 a community center;

14 (2) hire, supervise, discipline, reassign, or
15 terminate the employment of a center employee;

16 (3) reallocate a resource and manage an asset of the
17 center;

18 (4) provide technical assistance to an officer or
19 employee of the center;

20 (5) require or provide staff development;

21 (6) require that a financial transaction,
22 expenditure, or contract for goods and services must be approved by
23 the manager or management team;

24 (7) redesign, modify, or terminate a center program or
25 service;

26 (8) direct the executive director, local board of
27 trustees, chief financial officer, or a fiscal or program officer

1 of the center to take an action;

2 (9) exercise a power or duty of an officer or employee
3 of the center; or

4 (10) make a recommendation to the local agency or
5 combination of agencies responsible for appointments to the local
6 board of trustees regarding the removal of a center trustee.

7 (b) The manager or management team shall supervise the
8 exercise of a power or duty by the local board of trustees.

9 (c) The manager or management team shall report monthly to
10 each appropriate [~~the~~] commissioner and local board of trustees on
11 actions taken.

12 (d) A manager or management team appointed under this
13 section may not use an asset or money contributed by a county,
14 municipality, or other local funding entity without the approval of
15 the county, municipality, or entity.

16 Sec. 534.040. RESTORING MANAGEMENT TO CENTER. (a) Each
17 month, each appropriate [~~the~~] commissioner shall evaluate the
18 performance of a community center managed by a manager or team
19 appointed under Section 534.038 to determine the feasibility of
20 restoring the center's management and operation to a local board of
21 trustees.

22 (b) The authority of the manager or management team
23 continues until each appropriate [~~the~~] commissioner determines
24 that the relevant factors listed under Section 534.038(a) no longer
25 apply.

26 (c) Following a determination under Subsection (b), each
27 appropriate [~~the~~] commissioner shall terminate the authority of the

1 manager or management team and restore authority to manage and
2 operate the center to the center's authorized officers and
3 employees.

4 SUBCHAPTER B. COMMUNITY-BASED MENTAL HEALTH SERVICES

5 Sec. 534.051. DEFINITIONS. In this subchapter:

6 (1) "Commissioner" means the commissioner of state
7 health services.

8 (2) "Department" means the Department of State Health
9 Services.

10 Sec. 534.052. RULES AND STANDARDS. (a) The executive
11 commissioner [~~board~~] shall adopt rules, including standards, the
12 executive commissioner [~~board~~] considers necessary and appropriate
13 to ensure the adequate provision of community-based mental health
14 [~~and mental retardation~~] services through a local mental health [~~or~~
15 ~~mental retardation~~] authority under this subchapter.

16 (b) The department shall send a copy of the rules to each
17 local mental health [~~or mental retardation~~] authority or other
18 provider receiving contract funds as a local mental health [~~or~~
19 ~~mental retardation~~] authority or designated provider.

20 Sec. 534.053. REQUIRED COMMUNITY-BASED MENTAL HEALTH
21 SERVICES. (a) The department shall ensure that, at a minimum, the
22 following services are available in each service area:

23 (1) 24-hour emergency screening and rapid crisis
24 stabilization services;

25 (2) community-based crisis residential services or
26 hospitalization;

27 (3) community-based assessments, including the

1 development of interdisciplinary treatment plans and diagnosis and
2 evaluation services;

3 (4) [family support services, including respite care;

4 [(5) case management services;

5 [(6) medication-related services, including
6 medication clinics, laboratory monitoring, medication education,
7 mental health maintenance education, and the provision of
8 medication; and

9 (5) [(7) psychosocial rehabilitation programs,
10 including social support activities, independent living skills,
11 and vocational training.

12 (b) The department shall arrange for appropriate
13 community-based services[, including the assignment of a case
14 manager] to be available in each service area for each person
15 discharged from a department facility who is in need of care.

16 (c) To the extent that resources are available, the
17 department shall:

18 (1) ensure that the services listed in this section
19 are available for children, including adolescents, as well as
20 adults, in each service area;

21 (2) emphasize early intervention services for
22 children, including adolescents, who meet the department's
23 definition of being at high risk of developing severe emotional
24 disturbances or severe mental illnesses; and

25 (3) ensure that services listed in this section are
26 available for defendants required to submit to mental health
27 treatment under Article 17.032 or Section 5(a) or 11(d), Article

1 42.12, Code of Criminal Procedure.

2 Sec. 534.0535. JOINT DISCHARGE PLANNING. (a) The
3 executive commissioner [board] shall adopt, and the department
4 shall enforce, rules that require continuity of services and
5 planning for patient [or client] care between department facilities
6 and local mental health [or mental retardation] authorities.

7 (b) At a minimum, the rules must require joint discharge
8 planning between a department facility and a local mental health
9 [or mental retardation] authority before a facility discharges a
10 patient [or client] or places the patient [or client] on an extended
11 furlough with an intent to discharge.

12 (c) The local mental health [or mental retardation]
13 authority shall plan with the department facility and determine the
14 appropriate community services for the patient [or client].

15 (d) The local mental health [or mental retardation]
16 authority shall arrange for the provision of the services if
17 department funds are to be used and may subcontract with or make a
18 referral to a local agency or entity.

19 Sec. 534.054. DESIGNATION OF PROVIDER. (a) The department
20 shall identify and contract with a local mental health [or mental
21 retardation] authority for each service area to ensure that
22 services are provided to patient [and client] populations
23 determined by the department. A local mental health [or mental
24 retardation] authority shall ensure that services to address the
25 needs of priority populations are provided as required by the
26 department and shall comply with the rules and standards adopted
27 under Section 534.052.

1 (c) The department may contract with a local agency or a
2 private provider or organization to act as a designated provider of
3 a service if the department:

4 (1) cannot negotiate a contract with a local mental
5 health [~~or mental retardation~~] authority to ensure that a specific
6 required service for priority populations is available in that
7 service area; or

8 (2) determines that a local mental health [~~or mental~~
9 ~~retardation~~] authority does not have the capacity to ensure the
10 availability of that service.

11 Sec. 534.055. CONTRACTS FOR CERTAIN COMMUNITY SERVICES.

12 (a) [~~A mental health or mental retardation authority and a private~~
13 ~~provider shall use a contract designed by the department as a model~~
14 ~~contract for the provision of services at the community level for~~
15 ~~persons with mental retardation or mental illness, including~~
16 ~~residential services, if the contract involves the use of state~~
17 ~~funds or funds for which the state has oversight responsibility.~~

18 [~~(b) The department shall design one or more model contracts~~
19 ~~and shall retain copies of each model contract in the central office~~
20 ~~of the department.~~

21 [~~(c) A model contract must:~~

22 [~~(1) require that the services provided by the private~~
23 ~~provider be based on the patient's or client's individual treatment~~
24 ~~plan;~~

25 [~~(2) provide that a community-based residential~~
26 ~~facility that is a family home as defined in Chapter 123, Human~~
27 ~~Resources Code may house only a person with a disability as defined~~

1 in Section 123.002, Human Resources Code,
2 [(3)] prohibit the use of the facility for purposes
3 such as restitution centers, homes for substance abusers, or
4 halfway houses; and

5 [(4)] outline a dispute resolution procedure.

6 [(d)] The executive commissioner [~~department~~] shall design
7 a competitive procurement or similar system that a mental health
8 [or mental retardation] authority shall use in awarding an initial
9 contract for the provision of services at the community level for
10 persons with mental illness, including residential services, if the
11 contract involves the use of state money or money for which the
12 state has oversight responsibility [~~under this section~~].

13 (b) [~~(e)~~] The system must require that each local mental
14 health [~~or mental retardation~~] authority:

15 (1) ensure public participation in the authority's
16 decisions regarding whether to provide or to contract for a
17 service;

18 (2) make a reasonable effort to give notice of the
19 intent to contract for services to each potential private provider
20 in the local service area of the authority; and

21 (3) review each submitted proposal and award the
22 contract to the applicant that the authority determines has made
23 the lowest and best bid to provide the needed services.

24 (c) [~~(f)~~] Each local mental health [~~or mental retardation~~]
25 authority, in determining the lowest and best bid, shall consider
26 any relevant information included in the authority's request for
27 bid proposals, including:

1 (1) price;

2 (2) the ability of the bidder to perform the contract

3 and to provide the required services;

4 (3) whether the bidder can perform the contract or

5 provide the services within the period required, without delay or

6 interference;

7 (4) the bidder's history of compliance with the laws

8 relating to the bidder's business operations and the affected

9 services and whether the bidder is currently in compliance;

10 (5) whether the bidder's financial resources are

11 sufficient to perform the contract and to provide the services;

12 (6) whether necessary or desirable support and

13 ancillary services are available to the bidder;

14 (7) the character, responsibility, integrity,

15 reputation, and experience of the bidder;

16 (8) the quality of the facilities and equipment

17 available to or proposed by the bidder;

18 (9) the ability of the bidder to provide continuity of

19 services; and

20 (10) the ability of the bidder to meet all applicable

21 written departmental policies, principles, and regulations.

22 Sec. 534.056. COORDINATION OF ACTIVITIES. A local mental

23 health [~~or mental retardation~~] authority shall coordinate its

24 activities with the activities of other appropriate agencies that

25 provide care and treatment for persons with drug or alcohol

26 problems.

27 [Sec. 534.057. RESPITE CARE. (a) The board shall adopt

1 ~~rules relating to the provision of respite care and shall develop a~~
2 ~~system to reimburse providers of in-home respite care.~~

3 [(b) ~~The rules must:~~

4 [(1) ~~encourage the use of existing local providers;~~

5 [(2) ~~encourage family participation in the choice of a~~
6 ~~qualified provider;~~

7 [(3) ~~establish procedures necessary to administer~~
8 ~~this section, including procedures for:~~

9 [(A) ~~determining the amount and type of in-home~~
10 ~~respite care to be authorized;~~

11 [(B) ~~reimbursing providers;~~

12 [(C) ~~handling appeals from providers;~~

13 [(D) ~~handling complaints from recipients of~~
14 ~~in-home respite care;~~

15 [(E) ~~providing emergency backup for in-home~~
16 ~~respite care providers; and~~

17 [(F) ~~advertising for, selecting, and training~~
18 ~~in-home respite care providers; and~~

19 [(4) ~~specify the conditions and provisions under which~~
20 ~~a provider's participation in the program can be canceled.~~

21 [(c) ~~The board shall establish service and performance~~
22 ~~standards for department facilities and designated providers to use~~

23 ~~in operating the in-home respite care program. The board shall~~
24 ~~establish the standards from information obtained from the families~~

25 ~~of patients and clients receiving in-home respite care and from~~
26 ~~providers of in-home respite care. The board may obtain the~~

27 ~~information at a public hearing or from an advisory group.~~

1 [~~(d) The service and performance standards established by~~
2 ~~the board under Subsection (c) must:~~

3 [~~(1) prescribe minimum personnel qualifications the~~
4 ~~board determines are necessary to protect health and safety;~~

5 [~~(2) establish levels of personnel qualifications~~
6 ~~that are dependent on the needs of the patient or client; and~~

7 [~~(3) permit a health professional with a valid Texas~~
8 ~~practitioner's license to provide care that is consistent with the~~
9 ~~professional's training and license without requiring additional~~
10 ~~training unless the board determines that additional training is~~
11 ~~necessary.]~~

12 Sec. 534.058. STANDARDS OF CARE. (a) The executive
13 commissioner [~~department~~] shall develop standards of care for the
14 services provided by a local mental health [~~or mental retardation~~]
15 authority and its subcontractors under this subchapter.

16 (b) The standards must be designed to ensure that the
17 quality of the community-based mental health services is consistent
18 with the quality of care available in department facilities.

19 (c) In conjunction with local mental health [~~or mental~~
20 ~~retardation~~] authorities, the executive commissioner [~~department~~]
21 shall review the standards biennially to determine if each standard
22 is necessary to ensure the quality of care.

23 Sec. 534.059. CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES.
24 (a) The department shall evaluate a local mental health [~~or mental~~
25 ~~retardation~~] authority's compliance with its contract to ensure the
26 provision of specific services to priority populations.

27 (b) If, by a date set by the commissioner, a local mental

1 health [~~or mental retardation~~] authority fails to comply with its
2 contract to ensure the provision of services to the satisfaction of
3 the commissioner, the department may impose a sanction as provided
4 by the applicable contract rule until the dispute is resolved. The
5 department shall notify the authority in writing of the
6 department's decision to impose a sanction.

7 (c) A local mental health [~~or mental retardation~~] authority
8 may appeal the department's decision to impose a sanction on the
9 authority. The executive commissioner [~~board~~] by rule shall
10 prescribe the appeal procedure.

11 (d) The filing of a notice of appeal stays the imposition of
12 the department's decision to impose a sanction except when an act or
13 omission by a local mental health [~~or mental retardation~~] authority
14 is endangering or may endanger the life, health, welfare, or safety
15 of a person.

16 (e) While an appeal under this section is pending, the
17 department may limit general revenue allocations to a local mental
18 health [~~or mental retardation~~] authority to monthly distributions.

19 Sec. 534.060. PROGRAM AND SERVICE MONITORING AND REVIEW OF
20 LOCAL AUTHORITIES. (a) The department shall develop mechanisms
21 for monitoring the services provided by a local mental health [~~or~~
22 ~~mental retardation~~] authority.

23 (b) The department shall review the program quality and
24 program performance results of a local mental health [~~or mental~~
25 ~~retardation~~] authority in accordance with a risk assessment and
26 evaluation system appropriate to the authority's contract
27 requirements. The department may determine the scope of the

1 review.

2 (c) A contract between a local mental health [~~or mental~~
3 ~~retardation~~] authority and the department must authorize the
4 department to have unrestricted access to all facilities, records,
5 data, and other information under the control of the authority as
6 necessary to enable the department to audit, monitor, and review
7 the financial and program activities and services associated with
8 department funds.

9 Sec. 534.0601. COORDINATED PROGRAM AUDITS OF LOCAL
10 AUTHORITIES. (a) The executive commissioner [~~department~~] shall
11 coordinate with each agency or department of the state that
12 contracts with a local mental health [~~or mental retardation~~]
13 authority to prescribe procedures for a coordinated program audit
14 of the authority. The procedures must be:

15 (1) consistent with the requirements for the receipt
16 of federal funding by the authority; and
17 (2) based on risk assessment.

18 (b) A program audit must evaluate:

19 (1) the extent to which a local mental health [~~or~~
20 ~~mental retardation~~] authority is achieving the results or benefits
21 established by an agency or department of the state or by the
22 legislature;

23 (2) the effectiveness of the authority's organization,
24 program, activities, or functions; and

25 (3) the authority's compliance with law.

26 (c) A program audit of a local mental health [~~or mental~~
27 ~~retardation~~] authority must be performed in accordance with the

1 procedures prescribed under this section.

2 (d) The department may not implement a procedure for a
3 program audit under this section without the approval of the
4 executive commissioner [~~Health and Human Services Commission~~].

5 (e) This section does not prohibit an agency, department, or
6 other entity providing funding to a local mental health [~~or mental~~
7 ~~retardation~~] authority from investigating a complaint against the
8 authority or performing additional contract monitoring of the
9 authority.

10 Sec. 534.0602. FINANCIAL AUDITS OF LOCAL AUTHORITIES. (a)
11 The executive commissioner [~~department~~] shall prescribe procedures
12 for a financial audit of a local mental health [~~or mental~~
13 ~~retardation~~] authority. The procedures must be consistent with
14 requirements for the receipt of federal funding by the authority.

15 (b) The executive commissioner [~~department~~] shall develop
16 the procedures with the assistance of each agency or department of
17 the state that contracts with a local mental health [~~or mental~~
18 ~~retardation~~] authority. The executive commissioner [~~department~~]
19 shall incorporate each agency's or department's financial or
20 compliance requirements for an authority into a single audit that
21 meets the requirements of Section 534.068.

22 (c) Before prescribing or amending a procedure under this
23 section, the executive commissioner [~~department~~] must set a
24 deadline for agencies and departments of the state that contract
25 with local mental health [~~and mental retardation~~] authorities to
26 submit proposals relating to the procedure.

27 (d) An agency or department of the state that contracts with

1 a local mental health [or mental retardation] authority must comply
2 with a procedure developed under this section.

3 (e) The department may not implement a procedure under this
4 section without the approval of the executive commissioner [~~Health~~
5 ~~and Human Services Commission~~].

6 Sec. 534.0603. ADDITIONAL FINANCIAL AUDIT ACTIVITY. (a)
7 The executive commissioner [~~department~~] shall develop protocols
8 for an agency or department of the state to conduct additional
9 financial audit activities of a local mental health [or mental
10 ~~retardation~~] authority.

11 (b) An agency or department of the state may not conduct
12 additional financial audit activities relating to a local mental
13 health [or mental retardation] authority without the approval of
14 the executive commissioner [~~Health and Human Services Commission~~].

15 (c) This section, and a protocol developed under this
16 section, do not apply to an audit conducted under Chapter 321,
17 Government Code.

18 Sec. 534.061. PROGRAM AND SERVICE MONITORING AND REVIEW OF
19 CERTAIN COMMUNITY SERVICES. (a) [~~The department shall develop~~
20 ~~mechanisms for periodically monitoring the services of a provider~~
21 ~~who contracts with a local mental health or mental retardation~~
22 ~~authority to provide services for persons with mental retardation~~
23 ~~or mental illness at the community level, including residential~~
24 ~~services, if state funds or funds for which the state has oversight~~
25 ~~responsibility are used to pay for at least part of the services.~~

26 [(b)] The local mental health [or mental retardation]
27 authority shall monitor the services of a provider who contracts

1 with the authority to provide services for persons with mental
2 illness to ensure that the provider is delivering the services in a
3 manner consistent with the provider's contract.

4 (b) [(-e)] Each provider contract involving the use of state
5 funds or funds for which the state has oversight responsibility
6 must authorize the local mental health [~~or mental retardation~~]
7 authority or the authority's designee and the department or the
8 department's designee to have unrestricted access to all
9 facilities, records, data, and other information under the control
10 of the provider as necessary to enable the department to audit,
11 monitor, and review the financial and program activities and
12 services associated with the contract.

13 (c) [(-d)] The department may withdraw funding from a local
14 mental health [~~or mental retardation~~] authority that fails to
15 cancel a contract with a provider involving the use of state funds
16 or funds for which the state has oversight responsibility if:

17 (1) the provider is not fulfilling its contractual
18 obligations; and

19 (2) the authority has not taken appropriate action to
20 remedy the problem in accordance with department [~~board~~] rules.

21 (d) [(-e)] The executive commissioner [~~board~~] by rule shall
22 prescribe procedures a local mental health [~~or mental retardation~~]
23 authority must follow in remedying a problem with a provider.

24 Sec. 534.063. PEER REVIEW ORGANIZATION. The department
25 shall assist a local mental health [~~or mental retardation~~]
26 authority in developing a peer review organization to provide
27 self-assessment of programs and to supplement department reviews

1 under Section 534.060.

2 Sec. 534.064. CONTRACT RENEWAL. The executive commissioner
3 may refuse to renew a contract with a local mental health [or mental
4 retardation] authority and may select other agencies, entities, or
5 organizations to be the local mental health [or mental retardation]
6 authority if the department's evaluation of the authority's
7 performance under Section 534.059 indicates that the authority
8 cannot ensure the availability of the specific services to priority
9 populations required by the department and this subtitle.

10 Sec. 534.065. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY
11 SERVICES. (a) A local mental health [or mental retardation]
12 authority shall review a contract scheduled for renewal that:

13 (1) is between the authority and a private provider;
14 (2) is for the provision of mental health [or mental
15 retardation] services at the community level, including
16 residential services; and
17 (3) involves the use of state funds or funds for which
18 the state has oversight responsibility.

19 (b) The local mental health [or mental retardation]
20 authority may renew the contract only if the contract meets the
21 criteria provided by Section 533.016.

22 (c) The local mental health [or mental retardation]
23 authority and private provider shall negotiate a contract renewal
24 at arm's [arm's] length and in good faith.

25 (d) This section applies to a contract renewal regardless of
26 the date on which the original contract was initially executed.

27 Sec. 534.066. LOCAL MATCH REQUIREMENT. (a) The department

1 shall include in a contract with a local mental health [~~or mental~~
2 ~~retardation~~] authority a requirement that some or all of the state
3 funds the authority receives be matched by local support in an
4 amount or proportion jointly agreed to by the department and the
5 authority's board of trustees and based on the authority's
6 financial capability and its overall commitment to other mental
7 health [~~or mental retardation~~] programs, as appropriate.

8 (b) [~~The department shall establish, for community services~~
9 ~~divisions of department facilities that provide community-based~~
10 ~~services required under this subchapter, a local match requirement~~
11 ~~that is consistent with the requirements applied to other local~~
12 ~~mental health or mental retardation authorities.~~

13 [~~(c)~~] Patient fee income, third-party insurance income,
14 services and facilities contributed by the local mental health [~~or~~
15 ~~mental retardation~~] authority, contributions by a county or
16 municipality, and other locally generated contributions, including
17 local tax funds, may be counted when calculating the local support
18 for a local mental health [~~or mental retardation~~] authority. The
19 department may disallow or reduce the value of services claimed as
20 support.

21 Sec. 534.067. FEE COLLECTION POLICY. The executive
22 commissioner [~~department~~] shall establish a uniform fee collection
23 policy for all local mental health [~~or mental retardation~~]
24 authorities that is equitable, provides for collections, and
25 maximizes contributions to local revenue.

26 Sec. 534.0675. NOTICE OF DENIAL, REDUCTION, OR TERMINATION
27 OF SERVICES. The executive commissioner [~~board~~] by rule, in

1 cooperation with local mental health [and mental retardation]
2 authorities, consumers, consumer advocates, and service providers,
3 shall establish a uniform procedure that each local mental health
4 [or mental retardation] authority shall use to notify consumers in
5 writing of the denial, involuntary reduction, or termination of
6 services and of the right to appeal those decisions.

7 Sec. 534.068. AUDITS. (a) As a condition to receiving
8 funds under this subtitle, a local mental health [and mental
9 retardation] authority other than a state facility designated as an
10 authority must annually submit to the department a financial and
11 compliance audit prepared by a certified public accountant or
12 public accountant licensed by the Texas State Board of Public
13 Accountancy. To ensure the highest degree of independence and
14 quality, the local mental health [or mental retardation] authority
15 shall use an invitation-for-proposal process as prescribed by the
16 executive commissioner [department] to select the auditor.

17 (a-1) The audit required under Subsection (a) may be
18 published electronically on the local mental health [~~an~~]
19 authority's Internet website. An authority that electronically
20 publishes an audit under this subsection shall notify the
21 department that the audit is available on the authority's Internet
22 website on or before the date the audit is due.

23 (b) The audit must meet the minimum requirements as shall
24 be, and be in the form and in the number of copies as may be,
25 prescribed by the executive commissioner [department], subject to
26 review and comment by the state auditor.

27 (c) The local mental health [or mental retardation]

1 authority shall file the required number of copies of the audit
2 report with the department by the date prescribed by the executive
3 commissioner [department]. From the copies filed with the
4 department, copies of the report shall be submitted to the governor
5 and Legislative Budget Board.

6 (d) The local mental health [~~or mental retardation~~]
7 authority shall either approve or refuse to approve the audit
8 report. If the authority refuses to approve the report, the
9 authority shall include with the department's copies a statement
10 detailing the reasons for refusal.

11 (e) The commissioner and state auditor have access to all
12 vouchers, receipts, journals, or other records the commissioner or
13 auditor considers necessary to review and analyze the audit report.

14 (f) The department shall annually submit to the governor,
15 Legislative Budget Board, and Legislative Audit Committee a summary
16 of the significant findings identified during the department's
17 reviews of fiscal audit activities.

18 (g) The report required under Subsection (f) may be
19 published electronically on the department's Internet website. The
20 department shall notify each entity entitled to receive a copy of
21 the report that the report is available on the department's
22 Internet website on or before the date the report is due.

23 Sec. 534.069. CRITERIA FOR PROVIDING FUNDS FOR START-UP
24 COSTS. (a) The executive commissioner [board] by rule shall
25 develop criteria to regulate the provision of payment to a private
26 provider for start-up costs associated with the development of
27 residential and other community services for persons with mental

1 illness [~~or mental retardation~~].

2 (b) The criteria shall provide that start-up funds be
3 awarded only as a last resort and shall include provisions relating
4 to:

5 (1) the purposes for which start-up funds may be used;
6 (2) the ownership of capital property and equipment
7 obtained by the use of start-up funds; and

8 (3) the obligation of the private provider to repay
9 the start-up funds awarded by the department by direct repayment or
10 by providing services for a period agreed to by the parties.

11 Sec. 534.070. USE OF PROSPECTIVE PAYMENT FUNDS. (a) Each
12 local mental health [~~or mental retardation~~] authority that receives
13 prospective payment funds shall submit to the department a
14 quarterly report that clearly identifies how the provider or
15 program used the funds during the preceding fiscal quarter.

16 (b) The executive commissioner [~~board~~] by rule shall
17 prescribe the form of the report, the specific information that
18 must be included in the report, and the deadlines for submitting the
19 report.

20 (c) The department may not provide prospective payment
21 funds to a local mental health [~~or mental retardation~~] authority
22 that fails to submit the quarterly reports required by this
23 section.

24 (d) In this section, "prospective payment funds" means
25 money the department prospectively provides to a local mental
26 health [~~or mental retardation~~] authority to provide community
27 services to certain persons with [~~mental retardation or~~] mental

1 illness.

2 Sec. 534.071. ADVISORY COMMITTEE. A local mental health
3 [~~or mental retardation~~] authority may appoint a committee to advise
4 its governing board on a matter relating to the oversight and
5 provision of mental health [~~and mental retardation~~] services. The
6 appointment of a committee does not relieve the authority's
7 governing board of a responsibility prescribed by this subtitle.

8 SUBCHAPTER B-1. COMMUNITY-BASED INTELLECTUAL DISABILITY SERVICES

9 Sec. 534.101. DEFINITIONS. In this subchapter:

10 (1) "Commissioner" means the commissioner of aging and
11 disability services.

12 (2) "Department" means the Department of Aging and
13 Disability Services.

14 (3) "Department facility" means a state supported
15 living center, including the ICF-IID component of the Rio Grande
16 State Center.

17 Sec. 534.102. RULES AND STANDARDS. (a) The executive
18 commissioner shall adopt rules, including standards, the executive
19 commissioner considers necessary and appropriate to ensure the
20 adequate provision of community-based intellectual disability
21 services through a local intellectual and developmental disability
22 authority under this subchapter.

23 (b) The department shall send a copy of the rules to each
24 local intellectual and developmental disability authority or other
25 provider receiving contract funds as a local intellectual and
26 developmental disability authority or designated provider.

27 Sec. 534.103. REQUIRED COMMUNITY-BASED INTELLECTUAL

1 DISABILITY SERVICES. (a) The department shall ensure that, at a
2 minimum, the following services are available in each service area:

3 (1) community-based assessments, including diagnosis
4 and evaluation services;

5 (2) respite care; and

6 (3) case management services.

7 (b) The department shall arrange for appropriate
8 community-based services, including the assignment of a case
9 manager, to be available in each service area for each person
10 discharged from a department facility who is in need of care.

11 (c) To the extent that resources are available, the
12 department shall ensure that the services listed in this section
13 are available for children, including adolescents, as well as
14 adults, in each service area.

15 Sec. 534.104. JOINT DISCHARGE PLANNING. (a) The executive
16 commissioner shall adopt, and the department shall enforce, rules
17 that require continuity of services and planning for client care
18 between department facilities and local intellectual and
19 developmental disability authorities.

20 (b) At a minimum, the rules must require joint discharge
21 planning between a department facility and a local intellectual and
22 developmental disability authority before a facility discharges a
23 client or places the client on an extended furlough with an intent
24 to discharge.

25 (c) The local intellectual and developmental disability
26 authority shall plan with the department facility and determine the
27 appropriate community services for the client.

1 (d) The local intellectual and developmental disability
2 authority shall arrange for the provision of the services if
3 department funds are to be used and may subcontract with or make a
4 referral to a local agency or entity.

5 Sec. 534.105. DESIGNATION OF PROVIDER. (a) The department
6 shall identify and contract with a local intellectual and
7 developmental disability authority for each service area to ensure
8 that services are provided to client populations determined by the
9 department. A local intellectual and developmental disability
10 authority shall ensure that services to address the needs of
11 priority populations are provided as required by the department and
12 shall comply with the rules and standards adopted under Section
13 534.102.

14 (b) The department may contract with a local agency or a
15 private provider or organization to act as a designated provider of
16 a service if the department:

17 (1) cannot negotiate a contract with a local
18 intellectual and developmental disability authority to ensure that
19 a specific required service for priority populations is available
20 in that service area; or

21 (2) determines that a local intellectual and
22 developmental disability authority does not have the capacity to
23 ensure the availability of that service.

24 Sec. 534.106. CONTRACTS FOR CERTAIN COMMUNITY SERVICES.
25 (a) The executive commissioner shall design a competitive
26 procurement or similar system that an intellectual and
27 developmental disability authority shall use in awarding an initial

1 contract for the provision of services at the community level for
2 persons with an intellectual disability, including residential
3 services, if the contract involves the use of state money or money
4 for which the state has oversight responsibility.

5 (b) The system must require that each local intellectual and
6 developmental disability authority:

7 (1) ensure public participation in the authority's
8 decisions regarding whether to provide or to contract for a
9 service;

10 (2) make a reasonable effort to give notice of the
11 intent to contract for services to each potential private provider
12 in the local service area of the authority; and

13 (3) review each submitted proposal and award the
14 contract to the applicant that the authority determines has made
15 the lowest and best bid to provide the needed services.

16 (c) Each local intellectual and developmental disability
17 authority, in determining the lowest and best bid, shall consider
18 any relevant information included in the authority's request for
19 bid proposals, including:

20 (1) price;
21 (2) the ability of the bidder to perform the contract
22 and to provide the required services;

23 (3) whether the bidder can perform the contract or
24 provide the services within the period required, without delay or
25 interference;

26 (4) the bidder's history of compliance with the laws
27 relating to the bidder's business operations and the affected

1 services and whether the bidder is currently in compliance;
2 (5) whether the bidder's financial resources are
3 sufficient to perform the contract and to provide the services;
4 (6) whether necessary or desirable support and
5 ancillary services are available to the bidder;
6 (7) the character, responsibility, integrity,
7 reputation, and experience of the bidder;
8 (8) the quality of the facilities and equipment
9 available to or proposed by the bidder;
10 (9) the ability of the bidder to provide continuity of
11 services; and
12 (10) the ability of the bidder to meet all applicable
13 written departmental policies, principles, and regulations.

14 Sec. 534.107. COORDINATION OF ACTIVITIES. A local
15 intellectual and developmental disability authority shall
16 coordinate its activities with the activities of other appropriate
17 agencies that provide care and treatment for persons with drug or
18 alcohol problems.

19 Sec. 534.108. STANDARDS OF CARE. (a) The executive
20 commissioner shall develop standards of care for the services
21 provided by a local intellectual and developmental disability
22 authority and its subcontractors under this subchapter.

23 (b) The standards must be designed to ensure that the
24 quality of community-based intellectual disability services is
25 consistent with the quality of care available in department
26 facilities.

27 (c) In conjunction with local intellectual and

1 developmental disability authorities, the executive commissioner
2 shall review the standards biennially to determine if each standard
3 is necessary to ensure the quality of care.

4 Sec. 534.109. CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES.

5 (a) The department shall evaluate a local intellectual and
6 developmental disability authority's compliance with its contract
7 to ensure the provision of specific services to priority
8 populations.

9 (b) If, by a date set by the commissioner, a local
10 intellectual and developmental disability authority fails to
11 comply with its contract to ensure the provision of services to the
12 satisfaction of the commissioner, the department may impose a
13 sanction as provided by the applicable contract rule until the
14 dispute is resolved. The department shall notify the authority in
15 writing of the department's decision to impose a sanction.

16 (c) A local intellectual and developmental disability
17 authority may appeal the department's decision to impose a sanction
18 on the authority. The executive commissioner by rule shall
19 prescribe the appeal procedure.

20 (d) The filing of a notice of appeal stays the imposition of
21 the department's decision to impose a sanction except when an act or
22 omission by a local intellectual and developmental disability
23 authority is endangering or may endanger the life, health, welfare,
24 or safety of a person.

25 (e) While an appeal under this section is pending, the
26 department may limit general revenue allocations to a local
27 intellectual and developmental disability authority to monthly

1 distributions.

2 Sec. 534.110. PROGRAM AND SERVICE MONITORING AND REVIEW OF
3 LOCAL AUTHORITIES. (a) The department shall develop mechanisms
4 for monitoring the services provided by a local intellectual and
5 developmental disability authority.

6 (b) The department shall review the program quality and
7 program performance results of a local intellectual and
8 developmental disability authority in accordance with a risk
9 assessment and evaluation system appropriate to the authority's
10 contract requirements. The department may determine the scope of
11 the review.

12 (c) A contract between a local intellectual and
13 developmental disability authority and the department must
14 authorize the department to have unrestricted access to all
15 facilities, records, data, and other information under the control
16 of the authority as necessary to enable the department to audit,
17 monitor, and review the financial and program activities and
18 services associated with department funds.

19 Sec. 534.111. COORDINATED PROGRAM AUDITS OF LOCAL
20 AUTHORITIES. (a) The executive commissioner shall coordinate with
21 each agency or department of the state that contracts with a local
22 intellectual and developmental disability authority to prescribe
23 procedures for a coordinated program audit of the authority. The
24 procedures must be:

25 (1) consistent with the requirements for the receipt
26 of federal funding by the authority; and
27 (2) based on risk assessment.

1 (b) A program audit must evaluate:

2 (1) the extent to which a local intellectual and
3 developmental disability authority is achieving the results or
4 benefits established by an agency or department of the state or by
5 the legislature;

6 (2) the effectiveness of the authority's organization,
7 program, activities, or functions; and

8 (3) the authority's compliance with law.

9 (c) A program audit of a local intellectual and
10 developmental disability authority must be performed in accordance
11 with the procedures prescribed under this section.

12 (d) The department may not implement a procedure for a
13 program audit under this section without the approval of the
14 executive commissioner.

15 (e) This section does not prohibit an agency, department, or
16 other entity providing funding to a local intellectual and
17 developmental disability authority from investigating a complaint
18 against the authority or performing additional contract monitoring
19 of the authority.

20 Sec. 534.112. FINANCIAL AUDITS OF LOCAL AUTHORITIES. (a)

21 The executive commissioner shall prescribe procedures for a
22 financial audit of a local intellectual and developmental
23 disability authority. The procedures must be consistent with
24 requirements for the receipt of federal funding by the authority.

25 (b) The executive commissioner shall develop the procedures
26 with the assistance of each agency or department of the state that
27 contracts with a local intellectual and developmental disability

1 authority. The executive commissioner shall incorporate each
2 agency's or department's financial or compliance requirements for
3 an authority into a single audit that meets the requirements of
4 Section 534.121.

5 (c) Before prescribing or amending a procedure under this
6 section, the executive commissioner must set a deadline for
7 agencies and departments of the state that contract with local
8 intellectual and developmental disability authorities to submit
9 proposals relating to the procedure.

10 (d) An agency or department of the state that contracts with
11 a local intellectual and developmental disability authority must
12 comply with a procedure developed under this section.

13 (e) The department may not implement a procedure under this
14 section without the approval of the executive commissioner.

15 Sec. 534.113. ADDITIONAL FINANCIAL AUDIT ACTIVITY. (a)
16 The executive commissioner shall develop protocols for an agency or
17 department of the state to conduct additional financial audit
18 activities of a local intellectual and developmental disability
19 authority.

20 (b) An agency or department of the state may not conduct
21 additional financial audit activities relating to a local
22 intellectual and developmental disability authority without the
23 approval of the executive commissioner.

24 (c) This section, and a protocol developed under this
25 section, do not apply to an audit conducted under Chapter 321,
26 Government Code.

27 Sec. 534.114. PROGRAM AND SERVICE MONITORING AND REVIEW OF

1 CERTAIN COMMUNITY SERVICES. (a) The local intellectual and
2 developmental disability authority shall monitor the services of a
3 provider who contracts with the authority to provide services to
4 persons with an intellectual disability to ensure that the provider
5 is delivering the services in a manner consistent with the
6 provider's contract.

7 (b) Each provider contract involving the use of state funds
8 or funds for which the state has oversight responsibility must
9 authorize the local intellectual and developmental disability
10 authority or the authority's designee and the department or the
11 department's designee to have unrestricted access to all
12 facilities, records, data, and other information under the control
13 of the provider as necessary to enable the department to audit,
14 monitor, and review the financial and program activities and
15 services associated with the contract.

16 (c) The department may withdraw funding from a local
17 intellectual and developmental disability authority that fails to
18 cancel a contract with a provider involving the use of state funds
19 or funds for which the state has oversight responsibility if:

20 (1) the provider is not fulfilling its contractual
21 obligations; and

22 (2) the authority has not taken appropriate action to
23 remedy the problem in accordance with department rules.

24 (d) The executive commissioner by rule shall prescribe
25 procedures a local intellectual and developmental disability
26 authority must follow in remedying a problem with a provider.

27 Sec. 534.115. PEER REVIEW ORGANIZATION. The department

1 shall assist a local intellectual and developmental disability
2 authority in developing a peer review organization to provide
3 self-assessment of programs and to supplement department reviews
4 under Section 534.110.

5 Sec. 534.116. CONTRACT RENEWAL. The executive commissioner
6 may refuse to renew a contract with a local intellectual and
7 developmental disability authority and may select other agencies,
8 entities, or organizations to be the local intellectual and
9 developmental disability authority if the department's evaluation
10 of the authority's performance under Section 534.109 indicates that
11 the authority cannot ensure the availability of the specific
12 services to priority populations required by the department and
13 this subtitle.

14 Sec. 534.117. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY
15 SERVICES. (a) A local intellectual and developmental disability
16 authority shall review a contract scheduled for renewal that:

17 (1) is between the authority and a private provider;
18 (2) is for the provision of intellectual disability
19 services at the community level, including residential services;
20 and
21 (3) involves the use of state funds or funds for which
22 the state has oversight responsibility.

23 (b) The local intellectual and developmental disability
24 authority may renew the contract only if the contract meets the
25 criteria provided by Section 533A.016.

26 (c) The local intellectual and developmental disability
27 authority and private provider shall negotiate a contract renewal

1 at arm's length and in good faith.

2 (d) This section applies to a contract renewal regardless of
3 the date on which the original contract was initially executed.

4 Sec. 534.118. LOCAL MATCH REQUIREMENT. (a) The department
5 shall include in a contract with a local intellectual and
6 developmental disability authority a requirement that some or all
7 of the state funds the authority receives be matched by local
8 support in an amount or proportion jointly agreed to by the
9 department and the authority's board of trustees and based on the
10 authority's financial capability and its overall commitment to
11 other intellectual disability programs, as appropriate.

12 (b) Client fee income, third-party insurance income,
13 services and facilities contributed by the local intellectual and
14 developmental disability authority, contributions by a county or
15 municipality, and other locally generated contributions, including
16 local tax funds, may be counted when calculating the local support
17 for a local intellectual and developmental disability authority.
18 The department may disallow or reduce the value of services claimed
19 as support.

20 Sec. 534.119. FEE COLLECTION POLICY. The executive
21 commissioner shall establish a uniform fee collection policy for
22 all local intellectual and developmental disability authorities
23 that is equitable, provides for collections, and maximizes
24 contributions to local revenue.

25 Sec. 534.120. NOTICE OF DENIAL, REDUCTION, OR TERMINATION
26 OF SERVICES. The executive commissioner by rule, in cooperation
27 with local intellectual and developmental disability authorities,

1 consumers, consumer advocates, and service providers, shall
2 establish a uniform procedure that each local intellectual and
3 developmental disability authority shall use to notify consumers in
4 writing of the denial, involuntary reduction, or termination of
5 services and of the right to appeal those decisions.

6 Sec. 534.121. AUDITS. (a) As a condition to receiving
7 funds under this subtitle, a local intellectual and developmental
8 disability authority other than a state facility designated as an
9 authority must annually submit to the department a financial and
10 compliance audit prepared by a certified public accountant or
11 public accountant licensed by the Texas State Board of Public
12 Accountancy. To ensure the highest degree of independence and
13 quality, the local intellectual and developmental disability
14 authority shall use an invitation-for-proposal process as
15 prescribed by the executive commissioner to select the auditor.

16 (a-1) The audit required under Subsection (a) may be
17 published electronically on the local intellectual and
18 developmental disability authority's Internet website. An
19 authority that electronically publishes an audit under this
20 subsection shall notify the department that the audit is available
21 on the authority's Internet website on or before the date the audit
22 is due.

23 (b) The audit must meet the minimum requirements as shall
24 be, and be in the form and in the number of copies as may be,
25 prescribed by the executive commissioner, subject to review and
26 comment by the state auditor.

27 (c) The local intellectual and developmental disability

1 authority shall file the required number of copies of the audit
2 report with the department by the date prescribed by the executive
3 commissioner. From the copies filed with the department, copies of
4 the report shall be submitted to the governor and Legislative
5 Budget Board.

6 (d) The local intellectual and developmental disability
7 authority shall either approve or refuse to approve the audit
8 report. If the authority refuses to approve the report, the
9 authority shall include with the department's copies a statement
10 detailing the reasons for refusal.

11 (e) The commissioner and state auditor have access to all
12 vouchers, receipts, journals, or other records the commissioner or
13 auditor considers necessary to review and analyze the audit report.

14 (f) The department shall annually submit to the governor,
15 Legislative Budget Board, and Legislative Audit Committee a summary
16 of the significant findings identified during the department's
17 reviews of fiscal audit activities.

18 (g) The report required under Subsection (f) may be
19 published electronically on the department's Internet website. The
20 department shall notify each entity entitled to receive a copy of
21 the report that the report is available on the department's
22 Internet website on or before the date the report is due.

23 Sec. 534.122. CRITERIA FOR PROVIDING FUNDS FOR START-UP
24 COSTS. (a) The executive commissioner by rule shall develop
25 criteria to regulate the provision of payment to a private provider
26 for start-up costs associated with the development of residential
27 and other community services for persons with an intellectual

1 disability.

2 (b) The criteria shall provide that start-up funds be
3 awarded only as a last resort and shall include provisions relating
4 to:

5 (1) the purposes for which start-up funds may be used;
6 (2) the ownership of capital property and equipment
7 obtained by the use of start-up funds; and
8 (3) the obligation of the private provider to repay
9 the start-up funds awarded by the department by direct repayment or
10 by providing services for a period agreed to by the parties.

11 Sec. 534.123. USE OF PROSPECTIVE PAYMENT FUNDS. (a) Each
12 local intellectual and developmental disability authority that
13 receives prospective payment funds shall submit to the department a
14 quarterly report that clearly identifies how the provider or
15 program used the funds during the preceding fiscal quarter.

16 (b) The executive commissioner by rule shall prescribe the
17 form of the report, the specific information that must be included
18 in the report, and the deadlines for submitting the report.

19 (c) The department may not provide prospective payment
20 funds to a local intellectual and developmental disability
21 authority that fails to submit the quarterly reports required by
22 this section.

23 (d) In this section, "prospective payment funds" means
24 money the department prospectively provides to a local intellectual
25 and developmental disability authority to provide community
26 services to certain persons with an intellectual disability.

27 Sec. 534.124. ADVISORY COMMITTEE. A local intellectual and

1 developmental disability authority may appoint a committee to
2 advise its governing board on a matter relating to the oversight and
3 provision of intellectual disability services. The appointment of
4 a committee does not relieve the authority's governing board of a
5 responsibility prescribed by this subtitle.

6 SUBCHAPTER C. HEALTH MAINTENANCE ORGANIZATIONS

7 Sec. 534.151 [534.101]. HEALTH MAINTENANCE ORGANIZATION
8 CERTIFICATE OF AUTHORITY. (a) One or more community centers may
9 create or operate a nonprofit corporation pursuant to the laws of
10 this state for the purpose of accepting capitated or other at-risk
11 payment arrangements for the provision of services designated in a
12 plan approved by each appropriate [~~the~~] department under Subchapter
13 A.

14 (b) Before a nonprofit corporation organized or operating
15 under Subsection (a) accepts or enters into any capitated or other
16 at-risk payment arrangement for services designated in a plan
17 approved by each appropriate [~~the~~] department under Subchapter A,
18 the nonprofit corporation must obtain the appropriate certificate
19 of authority from the Texas Department of Insurance to operate as a
20 health maintenance organization pursuant to Chapter 843, Insurance
21 Code.

22 (c) Before submitting any bids, a nonprofit corporation
23 operating under this subchapter shall disclose in an open meeting
24 the services to be provided by the community center through any
25 capitated or other at-risk payment arrangement by the nonprofit
26 corporation. Notice of the meeting must be posted in accordance
27 with Sections 551.041, 551.043, and 551.054, Government Code. Each

1 appropriate [The] department shall verify that the services
2 provided under any capitated or other at-risk payment arrangement
3 are within the scope of services approved by each appropriate [the]
4 department in each community center's plan required under
5 Subchapter A.

6 (d) The board of the nonprofit corporation shall:

7 (1) provide for public notice of the nonprofit
8 corporation's intent to submit a bid to provide or arrange services
9 through a capitated or other at-risk payment arrangement through
10 placement as a board agenda item on the next regularly scheduled
11 board meeting that allows at least 15 days' public review of the
12 plan; and

13 (2) provide an opportunity for public comment on the
14 services to be provided through such arrangements and on the
15 consideration of local input into the plan.

16 (e) The nonprofit corporation shall provide:

17 (1) public notice before verification and disclosure
18 of services to be provided by the community center through any
19 capitated or other at-risk payment arrangements by the nonprofit
20 corporation;

21 (2) an opportunity for public comment on the community
22 center services within the capitated or other at-risk payment
23 arrangements offered by the nonprofit corporation;

24 (3) published summaries of all relevant documentation
25 concerning community center services arranged through the
26 nonprofit corporation, including summaries of any similar
27 contracts the nonprofit corporation has entered into; and

1 (4) public access and review of all relevant
2 documentation.

3 (f) A nonprofit corporation operating under this
4 subchapter:

5 (1) is subject to the requirements of Chapters 551 and
6 552, Government Code;

7 (2) shall solicit public input on the operations of
8 the nonprofit corporation and allow public access to information on
9 the operations, including services, administration, governance,
10 revenues, and expenses, on request unless disclosure is expressly
11 prohibited by law or the information is confidential under law; and

12 (3) shall publish an annual report detailing the
13 services, administration, governance, revenues, and expenses of
14 the nonprofit corporation, including the disposition of any excess
15 revenues.

16 Sec. 534.152 [~~534.102~~]. LAWS AND RULES. A nonprofit
17 corporation created or operated under this subchapter that obtains
18 and holds a valid certificate of authority as a health maintenance
19 organization may exercise the powers and authority and is subject
20 to the conditions and limitations provided by this subchapter,
21 Chapter 843, Insurance Code, the Texas Nonprofit Corporation Law as
22 described by Section 1.008(d), Business Organizations Code
23 ~~[Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's~~
24 ~~Texas Civil Statutes)]~~, and rules of the Texas Department of
25 Insurance.

26 Sec. 534.153 [~~534.103~~]. APPLICATION OF LAWS AND RULES. A
27 health maintenance organization created and operating under this

1 subchapter is governed as, and is subject to the same laws and rules
2 of the Texas Department of Insurance as, any other health
3 maintenance organization of the same type. The commissioner of
4 insurance may adopt rules as necessary to accept funding sources
5 other than the sources specified by Section [843.405](#), Insurance
6 Code, from a nonprofit health maintenance organization created and
7 operating under this subchapter, to meet the minimum surplus
8 requirements of that section.

9 Sec. [534.154](#) [~~534.104~~]. APPLICABILITY [~~APPLICATION~~] OF
10 SPECIFIC LAWS. (a) A nonprofit health maintenance organization
11 created under Section [534.151](#) [~~534.101~~] is a health care provider
12 that is a nonprofit health maintenance organization created and
13 operated by a community center for purposes of Section [84.007\(e\)](#),
14 Civil Practice and Remedies Code. The nonprofit health maintenance
15 organization is not a governmental unit or a unit of local
16 government, for purposes of Chapters 101 and 102, Civil Practice
17 and Remedies Code, respectively, or a local government for purposes
18 of Chapter 791, Government Code.

19 (b) Nothing in this subchapter precludes one or more
20 community centers from forming a nonprofit corporation under
21 Chapter 162, Occupations Code, to provide services on a
22 risk-sharing or capitated basis as permitted under Chapter 844,
23 Insurance Code.

24 Sec. [534.155](#) [~~534.105~~]. CONSIDERATION OF BIDS. Each
25 appropriate [~~The~~] department shall give equal consideration to bids
26 submitted by any entity, whether it be public, for-profit, or
27 nonprofit, if the department accepts bids to provide services

1 through a capitated or at-risk payment arrangement and if the
2 entities meet all other criteria as required by the department.

3 Sec. 534.156 [~~534.106~~]. CONDITIONS FOR CERTAIN CONTRACTS.

4 A contract between each appropriate [~~the~~] department and a health
5 maintenance organization formed by one or more community centers
6 must provide that the health maintenance organization may not form
7 a for-profit entity unless the organization transfers all of the
8 organization's assets to the control of the boards of trustees of
9 the community centers that formed the organization.

10 SECTION 3.1337. Chapter 551, Health and Safety Code, is
11 amended to read as follows:

12 CHAPTER 551. GENERAL PROVISIONS

13 SUBCHAPTER A. GENERAL POWERS AND DUTIES RELATING TO STATE

14 FACILITIES

15 Sec. 551.001. DEFINITIONS. In this subtitle:

16 (1) "Commission" means the Health and Human Services
17 Commission. [~~Board~~ means the Texas Board of Mental Health and
18 ~~Mental Retardation~~.]

19 (2) "Commissioner" means:

20 (A) the commissioner of state health services in
21 relation to mental health services; and

22 (B) the commissioner of aging and disability
23 services in relation to intellectual disability services [mental
24 ~~health and mental retardation~~].

25 (3) "Department" means:

26 (A) the [~~Texas~~] Department of State Health
27 Services in relation to mental health services; and

1 (B) the Department of Aging and Disability
2 Services in relation to intellectual disability services [Mental
3 Health and Mental Retardation].

4 (4) "Department facility" means:
5 (A) a facility [~~under the department's~~
6 ~~jurisdiction~~] for persons with mental illness under the
7 jurisdiction of the Department of State Health Services; and
8 (B) a facility for persons with an intellectual
9 disability under the jurisdiction of the Department of Aging and
10 Disability Services [or mental retardation].

11 (5) "Executive commissioner" means the executive
12 commissioner of the Health and Human Services Commission.

13 Sec. 551.002. PROHIBITION OF INTEREST. The [A member of the
14 board, the] superintendent or director of a department facility[‐]
15 or a person connected with that [a] department facility may not:

16 (1) sell or have a concern in the sale of merchandise,
17 supplies, or other items to a department facility; or
18 (2) have an interest in a contract with a department
19 facility.

20 Sec. 551.003. DEPOSIT OF PATIENT OR CLIENT FUNDS. (a) The
21 superintendent or director of a department facility is the
22 custodian of the personal funds that belong to a facility patient or
23 client and that are on deposit with the institution.

24 (b) The superintendent or director may deposit or invest
25 those funds in:

26 (1) a bank in this state;
27 (2) federal bonds or obligations; or

1 (3) bonds or obligations for which the faith and
2 credit of the United States are pledged.

3 (c) The superintendent or director may combine the funds of
4 facility patients or clients only to deposit or invest the funds.

5 (d) The person performing the function of [~~facility's~~]
6 business manager at that facility shall maintain records of the
7 amount of funds on deposit for each facility patient or client.

8 Sec. 551.004. BENEFIT FUND. (a) The superintendent or
9 director may deposit the interest or increment accruing from funds
10 deposited or invested under Section 551.003 into a fund to be known
11 as the benefit fund. The superintendent or director is the trustee
12 of the fund.

13 (b) The superintendent or director may spend money from the
14 benefit fund for:

15 (1) educating or entertaining the patients or clients;
16 (2) barber or cosmetology services for the patients or
17 clients; and

18 (3) the actual expense incurred in maintaining the
19 fund.

20 Sec. 551.005. DISBURSEMENT OF PATIENT OR CLIENT FUNDS.
21 Funds in the benefit fund or belonging to a facility patient or
22 client may be disbursed only on the signatures of both the
23 facility's superintendent or director and the person performing the
24 function of business manager at that facility.

25 Sec. 551.006. FACILITY STANDARDS [~~BY DEPARTMENT OF HEALTH~~].
26 (a) The executive commissioner [~~Texas Department of Health~~] by
27 rule shall prescribe standards for department facilities relating

1 to building safety and the number and quality of staff. The staff
2 standards must provide that adequate staff exist to ensure a
3 continuous plan of adequate medical, psychiatric, nursing, and
4 social work services for patients and clients of a department
5 facility.

6 (b) Each department [~~The Texas Department of Health~~] shall
7 approve [~~department~~] facilities of that department that meet
8 applicable standards and, when requested, shall certify the
9 approval to the Centers for Medicare and Medicaid Services [~~Texas~~
10 ~~Department of Human Services or the United States Health Care~~
11 ~~Financing Administration~~].

12 Sec. 551.007. BUILDING AND IMPROVEMENT PROGRAM. (a) The
13 executive commissioner, in coordination with the appropriate
14 department, shall design, construct, equip, furnish, and maintain
15 buildings and improvements authorized by law at department
16 facilities.

17 (b) The executive commissioner [~~department~~] may employ
18 architects and engineers to prepare plans and specifications and to
19 supervise construction of buildings and improvements. The
20 executive commissioner [~~department~~] shall employ professional,
21 technical, and clerical personnel to carry out the design and
22 construction functions prescribed by this section, subject to the
23 General Appropriations Act and other applicable law.

24 [~~(c) The board shall adopt rules in accordance with this~~
25 ~~section and other applicable law relating to awarding contracts for~~
26 ~~the construction of buildings and improvements. The department~~
27 ~~shall award contracts for the construction of buildings and~~

1 ~~improvements to the qualified bidder who makes the lowest and best~~
2 ~~bid.~~

3 ~~[(d) The department may not award a construction contract~~
4 ~~for an amount that exceeds the amount of funds available for the~~
5 ~~project.~~

6 ~~[(e) The department shall require each successful bidder to~~
7 ~~give a bond payable to the state in an amount equal to the amount of~~
8 ~~the bid and conditioned on the faithful performance of the~~
9 ~~contract.~~

10 ~~[(f) The department may reject any or all bids.~~

11 ~~[(g) The department may waive, suspend, or modify a~~
12 ~~provision of this section that might conflict with a federal~~
13 ~~statute, rule, regulation, or administrative procedure if the~~
14 ~~waiver, suspension, or modification is essential to the receipt of~~
15 ~~federal funds for a project. If a project is financed entirely from~~
16 ~~federal funds, a standard required by a federal statute, rule, or~~
17 ~~regulation controls.~~

18 ~~[Sec. 551.008. TRANSFER OF FACILITIES. (a) The department~~
19 ~~may transfer the South Campus of the Vernon State Hospital to the~~
20 ~~Texas Youth Commission contingent upon the agreement of the~~
21 ~~governing board of the department and the executive commissioner of~~
22 ~~the Texas Youth Commission.~~

23 ~~[(b) In this section, "transfer" means to convey title to,~~
24 ~~lease, or otherwise convey the beneficial use of facilities,~~
25 ~~equipment, and land appurtenant to the facilities.]~~

26 Sec. 551.009. HILL COUNTRY LOCAL MENTAL HEALTH AUTHORITY
27 CRISIS STABILIZATION UNIT. (a) In this section, "department"

1 means the Department of State Health Services.

2 (a-1) The department [Department of State Health Services]
3 shall contract with the local mental health authority serving the
4 Hill Country area, including Kerr County, to operate a crisis
5 stabilization unit on the grounds of the Kerrville State Hospital
6 as provided by this section. The unit must be a 16-bed facility
7 separate from the buildings used by the Kerrville State Hospital.

8 (b) The department shall include provisions in the contract
9 requiring the local mental health authority to ensure that the
10 crisis stabilization unit provides short-term residential
11 treatment, including medical and nursing services, designed to
12 reduce a patient's acute symptoms of mental illness and prevent a
13 patient's admission to an inpatient mental health facility.

14 (c) The local mental health authority shall contract with
15 Kerrville State Hospital to provide food service, laundry service,
16 and lawn care.

17 (d) The crisis stabilization unit may not be used to provide
18 care to:

19 (1) children; or
20 (2) adults committed to or court ordered to [sentenced
21 to] a department [state mental] facility as provided by Chapter
22 46C, Code of Criminal Procedure.

23 (e) The local mental health authority operating the crisis
24 stabilization unit under contract shall use, for the purpose of
25 operating the 16-bed unit, the money appropriated to the department
26 for operating 16 beds in state hospitals that is allocated to the
27 local mental health authority. The department shall ensure that

1 the local mental health authority retains the remainder of the
2 local authority's state hospital allocation that is not used for
3 operating the 16-bed unit. The department may allocate additional
4 funds appropriated to the department for state hospitals to the
5 crisis stabilization unit.

6 (f) The department shall reduce the number of beds the
7 department operates in the state hospital system by 16. The
8 department, in collaboration with the local mental health
9 authority, shall ensure that the 16 beds in the crisis
10 stabilization unit are made available to other mental health
11 authorities for use as designated by the department.

12 SUBCHAPTER B. PROVISIONS APPLICABLE TO FACILITY SUPERINTENDENT OR
13 DIRECTOR [~~AND BUSINESS MANAGER~~]

14 Sec. 551.022. POWERS AND DUTIES OF SUPERINTENDENT. (a) The
15 superintendent of a department facility for persons with mental
16 illness is the administrative head of that facility.

17 (b) The superintendent has the custody of and
18 responsibility to care for the buildings, grounds, furniture, and
19 other property relating to the facility.

20 (c) The superintendent shall:

21 (1) oversee the admission and discharge of patients
22 [~~and clients~~];

23 (2) keep a register of all patients [~~and clients~~]
24 admitted to or discharged from the facility;

25 (3) supervise repairs and improvements to the
26 facility;

27 (4) ensure that facility money is spent judiciously

1 and economically;

2 (5) keep an accurate and detailed account of all money
3 received and spent, stating the source of the money and to whom and
4 the purpose for which the money is spent; and

5 (6) keep a full record of the facility's operations.

6 (d) In accordance with department [board] rules and
7 departmental operating procedures, the superintendent may:

8 (1) establish policy to govern the facility that the
9 superintendent considers will best promote the patients' [and
10 clients!] interest and welfare;

11 (2) appoint subordinate officers, teachers, and other
12 employees and set their salaries, in the absence of other law; and

13 (3) remove an officer, teacher, or employee for good
14 cause.

15 (e) This section does not apply to a state supported living
16 center or the director of a state supported living center.

17 Sec. 551.0225. POWERS AND DUTIES OF STATE SUPPORTED LIVING
18 CENTER DIRECTOR. (a) The director of a state supported living
19 center is the administrative head of the center.

20 (b) The director of a state supported living center has the
21 custody of and responsibility to care for the buildings, grounds,
22 furniture, and other property relating to the center.

23 (c) The director of a state supported living center shall:

24 (1) oversee the admission and discharge of residents
25 and clients;

26 (2) keep a register of all residents and clients
27 admitted to or discharged from the center;

1 (3) ensure that the civil rights of residents and
2 clients of the center are protected;

3 (4) ensure the health, safety, and general welfare of
4 residents and clients of the center;

5 (5) supervise repairs and improvements to the center;

6 (6) ensure that center money is spent judiciously and
7 economically;

8 (7) keep an accurate and detailed account of all money
9 received and spent, stating the source of the money and on whom and
10 the purpose for which the money is spent;

11 (8) keep a full record of the center's operations;

12 (9) monitor the arrival and departure of individuals
13 to and from the center as appropriate to ensure the safety of
14 residents; and

15 (10) ensure that residents' family members and legally
16 authorized representatives are notified of serious events that may
17 indicate problems in the care or treatment of residents.

18 (d) In accordance with department rules and operating
19 procedures, the director of a state supported living center may:

20 (1) establish policy to govern the center that the
21 director considers will best promote the residents' interest and
22 welfare;

23 (2) hire subordinate officers, teachers, and other
24 employees and set their salaries, in the absence of other law; and

25 (3) dismiss a subordinate officer, teacher, or
26 employee for good cause.

27 (e) The Department of Aging and Disability Services shall,

1 with input from residents of a state supported living center, and
2 the family members and legally authorized representatives of those
3 residents, develop a policy that defines "serious event" for
4 purposes of Subsection (c)(10).

5 Sec. 551.024. SUPERINTENDENT'S OR DIRECTOR'S DUTY TO ADMIT
6 COMMISSIONER AND EXECUTIVE COMMISSIONER [~~BOARD MEMBERS~~]. (a) The
7 superintendent or director shall admit into every part of the
8 department facility the commissioner of that department and the
9 executive commissioner [~~members of the board~~].

10 (b) The superintendent or director shall on request show any
11 book, paper, or account relating to the department facility's
12 business, management, discipline, or government to the
13 commissioner of that department or the executive commissioner
14 [~~board member~~].

15 (c) The superintendent or director shall give to the
16 commissioner of that department or the executive commissioner [~~a~~
17 ~~board member~~] any requested copy, abstract, or report.

18 Sec. 551.025. DUTY TO REPORT MISSING PATIENT OR CLIENT. If
19 a person receiving inpatient intellectual disability [~~mental~~
20 ~~retardation~~] services or court-ordered inpatient mental health
21 services [~~in a department facility~~] leaves a department [~~the~~]
22 facility without notifying the facility or without the facility's
23 consent, the facility director or superintendent shall immediately
24 report the person as a missing person to an appropriate law
25 enforcement agency in the area in which the facility is located.

26 Sec. 551.026. PERSON PERFORMING BUSINESS MANAGER FUNCTION.
27 (a) The person performing the function of business manager of a

1 department facility is the chief disbursing officer of the
2 department facility.

3 (b) The person performing the function of business manager
4 of a department facility is directly responsible to the
5 superintendent or director.

6 SUBCHAPTER C. POWERS AND DUTIES RELATING TO PATIENT OR CLIENT CARE

7 Sec. 551.041. MEDICAL AND DENTAL TREATMENT. (a) Each [~~The~~]
8 department shall provide or perform recognized medical and dental
9 treatment or services to a person admitted or committed to that
10 [~~the~~] department's care. Each [~~The~~] department may perform this
11 duty through an authorized agent.

12 (b) Each [~~The~~] department may contract for the support,
13 maintenance, care, or medical or dental treatment or service with a
14 municipal, county, or state hospital, a private physician, a
15 licensed nursing facility [~~home~~] or hospital, or a hospital
16 district. The authority to contract provided by this subsection is
17 in addition to other contractual authority granted to the
18 department. A contract entered into under this subsection may not
19 assign a lien accruing to this state.

20 (c) If a [~~the~~] department requests consent to perform
21 medical or dental treatment or services from a person or the
22 guardian of the person whose consent is considered necessary and a
23 reply is not obtained immediately, or if there is no guardian or
24 responsible relative of the person to whom a request can be made,
25 the superintendent or director of a department facility shall
26 order:

27 (1) medical treatment or services for the person on

1 the advice and consent of three physicians licensed by the Texas
2 Medical [State] Board [~~of Medical Examiners~~], at least one of whom
3 is primarily engaged in the private practice of medicine; or

4 (2) dental treatment or services for the person on the
5 advice and consent of a dentist licensed by the State Board of
6 Dental Examiners and of two physicians licensed by the Texas
7 Medical [State] Board [~~of Medical Examiners~~], at least one of whom
8 is primarily engaged in the private practice of medicine.

9 (d) This section does not authorize the performance of an
10 operation involving sexual sterilization or a frontal lobotomy.

11 Sec. 551.042. OUTPATIENT CLINICS. (a) If funds are
12 available, the Department of State Health Services [~~Department~~] may
13 establish in locations the department considers necessary
14 outpatient clinics to treat persons with mental illness.

15 (b) As necessary to establish and operate the clinics:

16 (1) [~~r~~] the department may:

17 (A) [~~(1)~~] acquire facilities;

18 (B) [~~(2)~~] hire personnel;

19 [~~(3) adopt rules,~~] and

20 (C) [~~(4)~~] contract with persons, corporations,
21 and local, state, and federal agencies; and

22 (2) the executive commissioner may adopt rules.

23 [~~Sec. 551.043. MENTAL HYGIENE CLINIC SERVICE.~~] (a) The
24 ~~department may establish a mental hygiene clinic service through~~
25 ~~its agents and facilities.~~

26 [~~(b) The clinic service shall cooperate with the Texas~~
27 ~~Education Agency and local boards of education in studying the~~

1 ~~mental and physical health of children:~~

2 [+(1) ~~with serious retardation in school progress or in~~

3 ~~mental development; or~~

4 [(2) ~~who have personality development problems.~~]]

5 Sec. 551.044. OCCUPATIONAL THERAPY PROGRAMS. (a) Each
6 [The] department may provide equipment, materials, and merchandise
7 for occupational therapy programs at department facilities.

8 (b) The superintendent or director of a department facility
9 may, in accordance with rules of that department [~~rules~~], contract
10 for the provision of equipment, materials, and merchandise for
11 occupational therapy programs. If the contractor retains the
12 finished or semi-finished product, the contract shall provide for a
13 fair and reasonable rental payment to the applicable department by
14 the contractor for the use of facility premises or equipment. The
15 rental payment is determined by the amount of time the facility
16 premises or equipment is used in making the products.

17 (c) The finished products made in an occupational therapy
18 program may be sold and the proceeds placed in the patients' or
19 clients' benefit fund, the patients' or clients' trust fund, or a
20 revolving fund for use by the patients or clients. A patient or
21 client may keep the finished product if the patient or client
22 purchases the material for the product from the state.

23 (d) Each [The] department may accept donations of money or
24 materials for use in occupational therapy programs and may use a
25 donation in the manner requested by the donor if not contrary to the
26 [~~board~~] policy of that department.

27 SECTION 3.1338. Sections 552.016(b), (c), and (d), Health

1 and Safety Code, are amended to read as follows:

2 (b) The executive commissioner [department] may use the
3 projected cost of providing inpatient services to establish by rule
4 the maximum fee that may be charged to a payer.

5 (c) The executive commissioner by rule [department] may
6 establish the maximum fee according to one or a combination of the
7 following:

- 8 (1) a statewide per capita;
9 (2) an individual facility per capita; or
10 (3) the type of service provided.

11 (d) Notwithstanding Subsection (b), the executive
12 commissioner by rule [department] may establish a fee in excess of
13 the department's projected cost of providing inpatient services
14 that may be charged to a payer:

- 15 (1) who is not an individual; and
16 (2) whose method of determining the rate of
17 reimbursement to a provider results in the excess.

18 SECTION 3.1339. Sections 552.017(a), (b), (d), and (e),
19 Health and Safety Code, are amended to read as follows:

20 (a) The executive commissioner [department] by rule shall
21 establish a sliding fee schedule for the payment by the patient's
22 parents of the state's total costs for the support, maintenance,
23 and treatment of a patient younger than 18 years of age.

24 (b) The executive commissioner [department] shall set the
25 fee according to the parents' net taxable income and ability to pay.

26 (d) In determining the portion of the costs of the patient's
27 support, maintenance, and treatment that the parents are required

1 to pay, the department, in accordance with rules adopted by the
2 executive commissioner, shall adjust, when appropriate, the
3 payment required under the fee schedule to allow for consideration
4 of other factors affecting the ability of the parents to pay.

5 (e) The executive commissioner [department] shall evaluate
6 and, if necessary, revise the fee schedule at least once every five
7 years.

8 SECTION 3.1340. Section 552.018(e), Health and Safety Code,
9 is amended to read as follows:

10 (e) For the purposes of this section, the following are not
11 considered to be trusts and are not entitled to the exemption
12 provided by this section:

13 (1) a guardianship established under the former Texas
14 Probate Code or under the Estates Code;

15 (2) a trust established under Chapter 142, Property
16 Code;

17 (3) a facility custodial account established under
18 Section 551.003;

19 (4) the provisions of a divorce decree or other court
20 order relating to child support obligations;

21 (5) an administration of a decedent's estate; or

22 (6) an arrangement in which funds are held in the
23 registry or by the clerk of a court.

24 SECTION 3.1341. Sections 552.019(a), (b), (c), and (g),
25 Health and Safety Code, are amended to read as follows:

26 (a) A county or district attorney shall, on the written
27 request of the department, represent the state in filing a claim in

1 probate court or a petition in a court of competent jurisdiction[+
2 [(1)] to require the person responsible for a patient
3 to appear in court and show cause why the state should not have
4 judgment against the person for the costs of the patient's support,
5 maintenance, and treatment[; or
6 [(2) ~~if the liability arises under Subchapter D,~~
7 ~~Chapter 593, to require a person responsible for a resident to~~
8 ~~appear in court and show cause why the state should not have~~
9 ~~judgment against the person for the resident's support and~~
10 ~~maintenance in a residential care facility operated by the~~
11 ~~department~~].

12 (b) On a sufficient showing, the court may enter judgment
13 against[+
14 [(1)] the person responsible for the patient for the
15 costs of the patient's support, maintenance, and treatment[; or
16 [(2) ~~the person responsible for the resident for the~~
17 ~~costs of the resident's support and maintenance~~].

18 (c) Sufficient evidence to authorize the court to enter
19 judgment is[+
20 [(1)] a verified account, sworn to by the
21 superintendent [~~or director~~] of the hospital in which the patient
22 is being treated, or has been treated, as to the amount due[; or
23 [(2) a verified account, sworn to by the
24 superintendent or director of the residential care facility in
25 which the person with mental retardation resided or has resided, as
26 to the amount due].

27 (g) In this section, "person" [+]

1 [~~(1)~~ "Person] responsible for a patient" means the
2 guardian of a patient, a person liable for the support of the
3 patient, or both.

4 [~~(2)~~ "Person responsible for a resident" means the
5 resident, a person liable for the support of the resident, or both.

6 [~~(3)~~ "Resident" means a person admitted to a
7 residential care facility operated by the department for persons
8 with mental retardation.]

9 SECTION 3.1342. The heading to Chapter 553, Health and
10 Safety Code, is amended to read as follows:

11 CHAPTER 553. SAN ANTONIO STATE SUPPORTED LIVING CENTER [~~SCHOOLS~~]

12 SECTION 3.1343. Section 553.001, Health and Safety Code, is
13 transferred to Subchapter A, Chapter 593, Health and Safety Code,
14 redesignated as Section 593.014, Health and Safety Code, and
15 amended to read as follows:

16 Sec. 593.014 [~~553.001~~]. EPILEPSY. A person may not be
17 denied admission to a residential care facility [~~state institution~~
18 ~~or school~~] because the person suffers from epilepsy.

19 SECTION 3.1344. Section 553.022, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 553.022. SAN ANTONIO STATE SUPPORTED LIVING CENTER
22 [~~SCHOOL~~]. (a) The San Antonio State Supported Living Center
23 [~~School~~] is for the education, care, and treatment of persons with
24 an intellectual disability [~~mental retardation~~].

25 (b) The [~~Texas~~] Department of Aging and Disability Services
26 [~~Mental Health and Mental Retardation~~] may enter into agreements
27 with the [~~Texas~~] Department of State Health Services for use of the

1 excess facilities of a public health hospital as defined by Section
2 13.033 [~~the Texas Center for Infectious Disease~~] in the operation
3 of the state supported living center [~~school~~].

4 SECTION 3.1345. Chapter 554, Health and Safety Code, is
5 amended by adding Section 554.0001 to read as follows:

6 Sec. 554.0001. DEFINITION. In this chapter, "department"
7 means the Department of State Health Services.

8 SECTION 3.1346. Section 555.001, Health and Safety Code, is
9 amended by amending Subdivisions (1), (2), (3), (4), (6), and (15)
10 and adding Subdivision (10-a) to read as follows:

11 (1) "Alleged offender resident" means a person with an
12 intellectual disability [~~mental retardation~~] who:

13 (A) was committed to or transferred to a state
14 supported living center under Chapter 46B or 46C, Code of Criminal
15 Procedure, as a result of being charged with or convicted of a
16 criminal offense; or

17 (B) is a child committed to or transferred to a
18 state supported living center under Chapter 55, Family Code, as a
19 result of being alleged by petition or having been found to have
20 engaged in delinquent conduct constituting a criminal offense.

21 (2) "Center" means the state supported living centers
22 and the ICF-IID [~~ICF-MR~~] component of the Rio Grande State Center.

23 (3) "Center employee" means an employee of a state
24 supported living center or the ICF-IID [~~ICF-MR~~] component of the
25 Rio Grande State Center.

26 (4) "Client" means a person with an intellectual
27 disability [~~mental retardation~~] who receives ICF-IID [~~ICF-MR~~]

1 services from a state supported living center or the ICF-IID
2 [~~ICF-MR~~] component of the Rio Grande State Center.

3 (6) "Complaint" means information received by the
4 office of independent ombudsman regarding a possible violation of a
5 right of a resident or client and includes information received
6 regarding a failure by a state supported living center or the
7 ICF-IID [~~ICF-MR~~] component of the Rio Grande State Center to comply
8 with the department's policies and procedures relating to the
9 community living options information process.

10 (10-a) "ICF-IID" has the meaning assigned by Section
11 531.002.

12 (15) "Resident" means a person with an intellectual
13 disability [~~mental retardation~~] who resides in a state supported
14 living center or the ICF-IID [~~ICF-MR~~] component of the Rio Grande
15 State Center.

16 SECTION 3.1347. Sections 555.002(d) and (e), Health and
17 Safety Code, are amended to read as follows:

18 (d) The department shall ensure that the forensic state
19 supported living center:

20 (1) complies with the requirements for ICF-IID
21 [~~ICF-MR~~] certification under the Medicaid program, as appropriate;
22 and

23 (2) has additional center employees, including direct
24 care employees, to protect the safety of center employees,
25 residents, and the community.

26 (e) The department shall collect data regarding the
27 commitment of alleged offender residents to state supported living

1 centers, including any offense with which an alleged offender
2 resident is charged, the location of the committing court, whether
3 the alleged offender resident has previously been in the custody of
4 the Texas Juvenile Justice Department [~~Youth Commission~~] or the
5 Department of Family and Protective Services, and whether the
6 alleged offender resident receives mental health services or
7 previously received any services under a Section 1915(c) waiver
8 program. The department shall annually submit to the governor, the
9 lieutenant governor, the speaker of the house of representatives,
10 and the standing committees of the legislature with primary subject
11 matter jurisdiction over state supported living centers a report of
12 the information collected under this section. The report may not
13 contain personally identifiable information for any person in the
14 report.

15 SECTION 3.1348. Sections 555.024(a), (b), and (e), Health
16 and Safety Code, are amended to read as follows:

17 (a) Before a center employee begins to perform the
18 employee's duties without direct supervision, the department shall
19 provide the employee with competency training and a course of
20 instruction about the general duties of a center employee. The
21 department shall ensure the basic center employee competency course
22 focuses on:

23 (1) the uniqueness of the individuals the center
24 employee serves;

25 (2) techniques for improving quality of life for and
26 promoting the health and safety of individuals with an intellectual
27 disability [~~mental retardation~~]; and

(3) an introduction to autism;

11 (4) an introduction to mental illness and dual
12 diagnosis;

(7) the safe and proper use of restraints;

19 (8) recognizing and reporting:

20 (A) evidence of abuse, neglect, and exploitation
21 of individuals with an intellectual disability [mental
22 retardation]:

(B) unusual incidents;

24 (C) reasonable suspicion of illegal drug use in
25 the workplace;

(D) workplace violence; or

27 (E) sexual harassment in the workplace;

- (9) preventing and treating infection;
- (10) first aid;
- (11) cardiopulmonary resuscitation;
- (12) the Health Insurance Portability and
ity Act of 1996 (Pub. L. No. 104-191); and
- (13) the rights of center employees.

7 (e) A center may allow an employee of an ICF-IID
8 [intermediate care facility for persons with mental retardation]
9 licensed by the department, an employee of a person licensed or
10 certified to provide Section 1915(c) waiver program services, or
11 another employee or professional involved in the provision of
12 services to persons with an intellectual disability [mental
13 retardation] to receive information and training under this
14 section, as appropriate. The center may charge an administrative
15 fee in an amount not to exceed the cost of providing the information
16 or training.

17 SECTION 3.1349. Section 555.025(d), Health and Safety Code,
18 is amended to read as follows:

19 (d) The department shall ensure that the use of video
20 surveillance equipment under this section complies with federal
21 requirements for ICF-IID [ICF-MR] certification.

22 SECTION 3.1350. Section 555.051, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of
25 independent ombudsman is established for the purpose of
26 investigating, evaluating, and securing the rights of residents and
27 clients of state supported living centers and the ICF-IID [ICF-MR]

1 component of the Rio Grande State Center. The office is
2 administratively attached to the department. The department shall
3 provide administrative support and resources to the office as
4 necessary for the office to perform its duties.

5 SECTION 3.1351. Section 555.053(b), Health and Safety Code,
6 is amended to read as follows:

7 (b) The governor may appoint as independent ombudsman only
8 an individual with at least five years of experience managing and
9 ensuring the quality of care and services provided to individuals
10 with an intellectual disability [~~mental retardation~~].

11 SECTION 3.1352. Section 555.054(b), Health and Safety Code,
12 is amended to read as follows:

13 (b) The independent ombudsman may hire as assistant
14 ombudsmen only individuals with at least five years of experience
15 ensuring the quality of care and services provided to individuals
16 with an intellectual disability [~~mental retardation~~].

17 SECTION 3.1353. Section 555.057(b), Health and Safety Code,
18 is amended to read as follows:

19 (b) The records of the independent ombudsman are
20 confidential, except that the independent ombudsman shall:

21 (1) share with the Department of Family and Protective
22 Services a communication that may involve the abuse, neglect, or
23 exploitation of a resident or client;

24 (2) share with the inspector general a communication
25 that may involve an alleged criminal offense;

26 (3) share with the regulatory services division of the
27 department a communication that may involve a violation of an

1 ICF-IID [~~ICF-MR~~] standard or condition of participation; and
2 (4) disclose the ombudsman's nonprivileged records if
3 required by a court order on a showing of good cause.

4 SECTION 3.1354. Section 555.059(a), Health and Safety Code,
5 is amended to read as follows:

6 (a) The independent ombudsman shall:

7 (1) evaluate the process by which a center
8 investigates, reviews, and reports an injury to a resident or
9 client or an unusual incident;

10 (2) evaluate the delivery of services to residents and
11 clients to ensure that the rights of residents and clients are fully
12 observed, including ensuring that each center conducts sufficient
13 unannounced patrols;

14 (3) immediately refer a complaint alleging the abuse,
15 neglect, or exploitation of a resident or client to the Department
16 of Family and Protective Services;

17 (4) refer a complaint alleging employee misconduct
18 that does not involve abuse, neglect, or exploitation or a possible
19 violation of an ICF-IID [~~ICF-MR~~] standard or condition of
20 participation to the regulatory services division of the
21 department;

22 (5) refer a complaint alleging a criminal offense,
23 other than an allegation of abuse, neglect, or exploitation of a
24 resident or client, to the inspector general;

25 (6) conduct investigations of complaints, other than
26 complaints alleging criminal offenses or the abuse, neglect, or
27 exploitation of a resident or client, if the office determines

1 that:

2 (A) a resident or client or the resident's or
3 client's family may be in need of assistance from the office; or
4 (B) a complaint raises the possibility of a
5 systemic issue in the center's provision of services;

6 (7) conduct biennial on-site audits at each center of:
7 (A) the ratio of direct care employees to
8 residents;

9 (B) the provision and adequacy of training to:
10 (i) center employees; and
11 (ii) direct care employees; and

12 (C) if the center serves alleged offender
13 residents, the provision of specialized training to direct care
14 employees;

15 (8) conduct an annual audit of each center's policies,
16 practices, and procedures to ensure that each resident and client
17 is encouraged to exercise the resident's or client's rights,
18 including:

19 (A) the right to file a complaint; and
20 (B) the right to due process;

21 (9) prepare and deliver an annual report regarding the
22 findings of each audit to the:

23 (A) executive commissioner;
24 (B) commissioner;
25 (C) Aging and Disability Services Council;
26 (D) governor;
27 (E) lieutenant governor;

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1 (F) speaker of the house of representatives;
2 (G) standing committees of the senate and house
3 of representatives with primary jurisdiction over state supported
4 living centers; and

5 (H) state auditor;

(10) require a center to provide access to all records, data, and other information under the control of the center that the independent ombudsman determines is necessary to investigate a complaint or to conduct an audit under this section;

10 (11) review all final reports produced by the
11 Department of Family and Protective Services, the regulatory
12 services division of the department, and the inspector general
13 regarding a complaint referred by the independent ombudsman;

22 (14) monitor and evaluate the department's actions
23 relating to any problem identified or recommendation included in a
24 report received from the Department of Family and Protective
25 Services relating to an investigation of alleged abuse, neglect, or
26 exploitation of a resident or client.

27 SECTION 3.1355. Section 571.003, Health and Safety Code, is

1 amended by amending Subdivisions (2), (5), (7), (9), (11), (14),
2 and (18) and adding Subdivision (5-a) to read as follows:

3 (2) "Commissioner" means the commissioner of state
4 health services [~~mental health and mental retardation~~].

5 (5) "Department" means the [~~Texas~~] Department of State
6 Health Services [~~Mental Health and Mental Retardation~~].

7 (5-a) "Executive commissioner" means the executive
8 commissioner of the Health and Human Services Commission.

9 (7) "General hospital" means a hospital operated
10 primarily to diagnose, care for, and treat [~~physically ill~~] persons
11 who are physically ill.

12 (9) "Inpatient mental health facility" means a mental
13 health facility that can provide 24-hour residential and
14 psychiatric services and that is:

15 (A) a facility operated by the department;

16 (B) a private mental hospital licensed by the
17 department [~~Texas Department of Health~~];

18 (C) a community center, facility operated by or
19 under contract with a community center or other entity the
20 department designates to provide mental health services;

21 (D) a local mental health authority or a facility
22 operated by or under contract with a local mental health authority;

23 (E) an identifiable part of a general hospital in
24 which diagnosis, treatment, and care for persons with mental
25 illness is provided and that is licensed by the department [~~Texas~~
26 ~~Department of Health~~]; or

27 (F) a hospital operated by a federal agency.

1 (11) "Local mental health authority" means an entity
2 to which the executive commissioner [board] delegates the executive
3 commissioner's [~~its~~] authority and responsibility within a
4 specified region for planning, policy development, coordination,
5 including coordination with criminal justice entities, and
6 resource development and allocation and for supervising and
7 ensuring the provision of mental health services to persons with
8 mental illness in the most appropriate and available setting to
9 meet individual needs in one or more local service areas.

10 (14) "Mental illness" means an illness, disease, or
11 condition, other than epilepsy, dementia, substance abuse
12 [~~senility, alcoholism~~], or intellectual disability [~~mental~~
13 ~~deficiency~~], that:

14 (A) substantially impairs a person's thought,
15 perception of reality, emotional process, or judgment; or
16 (B) grossly impairs behavior as demonstrated by
17 recent disturbed behavior.

18 (18) "Physician" means:

19 (A) a person licensed to practice medicine in
20 this state;

21 (B) a person employed by a federal agency who has
22 a license to practice medicine in any state; or

23 (C) a person authorized to perform medical acts
24 under a physician-in-training [~~an institutional~~] permit at a Texas
25 postgraduate training program approved by the Accreditation
26 Council for [~~on~~] Graduate Medical Education, the American
27 Osteopathic Association, or the Texas Medical [~~State~~] Board [~~or~~

1 ~~Medical Examiners~~].

2 SECTION 3.1356. Section 571.006, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 571.006. EXECUTIVE COMMISSIONER AND DEPARTMENT
5 POWERS. (a) The executive commissioner may adopt rules as
6 necessary for the proper and efficient treatment of persons with
7 mental illness.

8 (b) The department may:

9 (1) [adopt rules as necessary for the proper and
10 efficient treatment of persons with mental illness;

11 [2] prescribe the form and content of applications,
12 certificates, records, and reports provided for under this
13 subtitle;

14 (2) [3] require reports from a facility
15 administrator relating to the admission, examination, diagnosis,
16 release, or discharge of any patient;

17 (3) [4] regularly visit each mental health facility
18 to review the commitment procedure for each new patient admitted
19 after the last visit; and

20 (4) [5] visit a mental health facility to
21 investigate a complaint made by a patient or by a person on behalf
22 of a patient.

23 SECTION 3.1357. Section 571.0065, Health and Safety Code,
24 is amended to read as follows:

25 Sec. 571.0065. TREATMENT METHODS. (a) The executive
26 commissioner [board] by rule may adopt procedures for an advisory
27 committee to review treatment methods for persons with mental

1 illness.

2 (b) A state agency that has knowledge of or receives a
3 complaint relating to an abusive treatment method shall report that
4 knowledge or forward a copy of the complaint to the department
5 ~~[board]~~.

6 (c) A mental health facility, physician, or other mental
7 health professional is not liable for an injury or other damages
8 sustained by a person as a result of the failure of the facility,
9 physician, or professional to administer or perform a treatment
10 prohibited by statute or rules adopted by the executive
11 commissioner ~~[board]~~.

12 SECTION 3.1358. Section [571.0066\(a\)](#), Health and Safety
13 Code, is amended to read as follows:

14 (a) The executive commissioner ~~[board]~~ by rule shall
15 require a mental health facility that admits a patient under this
16 subtitle to provide to the patient in the patient's primary
17 language, if possible, information relating to prescription
18 medications ordered by the patient's treating physician.

19 SECTION 3.1359. Section [571.009](#), Health and Safety Code, is
20 amended to read as follows:

21 Sec. 571.009. EFFECT OF CERTAIN CONDITIONS ON ADMISSION OR
22 COMMITMENT. A person with mental illness may not be denied
23 admission or commitment to a mental health facility because the
24 person also suffers from epilepsy, dementia, substance abuse
25 ~~[senility, alcoholism]~~, or intellectual disability ~~[mental~~
26 ~~deficiency]~~.

27 SECTION 3.1360. Section [571.0167\(c\)](#), Health and Safety

1 Code, is amended to read as follows:

2 (c) In a habeas corpus proceeding in which a department
3 [~~state~~] inpatient mental health facility or a physician employed by
4 a department [~~state~~] inpatient mental health facility is a party as
5 a result of enforcing a commitment order, the appropriate attorney
6 prescribed by Section 571.016 shall represent the facility or
7 physician, or both the facility and physician if both are parties,
8 unless the attorney determines that representation violates the
9 Texas Disciplinary Rules of Professional Conduct.

10 SECTION 3.1361. Sections 571.025(a), (d), (e), (f), (g),
11 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
12 amended to read as follows:

13 (a) The department [~~board~~] may impose an administrative
14 penalty against a person licensed or regulated under this subtitle
15 who violates this subtitle or a rule or order adopted under this
16 subtitle.

17 (d) If the department [~~commissioner~~] determines that a
18 violation has occurred, the department [~~commissioner~~] may issue [to
19 ~~the board~~] a report that states the facts on which the determination
20 is based and the department's [~~commissioner's~~] recommendation on
21 the imposition of a penalty, including a recommendation on the
22 amount of the penalty.

23 (e) Within 14 days after the date the report is issued, the
24 department [~~commissioner~~] shall give written notice of the report
25 to the person. The notice may be given by certified mail. The
26 notice must include a brief summary of the alleged violation and a
27 statement of the amount of the recommended penalty and must inform

1 the person that the person has a right to a hearing on the
2 occurrence of the violation, the amount of the penalty, or both the
3 occurrence of the violation and the amount of the penalty.

4 (f) Within 20 days after the date the person receives the
5 notice, the person in writing may accept the determination and
6 recommended penalty of the department [~~commissioner~~] or may make a
7 written request for a hearing on the occurrence of the violation,
8 the amount of the penalty, or both the occurrence of the violation
9 and the amount of the penalty.

10 (g) If the person accepts the determination and recommended
11 penalty of the department [~~commissioner~~], the department [~~board~~] by
12 order shall [~~approve the determination and~~] impose the recommended
13 penalty.

14 (h) If the person requests a hearing or fails to respond
15 timely to the notice, the department [~~commissioner~~] shall set a
16 hearing and give notice of the hearing to the person. The
17 administrative law judge shall make findings of fact and
18 conclusions of law and promptly issue to the department [~~board~~] a
19 proposal for a decision about the occurrence of the violation and
20 the amount of a proposed penalty. Based on the findings of fact,
21 conclusions of law, and proposal for a decision, the department
22 [~~board~~] by order may find that a violation has occurred and impose a
23 penalty or may find that no violation occurred.

24 (i) The notice of the department's [~~board's~~] order given to
25 the person under Chapter 2001, Government Code, must include a
26 statement of the right of the person to judicial review of the
27 order.

1 (j) Within 30 days after the date the department's [board's]
2 order is final as provided by Subchapter F, Chapter 2001,
3 Government Code, the person shall:

4 (1) pay the amount of the penalty;
5 (2) pay the amount of the penalty and file a petition
6 for judicial review contesting the occurrence of the violation, the
7 amount of the penalty, or both the occurrence of the violation and
8 the amount of the penalty; or

9 (3) without paying the amount of the penalty, file a
10 petition for judicial review contesting the occurrence of the
11 violation, the amount of the penalty, or both the occurrence of the
12 violation and the amount of the penalty.

13 (k) Within the 30-day period, a person who acts under
14 Subsection (j)(3) may:

15 (1) stay enforcement of the penalty by:
16 (A) paying the amount of the penalty to the court
17 for placement in an escrow account; or
18 (B) giving to the court a supersedeas bond that
19 is approved by the court for the amount of the penalty and that is
20 effective until all judicial review of the department's [board's]
21 order is final; or

22 (2) request the court to stay enforcement of the
23 penalty by:

24 (A) filing with the court a sworn affidavit of
25 the person stating that the person is financially unable to pay the
26 amount of the penalty and is financially unable to give the
27 supersedeas bond; and

(B) giving a copy of the affidavit to the department [commissioner] by certified mail.

3 (1) The department [commissioner] on receipt of a copy of an
4 affidavit under Subsection (k)(2) may file with the court within
5 five days after the date the copy is received a contest to the
6 affidavit. The court shall hold a hearing on the facts alleged in
7 the affidavit as soon as practicable and shall stay the enforcement
8 of the penalty on finding that the alleged facts are true. The
9 person who files an affidavit has the burden of proving that the
10 person is financially unable to pay the amount of the penalty and to
11 give a supersedeas bond.

12 (m) If the person does not pay the amount of the penalty and
13 the enforcement of the penalty is not stayed, the department
14 [~~commissioner~~] may refer the matter to the attorney general for
15 collection of the amount of the penalty.

16 (n) Judicial review of the order of the department [board]:
17 (1) is instituted by filing a petition as provided by
18 Subchapter G, Chapter 2001, Government Code; and
19 (2) is under the substantial evidence rule.

20 SECTION 3.1362. Sections 571.027(a) through (e), Health and
21 Safety Code, are amended to read as follows:

22 (a) The executive commissioner [board] shall appoint an
23 advisory committee on inpatient mental health services to advise
24 the executive commissioner [board] on:

1 (2) ~~coordination and communication between the~~
2 ~~department, the Texas Department of Health, and facilities~~
3 ~~described by Section 571.003(9)(B) or (E) to address consistency~~
4 ~~between the agencies in interpretation and enforcement of agency~~
5 ~~policies and other rules; and~~

6 ~~[43]~~ training for inpatient mental health facility
7 surveyors or investigators.

8 (b) The executive commissioner ~~[board]~~ shall appoint to the
9 committee:

10 (1) three representatives of hospitals, at least two
11 of whom represent a facility described by Section 571.003(9)(B) or
12 (E);

13 (2) three consumers of mental health services, each of
14 whom has received treatment in a facility described by Section
15 571.003(9)(B) or (E);

16 (3) two physicians licensed under Subtitle B, Title 3,
17 Occupations Code, who practice psychiatry and are board certified
18 in psychiatry, at least one of whom is board certified in child and
19 adolescent psychiatry; and

20 (4) one family member of a person who has been a
21 consumer of mental health services provided by a facility described
22 by Section 571.003(9)(B) or (E).

23 (c) The executive commissioner ~~[Texas Board of Health]~~
24 shall provide the advisory committee with two persons to represent
25 the department ~~[Texas Department of Health]~~. The representatives
26 may address the advisory committee on any issue relevant to a matter
27 before the advisory committee, but the representatives may not vote

1 on any matter. The executive commissioner [~~Texas Board of Health~~]
2 shall consider designating an inpatient mental health facility
3 surveyor or investigator to be a representative under this
4 subsection.

5 (d) Except for persons who represent the department [~~Texas~~
6 ~~Department of Health~~] designated under Subsection (c), members of
7 the advisory committee serve staggered four-year terms. A member's
8 term expires on August 31 of the fourth year following the member's
9 appointment.

10 (e) The executive commissioner [~~board~~] shall fill vacancies
11 on the advisory committee [~~board~~] in the same manner as the original
12 appointment.

13 SECTION 3.1363. Section 572.0022(a), Health and Safety
14 Code, is amended to read as follows:

15 (a) A mental health facility shall provide to a patient in
16 the patient's primary language, if possible, and in accordance with
17 department [~~board~~] rules information relating to prescription
18 medication ordered by the patient's treating physician.

19 SECTION 3.1364. Sections 572.0025(a), (c), and (e), Health
20 and Safety Code, are amended to read as follows:

21 (a) The executive commissioner [~~board~~] shall adopt rules
22 governing the voluntary admission of a patient to an inpatient
23 mental health facility, including rules governing the intake and
24 assessment procedures of the admission process.

25 (c) The assessment provided for by the rules may be
26 conducted only by a professional who meets the qualifications
27 prescribed by department [~~board~~] rules.

1 (e) In accordance with department [board] rule, a facility
2 shall provide annually a minimum of eight hours of inservice
3 training regarding intake and assessment for persons who will be
4 conducting an intake or assessment for the facility. A person may
5 not conduct intake or assessments without having completed the
6 initial and applicable annual inservice training.

7 SECTION 3.1365. Section 572.003(e), Health and Safety Code,
8 is amended to read as follows:

9 (e) In addition to the rights provided by this subtitle, a
10 person voluntarily admitted to an inpatient mental health facility
11 under Section 572.002(3)(B) has the right to be evaluated by a
12 physician at regular intervals to determine the person's need for
13 continued inpatient treatment. The executive commissioner
14 [department] by rule shall establish the intervals at which a
15 physician shall evaluate a person under this subsection.

16 SECTION 3.1366. Section 573.001(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) A peace officer, without a warrant, may take a person
19 into custody if the officer:

20 (1) has reason to believe and does believe that:

21 (A) the person is a person with mental illness
22 [mentally ill]; and

23 (B) because of that mental illness there is a
24 substantial risk of serious harm to the person or to others unless
25 the person is immediately restrained; and

26 (2) believes that there is not sufficient time to
27 obtain a warrant before taking the person into custody.

1 SECTION 3.1367. Section 573.003(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) A guardian of the person of a ward who is 18 years of age
4 or older, without the assistance of a peace officer, may transport
5 the ward to an inpatient mental health facility for a preliminary
6 examination in accordance with Section 573.021 if the guardian has
7 reason to believe and does believe that:

8 (1) the ward is a person with mental illness [~~mentally~~
9 ~~ill~~]; and

10 (2) because of that mental illness there is a
11 substantial risk of serious harm to the ward or to others unless the
12 ward is immediately restrained.

13 SECTION 3.1368. Section 573.022(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) A person may be admitted to a facility for emergency
16 detention only if the physician who conducted the preliminary
17 examination of the person makes a written statement that:

18 (1) is acceptable to the facility;

19 (2) states that after a preliminary examination it is
20 the physician's opinion that:

21 (A) the person is a person with mental illness
22 [~~mentally ill~~];

23 (B) the person evidences a substantial risk of
24 serious harm to the person [~~himself~~] or to others;

25 (C) the described risk of harm is imminent unless
26 the person is immediately restrained; and

27 (D) emergency detention is the least restrictive

1 means by which the necessary restraint may be accomplished; and

2 (3) includes:

3 (A) a description of the nature of the person's
4 mental illness;

5 (B) a specific description of the risk of harm
6 the person evidences that may be demonstrated either by the
7 person's behavior or by evidence of severe emotional distress and
8 deterioration in the person's mental condition to the extent that
9 the person cannot remain at liberty; and

10 (C) the specific detailed information from which
11 the physician formed the opinion in Subdivision (2).

12 SECTION 3.1369. Section [573.023\(b\)](#), Health and Safety Code,
13 is amended to read as follows:

14 (b) A person admitted to a facility under Section [573.022](#)
15 shall be released if the facility administrator determines at any
16 time during the emergency detention period that one of the criteria
17 prescribed by Section [573.022\(a\)\(2\)](#) [~~573.022(2)~~] no longer
18 applies.

19 SECTION 3.1370. Section [573.025\(c\)](#), Health and Safety Code,
20 is amended to read as follows:

21 (c) The executive commissioner [~~of the Health and Human~~
22 ~~Services Commission~~] by rule shall prescribe the manner in which
23 the person is informed of the person's rights under this section and
24 this subtitle.

25 SECTION 3.1371. Section [574.001\(f\)](#), Health and Safety Code,
26 is amended to read as follows:

27 (f) An application in which the proposed patient is a child

1 in the custody of the Texas Juvenile Justice Department [~~Youth~~
2 ~~Commission~~] may be filed in the county in which the child's
3 commitment to the Texas Juvenile Justice Department [~~commission~~]
4 was ordered.

5 SECTION 3.1372. Section 574.002(c), Health and Safety Code,
6 is amended to read as follows:

7 (c) Any application must contain the following information
8 according to the applicant's information and belief:

9 (1) the proposed patient's name and address;
10 (2) the proposed patient's county of residence in this
11 state;

12 (3) a statement that the proposed patient is a person
13 with mental illness [~~mentally ill~~] and meets the criteria in
14 Section 574.034 or 574.035 for court-ordered mental health
15 services; and

16 (4) whether the proposed patient is charged with a
17 criminal offense.

18 SECTION 3.1373. Section 574.011(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) A certificate of medical examination for mental illness
21 must be sworn to, dated, and signed by the examining physician. The
22 certificate must include:

23 (1) the name and address of the examining physician;
24 (2) the name and address of the person examined;
25 (3) the date and place of the examination;
26 (4) a brief diagnosis of the examined person's
27 physical and mental condition;

1 (5) the period, if any, during which the examined
2 person has been under the care of the examining physician;

3 (6) an accurate description of the mental health
4 treatment, if any, given by or administered under the direction of
5 the examining physician; and

6 (7) the examining physician's opinion that:

7 (A) the examined person is a person with mental
8 illness [~~mentally ill~~]; and

9 (B) as a result of that illness the examined
10 person is likely to cause serious harm to the person [~~himself~~] or to
11 others or is:

12 (i) suffering severe and abnormal mental,
13 emotional, or physical distress;

14 (ii) experiencing substantial mental or
15 physical deterioration of the proposed patient's [~~his~~] ability to
16 function independently, which is exhibited by the proposed
17 patient's inability, except for reasons of indigence, to provide
18 for the proposed patient's basic needs, including food, clothing,
19 health, or safety; and

20 (iii) not able to make a rational and
21 informed decision as to whether to submit to treatment.

22 SECTION 3.1374. Section 574.022(a), Health and Safety Code,
23 is amended to read as follows:

24 (a) The judge or designated magistrate may issue a
25 protective custody order if the judge or magistrate determines:

26 (1) that a physician has stated the physician's [~~his~~]
27 opinion and the detailed reasons for the physician's [~~his~~] opinion

1 that the proposed patient is a person with mental illness [~~mentally~~
2 ~~ill~~]; and

6 SECTION 3.1375. Section 574.025(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) A hearing must be held to determine if:

14 (2) a physician has stated the physician's [his]
15 opinion and the detailed reasons for the physician's [his] opinion
16 that the proposed patient is a person with mental illness [mentally]
17 [ill].

18 SECTION 3.1376. Section 574.026(d), Health and Safety Code,
19 is amended to read as follows:

20 (d) The notification of probable cause hearing shall read as
21 follows:

22 (Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

24 On this the _____ day of _____, 20__ [19__], the
25 undersigned hearing officer heard evidence concerning the need for
26 protective custody of _____ (hereinafter referred to as
27 proposed patient). The proposed patient was given the opportunity

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1 to challenge the allegations that the proposed patient [(s)he]
2 presents a substantial risk of serious harm to self or others.

3 The proposed patient and the proposed patient's [his]
4 attorney _____ have been given written notice that the
5 (attorney)

6 proposed patient was placed under an order of protective custody
7 and the reasons for such order on _____.
8 (date of notice)

9 I have examined the certificate of medical examination for mental
10 illness and _____. Based on
11 (other evidence considered)

12 this evidence, I find that there is probable cause to believe that
13 the proposed patient presents a substantial risk of serious harm to
14 the proposed patient [~~himself~~] (yes ____ or no ____) or others (yes
15 ____ or no ____) such that the proposed patient [~~(s)he~~] cannot be at
16 liberty pending final hearing because

18

20 SECTION 3.1377. Section 574.032(f), Health and Safety Code,

22 (f) In a hearing before a jury, the jury shall determine if
23 the proposed patient is a person with mental illness [~~mentally ill~~]
24 and meets the criteria for court-ordered mental health services.
25 The jury may not make a finding about the type of services to be
26 provided to the proposed patient.

27 SECTION 3.1378. Section 574.033(a), Health and Safety Code,
28 is amended to read as follows:

(a) The court shall enter an order denying an application

1 for court-ordered temporary or extended mental health services if
2 after a hearing the court or jury fails to find, from clear and
3 convincing evidence, that the proposed patient is a person with
4 mental illness [~~mentally ill~~] and meets the applicable criteria for
5 court-ordered mental health services.

6 SECTION 3.1379. Sections [574.034](#)(a) and (b), Health and
7 Safety Code, are amended to read as follows:

8 (a) The judge may order a proposed patient to receive
9 court-ordered temporary inpatient mental health services only if
10 the judge or jury finds, from clear and convincing evidence, that:

11 (1) the proposed patient is a person with mental
12 illness [~~mentally ill~~]; and

13 (2) as a result of that mental illness the proposed
14 patient:

15 (A) is likely to cause serious harm to the
16 proposed patient [~~himself~~];

17 (B) is likely to cause serious harm to others; or

18 (C) is:

19 (i) suffering severe and abnormal mental,
20 emotional, or physical distress;

21 (ii) experiencing substantial mental or
22 physical deterioration of the proposed patient's ability to
23 function independently, which is exhibited by the proposed
24 patient's inability, except for reasons of indigence, to provide
25 for the proposed patient's basic needs, including food, clothing,
26 health, or safety; and

27 (iii) unable to make a rational and

1 informed decision as to whether or not to submit to treatment.

2 (b) The judge may order a proposed patient to receive
3 court-ordered temporary outpatient mental health services only if:

4 (1) the judge finds that appropriate mental health
5 services are available to the proposed patient; and

6 (2) the judge or jury finds, from clear and convincing
7 evidence, that:

8 (A) the proposed patient is a person with mental
9 illness [mentally ill];

10 (B) the nature of the mental illness is severe
11 and persistent;

12 (C) as a result of the mental illness, the
13 proposed patient will, if not treated, continue to:

14 (i) suffer severe and abnormal mental,
15 emotional, or physical distress; and

16 (ii) experience deterioration of the
17 ability to function independently to the extent that the proposed
18 patient will be unable to live safely in the community without
19 court-ordered outpatient mental health services; and

20 (D) the proposed patient has an inability to
21 participate in outpatient treatment services effectively and
22 voluntarily, demonstrated by:

23 (i) any of the proposed patient's actions
24 occurring within the two-year period which immediately precedes the
25 hearing; or

26 (ii) specific characteristics of the
27 proposed patient's clinical condition that make impossible a

1 rational and informed decision whether to submit to voluntary
2 outpatient treatment.

3 SECTION 3.1380. Sections 574.035(a) and (b), Health and
4 Safety Code, are amended to read as follows:

5 (a) The judge may order a proposed patient to receive
6 court-ordered extended inpatient mental health services only if the
7 jury, or the judge if the right to a jury is waived, finds, from
8 clear and convincing evidence, that:

9 (1) the proposed patient is a person with mental
10 illness [mentally ill];

11 (2) as a result of that mental illness the proposed
12 patient:

13 (A) is likely to cause serious harm to the
14 proposed patient [himself];

15 (B) is likely to cause serious harm to others; or

16 (C) is:

17 (i) suffering severe and abnormal mental,
18 emotional, or physical distress;

19 (ii) experiencing substantial mental or
20 physical deterioration of the proposed patient's ability to
21 function independently, which is exhibited by the proposed
22 patient's inability, except for reasons of indigence, to provide
23 for the proposed patient's basic needs, including food, clothing,
24 health, or safety; and

25 (iii) unable to make a rational and
26 informed decision as to whether or not to submit to treatment;

27 (3) the proposed patient's condition is expected to

1 continue for more than 90 days; and

2 (4) the proposed patient has received court-ordered
3 inpatient mental health services under this subtitle or under
4 Chapter 46B, Code of Criminal Procedure, for at least 60
5 consecutive days during the preceding 12 months.

6 (b) The judge may order a proposed patient to receive
7 court-ordered extended outpatient mental health services only if:

8 (1) the judge finds that appropriate mental health
9 services are available to the proposed patient; and

10 (2) the jury, or the judge if the right to a jury is
11 waived, finds from clear and convincing evidence that:

12 (A) the proposed patient is a person with mental
13 illness [~~mentally ill~~];

14 (B) the nature of the mental illness is severe
15 and persistent;

16 (C) as a result of the mental illness, the
17 proposed patient will, if not treated, continue to:

18 (i) suffer severe and abnormal mental,
19 emotional, or physical distress; and

20 (ii) experience deterioration of the
21 ability to function independently to the extent that the proposed
22 patient will be unable to live safely in the community without
23 court-ordered outpatient mental health services;

24 (D) the proposed patient has an inability to
25 participate in outpatient treatment services effectively and
26 voluntarily, demonstrated by:

27 (i) any of the proposed patient's actions

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1 occurring within the two-year period which immediately precedes the
2 hearing; or

9 (F) the proposed patient has received:

18 SECTION 3.1381. Section 574.036(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) The judge shall dismiss the jury, if any, after a
21 hearing in which a person is found to be a person with mental
22 illness [~~mentally ill~~] and to meet the criteria for court-ordered
23 temporary or extended mental health services.

24 SECTION 3.1382. Section 574.0415(a), Health and Safety
25 Code, is amended to read as follows:

26 (a) A mental health facility shall provide to a patient in
27 the patient's primary language, if possible, and in accordance with

1 department [board] rules information relating to prescription
2 medication ordered by the patient's treating physician.

3 SECTION 3.1383. Section 574.0455(b), Health and Safety
4 Code, is amended to read as follows:

5 (b) The executive commissioner [Department of State Health
6 Services] shall prescribe uniform standards:

7 (1) that a person must meet to be listed as a qualified
8 transportation service provider under Subsection (a); and

9 (2) prescribing requirements relating to how the
10 transportation of a person to a mental health facility by a
11 qualified transportation service provider is provided.

12 SECTION 3.1384. Section 574.103(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) In this section, "ward" has the meaning assigned by
15 Section 1002.030, Estates [601, Texas Probate] Code.

16 SECTION 3.1385. Section 575.003, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 575.003. ADMISSION OF PERSONS WITH CHEMICAL DEPENDENCY
19 [ALCOHOLICS] AND PERSONS CHARGED WITH CRIMINAL OFFENSE. This
20 subtitle does not affect the admission to a state mental health
21 facility of:

22 (1) a person with a chemical dependency [an alcoholic]
23 admitted under Chapter 462; or

24 (2) a person charged with a criminal offense admitted
25 under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

26 SECTION 3.1386. Section 575.012, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 575.012. TRANSFER OF PERSON WITH AN INTELLECTUAL
2 DISABILITY [~~MENTAL RETARDATION~~] TO AN INPATIENT MENTAL HEALTH
3 FACILITY OPERATED BY THE DEPARTMENT. (a) An inpatient mental
4 health facility may not transfer a patient who is also a person with
5 an intellectual disability [~~mental retardation~~] to a department
6 mental health facility unless, before initiating the transfer, the
7 facility administrator of the inpatient mental health facility
8 obtains from the commissioner a determination that space is
9 available in a department facility unit that is specifically
10 designed to serve such a person.

11 (b) The department shall maintain an appropriate number of
12 hospital-level beds for persons with an intellectual disability
13 [~~mental retardation~~] who are committed for court-ordered mental
14 health services to meet the needs of the local mental health
15 authorities. The number of beds the department maintains must be
16 determined according to the previous year's need.

17 SECTION 3.1387. The heading to Section 575.013, Health and
18 Safety Code, is amended to read as follows:

19 Sec. 575.013. TRANSFER OF PERSON WITH AN INTELLECTUAL
20 DISABILITY [~~MENTAL RETARDATION~~] TO STATE SUPPORTED LIVING CENTER
21 [~~SCHOOL~~].

22 SECTION 3.1388. Sections 575.013(a) and (b), Health and
23 Safety Code, are amended to read as follows:

24 (a) The facility administrator of an inpatient mental
25 health facility operated by the department may transfer an
26 involuntary patient in the facility to a state supported living
27 center [~~school~~] for persons with an intellectual disability [~~mental~~

1 ~~retardation~~] if:

2 (1) an examination of the patient indicates that the
3 patient has symptoms of an intellectual disability [~~mental~~
4 ~~retardation~~] to the extent that training, education,
5 rehabilitation, care, treatment, and supervision in a state
6 supported living center [~~school~~] are in the patient's best
7 interest;

8 (2) the director of the state supported living center
9 to which the patient is to be transferred agrees to the transfer;
10 and

11 (3) the facility administrator coordinates the
12 transfer with the director of that state supported living center.

13 (b) A certificate containing the diagnosis and the facility
14 administrator's recommendation of transfer to a specific state
15 supported living center [~~school~~] shall be furnished to the
16 committing court.

17 SECTION 3.1389. Section 575.017, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 575.017. TRANSFER OF RECORDS. The facility
20 administrator of the transferring inpatient mental health facility
21 shall send the patient's appropriate hospital records, or a copy of
22 the records, to the hospital or facility administrator of the
23 mental hospital or state supported living center [~~school~~] to which
24 the patient is transferred.

25 SECTION 3.1390. Section 577.001(b), Health and Safety Code,
26 is amended to read as follows:

27 (b) A community center or other entity designated by the

1 department [~~Texas Department of Mental Health and Mental~~
2 ~~Retardation~~] to provide mental health services may not operate a
3 mental health facility that provides court-ordered mental health
4 services without a license issued by the department under this
5 chapter.

6 SECTION 3.1391. Section 577.002, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 577.002. EXEMPTIONS FROM LICENSING REQUIREMENT. A
9 mental health facility operated by the department [~~Texas Department~~
10 ~~of Mental Health and Mental Retardation~~] or a federal agency need
11 not be licensed under this chapter.

12 SECTION 3.1392. Section 577.003, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 577.003. ADDITIONAL LICENSE NOT REQUIRED. A mental
15 hospital licensed under this chapter that the department [~~Texas~~
16 ~~Department of Mental Health and Mental Retardation~~] designates to
17 provide mental health services is not required to obtain an
18 additional license to provide court-ordered mental health
19 services.

20 SECTION 3.1393. Sections 577.006(a), (b), (c), (e), (g),
21 and (i), Health and Safety Code, are amended to read as follows:

22 (a) The department shall charge each hospital every two
23 years a [~~an annual~~] license fee for an initial license or a license
24 renewal.

25 (b) The executive commissioner [~~board~~] by rule shall adopt
26 the fees authorized by Subsection (a) in accordance with Section
27 12.0111 and according to a schedule under which the number of beds

1 in the hospital determines the amount of the fee. [~~The fee may not~~
2 ~~exceed \$15 a bed.~~] A minimum license fee may be established. [~~The~~
3 ~~minimum fee may not exceed \$1,000.~~]

4 (c) The executive commissioner [~~board~~] by rule shall adopt
5 fees for hospital plan reviews according to a schedule under which
6 the amounts of the fees are based on the estimated construction
7 costs.

8 (e) The department shall charge a fee for field surveys of
9 construction plans reviewed under this section. The executive
10 commissioner [~~board~~] by rule shall adopt a fee schedule for the
11 surveys that provides a minimum fee [~~of \$500~~] and a maximum fee [~~of~~
12 \$1,000] for each survey conducted.

13 (g) The executive commissioner [~~department~~] may establish
14 staggered license renewal dates and dates on which fees are due.

15 (i) All license fees collected shall be deposited to the
16 credit of the general revenue fund [~~in the state treasury to the~~
17 ~~credit of the department to administer and enforce this chapter.~~
18 ~~These fees may be appropriated only to the department~~].

19 SECTION 3.1394. Section 577.009, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 577.009. LIMITATION ON CERTAIN CONTRACTS. A community
22 center or other entity the department [~~Texas Department of Mental~~
23 ~~Health and Mental Retardation~~] designates to provide mental health
24 services may not contract with a mental health facility to provide
25 court-ordered mental health services unless the facility is
26 licensed by the department.

27 SECTION 3.1395. Section 577.010(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) The executive commissioner [~~Texas Board of Mental~~
3 ~~Health and Mental Retardation~~] shall adopt rules and standards the
4 executive commissioner [~~board~~] considers necessary and appropriate
5 to ensure the proper care and treatment of patients in a private
6 mental hospital or mental health facility required to obtain a
7 license under this chapter.

8 SECTION 3.1396. Section [577.0101](#)(a), Health and Safety
9 Code, is amended to read as follows:

10 (a) The executive commissioner [~~board~~] shall adopt rules
11 governing the transfer or referral of a patient from a private
12 mental hospital to an inpatient mental health facility.

13 SECTION 3.1397. Section [578.003](#)(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) The executive commissioner [~~board~~] by rule shall adopt a
16 standard written consent form to be used when electroconvulsive
17 therapy is considered. The executive commissioner [~~board~~] by rule
18 shall also prescribe the information that must be contained in the
19 written supplement required under Subsection (c). In addition to
20 the information required under this section, the form must include
21 the information required by the Texas Medical Disclosure Panel for
22 electroconvulsive therapy. In developing the form, the executive
23 commissioner [~~board~~] shall consider recommendations of the panel.
24 Use of the consent form prescribed by the executive commissioner
25 [~~board~~] in the manner prescribed by this section creates a
26 rebuttable presumption that the disclosure requirements of
27 Sections [74.104](#) and [74.105](#), Civil Practice and Remedies Code, have

1 been met.

2 SECTION 3.1398. Sections 578.006(b), (c), (d), and (f),
3 Health and Safety Code, are amended to read as follows:

4 (b) A mental hospital or facility administering
5 electroconvulsive therapy or a private physician administering the
6 therapy on an outpatient basis must file an application for
7 registration under this section. The applicant must submit the
8 application to the department on a form prescribed by [the]
9 department rule.

10 (c) The application must be accompanied by a nonrefundable
11 application fee. The executive commissioner by rule [board] shall
12 set the fee in a reasonable amount not to exceed the cost to the
13 department to administer this section.

14 (d) The application must contain:

15 (1) the model, manufacturer, and age of each piece of
16 equipment used to administer the therapy; and

17 (2) any other information required by [the] department
18 rule.

19 (f) The executive commissioner [board] by rule may prohibit
20 the registration and use of equipment of a type, model, or age the
21 executive commissioner [board] determines is dangerous.

22 SECTION 3.1399. Section 578.007(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) A report must state for each quarter:

25 (1) the number of patients who received the therapy,
26 including:

27 (A) the number of persons voluntarily receiving

1 mental health services who consented to the therapy;

2 (B) the number of involuntary patients who

3 consented to the therapy; and

4 (C) the number of involuntary patients for whom a

5 guardian of the person consented to the therapy;

6 (2) the age, sex, and race of the persons receiving the

7 therapy;

8 (3) the source of the treatment payment;

9 (4) the average number of nonelectroconvulsive

10 treatments;

11 (5) the average number of electroconvulsive

12 treatments administered for each complete series of treatments, but

13 not including maintenance treatments;

14 (6) the average number of maintenance

15 electroconvulsive treatments administered per month;

16 (7) the number of fractures, reported memory losses,

17 incidents of apnea, and cardiac arrests without death;

18 (8) autopsy findings if death followed within 14 days

19 after the date of the administration of the therapy; and

20 (9) any other information required by [the] department

21 rule.

22 SECTION 3.1400. The heading to Subtitle D, Title 7, Health

23 and Safety Code, is amended to read as follows:

24 SUBTITLE D. PERSONS WITH AN INTELLECTUAL DISABILITY [~~MENTAL~~

25 ~~RETARDATION~~] ACT

26 SECTION 3.1401. Section 591.001, Health and Safety Code, is

27 amended to read as follows:

1 Sec. 591.001. SHORT TITLE. This subtitle may be cited as
2 the Persons with an Intellectual Disability [~~Mental Retardation~~]
3 Act.

4 SECTION 3.1402. Section [591.002](#), Health and Safety Code, is
5 amended to read as follows:

6 Sec. 591.002. PURPOSE. (a) It is the public policy of this
7 state that persons with an intellectual disability [~~mental~~
~~retardation~~] have the opportunity to develop to the fullest extent
9 possible their potential for becoming productive members of
10 society.

11 (b) It is the purpose of this subtitle to provide and assure
12 a continuum of quality services to meet the needs of all persons
13 with an intellectual disability [~~mental retardation~~] in this state.

14 (c) The state's responsibility to persons with an
15 intellectual disability [~~mental retardation~~] does not replace or
16 impede parental rights and responsibilities or terminate the
17 activities of persons, groups, or associations that advocate for
18 and assist persons with an intellectual disability [~~mental~~
~~retardation~~].

20 (d) It is desirable to preserve and promote living at home
21 if feasible. If living at home is not possible and placement in a
22 residential care facility [~~for persons with mental retardation~~] is
23 necessary, a person must be admitted in accordance with basic due
24 process requirements, giving appropriate consideration to parental
25 desires if possible. The person must be admitted to a facility that
26 provides habilitative training for the person's condition, that
27 fosters the personal development of the person, and that enhances

1 the person's ability to cope with the environment.

2 (e) Because persons with an intellectual disability [~~mental~~
3 ~~retardation~~] have been denied rights solely because they are
4 persons with an intellectual disability [~~of their retardation~~], the
5 general public should be educated to the fact that persons with an
6 intellectual disability [~~mental retardation~~] who have not been
7 adjudicated incompetent and for whom a guardian has not been
8 appointed by a due process proceeding in a court have the same
9 rights and responsibilities enjoyed by all citizens of this state.
10 All citizens are urged to assist persons with an intellectual
11 disability [~~mental retardation~~] in acquiring and maintaining
12 rights and in participating in community life as fully as possible.

13 SECTION 3.1403. Section 591.003, Health and Safety Code, is
14 amended by amending Subdivisions (3), (4), (5), (6), (7), (8), (9),
15 (10), (14), (15-a), (16), (18), (19), (22), and (23) and adding
16 Subdivisions (4-a) and (9-a) to read as follows:

17 (3) "Care" means the life support and maintenance
18 services or other aid provided to a person with an intellectual
19 disability [~~mental retardation~~], including dental, medical, and
20 nursing care and similar services.

21 (4) "Client" means a person receiving intellectual
22 disability [~~mental retardation~~] services from the department or a
23 community center. The term includes a resident.

24 (4-a) "Commission" means the Health and Human Services
25 Commission.

26 (5) "Commissioner" means the commissioner of aging and
27 disability services [~~mental health and mental retardation~~].

1 (6) "Community center" means an entity organized under
2 Subchapter A, Chapter 534, that provides intellectual disability
3 [~~mental retardation~~] services.

4 (7) "Department" means the [Texas] Department of Aging
5 and Disability Services [~~Mental Health and Mental Retardation~~].

6 (8) "Interdisciplinary team" means a group of
7 intellectual disability [~~mental retardation~~] professionals and
8 paraprofessionals who assess the treatment, training, and
9 habilitation needs of a person with an intellectual disability
10 [~~mental retardation~~] and make recommendations for services for that
11 person.

12 (9) "Director" means the director or superintendent of
13 a residential care facility [~~community center~~].

14 (9-a) "Executive commissioner" means the executive
15 commissioner of the Health and Human Services Commission.

16 (10) "Group home" means a residential arrangement,
17 other than a residential care facility, operated by the department
18 or a community center in which not more than 15 persons with an
19 intellectual disability [~~mental retardation~~] voluntarily live and
20 under appropriate supervision may share responsibilities for
21 operation of the living unit.

22 (14) "Intellectual disability [~~Mental retardation~~]
23 services" means programs and assistance for persons with an
24 intellectual disability [~~mental retardation~~] that may include a
25 determination of an intellectual disability [~~mental retardation~~],
26 interdisciplinary team recommendations, education, special
27 training, supervision, care, treatment, rehabilitation,

1 residential care, and counseling, but does not include those
2 services or programs that have been explicitly delegated by law to
3 other state agencies.

4 (15-a) "Person with an intellectual disability" means
5 a person determined by a physician or psychologist licensed in this
6 state or certified by the department to have subaverage general
7 intellectual functioning with deficits in adaptive behavior.

8 (16) "Person with mental retardation" means a person
9 with an intellectual disability.

10 (18) "Residential care facility" means a state
11 supported living center or the ICF-IID component of the Rio Grande
12 Center [facility operated by the department or a community center
13 that provides 24-hour services, including domiciliary services,
14 directed toward enhancing the health, welfare, and development of
15 persons with mental retardation].

16 (19) "Service provider" means a person who provides
17 intellectual disability [~~mental retardation~~] services.

18 (22) "Training" means the process by which a person
19 with an intellectual disability [~~mental retardation~~] is
20 habilitated and may include the teaching of life and work skills.

21 (23) "Treatment" means the process by which a service
22 provider attempts to ameliorate the condition of a person with an
23 intellectual disability [~~mental retardation~~].

24 SECTION 3.1404. Section 591.004, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 591.004. RULES. The executive commissioner [~~board~~] by
27 rule shall ensure the implementation of this subtitle.

1 SECTION 3.1405. Sections [591.011\(a\), \(b\), \(c\), and \(e\)](#),
2 Health and Safety Code, are amended to read as follows:

3 (a) Subject to the executive commissioner's authority to
4 adopt rules and policies, the [The] department shall make all
5 reasonable efforts consistent with available resources to:

6 (1) assure that each identified person with an
7 intellectual disability [~~mental retardation~~] who needs
8 intellectual disability [~~mental retardation~~] services is given
9 while these services are needed quality care, treatment, education,
10 training, and rehabilitation appropriate to the person's
11 individual needs other than those services or programs explicitly
12 delegated by law to other governmental agencies;

13 (2) initiate, carry out, and evaluate procedures to
14 guarantee to persons with an intellectual disability [~~mental~~
15 ~~retardation~~] the rights listed in this subtitle;

16 (3) carry out this subtitle, including planning,
17 initiating, coordinating, promoting, and evaluating all programs
18 developed;

19 (4) provide either directly or by cooperation,
20 negotiation, or contract with other agencies and those persons and
21 groups listed in Section 533A.034 [~~533.034~~], a continuum of
22 services to persons with an intellectual disability [~~mental~~
23 ~~retardation~~]; and

24 (5) provide, either directly or by contract with other
25 agencies, a continuum of services to children, juveniles, or adults
26 with an intellectual disability [~~mental retardation~~] committed
27 into the department's custody by the juvenile or criminal courts.

1 (b) The services provided by the department under
2 Subsection (a)(4) shall include:

3 (1) treatment and care;

4 (2) education and training, including sheltered
5 workshop programs;

6 (3) counseling and guidance; and

7 (4) development of residential and other facilities to
8 enable persons with an intellectual disability [~~mental~~
9 ~~retardation~~] to live and be habilitated in the community.

10 (c) The facilities provided under Subsection (b) shall
11 include group homes, foster homes, halfway houses, and day-care
12 facilities for persons with an intellectual disability [~~mental~~
13 ~~retardation~~] to which the department has assigned persons with an
14 intellectual disability [~~mental retardation~~].

15 (e) The department shall have the right of access to all
16 clients [~~residents~~] and records of clients [~~residents~~] who are
17 placed with residential service providers.

18 SECTION 3.1406. Section 591.013, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 591.013. LONG-RANGE PLAN. (a) The commission
21 [~~department and the Texas Department of Human Services~~] shall
22 [~~jointly~~] develop a long-range plan for services to persons with
23 intellectual and developmental disabilities[~~, including mental~~
24 ~~retardation~~].

25 (b) The executive commissioner [~~of each department~~] shall
26 appoint the necessary staff to develop the plan through research of
27 appropriate topics and public hearings to obtain testimony from

1 persons with knowledge of or interest in state services to persons
2 with intellectual and developmental disabilities[, ~~including~~
3 ~~mental retardation~~].

4 (c) In developing the plan, the commission [~~department~~] shall consider existing plans or studies made by the commission or
5 department [~~departments~~].

6 (d) The plan must address at least the following topics:

7 (1) the needs of persons with intellectual and
8 developmental disabilities[, ~~including mental retardation~~];

9 (2) how state services should be structured to meet
10 those needs;

11 (3) how the ICF-IID [~~ICF-MR~~] program, the waiver
12 program under Section 1915(c), federal Social Security Act, other
13 programs under Title XIX, federal Social Security Act, and other
14 federally funded programs can best be structured and financed to
15 assist the state in delivering services to persons with
16 intellectual and developmental disabilities[, ~~including mental~~
17 ~~retardation~~];

18 (4) the statutory limits and rule or policy changes
19 necessary to ensure the controlled growth of the programs under
20 Title XIX, federal Social Security Act, and other federally funded
21 programs;

22 (5) methods for expanding services available through
23 the ICF-IID [~~ICF-MR~~] program to persons with related conditions as
24 defined by federal regulations relating to the medical assistance
25 program; and

26 (6) the cost of implementing the plan.

1 (e) The commission and the department [~~departments~~] shall,
2 if necessary, modify their respective long-range plans and other
3 existing plans relating to the provision of services to persons
4 with intellectual and developmental disabilities[~~, including~~
5 ~~mental retardation,~~] to incorporate the provisions of the [~~joint~~]
6 plan.

7 (f) The commission [~~departments~~] shall review and revise
8 the plan biennially. The commission and the [~~Each~~] department
9 shall consider the most recent revision of the plan in any
10 modifications of the commission's or [~~that~~] department's long-range
11 plans and in each future budget request.

12 (g) This section does not affect the authority of the
13 commission and the department [~~and the Texas Department of Human~~
14 ~~Services~~] to carry out their separate functions as established by
15 state and federal law.

16 (h) In this section, "ICF-IID [~~ICF-MR~~] program" means the
17 medical assistance program serving persons with intellectual and
18 developmental disabilities [~~mental retardation~~] who receive care
19 in intermediate care facilities.

20 SECTION 3.1407. Sections 591.022(a), (b), and (c), Health
21 and Safety Code, are amended to read as follows:

22 (a) A person who intentionally violates the rights
23 guaranteed by this subtitle to a person with an intellectual
24 disability [~~mental retardation~~] is liable to the person injured by
25 the violation in an amount of not less than \$100 or more than
26 \$5,000.

27 (b) A person who recklessly violates the rights guaranteed

1 by this subtitle to a person with an intellectual disability
2 [mental retardation] is liable to the person injured by the
3 violation in an amount of not less than \$100 or more than \$1,000.

4 (c) A person who intentionally releases confidential
5 information or records of a person with an intellectual disability
6 [mental retardation] in violation of law is liable to the person
7 injured by the unlawful disclosure for \$1,000 or three times the
8 actual damages, whichever is greater.

9 SECTION 3.1408. Sections 591.023(a) and (e), Health and
10 Safety Code, are amended to read as follows:

11 (a) A district court, in an action brought in the name of the
12 state by the state attorney general or a district or county attorney
13 within the attorney's respective jurisdiction, may issue a
14 temporary restraining order, a temporary injunction, or a permanent
15 injunction to:

16 (1) restrain and prevent a person from violating this
17 subtitle or a rule adopted by the executive commissioner
18 [department] under this subtitle; or

19 (2) enforce compliance with this subtitle or a rule
20 adopted by the executive commissioner [department] under this
21 subtitle.

22 (e) A civil penalty recovered under this section shall be
23 paid to the state for use in intellectual disability [mental
24 retardation] services.

25 SECTION 3.1409. The heading to Chapter 592, Health and
26 Safety Code, is amended to read as follows:

27 CHAPTER 592. RIGHTS OF PERSONS WITH AN INTELLECTUAL DISABILITY

1 [MENTAL RETARDATION]

2 SECTION 3.1410. Section 592.001, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 592.001. PURPOSE. The purpose of this chapter is to
5 recognize and protect the individual dignity and worth of each
6 person with an intellectual disability [mental retardation].

7 SECTION 3.1411. Section 592.002, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 592.002. RULES. The executive commissioner [~~board~~] by
10 rule shall ensure the implementation of the rights guaranteed in
11 this chapter.

12 SECTION 3.1412. Subchapter B, Chapter 592, Health and
13 Safety Code, is amended to read as follows:

14 SUBCHAPTER B. BASIC BILL OF RIGHTS

15 Sec. 592.011. RIGHTS GUARANTEED. (a) Each person with an
16 intellectual disability [mental retardation] in this state has the
17 rights, benefits, and privileges guaranteed by the constitution and
18 laws of the United States and this state.

19 (b) The rights specifically listed in this subtitle are in
20 addition to all other rights that persons with an intellectual
21 disability [mental retardation] have and are not exclusive or
22 intended to limit the rights guaranteed by the constitution and
23 laws of the United States and this state.

24 Sec. 592.012. PROTECTION FROM EXPLOITATION AND ABUSE. Each
25 person with an intellectual disability [mental retardation] has the
26 right to protection from exploitation and abuse because of the
27 person's intellectual disability [mental retardation].

1 Sec. 592.013. LEAST RESTRICTIVE LIVING ENVIRONMENT. Each
2 person with an intellectual disability [~~mental retardation~~] has the
3 right to live in the least restrictive setting appropriate to the
4 person's individual needs and abilities and in a variety of living
5 situations, including living:

- 6 (1) alone;
7 (2) in a group home;
8 (3) with a family; or
9 (4) in a supervised, protective environment.

10 Sec. 592.014. EDUCATION. Each person with an intellectual
11 disability [~~mental retardation~~] has the right to receive publicly
12 supported educational services, including those services provided
13 under the Education Code, that are appropriate to the person's
14 individual needs regardless of [~~the person's~~]:

- 15 (1) the person's chronological age;
16 (2) the degree of the person's intellectual disability
17 [~~retardation~~];
18 (3) the person's accompanying disabilities or
19 handicaps; or
20 (4) the person's admission or commitment to
21 intellectual disability [~~mental retardation~~] services.

22 Sec. 592.015. EMPLOYMENT. An employer, employment agency,
23 or labor organization may not deny a person equal opportunities in
24 employment because of the person's intellectual disability [~~mental~~
25 ~~retardation~~], unless:

- 26 (1) the person's intellectual disability [~~mental~~
27 ~~retardation~~] significantly impairs the person's ability to perform

1 the duties and tasks of the position for which the person has
2 applied; or

3 (2) the denial is based on a bona fide occupational
4 qualification reasonably necessary to the normal operation of the
5 particular business or enterprise.

6 Sec. 592.016. HOUSING. An owner, lessee, sublessee,
7 assignee, or managing agent or other person having the right to
8 sell, rent, or lease real property, or an agent or employee of any
9 of these, may not refuse to sell, rent, or lease to any person or
10 group of persons solely because the person is a person with an
11 intellectual disability [~~mental retardation~~] or a group that
12 includes one or more persons with an intellectual disability
13 [~~mental retardation~~].

14 Sec. 592.017. TREATMENT AND SERVICES. Each person with an
15 intellectual disability [~~mental retardation~~] has the right to
16 receive for the person's intellectual disability [~~mental~~
17 ~~retardation~~] adequate treatment and habilitative services that:

18 (1) are suited to the person's individual needs;
19 (2) maximize the person's capabilities;
20 (3) enhance the person's ability to cope with the
21 person's environment; and

22 (4) are administered skillfully, safely, and humanely
23 with full respect for the dignity and personal integrity of the
24 person.

25 Sec. 592.018. DETERMINATION OF AN INTELLECTUAL DISABILITY
26 [~~MENTAL RETARDATION~~]. A person thought to be a person with an
27 intellectual disability [~~mental retardation~~] has the right

1 promptly to receive a determination of an intellectual disability
2 [mental retardation] using diagnostic techniques that are adapted
3 to that person's cultural background, language, and ethnic origin
4 to determine if the person is in need of intellectual disability
5 [mental retardation] services as provided by Subchapter A, Chapter
6 593.

7 Sec. 592.019. ADMINISTRATIVE HEARING. A person who files
8 an application for a determination of an intellectual disability
9 [mental retardation] has the right to request and promptly receive
10 an administrative hearing under Subchapter A, Chapter 593, to
11 contest the findings of the determination of an intellectual
12 disability [mental retardation].

13 Sec. 592.020. INDEPENDENT DETERMINATION OF AN INTELLECTUAL
14 DISABILITY [MENTAL RETARDATION]. A person for whom a determination
15 of an intellectual disability [mental retardation] is performed or
16 a person who files an application for a determination of an
17 intellectual disability [mental retardation] under Section 593.004
18 and who questions the validity or results of the determination of an
19 intellectual disability [mental retardation] has the right to an
20 additional, independent determination of an intellectual
21 disability [mental retardation] performed at the person's own
22 expense.

23 Sec. 592.021. ADDITIONAL RIGHTS. Each person with an
24 intellectual disability [mental retardation] has the right to:

- 25 (1) presumption of competency;
- 26 (2) due process in guardianship proceedings; and
- 27 (3) fair compensation for the person's labor for the

1 economic benefit of another, regardless of any direct or incidental
2 therapeutic value to the person.

3 SECTION 3.1413. Sections 592.033(c) and (d), Health and
4 Safety Code, are amended to read as follows:

5 (c) The plan shall be implemented as soon as possible but
6 not later than the 30th day after the date on which the client is
7 admitted or committed to intellectual disability [mental
8 retardation] services.

9 (d) The content of an individualized habilitation plan is as
10 required by department rule and as may be required by the department
11 by contract.

12 SECTION 3.1414. Section 592.036(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) Except as provided by Section 593.030, a client, the
15 parent if the client is a minor, or a guardian of the person may
16 withdraw the client from intellectual disability [mental
17 retardation] services.

18 SECTION 3.1415. Section 592.039, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 592.039. GRIEVANCES. A client, or a person acting on
21 behalf of a person with an intellectual disability [mental
22 retardation] or a group of persons with an intellectual disability
23 [mental retardation], has the right to submit complaints or
24 grievances regarding the infringement of the rights of a person
25 with an intellectual disability [mental retardation] or the
26 delivery of intellectual disability [mental retardation] services
27 against a person, group of persons, organization, or business to

1 the department's Office of Consumer Rights and Services
2 [~~appropriate public responsibility committee~~] for investigation
3 and appropriate action.

4 SECTION 3.1416. Section 592.040(a), Health and Safety Code,
5 is amended to read as follows:

6 (a) On admission for intellectual disability [~~mental~~
7 ~~retardation~~] services, each client, and the parent if the client is
8 a minor or the guardian of the person of the client, shall be given
9 written notice of the rights guaranteed by this subtitle. The
10 notice shall be in plain and simple language.

11 SECTION 3.1417. The heading to Section 592.054, Health and
12 Safety Code, is amended to read as follows:

13 Sec. 592.054. DUTIES OF [~~SUPERINTENDENT OR~~] DIRECTOR.

14 SECTION 3.1418. Section 592.054(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) Except as limited by this subtitle, the [~~superintendent~~
17 ~~or~~] director shall provide without further consent necessary care
18 and treatment to each court-committed resident and make available
19 necessary care and treatment to each voluntary resident.

20 SECTION 3.1419. Section 592.153(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) In this section, "ward" has the meaning assigned by
23 Section 1002.030, Estates [~~601, Texas Probate~~] Code.

24 SECTION 3.1420. The heading to Chapter 593, Health and
25 Safety Code, is amended to read as follows:

26 CHAPTER 593. ADMISSION AND COMMITMENT TO INTELLECTUAL DISABILITY
27 [~~MENTAL RETARDATION~~] SERVICES

1 SECTION 3.1421. Section 593.001, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 593.001. ADMISSION. A person may be admitted for
4 intellectual disability [~~mental retardation~~] services offered by
5 the department or a community center, admitted voluntarily to a
6 residential care program, or committed to a residential care
7 facility, only as provided by this chapter.

8 SECTION 3.1422. Section 593.002, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 593.002. CONSENT REQUIRED. (a) Except as provided by
11 Subsection (b), the department or a community center may not
12 provide intellectual disability [~~mental retardation~~] services to a
13 client without the client's legally adequate consent.

14 (b) The department or community center may provide
15 nonresidential intellectual disability [~~mental retardation~~]
16 services, including a determination of an intellectual disability
17 [~~mental retardation~~], to a client without the client's legally
18 adequate consent if the department or community center has made all
19 reasonable efforts to obtain consent.

20 (c) The executive commissioner [~~board~~] by rule shall
21 prescribe the efforts to obtain consent that are reasonable and the
22 documentation for those efforts.

23 SECTION 3.1423. Section 593.003, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 593.003. REQUIREMENT OF DETERMINATION OF AN
26 INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]. [(a)] Except as
27 provided by Sections 593.027, 593.0275, and 593.028, a person is

1 not eligible to receive intellectual disability [~~mental~~
2 ~~retardation~~] services unless the person first is determined to be a
3 person with an intellectual disability [~~have mental retardation~~].

4 [(b) ~~This section does not apply to an eligible child with a~~
5 ~~developmental disability receiving services under Subchapter A,~~
6 ~~Chapter 535.~~]

7 SECTION 3.1424. The heading to Section 593.004, Health and
8 Safety Code, is amended to read as follows:

9 Sec. 593.004. APPLICATION FOR DETERMINATION OF AN
10 INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~].

11 SECTION 3.1425. Section 593.004(b), Health and Safety Code,
12 is amended to read as follows:

13 (b) A person believed to be a person with an intellectual
14 disability [~~mental retardation~~], the parent if the person is a
15 minor, or the guardian of the person may make written application to
16 an authorized provider for a determination of an intellectual
17 disability [~~mental retardation~~] using forms provided by the
18 department.

19 SECTION 3.1426. The heading to Section 593.005, Health and
20 Safety Code, is amended to read as follows:

21 Sec. 593.005. DETERMINATION OF AN INTELLECTUAL DISABILITY
22 [~~MENTAL RETARDATION~~].

23 SECTION 3.1427. Sections 593.005(a-1) and (d), Health and
24 Safety Code, are amended to read as follows:

25 (a-1) An authorized provider shall perform the
26 determination of an intellectual disability [~~mental retardation~~].

27 The department may charge a reasonable fee for certifying an

1 authorized provider.

2 (d) If the person is indigent, the determination of an
3 intellectual disability [~~mental retardation~~] shall be performed at
4 the department's expense by an authorized provider.

5 SECTION 3.1428. Section 593.006, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 593.006. REPORT. A person who files an application for
8 a determination of an intellectual disability [~~mental retardation~~]
9 under Section 593.004 shall be promptly notified in writing of the
10 findings.

11 SECTION 3.1429. Section 593.007, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 593.007. NOTIFICATION OF CERTAIN RIGHTS. The
14 department shall inform the person who filed an application for a
15 determination of an intellectual disability [~~mental retardation~~]
16 of the person's right to:

17 (1) an independent determination of an intellectual
18 disability [~~mental retardation~~] under Section 592.020; and

19 (2) an administrative hearing under Section 593.008 by
20 the agency that conducted the determination of an intellectual
21 disability [~~mental retardation~~] to contest the findings.

22 SECTION 3.1430. Sections 593.008(b) and (e), Health and
23 Safety Code, are amended to read as follows:

24 (b) The proposed client, contestant, and their respective
25 representative by right may:

26 (1) have reasonable access at a reasonable time before
27 the hearing to any records concerning the proposed client relevant

1 to the proposed action;

2 (2) present oral or written testimony and evidence,
3 including the results of an independent determination of an
4 intellectual disability [~~mental retardation~~]; and

5 (3) examine witnesses.

6 (e) The executive commissioner [~~board~~] by rule shall
7 implement the hearing procedures.

8 SECTION 3.1431. Section 593.012(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) The director [~~superintendent~~] of a residential care
11 facility to which a client has been admitted for court-ordered care
12 and treatment may have a client who is absent without authority
13 taken into custody, detained, and returned to the facility by
14 issuing a certificate to a law enforcement agency of the
15 municipality or county in which the facility is located or by
16 obtaining a court order issued by a magistrate in the manner
17 prescribed by Section 574.083.

18 SECTION 3.1432. Sections 593.013(b) and (f), Health and
19 Safety Code, are amended to read as follows:

20 (b) An interdisciplinary team shall:

21 (1) interview the person with an intellectual
22 disability [~~mental retardation~~], the person's parent if the person
23 is a minor, and the person's guardian;

24 (2) review the person's:

25 (A) social and medical history;

26 (B) medical assessment, which shall include an
27 audiological, neurological, and vision screening;

7 (5) identify the person's habilitation and service
8 preferences and needs; and

9 (6) recommend services to address the person's needs
10 that consider the person's preferences.

11 (f) If the court has ordered the interdisciplinary team
12 report and recommendations under Section [593.041](#), the team shall
13 promptly send a copy of the report and recommendations to the court,
14 the person with an intellectual disability [mental retardation] or
15 the person's legal representative, the person's parent if the
16 person is a minor, and the person's guardian.

17 SECTION 3.1433. The heading to Subchapter B, Chapter 593,
18 Health and Safety Code, is amended to read as follows:

19 SUBCHAPTER B. APPLICATION AND ADMISSION TO VOLUNTARY INTELLECTUAL
20 DISABILITY [~~MENTAL RETARDATION~~] SERVICES

21 SECTION 3.1434. Section 593.021(a), Health and Safety Code,
22 is amended to read as follows:

23 (a) The proposed client or the parent if the proposed client
24 is a minor may apply for voluntary intellectual disability [~~mental~~
25 ~~retardation~~] services under Section 593.022, 593.026, 593.027,
26 593.0275, or 593.028.

27 SECTION 3.1435. The heading to Section 593.022, Health and

1 Safety Code, is amended to read as follows:

2 Sec. 593.022. ADMISSION TO VOLUNTARY INTELLECTUAL
3 DISABILITY [~~MENTAL RETARDATION~~] SERVICES.

4 SECTION 3.1436. Section 593.022(a), Health and Safety Code,
5 is amended to read as follows:

6 (a) An eligible person who applies for intellectual
7 disability [~~mental retardation~~] services may be admitted as soon as
8 appropriate services are available.

9 SECTION 3.1437. Section 593.023(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) The executive commissioner [~~board~~] by rule shall
12 develop and adopt procedures permitting a client, a parent if the
13 client is a minor, or a guardian of the person to participate in
14 planning the client's treatment and habilitation, including a
15 decision to recommend or place a client in an alternative setting.

16 SECTION 3.1438. Section 593.026, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 593.026. REGULAR VOLUNTARY ADMISSION. A regular
19 voluntary admission is permitted if:

20 (1) space is available at the facility for which
21 placement is requested; and

22 (2) the facility director [~~superintendent~~] determines
23 that the facility provides services that meet the needs of the
24 proposed resident.

25 SECTION 3.1439. Section 593.027, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 593.027. EMERGENCY ADMISSION. (a) An emergency

1 admission to a residential care facility is permitted without a
2 determination of an intellectual disability [~~mental retardation~~]
3 and an interdisciplinary team recommendation if:

4 (1) there is persuasive evidence that the proposed
5 resident is a person with an intellectual disability [~~mental~~
6 ~~retardation~~];

7 (2) space is available at the facility for which
8 placement is requested;

9 (3) the proposed resident has an urgent need for
10 services that the facility director [~~superintendent~~] determines
11 the facility provides; and

12 (4) the facility can provide relief for the urgent
13 need within a year after admission.

14 (b) A determination of an intellectual disability [~~mental~~
15 ~~retardation~~] and an interdisciplinary team recommendation for the
16 person admitted under this section shall be performed within 30
17 days after the date of admission.

18 SECTION 3.1440. Section 593.0275, Health and Safety Code,
19 is amended to read as follows:

20 Sec. 593.0275. EMERGENCY SERVICES. (a) A person may
21 receive emergency services without a determination of an
22 intellectual disability [~~mental retardation~~] if:

23 (1) there is persuasive evidence that the person is a
24 person with an intellectual disability [~~mental retardation~~];

25 (2) emergency services are available; and

26 (3) the person has an urgent need for emergency
27 services.

1 (b) A determination of an intellectual disability [~~mental~~
2 ~~retardation~~] for the person served under this section shall be
3 performed within 30 days after the date the services begin.

4 SECTION 3.1441. Sections 593.028(a) and (b), Health and
5 Safety Code, are amended to read as follows:

6 (a) A person may be admitted to a residential care facility
7 for respite care without a determination of an intellectual
8 disability [~~mental retardation~~] and interdisciplinary team
9 recommendation if:

10 (1) there is persuasive evidence that the proposed
11 resident is a person with an intellectual disability [~~mental~~
12 ~~retardation~~];

13 (2) space is available at the facility for which
14 respite care is requested;

15 (3) the facility director [~~superintendent~~] determines
16 that the facility provides services that meet the needs of the
17 proposed resident; and

18 (4) the proposed resident or the proposed resident's
19 family urgently requires assistance or relief that can be provided
20 within a period not to exceed 30 consecutive days after the date of
21 admission.

22 (b) If the relief sought by the proposed resident or the
23 proposed resident's family has not been provided within 30 days,
24 one 30-day extension may be allowed if:

25 (1) the facility director [~~superintendent~~] determines
26 that the relief may be provided in the additional period; and

27 (2) the parties agreeing to the original placement

1 consent to the extension.

2 SECTION 3.1442. Section 593.029, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 593.029. TREATMENT OF MINOR WHO REACHES MAJORITY.

5 When a facility resident who is voluntarily admitted as a minor
6 approaches 18 years of age and continues to be in need of
7 residential services, the facility director [~~superintendent~~] shall
8 ensure that when the resident becomes an adult:

9 (1) the resident's legally adequate consent for
10 admission to the facility is obtained from the resident or the
11 guardian of the person; or

12 (2) an application is filed for court commitment under
13 Subchapter C.

14 SECTION 3.1443. Section 593.030, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 593.030. WITHDRAWAL FROM SERVICES. A resident
17 voluntarily admitted to a residential care facility may not be
18 detained more than 96 hours after the time the resident, the
19 resident's parents if the resident is a minor, or the guardian of
20 the resident's person requests discharge of the resident as
21 provided by department rules, unless:

22 (1) the facility director [~~superintendent~~] determines
23 that the resident's condition or other circumstances are such that
24 the resident cannot be discharged without endangering the safety of
25 the resident or the general public;

26 (2) the facility director [~~superintendent~~] files an
27 application for judicial commitment under Section 593.041; and

1 (3) a court issues a protective custody order under
2 Section 593.044 pending a final determination on the application.

3 SECTION 3.1444. Sections 593.041(a), (b), (c), and (e),
4 Health and Safety Code, are amended to read as follows:

5 (a) A proposed resident, if an adult, a parent if the
6 proposed resident is a minor, the guardian of the person, the court,
7 or any other interested person, including a community center or
8 agency that conducted a determination of an intellectual disability
9 [~~mental retardation~~] of the proposed resident, may file an
10 application for an interdisciplinary team report and
11 recommendation that the proposed client is in need of long-term
12 placement in a residential care facility.

13 (b) Except as provided by Subsection (e), the application
14 must be filed with the county clerk in the county in which the
15 proposed resident resides. If the director [~~superintendent~~] of a
16 residential care facility files an application for judicial
17 commitment of a voluntary resident, the county in which the
18 facility is located is considered the resident's county of
19 residence.

20 (c) The county court has original jurisdiction of all
21 judicial proceedings for commitment of a person with an
22 intellectual disability [~~mental retardation~~] to residential care
23 facilities.

24 (e) An application in which the proposed patient is a child
25 in the custody of the Texas Juvenile Justice Department [~~Youth~~
26 ~~Commission~~] may be filed in the county in which the child's
27 commitment to the Texas Juvenile Justice Department [~~the~~

1 ~~commission~~] was ordered.

2 SECTION 3.1445. Section 593.044(a), Health and Safety Code,
3 is amended to read as follows:

4 (a) The court in which an application for a hearing is filed
5 may order the proposed resident taken into protective custody if
6 the court determines from certificates filed with the court that
7 the proposed resident is:

8 (1) believed to be a person with an intellectual
9 disability [~~mental retardation~~]; and

10 (2) likely to cause injury to the proposed resident
11 [~~himself~~] or others if not immediately restrained.

12 SECTION 3.1446. Section 593.048, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 593.048. HEARING NOTICE. (a) Not later than the 11th
15 day before the date set for the hearing, a copy of the application,
16 notice of the time and place of the hearing and, if appropriate, the
17 order for the determination of an intellectual disability [~~mental~~
18 ~~retardation~~] and interdisciplinary team report and recommendations
19 shall be served on:

20 (1) the proposed resident or the proposed resident's
21 representative;

22 (2) the parent if the proposed resident is a minor;

23 (3) the guardian of the person; and

24 (4) the department.

25 (b) The notice must specify in plain and simple language:

26 (1) the right to an independent determination of an
27 intellectual disability [~~mental retardation~~] under Section

1 593.007; and

2 (2) the provisions of Sections 593.043, 593.047,
3 593.049, 593.050, and 593.053.

4 SECTION 3.1447. Section 593.050(d), Health and Safety Code,
5 is amended to read as follows:

6 (d) The Texas Rules of Evidence apply. The results of the
7 determination of an intellectual disability [~~mental retardation~~]
8 and the current interdisciplinary team report and recommendations
9 shall be presented in evidence.

10 SECTION 3.1448. Section 593.052(a), Health and Safety Code,
11 is amended to read as follows:

12 (a) A proposed resident may not be committed to a
13 residential care facility unless:

14 (1) the proposed resident is a person with an
15 intellectual disability [~~mental retardation~~];

16 (2) evidence is presented showing that because of the
17 proposed resident's intellectual disability [~~retardation~~], the
18 proposed resident:

19 (A) represents a substantial risk of physical
20 impairment or injury to the proposed resident [~~himself~~] or others;
21 or

22 (B) is unable to provide for and is not providing
23 for the proposed resident's most basic personal physical needs;

24 (3) the proposed resident cannot be adequately and
25 appropriately habilitated in an available, less restrictive
26 setting; and

27 (4) the residential care facility provides

1 habilitative services, care, training, and treatment appropriate
2 to the proposed resident's needs.

3 SECTION 3.1449. Section 593.073, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 593.073. DETERMINATION OF RESIDENTIAL COSTS. The
6 executive commissioner [board] by rule may determine the cost of
7 support, maintenance, and treatment of a resident.

8 SECTION 3.1450. Sections 593.074(b), (c), and (d), Health
9 and Safety Code, are amended to read as follows:

10 (b) The executive commissioner [department] may use the
11 projected cost of providing residential services to establish by
12 rule the maximum fee that may be charged to a payer.

13 (c) The executive commissioner by rule [department] may
14 establish maximum fees on one or a combination of the following:

15 (1) a statewide per capita;
16 (2) an individual facility per capita; or
17 (3) the type of service provided.

18 (d) Notwithstanding Subsection (b), the executive
19 commissioner by rule [department] may establish a fee in excess of
20 the department's projected cost of providing residential services
21 that may be charged to a payer:

22 (1) who is not an individual; and
23 (2) whose method of determining the rate of
24 reimbursement to a provider results in the excess.

25 SECTION 3.1451. Sections 593.075(a), (b), (d), and (e),
26 Health and Safety Code, are amended to read as follows:

27 (a) The executive commissioner [board] by rule shall

1 establish a sliding fee schedule for the payment by the resident's
2 parents of the state's total costs for the support, maintenance,
3 and treatment of a resident younger than 18 years of age.

4 (b) The executive commissioner by rule [board] shall set the
5 fee according to the parents' net taxable income and ability to pay.

6 (d) In determining the portion of the costs of the
7 resident's support, maintenance, and treatment that the parents are
8 required to pay, the department, in accordance with rules adopted
9 by the executive commissioner, shall adjust, when appropriate, the
10 payment required under the fee schedule to allow for consideration
11 of other factors affecting the ability of the parents to pay.

12 (e) The executive commissioner [department] shall evaluate
13 and, if necessary, revise the fee schedule at least once every five
14 years.

15 SECTION 3.1452. Section 593.077(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) Child support payments for the benefit of a resident
18 paid or owed by a parent under court order are considered the
19 property and estate of the resident and the [department may]:

20 (1) department may be reimbursed for the costs of a
21 resident's support, maintenance, and treatment from those amounts;
22 and

23 (2) executive commissioner by rule may establish a fee
24 based on the child support obligation in addition to other fees
25 authorized by this subchapter.

26 SECTION 3.1453. Section 593.081(f), Health and Safety Code,
27 is amended to read as follows:

1 (f) For the purposes of this section, the following are not
2 considered to be trusts and are not entitled to the exemption
3 provided by this section:

4 (1) a guardianship established under the former Texas
5 Probate Code or under the Estates Code;

6 (2) a trust established under Chapter 142, Property
7 Code;

8 (3) a facility custodial account established under
9 Section 551.003;

10 (4) the provisions of a divorce decree or other court
11 order relating to child support obligations;

12 (5) an administration of a decedent's estate; or

13 (6) an arrangement in which funds are held in the
14 registry or by the clerk of a court.

15 SECTION 3.1454. Subchapter D, Chapter 593, Health and
16 Safety Code, is amended by adding Section 593.082 to read as
17 follows:

18 Sec. 593.082. FILING OF CLAIMS. (a) In this section:

19 (1) "Person responsible for a resident" means the
20 resident, a person liable for the support of the resident, or both.

21 (2) "Resident" means a person admitted to a
22 residential care facility operated by the department for persons
23 with an intellectual disability.

24 (b) A county or district attorney shall, on the written
25 request of the department, represent the state in filing a claim in
26 probate court or a petition in a court of competent jurisdiction to
27 require a person responsible for a resident to appear in court and

1 show cause why the state should not have judgment against the person
2 for the resident's support and maintenance in a residential care
3 facility operated by the department.

4 (c) On a sufficient showing, the court may enter judgment
5 against the person responsible for the resident for the costs of the
6 resident's support and maintenance.

7 (d) Sufficient evidence to authorize the court to enter
8 judgment is a verified account, sworn to by the director of the
9 residential care facility in which the person with an intellectual
10 disability resided or has resided, as to the amount due.

11 (e) The judgment may be enforced as in other cases.

12 (f) The county or district attorney representing the state
13 is entitled to a commission of 10 percent of the amount collected.

14 (g) The attorney general shall represent the state if the
15 county and district attorney refuse or are unable to act on the
16 department's request.

17 SECTION 3.1455. Section 593.092, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 593.092. DISCHARGE OF PERSON VOLUNTARILY ADMITTED TO
20 RESIDENTIAL CARE FACILITY. (a) Except as otherwise provided, a
21 resident voluntarily admitted to a residential care facility under
22 a law in force before January 1, 1978, shall be discharged not later
23 than the 96th hour after the time the facility director
24 [superintendent] receives written request from the person on whose
25 application the resident was admitted, or on the resident's own
26 request.

27 (b) The facility director [superintendent] may detain the

1 resident for more than 96 hours in accordance with Section 593.030.

2 SECTION 3.1456. Sections 594.001(b) and (c), Health and
3 Safety Code, are amended to read as follows:

4 (b) This chapter does not apply to the:

5 (1) transfer of a client for emergency medical,
6 dental, or psychiatric care for not more than 30 consecutive days;

7 (2) voluntary withdrawal of a client from intellectual
8 disability [mental retardation] services; or

9 (3) discharge of a client by a [~~superintendent or~~]
10 director because the person is not a person with an intellectual
11 disability [mental retardation] according to the results of the
12 determination of an intellectual disability [mental retardation].

13 (c) A discharge under Subsection (b)(3) is without further
14 hearings, unless an administrative hearing under Subchapter A,
15 Chapter 593, to contest the determination of an intellectual
16 disability [mental retardation] is requested.

17 SECTION 3.1457. Section 594.002, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 594.002. LEAVE; FURLough. The director
20 [~~superintendent~~] may grant or deny a resident a leave of absence or
21 furlough.

22 SECTION 3.1458. Section 594.014(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) A client may not be transferred to another facility or
25 discharged from intellectual disability [mental retardation]
26 services unless the client is given the opportunity to request and
27 receive an administrative hearing to contest the proposed transfer

1 or discharge.

2 SECTION 3.1459. Section 594.015(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) The client, the parent of a client who is a minor, the
5 guardian of the person, and the director [~~superintendent~~] have the
6 right to:

7 (1) be present and represented at the hearing; and
8 (2) have reasonable access at a reasonable time before
9 the hearing to any records concerning the client relevant to the
10 proposed action.

11 SECTION 3.1460. Section 594.016(d), Health and Safety Code,
12 is amended to read as follows:

13 (d) If an appeal is not filed from a final order granting a
14 request for a transfer or discharge, the director [~~superintendent~~]
15 shall proceed with the transfer or discharge.

16 SECTION 3.1461. Section 594.019(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) The department shall provide appropriate alternative or
19 follow-up supportive services consistent with available resources
20 by agreement among the department, the local intellectual and
developmental disability [~~mental retardation~~] authority in the
22 area in which the client will reside, and the client, parent of a
23 client who is a minor, or guardian of the person. The services
24 shall be consistent with the rights guaranteed in Chapter 592.

25 SECTION 3.1462. Subchapter C, Chapter 594, Health and
26 Safety Code, is amended by adding Section 594.0301 to read as
27 follows:

1 Sec. 594.0301. DEFINITION. In this subchapter, "state
2 mental hospital" has the meaning assigned by Section [571.003](#).

3 SECTION 3.1463. Section [594.032](#)(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) The director [~~superintendent~~] may transfer a resident
6 committed to a residential care facility under Subchapter C,
7 Chapter 593, to a state mental hospital for mental health care if:

8 (1) an examination of the resident by a licensed
9 physician indicates symptoms of mental illness to the extent that
10 care, treatment, [~~control~~], and rehabilitation in a state mental
11 hospital is in the best interest of the resident;

12 (2) the hospital administrator of the state mental
13 hospital to which the resident is to be transferred agrees to the
14 transfer; and

15 (3) the director coordinates the transfer with the
16 hospital administrator of the state mental hospital.

17 SECTION 3.1464. Section [594.036](#)(b), Health and Safety Code,
18 is amended to read as follows:

19 (b) Notice shall also be served on the parents if the
20 resident is a minor and on the guardian for the resident's person if
21 the resident has been declared to be incapacitated as provided by
22 the former Texas Probate Code or the Estates Code and a guardian has
23 been appointed.

24 SECTION 3.1465. Section [594.041](#)(b), Health and Safety Code,
25 is amended to read as follows:

26 (b) A person may not be transferred to a state mental
27 hospital except on competent medical or psychiatric testimony.

1 SECTION 3.1466. The heading to Section 594.044, Health and
2 Safety Code, is amended to read as follows:

3 Sec. 594.044. TRANSFER TO [OF] RESIDENTIAL CARE FACILITY.

4 SECTION 3.1467. Section 594.044(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) The hospital administrator of the state mental hospital
7 shall notify the director [~~superintendent~~] of the facility from
8 which the resident was transferred that hospitalization in a state
9 mental hospital is not necessary or appropriate for the resident.
10 The director [~~superintendent~~] shall immediately provide for the
11 return of the resident to the facility.

12 SECTION 3.1468. Section 594.045(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) If a resident has been transferred to a state mental
15 hospital under a court order under this subchapter, the hospital
16 administrator of the state mental hospital shall:

17 (1) send a certificate to the committing court stating
18 that the resident does not require hospitalization in a state
19 mental hospital but requires care in a residential care facility
20 because of the resident's intellectual disability [~~mental~~
21 ~~retardation~~]; and

22 (2) request that the resident be transferred to a
23 residential care facility.

24 SECTION 3.1469. Section 595.001, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 595.001. CONFIDENTIALITY OF RECORDS. Records of the
27 identity, diagnosis, evaluation, or treatment of a person that are

1 maintained in connection with the performance of a program or
2 activity relating to an intellectual disability [~~mental~~
3 ~~retardation~~] are confidential and may be disclosed only for the
4 purposes and under the circumstances authorized by this chapter,
5 subject to applicable federal and other state law [~~under Sections~~
6 ~~595.003 and 595.004~~].

7 SECTION 3.1470. Section 595.002, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 595.002. RULES. The executive commissioner [~~board10 shall adopt rules to carry out this chapter that are [~~the department~~
11 ~~considers~~] necessary or proper to:~~

12 (1) prevent circumvention or evasion of the chapter;
13 or

14 (2) facilitate compliance with the chapter.

15 SECTION 3.1471. Section 595.005(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) The content of a confidential record may be disclosed
18 without the consent required under Section 595.003 to:

19 (1) medical personnel to the extent necessary to meet
20 a medical emergency;

21 (2) qualified personnel for management audits,
22 financial audits, program evaluations, or research approved by the
23 department; or

24 (3) personnel legally authorized to conduct
25 investigations concerning complaints of abuse or denial of rights
26 of persons with an intellectual disability [~~mental retardation~~].

27 SECTION 3.1472. Section 595.0055(b), Health and Safety

1 Code, is amended to read as follows:

2 (b) Notwithstanding any other law, on request by a
3 representative of a cemetery organization or funeral
4 establishment, the director [~~superintendent~~] of a residential care
5 facility shall release to the representative the name, date of
6 birth, or date of death of a person who was a resident at the
7 facility when the person died, unless the person or the person's
8 guardian provided written instructions to the facility not to
9 release the person's name or dates of birth and death. A
10 representative of a cemetery organization or a funeral
11 establishment may use a name or date released under this subsection
12 only for the purpose of inscribing the name or date on a grave
13 marker.

14 SECTION 3.1473. Section 595.008, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 595.008. EXCHANGE OF RECORDS. The prohibitions
17 against disclosure apply to an exchange of records between
18 government agencies or persons, except for exchanges of information
19 necessary for:

20 (1) delivery of services to clients; or
21 (2) payment for intellectual disability [~~mental~~
22 ~~retardation~~] services as defined in this subtitle.

23 SECTION 3.1474. Section 595.010, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 595.010. DISCLOSURE OF PHYSICAL OR MENTAL CONDITION.
26 This chapter does not prohibit a qualified professional from
27 disclosing the current physical and mental condition of a person

1 with an intellectual disability [~~mental retardation~~] to the
2 person's parent, guardian, relative, or friend.

3 SECTION 3.1475. Sections [597.001](#)(2), (4), (5), and (8),
4 Health and Safety Code, are amended to read as follows:

5 (2) "Client" means a person receiving services in a
6 community-based ICF-IID [~~ICF-MR facility~~].

7 (4) "ICF-IID" [~~ICF-MR~~] has the meaning assigned by
8 Section [531.002](#).

9 (5) "Interdisciplinary team" means those
10 interdisciplinary teams defined in the Code of Federal Regulations
11 for participation in the intermediate care facilities for
12 individuals with intellectual and developmental disabilities [~~the~~
13 ~~mentally retarded~~].

14 (8) "Surrogate decision-maker" means an individual
15 authorized under Section [597.041](#) to consent on behalf of a client
16 residing in an ICF-IID [~~ICF-MR facility~~].

17 SECTION 3.1476. Section [597.002](#), Health and Safety Code, is
18 amended to read as follows:

19 Sec. 597.002. RULES. The executive commissioner [~~board~~]
20 may adopt rules necessary to implement this chapter [~~not later than~~
21 ~~180 days after its effective date~~].

22 SECTION 3.1477. Section [597.021](#), Health and Safety Code, is
23 amended to read as follows:

24 Sec. 597.021. ICF-IID [~~ICF-MR~~] ASSESSMENT OF CLIENT'S
25 CAPACITY TO CONSENT TO TREATMENT. (a) The executive commissioner
26 [~~board~~] by rule shall require an ICF-IID [~~ICF-MR facility~~]
27 certified in this state to assess the capacity of each adult client

1 without a legal guardian to make treatment decisions when there is
2 evidence to suggest the individual is not capable of making a
3 decision covered under this chapter.

4 (b) The rules must require the use of a uniform assessment
5 process prescribed by department [board] rule to determine a
6 client's capacity to make treatment decisions.

7 SECTION 3.1478. The heading to Subchapter C, Chapter 597,
8 Health and Safety Code, is amended to read as follows:

9 SUBCHAPTER C. SURROGATE CONSENT FOR ICF-IID [~~ICF-MR~~] CLIENTS

10 SECTION 3.1479. Section 597.041(d), Health and Safety Code,
11 is amended to read as follows:

12 (d) Any dispute as to the right of a party to act as a
13 surrogate decision-maker may be resolved only by a court of record
14 under Title 3, Estates [~~Chapter V, Texas Probate~~] Code.

15 SECTION 3.1480. Section 597.043(c), Health and Safety Code,
16 is amended to read as follows:

17 (c) The list of qualified individuals from which committee
18 members are drawn shall include:

19 (1) health care professionals licensed or registered
20 in this state who have specialized training in medicine,
21 psychopharmacology, nursing, or psychology;

22 (2) persons with an intellectual disability [~~mental~~
23 ~~retardation~~] or parents, siblings, spouses, or children of a person
24 with an intellectual disability [~~mental retardation~~];

25 (3) attorneys licensed in this state who have
26 knowledge of legal issues of concern to persons with an
27 intellectual disability [~~mental retardation~~] or to the families of

1 persons with an intellectual disability [mental retardation];
2 (4) members of private organizations that advocate on
3 behalf of persons with an intellectual disability [mental
4 retardation]; and
5 (5) persons with demonstrated expertise or interest in
6 the care and treatment of persons with an intellectual disability
7 [mental disabilities].

8 SECTION 3.1481. Section 597.044(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) If the results of the assessment conducted in accordance
11 with Section 597.021 indicate that a client who does not have a
12 legal guardian or surrogate decision-maker lacks the capacity to
13 make a treatment decision about major medical or dental treatment,
14 psychoactive medication, or a highly restrictive procedure, the
15 ICF-IID [ICF-MR facility] must file an application for a treatment
16 decision with the department.

17 SECTION 3.1482. Sections 597.045(b) and (c), Health and
18 Safety Code, are amended to read as follows:

19 (b) The ICF-IID [ICF-MR facility] with assistance from the
20 department shall schedule a review of the application.

21 (c) The ICF-IID [ICF-MR facility] with assistance from the
22 department shall send notice of the date, place, and time of the
23 review to the surrogate consent committee, the client who is the
24 subject of the application, the client's actively involved parent,
25 spouse, adult child, or other person known to have a demonstrated
interest in the care and welfare of the client, and any other person
27 as prescribed by department [board] rule. The ICF-IID [ICF-MR

1 ~~facility~~] shall include a copy of the application and a statement of
2 the committee's procedure for consideration of the application,
3 including the opportunity to be heard or to present evidence and to
4 appeal.

5 SECTION 3.1483. Section 597.047, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 597.047. CONFIDENTIAL INFORMATION. Notwithstanding
8 any other state law, a person licensed by this state to provide
9 services related to health care or to the treatment or care of a
10 person with an intellectual disability [~~mental retardation~~], a
11 developmental disability, or a mental illness shall provide to the
12 committee members any information the committee requests that is
13 relevant to the client's need for a proposed treatment.

14 SECTION 3.1484. Section 597.048(f), Health and Safety Code,
15 is amended to read as follows:

16 (f) At any time before the committee makes its determination
17 of a client's best interest under Section 597.049, the committee
18 chair may suspend the review of the application for not more than
19 five days if any person applies for appointment as the client's
20 guardian of the person in accordance with the Estates [~~Texas~~
21 ~~Probate~~] Code.

22 SECTION 3.1485. Section 597.050(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) The ICF-IID [~~ICF-MR facility~~] shall send a copy of the
25 committee's opinion to:

- 26 (1) each person notified under Section 597.045; and
27 (2) the department.

1 SECTION 3.1486. Section 597.054(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) Each ICF-IID [~~ICF-MR~~] shall develop procedures for the
4 surrogate consent committees in accordance with the rules adopted
5 under Section 597.002.

6 SECTION 3.1487. Section 612.002(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) Under the compact, the governor shall appoint the
9 executive commissioner of the Health and Human Services Commission
10 [~~mental health and mental retardation~~] as the compact
11 administrator.

12 SECTION 3.1488. Section 612.005(b), Health and Safety Code,
13 is amended to read as follows:

14 (b) If a supplementary agreement requires or contemplates
15 the use of an institution or facility of this state or requires or
16 contemplates the provision of a service by this state, the
17 supplementary agreement does not take effect until approved by the
18 executive commissioner and the head of the department or agency:

19 (1) under whose jurisdiction the institution or
20 facility is operated; or

21 (2) that will perform the service.

22 SECTION 3.1489. Section 614.001, Health and Safety Code, is
23 amended by amending Subdivisions (2), (6), (7), (8), and (10) and
24 adding Subdivision (4-a) to read as follows:

25 (2) "Case management" means a process by which a
26 person or team responsible for establishing and continuously
27 maintaining contact with a person with mental illness, a

1 developmental disability, or an intellectual disability [~~mental~~
2 ~~retardation~~] provides that person with access to services required
3 by the person and ensures the coordinated delivery of those
4 services to the person.

5 (4-a) "Executive commissioner" means the executive
6 commissioner of the Health and Human Services Commission.

7 (6) "Mental impairment" means a mental illness, an
8 intellectual disability [~~mental retardation~~], or a developmental
9 disability.

10 (7) "Intellectual disability" [~~Mental retardation~~]
11 has the meaning assigned by Section 591.003.

12 (8) "Offender with a medical or mental impairment"
13 means a juvenile or adult who is arrested or charged with a criminal
14 offense and who:

15 (A) is a person with:
16 (i) [~~has~~] a mental impairment; or
17 (ii) a physical disability, terminal
18 illness, or significant illness; or

19 (B) is elderly [~~, physically disabled, terminally~~
20 ~~ill, or significantly ill~~].

21 (10) "Person with an intellectual disability [~~mental~~
22 ~~retardation~~]" means a juvenile or adult with an intellectual
23 disability [~~mental retardation~~] that is not a mental disorder who,
24 because of the mental deficit, requires special training,
25 education, supervision, treatment, care, or control in the person's
26 home or community or in a private [~~or state~~] school or state
27 supported living center for persons with an intellectual disability

1 [mental retardation].

2 SECTION 3.1490. Sections 614.002(a), (b), and (e), Health
3 and Safety Code, are amended to read as follows:

4 (a) The Advisory Committee to the Texas Board of Criminal
5 Justice on Offenders with Medical or Mental Impairments is composed
6 of 28 [29] members.

7 (b) The governor shall appoint, with the advice and consent
8 of the senate:

9 (1) four at-large members who have expertise in mental
10 health, intellectual disabilities [mental retardation], or
11 developmental disabilities, three of whom must be forensic
12 psychiatrists or forensic psychologists;

13 (2) one at-large member who is the judge of a district
14 court with criminal jurisdiction;

15 (3) one at-large member who is a prosecuting attorney;

16 (4) one at-large member who is a criminal defense
17 attorney;

18 (5) two at-large members who have expertise in the
19 juvenile justice or criminal justice system; and

20 (6) one at-large member whose expertise can further
21 the mission of the committee.

22 (e) The executive head of each of the following agencies,
23 divisions of agencies, or associations, or that person's designated
24 representative, shall serve as a member of the committee:

25 (1) the correctional institutions division of the
26 Texas Department of Criminal Justice;

27 (2) the Department of State Health Services;

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1 (a) The office may maintain at least one program in a county
2 selected by the office to employ a cooperative community-based
3 alternative system to divert from the state criminal justice system
4 offenders with mental impairments or offenders who are identified
5 as being elderly or persons with physical disabilities, terminal
6 illnesses, or significant illnesses[, ~~physically disabled,~~
7 ~~terminally ill, or significantly ill]~~ and to rehabilitate those
8 offenders.

9 SECTION 3.1492. Section [614.013](#), Health and Safety Code, is
10 amended to read as follows:

11 Sec. 614.013. CONTINUITY OF CARE FOR OFFENDERS WITH MENTAL
12 IMPAIRMENTS. (a) The Texas Department of Criminal Justice, the
13 Department of State Health Services, the bureau of identification
14 and records of the Department of Public Safety, representatives of
15 local mental health or intellectual and developmental disability
16 [~~mental retardation~~] authorities appointed by the commissioner of
17 the Department of State Health Services, and the directors of
18 community supervision and corrections departments shall adopt a
19 memorandum of understanding that establishes their respective
20 responsibilities to institute a continuity of care and service
21 program for offenders with mental impairments in the criminal
22 justice system. The office shall coordinate and monitor the
23 development and implementation of the memorandum of understanding.

24 (b) The memorandum of understanding must establish methods
25 for:

26 (1) identifying offenders with mental impairments in
27 the criminal justice system and collecting and reporting prevalence

1 rate data to the office;

2 (2) developing interagency rules, policies,

3 procedures, and standards for the coordination of care of and the

4 exchange of information on offenders with mental impairments by

5 local and state criminal justice agencies, the Department of State

6 Health Services and the Department of Aging and Disability Services

7 [~~Texas Department of Mental Health and Mental Retardation~~], local

8 mental health or intellectual and developmental disability [~~mental~~

9 ~~retardation~~] authorities, the Commission on Jail Standards, and

10 local jails;

11 (3) identifying the services needed by offenders with

12 mental impairments to reenter the community successfully; and

13 (4) establishing a process to report implementation

14 activities to the office.

15 (c) The Texas Department of Criminal Justice, the

16 Department of State Health Services, local mental health or

17 intellectual and developmental disability [~~mental retardation~~]

18 authorities, and community supervision and corrections departments

19 shall:

20 (1) operate the continuity of care and service program

21 for offenders with mental impairments in the criminal justice

22 system with funds appropriated for that purpose; and

23 (2) actively seek federal grants or funds to operate

24 and expand the program.

25 (d) Local and state criminal justice agencies shall,

26 whenever possible, contract with local mental health or

27 intellectual and developmental disability [~~mental retardation~~]

1 authorities to maximize Medicaid funding and improve on the
2 continuity of care and service program for offenders with mental
3 impairments in the criminal justice system.

4 (e) The office, in coordination with each state agency
5 identified in Subsection (b)(2), shall develop a standardized
6 process for collecting and reporting the memorandum of
7 understanding implementation outcomes by local and state criminal
8 justice agencies and local and state mental health or intellectual
9 and developmental disability [~~mental retardation~~] authorities.
10 The findings of these reports shall be submitted to the office by
11 September 1 of each even-numbered year and shall be included in
12 recommendations to the board in the office's biennial report under
13 Section 614.009.

14 SECTION 3.1493. Section 614.014, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 614.014. CONTINUITY OF CARE FOR ELDERLY OFFENDERS.
17 (a) The Texas Department of Criminal Justice and the executive
18 commissioner[, the Texas Department of Human Services, and the
19 Texas Department on Aging] by rule shall adopt a memorandum of
20 understanding that establishes the [~~their~~] respective
21 responsibilities of the Texas Department of Criminal Justice, the
22 Department of State Health Services, the Department of Aging and
23 Disability Services, and the Department of Assistive and
24 Rehabilitative Services to institute a continuity of care and
25 service program for elderly offenders in the criminal justice
26 system. The office shall coordinate and monitor the development
27 and implementation of the memorandum of understanding.

1 (b) The memorandum of understanding must establish methods
2 for:

3 (1) identifying elderly offenders in the criminal
4 justice system;

5 (2) developing interagency rules, policies, and
6 procedures for the coordination of care of and the exchange of
7 information on elderly offenders by local and state criminal
8 justice agencies, the Department of State Health Services, the
9 Department of Aging and Disability Services, and the Department of
10 Assistive and Rehabilitative Services [~~Texas Department of Human~~
11 ~~Services, and the Texas Department on Aging~~]; and

12 (3) identifying the services needed by elderly
13 offenders to reenter the community successfully.

14 (c) The Texas Department of Criminal Justice, the
15 Department of State Health Services, the Department of Aging and
16 Disability Services, and the Department of Assistive and
17 Rehabilitative Services [~~Texas Department of Human Services, and~~
18 ~~the Texas Department on Aging~~] shall:

19 (1) operate the continuity of care and service program
20 for elderly offenders in the criminal justice system with funds
21 appropriated for that purpose; and

22 (2) actively seek federal grants or funds to operate
23 and expand the program.

24 SECTION 3.1494. Section 614.015, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 614.015. CONTINUITY OF CARE FOR [~~PHYSICALLY DISABLED,~~
27 ~~TERMINALLY ILL, OR SIGNIFICANTLY ILL~~] OFFENDERS WITH PHYSICAL

1 DISABILITIES, TERMINAL ILLNESSES, OR SIGNIFICANT ILLNESSES. (a)
2 The Texas Department of Criminal Justice and the executive
3 commissioner[, the Department of Assistive and Rehabilitative
4 Services, the Department of State Health Services, and the
5 Department of Aging and Disability Services] by rule shall adopt a
6 memorandum of understanding that establishes the [their]
7 respective responsibilities of the Texas Department of Criminal
8 Justice, the Department of Assistive and Rehabilitative Services,
9 the Department of State Health Services, and the Department of
10 Aging and Disability Services to institute a continuity of care and
11 service program for offenders in the criminal justice system who
12 are persons with physical disabilities, terminal illnesses, or
13 significant illnesses [physically disabled, terminally ill, or
14 significantly ill]. The council shall coordinate and monitor the
15 development and implementation of the memorandum of understanding.

16 (b) The memorandum of understanding must establish methods
17 for:

18 (1) identifying offenders in the criminal justice
19 system who are persons with physical disabilities, terminal
20 illnesses, or significant illnesses [physically disabled,
21 terminally ill, or significantly ill];

22 (2) developing interagency rules, policies, and
23 procedures for the coordination of care of and the exchange of
24 information on offenders who are persons with physical
25 disabilities, terminal illnesses, or significant illnesses
26 [physically disabled, terminally ill, or significantly ill] by
27 local and state criminal justice agencies, the Texas Department of

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1 Criminal Justice, the Department of Assistive and Rehabilitative
2 Services, the Department of State Health Services, and the
3 Department of Aging and Disability Services; and

8 (c) The Texas Department of Criminal Justice, the
9 Department of Assistive and Rehabilitative Services, the
10 Department of State Health Services, and the Department of Aging
11 and Disability Services shall:

21 Sec. 614.016. CONTINUITY OF CARE FOR CERTAIN OFFENDERS BY
22 LAW ENFORCEMENT AND JAILS. (a) The office, the Texas Commission on

23 Law Enforcement, the bureau of identification and records of the
24 Department of Public Safety, and the Commission on Jail Standards
25 by rule shall adopt a memorandum of understanding that establishes
26 their respective responsibilities to institute a continuity of care
27 and service program for offenders in the criminal justice system

1 who are persons with mental impairments, physical disabilities,
2 terminal illnesses, or significant illnesses, or who are [mentally
3 impaired,] elderly[, physically disabled, terminally ill, or
4 significantly ill].

5 (b) The memorandum of understanding must establish methods
6 for:

7 (1) identifying offenders in the criminal justice
8 system who are persons with mental impairments, physical
9 disabilities, terminal illnesses, or significant illnesses, or who
10 are [mentally impaired,] elderly[, physically disabled, terminally
11 ill, or significantly ill];

12 (2) developing procedures for the exchange of
13 information relating to offenders who are persons with mental
14 impairments, physical disabilities, terminal illnesses, or
15 significant illnesses, or who are [mentally impaired,] elderly[,
16 physically disabled, terminally ill, or significantly ill] by the
17 office, the Texas Commission on Law Enforcement, and the Commission
18 on Jail Standards for use in the continuity of care and services
19 program; and

20 (3) adopting rules and standards that assist in the
21 development of a continuity of care and services program for
22 offenders who are persons with mental impairments, physical
23 disabilities, terminal illnesses, or significant illnesses, or who
24 are [mentally impaired,] elderly[, physically disabled, terminally
25 ill, or significantly ill].

26 SECTION 3.1496. Section 614.018(b), Health and Safety Code,
27 is amended to read as follows:

1 (b) The memorandum of understanding must establish methods
2 for:

3 (1) identifying juveniles with mental impairments in
4 the juvenile justice system and collecting and reporting relevant
5 data to the office;

6 (2) developing interagency rules, policies, and
7 procedures for the coordination of care of and the exchange of
8 information on juveniles with mental impairments who are committed
9 to or treated, served, or supervised by the Texas Juvenile Justice
10 Department, the Department of Public Safety, the Department of
11 State Health Services, the Department of Family and Protective
12 Services, the Department of Aging and Disability Services, the
13 Texas Education Agency, local juvenile probation departments,
14 local mental health or intellectual and developmental disability
15 [~~mental retardation~~] authorities, and independent school
16 districts; and

17 (3) identifying the services needed by juveniles with
18 mental impairments in the juvenile justice system.

19 SECTION 3.1497. Section [614.019](#), Health and Safety Code, is
20 amended to read as follows:

21 Sec. 614.019. PROGRAMS FOR JUVENILES. (a) The office, in
22 cooperation with the Department of State Health Services [~~Texas~~
23 ~~Commission on Alcohol and Drug Abuse, the Texas Department of~~
24 ~~Mental Health and Mental Retardation~~], the Department of Family and
25 Protective [~~and Regulatory~~] Services, the Texas Juvenile Justice
26 Department [~~Probation Commission, the Texas Youth Commission~~], and
27 the Texas Education Agency, may establish and maintain programs,

1 building on existing successful efforts in communities, to address
2 prevention, intervention, and continuity of care for juveniles with
3 mental health and substance abuse disorders.

4 (b) A child with mental illness who is receiving continuity
5 of care services during parole from the Texas Juvenile Justice
6 Department [~~Youth Commission~~] and who is no longer eligible to
7 receive services from a local mental health authority when the
8 child becomes 17 years of age because the child does not meet the
9 requirements of a local service area plan under Section 533.0352(a)
10 may continue to receive continuity of care services from the office
11 until the child completes the child's parole.

12 (c) A child with mental illness or an intellectual
13 disability [~~mental retardation~~] who is discharged from the Texas
14 Juvenile Justice Department under Section 244.011, Human Resources
15 Code, may receive continuity of care services from the office for a
16 minimum of 90 days after discharge from the department [~~commission~~]
17 and for as long as necessary for the child to demonstrate sufficient
18 stability to transition successfully to mental health or
19 intellectual disability [~~mental retardation~~] services provided by
20 a local mental health or intellectual and developmental disability
21 [~~mental retardation~~] authority.

22 SECTION 3.1498. Section 614.020(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) The program must be modeled after other assertive
25 community treatment programs established by the [Texas] Department
26 of State Health Services [~~Mental Health and Mental Retardation~~].
27 The program is limited to serving not more than 30 program

1 participants at any time.

2 SECTION 3.1499. Section 614.021(a), Health and Safety Code,
3 is amended to read as follows:

4 (a) In this section, "wrongfully imprisoned person" has the
5 meaning assigned by Section 501.101 [501.102], Government Code.

6 SECTION 3.1500. Chapter 615, Health and Safety Code, is
7 amended to read as follows:

8 CHAPTER 615. MISCELLANEOUS PROVISIONS

9 Sec. 615.001. COUNTY RESPONSIBILITY. Each commissioners
10 court shall provide for the support of a person with mental illness
11 or an intellectual disability [mental retardation] who is:

12 (1) a resident of the county;

13 (2) unable to provide self-support; and

14 (3) cannot be admitted to a state mental health or
15 intellectual disability [mental retardation] facility.

16 Sec. 615.002. ACCESS TO [MENTAL HEALTH] RECORDS BY
17 PROTECTION AND ADVOCACY SYSTEM. (a) Notwithstanding other state
18 law, the protection and advocacy system established in this state
19 under the federal Protection and Advocacy for Individuals with
20 Mental Illness [Mentally Ill Individuals] Act [of 1986] (42 U.S.C.
21 Sec. 10801 et seq.) and the Developmental Disabilities Assistance
22 and Bill of Rights Act of 2000 (42 U.S.C. Sec. 15001 et seq.) is
23 entitled to access to records relating to persons with mental
24 illness or developmental disabilities to the extent authorized by
25 federal law.

26 (b) If the person [patient] consents to notification, the
27 protection and advocacy system shall notify the [Texas] Department

1 of State Health Services or the Department of Aging and Disability
2 Services, as appropriate, [Mental Health and Mental Retardation's
3 Office of Client Services and Rights Protection] if the system
4 decides to investigate a complaint of abuse, neglect, or rights
5 violation that relates to a person with mental illness or a
6 developmental disability who is a patient or client in a facility or
7 program operated by, licensed by, certified by, or in a contractual
8 relationship with that [the] department.

9 SECTION 3.1501. Section 671.001(d), Health and Safety Code,
10 is amended to read as follows:

11 (d) A registered nurse or physician assistant may determine
12 and pronounce a person dead in situations other than those
13 described by Subsection (b) if permitted by written policies of a
14 licensed health care facility, institution, or entity providing
15 services to that person. Those policies must include physician
16 assistants who are credentialed or otherwise permitted to practice
17 at the facility, institution, or entity. If the facility,
18 institution, or entity has an organized nursing staff and an
19 organized medical staff or medical consultant, the nursing staff
20 and medical staff or consultant shall jointly develop and approve
21 those policies. The executive commissioner of the Health and Human
22 Services Commission [board] shall adopt rules to govern policies
23 for facilities, institutions, or entities that do not have
24 organized nursing staffs and organized medical staffs or medical
25 consultants.

26 SECTION 3.1502. Section 672.002(d), Health and Safety Code,
27 is amended to read as follows:

1 (d) A review team may include:

2 (1) a criminal prosecutor involved in prosecuting
3 crimes involving family violence;

4 (2) a peace officer;

5 (3) a justice of the peace or medical examiner;

6 (4) a public health professional;

7 (5) a representative of the Department of Family and
8 Protective ~~[and Regulatory]~~ Services engaged in providing adult
9 protective services;

10 (6) a mental health services provider;

11 (7) a representative of the family violence shelter
12 center providing services to the county;

13 (8) the victim witness advocate in the county
14 prosecutor's office;

15 (9) a representative from the battering intervention
16 and prevention program for the county; and

17 (10) a community supervision and corrections
18 department officer.

19 SECTION 3.1503. Section 672.008, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 672.008. REPORT. (a) Not later than December 15 of
22 each even-numbered year, each review team shall submit to the
23 Department of Family and Protective ~~[and Regulatory]~~ Services a
24 report on deaths reviewed.

25 (b) Subject to Section 672.009, the Department of Family and
26 Protective ~~[and Regulatory]~~ Services shall make the reports
27 received under Subsection (a) available to the public.

1 SECTION 3.1504. Section 673.001, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 673.001. DEFINITIONS. In this chapter:

4 (1) "Commissioner" means the commissioner of state
5 health services.

6 (2) "Department" means the [Texas] Department of State
7 Health Services.

8 (3) "Executive commissioner" means the executive
9 commissioner of the Health and Human Services Commission.

10 SECTION 3.1505. Sections 673.002(b) and (c), Health and
11 Safety Code, are amended to read as follows:

12 (b) The justice of the peace or medical examiner shall
13 inform the child's legal guardian or parents that an autopsy shall
14 be performed on the child. The state shall reimburse a county \$500
15 for the cost of the autopsy if the primary cause of death of the
16 child is sudden infant death syndrome. The executive commissioner
17 [department] shall adopt rules that:

18 (1) define sudden infant death syndrome; and
19 (2) describe the method for obtaining reimbursement
20 for the cost of an autopsy.

21 (c) Reimbursement required by Subsection (b) [~~of this~~
22 section] is subject to the availability of funds.

23 SECTION 3.1506. Section 694.001, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 694.001. DUTIES OF [TEXAS] DEPARTMENT OF STATE HEALTH
26 SERVICES. The [Texas] Department of State Health Services shall
27 regulate the disposal, transportation, interment, and disinterment

1 of dead bodies to the extent reasonable and necessary to protect
2 public health and safety.

3 SECTION 3.1507. Section 751.010(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) After notice and a public hearing, the executive
6 commissioner of the Health and Human Services Commission [~~Texas~~
7 ~~Board of Health~~] shall adopt rules relating to minimum standards of
8 health and sanitation to be maintained at mass gatherings.

9 SECTION 3.1508. Section 755.033(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) The executive director shall enter into interagency
12 agreements with the [~~Texas~~] Department of State Health Services,
13 the Texas Commission on Fire Protection, and the Texas Department
14 of Insurance under which inspectors, marshals, or investigators
15 from those agencies who discover unsafe or unregistered boilers in
16 the course and scope of inspections conducted as part of regulatory
17 or safety programs administered by those agencies are required to
18 report the unsafe or unregistered boilers to the executive
19 director.

20 SECTION 3.1509. Section 757.010(b), Health and Safety Code,
21 is amended to read as follows:

22 (b) An owner of a multiunit rental complex or a rental
23 dwelling in a condominium, cooperative, or town home project with a
24 pool or a property owners association that owns, controls, or
25 maintains a pool may, at the person's option, exceed the standards
26 of this chapter or those adopted [~~by the Texas Board of Health~~]
27 under Section 757.011. A tenant or occupant in a multiunit rental

1 complex and a member of a property owners association may, by
2 express written agreement, require the owner of the complex or the
3 association to exceed those standards.

4 SECTION 3.1510. Section 757.011, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 757.011. RULEMAKING AUTHORITY [OF TEXAS BOARD OF
7 ~~HEALTH~~]. The executive commissioner of the Health and Human
8 Services Commission [~~Texas Board of Health~~] may adopt rules
9 requiring standards for design and construction of pool yard
10 enclosures that exceed the requirements of this chapter and that
11 apply to all pools and pool yards subject to this chapter. An owner
12 of a multiunit rental complex or a rental dwelling in a condominium,
13 cooperative, or town home project with a pool or a property owners
14 association that owns, controls, or maintains a pool shall comply
15 with and shall be liable for failure to comply with those rules to
16 the same extent as if they were part of this chapter.

17 SECTION 3.1511. Sections 773.003(6), (10), and (18), Health
18 and Safety Code, are amended to read as follows:

19 (6) "Commissioner" means the commissioner of state
20 health services.

21 (10) "Emergency medical services personnel" means:

22 (A) emergency care attendant;

23 (B) emergency medical technicians;

24 (C) advanced emergency medical technicians
25 [~~technicians--intermediate~~];

26 (D) emergency medical technicians--paramedic; or

27 (E) licensed paramedic.

1 (18) "Medical supervision" means direction given to
2 emergency medical services personnel by a licensed physician under
3 Subtitle B, Title 3, Occupations Code, and the rules adopted under
4 that subtitle by the Texas ~~State Board of~~ Medical Board
5 ~~Examiners~~.

6 SECTION 3.1512. Section 773.0045(b), Health and Safety
7 Code, is amended to read as follows:

8 (b) The department on a case-by-case basis may temporarily
9 exempt emergency medical services personnel who primarily practice
10 in a rural area from a requirement imposed either by Section 773.050
11 or 773.055 or by a department rule adopted ~~[by the department]~~ under
12 Section 773.050 or 773.055 if specific circumstances that affect
13 the rural area served by the emergency medical services personnel
14 justify the exemption. The department may temporarily exempt the
15 emergency medical services personnel from a requirement imposed:

16 (1) by a department rule adopted under Section 773.050
17 or 773.055 only if the department finds that, under the
18 circumstances, imposing the requirement would not be in the best
19 interests of the people in the rural area who are served by the
20 emergency medical services personnel; and

21 (2) by Section 773.050 or 773.055 only if the
22 department finds that, under the circumstances, there is a
23 substantial risk that imposing the requirement will detrimentally
24 affect the health or safety of one or more persons in the affected
25 rural area or hinder the ability of emergency medical services
26 personnel who practice in the area to alleviate a threat to the
27 health or safety of one or more persons in the area.

1 SECTION 3.1513. Section 773.006, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 773.006. FUND FOR EMERGENCY MEDICAL SERVICES, TRAUMA
4 FACILITIES, AND TRAUMA CARE SYSTEMS. (a) The fund for emergency
5 medical services, trauma facilities, and trauma care systems is
6 established as an account in the general revenue fund. Money in the
7 account may be appropriated only to the department [bureau] for the
8 purposes specified by Section 773.122.

9 (b) The account is composed of money deposited to the
10 account under Article 102.0185, Code of Criminal Procedure[, and
11 ~~the earnings of the account~~].

12 (c) Section [~~Sections 403.095 and~~] 404.071, Government
13 Code, does [do] not apply to the account.

14 SECTION 3.1514. Sections 773.011(b), (c), and (d), Health
15 and Safety Code, are amended to read as follows:

16 (b) The executive commissioner [board] shall adopt rules
17 establishing minimum standards for the creation and operation of a
18 subscription program.

19 (c) The executive commissioner [board] shall adopt a rule
20 that requires an emergency medical services provider to secure a
21 surety bond in the amount of sums to be subscribed before soliciting
22 subscriptions and creating and operating a subscription program.
23 The surety bond must be issued by a company that is licensed by or
24 eligible to do business in this state.

25 (d) The executive commissioner [board] may adopt rules for
26 waiver of the surety bond.

27 SECTION 3.1515. Sections 773.012(a) and (j), Health and

1 Safety Code, are amended to read as follows:

2 (a) The governor shall appoint an advisory council to advise
3 the department [board] regarding matters related to the
4 responsibilities of the executive commissioner [board],
5 commissioner, and department under this chapter. In making
6 appointments to the advisory council, the governor shall ensure
7 that approximately one-half of the members of the advisory council
8 are residents of rural areas of the state.

9 (j) The advisory council periodically shall review
10 department [board] rules relating to this chapter and may recommend
11 changes in those rules to the department [board]. The department
12 [board and the commissioner] shall ensure that the advisory council
13 is given adequate time and opportunity to review and comment on each
14 rule proposed for adoption by the executive commissioner [board]
15 under this chapter, including the amendment or repeal of an
16 existing rule, but not including an emergency rule.

17 SECTION 3.1516. Section 773.013, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 773.013. PEER ASSISTANCE PROGRAM. The department may
20 establish, approve, and fund a peer assistance program in
21 accordance with Section 467.003 and department [board] rules.

22 SECTION 3.1517. Sections 773.014(b) and (c), Health and
23 Safety Code, are amended to read as follows:

24 (b) The executive commissioner [department] shall adopt
25 rules designed to protect the public health and safety to implement
26 this section. The rules must provide that emergency medical
27 services personnel may administer an epinephrine auto-injector

1 device to another only if the person has successfully completed a
2 training course, approved by the department, in the use of the
3 device that is consistent with the national standard training
4 curriculum for emergency medical technicians.

5 (c) An emergency medical services provider or first
6 responder organization may acquire, possess, maintain, and dispose
7 of epinephrine auto-injector devices, and emergency medical
8 services personnel may carry, maintain, administer, and dispose of
9 epinephrine auto-injector devices, only in accordance with:

10 (1) rules adopted [~~by the department~~] under this
11 section; and

12 (2) a delegated practice agreement that provides for
13 medical supervision by a licensed physician who either:

14 (A) acts as a medical director for an emergency
15 medical services system or a licensed hospital; or

16 (B) has knowledge and experience in the delivery
17 of emergency care.

18 SECTION 3.1518. Sections [773.021](#)(a) and (c), Health and
19 Safety Code, are amended to read as follows:

20 (a) The department [~~bureau~~] shall develop a state plan for
21 the prompt and efficient delivery of adequate emergency medical
22 services to acutely sick or injured persons.

23 (c) The advisory council shall consider the department's
24 [~~bureau's~~] actions under Subsection (a), and the department [~~board~~]
25 shall review the council's recommendations.

26 SECTION 3.1519. Section [773.022](#), Health and Safety Code, is
27 amended to read as follows:

1 Sec. 773.022. SERVICE DELIVERY AREAS. The department
2 [bureau] shall divide the state into emergency medical services
3 delivery areas that coincide, to the extent possible, with other
4 regional planning areas.

5 SECTION 3.1520. Section [773.023](#)(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) The department [bureau] shall:

8 (1) identify all public or private agencies and
9 institutions that are used or may be used for emergency medical
10 services in each delivery area; and

11 (2) enlist the cooperation of all concerned agencies
12 and institutions in developing a well-coordinated plan for
13 delivering emergency medical services in each delivery area.

14 SECTION 3.1521. Section [773.024](#), Health and Safety Code, is
15 amended to read as follows:

16 Sec. 773.024. FEDERAL PROGRAMS. The department [bureau] is
17 the state agency designated to develop state plans required for
18 participation in federal programs involving emergency medical
19 services. The department [bureau] may receive and disburse
20 available federal funds to implement the service programs.

21 SECTION 3.1522. Sections [773.025](#)(a), (c), (d), and (e),
22 Health and Safety Code, are amended to read as follows:

23 (a) The department [bureau] shall identify all individuals
24 and public or private agencies and institutions that are or may be
25 engaged in emergency medical services training in each delivery
26 area.

27 (c) A governmental entity that sponsors or wishes to sponsor

1 an emergency medical services provider may request the department
2 [bureau] to provide emergency medical services training for
3 emergency care attendants at times and places that are convenient
4 for the provider's personnel, if the training is not available
5 locally.

6 (d) A governmental entity or nongovernmental organization
7 that sponsors or wishes to sponsor an emergency medical services
8 provider or first responder organization in a rural or underserved
9 area may request the department [bureau] to provide or facilitate
10 the provision of initial training for emergency care attendants, if
11 the training is not available locally. The department [bureau]
12 shall ensure that the training is provided. The department
13 [bureau] shall provide the training without charge, or contract
14 with qualified instructors to provide the training without charge,
15 to students who agree to perform emergency care attendant services
16 for at least one year with the local emergency medical services
17 provider or first responder organization. The training must be
18 provided at times and places that are convenient to the students.
19 The department [bureau] shall require that at least three students
20 are scheduled to take any class offered under this subsection.

21 (e) To facilitate all levels of emergency medical services
22 training, the department [bureau] shall consult with and solicit
23 comment from emergency medical services providers, first responder
24 organizations, persons who provide emergency medical services
25 training, and other entities interested in emergency medical
26 services training programs.

27 SECTION 3.1523. Section [773.0415](#), Health and Safety Code,

1 is amended to read as follows:

2 Sec. 773.0415. LIMITATION ON INFORMATION REQUIRED FOR
3 CERTIFICATE RENEWAL. The requirements and procedures adopted by
4 the executive commissioner [department] for the renewal of a
5 certificate to practice as emergency medical services personnel
6 issued under this chapter:

7 (1) may not require an applicant to provide unchanged
8 criminal history information already included in one or more of the
9 applicant's previous applications for certification or for
10 certificate renewal filed with the department; and

11 (2) may require the applicant to provide only
12 information relevant to the period occurring since the date of the
13 applicant's last application for certification or for certificate
14 renewal, as applicable, including information relevant to any new
15 requirement applicable to the certificate held by the applicant.

16 SECTION 3.1524. Section 773.045(c), Health and Safety Code,
17 is amended to read as follows:

18 (c) An air ambulance company based in another state that
19 transports patients from a point in this state is required to be
20 licensed by the department as an emergency medical services
21 provider. The department shall issue a license to an air ambulance
22 company under this subsection if the company applies as required by
23 this chapter and has met the [department's] qualifications
24 specified in department rules for safely transporting patients. An
25 air ambulance company accredited by the Commission [Committee] on
26 Accreditation of [Air Ambulance] Medical Transport Systems
27 [Services] is rebuttably presumed to have met the department's

1 qualifications.

2 SECTION 3.1525. Section 773.046(c), Health and Safety Code,
3 is amended to read as follows:

4 (c) The executive commissioner [board] shall adopt rules as
5 necessary to administer this section.

6 SECTION 3.1526. Sections 773.048 and 773.0495, Health and
7 Safety Code, are amended to read as follows:

8 Sec. 773.048. ADVANCED EMERGENCY MEDICAL TECHNICIAN
9 [~~TECHNICIAN-INTERMEDIATE~~] QUALIFICATIONS. An individual
10 qualifies as an advanced emergency medical technician
11 [~~technician-intermediate~~] if the individual is certified by the
12 department as minimally proficient to provide emergency
13 prehospital care by initiating under medical supervision certain
14 procedures, including intravenous therapy and endotracheal or
15 esophageal intubation.

16 Sec. 773.0495. LICENSED PARAMEDIC QUALIFICATIONS. An
17 individual qualifies as a licensed paramedic if the department
18 determines that the individual is minimally proficient to provide
19 advanced life support that includes initiation under medical
20 supervision of certain procedures, including intravenous therapy,
21 endotracheal or esophageal intubation, electrical cardiac
22 defibrillation or cardioversion, and drug therapy. In addition, a
23 licensed paramedic must complete a curriculum that includes
24 college-level course work in accordance with department rules
25 [~~adopted by the board~~].

26 SECTION 3.1527. Section 773.050(h), Health and Safety Code,
27 is amended to read as follows:

1 (h) The department may provide a prescreening criminal
2 history record check for an emergency medical services personnel
3 applicant to determine the applicant's eligibility to receive
4 certification before enrollment in the educational and training
5 requirements mandated by the executive commissioner. The executive
6 commissioner by rule may prescribe ~~[department may charge]~~ a
7 reasonable fee for the costs associated with prescreening to charge
8 each applicant who requests prescreening. The department shall
9 collect the prescribed fee.

10 SECTION 3.1528. Section 773.0505, Health and Safety Code,
11 is amended to read as follows:

12 Sec. 773.0505. RULES REGARDING ADVERTISING OR COMPETITIVE
13 BIDDING. (a) The executive commissioner ~~[board]~~ may not adopt
14 rules restricting advertising or competitive bidding by a license
15 or certificate holder except to prohibit false, misleading, or
16 deceptive practices.

17 (b) In ~~[its]~~ rules to prohibit false, misleading, or
18 deceptive practices, the executive commissioner ~~[board]~~ may not
19 include a rule that:

20 (1) restricts the use of any medium for advertising;
21 (2) restricts the use of a license or certificate
22 holder's personal appearance or voice in an advertisement;
23 (3) relates to the size or duration of an
24 advertisement by the license or certificate holder; or
25 (4) restricts the license or certificate holder's
26 advertisement under a trade name.

27 SECTION 3.1529. Sections 773.052(a) and (c), Health and

1 Safety Code, are amended to read as follows:

2 (a) An emergency medical services provider with a specific
3 hardship may apply to the department [bureau chief] for a variance
4 from a rule adopted under this chapter. The executive commissioner
5 by rule [board] may adopt a fee of not more than \$30 for filing an
6 application for a variance.

7 (c) The department [bureau chief] shall grant to a sole
8 provider for a service area a variance from the minimum standards
9 for staffing and equipment for the provision of basic life-support
10 emergency medical services if the provider is an emergency medical
11 services provider exempt from the payment of fees under Section
12 **773.0581**.

13 SECTION 3.1530. Section **773.054**(b), Health and Safety Code,
14 is amended to read as follows:

15 (b) Each application must be made to the department on a
16 form prescribed by the department [board] and under department
17 rules [adopted by the board].

18 SECTION 3.1531. Sections **773.055**(a), (d), and (g), Health
19 and Safety Code, are amended to read as follows:

20 (a) A nonrefundable fee must accompany each application for
21 emergency medical services personnel certification. The fee may
22 not exceed:

23 (1) \$90 for an emergency medical technician-paramedic
24 or advanced emergency medical technician
25 [technician-intermediate];

26 (2) \$60 for an emergency medical technician or
27 emergency care attendant;

1 (3) \$90 for recertification of an emergency medical
2 technician-paramedic or advanced emergency medical technician
3 [~~technician-intermediate~~];

4 (4) \$60 for recertification of an emergency medical
5 technician or emergency care attendant; or

6 (5) \$120 for certification or recertification of a
7 licensed paramedic.

8 (d) The department shall furnish a person who fails an
9 examination for certification with an analysis of the person's
10 performance on the examination if requested in writing by that
11 person. The executive commissioner [board] may adopt rules to
12 allow a person who fails the examination to retake all or part of
13 the examination. A fee of not more than \$30 must accompany each
14 application for reexamination.

15 (g) The executive commissioner [board] by rule may adopt a
16 system under which certificates expire on various dates during the
17 year. For the year in which the certificate expiration date is
18 changed, the department shall prorate certificate fees on a monthly
19 basis so that each certificate holder pays only that portion of the
20 certificate fee that is allocable to the number of months during
21 which the certificate is valid. On renewal of the certificate on
22 the new expiration date, the total certificate renewal fee is
23 payable.

24 SECTION 3.1532. Sections 773.057(a), (b), and (c), Health
25 and Safety Code, are amended to read as follows:

26 (a) An emergency medical services provider must submit an
27 application for a license in accordance with procedures prescribed

1 by the executive commissioner [board].

2 (b) A nonrefundable application and vehicle fee determined
3 by the executive commissioner by rule [board] must accompany each
4 application. The application fee may not exceed \$500 for each
5 application and the vehicle fee may not exceed \$180 for each
6 emergency medical services vehicle operated by the provider.

7 (c) The department may delegate vehicle inspections to the
8 commissioners court of a county or the governing body of a
9 municipality. The delegation must be made:

10 (1) at the request of the commissioners court or
11 governing body; and

12 (2) in accordance with criteria and procedures adopted
13 by the executive commissioner [board].

14 SECTION 3.1533. Section 773.0572, Health and Safety Code,
15 is amended to read as follows:

16 Sec. 773.0572. PROVISIONAL LICENSES. The executive
17 commissioner [board] by rule shall establish conditions under which
18 an emergency medical services provider who fails to meet the
19 minimum standards prescribed by this chapter may be issued a
20 provisional license. The department may issue a provisional
21 license to an emergency medical services provider under this
22 chapter if the department finds that issuing the license would
23 serve the public interest and that the provider meets the
24 requirements of the rules adopted under this section. A
25 nonrefundable fee of not more than \$30 must accompany each
26 application for a provisional license.

27 SECTION 3.1534. Section 773.060(b), Health and Safety Code,

1 is amended to read as follows:

2 (b) The department shall deposit the fees and other funds in
3 the state treasury to the credit of the bureau of emergency
4 management account in the general revenue fund. The account [~~fund~~]
5 may be used only to administer this chapter.

6 SECTION 3.1535. Section 773.061(d), Health and Safety Code,
7 is amended to read as follows:

8 (d) The department may place on probation a course or
9 training program or a person, including emergency medical services
10 personnel, an emergency medical services provider license holder,
11 or a program instructor, examiner, or course coordinator, whose
12 certificate, license, or approval is suspended. If a suspension is
13 probated, the department may require the person or the sponsor of a
14 course or training program, as applicable:

15 (1) to report regularly to the department on matters
16 that are the basis of the probation;

17 (2) to limit practice to the areas prescribed by the
18 department [~~board~~]; or

19 (3) to continue or review professional education until
20 the person attains a degree of skill satisfactory to the department
21 in those areas that are the basis of the probation.

22 SECTION 3.1536. Section 773.0611(c), Health and Safety
23 Code, is amended to read as follows:

24 (c) The executive commissioner [~~board~~] shall adopt rules
25 for unannounced inspections authorized under this section. The
26 department or its representative shall perform unannounced
27 inspections in accordance with those rules. An emergency medical

1 services provider shall pay to the department a nonrefundable fee
2 of not more than \$30 if reinspection is necessary to determine
3 compliance with this chapter and the rules adopted under this
4 chapter.

5 SECTION 3.1537. Section [773.0612](#)(b), Health and Safety
6 Code, is amended to read as follows:

7 (b) A report, record, or working paper used or developed in
8 an investigation under this section is confidential and may be used
9 only for purposes consistent with department [~~the~~] rules [~~adopted~~
10 ~~by the board~~].

11 SECTION 3.1538. Section [773.0613](#)(b), Health and Safety
12 Code, is amended to read as follows:

13 (b) The executive commissioner [~~department~~] shall adopt
14 rules relating to the type of information an emergency medical
15 services provider must provide under this section and the manner in
16 which the information must be provided.

17 SECTION 3.1539. Section [773.0614](#)(a), Health and Safety
18 Code, is amended to read as follows:

19 (a) In addition to the grounds under Section [773.061](#), the
20 department [~~commissioner~~] may suspend or revoke a certificate,
21 disqualify a person from receiving a certificate, or deny a person
22 the opportunity to take a certification examination on the grounds
23 that the person has been convicted of, or placed on deferred
24 adjudication community supervision or deferred disposition for, an
25 offense that directly relates to the duties and responsibilities of
26 emergency medical services personnel.

27 SECTION 3.1540. Section [773.06141](#)(a), Health and Safety

1 Code, is amended to read as follows:

2 (a) The department [~~commissioner~~] may suspend, revoke, or
3 deny an emergency medical services provider license on the grounds
4 that the provider's administrator of record, employee, or other
5 representative:

6 (1) has been convicted of, or placed on deferred
7 adjudication community supervision or deferred disposition for, an
8 offense that directly relates to the duties and responsibilities of
9 the administrator, employee, or representative, other than an
10 offense for which points are assigned under Section [708.052](#),
11 Transportation Code;

12 (2) has been convicted of or placed on deferred
13 adjudication community supervision or deferred disposition for an
14 offense, including:

15 (A) an offense listed in Sections 3g(a)(1)(A)
16 through (H), Article [42.12](#), Code of Criminal Procedure; or

17 (B) an offense, other than an offense described
18 by Subdivision (1), for which the person is subject to registration
19 under Chapter 62, Code of Criminal Procedure; or

20 (3) has been convicted of Medicare or Medicaid fraud,
21 has been excluded from participation in the state Medicaid program,
22 or has a hold on payment for reimbursement under the state Medicaid
23 program under Subchapter C, Chapter 531, Government Code.

24 SECTION 3.1541. Sections [773.0615](#)(a), (b), and (c), Health
25 and Safety Code, are amended to read as follows:

26 (a) In determining whether an offense directly relates to
27 the duties and responsibilities of emergency medical services

1 personnel under Section 773.0614(a), the department [commissioner]
2 shall consider:

3 (1) the nature and seriousness of the crime;
4 (2) the relationship of the crime to the purposes for
5 requiring certification to engage in emergency medical services;
6 (3) the extent to which certification might offer an
7 opportunity to engage in further criminal activity of the same type
8 as that in which the person previously had been involved; and
9 (4) the relationship of the crime to the ability,
10 capacity, or fitness required to perform the duties and discharge
11 the responsibilities of emergency medical services personnel.

12 (b) In determining the fitness to perform the duties and
13 discharge the responsibilities of emergency medical services
14 personnel for a person who has been convicted of, or placed on
15 deferred adjudication community supervision or deferred
16 disposition for, a crime the department [commissioner] shall
17 consider, in addition to the factors listed in Subsection (a):

18 (1) the extent and nature of the person's past criminal
19 activity;
20 (2) the age of the person when the crime was committed;
21 (3) the amount of time that has elapsed since the
22 person's last criminal activity;
23 (4) the conduct and work activity of the person before
24 and after the criminal activity;
25 (5) evidence of the person's rehabilitation or
26 rehabilitative effort while incarcerated, after release, or since
27 imposition of community supervision or deferred adjudication; and

1 (6) other evidence of the person's fitness, including
2 letters of recommendation from:

3 (A) prosecutors, law enforcement officers,
4 correctional officers, or community supervision officers who
5 prosecuted, arrested, or had custodial or other responsibility for
6 the person;

7 (B) the sheriff or chief of police in the
8 community where the person resides; and

9 (C) any other person in contact with the person.

10 (c) The applicant or certificate holder has the
11 responsibility, to the extent possible, to obtain and provide to
12 the department [~~commissioner~~] the recommendations of the persons
13 required by Subsection (b)(6).

14 SECTION 3.1542. Sections 773.0616(a) and (b), Health and
15 Safety Code, are amended to read as follows:

16 (a) A proceeding [~~before the commissioner~~] to consider the
17 issues under Section 773.0615 is governed by Chapter 2001,
18 Government Code.

19 (b) The executive commissioner shall issue guidelines
20 relating to the department's [~~commissioner's~~] decision-making
21 under Sections 773.0614 and 773.0615. The guidelines must state
22 the reasons a particular crime is considered to relate to emergency
23 medical services personnel and include any other criterion that may
24 affect the decisions of the department [~~commissioner~~].

25 SECTION 3.1543. Section 773.0617, Health and Safety Code,
26 is amended to read as follows:

27 Sec. 773.0617. NOTICE AND REVIEW OF SUSPENSION, REVOCATION,

1 DISQUALIFICATION FOR, OR DENIAL OF CERTIFICATION. (a) If the
2 department [~~commissioner~~] suspends or revokes a certification,
3 denies a person a certificate, or denies the opportunity to be
4 examined for a certificate under Section 773.0614, the department
5 [~~commissioner~~] shall notify the person in writing of:

6 (1) the reason for the suspension, revocation, denial,
7 or disqualification;

8 (2) the review procedure provided by Subsection (b);
9 and

10 (3) the earliest date the person may appeal the action
11 of the department [~~commissioner~~].

12 (b) A person whose certificate has been suspended or revoked
13 or who has been denied a certificate or the opportunity to take an
14 examination and who has exhausted the person's administrative
15 appeals may file an action in the district court in Travis County
16 for review of the evidence presented to the department
17 [~~commissioner~~] and the decision of the department [~~commissioner~~].

18 (c) The petition for an action under Subsection (b) must be
19 filed not later than the 30th day after the date the department's
20 [~~commissioner's~~] decision is final.

21 SECTION 3.1544. Sections 773.062(a) and (c), Health and
22 Safety Code, are amended to read as follows:

23 (a) The commissioner [~~bureau chief~~] shall issue an
24 emergency order to suspend a certificate or license issued under
25 this chapter if the commissioner [~~bureau chief~~] has reasonable
26 cause to believe that the conduct of any certificate or license
27 holder creates an imminent danger to the public health or safety.

1 (c) The holder may request in writing a hearing on the
2 emergency suspension. The department shall refer the matter to the
3 State Office of Administrative Hearings. An administrative law
4 judge of that office shall conduct the hearing not earlier than the
5 10th day or later than the 30th day after the date on which the
6 request is received by the department, shall make findings of fact,
7 and shall issue a written proposal for decision regarding whether
8 the department should [and may] continue, modify, or rescind the
9 suspension. The department's [~~department~~] hearing rules and
10 Chapter 2001, Government Code, govern the hearing and any appeal
11 from a disciplinary action related to the hearing.

12 SECTION 3.1545. Section 773.064(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) A person commits an offense if the person knowingly
15 practices as, attempts to practice as, or represents himself to be
16 an emergency medical technician-paramedic, advanced emergency
17 medical technician [~~technician-intermediate~~], emergency medical
18 technician, emergency care attendant, or licensed paramedic and the
19 person does not hold an appropriate certificate issued by the
20 department under this chapter. An offense under this subsection is
21 a Class A misdemeanor.

22 SECTION 3.1546. Sections 773.065(a), (b), and (c), Health
23 and Safety Code, are amended to read as follows:

24 (a) The department [~~commissioner~~] may assess an
25 administrative penalty against an emergency medical services
26 provider or a course coordinator who violates this chapter or a rule
27 adopted or an order issued under this chapter.

1 (b) In determining the amount of the penalty, the department
2 [commissioner] shall consider:

3 (1) the emergency medical services provider's or
4 course coordinator's previous violations;

5 (2) the seriousness of the violation;

6 (3) any hazard to the health and safety of the public;

7 (4) the emergency medical services provider's or
8 course coordinator's demonstrated good faith; and

9 (5) any other matter as justice may require.

10 (c) The penalty may not exceed \$7,500 for each violation.

11 The executive commissioner [board] by rule shall establish
12 gradations of penalties in accordance with the relative seriousness
13 of the violation.

14 SECTION 3.1547. Sections 773.066(b), (c), (d), and (e),
15 Health and Safety Code, are amended to read as follows:

16 (b) If a hearing is held, the department shall refer the
17 matter to the State Office of Administrative Hearings. An
18 administrative law judge of that office [commissioner] shall
19 conduct the hearing, make findings of fact, and [shall] issue to the
20 department a written proposal for decision regarding whether the
21 emergency medical services provider or course coordinator
22 committed a violation and the amount of any penalty to be assessed.

23 (c) If the emergency medical services provider or course
24 coordinator charged with the violation does not request a hearing,
25 the department [commissioner] shall determine whether the provider
26 or course coordinator committed a violation and the amount of any
27 penalty to be assessed.

1 (d) After making a determination under this section
2 [Subsection (b) or (c)] that a penalty is to be assessed against an
3 emergency medical services provider or a course coordinator, the
4 department [~~commissioner~~] shall issue an order requiring that the
5 emergency medical services provider or course coordinator pay the
6 penalty.

7 (e) Not later than the 30th day after the date an order is
8 issued under Subsection (d), the department [~~commissioner~~] shall
9 give written notice of the order to the emergency medical services
10 provider or course coordinator.

11 SECTION 3.1548. Sections 773.067(b), (c), (d), and (e),
12 Health and Safety Code, are amended to read as follows:

13 (b) Within the 30-day period, a person who acts under
14 Subsection (a)(3) may:

15 (1) stay enforcement of the penalty by:

16 (A) paying the amount of the penalty to the court
17 for placement in an escrow account; or

18 (B) giving to the court a supersedeas bond that
19 is approved by the court for the amount of the penalty and that is
20 effective until all judicial review of the department's
21 [~~commissioner's~~] order is final; or

22 (2) request the court to stay enforcement of the
23 penalty by:

24 (A) filing with the court a sworn affidavit of
25 the person stating that the person is financially unable to pay the
26 amount of the penalty and is financially unable to give the
27 supersedeas bond; and

(B) giving a copy of the affidavit to the department [commissioner] by certified mail.

3 (c) If the department [~~commissioner~~] receives a copy of an
4 affidavit under Subsection (b)(2), the department [~~commissioner~~]
5 may file with the court, within five days after the date the copy is
6 received, a contest to the affidavit. The court shall hold a
7 hearing on the facts alleged in the affidavit as soon as practicable
8 and shall stay the enforcement of the penalty on finding that the
9 alleged facts are true. The person who files an affidavit has the
10 burden of proving that the person is financially unable to pay the
11 amount of the penalty and to give a supersedeas bond.

12 (d) If the person does not pay the amount of the penalty and
13 the enforcement of the penalty is not stayed, the department
14 [~~commissioner~~] may refer the matter to the attorney general for
15 collection of the amount of the penalty.

16 (e) Judicial review of the order of the department
17 [commissioner]:

(2) is under the substantial evidence rule.

21 SECTION 3.1549. Section [773.069](#), Health and Safety Code, is
22 amended to read as follows:

23 Sec. 773.069. RECOVERY OF ADMINISTRATIVE PENALTY BY
24 ATTORNEY GENERAL. The attorney general at the request of the
25 department [commissioner] may bring a civil action to recover an
26 administrative penalty assessed under this subchapter.

27 SECTION 3.1550. Section 773.070, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 773.070. DENIAL OF CERTIFICATION OR LICENSURE FOR
3 FAILURE TO PROVIDE [ACCESS TO] CERTAIN CRIMINAL HISTORY RECORD
4 INFORMATION. [(e)] The department [~~board~~] may deny licensure or
5 certification to an applicant who does not provide a complete set of
6 the required fingerprints to obtain criminal history record
7 information.

8 SECTION 3.1551. Section 773.071(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) To the extent feasible, the executive commissioner
11 [~~board~~] by rule shall set the fees under this subchapter in amounts
12 necessary for the department to recover the cost of administering
13 this subchapter.

14 SECTION 3.1552. Sections 773.092(b), (c), and (e), Health
15 and Safety Code, are amended to read as follows:

16 (b) Information under Subsection (a)(4) [~~Subdivision (4)~~]
17 is discoverable in any court or administrative proceeding in this
18 state if the court or administrative body has jurisdiction of the
19 subject matter, pursuant to rules of procedure specified for the
20 matter.

21 (c) Subsection (a)(5) [~~Subdivision (5)~~] does not authorize
22 the release of confidential information to instigate or
23 substantiate criminal charges against a patient.

24 (e) Communications and records that are confidential under
25 this section may be disclosed to:

26 (1) medical or law enforcement personnel if the
27 emergency medical services personnel, the physician providing

1 medical supervision, or the emergency medical services provider
2 determines that there is a probability of imminent physical danger
3 to any person or if there is a probability of immediate mental or
4 emotional injury to the patient;

5 (2) governmental agencies if the disclosure is
6 required or authorized by law;

7 (3) qualified persons to the extent necessary for
8 management audits, financial audits, program evaluation, system
9 improvement, or research, except that any report of the research,
10 audit, or evaluation may not directly or indirectly identify a
11 patient;

12 (4) any person who bears a written consent of the
13 patient or other persons authorized to act on the patient's behalf
14 for the release of confidential information as provided by Section
15 **773.093**;

16 (5) the department for data collection or complaint
17 investigation;

18 (6) other emergency medical services personnel, other
19 physicians, and other personnel under the direction of a physician
20 who are participating in the diagnosis, evaluation, or treatment of
21 a patient; or

22 (7) individuals, corporations, or governmental
23 agencies involved in the payment or collection of fees for
24 emergency medical services rendered by emergency medical services
25 personnel.

26 SECTION 3.1553. The heading to Section **773.112**, Health and
27 Safety Code, is amended to read as follows:

1 Sec. 773.112. [DUTIES OF BOARD] RULES.

2 SECTION 3.1554. Section 773.112(a), Health and Safety Code,
3 is amended to read as follows:

4 (a) The executive commissioner [board] by rule shall adopt
5 minimum standards and objectives to implement emergency medical
6 services and trauma care systems. The executive commissioner
7 [board] by rule shall provide for the designation of trauma
8 facilities and for triage, transfer, and transportation policies.
9 The executive commissioner [board] shall consider guidelines
10 adopted by the American College of Surgeons and the American
11 College of Emergency Physicians in adopting rules under this
12 section.

13 SECTION 3.1555. Section 773.113, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 773.113. DUTIES OF DEPARTMENT [BUREAU]. (a) The
16 department [bureau] shall:

17 (1) develop and monitor a statewide emergency medical
18 services and trauma care system;

19 (2) designate trauma facilities;

20 (3) develop and maintain a trauma reporting and
21 analysis system to:

22 (A) identify severely injured trauma patients at
23 each health care facility in this state;

24 (B) identify the total amount of uncompensated
25 trauma care expenditures made each fiscal year by each health care
26 facility in this state; and

27 (C) monitor trauma patient care in each health

1 care facility, including each designated trauma center, in
2 emergency medical services and trauma care systems in this state;
3 and

4 (4) provide for coordination and cooperation between
5 this state and any other state with which this state shares a
6 standard metropolitan statistical area.

7 (b) The department [~~bureau~~] may grant an exception to a rule
8 adopted under Section [773.112](#) if it finds that compliance with the
9 rule would not be in the best interests of the persons served in the
10 affected local emergency medical services and trauma care delivery
11 area.

12 SECTION 3.1556. Section [773.1135](#), Health and Safety Code,
13 is transferred to Section [773.113](#), Health and Safety Code,
14 redesignated as Section [773.113\(c\)](#), Health and Safety Code, and
15 amended to read as follows:

16 (c) [~~Sec. 773.1135. DUTIES OF DEPARTMENT.~~] The department
17 shall develop performance measures for regional advisory councils
18 in trauma service areas to:

19 (1) promote the provision of a minimum level of
20 emergency medical services in a trauma service area in accordance
21 with the rules adopted under Section [773.112](#);

22 (2) promote the provision of quality care and service
23 by the emergency medical services and trauma care system in
24 accordance with the rules adopted under Section [773.112](#); and

25 (3) maximize the accuracy of information provided by a
26 regional advisory council to the department [~~or bureau~~] for
27 increased council effectiveness.

1 SECTION 3.1557. Section 773.114(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) Each emergency medical services and trauma care system
4 must have:

5 (1) local or regional medical control for all field
6 care and transportation, consistent with geographic and current
7 communications capability;

8 (2) triage, transport, and transfer protocols; and

9 (3) one or more hospitals categorized according to
10 trauma care capabilities using standards adopted by department
11 [~~board~~] rule.

12 SECTION 3.1558. Section 773.115, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 773.115. TRAUMA FACILITIES. (a) The department
15 [~~bureau~~] may designate trauma facilities that are a part of an
16 emergency medical services and trauma care system. A trauma
17 facility shall be designated by the level of trauma care and
18 services provided in accordance with the American College of
19 Surgeons guidelines for level I and II trauma facilities and
20 department rules [~~adopted by the board~~] for level III and IV trauma
21 facilities. In adopting rules under this section, the executive
22 commissioner [~~board~~] may consider trauma caseloads, geographic
23 boundaries, or minimum population requirements, but the department
24 [~~bureau~~] may not deny designation solely on these criteria. The
25 executive commissioner [~~board~~] may not set an arbitrary limit on
26 the number of facilities designated as trauma facilities.

27 (b) A health care facility may apply to the department

1 [bureau] for designation as a trauma facility, and the department
2 [bureau] shall grant the designation if the facility meets the
3 requirements for designation prescribed by department [board]
4 rules.

5 (c) A [~~After September 1, 1993, a~~] health care facility may
6 not use the terms "trauma facility," "trauma hospital," "trauma
7 center," or similar terminology in its signs or advertisements or
8 in the printed materials and information it provides to the public
9 unless the facility has been designated as a trauma facility under
10 this subchapter.

11 SECTION 3.1559. Sections 773.116(a), (b), and (d), Health
12 and Safety Code, are amended to read as follows:

13 (a) The department [bureau] shall charge a fee to a health
14 care facility that applies for initial or continuing designation as
15 a trauma facility.

16 (b) The executive commissioner [board] by rule shall set the
17 amount of the fee schedule for initial or continuing designation as
18 a trauma facility according to the number of beds in the health care
19 facility. The amount of the fee may not exceed:

- 20 (1) \$5,000 for a Level I or II facility;
- 21 (2) \$2,500 for a Level III facility; or
- 22 (3) \$1,000 for a Level IV facility.

23 (d) To the extent feasible, the executive commissioner
24 [board] by rule shall set the fee in an amount necessary for the
25 department to recover the cost directly related to designating
26 trauma facilities under this subchapter.

27 SECTION 3.1560. Sections 773.119(b) and (c), Health and

1 Safety Code, are amended to read as follows:

2 (b) The executive commissioner [board] by rule shall
3 establish eligibility criteria for awarding the grants. The rules
4 must require the department to consider:

5 (1) the need of an area for the provision of emergency
6 medical services or trauma care and the extent to which the grant
7 would meet the identified need;

8 (2) the availability of personnel and training
9 programs;

10 (3) the availability of other funding sources;

11 (4) the assurance of providing quality services;

12 (5) the use or acquisition of helicopters for
13 emergency medical evacuation; and

14 (6) the development or existence of an emergency
15 medical services system.

16 (c) The department may approve grants according to
17 department [~~the~~] rules [~~adopted by the board~~]. A grant awarded
18 under this section is governed by Chapter 783, Government Code,
19 [~~the Uniform Grant and Contract Management Act of 1981 (Article~~
20 ~~4413(32g), Vernon's Texas Civil Statutes)~~] and by the rules adopted
21 under that chapter [Act].

22 SECTION 3.1561. Section 773.122(e), Health and Safety Code,
23 is amended to read as follows:

24 (e) In any fiscal year, the commissioner may use not more
25 than three percent of the appropriated money from the accounts
26 after any amount necessary to maintain the reserve established by
27 Subsection (b) is deducted to fund the administrative costs [~~of the~~

1 ~~bureau of emergency management~~] of the department associated with
2 administering the state emergency medical services program, the
3 trauma program, and the accounts and to fund the costs of monitoring
4 and providing technical assistance for those programs and the
5 accounts.

6 SECTION 3.1562. The heading to Subchapter F, Chapter 773,
7 Health and Safety Code, is amended to read as follows:

8 SUBCHAPTER F. MEDICAL INFORMATION PROVIDED BY CERTAIN EMERGENCY
9 MEDICAL SERVICES CALL TAKERS [~~OPERATORS~~]

10 SECTION 3.1563. Section [773.141](#)(2), Health and Safety Code,
11 is amended to read as follows:

12 (2) "Emergency medical services call taker
13 [~~operator~~]" means a person who, as a volunteer or employee of a
14 public agency, as that term is defined by Section [771.001](#), receives
15 emergency calls.

16 SECTION 3.1564. Section [773.143](#), Health and Safety Code, is
17 amended to read as follows:

18 Sec. 773.143. PROVISION OF MEDICAL INFORMATION. An
19 emergency medical services call taker [~~operator~~] may provide
20 medical information to a member of the public during an emergency
21 call if:

22 (1) the call taker [~~operator~~] has successfully
23 completed an emergency medical services call taker [~~operator~~]
24 training program and holds a certificate issued under Section
25 [773.144](#); and

26 (2) the information provided substantially conforms
27 to the protocol for delivery of the information adopted by the

1 executive commissioner [board] under Section 773.145.

2 SECTION 3.1565. Section 773.144, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 773.144. TRAINING PROGRAMS. (a) The department may
5 offer emergency medical services call taker [~~operator~~] training
6 programs and may approve training programs offered by other
7 persons. The executive commissioner [board] by rule shall
8 establish minimum standards for approval of training programs and
9 certification and decertification of program instructors.

10 (b) The provider of an emergency medical services call taker
11 [~~operator~~] training program shall issue an emergency medical
12 services call taker [~~operator~~] a certificate evidencing completion
13 of the training program. The executive commissioner [board] by
14 rule may require that, before issuance of the certificate, the call
15 taker [~~operator~~] successfully complete an examination administered
16 by the department [board], by the provider of the training program,
17 or by another person.

18 (c) The executive commissioner [board] by rule may provide
19 that a certificate issued under Subsection (b) expires at the end of
20 a specified period not less than one year after the date on which
21 the certificate is issued and may adopt requirements, including
22 additional training or examination, for renewal of the certificate.

23 (d) The executive commissioner [board] by rule may adopt
24 other requirements relating to emergency medical services call
25 taker [~~operator~~] training programs. The establishment of minimum
26 standards under this section does not prohibit the entity that is
27 employing or accepting the volunteer services of the emergency

1 medical services call taker [operator] from imposing additional
2 training standards or procedures.

3 SECTION 3.1566. Section 773.145, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 773.145. MEDICAL INFORMATION. The executive
6 commissioner [board] by rule shall adopt a protocol that must be
7 used to provide medical information under Section 773.143. The
8 protocol may include the use of a flash-card system or other similar
9 system designed to make the information readily accessible to the
10 emergency medical services call taker [operator] in an
11 understandable form.

12 SECTION 3.1567. Section 773.146(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) An emergency medical services call taker [operator] who
15 holds a certificate under Section 773.144 is not liable for damages
16 that arise from the provision of medical information according to
17 the protocol adopted under Section 773.145 if the information is
18 provided in good faith. This subsection does not apply to an act or
19 omission of the call taker [operator] that constitutes gross
20 negligence, recklessness, or intentional misconduct. This
21 subsection does not affect any liability imposed on a public agency
22 for the conduct of the emergency medical services call taker
23 [operator] under Section 101.062, Civil Practice and Remedies Code.

24 SECTION 3.1568. Section 773.147(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) The executive commissioner [board] by rule may adopt
27 fees for:

1 (1) training programs provided by the department
2 [board] under Section 773.144; and
3 (2) the approval of program instructors and of
4 training programs offered by other persons.

5 SECTION 3.1569. Section 773.171(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) The emergency medical services for children program is
8 in the department [bureau of emergency management].

9 SECTION 3.1570. The heading to Section 773.173, Health and
10 Safety Code, is amended to read as follows:

11 Sec. 773.173. [DUTIES OF BOARD] RULES.

12 SECTION 3.1571. Sections 773.173(a), (b), and (c), Health
13 and Safety Code, are amended to read as follows:

14 (a) On the recommendation of the advisory council
15 [committee], the executive commissioner [board] shall adopt
16 minimum standards and objectives to implement a pediatric emergency
17 services system, including rules that:

18 (1) provide guidelines for categorization of a
19 facility's pediatric capability;

20 (2) provide for triage, transfer, and transportation
21 policies for pediatric care;

22 (3) establish guidelines for:

23 (A) prehospital care management for triage and
24 transportation of a pediatric patient;

25 (B) prehospital and hospital equipment that is
26 necessary and appropriate for the care of a pediatric patient;

27 (C) necessary pediatric emergency equipment and

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1 training in long-term care facilities; and
2 (D) an interhospital transfer system for a
3 critically ill or injured pediatric patient; and
4 (4) provide for data collection and analysis.

5 (b) The executive commissioner [board] and the advisory
6 council [committee] shall consider guidelines endorsed by the
7 American Academy of Pediatrics and the American College of Surgeons
8 in recommending and adopting rules under this section.

9 (c) The department [bureau] may grant an exception to a rule
10 adopted under this section if it finds that compliance with the rule
11 would not be in the best interests of persons served in the affected
12 local pediatric emergency medical services system.

13 SECTION 3.1572. Section 773.204(c), Health and Safety Code,
14 is amended to read as follows:

15 (c) In developing the stroke emergency transport plan and
16 stroke facility criteria, the stroke committee shall consult the
17 criteria for stroke facilities established by national medical
18 organizations such as The [~~the~~] Joint Commission [~~on Accreditation~~
19 ~~of Healthcare Organizations~~].

20 SECTION 3.1573. Section 774.002(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) A municipality or other political subdivision that
23 employs emergency medical technicians may pay educational
24 incentive pay to employees holding certificates from the [Texas]
25 Department of State Health Services as emergency medical
26 technicians.

27 SECTION 3.1574. Section 777.008(b), Health and Safety Code,

1 is amended to read as follows:

2 (b) The committee is composed of:

3 (1) one public member appointed by the Commission on
4 State Emergency Communications;

5 (2) six members who represent the six regional poison
6 control centers, one appointed by the chief executive officer of
7 each center;

8 (3) one member appointed by the commissioner of state
9 health services [~~the Department of State Health Services~~]; and

10 (4) one member who is a health care professional
11 designated as the poison control program coordinator appointed by
12 the Commission on State Emergency Communications.

13 SECTION 3.1575. Section 779.002, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 779.002. TRAINING. (a) A person or entity that
16 acquires an automated external defibrillator shall ensure that:

17 (1) each user of the automated external defibrillator
18 receives training given or approved by the [~~Texas~~] Department of
19 State Health Services in:

20 (A) cardiopulmonary resuscitation; and

21 (B) use of the automated external defibrillator;

22 and

23 (2) a licensed physician is involved in the training
24 program to ensure compliance with the requirements of this chapter.

25 (b) The executive commissioner of the Health and Human
26 Services Commission [~~Texas Department of Health~~] shall adopt rules
27 establishing the minimum requirements for the training required by

1 this section. In adopting rules under this section, the executive
2 commissioner [~~Texas Department of Health~~] shall consider the
3 guidelines for automated external defibrillator training approved
4 by the American Heart Association, the American Red Cross, or
5 another nationally recognized association.

6 SECTION 3.1576. Section 781.001, Health and Safety Code, is
7 amended by adding Subdivision (4-a) to read as follows:

8 (4-a) "Executive commissioner" means the executive
9 commissioner of the Health and Human Services Commission.

10 SECTION 3.1577. Sections 781.051(b), (c), and (d), Health
11 and Safety Code, are amended to read as follows:

12 (b) The executive commissioner shall adopt rules necessary
13 to administer this chapter.

14 (c) The executive commissioner by rule shall establish fees
15 necessary to administer this chapter, including fees for processing
16 and issuing or renewing a license or registration under this
17 chapter.

18 (d) The department [~~commissioner~~] shall prescribe forms
19 required by this chapter.

20 SECTION 3.1578. Section 781.103, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 781.103. APPLICATION FOR LICENSE. An application for
23 a license under this chapter must be in the form prescribed by the
24 department [~~commissioner~~] and include:

25 (1) the full name and business address of the
26 applicant;

27 (2) the name under which the applicant intends to do

1 business;

2 (3) a statement as to the general nature of the
3 business in which the applicant intends to engage;

4 (4) if the applicant is an entity other than an
5 individual, the full name and residence address of each partner,
6 officer, and director of the applicant, and of the applicant's
7 manager;

8 (5) a verified statement of the applicant's experience
9 qualifications;

10 (6) a report from the Department of Public Safety
11 stating the applicant's record of any convictions for a Class B
12 misdemeanor or equivalent offense or a greater offense;

13 (7) the social security number of the individual
14 making the application; and

15 (8) other information, evidence, statements, or
16 documents required by the department.

17 SECTION 3.1579. Section 781.105, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 781.105. FORM OF LICENSE. The department
20 [commissioner] shall prescribe the form of a license, including a
21 branch office license. The license must include:

22 (1) the name of the license holder;

23 (2) the name under which the license holder is to
24 operate; and

25 (3) the license number and the date the license was
26 issued.

27 SECTION 3.1580. Section 781.108(d), Health and Safety Code,

1 is amended to read as follows:

2 (d) After suspension of the license, the department may not
3 reinstate the license until an application, in the form prescribed
4 by the department [~~commissioner~~], is filed accompanied by a proper
5 insurance certificate. The department may deny the application
6 notwithstanding the applicant's compliance with this section:

7 (1) for a reason that would justify suspending,
8 revoking, or denying a license; or

9 (2) if, during the suspension, the applicant performs
10 a practice for which a license is required.

11 SECTION 3.1581. Section [781.155](#)(b), Health and Safety Code,
12 is amended to read as follows:

13 (b) The executive commissioner [~~department~~] by rule may
14 adopt additional qualifications for an individual to be registered
15 under this subchapter.

16 SECTION 3.1582. Section [781.254](#), Health and Safety Code, is
17 amended to read as follows:

18 Sec. 781.254. STAGGERED RENEWAL; PRORATION OF LICENSE FEE.
19 The executive commissioner [~~department~~] by rule may adopt a system
20 under which licenses expire on various dates during the year. For
21 the year in which the expiration date of a license is changed, the
22 department shall prorate license fees on a monthly basis so that
23 each license holder pays only that portion of the license fee that
24 is allocable to the number of months during which the license is
25 valid. On renewal of the license on the new expiration date, the
26 total license renewal fee is payable.

27 SECTION 3.1583. Section [781.352](#), Health and Safety Code, is

1 amended to read as follows:

2 Sec. 781.352. HEARING. (a) If the department proposes to
3 revoke or suspend a person's license or registration, the person is
4 entitled to a hearing before an administrative law judge of [a
5 ~~hearings officer appointed by]~~ the State Office of Administrative
6 Hearings.

7 (b) The executive commissioner shall prescribe procedures
8 for appealing to the department a decision to revoke or suspend a
9 license or registration.

10 SECTION 3.1584. Section 781.453, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 781.453. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY.
13 (a) If the department [~~commissioner or the commissioner's~~
14 ~~designee~~] determines that a violation occurred, the [~~commissioner~~
15 ~~or the designee may issue to the~~] department, within [~~a report~~
16 ~~stating~~]:

17 [~~(1) the facts on which the determination is based,~~
18 ~~and~~

19 [~~(2) the commissioner's or the designee's~~
20 ~~recommendation on the imposition of an administrative penalty,~~
21 ~~including a recommendation on the amount of the penalty.~~

22 [~~(b) Within~~] 14 days after the date the report is issued,
23 [~~the commissioner or the commissioner's designee~~] shall give
24 written notice of the violation [~~report~~] to the person by certified
25 mail.

26 (b) The notice under Subsection (a) must:

27 (1) include a brief summary of the alleged violation;

1 (2) state the amount of the recommended administrative
2 penalty; and

3 (3) inform the person of the person's right to a
4 hearing on the occurrence of the violation, the amount of the
5 penalty, or both.

6 SECTION 3.1585. Section 781.454, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 781.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
9 Within 10 days after the date the person receives the notice, the
10 person in writing may:

11 (1) accept the department's determination and
12 recommended administrative penalty [~~of the commissioner or the~~
13 ~~commissioner's designee~~]; or

14 (2) [~~make a~~] request [~~for~~] a hearing on the occurrence
15 of the violation, the amount of the penalty, or both.

16 (b) If the person accepts the determination and recommended
17 penalty [~~of the commissioner or the commissioner's designee~~], the
18 department by order shall [~~approve the determination and~~] impose
19 the recommended penalty.

20 SECTION 3.1586. Section 781.455(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) If the person requests a hearing or fails to respond in a
23 timely manner to the notice, an administrative law judge of the
24 State Office of Administrative Hearings [~~the commissioner or the~~
25 ~~commissioner's designee~~] shall set a hearing and the department
26 shall give written notice of the hearing to the person.

27 SECTION 3.1587. Sections 781.457(b) and (c), Health and

1 Safety Code, are amended to read as follows:

2 (b) Within the 30-day period prescribed by Subsection (a), a
3 person who files a petition for judicial review may:

4 (1) stay enforcement of the penalty by:

5 (A) paying the penalty to the court for placement
6 in an escrow account; or

7 (B) giving the court a supersedeas bond approved
8 by the court that:

9 (i) is for the amount of the penalty; and

10 (ii) is effective until all judicial review
11 of the department's order is final; or

12 (2) request the court to stay enforcement of the
13 penalty by:

14 (A) filing with the court a sworn affidavit of
15 the person stating that the person is financially unable to pay the
16 penalty and is financially unable to give the supersedeas bond; and

17 (B) giving a copy of the affidavit to the
18 department [~~commissioner or the commissioner's designee~~] by
19 certified mail.

20 (c) If the department [~~commissioner or the commissioner's~~
21 ~~designee~~] receives a copy of an affidavit under Subsection (b)(2),
22 the department [~~commissioner or the designee~~] may file with the
23 court, within five days after the date the copy is received, a
24 contest to the affidavit.

25 SECTION 3.1588. Section 782.001(2), Health and Safety Code,
26 is amended to read as follows:

27 (2) "Executive commissioner" [~~"Commissioner"~~] means

1 the executive commissioner of the Health and Human Services
2 Commission.

3 SECTION 3.1589. Section 782.002(b), Health and Safety Code,
4 as added by Chapter 1149 (S.B. 1119), Acts of the 80th Legislature,
5 Regular Session, 2007, is amended to read as follows:

6 (b) The account is composed of money deposited to the credit
7 of the account under Sections 542.406 and [~~Section~~] 707.008,
8 Transportation Code[~~, and the earnings of the account~~].

9 SECTION 3.1590. Section 782.002(c), Health and Safety Code,
10 is amended to read as follows:

11 (c) Section [~~Sections 403.095 and~~] 404.071, Government
12 Code, does [do] not apply to the account.

13 SECTION 3.1591. Section 782.003(a), Health and Safety Code,
14 as added by Chapter 1149 (S.B. 1119), Acts of the 80th Legislature,
15 Regular Session, 2007, is amended to read as follows:

16 (a) The executive commissioner shall use money appropriated
17 from the regional trauma account established under Section 782.002
18 to fund uncompensated care of designated trauma facilities and
19 county and regional emergency medical services located in the area
20 served by the trauma service area regional advisory council that
21 serves the local authority submitting money under Section 542.406
22 or 707.008, Transportation Code.

23 SECTION 3.1592. Section 782.003(b), Health and Safety Code,
24 is amended to read as follows:

25 (b) In any fiscal year, the executive commissioner shall
26 use:

27 (1) 96 percent of the money appropriated from the

1 account to fund a portion of the uncompensated trauma care provided
2 at facilities designated as state trauma facilities by the
3 Department of State Health Services;

4 (2) two percent of the money appropriated from the
5 account for county and regional emergency medical services;

6 (3) one percent of the money appropriated from the
7 account for distribution to the 22 trauma service area regional
8 advisory councils; and

9 (4) one percent of the money appropriated from the
10 account to fund administrative costs of the commission.

11 SECTION 3.1593. Section 821.001, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 821.001. DEFINITION. In this subchapter, "animal"
14 includes every living nonhuman [dumb] creature.

15 SECTION 3.1594. Section 821.052(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) A person may euthanize all other animals in the custody
18 of an animal shelter, including birds and reptiles, only in
19 accordance with the applicable methods, recommendations, and
20 procedures set forth in the edition [2000 Report] of the American
21 Veterinary Medical Association Guidelines for the [Panel on]
22 Euthanasia of Animals [~~as modified or superseded by a subsequent~~
23 ~~report of the American Veterinary Medical Association Panel on~~
24 ~~Euthanasia~~] that is approved by the executive commissioner [board].

25 SECTION 3.1595. Section 821.053, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 821.053. REQUIREMENTS FOR USE OF SODIUM PENTOBARBITAL.

1 (a) The executive commissioner [board] by rule shall establish the
2 requirements and procedures for administering sodium pentobarbital
3 to euthanize an animal in the custody of an animal shelter.

4 (b) A person may administer sodium pentobarbital to
5 euthanize an animal in the custody of an animal shelter only in
6 accordance with the requirements and procedures established by
7 department [board] rule.

8 SECTION 3.1596. Section 821.056(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) A person commits an offense if the person violates this
11 subchapter or a [board] rule adopted under this subchapter.

12 SECTION 3.1597. Section 821.057, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 821.057. INJUNCTION. A court of competent
15 jurisdiction, on the petition of any person, may prohibit by
16 injunction the substantial violation of this subchapter or a
17 [board] rule adopted under this subchapter.

18 SECTION 3.1598. Section 822.006(d), Health and Safety Code,
19 is amended to read as follows:

20 (d) It is a defense to prosecution under Section 822.005(a)
21 that the person is a person with a disability [disabled] and uses
22 the dog to provide assistance, the dog is trained to provide
23 assistance to a person with a disability, and the person is using
24 the dog to provide assistance in connection with the person's
25 disability.

26 SECTION 3.1599. Section 822.101, Health and Safety Code, is
27 amended by adding Subdivision (4-a) to read as follows:

1 (4-a) "Executive commissioner" means the executive
2 commissioner of the Health and Human Services Commission.

3 SECTION 3.1600. Section 822.102(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) This subchapter does not apply to:

6 (1) a county, municipality, or agency of the state or
7 an agency of the United States or an agent or official of a county,
8 municipality, or agency acting in an official capacity;

9 (2) a research facility, as that term is defined by
10 Section 2(e), Animal Welfare Act (7 U.S.C. Section 2132), and its
11 subsequent amendments, that is licensed by the secretary of
12 agriculture of the United States under that Act;

13 (3) an organization that is an accredited member of
14 the [American Zoo and Aquarium] Association of Zoos and Aquariums;

15 (4) an injured, infirm, orphaned, or abandoned
16 dangerous wild animal while being transported for care or
17 treatment;

18 (5) an injured, infirm, orphaned, or abandoned
19 dangerous wild animal while being rehabilitated, treated, or cared
20 for by a licensed veterinarian, an incorporated humane society or
21 animal shelter, or a person who holds a rehabilitation permit
22 issued under Subchapter C, Chapter 43, Parks and Wildlife Code;

23 (6) a dangerous wild animal owned by and in the custody
24 and control of a transient circus company that is not based in this
25 state if:

26 (A) the animal is used as an integral part of the
27 circus performances; and

(11) a dangerous wild animal that is:

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(12) in a county west of the Pecos River that has a population of less than 25,000, a cougar, bobcat, or coyote in the possession, custody, or control of a person that has trapped the cougar, bobcat, or coyote as part of a predator or depredation control activity.

8 SECTION 3.1601. Section 822.106(b), Health and Safety Code,
9 is amended to read as follows:

10 (b) Not later than the 10th day after the date a person
11 receives a certificate of registration, the person shall file a
12 clear and legible copy of the certificate of registration with the
13 [Texas] Department of State Health Services. The executive
14 commissioner [~~department~~] shall establish a procedure for filing a
15 certificate of registration and by rule shall establish [~~charge~~] a
16 reasonable fee to be collected by the department in an amount
17 sufficient to recover the cost associated with filing a certificate
18 of registration under this subsection.

19 SECTION 3.1602. Section 822.111, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 822.111. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
22 [BOARD]; CAGING REQUIREMENTS AND STANDARDS. (a) The executive
23 commissioner [board] by rule shall establish caging requirements
24 and standards for the keeping and confinement of a dangerous wild
25 animal to ensure that the animal is kept in a manner and confined in
26 a primary enclosure that:

27 (1) protects and enhances the public's health and

1 safety;

2 (2) prevents escape by the animal; and

3 (3) provides a safe, healthy, and humane environment

4 for the animal.

5 (b) An owner of a dangerous wild animal shall keep and

6 confine the animal in accordance with the caging requirements and

7 standards established by the executive commissioner [board].

8 (c) An animal registration agency may approve a deviation

9 from the caging requirements and standards established by the

10 executive commissioner [board], only if:

11 (1) the animal registration agency has good cause for

12 the deviation; and

13 (2) the deviation:

14 (A) does not compromise the public's health and

15 safety;

16 (B) does not reduce the total area of the primary

17 enclosure below that established by the executive commissioner

18 [board]; and

19 (C) does not otherwise adversely affect the

20 overall welfare of the animal involved.

21 SECTION 3.1603. Section 823.001(4), Health and Safety Code,

22 is amended to read as follows:

23 (4) "Department" means the [Texas] Department of State

24 Health Services.

25 SECTION 3.1604. Sections 823.003(a) and (e), Health and

26 Safety Code, are amended to read as follows:

27 (a) Each animal shelter operated in this state shall comply

1 with the standards for:

2 (1) housing and sanitation as provided in [existing on
3 ~~September 1, 1982, and adopted under]~~ Chapter 826 for quarantine
4 and impoundment facilities; and

5 (2) animal control officer training adopted under
6 Chapter 829.

7 (e) The executive commissioner of the Health and Human
8 Services Commission [board] may require each person operating an
9 animal shelter to keep records of the date and disposition of
10 animals in its custody, to maintain the records on the business
11 premises of the animal shelter, and to make the records available
12 for inspection at reasonable times.

13 SECTION 3.1605. Section 826.002, Health and Safety Code, is
14 amended by amending Subdivisions (5) and (9) and adding Subdivision
15 (7-a) to read as follows:

16 (5) "Department" means the ~~Texas~~ Department of State
17 Health Services.

18 (7-a) "Executive commissioner" means the executive
19 commissioner of the Health and Human Services Commission.

20 (9) "Quarantine" means strict confinement of an animal
21 specified in an order of the department ~~[board]~~ or its designee:

22 (A) on the private premises of the animal's owner
23 or at a facility approved by the department ~~[board]~~ or its designee;
24 and

25 (B) under restraint by closed cage or paddock or
26 in any other manner approved by department ~~[board]~~ rule.

27 SECTION 3.1606. The heading to Subchapter B, Chapter 826,

1 Health and Safety Code, is amended to read as follows:

2 SUBCHAPTER B. GENERAL POWERS AND DUTIES OF EXECUTIVE COMMISSIONER,
3 DEPARTMENT, [BOARD] AND LOCAL GOVERNMENTS

4 SECTION 3.1607. Section 826.011, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 826.011. GENERAL POWERS AND DUTIES OF EXECUTIVE
7 COMMISSIONER AND DEPARTMENT [BOARD]. (a) The department [board]
8 or its designee, with the cooperation of the governing bodies of
9 counties and municipalities, shall administer the rabies control
10 program established by this chapter.

11 (b) The executive commissioner [board] shall adopt rules
12 necessary to effectively administer this chapter.

13 (c) The department [board] or its designee may enter into
14 contracts or agreements with public or private entities to carry
15 out this chapter. The contracts or agreements may provide for
16 payment by the state for materials, equipment, and services.

17 (d) Subject to any limitations or conditions prescribed by
18 the legislature, the department [board] or its designee may seek,
19 receive, and spend funds received through appropriations, grants,
20 or donations from public or private sources for the rabies control
21 program established by this chapter.

22 (e) The department [board] or its designee may compile,
23 analyze, publish, and distribute information relating to the
24 control of rabies for the education of physicians, veterinarians,
25 public health personnel, and the public.

26 SECTION 3.1608. Section 826.012, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 826.012. MINIMUM STANDARDS FOR RABIES CONTROL. This
2 chapter and the rules adopted by the executive commissioner [~~board~~]
3 under this chapter are the minimum standards for rabies control.

4 SECTION 3.1609. Section 826.013, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 826.013. COUNTIES AND MUNICIPALITIES MAY ADOPT
7 CHAPTER. The governing body of a municipality or the commissioners
8 court of a county may adopt this chapter and the standards adopted
9 by the executive commissioner [~~board~~].

10 SECTION 3.1610. Section 826.014, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 826.014. COUNTIES MAY ADOPT ORDINANCES AND RULES. (a)
13 The commissioners court of a county may adopt ordinances or rules
14 that establish a local rabies control program in the county and set
15 local standards that are compatible with and equal to or more
16 stringent than the program established by this chapter and the
17 department rules adopted under this chapter [~~by the board~~].

18 (b) County ordinances or rules adopted under this section
19 supersede this chapter and the department rules adopted under this
20 chapter [~~of the board~~] within that county so that dual enforcement
21 will not occur.

22 SECTION 3.1611. Section 826.015, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 826.015. MUNICIPALITIES MAY ADOPT ORDINANCES OR RULES.
25 (a) The governing body of a municipality may adopt ordinances or
26 rules that establish a local rabies control program in the
27 municipality and set local standards that are compatible with and

1 equal to or more stringent than:

2 (1) the ordinances or rules adopted by the county in
3 which the municipality is located; and

4 (2) the program established by this chapter and the
5 department rules adopted under this chapter [~~by the board~~].

6 (b) Municipal ordinances or rules adopted under this
7 section supersede ordinances or rules adopted by the county in
8 which the municipality is located, this chapter, and the department
9 rules adopted under this chapter [~~of the board~~] within that
10 municipality so that multiple enforcement will not occur.

11 SECTION 3.1612. Sections [826.017](#)(b) and (c), Health and
12 Safety Code, are amended to read as follows:

13 (b) Except as restricted by department [~~board~~] rule, the
14 officer designated as the local rabies control authority may be the
15 county health officer, municipal health officer, animal control
16 officer, peace officer, or any entity that the commissioners court
17 or governing body considers appropriate.

18 (c) Among other duties, the local rabies control authority
19 shall enforce:

20 (1) this chapter and the department [~~board~~] rules that
21 comprise the minimum standards for rabies control;

22 (2) the ordinances or rules of the municipality or
23 county that the local rabies control authority serves; and

24 (3) the rules adopted by the executive commissioner
25 [~~board~~] under the area rabies quarantine provisions of Section
26 [826.045](#).

27 SECTION 3.1613. Sections [826.021](#)(a) and (b), Health and

1 Safety Code, are amended to read as follows:

2 (a) Except as otherwise provided by department [board]
3 rule, the owner of a dog or cat shall have the animal vaccinated
4 against rabies by the time the animal is four months of age and at
5 regular intervals thereafter as prescribed by department [board]
6 rule.

7 (b) A veterinarian who vaccinates a dog or cat against
8 rabies shall issue to the animal's owner a vaccination certificate
9 in a form that meets the minimum standards approved by the executive
10 commissioner [board].

11 SECTION 3.1614. Section 826.022(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) A person commits an offense if the person fails or
14 refuses to have each dog or cat owned by the person vaccinated
15 against rabies and the animal is required to be vaccinated under:

16 (1) Section 826.021 and department [board] rules; or
17 (2) ordinances or rules adopted under this chapter by
18 a county or municipality within whose jurisdiction the act occurs.

19 SECTION 3.1615. Sections 826.025(a) and (b), Health and
20 Safety Code, are amended to read as follows:

21 (a) The department may provide vaccine and hyperimmune
22 serum in accordance with department [board] policies or procedures
23 for the use and benefit of a person exposed, or suspected of having
24 been exposed, to rabies.

25 (b) In accordance with department [board] rules and
26 eligibility standards, the department is entitled to be reimbursed
27 by or on behalf of the person receiving the vaccine or serum for

1 actual costs incurred in providing the vaccine or serum.

2 SECTION 3.1616. Sections [826.042](#)(a) and (b), Health and
3 Safety Code, are amended to read as follows:

4 (a) The executive commissioner [board] shall adopt rules
5 governing the testing of quarantined animals and the procedure for
6 and method of quarantine.

7 (b) The local rabies control authority or a veterinarian
8 shall quarantine or test in accordance with department [board]
9 rules any animal that the local rabies control authority or
10 veterinarian has probable cause to believe is rabid, may have been
11 exposed to rabies, or may have exposed a person to rabies.

12 SECTION 3.1617. Section [826.044](#)(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) A person commits an offense if the person fails or
15 refuses to quarantine or present for quarantine or testing an
16 animal that:

17 (1) is required to be placed in quarantine or
18 presented for testing under Section [826.042](#) and department [board]
19 rules; or

20 (2) is required to be placed in quarantine under
21 ordinances or rules adopted under this chapter by a county or
22 municipality within whose jurisdiction the act occurs.

23 SECTION 3.1618. Sections [826.045](#)(a), (b), (d), and (e),
24 Health and Safety Code, are amended to read as follows:

25 (a) If rabies is known to exist in an area, the department
26 [board] or its designee may declare an area rabies quarantine to
27 prevent or contain a rabies epizootic.

1 (b) On the declaration that a quarantine exists, the
2 executive commissioner [board] shall:

- 3 (1) define the borders of the quarantine area; and
4 (2) adopt permanent or emergency rules.

5 (d) The quarantine remains in effect until the 181st day
6 after the date on which the last case of rabies is diagnosed in a
7 dog, cat, or other animal species that caused the department
8 [board] or its designee to declare a quarantine, unless the
9 department [board] or its designee, by declaration, removes the
10 quarantine before that date.

11 (e) While the quarantine is in effect, the rules adopted by
12 the executive commissioner [board] supersede all other applicable
13 ordinances or rules applying to the quarantine area and apply until
14 the department [board] or its designee removes the quarantine by
15 declaration or until the rules expire or are revoked by the
16 executive commissioner [board].

17 SECTION 3.1619. Section 826.046(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) A person commits an offense if the person violates or
20 attempts to violate a department rule [~~or the board~~] adopted under
21 Section 826.045 governing an area rabies quarantine.

22 SECTION 3.1620. Section 826.051, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 826.051. MINIMUM STANDARDS FOR QUARANTINE AND
25 IMPOUNDMENT FACILITIES. (a) The executive commissioner [board]
26 shall adopt rules governing the types of facilities that may be used
27 to quarantine animals.

1 (b) The executive commissioner [board] by rule shall
2 establish minimum standards for impoundment facilities and for the
3 care of impounded animals.

4 (c) In accordance with department [board] rules, a local
5 rabies control authority may contract with one or more public or
6 private entities to provide and operate a quarantine facility.

7 SECTION 3.1621. Section 826.052, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 826.052. INSPECTIONS. An employee of the department,
10 on the presentation of appropriate credentials to the local rabies
11 control authority or the authority's designee, may conduct a
12 reasonable inspection of a quarantine or impoundment facility at a
13 reasonable hour to determine if the facility complies with:

14 (1) the minimum standards adopted by the executive
15 commissioner [board] for those facilities; and

16 (2) the requirements for animal control officer
17 training adopted under Chapter 829.

18 SECTION 3.1622. Section 826.053, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 826.053. HEARING. (a) A person aggrieved by an action
21 of the department in amending, limiting, suspending, or revoking
22 any approval required of the department by this chapter may request
23 a hearing [~~before the department~~].

24 (b) A [~~The department shall conduct the~~] hearing held under
25 this section must be conducted in accordance with Chapter 2001,
26 Government Code, and the department's formal hearing rules.

27 SECTION 3.1623. Section 826.054(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) At the request of the commissioner, the attorney general
3 may bring suit in the name of the state to enjoin the operation of a
4 quarantine or impoundment facility that fails to meet the minimum
5 standards established by this chapter and department [board] rules.

6 SECTION 3.1624. Section [826.055](#)(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) A person commits an offense if the person operates a
9 facility for quarantined or impounded animals that fails to meet
10 standards for approval established by:

11 (1) department [board] rules; or

12 (2) ordinances or rules adopted under this chapter by
13 a county or municipality.

14 SECTION 3.1625. The heading to Section [828.014](#), Health and
15 Safety Code, is amended to read as follows:

16 Sec. 828.014. ANIMAL FRIENDLY ACCOUNT; DEDICATION.

17 SECTION 3.1626. Section [828.014](#), Health and Safety Code, is
18 amended by amending Subsections (a), (b), and (c) and adding
19 Subsection (b-1) to read as follows:

20 (a) The [~~Texas Department of Health~~] animal friendly
21 account is a separate account in the general revenue fund. The
22 account is composed of:

23 (1) money deposited to the credit of the account under
24 former Section 502.291, Transportation Code, and under Section
25 [504.605](#), Transportation Code; and

26 (2) gifts, grants, donations, and legislative
27 appropriations.

1 (b) The [Texas] Department of State Health Services
2 administers the account.

3 (b-1) The Department of State Health Services [~~department~~]
4 may spend money credited to the account or money deposited to the
5 associated trust fund account created under Section 504.6012,
6 Transportation Code, only to:

7 (1) make grants to eligible organizations that
8 sterilize animals owned by the general public at minimal or no cost;
9 and

10 (2) defray the cost of administering the account.

11 (c) The Department of State Health Services [~~Texas Board of~~
12 ~~Health~~:

13 [~~(1)~~] may accept gifts, donations, and grants from any
14 source for the benefit of the account. The executive commissioner
15 of the Health and Human Services Commission [~~; and~~

16 [~~(2)~~] by rule shall establish guidelines for spending
17 money described by Subsection (b-1) [~~credited to the account~~].

18 SECTION 3.1627. Section 829.005, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 829.005. FEE. The department and any authorized
21 animal control course sponsor, in accordance with department rules,
22 may collect [~~charge~~] reasonable fees to cover the cost of arranging
23 and conducting an animal control course.

24 SECTION 3.1628. Sections 841.022(a) and (c), Health and
25 Safety Code, are amended to read as follows:

26 (a) The executive director of the Texas Department of
27 Criminal Justice and the commissioner of state health services [~~the~~

1 Department of State Health Services] jointly shall establish a
2 multidisciplinary team to review available records of a person
3 referred to the team under Section 841.021. The team must include:

4 (1) one person from the Department of State Health
5 Services;

6 (2) two persons from the Texas Department of Criminal
7 Justice, one of whom must be from the victim services division
8 [office] of that department;

9 (3) one person from the Department of Public Safety;

10 (4) two persons from the office or office personnel;
11 and

12 (5) one person from the Council on Sex Offender
13 Treatment.

14 (c) Not later than the 60th day after the date the
15 multidisciplinary team receives notice under Section 841.021(a) or
16 (b), the team shall:

17 (1) assess whether the person is a repeat sexually
18 violent offender and whether the person is likely to commit a
19 sexually violent offense after release or discharge;

20 (2) give notice of that assessment to the Texas
21 Department of Criminal Justice or the [Texas] Department of State
22 [Mental] Health Services [and Mental Retardation], as appropriate;
23 and

24 (3) recommend the assessment of the person for a
25 behavioral abnormality, as appropriate.

26 SECTION 3.1629. Section 841.150, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 841.150. EFFECT OF SUBSEQUENT COMMITMENT OR
2 CONFINEMENT ON ORDER OF CIVIL COMMITMENT. (a) The duties imposed
3 by this chapter are suspended for the duration of any confinement of
4 a person, or if applicable any other commitment of a person to a
5 community center, mental health facility, or state supported living
6 center [school], by governmental action.

7 (b) In this section:

8 (1) "Community center" means a center established
9 under Subchapter A, Chapter 534.

10 (2) "Mental health facility" has the meaning assigned
11 by Section 571.003.

12 (3) "State supported living center [school]" has the
13 meaning assigned by Section 531.002.

14 SECTION 3.1630. Section 1001.001, Health and Safety Code,
15 is amended to read as follows:

16 Sec. 1001.001. DEFINITIONS. In this title [chapter]:

17 (1) "Commission" means the Health and Human Services
18 Commission.

19 (2) "Commissioner" means the commissioner of state
20 health services.

21 (3) "Council" means the State Health Services Council.

22 (4) "Department" means the Department of State Health
23 Services.

24 (5) "Executive commissioner" means the executive
25 commissioner of the Health and Human Services Commission.

26 SECTION 3.1631. Section 1001.051(c), Health and Safety
27 Code, is amended to read as follows:

1 (c) Subject to the control of the executive commissioner,
2 the commissioner shall:

3 (1) act as the department's chief administrative
4 officer;

5 (2) in accordance with the procedures prescribed by
6 Section 531.00551, Government Code, assist the executive
7 commissioner in the development and implementation of policies and
8 guidelines needed for the administration of the department's
9 functions;

10 (3) in accordance with the procedures adopted by the
11 executive commissioner under Section 531.00551, Government Code,
12 assist the executive commissioner in the development of rules
13 relating to the matters within the department's jurisdiction,
14 including the delivery of services to persons and the rights and
15 duties of persons who are served or regulated by the department; and

16 (4) serve as a liaison between the department and
17 commission.

18 SECTION 3.1632. Section 1001.056(c), Health and Safety
19 Code, is amended to read as follows:

20 (c) The policy statement must be:

21 (1) updated annually;

22 (2) reviewed by the Texas Workforce [state] Commission
23 civil rights division [~~on Human Rights~~] for compliance with
24 Subsection (b)(1); and

25 (3) filed with the governor's office.

26 SECTION 3.1633. Section 1001.0711(a), Health and Safety
27 Code, is amended to read as follows:

1 (a) The executive commissioner [commission] by rule shall
2 establish a School Health Advisory Committee at the department to
3 provide assistance to the council in establishing a leadership role
4 for the department in support for and delivery of coordinated
5 school health programs and school health services.

6 SECTION 3.1634. Section 1001.080(a), Health and Safety
7 Code, is amended to read as follows:

8 (a) In this section, "individual's legally authorized
9 representative" means:

10 (1) a parent, managing conservator, or guardian of an
11 individual, if the individual is a minor;

12 (2) a guardian of an individual, if the individual has
13 been adjudicated incompetent to manage the individual's personal
14 affairs; or

15 (3) an agent of the individual authorized under a
16 medical [durable] power of attorney for health care.

17 SECTION 3.1635. Subchapter D, Chapter 1001, Health and
18 Safety Code, is amended by adding Sections 1001.084 and 1001.085 to
19 read as follows:

20 Sec. 1001.084. CONTRACTING AND AUDITING AUTHORITY;
21 DELEGATION. (a) The executive commissioner, as authorized by
22 Section 531.0055, Government Code, may delegate to the department
23 the executive commissioner's authority under that section for
24 contracting and auditing relating to the department's powers,
25 duties, functions, and activities.

26 (b) If the executive commissioner does not make a delegation
27 under Subsection (a), a reference in law to the department with

1 respect to the department's contracting or auditing authority means
2 the executive commissioner. If the executive commissioner makes a
3 delegation under Subsection (a), a reference in law to the
4 department's contracting or auditing authority means that
5 authority the executive commissioner has delegated to the
6 department.

7 (c) If the executive commissioner revokes all or part of a
8 delegation made under Subsection (a), a reference in law to the
9 department with respect to a function for which the delegation was
10 revoked means the executive commissioner or another entity to which
11 the executive commissioner delegates that authority.

12 (d) It is the legislature's intent that the executive
13 commissioner retain the authority over and responsibility for
14 contracting and auditing at each health and human services agency
15 as provided by Section 531.0055, Government Code. A statute
16 enacted on or after January 1, 2015, that references the
17 contracting or auditing authority of the department does not give
18 the department direct contracting or auditing authority unless the
19 statute expressly provides that the contracting or auditing
20 authority:

21 (1) is given directly to the department; and
22 (2) is an exception to the exclusive contracting and
23 auditing authority given to the executive commissioner under
24 Section 531.0055, Government Code.

25 Sec. 1001.085. MANAGEMENT AND DIRECTION BY EXECUTIVE
26 COMMISSIONER. The department's powers and duties prescribed by
27 this chapter and other law, including enforcement activities and

1 functions, are subject to the executive commissioner's oversight
2 under Chapter 531, Government Code, to manage and direct the
3 operations of the department.

4 SECTION 3.1636. Section 1001.202(c), Health and Safety
5 Code, as added by Chapter 352 (H.B. 2392), Acts of the 83rd
6 Legislature, Regular Session, 2013, is amended to read as follows:

7 (c) The executive commissioner [~~department~~] may adopt rules
8 necessary to implement this subchapter.

9 SECTION 3.1637. Section 1002.052(b), Health and Safety
10 Code, is amended to read as follows:

11 (b) The following ex officio, nonvoting members also serve
12 on the board:

13 (1) the commissioner [~~of the department~~];
14 (2) the executive commissioner;
15 (3) the commissioner of insurance;
16 (4) the executive director of the Employees Retirement
17 System of Texas;

18 (5) the executive director of the Teacher Retirement
19 System of Texas;

20 (6) the state Medicaid director of the commission
21 [~~Health and Human Services Commission~~];

22 (7) the executive director of the Texas Medical Board;
23 (8) the commissioner of aging and disability services
24 [~~the Department of Aging and Disability Services~~];

25 (9) the executive director of the Texas Workforce
26 Commission;

27 (10) the commissioner of the Texas Higher Education

1 Coordinating Board; and

2 (11) a representative from each state agency or system
3 of higher education that purchases or provides health care
4 services, as determined by the governor.

5 SECTION 3.1638. Section 1002.102(b), Health and Safety
6 Code, is amended to read as follows:

7 (b) The institute shall study and develop recommendations
8 for measuring quality of care and efficiency across:

9 (1) all state employee and state retiree benefit
10 plans;

11 (2) employee and retiree benefit plans provided
12 through the Teacher Retirement System of Texas;

13 (3) the [state] medical assistance program under
14 Chapter 32, Human Resources Code; and

15 (4) the child health plan program under Chapter 62.

16 SECTION 3.1639. The following provisions of the Health and
17 Safety Code are repealed:

18 (1) Section 11.002;

19 (2) Section 11.003(a);

20 (3) the heading to Section 11.004;

21 (4) Section 11.004(a);

22 (5) Sections 11.0045, 11.005, 11.0055, 11.006,
23 11.007, 11.008, 11.009, 11.010, and 11.011;

24 (6) the heading to Section 11.012;

25 (7) Section 11.012(e);

26 (8) Section 11.013;

27 (9) Section 11.015;

- 1 (10) Section [11.0161](#);
- 2 (11) Section [11.017](#);
- 3 (12) Section [11.018](#);
- 4 (13) Section [12.0123](#), as added by Chapters 1447 and
- 5 1460, Acts of the 76th Legislature, Regular Session, 1999;
- 6 (14) Section [12.017](#);
- 7 (15) Subchapter C, Chapter 12;
- 8 (16) Sections [33.018\(a\)\(2\)](#) and (3) and [33.051\(1\)](#) and
- 9 (2);
- 10 (17) Sections [34.001\(1\)](#), (2), and (3);
- 11 (18) Sections [42.002\(1\)](#) and [42.005\(e\)](#);
- 12 (19) Section [47.0035](#);
- 13 (20) Sections [48.001\(2\)](#), (3), (5), and (6);
- 14 (21) Section [61.002\(1\)](#);
- 15 (22) Sections [62.002\(1\)](#) and (2);
- 16 (23) Section [62.055\(d\)](#);
- 17 (24) Section [62.059](#);
- 18 (25) Section [62.101\(b-1\)](#);
- 19 (26) Section [62.1012](#);
- 20 (27) Section [63.001](#);
- 21 (28) Sections [81.043\(c\)](#) and (d) and [81.050\(i\)](#);
- 22 (29) Section [85.013](#);
- 23 (30) Sections [85.083](#) and [85.084](#);
- 24 (31) Subchapter F, Chapter 85;
- 25 (32) Sections [85.271\(1\)](#) and (3);
- 26 (33) Sections [87.001\(5\)](#) and (10);
- 27 (34) Section [88.001\(12\)](#);

- (35) Section 92.008;
 - (36) Section 93.011;
 - (37) Sections 96.001(1) and (2);
 - (38) Sections 98.001(3), (4), and (5);
 - (39) Section 101.0075;
 - (40) Section 103.0105;
 - (41) Sections 103A.001(1) and (3);
 - (42) Sections 104.002(1), (2), (3), and (4);
 - (43) Section 105.008;
 - (44) Chapter 112;
 - (45) Sections 115.001(2) and (3);
 - (46) Sections 117.001(1) and (3);
 - (47) Sections 141.013(b) and 141.017(e);
 - (48) Sections 142.001(10) and (11-b);
 - (49) Section 142.015;
 - (50) Section 142.016;
 - (51) Section 144.082(e);
 - (52) Section 146.019(s);
 - (53) Section 161.0901;
 - (54) Section 162.017;
 - (55) Sections 181.001(b)(1) and (2-b);
 - (56) Section 241.024;
 - (57) Section 241.181, as added by Chapter 217 (H.B. 15), Acts of the 83rd Legislature, Regular Session, 2013;
 - (58) Section 242.004;
 - (59) Section 242.094(e), as added by Chapter 583 (S.B. 28), Acts of the 73rd Legislature, Regular Session, 1993;

1 (60) Section 244.002(2);
2 (61) Section 244.008;
3 (62) Section 245.002(3);
4 (63) Sections 245.008;
5 (64) Sections 247.006 and 247.047;
6 (65) Section 248.029(e);
7 (66) Section 251.001(1);
8 (67) Sections 252.045 and 252.099;
9 (68) Section 254.051(f);
10 (69) Sections 311.004(b) and 311.031(1);
11 (70) Sections 312.002(1) and (2);
12 (71) Section 321.002(e);
13 (72) Section 341.001(1);
14 (73) Section 345.043(b);
15 (74) Sections 401.003(2), 401.249(d), and 401.501(2);
16 (75) Sections 431.002(3), (4), (7), and (12),
17 431.045(d), 431.055(e), 431.2021, 431.243, 431.247(a), 431.2471,
18 431.275, and 431.277;
19 (76) Sections 432.003(1), (2), and (4) and 432.022(e);
20 (77) Sections 433.003(4) and 433.095(e);
21 (78) Sections 436.002(4), (5), (13), and (17);
22 (79) Sections 437.001(1), (2), (3), and (3-a);
23 (80) Section 438.041(1);
24 (81) Section 438.042(b), as added by Chapter 885 (H.B.
25 1682), Acts of the 72nd Legislature, Regular Session, 1991;
26 (82) Section 438.101(1);
27 (83) Section 438.151;

- 1 (84) Section 439.004;
- 2 (85) Sections 440.003(2), (3), (4), and (15);
- 3 (86) Section 441.001;
- 4 (87) Chapter 461;
- 5 (88) Section 462.001(4);
- 6 (89) Chapter 463;
- 7 (90) Sections 464.001(2) and 464.013;
- 8 (91) Sections 466.002(2) and (3);
- 9 (92) Section 466.023(g);
- 10 (93) Subchapters A and C, Chapter 468;
- 11 (94) Section 485.001(3);
- 12 (95) Section 486.001(a)(2);
- 13 (96) Section 501.001(1);
- 14 (97) Sections 502.003(2) and (8);
- 15 (98) Section 502.0141(e);
- 16 (99) Section 503.001(1);
- 17 (100) Sections 505.004(2) and (6) and 505.011(f);
- 18 (101) Sections 506.004(2) and (6) and 506.011(f);
- 19 (102) Sections 507.004(2) and (6) and 507.010(f);
- 20 (103) Chapter 535;
- 21 (104) Sections 552.0011(1) and (5);
- 22 (105) the headings to Subchapters A and B, Chapter
- 23 553;
- 24 (106) the heading to Subchapter A, Chapter 554;
- 25 (107) Sections 555.001(5) and (9);
- 26 (108) Section 571.003(1);
- 27 (109) Sections 577.0011 and 577.006(d);

1 (110) Sections 591.003(2) and (21) and 591.012;
2 (111) Section 592.101;
3 (112) Section 593.079;
4 (113) Sections 756.081(2) and (3);
5 (114) Sections 773.003(3), (4), and (5), 773.005, and
6 773.066(f);
7 (115) Section 781.001(3);
8 (116) Section 782.002(b), as added by Chapter 1027
9 (H.B. 1623), Acts of the 80th Legislature, Regular Session, 2007;
10 (117) Section 782.003(a), as added by Chapter 1027
11 (H.B. 1623), Acts of the 80th Legislature, Regular Session, 2007;
12 (118) Section 821.051(3);
13 (119) Section 822.101(2);
14 (120) Sections 823.001(2) and (3);
15 (121) Sections 826.002(2) and (4);
16 (122) Section 828.015;
17 (123) Section 1001.076; and
18 (124) Sections 1002.001(2), (3), and (4).

19 SECTION 3.1640. The repeal by this Act of Chapter 463,
20 Health and Safety Code, does not apply to an offense committed under
21 that chapter before the effective date of this Act. An offense
22 committed under Chapter 463, Health and Safety Code, is governed by
23 the law in effect when the offense was committed, and the former law
24 is continued in effect for that purpose.

25 ARTICLE 4. HUMAN RESOURCES CODE

26 SECTION 4.001. The heading to Title 2, Human Resources
27 Code, is amended to read as follows:

1 TITLE 2. [DEPARTMENT OF] HUMAN SERVICES AND [DEPARTMENT OF]
2 PROTECTIVE [AND REGULATORY] SERVICES IN GENERAL

3 SECTION 4.002. Chapter 11, Human Resources Code, is amended
4 to read as follows:

5 CHAPTER 11. GENERAL PROVISIONS

6 Sec. 11.001. DEFINITIONS. In [Except as provided by
7 ~~Section 40.001, in~~] this title:

8 (1) ~~"Board"~~ means the Texas Board of Human Services.

9 [~~(2)~~ "Department" means the Texas Department of Human
10 Services.

11 [~~(3)~~ "Commissioner" means the Commissioner of Human
12 Services.

13 [~~(4)~~] "Assistance" means all forms of assistance and
14 services for needy persons authorized by Subtitle C.

15 (2) "Commission" means the Health and Human Services
16 Commission.

17 (3) "Executive commissioner" means the executive
18 commissioner of the Health and Human Services Commission.

19 (4) [~~(5~~)] "Financial assistance" means money payments
20 for needy persons authorized by Chapter 31.

21 (5) [~~(6~~)] "Medical assistance" means assistance for
22 needy persons authorized by Chapter 32.

23 Sec. 11.002. PURPOSE OF TITLE; CONSTRUCTION. (a) The
24 purpose of this title is to establish a program of social security
25 to provide necessary and prompt assistance to the citizens of this
26 state who are entitled to avail themselves of its provisions.

27 (b) This title shall be liberally construed in order that

1 its purposes may be accomplished as equitably, economically, and
2 expeditiously as possible.

3 Sec. 11.003. RESPONSIBILITY OF COUNTIES AND MUNICIPALITIES
4 NOT AFFECTED. No provision of this title is intended to release the
5 counties and municipalities in this state from the specific
6 responsibilities they have with regard to the support of public
7 welfare, child welfare, and relief services. Funds which the
8 counties and municipalities may appropriate for the support of
9 those programs may be administered through the [department's] local
10 or regional offices of the commission or Department of Aging and
11 Disability Services, and if administered in that manner must be
12 devoted exclusively to the programs in the county or municipality
13 making the appropriation.

14 Sec. 11.004. POWERS AND FUNCTIONS NOT AFFECTED. The
15 provisions of this title are not intended to interfere with the
16 powers and functions of the commission, the health and human
17 services agencies, as defined by Section 531.001, Government Code
18 [Texas Rehabilitation Commission, the Texas Commission for the
19 Blind, the division of maternal and child health of the Texas
20 Department of Health], or county juvenile boards.

21 SECTION 4.003. Chapter 12, Human Resources Code, is amended
22 to read as follows:

23 CHAPTER 12. PENAL PROVISIONS

24 Sec. 12.001. PROHIBITED ACTIVITIES. (a) A person who is
25 not licensed to practice law in Texas commits an offense if the
26 person charges a fee for representing or aiding an applicant or
27 recipient in procuring assistance from the state agency

1 administering the assistance [department].

2 (b) A person commits an offense if the person advertises,
3 holds himself or herself out for, or solicits the procurement of
4 assistance from the state agency administering the assistance
5 [department].

6 (c) An offense under this section is a Class A misdemeanor.

7 Sec. 12.002. UNLAWFUL USE OF FUNDS. (a) A person charged
8 with the duty or responsibility of administering, disbursing,
9 auditing, or otherwise handling the grants, funds, or money
10 provided for in this title commits an offense if the person
11 misappropriates the grants, funds, or money or by deception or
12 fraud wrongfully distributes the grants, funds, or money to any
13 person.

14 (b) An offense under this section is a felony punishable by
15 confinement in the Texas Department of Criminal Justice for a term
16 of not less than two or more than seven years.

17 Sec. 12.003. DISCLOSURE OF INFORMATION PROHIBITED. (a)
18 Except for purposes directly connected with the administration of
19 the [department's] assistance programs of the commission or
20 Department of Aging and Disability Services, as applicable, it is
21 an offense for a person to solicit, disclose, receive, or make use
22 of, or to authorize, knowingly permit, participate in, or acquiesce
23 in the use of the names of, or any information concerning, persons
24 applying for or receiving assistance if the information is directly
25 or indirectly derived from the records, papers, files, or
26 communications of the commission or department or acquired by
27 employees of the commission or department in the performance of

1 their official duties.

2 (b) An offense under this section is a Class A misdemeanor.

3 SECTION 4.004. The heading to Subtitle B, Title 2, Human
4 Resources Code, is amended to read as follows:

5 SUBTITLE B. ADMINISTRATIVE PROVISIONS AND GENERAL FUNCTIONS
6 RELATING TO [STRUCTURE AND FUNCTIONS OF DEPARTMENT OF] HUMAN
7 SERVICES

8 SECTION 4.005. The heading to Chapter 21, Human Resources
9 Code, is amended to read as follows:

10 CHAPTER 21. ADMINISTRATIVE PROVISIONS RELATING TO AGENCIES
11 ADMINISTERING ASSISTANCE PROGRAMS [~~FOR DEPARTMENT OF HUMAN~~
12 ~~SERVICES~~]

13 SECTION 4.006. Section 21.007, Human Resources Code, is
14 transferred to Subchapter C, Chapter 161, Human Resources Code,
15 redesignated as Section 161.0541, Human Resources Code, and amended
16 to read as follows:

17 Sec. 161.0541 [~~21.007~~]. MAINTENANCE OF MERIT SYSTEM. [~~The~~
18 ~~department may establish a merit system for its employees.~~] The
19 merit system established as provided by Section 161.054 may be
20 maintained in conjunction with other state agencies that are
21 required by federal law to operate under a merit system.

22 SECTION 4.007. Sections 21.011, 21.012, and 21.013, Human
23 Resources Code, are amended to read as follows:

24 Sec. 21.011. ANNUAL REPORT ON DEPARTMENT OF AGING AND
25 DISABILITY SERVICES [~~REPORTS~~]. [~~(a)~~] On or before December 31 of
26 each year the Department of Aging and Disability Services
27 [~~commissioner~~] shall prepare and submit to the commission [~~board~~] a

1 full report on the operation and administration of the department
2 under this title together with the department's [~~commissioner's~~]
3 recommendations for changes. [~~The report must include information~~
4 ~~relating to the status of the client-centered outcome measures~~
5 ~~developed by the department under Section 21.00605(b) and the~~
6 ~~department's progress in improving those outcome measures.~~] The
7 commission [~~board~~] shall submit the report to the governor and the
8 legislature.

9 Sec. 21.012. CONFIDENTIALITY OF INFORMATION. (a) The
10 executive commissioner [~~department~~] shall establish [~~and enforce~~]
11 reasonable rules governing the custody, use, and preservation of
12 the [~~department's~~] records, papers, files, and communications of
13 the commission and the Department of Aging and Disability Services
14 under this title. The commission and the department shall:

15 (1) enforce the agency's rules; and
16 (2) provide safeguards which restrict the use or
17 disclosure of information concerning applicants for or recipients
18 of the commission's and the department's assistance programs to
19 purposes directly connected with the administration of the
20 programs.

21 (b) If under a provision of law lists of the names and
22 addresses of recipients of the commission's or the department's
23 assistance programs are furnished to or held by a governmental
24 agency other than the commission or the department, that agency or
25 the person with responsibility for adopting rules for that agency
26 shall adopt rules necessary to prevent the publication of the lists
27 or the use of the lists for purposes not directly connected with the

1 administration of the assistance programs.

2 Sec. 21.013. OATHS AND ACKNOWLEDGMENTS. A local
3 representative of the commission or the Department of Aging and
4 Disability Services [department] who is responsible for
5 investigating and determining the eligibility of an applicant for
6 assistance authorized in this title may administer oaths and take
7 acknowledgments concerning all matters relating to the
8 administration of this title. The representative shall sign the
9 oaths or acknowledgments and indicate the representative's [his or
10 her] position and title but need not seal the instruments. The
11 representative [agent] has the same authority as a notary public
12 coextensive with the limits of the state for the purpose of
13 administering the provisions of this title.

14 SECTION 4.008. The heading to Chapter 22, Human Resources
15 Code, is amended to read as follows:

16 CHAPTER 22. GENERAL FUNCTIONS RELATING TO [OF DEPARTMENT OF] HUMAN
17 SERVICES

18 SECTION 4.009. Section 22.0001, Human Resources Code, is
19 amended to read as follows:

20 Sec. 22.0001. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
21 CONFLICT WITH OTHER LAW [OF COMMISSIONER OF HEALTH AND HUMAN
22 SERVICES]. [The commissioner of health and human services has the
23 powers and duties relating to the board and commissioner as
24 provided by Section 531.0055, Government Code.] To the extent a
25 power or duty given to the [board or] commissioner of aging and
26 disability services by this title or another law conflicts with
27 Section 531.0055, Government Code, Section 531.0055 controls.

1 SECTION 4.010. Section 22.001, Human Resources Code, is
2 amended to read as follows:

3 Sec. 22.001. GENERAL POWERS AND DUTIES OF COMMISSION [~~THE~~
4 ~~DEPARTMENT~~]. (a) The executive commissioner [~~department~~] is
5 responsible for supervising the administration of [administering]
6 the welfare functions authorized in this title.

7 (b) The commission [~~The department~~] shall administer
8 medical assistance to needy persons [~~who are aged, blind, or~~
9 ~~disabled~~] and financial and medical assistance to [~~needy~~] families
10 with dependent children.

11 (b-1) The executive commissioner [~~department~~] shall [~~also~~
12 ~~administer or~~] supervise general relief services. [~~The department~~
13 ~~may administer state child day-care services.~~]

14 (c) The commission [~~department~~] shall assist other
15 governmental agencies in performing services in conformity with the
16 purposes of this title when so requested and shall cooperate with
17 the agencies when expedient.

18 (d) The commission [~~department~~] shall conduct research and
19 compile statistics on public welfare programs in the state. The
20 research must include all phases of dependency and delinquency and
21 related problems. The commission [~~department~~] shall cooperate with
22 other public and private agencies in developing plans for the
23 prevention and treatment of conditions giving rise to public
24 welfare problems.

25 SECTION 4.011. Sections 22.0011 and 22.0015, Human
26 Resources Code, are amended to read as follows:

27 Sec. 22.0011. DEFINITIONS [~~DEFINITION~~]. In this chapter:

1 (1) "Department" means the Department of Aging and
2 Disability Services.

3 (2) "Long-term [~~, except in Section 22.032,~~
4 ~~"long-term~~] care services" means the provision of personal care and
5 assistance related to health and social services given episodically
6 or over a sustained period to assist individuals of all ages and
7 their families to achieve the highest level of functioning
8 possible, regardless of the setting in which the assistance is
9 given.

10 Sec. 22.0015. EVALUATION AND IMPROVEMENT OF PROGRAMS. The
11 commission and the department shall conduct research, analysis, and
12 reporting of the [~~its~~] programs administered by each agency under
13 this title to evaluate and improve the programs. The commission and
14 the department may contract with one or more independent entities
15 to assist the commission or the department, as applicable, with the
16 research, analysis, and reporting required by this section.

17 SECTION 4.012. Sections 22.002 and 22.003, Human Resources
18 Code, are amended to read as follows:

19 Sec. 22.002. ADMINISTRATION OF FEDERAL WELFARE PROGRAMS.
20 (a) The commission [~~department~~] is the state agency designated to
21 cooperate with the federal government in the administration of
22 Titles IV, XIX, and XX of the federal Social Security Act. The
23 commission [~~department~~] shall administer other titles added to the
24 act after January 1, 1979, unless another state agency is
25 designated by law to perform the additional functions. The
26 commission [~~department~~] shall cooperate with federal, state, and
27 local governmental agencies in the enforcement and administration

1 of the federal act, and the executive commissioner shall promulgate
2 rules to effect that cooperation.

3 (b) The commission [department] shall cooperate with the
4 United States Department of Health and Human Services[, Education,
5 and Welfare] and other federal agencies in a reasonable manner and
6 in conformity with the provisions of this title to the extent
7 necessary to qualify for federal assistance for persons entitled to
8 benefits under the federal Social Security Act. The commission
9 [department] shall make reports periodically in compliance with
10 federal regulations.

11 (c) The commission [department] may establish and maintain
12 programs of assistance and services authorized by federal law and
13 designed to help needy families and individuals attain and retain
14 the capability of independence and self-care. Notwithstanding any
15 other provision of law, the commission [department] may extend the
16 scope of its programs to the extent necessary to ensure that federal
17 matching funds are available, if the commission [department]
18 determines that the extension of scope is feasible and within the
19 limits of appropriated funds.

20 (d) If the commission [department] determines that a
21 provision of state welfare law conflicts with a provision of
22 federal law, the executive commissioner [department] may
23 promulgate policies and rules necessary to allow the state to
24 receive and expend federal matching funds to the fullest extent
25 possible in accordance with the federal statutes and the provisions
26 of this title and the state constitution and within the limits of
27 appropriated funds.

1 (e) The commission [department] may accept, expend, and
2 transfer federal and state funds appropriated for programs
3 authorized by federal law. The commission [department] may accept,
4 expend, and transfer funds received from a county, municipality, or
5 public or private agency or from any other source, and the funds
6 shall be deposited in the state treasury subject to withdrawal on
7 order of the executive commissioner in accordance with the
8 commission's [department's] rules.

9 (f) The commission [department] may enter into agreements
10 with federal, state, or other public or private agencies or
11 individuals to accomplish the purposes of the programs authorized
12 in Subsection (c) [~~of this section~~]. The agreements or contracts
13 between the commission [department] and other state agencies are
14 not subject to Chapter 771, Government Code [~~the Interagency~~
15 ~~Cooperation Act (Article 4413(32), Vernon's Texas Civil~~
16 ~~Statutes)~~].

17 (g) In administering social service programs authorized by
18 the Social Security Act, the commission [department] may prepay an
19 agency or facility for expenses incurred under a contract with the
20 commission [department] to provide a social service.

21 (h) The executive commissioner by rule [department] may set
22 and the commission may charge reasonable fees for services provided
23 in administering social service programs authorized by the Social
24 Security Act. The executive commissioner [department] shall set
25 the amount of each fee according to the cost of the service provided
26 and the ability of the recipient to pay.

27 (i) The commission [department] may not deny services

1 administered under this section to any person because of that
2 person's inability to pay for services.

3 Sec. 22.003. RESEARCH AND DEMONSTRATION PROJECTS. (a) The
4 commission and the department may conduct research and
5 demonstration projects that in the judgment of the executive
6 commissioner will assist in promoting the purposes of the
7 commission's and the department's assistance programs. The
8 commission and the department may conduct the projects
9 independently or in cooperation with a public or private agency.

10 (b) The executive commissioner [department] may authorize
11 the use of state or federal funds available for commission or
12 department [~~its~~] assistance programs or for research and
13 demonstration projects to support the projects. The projects must
14 be consistent with the state and federal laws making the funds
15 available.

16 SECTION 4.013. Sections 22.0031(a) and (d), Human Resources
17 Code, are amended to read as follows:

18 (a) The commission [department] shall establish programs of
19 case management for high-risk pregnant women and high-risk children
20 to age one as provided under Section 1915(g) of the federal Social
21 Security Act (42 U.S.C. Section 1396n).

22 (d) The commission [department] shall use existing funds of
23 the commission [department] or any other lawful source to fund and
24 support the projects for high-risk pregnant women and high-risk
25 children.

26 SECTION 4.014. Section 22.004, Human Resources Code, is
27 amended to read as follows:

1 Sec. 22.004. PROVISION OF LEGAL SERVICES. (a) On request,
2 the commission [department] may provide legal services to an
3 applicant for or recipient of assistance at a hearing before the
4 commission [department].

5 (b) The services must be provided by an attorney licensed to
6 practice law in Texas or by a law student acting under the
7 supervision of a law teacher or a legal services organization, and
8 the attorney or law student must be approved by the commission
9 [department].

10 (c) The executive commissioner [department] shall adopt a
11 reasonable fee schedule for the legal services. The fees may not
12 exceed those customarily charged by an attorney for similar
13 services for a private client. The fees may be paid only from funds
14 appropriated to the commission [department] for the purpose of
15 providing these legal services.

16 SECTION 4.015. The heading to Section 22.005, Human
17 Resources Code, is amended to read as follows:

18 Sec. 22.005. CUSTODIAN OF ASSISTANCE FUNDS.

19 SECTION 4.016. Section 22.005(f), Human Resources Code, is
20 amended to read as follows:

21 (f) The comptroller is the designated custodian of all funds
22 administered by the commission and the department and received by
23 the state from the federal government or any other source for the
24 purpose of implementing the provisions of the Social Security Act.
25 The comptroller may receive the funds, pay them into the proper fund
26 or account of the general fund of the state treasury, provide for
27 the proper custody of the funds, and make disbursements of the funds

1 on the order of the commission or the department and on warrant of
2 the comptroller.

3 SECTION 4.017. Section 22.007, Human Resources Code, is
4 amended to read as follows:

5 Sec. 22.007. PUBLIC INFORMATION CONTRACT REQUIREMENT. (a)
6 Each contract between the commission or the department and a
7 provider of services under this title must contain a provision that
8 authorizes the commission or the department to display at the
9 service provider's place of business public awareness information
10 on services provided by the commission or the department.

11 (b) Notwithstanding Subsection (a) [~~of this section~~], the
12 commission or department may not require a physician to display in
13 the physician's private offices public awareness information on
14 services provided by the commission or department.

15 SECTION 4.018. Section 22.008(a), Human Resources Code, is
16 amended to read as follows:

17 (a) The executive commissioner [~~department~~] shall adopt
18 rules [~~develop enforcement guidelines~~] for the department's [~~its~~]
19 community care program that relate to the service delivery
20 standards required of persons who contract with the department to
21 carry out its community care program. The department shall apply
22 the rules [~~guidelines~~] consistently across the state.

23 SECTION 4.019. Sections 22.009(a), (b), (c), (d), (e), and
24 (g), Human Resources Code, are amended to read as follows:

25 (a) The executive commissioner [~~board~~] shall appoint
26 advisory committees [~~on the recommendation of the commissioner~~] to
27 assist the executive commissioner, commission, and department

1 [board] in performing their [~~its~~] duties.

2 (b) The executive commissioner [board] shall appoint each
3 advisory committee to provide for a balanced representation of the
4 general public, providers, consumers, and other persons, state
5 agencies, or groups with knowledge of and interest in the
6 committee's field of work.

7 (c) The executive commissioner [board] shall specify each
8 advisory committee's purpose, powers, and duties and shall require
9 each committee to report to the executive commissioner [board] in a
10 manner specified by the executive commissioner [board] concerning
11 the committee's activities and the results of its work.

12 (d) The executive commissioner [board] shall establish
13 procedures for receiving reports concerning activities and
14 accomplishments of advisory committees established to advise the
15 executive commissioner, commission, [board] or department. The
16 executive commissioner [board on the recommendation of the
17 commissioner] may appoint additional members to those committees
18 and establish additional duties of those committees as the
19 executive commissioner [board] determines to be necessary.

20 (e) The executive commissioner [board] shall adopt rules to
21 implement this section. Those rules must provide that during the
22 development of rules relating to an area in which an advisory
23 committee exists the committee must be allowed to assist in the
24 development of and to comment on the rules before the rules are
25 finally adopted. [The rules may allow the department to bypass this
26 procedure only in an emergency situation. However, the department
27 shall submit emergency rules to the appropriate advisory committee

1 ~~for review at the first committee meeting that occurs after the
2 rules are adopted.]~~

3 (g) Subsections (c) through (f) ~~[of this section]~~ apply to
4 each ~~department~~ advisory committee created under this section ~~[or
5 under other law]~~.

6 SECTION 4.020. Sections 22.011 through 22.017, Human
7 Resources Code, are amended to read as follows:

8 Sec. 22.011. MEMORANDUM OF UNDERSTANDING ON SERVICES TO
9 ~~[DISABLED]~~ PERSONS WITH DISABILITIES. (a) The commission, the
10 department, the ~~Texas~~ Department of State Health Services, the
11 ~~Texas~~ Department of Assistive and Rehabilitative Services, the
12 Department of Family and Protective Services ~~[Mental Health and~~
13 ~~Mental Retardation, the Texas Rehabilitation Commission, the Texas~~
14 ~~Commission for the Blind, the Texas Commission for the Deaf and Hard~~
15 ~~ef Hearing]~~, and the Texas Education Agency shall enter into
16 ~~[adopt]~~ a joint memorandum of understanding to facilitate the
17 coordination of services to ~~disabled~~ persons with disabilities.

18 The memorandum shall:

19 (1) clarify the financial and service
20 responsibilities of each agency in relation to ~~disabled~~ persons
21 with disabilities; and

22 (2) address how the agency will share data relating to
23 services delivered to ~~disabled~~ persons with disabilities by each
24 agency.

25 (b) These agencies in the formulation of this memorandum of
26 understanding shall consult with and solicit input from advocacy
27 and consumer groups.

1 (c) Not later than the last month of each state fiscal year,
2 the [~~department and the other~~] agencies shall review and update the
3 memorandum.

4 (d) The executive commissioner and the commissioner of
5 education [~~Each agency~~] by rule shall adopt the memorandum of
6 understanding and all revisions to the memorandum.

7 Sec. 22.013. MEMORANDUM OF UNDERSTANDING ON PUBLIC
8 AWARENESS INFORMATION. (a) The commission, the department, the
9 [~~Texas~~] Department of State Health Services, [~~the Texas Department~~
10 ~~of Mental Health and Mental Retardation,~~] and the Department of
11 Assistive and Rehabilitative Services [~~Texas Rehabilitation~~
12 ~~Commission~~] shall enter into [~~adopt~~] a joint memorandum of
13 understanding that authorizes and requires the exchange and
14 distribution among the agencies of public awareness information
15 relating to services provided by or through the agencies.

16 (b) Not later than the last month of each state fiscal year,
17 the [~~department and the other~~] agencies shall review and update the
18 memorandum.

19 (c) The executive commissioner [~~Each agency~~] by rule shall
20 adopt the memorandum of understanding and all revisions to the
21 memorandum.

22 Sec. 22.014. MEMORANDUM OF UNDERSTANDING ON HOSPITAL AND
23 LONG-TERM CARE SERVICES. (a) The commission, the department, and
24 the [~~Texas~~] Department of State Health Services[, ~~and the Texas~~
25 ~~Department of Mental Health and Mental Retardation~~] shall enter
26 into [~~adopt~~] a memorandum of understanding that:

27 (1) clearly defines the responsibilities of each

1 agency in providing, regulating, and funding hospital or long-term
2 care services; and

3 (2) defines the procedures and standards that each
4 agency will use to provide, regulate, and fund hospital or
5 long-term care services.

6 (b) The memorandum must provide that no new rules or
7 regulations that would increase the costs of providing the required
8 services or would increase the number of personnel in hospital or
9 long-term care facilities may be promulgated by the executive
10 commissioner [~~either the department, the Department of Health, or~~
~~the Department of Mental Health and Mental Retardation~~] unless the
11 executive commissioner [~~of health~~] certifies that the new rules or
12 regulations are urgent as well as necessary to protect the health or
13 safety of recipients of hospital or long-term care services.

15 (c) The memorandum must provide that any rules or
16 regulations proposed by the commission, the department, or the
17 Department of State Health Services[, or the ~~Department of Mental~~
~~Health and Mental Retardation~~] which would increase the costs of
19 providing the required services or which would increase the number
20 of personnel in hospital or long-term care facilities must be
21 accompanied by a fiscal note prepared by the agency proposing said
22 rules and submitted to the executive commissioner [~~department~~].
23 The fiscal note should set forth the expected impact which the
24 proposed rule or regulation will have on the cost of providing the
25 required service and the anticipated impact of the proposed rule or
26 regulation on the number of personnel in hospital or long-term care
27 facilities. The memorandum must provide that in order for a rule to

1 be finally adopted the commission [department] must provide written
2 verification that funds are available to adequately reimburse
3 hospital or long-term care service providers for any increased
4 costs resulting from the rule or regulation. The commission
5 [department] is not required to provide written verification if the
6 executive commissioner [~~of health~~] certifies that a new rule or
7 regulation is urgent as well as necessary to protect the health or
8 safety of recipients of hospital or long-term care services.

9 (d) The memorandum must provide that upon final adoption of
10 any rule increasing the cost of providing the required services,
11 the executive commissioner [department] must establish
12 reimbursement rates sufficient to cover the increased costs related
13 to the rule. The executive commissioner [department] is not
14 required to establish reimbursement rates sufficient to cover the
15 increased cost related to a rule or regulation if the executive
16 commissioner [~~of health~~] certifies that the rule or regulation is
17 urgent as well as necessary to protect the health or safety of
18 recipients of hospital or long-term care services.

19 (e) The memorandum must provide that Subsections (b)
20 through (d) [~~of this section~~] do not apply if the rules are required
21 by state or federal law or federal regulations.

22 (f) These agencies in the formulation of this memorandum of
23 understanding shall consult with and solicit input from advocacy
24 and consumer groups.

25 (g) Not later than the last month of each state fiscal year,
26 the [~~department and the other~~] agencies shall review and update the
27 memorandum.

1 (h) The executive commissioner [~~Each agency~~] by rule shall
2 adopt the memorandum of understanding and all revisions to the
3 memorandum.

4 Sec. 22.015. REPORTING OF PHYSICIAN MISCONDUCT OR
5 MALPRACTICE. (a) If the commission or the department receives an
6 allegation that a physician employed by or under contract with the
7 commission or the department under this title has committed an
8 action that constitutes a ground for the denial or revocation of the
9 physician's license under Section 164.051, Occupations Code, the
10 commission or the department, as applicable, shall report the
11 information to the Texas [~~State Board of~~] Medical Board [~~Examiners~~]
12 in the manner provided by Section 154.051, Occupations Code.

13 (b) The commission or the department shall provide the Texas
14 [~~State Board of~~] Medical Board [~~Examiners~~] with a copy of any report
15 or finding relating to an investigation of an allegation reported
16 to the Texas [~~State Board of~~] Medical Board [~~Examiners~~].

17 Sec. 22.016. SPECIAL PURCHASING PROCEDURES. The department
18 shall coordinate with the commission in complying [~~comply~~] with any
19 special purchasing procedures requiring competitive review under
20 Subtitle D, Title 10, Government Code, for purchasing under this
21 title.

22 Sec. 22.017. PROGRAM ACCESSIBILITY. The commission
23 [~~department~~] shall prepare and maintain a written plan that
24 describes how persons who do not speak English or who have physical,
25 mental, or developmental disabilities can be provided reasonable
26 access to the commission's and the department's programs under this
27 title. The commission may solicit the assistance of a health and

1 human services agency in the preparation or maintenance of the
2 plan.

3 SECTION 4.021. Sections 22.018(a), (b), and (c), Human
4 Resources Code, are amended to read as follows:

5 (a) The department and the chief administrative law judge of
6 the State Office of Administrative Hearings shall enter into
7 [~~adopt~~] a memorandum of understanding under which the State Office
8 of Administrative Hearings, on behalf of the department, conducts
9 all contested case hearings authorized or required by law to be
10 conducted under this title by the department under the
11 administrative procedure law, Chapter 2001, Government Code.

12 (b) The memorandum of understanding shall require the chief
13 administrative law judge, the department, and the executive
14 commissioner to cooperate in connection with a contested case
15 hearing and may authorize the State Office of Administrative
16 Hearings to perform any administrative act, including giving of
17 notice, that is required to be performed by the department or
18 commissioner of aging and disability services.

19 (c) The memorandum of understanding shall address whether
20 the administrative law judge who conducts a contested case hearing
21 for the State Office of Administrative Hearings on behalf of the
22 department shall:

23 (1) enter the final decision in the case after
24 completion of the hearing; or

25 (2) propose a decision to the department or the
26 commissioner of aging and disability services for final
27 consideration.

1 SECTION 4.022. Section 22.019, Human Resources Code, is
2 amended to read as follows:

3 Sec. 22.019. DUE PROCESS PROCEDURES. (a) The commission
4 and the department may not retroactively apply a rule, standard,
5 guideline, or policy interpretation under this title.

6 (b) Any [The department shall adopt any] changes in agency
7 [departmental] policy shall be adopted in accordance with the
8 rulemaking [~~rule-making~~] provisions of Chapter 2001, Government
9 Code. Periodic [The department shall use periodic] bulletins and
10 indexes shall be used to notify contractors of changes in policy and
11 to explain the changes. A [The department may not adopt a] change
12 in agency [departmental] policy may not be adopted if it [~~that~~]
13 takes effect before the date on which [~~the department notifies~~]
14 contractors are notified as prescribed by this subsection.

15 (c) The executive commissioner [~~board~~] shall adopt a rule
16 requiring the commission or the department, as applicable, to
17 respond in writing to each written inquiry from a contractor under
18 this title not later than the 14th day after the date on which the
19 commission or the department receives the inquiry.

20 SECTION 4.023. Section 22.020, Human Resources Code, is
21 amended to read as follows:

22 Sec. 22.020. AUDIT PROCEDURE. At any time during an audit,
23 the commission or the department, as applicable, shall permit a
24 contractor under this title to submit additional or alternative
25 documentation to prove that services were delivered to an eligible
26 client. Any recovery of costs by the commission or the department
27 from the contractor for using additional or alternative

1 documentation may not exceed the amount the contractor would
2 otherwise be entitled to receive under the contract as
3 administrative costs.

4 SECTION 4.024. Section 22.021(a), Human Resources Code, is
5 amended to read as follows:

6 (a) Funds [~~If funds are~~] appropriated to the commission or
7 the department for the general support or development of a service
8 under this title that is needed throughout the state[~~, the~~
9 ~~department~~] shall be allocated [~~allocate those funds~~] equitably
10 across the state.

11 SECTION 4.025. Section 22.022, Human Resources Code, is
12 amended to read as follows:

13 Sec. 22.022. RESIDENCY REQUIREMENTS. To the extent
14 permitted by law the commission and the department shall only
15 provide services under this title to legal residents of the United
16 States or the State of Texas.

17 SECTION 4.026. Sections 22.023(b), (c), (d), and (e), Human
18 Resources Code, are amended to read as follows:

19 (b) Subject to the limitations in Subsection (c) [~~of this~~
20 ~~section~~], the commission [~~department~~] may purchase and pay the
21 premiums for a conversion policy or other health insurance coverage
22 for a person who is diagnosed as having AIDS, HIV, or other terminal
23 or chronic illness and whose income level is less than 200 percent
24 of the federal poverty level, based on the federal Office of
25 Management and Budget poverty index in effect at the time coverage
26 is provided, even though a person may be eligible for benefits under
27 Chapter 32 [~~of this code~~]. Health insurance coverage for which

1 premiums may be paid under this section includes coverage purchased
2 from an insurance company authorized to do business in this state, a
3 group hospital service [~~services~~] corporation operating under
4 Chapter 842, Insurance Code, a health maintenance organization
5 operating under Chapter 843, Insurance Code, or an insurance pool
6 created by the federal or state government or a political
7 subdivision of the state.

8 (c) If a person is eligible for benefits under Chapter 32
9 [~~of this code~~], the commission [~~department~~] may not purchase or pay
10 premiums for a health insurance policy under this section if the
11 premiums to be charged for the health insurance coverage are
12 greater than premiums paid for benefits under Chapter 32 [~~of this~~
13 ~~code~~]. The commission [~~department~~] may not purchase or pay
14 premiums for health insurance coverage under this section for a
15 person at the same time that that person is covered by benefits
16 under Chapter 32 [~~of this code~~].

17 (d) The commission [~~department~~] shall pay for that coverage
18 with money made available to the commission [~~it~~] for that purpose.

19 (e) The executive commissioner [~~board~~] by rule may adopt
20 necessary rules, criteria, and plans and may enter into necessary
21 contracts to carry out this section.

22 SECTION 4.027. Sections 22.024 and 22.025, Human Resources
23 Code, are amended to read as follows:

24 Sec. 22.024. DEVELOPMENT OF SERVICE PLAN FOR ELDERLY
25 PERSONS OR PERSONS WITH DISABILITIES [~~DISABLED~~]. If the
26 commission, the department, the Department of State Health
27 Services, the Department of Assistive and Rehabilitative Services

1 [the Texas Department of Human Services, Texas Department of Mental
2 Health and Mental Retardation, Texas Commission for the Deaf and
3 Hard of Hearing, Texas Department on Aging], or another agency
4 funded in the General Appropriations Act under appropriations for
5 health, welfare, and rehabilitation agencies receives funds to
6 provide case management services to [the] elderly persons or
7 persons with disabilities [disabled], the agency shall provide
8 information to its staff concerning the services other agencies
9 provide to those populations. The agency's staff shall use that
10 information to develop a comprehensive service plan for its
11 clients.

12 Sec. 22.025. ERROR-RATE REDUCTION. (a) The commission
13 [department] shall:

14 (1) set progressive goals for improving the
15 commission's [department's] error rates in the financial assistance
16 program under Chapter 31 [aid to families with dependent children]
17 and supplemental nutrition assistance program [food stamp
18 programs]; and

19 (2) develop a specific schedule to meet those goals.

20 (c) As appropriate, the commission [department] shall
21 include in its employee evaluation process a rating system that
22 emphasizes error-rate reduction and workload.

23 (d) The commission [department] shall take appropriate
24 action if a region has a higher than average error rate and that
25 rate is not reduced in a reasonable period.

26 SECTION 4.028. Sections 22.0251 through 22.0255, Human
27 Resources Code, are amended to read as follows:

1 Sec. 22.0251. TIMELY DETERMINATION OF OVERPAYMENTS. (a)
2 Subject to the approval of the executive commissioner [~~of health~~
3 ~~and human services~~], the commission [~~department~~] shall:

4 (1) determine and record the time taken by the
5 commission [~~department~~] to establish an overpayment claim in the
6 supplemental nutrition assistance [~~food stamp~~] program or the
7 program of financial assistance under Chapter 31;

8 (2) set progressive goals for reducing the time
9 described by Subdivision (1); and

10 (3) adopt a schedule to meet the goals set under
11 Subdivision (2).

12 (b) The commission [~~department~~] shall submit to the
13 governor and the Legislative Budget Board an annual report
14 detailing the commission's [~~department's~~] progress in reaching its
15 goals under Subsection (a)(2). The report may be consolidated with
16 any other report relating to the same subject that the commission
17 [~~department~~] is required to submit under other law.

18 Sec. 22.0252. TELEPHONE COLLECTION PROGRAM. (a) The
19 commission [~~department~~] shall use the telephone to attempt to
20 collect reimbursement from a person who receives a benefit granted
21 in error under the supplemental nutrition assistance [~~food stamp~~]
22 program or the program of financial assistance under Chapter 31.

23 (b) The commission [~~department~~] shall submit to the
24 governor and the Legislative Budget Board an annual report on the
25 operation and success of the telephone collection program. The
26 report may be consolidated with any other report relating to the
27 same subject that the commission [~~department~~] is required to submit

1 under other law.

2 (c) The commission [department] shall ensure that the
3 telephone collection program attempts to collect reimbursement for
4 all identified delinquent payments for which 15 days or more have
5 elapsed since the initial notice of delinquency was sent to the
6 recipient.

7 (d) The commission [department] shall use an automated
8 collections system to monitor the results of the telephone
9 collection program. The system must:

10 (1) accept data from the accounts receivable tracking
11 system used by the commission [department];

12 (2) automate recording tasks performed by a collector,
13 including providing access to commission [department] records
14 regarding the recipient and recording notes and actions resulting
15 from a call placed to the recipient;

16 (3) automatically generate a letter to a recipient
17 following a telephone contact that confirms the action to be taken
18 regarding the delinquency;

19 (4) monitor the receipt of scheduled payments from a
20 recipient for repayment of a delinquency; and

21 (5) generate reports regarding the effectiveness of
22 individual collectors and of the telephone collection program.

23 Sec. 22.0253. PARTICIPATION IN FEDERAL TAX REFUND OFFSET
24 PROGRAM. The commission [department] shall participate in the
25 Federal Tax Refund Offset Program (FTROP) to attempt to recover
26 benefits granted by the commission [department] in error under the
27 supplemental nutrition assistance [~~food stamp~~] program. The

1 commission [department] shall submit as many claims that meet
2 program criteria as possible for offset against income tax returns.

3 Sec. 22.0254. PROSECUTION OF FRAUDULENT CLAIMS. (a) The
4 commission [department] shall keep a record of the dispositions of
5 referrals made by the commission [department] to a district
6 attorney concerning fraudulent claims for benefits under the
7 supplemental nutrition assistance [food stamp] program or the
8 program of financial assistance under Chapter 31.

9 (b) The commission [department] may:

10 (1) request status information biweekly from the
11 appropriate district attorney on each major fraudulent claim
12 referred by the commission [department];

13 (2) request a written explanation from the appropriate
14 district attorney for each case referred in which the district
15 attorney declines to prosecute; and

16 (3) encourage the creation of a special welfare fraud
17 unit in each district attorney's office that serves a municipality
18 with a population of more than 250,000, to be financed by amounts
19 provided by the commission [department].

20 (c) The executive commissioner [department] by rule may
21 define what constitutes a major fraudulent claim under Subsection
22 (b)(1).

23 Sec. 22.0255. ELECTRONIC BENEFITS TRANSFER CARD;
24 RETURNED-MAIL REDUCTION. (a) The commission [department] shall
25 develop and implement policies and procedures designed to improve
26 the commission's [department's] electronic benefits transfer cards
27 used for federal and state entitlement programs administered by the

1 commission [department].

2 (b) The commission [department] shall set an annual goal of
3 reducing the amount of returned mail it receives under the programs
4 described by Subsection (a) so that the percentage rate of returned
5 mail is within one percent of the percentage rate of returned mail
6 reported annually for the credit card and debit card industries.

7 SECTION 4.029. Sections 22.026 through 22.028, Human
8 Resources Code, are amended to read as follows:

9 Sec. 22.026. REDUCTION OF CLIENT FRAUD. The commission and
10 the department shall:

11 (1) ensure that errors attributed to client fraud are
12 appropriate; and

13 (2) take immediate and appropriate action to limit any
14 client fraud that occurs.

15 Sec. 22.027. FRAUD PREVENTION. (e) The commission, the
16 department, and the comptroller shall coordinate their efforts to
17 cross-train agency staff whose duties include fraud prevention and
18 detection to enable the staff to identify and report possible
19 fraudulent activity in programs, taxes, or funds administered by
20 each of those [the] other agencies [agency].

21 (f) A local law enforcement agency that seizes an electronic
22 benefits transfer (EBT) card issued by the commission [department]
23 to a recipient of an entitlement program administered by the
24 commission [department] shall immediately notify the commission
25 [department] of the seizure and return the card to the commission
26 [department]. The commission [department] shall send letters to
27 local law enforcement agencies or post materials in the buildings

1 in which those agencies are located to ensure that local law
2 enforcement officials are aware of this requirement.

3 Sec. 22.028. ELECTRONIC BENEFITS TRANSFER: MONITORING. (a)
4 The private electronic benefits transfer (EBT) operator with which
5 the commission [department] contracts to administer the EBT
6 system[~~T~~] shall establish procedures to maintain records that
7 monitor all debit transactions relating to EBT client accounts
8 under this section. The EBT operator shall deliver copies of the
9 records to the commission [department] and the comptroller not
10 later than the first day of each month. The commission [department]
11 shall immediately review the records and assess the propriety of
12 the debit transactions.

13 (b) After reviewing the records under Subsection (a), the
14 commission [department] shall take necessary or advisable action to
15 ensure compliance with EBT rules by the EBT operator, retailers,
16 and clients.

17 (c) No later than the first day of each month, the
18 commission [department] shall send the comptroller a report listing
19 the accounts on which enforcement actions or other steps were taken
20 by the commission [department] in response to the records received
21 from the EBT operator under this section, and the action taken by
22 the commission [department]. The comptroller shall promptly review
23 the report and, as appropriate, may solicit the advice of the
24 Medicaid and Public Assistance Fraud Oversight Task Force regarding
25 the results of the commission's [department's] enforcement actions.

26 SECTION 4.030. Sections 22.029(a) and (c), Human Resources
27 Code, are amended to read as follows:

1 (a) In order to enhance the state's ability to detect and
2 prevent fraud in the payment of claims under federal and state
3 entitlement programs, the commission [~~Health and Human Services~~
4 ~~Commission~~] shall implement a data matching project as described by
5 Subsection (b). The costs of developing and administering the data
6 matching project shall be paid entirely from amounts recovered by
7 participating agencies as a result of potential fraudulent
8 occurrences or administrative errors identified by the project.

9 (c) Each agency participating in a matching cycle shall
10 document actions taken to investigate and resolve fraudulent issues
11 noted on the list provided by the commission. The commission shall
12 compile the documentation furnished by participating agencies for
13 each matching cycle[, ~~and shall report the results of the project to~~
14 ~~the governor, lieutenant governor, speaker of the house of~~
15 ~~representatives, and Legislative Budget Board not later than~~
16 ~~December 1, 1996~~].

17 SECTION 4.031. Section 22.0292, Human Resources Code, is
18 amended to read as follows:

19 Sec. 22.0292. INFORMATION MATCHING SYSTEM RELATING TO
20 IMMIGRANTS AND FOREIGN VISITORS. (a) The commission [~~department~~]
21 shall, through the use of a computerized matching system, compare
22 commission [~~department~~] information relating to applicants for and
23 recipients of supplemental nutrition assistance program benefits
24 [~~food stamps~~] and financial assistance under Chapter 31 with
25 information obtained from the United States Department of State [~~of~~
26 ~~the United States~~] and the United States Department of Justice
27 relating to immigrants and visitors to the United States for the

1 purpose of preventing individuals from unlawfully receiving public
2 assistance benefits administered by the commission [~~department~~].

3 (b) The commission [~~department~~] may enter into an agreement
4 with the United States Department of State [~~of the United States~~]
5 and the United States Department of Justice as necessary to
6 implement this section.

7 (c) The commission [~~department~~] and federal agencies
8 sharing information under this section shall protect the
9 confidentiality of the shared information in compliance with all
10 existing state and federal privacy guidelines.

11 (d) The commission [~~department~~] shall submit to the
12 governor and the Legislative Budget Board an annual report on the
13 operation and success of the information matching system required
14 by this section. The report may be consolidated with any other
15 report relating to the same subject matter the commission
16 [~~department~~] is required to submit under other law.

17 SECTION 4.032. Sections 22.030 through 22.032, Human
18 Resources Code, are amended to read as follows:

19 Sec. 22.030. AGREEMENTS FOR PURCHASE OF SERVICES FOR
20 CHILDREN. (a) To ensure the maximum use of available federal
21 matching funds for child care services and other support services
22 under Section 31.010, the commission and any other agency providing
23 the services [~~Department of Human Services~~] shall enter into
24 agreements with the appropriate local community organizations to
25 receive donations to be used for the purchase of services for which
26 matching federal funds are available.

27 (b) An agency described under Subsection (a) [~~The~~

1 ~~Department of Human Services~~] shall cooperate with each local
2 community organization to develop guidelines for the use of that
3 community's donation to provide the services described in
4 Subsection (a) [~~of this section~~].

5 Sec. 22.031. UNANNOUNCED INSPECTIONS. The commission and
6 the department may make any inspection of a facility or program
7 under the agency's [~~department's~~] jurisdiction under this title
8 without announcing the inspection.

9 Sec. 22.032. USE OF EARNED FEDERAL FUNDS. Subject to the
10 General Appropriations Act, the commission [~~department~~] may use
11 earned federal funds derived from recovery of amounts paid or
12 benefits granted by the commission [~~department~~] as a result of
13 fraud to pay the costs of the commission's [~~department's~~]
14 activities relating to preventing fraud.

15 SECTION 4.033. Sections 22.035(a), (b), (e), (f), (g), (i),
16 (j), (k), and (l), Human Resources Code, are amended to read as
17 follows:

18 (a) A work group to be known as the Children's Policy
19 Council shall assist the department [~~Department of Aging and~~
20 ~~Disability Services~~], the commission [~~Health and Human Services~~
21 ~~Commission~~], the Department of State Health Services, the
22 Department of Assistive and Rehabilitative Services, and the
23 Department of Family and Protective Services in developing,
24 implementing, and administering family support policies for
25 children with disabilities relating to:

- 26 (1) long-term services and supports;
27 (2) health services; and

1 (3) mental health services.

2 (b) The executive commissioner [~~of the Health and Human~~
3 ~~Services Commission~~] shall appoint the members of the work group,
4 which must include the following:

14 (5) a person from a private entity that provides
15 long-term care and health programs for children;

16 (6) a person from a public entity that provides
17 long-term care and health programs for children;

(8) a representative from a faith-based organization;

22 (9) a representative from a nonspecialized community
23 services organization; and

24 (10) a representative from a business that is not
25 related to providing services to persons with disabilities.

26 (e) The commission [Health and Human Services Commission]
27 shall provide administrative support, including staff, to the work

1 group.

2 (f) A member of the work group serves at the will of the
3 executive commissioner [of the Health and Human Services
4 Commission].

5 (g) The executive commissioner [of the Health and Human
6 Services Commission] shall appoint a member of the work group to
7 serve as a presiding officer.

8 (i) A member of the work group receives no additional
9 compensation for serving on the work group. Consumers and
10 relatives of consumers serving on the work group shall be
11 reimbursed for travel and other expenses necessary for
12 participation as provided in the General Appropriations Act. Other
13 members of the work group may not be reimbursed for travel or other
14 expenses incurred while conducting the business of the work group.
15 Reimbursement under this subsection shall be paid equally out of
16 funds appropriated to the department [Department of Aging and
17 Disability Services] and funds appropriated to the Department of
18 State Health Services.

19 (j) The work group may study and make recommendations in the
20 following areas:

21 (1) access of a child or a child's family to effective
22 case management services, including case management services with a
23 single case manager, parent case managers, or independent case
24 managers;

25 (2) the transition needs of children who reach an age
26 at which they are no longer eligible for services at the Department
27 of State Health Services, the Texas Education Agency, and other

1 applicable state agencies;

2 (3) the blending of funds, including case management
3 funding, for children needing long-term care, health services, and
4 mental health services;

5 (4) collaboration and coordination of children's
6 services between the department [Department of Aging and Disability
7 Services], the Department of State Health Services, the Department
8 of Assistive and Rehabilitative Services, the Department of Family
9 and Protective Services, and any other agency determined to be
10 applicable by the work group;

11 (5) budgeting and the use of funds appropriated for
12 children's long-term care services, health services, and mental
13 health services;

14 (6) services and supports for families providing care
15 for children with disabilities;

16 (7) effective permanency planning for children who
17 reside in institutions or who are at risk of placement in an
18 institution;

19 (8) barriers to enforcement of regulations regarding
20 institutions that serve children with disabilities; and

21 (9) the provision of services under the medical
22 assistance program to children younger than 23 years of age with
23 disabilities or special health care needs under a waiver granted
24 under Section 1915(c) of the federal Social Security Act (42 U.S.C.
25 Section 1396n(c)).

26 (k) Not later than September 1 of each even-numbered year,
27 the work group shall report on its findings and recommendations to

1 the legislature and the executive commissioner [~~of the Health and~~
2 ~~Human Services Commission~~].

3 (1) After evaluating and considering recommendations
4 reported under Subsection (k), the executive commissioner [~~of the~~
5 ~~Health and Human Services Commission~~] shall adopt rules to
6 implement guidelines for providing long-term care, health
7 services, and mental health services to children with disabilities.

8 SECTION 4.034. Section 22.036, Human Resources Code, is
9 amended to read as follows:

10 Sec. 22.036. PROGRAMS FOR [~~DEAF-BLIND MULTIHANDICAPPED~~]
11 INDIVIDUALS WHO ARE DEAF-BLIND WITH MULTIPLE DISABILITIES AND THEIR
12 PARENTS. (a) The department shall establish programs to serve
13 [~~deaf-blind multihandicapped~~] individuals who are deaf-blind with
14 multiple disabilities by helping them attain self-sufficiency and
15 independent living.

16 (b) The department shall establish a program of parental
17 counseling for the parents of [~~deaf-blind multihandicapped~~]
18 individuals who are deaf-blind with multiple disabilities. The
19 counseling program may be provided on an individual or group basis
20 and must include programs, activities, and services necessary to
21 foster greater understanding and to improve relationships among
22 professionals, parents, and [~~deaf-blind multihandicapped~~]
23 individuals who are deaf-blind with multiple disabilities.

24 (c) The department shall establish a summer outdoor
25 training program for [~~deaf-blind multihandicapped~~] individuals who
26 are deaf-blind with multiple disabilities. The outdoor training
27 program must be designed to help meet the unique needs of

1 [deaf-blind multihandicapped] individuals who are deaf-blind with
2 multiple disabilities for the purpose of broadening their
3 educational experiences and improving their ability to function
4 more independently.

5 (d) The executive commissioner [~~department~~] shall establish
6 regulations for implementing and administering the programs.

7 (e) The department may contract for services or goods with
8 private or public entities for purposes of this section.

9 (f) From information collected from the programs, the
10 department shall determine the need for related future services and
11 the most efficient and effective method of delivering the future
12 services.

13 SECTION 4.035. Section 22.039(a)(1), Human Resources Code,
14 is amended to read as follows:

15 (1) "Long-term care facility" means a nursing
16 institution, an assisted living facility, or an intermediate care
17 facility [~~for the mentally retarded~~] licensed under Chapter 242,
18 247, or 252, Health and Safety Code.

19 SECTION 4.036. Section 22.039(c), Human Resources Code, as
20 amended by Chapters 879 (S.B. 223) and 980 (H.B. 1720), Acts of the
21 82nd Legislature, Regular Session, 2011, is reenacted to read as
22 follows:

23 (c) The department shall semiannually provide training for
24 surveyors and providers on subjects that address the 10 most common
25 violations by long-term care facilities of federal or state law.
26 The department may charge providers a fee not to exceed \$50 per
27 person for the training.

1 SECTION 4.037. Sections [22.040](#) and [22.041](#), Human Resources
2 Code, are amended to read as follows:

3 Sec. 22.040. DETERMINATION OF ELIGIBILITY FOR COMMUNITY
4 CARE SERVICES FOR ELDERLY PERSONS OR PERSONS WITH DISABILITIES.
5 The executive commissioner [~~department~~] by rule shall develop and
6 the department shall implement a plan to assist elderly persons or
7 persons with disabilities requesting community care services in
8 receiving those services as quickly as possible when those services
9 become available. The plan must require the department to:

10 (1) forecast participant openings that will become
11 available in a community care program serving the elderly person or
12 person with a disability during the next fiscal quarter because of
13 program expansion or case closures;

14 (2) contact an individual on an interest list and
15 begin the program eligibility determination process at least 30
16 days before an opening is forecasted to become available in the
17 program; and

18 (3) ensure that an individual determined to be
19 eligible for services does not begin receiving services until after
20 the opening actually becomes available.

21 Sec. 22.041. THIRD-PARTY INFORMATION. Notwithstanding any
22 other provision of this code, the commission [~~department~~] may use
23 information obtained from a third party to verify the assets and
24 resources of a person for purposes of determining the person's
25 eligibility and need for medical assistance, financial assistance,
26 or nutritional assistance. Third-party information includes
27 information obtained from:

1 (1) a consumer reporting agency, as defined by Section
2 **20.01**, Business & Commerce Code;
3 (2) an appraisal district; or
4 (3) the Texas Department of Motor Vehicles vehicle
5 registration record database.

6 SECTION 4.038. Chapter 23, Human Resources Code, is amended
7 to read as follows:

8 CHAPTER 23. SUSPENSION OF DRIVER'S OR RECREATIONAL LICENSE FOR
9 FAILURE TO REIMBURSE COMMISSION [~~DEPARTMENT~~]

10 Sec. 23.001. DEFINITIONS. In this chapter:

11 (1) "License" means a license, certificate,
12 registration, permit, or other authorization that:

13 (A) is issued by a licensing authority;
14 (B) is subject before expiration to suspension,
15 revocation, forfeiture, or termination by an issuing licensing
16 authority; and

17 (C) a person must obtain to:

18 (i) operate a motor vehicle; or
19 (ii) engage in a recreational activity,
20 including hunting and fishing, for which a license or permit is
21 required.

22 (2) "Order suspending a license" means an order issued
23 by the commission [~~department~~] directing a licensing authority to
24 suspend a license.

25 Sec. 23.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. In
26 this chapter, "licensing authority" means:

27 (1) the Parks and Wildlife Department; and

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3 Sec. 23.003. SUSPENSION OF LICENSE. The commission
4 [department] may issue an order suspending a license as provided by
5 this chapter of a person who, after notice:

12 (3) has failed to comply with the repayment schedule.

13 Sec. 23.004. INITIATION OF PROCEEDING. (a) The commission
14 [~~department~~] may initiate a proceeding to suspend a person's
15 license by filing a petition with the commission's appeals
16 [~~department's hearings~~] division.

17 (b) The proceeding shall be conducted by the commission's
18 appeals [~~department's hearings~~] division. The proceeding is a
19 contested case under Chapter 2001, Government Code, except that
20 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.

27 Sec. 23.005. CONTENTS OF PETITION. A petition under this

1 chapter must state that license suspension is authorized under
2 Section 23.003 and allege:

3 (1) the name and, if known, social security number of
4 the person;

5 (2) the type of license the person is believed to hold
6 and the name of the licensing authority; and

7 (3) the amount owed to the commission [~~department~~].

8 Sec. 23.006. NOTICE. (a) On initiating a proceeding under
9 Section 23.004, the commission [~~department~~] shall give the person
10 named in the petition:

11 (1) notice of the person's right to a hearing before
12 the commission's appeals [~~hearings~~] division [~~of the department~~];

13 (2) notice of the deadline for requesting a hearing;
14 and

15 (3) a form requesting a hearing.

16 (b) Notice under this section may be served as in civil
17 cases generally.

18 (c) The notice must state that an order suspending a license
19 shall be rendered on the 60th day after the date of service of the
20 notice unless by that date:

21 (1) the person pays the amount owed to the commission
22 [~~department~~];

23 (2) the person presents evidence of a payment history
24 satisfactory to the commission [~~department~~] in compliance with a
25 reasonable repayment schedule; or

26 (3) the person appears at a hearing before the
27 commission's appeals [~~hearings~~] division and shows that the request

1 for suspension should be denied or stayed.

2 Sec. 23.007. HEARING ON PETITION TO SUSPEND LICENSE. (a) A
3 request for a hearing and motion to stay suspension must be filed
4 with the commission [~~department~~] not later than the 20th day after
5 the date of service of the notice under Section 23.006.

6 (b) If a request for a hearing is filed, the commission's
7 appeals [~~hearings~~] division [~~of the department~~] shall:

8 (1) promptly schedule a hearing;

9 (2) notify the person and an appropriate
10 representative of the commission [~~department~~] of the date, time,
11 and location of the hearing; and

12 (3) stay suspension pending the hearing.

13 Sec. 23.008. ORDER SUSPENDING LICENSE. (a) On making the
14 findings required by Section 23.003, the commission [~~department~~]
15 shall render an order suspending a license.

16 (b) The commission [~~department~~] may stay an order
17 suspending a license conditioned on the person's compliance with a
18 reasonable repayment schedule that is incorporated in the order.
19 An order suspending a license with a stay of the suspension may not
20 be served on the licensing authority unless the stay is revoked as
21 provided by this chapter.

22 (c) A final order suspending a license rendered by the
23 commission [~~department~~] shall be forwarded to the appropriate
24 licensing authority.

25 (d) If the commission [~~department~~] renders an order
26 suspending a license, the person may also be ordered not to engage
27 in the licensed activity.

1 (e) If the commission's appeals division [department] finds
2 that the petition for suspension should be denied, the petition
3 shall be dismissed without prejudice, and an order suspending a
4 license may not be rendered.

5 Sec. 23.009. DEFAULT ORDER. The commission [department]
6 shall consider the allegations of the petition for suspension to be
7 admitted and shall render an order suspending a license if the
8 person fails to:

- 9 (1) respond to a notice issued under Section 23.006;
10 (2) request a hearing; or
11 (3) appear at a hearing.

12 Sec. 23.010. REVIEW OF FINAL ADMINISTRATIVE ORDER. An
13 order issued by the commission [department] under this chapter is a
14 final agency decision and is subject to review as provided by
15 Chapter 2001, Government Code.

16 Sec. 23.011. ACTION BY LICENSING AUTHORITY. (a) On receipt
17 of a final order suspending a license, the licensing authority
18 shall immediately determine if the authority has issued a license
19 to the person named on the order and, if a license has been issued:

- 20 (1) record the suspension of the license in the
21 licensing authority's records;
22 (2) report the suspension as appropriate; and
23 (3) demand surrender of the suspended license if
24 required by law for other cases in which a license is suspended.

25 (b) A licensing authority shall implement the terms of a
26 final order suspending a license without additional review or
27 hearing. The authority may provide notice as appropriate to the

1 license holder or to others concerned with the license.

2 (c) A licensing authority may not modify, remand, reverse,
3 vacate, or stay an order suspending a license issued under this
4 chapter and may not review, vacate, or reconsider the terms of a
5 final order suspending a license.

6 (d) A person who is the subject of a final order suspending a
7 license is not entitled to a refund for any fee or deposit paid to
8 the licensing authority.

9 (e) A person who continues to engage in the licensed
10 activity after the implementation of the order suspending a license
11 by the licensing authority is liable for the same civil and criminal
12 penalties provided for engaging in the licensed activity without a
13 license or while a license is suspended that apply to any other
14 license holder of that licensing authority.

15 (f) A licensing authority is exempt from liability to a
16 license holder for any act authorized under this chapter performed
17 by the authority.

18 (g) Except as provided by this chapter, an order suspending
19 a license or dismissing a petition for the suspension of a license
20 does not affect the power of a licensing authority to grant, deny,
21 suspend, revoke, terminate, or renew a license.

22 (h) The denial or suspension of a driver's license under
23 this chapter is governed by this chapter and not by Subtitle B,
24 Title 7, Transportation Code.

25 Sec. 23.012. MOTION TO REVOKE STAY. (a) The commission
26 [~~department~~] may file a motion with the commission's appeals
27 [~~department's hearings~~] division to revoke the stay of an order

1 suspending a license if the person does not comply with the terms of
2 a reasonable repayment plan entered into by the person.

3 (b) Notice to the person of a motion to revoke stay under
4 this section may be given by personal service or by mail to the
5 address provided by the person, if any, in the order suspending a
6 license. The notice must include a notice of hearing before the
7 appeals [~~hearings~~] division. The notice must be provided to the
8 person not less than 10 days before the date of the hearing.

9 (c) A motion to revoke stay must allege the manner in which
10 the person failed to comply with the repayment plan.

11 (d) If the commission [~~department~~] finds that the person is
12 not in compliance with the terms of the repayment plan, the
13 commission [~~department~~] shall revoke the stay of the order
14 suspending a license and render a final order suspending a license.

15 Sec. 23.013. VACATING OR STAYING ORDER SUSPENDING [A]
16 LICENSE. (a) The commission [~~department~~] may render an order
17 vacating or staying an order suspending a license if the person has
18 paid all amounts owed to the commission [~~department~~] or has
19 established a satisfactory payment record.

20 (b) The commission [~~department~~] shall promptly deliver an
21 order vacating or staying an order suspending a license to the
22 appropriate licensing authority.

23 (c) On receipt of an order vacating or staying an order
24 suspending a license, the licensing authority shall promptly
25 reinstate and return the affected license to the person if the
26 person is otherwise qualified for the license.

27 (d) An order rendered under this section does not affect the

1 right of the commission [department] to any other remedy provided
2 by law, including the right to seek relief under this chapter. An
3 order rendered under this section does not affect the power of a
4 licensing authority to grant, deny, suspend, revoke, terminate, or
5 renew a license as otherwise provided by law.

6 Sec. 23.014. FEE BY LICENSING AUTHORITY. A licensing
7 authority may charge a fee to a person who is the subject of an order
8 suspending a license in an amount sufficient to recover the
9 administrative costs incurred by the authority under this chapter.

10 Sec. 23.015. COOPERATION BETWEEN LICENSING AUTHORITIES AND
11 COMMISSION [DEPARTMENT]. (a) The commission [department] may
12 request from each licensing authority the name, address, social
13 security number, license renewal date, and other identifying
14 information for each individual who holds, applies for, or renews a
15 license issued by the authority.

16 (b) A licensing authority shall provide the requested
17 information in the manner agreed to by the commission [department]
18 and the licensing authority.

19 (c) The commission [department] may enter into a
20 cooperative agreement with a licensing authority to administer this
21 chapter in a cost-effective manner.

22 (d) The commission [department] may adopt a reasonable
23 implementation schedule for the requirements of this section.

24 Sec. 23.016. RULES, FORMS, AND PROCEDURES. The executive
25 commissioner [department] by rule shall prescribe forms and
26 procedures for the implementation of this chapter.

27 SECTION 4.039. Section 31.001, Human Resources Code, is

1 amended to read as follows:

2 Sec. 31.001. TEMPORARY ASSISTANCE FOR NEEDY [AID TO]
3 FAMILIES [~~WITH DEPENDENT CHILDREN~~]. The commission [~~department~~]
4 shall provide financial assistance and services to families with
5 dependent children in accordance with the provisions of this
6 chapter. The commission [~~department~~] shall give first priority in
7 administering this chapter to assisting an adult recipient of or
8 unemployed applicant for the financial assistance and services in
9 finding and retaining a job.

10 SECTION 4.040. Section 31.002(b), Human Resources Code, is
11 amended to read as follows:

12 (b) In this chapter, the term "dependent child" also applies
13 to a child:

14 (1) who meets the specifications set forth in
15 Subsections (a)(1)-(4) [~~Subdivisions (1)-(4) of the preceding~~
16 ~~subsection~~];

17 (2) who has been removed from the home of a relative
18 specified in Subsection (a)(5) [~~Subdivision (5) of the preceding~~
19 ~~subsection~~] as a result of a judicial determination that the
20 child's residence there is contrary to his or her welfare;

21 (3) whose placement and care are the responsibility of
22 the [~~department, the~~] Department of Family and Protective [~~and~~
23 ~~Regulatory~~] Services[~~or~~] or an agency with which the [~~department or~~
24 ~~the~~] Department of Family and Protective [~~and Regulatory~~] Services
25 has entered into an agreement for the care and supervision of the
26 child;

27 (4) who has been placed in a foster home or child-care

1 institution by the [department or the] Department of Family and
2 Protective [~~and Regulatory~~] Services; and

3 (5) for whom the state may receive federal funds for
4 the purpose of providing foster care in accordance with rules
5 promulgated by the executive commissioner [department].

6 SECTION 4.041. Section 31.0021(b), Human Resources Code, is
7 amended to read as follows:

8 (b) "Nonrecipient parent" does not include:

9 (1) a minor parent who is not the head of household;

10 (2) a person who is ineligible for financial
11 assistance because of the person's immigration status; or

12 (3) a parent who cares for a [disabled] family member
13 with a disability living in the home if the family member does not
14 attend school full-time and the need for the care is supported by
15 medical documentation.

16 SECTION 4.042. Section 31.003, Human Resources Code, is
17 amended to read as follows:

18 Sec. 31.003. AMOUNT OF FINANCIAL ASSISTANCE. (a) The
19 executive commissioner [department] shall adopt rules governing
20 the determination of the amount of financial assistance to be
21 granted for the support of a dependent child. The amount granted,
22 when combined with the income and other resources available for the
23 child's support, must be sufficient to provide the child with a
24 subsistence compatible with decency and health.

25 (b) In considering the amount of income or other resources
26 available to a child or a relative claiming financial assistance on
27 the child's behalf, the commission [department] shall also consider

1 reasonable expenses attributable to earning the income. The
2 commission [department] may permit all or part of the earned or
3 other income to be set aside for the future identifiable needs of
4 the child, subject to limitations prescribed by the executive
5 commissioner [department].

6 (c) The commission's [department's] agents employed in the
7 region or county in which the dependent child resides shall
8 determine the amount to be paid in accordance with the rules
9 promulgated by the executive commissioner [department].

10 SECTION 4.043. Sections 31.0031(a), (c), (d), (e), (f),
11 (g), and (h), Human Resources Code, are amended to read as follows:

12 (a) The commission [department] shall require each adult
13 recipient to sign a bill of responsibilities that defines the
14 responsibilities of the state and of the recipient and encourages
15 personal responsibility. The commission [department] shall
16 explain to the applicant the work requirements and time-limited
17 benefits in addition to the other provisions of the agreement
18 before the applicant signs the agreement. The commission
19 [department] shall provide each applicant with a copy of the signed
20 agreement. The agreement shall include pertinent case information,
21 including the case number and a listing of the state's benefits.

22 (c) The executive commissioner [department] shall adopt
23 rules governing sanctions and penalties under this section to or
24 for:

25 (1) a person who fails to cooperate with each
26 applicable requirement of the responsibility agreement prescribed
27 by this section; and

1 (2) the family of a person who fails to cooperate with
2 each applicable requirement of the responsibility agreement.

3 (d) The responsibility agreement shall require that:

4 (1) the parent of a dependent child cooperate with the
5 commission [department] and the Title IV-D agency if necessary to
6 establish the paternity of the dependent child and to establish or
7 enforce child support;

8 (2) if adequate and accessible providers of the
9 services are available in the geographic area and subject to the
10 availability of funds, each dependent child, as appropriate,
11 complete early and periodic screening, diagnosis, and treatment
12 checkups on schedule and receive the immunization series prescribed
13 by Section [161.004](#), Health and Safety Code, unless the child is
14 exempt under that section;

15 (3) each adult recipient, or teen parent recipient who
16 has completed the requirements regarding school attendance in
17 Subdivision (6), not voluntarily terminate paid employment of at
18 least 30 hours each week without good cause in accordance with rules
19 adopted by the executive commissioner [department];

20 (4) each adult recipient for whom a needs assessment
21 is conducted participate in an activity to enable that person to
22 become self-sufficient by:

23 (A) continuing the person's education or
24 becoming literate;

25 (B) entering a job placement or employment skills
26 training program;

27 (C) serving as a volunteer in the person's

1 community; or

2 (D) serving in a community work program or other
3 work program approved by the commission [department];

4 (5) each caretaker relative or parent receiving
5 assistance not use, sell, or possess marihuana or a controlled
6 substance in violation of Chapter 481, Health and Safety Code, or
7 abuse alcohol;

8 (6) each dependent child younger than 18 years of age
9 or teen parent younger than 19 years of age attend school regularly,
10 unless the child has a high school diploma or high school
11 equivalency certificate or is specifically exempted from school
12 attendance under Section 25.086, Education Code;

13 (7) each recipient comply with commission
14 [department] rules regarding proof of school attendance; and

15 (8) each recipient attend appropriate parenting
16 skills training classes, as determined by the needs assessment.

17 (e) In conjunction with the Texas Education Agency, the
18 executive commissioner [department] by rule shall ensure
19 compliance with the school attendance requirements of Subsection
20 (d)(6) by establishing criteria for:

21 (1) determining whether a child is regularly attending
22 school;

23 (2) exempting a child from school attendance in
24 accordance with Subchapter C, Chapter 25, Education Code; and

25 (3) determining when an absence is excused.

26 (f) The executive commissioner [department] by rule may
27 provide for exemptions from Subsection (d)(4) or for a teen parent

1 under Subsection (d)(6). The commission [department] may not
2 require participation in an activity under Subsection (d)(4) or for
3 a teen parent under Subsection (d)(6) if funding for support
4 services is unavailable.

5 (g) In this section:

6 (1) "Caretaker relative" means a person who is listed
7 under Section 31.002(a)(5) in whose home residence a dependent
8 child lives [as a relative eligible to receive assistance under 42
9 U.S.C. Section 602(a)].

10 (2) "Payee" means a person who resides in a household
11 with a dependent child and who is within the degree of relationship
12 with the child that is required of a caretaker relative but whose
13 needs are not included in determining the amount of financial
14 assistance provided for the person's household.

15 (h) The commission [department] shall require each payee to
16 sign a bill of responsibilities that defines the responsibilities
17 of the state and of the payee. The responsibility agreement must
18 require that a payee comply with the requirements of Subsections
19 (d)(1), (2), (5), (6), and (7).

20 SECTION 4.044. Section 31.0032, Human Resources Code, is
21 amended to read as follows:

22 Sec. 31.0032. PAYMENT OF ASSISTANCE FOR PERFORMANCE. (a)
23 Except as provided by Section 231.115, Family Code, if after an
24 investigation the commission [department] or the Title IV-D agency
25 determines that a person is not cooperating with a requirement of
26 the responsibility agreement required under Section 31.0031, the
27 commission [department] shall immediately apply a sanction

1 terminating the total amount of financial assistance provided under
2 this chapter to or for the person and the person's family.

3 (a-1) The commission [department] shall apply a sanction or
4 penalty imposed under Subsection (a) for a period ending when the
5 person demonstrates cooperation with the requirement of the
6 responsibility agreement for which the sanction was imposed or for
7 a one-month period, whichever is longer.

8 (b) The commission [department] shall immediately notify
9 the caretaker relative, second parent, or payee receiving the
10 financial assistance if the commission [department] will not make
11 the financial assistance payment for the period prescribed by
12 Subsection (a-1) because of a person's failure to cooperate with
13 the requirements of the responsibility agreement during a month.

14 (c) To the extent allowed by federal law, the commission
15 [~~Health and Human Services Commission or any health and human~~
16 ~~services agency, as defined by Section 531.001, Government Code,~~]
17 may deny medical assistance for a person who is eligible for
18 financial assistance but to whom that assistance is not paid
19 because of the person's failure to cooperate. Medical assistance
20 to the person's family may not be denied for the person's failure to
21 cooperate. Medical assistance may not be denied to a person
22 receiving assistance under this chapter who is under the age of 19,
23 a pregnant adult, or any other person who may not be denied medical
24 assistance under federal law.

25 (d) This section does not prohibit the Texas Workforce
26 Commission, the commission [~~Health and Human Services Commission~~],
27 or any health and human services agency, as defined by Section

1 531.001, Government Code, from providing child care or any other
2 related social or support services for an individual who is
3 eligible for financial assistance but to whom that assistance is
4 not paid because of the individual's failure to cooperate.

5 (e) The executive commissioner [department] by rule shall
6 establish procedures to determine whether a person has cooperated
7 with the requirements of the responsibility agreement.

8 SECTION 4.045. Sections 31.0033(a), (b), (c), and (d),
9 Human Resources Code, are amended to read as follows:

10 (a) If the commission [department] or Title IV-D agency
11 determines that a person has failed to cooperate with the
12 requirements of the responsibility agreement under Section
13 31.0031, the person determined to have failed to cooperate or, if
14 different, the person receiving the financial assistance may
15 request a hearing to show good cause for failure to cooperate not
16 later than the 13th day after the date the notice is sent under
17 Section 31.0032. If the person determined to have failed to
18 cooperate or, if different, the person receiving the financial
19 assistance requests a hearing to show good cause not later than the
20 13th day after the date on which the notice is sent under Section
21 31.0032, the commission [department] may not withhold or reduce the
22 payment of financial assistance until the commission [department]
23 determines whether the person had good cause for the person's
24 failure to cooperate. On a showing of good cause for failure to
25 cooperate, the person may receive a financial assistance payment
26 for the period in which the person failed to cooperate, but had good
27 cause for that failure to cooperate.

1 (b) The commission [department] shall promptly conduct a
2 hearing if a timely request is made under Subsection (a).

3 (c) If the commission [department] finds that good cause for
4 the person's failure to cooperate was not shown at a hearing, the
5 commission [department] may not make a financial assistance payment
6 in any amount to the person for the person or the person's family
7 for the period prescribed by Section 31.0032(a-1).

8 (d) The executive commissioner [department] by rule shall
9 establish criteria for good cause failure to cooperate and
10 guidelines for what constitutes a good faith effort on behalf of a
11 recipient under this section.

12 SECTION 4.046. Sections 31.0035 and 31.0036, Human
13 Resources Code, are amended to read as follows:

14 Sec. 31.0035. TRANSITIONAL CHILD-CARE SERVICES. (a) The
15 Texas Workforce Commission [department] shall provide necessary
16 transitional child-care services, in accordance with Texas
17 Workforce Commission [department] rules and federal law, to a
18 person who was receiving financial assistance under this chapter
19 but is no longer eligible to receive the assistance because:

20 (1) the person's household income has increased; or
21 (2) the person has exhausted the person's benefits
22 under Section 31.0065.

23 (b) Except as provided by Section 31.012(c), the Texas
24 Workforce Commission [department] may provide the child-care
25 services only until the earlier of:

26 (1) the end of the applicable period prescribed by
27 Section 31.0065 for the provision of transitional benefits; or

1 (2) the first anniversary of the date on which the
2 person becomes ineligible for financial assistance because of
3 increased household income.

4 (c) The Texas Workforce Commission [department] by rule
5 shall adopt a system of copayments [~~co-payments~~] in order to have a
6 person who receives child-care services under this section
7 contribute an amount toward the cost of the services according to
8 the person's ability to pay.

9 (d) The Texas Workforce Commission [department] by rule
10 shall provide for sanctions for a person who is financially able to
11 contribute the amount required by Subsection (c) but fails to pay.

12 Sec. 31.0036. DEPENDENT CHILD'S INCOME. The commission
13 [department] may not consider any income earned by a dependent
14 child who is attending school and whose income is derived from the
15 child's part-time employment for purposes of determining:

16 (1) the amount of financial assistance granted to an
17 individual under this chapter for the support of dependent
18 children; or

19 (2) whether the family meets household income and
20 resource requirements for eligibility for financial assistance
21 under this chapter.

22 SECTION 4.047. Section 31.0038(a), Human Resources Code, is
23 amended to read as follows:

24 (a) Subject to the limitations prescribed by Subsection
25 (b), income earned by an individual who marries an individual
26 receiving financial assistance at the time of the marriage may not
27 be considered by the commission [department] during the six-month

1 period following the date of the marriage for purposes of
2 determining:

3 (1) the amount of financial assistance granted to an
4 individual under this chapter for the support of dependent
5 children; or

6 (2) whether the family meets household income and
7 resource requirements for financial assistance under this chapter.

8 SECTION 4.048. Sections [31.0039](#) and [31.004](#), Human Resources
9 Code, are amended to read as follows:

10 Sec. 31.0039. EXCLUSION OF ASSETS IN PREPAID TUITION
11 PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. For purposes of
12 determining the amount of financial assistance granted to an
13 individual under this chapter for the support of dependent children
14 or determining whether the family meets household income and
15 resource requirements for financial assistance under this chapter,
16 the commission [department] may not consider the right to assets
17 held in or the right to receive payments or benefits under:

18 (1) any fund or plan established under Subchapter G,
19 H, or I, Chapter 54, Education Code, including an interest in a
20 savings trust account, prepaid tuition contract, or related
21 matching account; or

22 (2) any qualified tuition program of any state that
23 meets the requirements of Section 529, Internal Revenue Code of
24 1986.

25 Sec. 31.004. FOSTER CARE. The Department of Family and
26 Protective [~~and Regulatory~~] Services may accept and spend funds
27 available from any source to provide foster care in facilities

1 approved by the Department of Family and Protective [and
2 ~~Regulatory~~] Services for dependent children who meet the
3 specifications set out in Section 31.002(b).

4 SECTION 4.049. Sections 31.0041(a), (c), and (d), Human
5 Resources Code, are amended to read as follows:

6 (a) To the extent funds are appropriated for this purpose,
7 the commission [~~department~~] may provide supplemental financial
8 assistance in addition to the amount of financial assistance
9 granted for the support of a dependent child under Section 31.003 to
10 a person who:

11 (1) is 45 years of age or older;
12 (2) is the grandparent of the dependent child, as
13 defined by Section 31.002, who lives at the person's residence;
14 (3) is the primary caretaker of the dependent child;
15 (4) has a family income that is at or below 200 percent
16 of the federal poverty level; and
17 (5) does not have resources that exceed the amount
18 allowed for financial assistance under this chapter.

19 (c) The commission [~~department~~] shall inform an applicant
20 for financial assistance under this chapter who meets the
21 eligibility requirements under Subsection (a) of the availability
22 of supplemental financial assistance.

23 (d) The commission [~~department~~] shall maintain complete
24 records and compile statistics regarding the number of households
25 that receive supplemental financial assistance under this section.

26 SECTION 4.050. Sections 31.005(a), (b), and (d), Human
27 Resources Code, are amended to read as follows:

1 (a) If after an investigation the commission [department]
2 determines that a family with a dependent child is needy and that
3 the child resides with the family, the commission [department]
4 shall provide financial assistance and services for the support of
5 the family.

6 (b) The commission [department] shall formulate policies
7 for studying and improving the child's home conditions and shall
8 plan services for the protection of the child and for the child's
9 health and educational needs.

10 (d) The commission [department] shall develop a plan for the
11 coordination of the services provided for dependent children under
12 this chapter and other child welfare services provided by the state
13 [~~for which the department is responsible~~].

14 SECTION 4.051. Sections 31.0051, 31.006, and 31.0065, Human
15 Resources Code, are amended to read as follows:

16 Sec. 31.0051. MINOR PARENT RESIDING WITH RELATIVES. If the
17 commission [department] determines based on documentation provided
18 that a minor caretaker who is receiving financial assistance and
19 services under this chapter on behalf of a dependent child benefits
20 from residing with an adult family member who is also receiving
21 assistance under this chapter, the commission [department] shall
22 provide assistance and services to both persons as if they were
23 living separately.

24 Sec. 31.006. WELFARE AND RELATED SERVICES. (a) The
25 commission [department] shall develop and implement a program of
26 welfare and related services for each dependent child which, in
27 light of the particular home conditions and other needs of the

1 child, will best promote the welfare of the child and his or her
2 family and will help to maintain and strengthen family life by
3 assisting the child's parents or relatives to attain and retain
4 their capabilities for maximum self-support and personal
5 independence consistent with the maintenance of continued parental
6 care and protection.

7 (b) The commission [department] shall coordinate the
8 services provided under the program with other services provided by
9 the commission [department] and by other public and private welfare
10 agencies, including other state agencies, for the care and
11 protection of children.

12 (c) The executive commissioner and the Texas Workforce
13 Commission [department] may promulgate rules which will enable the
14 Health and Human Services Commission and the Texas Workforce
15 Commission [~~is~~] to fully participate in work and training programs
16 authorized by federal law, to provide for all services required or
17 deemed advisable under the provisions of the program, and to
18 accept, transfer, and expend funds made available from public or
19 private sources for the purpose of carrying out the provisions of
20 this section.

21 Sec. 31.0065. TIME-LIMITED BENEFITS. (a) The commission
22 [department] may provide financial assistance under this chapter
23 only in accordance with the time limits specified by this section.
24 The executive commissioner [department] by rule may provide for
25 exceptions to these time limits if severe personal hardship or
26 community economic factors prevent the recipient from obtaining
27 employment or if the state is unable to provide support services.

1 (b) The commission [department] shall limit financial
2 assistance and transitional benefits in accordance with the
3 following schedule:

4 (1) financial assistance is limited to a cumulative
5 total of 12 months and transitional benefits are limited to 12
6 months if the person receiving financial assistance on behalf of a
7 dependent child has:

8 (A) a high school diploma, a high school
9 equivalency certificate, or a certificate or degree from a two-year
10 or four-year institution of higher education or technical or
11 vocational school; or

12 (B) recent work experience of 18 months or more;

13 (2) financial assistance is limited to a cumulative
14 total of 24 months and transitional benefits are limited to 12
15 months if the person receiving financial assistance on behalf of a
16 dependent child has:

17 (A) completed three years of high school; or

18 (B) recent work experience of not less than six
19 or more than 18 months; and

20 (3) financial assistance is limited to a cumulative
21 total of 36 months and transitional benefits of 12 months if the
22 person receiving financial assistance on behalf of a dependent
23 child has:

24 (A) completed less than three years of high
25 school; and

26 (B) less than six months of work experience.

27 (c) If the recipient has completed less than three years of

1 high school and has less than six months work experience, the
2 commission [~~department~~] shall perform an in-depth assessment of the
3 needs of that person and that person's family. If the recipient
4 cooperates with the commission's [~~department's~~] assessment, the
5 time period prescribed by Subsection (b)(3) begins on the first
6 anniversary of the date on which the commission [~~department~~]
7 completes the assessment, as determined by the commission
8 [~~department~~].

9 (d) The computation of time limits under Subsection (b)
10 begins when the adult or teen parent recipient receives
11 notification in accordance with the procedures under Section
12 31.012(b) of the availability of an opening in and eligibility for a
13 Temporary Assistance for Needy Families employment program
14 established under Part A, Subchapter IV, Social Security Act (42
15 U.S.C. Section 601 et seq.) [~~the job opportunity and basic skills~~
16 ~~(JOBS) program Part F, Subchapter IV, Social Security Act (42~~
17 ~~U.S.C. Section 682)~~].

18 (e) In implementing the time-limited benefits program, the
19 commission [~~department~~]:

20 (1) shall provide that a participant in the program
21 may reapply with the commission [~~department~~] for financial
22 assistance on or after the fifth anniversary of the date on which
23 the participant is totally disqualified from receiving assistance
24 because of the application of Subsection (b); and

25 (2) shall establish the criteria for determining what
26 constitutes severe personal hardship under Subsection (a).

27 (f) If the commission [~~department~~] is imposing time-limited

1 benefits on an individual, the commission [department] shall
2 consider:

3 (1) the assessment of the individual's need that was
4 conducted by the commission [department], provided that if the
5 needs assessment indicates discrepancies between a client's
6 self-reported educational level and the client's functional
7 abilities, the time limits shall be based upon the functional
8 educational level; and

9 (2) the prevailing economic and employment conditions
10 in the area of the state where the individual resides.

11 SECTION 4.052. Section 31.0066(a), Human Resources Code, is
12 amended to read as follows:

13 (a) The executive commissioner and [department] the Texas
14 Workforce Commission[~~, and the Health and Human Services~~
15 ~~commission~~] shall jointly adopt rules prescribing circumstances
16 that constitute a hardship for purposes of exempting a recipient of
17 financial assistance from the application of time limits imposed by
18 federal law on the receipt of benefits.

19 SECTION 4.053. Sections 31.007, 31.008, and 31.0095, Human
20 Resources Code, are amended to read as follows:

21 Sec. 31.007. FINANCIAL ASSISTANCE TO INDIVIDUALS IN
22 INSTITUTIONS. A person who is in an institution is eligible to
23 receive financial assistance under this chapter if the person would
24 be eligible to receive the financial assistance if the person [~~he~~]
25 were not in an institution and if the payments are made in
26 accordance with the commission's [department's] rules promulgated
27 in conformity with federal law and rules.

1 Sec. 31.008. COUNSELING AND GUIDANCE SERVICES. (a) If the
2 commission [department] believes that financial assistance to a
3 family with a dependent child is not being, or may not be, used in
4 the best interest of the child, the commission [department] may
5 provide counseling and guidance services to the relative receiving
6 financial assistance with respect to the use of the funds and the
7 management of other funds in the child's best interest.

8 (b) The commission [department] may advise the relative
9 that continued failure to use the funds in the child's best interest
10 will result in the funds being paid to a substitute payee. If the
11 commission [department] determines that protective payments are
12 required to safeguard the best interest of the child, the
13 commission [department] may pay the funds to a substitute payee on a
14 temporary basis in accordance with the commission's [department's]
15 rules.

16 (c) If the situation in the home which made the protective
17 payments necessary does not improve, and if the commission
18 [department] determines that the relative with whom the child is
19 living is unable or does not have the capacity to use the funds for
20 the best interest of the child, then the commission, with the
21 assistance of other appropriate state agencies, [department] may
22 make arrangements with the family for other plans for the care of
23 the child. The other plans may include:

24 (1) removing the child to the home of another
25 relative;
26 (2) appointment of a guardian or legal representative
27 for the relative with whom the child is living;

(3) imposition of criminal or civil penalties if a court determines that the relative is not using, or has not used, the payments for the benefit of the child; or

(4) referral of the case to a court for the removal of
the child and the placement of the child in a foster home.

6 (d) The commission [department] may make payments on behalf
7 of a dependent child residing in a foster family home or a
8 child-care institution in accordance with the provisions of this
9 chapter and commission [the] rules [~~of the department~~].

10 Sec. 31.0095. NEEDS ASSESSMENT. The commission [~~Health and~~
11 ~~Human Services Commission~~] shall assist a recipient or a
12 nonrecipient parent in assessing the particular needs of that
13 person and the person's family upon notification of entry into a
14 Temporary Assistance for Needy Families employment program
15 established under Part A, Subchapter IV, Social Security Act (42
16 U.S.C. Section 601 et seq.). The Texas Workforce Commission and the
17 recipient or the nonrecipient parent shall develop an employability
18 plan to help the recipient or nonrecipient parent achieve
19 independence from public assistance granted to the recipient and
20 the recipient's family, or to the child of the nonrecipient parent,
21 as applicable.

22 SECTION 4.054. Sections 31.010(b), (d), and (e), Human
23 Resources Code, are amended to read as follows:

24 (b) The Texas Workforce Commission [department] shall
25 consider the needs assessment and employability plan developed
26 under Section 31.0095 in determining the support services needed.

27 (d) The Texas Workforce Commission [department] by rule

1 shall provide for implementation of the support services.

2 (e) The Texas Workforce Commission [department] may
3 contract with other state agencies, community colleges, technical
4 schools, residence training facilities, or public or private
5 entities to provide support services under this section.

6 SECTION 4.055. The heading to Section 31.012, Human
7 Resources Code, is amended to read as follows:

8 Sec. 31.012. MANDATORY WORK OR PARTICIPATION IN EMPLOYMENT
9 ACTIVITIES THROUGH TEMPORARY ASSISTANCE FOR NEEDY FAMILIES
10 EMPLOYMENT [~~THE JOB OPPORTUNITIES AND BASIC SKILLS~~] PROGRAM.

11 SECTION 4.056. Sections 31.012(a), (b), (c), (d), and (e),
12 Human Resources Code, are amended to read as follows:

13 (a) The Health and Human Services Commission [department]
14 shall require that, during any one-month period in which an adult is
15 receiving financial assistance under this chapter, the adult shall
16 during that period:

17 (1) work not less than 30 hours a week; or
18 (2) participate for not less than 20 hours a week in an
19 activity established under a Temporary Assistance for Needy
20 Families employment program established under Part A, Subchapter
21 IV, Social Security Act (42 U.S.C. Section 601 et seq.) [~~the job~~
22 ~~opportunities and basic skills (JOBS) training program under Part~~
23 ~~F, Subchapter IV, Social Security Act (42 U.S.C. Section 682)~~].

24 (b) The Texas Workforce Commission [department] by rule
25 shall establish criteria for good cause failure to cooperate and
26 for notification procedures regarding participation in work or
27 employment activities under this section.

1 (c) A person who is the caretaker of a ~~physically or~~
2 ~~mentally disabled~~] child with a physical disability or mental,
3 intellectual, or developmental disability who requires the
4 caretaker's presence is not required to participate in a program
5 under this section. A single person who is the caretaker of a child
6 is exempt until the caretaker's youngest child at the time the
7 caretaker first became eligible for assistance reaches the age of
8 one. Notwithstanding Sections 31.0035(b) and 32.0255(b), the
9 Health and Human Services Commission ~~[department]~~ shall provide to
10 a person who is exempt under this subsection and who voluntarily
11 participates in a program under Subsection (a)(2) six months of
12 transitional benefits in addition to the applicable limit
13 prescribed by Section 31.0065.

14 (d) A state program operated under this section shall be
15 administered by the division of workforce development of the Texas
16 Workforce Commission ~~[when the program is transferred to that~~
17 ~~commission]~~.

18 (e) The Texas Workforce Commission ~~[department]~~ shall allow
19 a person who is participating in work or employment activities
20 under this section to complete those activities if the person
21 becomes ineligible to receive financial assistance under this
22 chapter because the person receives child support in an amount that
23 makes the person ineligible for that assistance. The Texas
24 Workforce Commission ~~[department]~~ shall provide to the person
25 necessary child care services until the date on which the person
26 completes work or employment activities under this section.

27 SECTION 4.057. Section 31.0124, Human Resources Code, is

1 amended to read as follows:

2 Sec. 31.0124. REFERRAL TO EDUCATIONAL PROGRAMS. The Texas
3 Workforce Commission [department] shall determine whether a person
4 who registers to participate in a Temporary Assistance for Needy
5 Families employment program established under Part A, Subchapter
6 IV, Social Security Act (42 U.S.C. Section 601 et seq.) [~~the job~~
7 ~~opportunities and basic skills training program~~] needs and is
8 eligible for adult education and literacy programs [~~services~~]
9 provided under Chapter 315, Labor [~~Section 11.2093, Education~~]
10 Code. If the person is eligible for the adult education and
11 literacy programs [~~services~~], the Texas Workforce Commission
12 [~~department~~] shall determine the person's needs and goals and refer
13 the person to the appropriate adult education and literacy program
14 [~~service~~] provided under Chapter 315, Labor [~~Section 11.2093,~~
15 ~~Education~~] Code.

16 SECTION 4.058. Sections 31.0126(b), (c), and (e), Human
17 Resources Code, are amended to read as follows:

18 (b) The Texas Workforce Commission [department] shall
19 develop the programs prescribed by this section in accordance with
20 federal law as a part of a Temporary Assistance for Needy Families
21 employment program established under Part A, Subchapter IV, Social
22 Security Act (42 U.S.C. Section 601 et seq.) [~~the job opportunities~~
23 ~~and basic skills (JOBS) training program under Part F, Subchapter~~
24 ~~IV, Social Security Act (42 U.S.C. Section 682)~~].

25 (c) In adopting rules governing a program prescribed by this
26 section, the executive commissioner [~~of the Health and Human~~
27 ~~Services Commission~~] shall:

1 (1) establish the criteria for determining which
2 recipients and nonrecipient parents who are eligible to participate
3 in the Temporary Assistance for Needy Families employment programs
4 established under Part A, Subchapter IV, Social Security Act (42
5 U.S.C. Section 601 et seq.), may be required to participate in a
6 particular program; and

7 (2) ensure that a recipient or a nonrecipient parent
8 who is incapable of participating in a particular program is not
9 required to participate in that program.

10 (e) The Texas Workforce Commission [department] shall
11 submit a waiver application or a renewal waiver application that a
12 federal agency may require before a local workforce development
13 board can implement one or more of the programs prescribed by this
14 section in a workforce development area.

15 SECTION 4.059. Sections 31.0127(a), (b), (c), (d), (h), and
16 (i), Human Resources Code, are amended to read as follows:

17 (a) The Health and Human Services Commission shall [~~is the~~
18 ~~state agency designated to~~] coordinate with the Texas Workforce
19 Commission for the provision of [~~between the department and another~~
20 ~~state agency providing~~] child care services, Temporary Assistance
21 for Needy Families employment [~~work~~] programs, and supplemental
22 nutrition assistance program employment and training [~~Food Stamp~~
23 ~~Employment and Training~~] services to an individual or family who
24 has been referred for programs and services by the Health and Human
25 Services Commission [department]. The purpose of this section is
26 to accomplish the following:

27 (1) increase the self-sufficiency of recipients of

1 Temporary Assistance for Needy Families and improve the delivery of
2 services to those recipients; and

3 (2) improve the effectiveness of job-training
4 programs funded under the Workforce Investment Act of 1998 [~~Job~~
5 ~~Training Partnership Act~~] (29 U.S.C. Section 2801 [~~1501~~] et seq.)
6 or a successor program in obtaining employment for individuals
7 receiving Temporary Assistance for Needy Families cash assistance.

8 (b) The Health and Human Services Commission shall require
9 the Texas Workforce Commission [~~a state agency providing program~~
10 ~~services described by Subsection (a)~~] to comply with Chapter 531,
11 Government Code, solely for:

12 (1) the promulgation of rules relating to the programs
13 described by Subsection (a);

14 (2) the expenditure of funds relating to the programs
15 described by Subsection (a), within the limitations established by
16 and subject to the General Appropriations Act and federal and other
17 law applicable to the use of the funds;

18 (3) data collection and reporting relating to the
19 programs described by Subsection (a); and

20 (4) evaluation of services relating to the programs
21 described by Subsection (a).

22 (c) The Health and Human Services Commission [~~department~~]
23 and the Texas Workforce Commission [~~a state agency providing~~
24 ~~program services described by Subsection (a)~~] shall jointly develop
25 and adopt a memorandum of understanding [~~, subject to the approval~~
26 ~~of the Health and Human Services Commission~~]. The memorandum of
27 understanding must:

1 (1) outline measures to be taken to increase the
2 number of individuals receiving Temporary Assistance for Needy
3 Families cash assistance who are using job-training programs funded
4 under the Workforce Investment Act of 1998 [~~Job Training~~
5 ~~Partnership Act~~] (29 U.S.C. Section 2801 [~~1501~~] et seq.), or a
6 successor program; and

7 (2) identify specific measures to improve the delivery
8 of services to clients served by programs described by Subsection
9 (a).

10 (d) Not later than January 15 of each odd-numbered year, the
11 Health and Human Services Commission shall provide a report to the
12 governor, the lieutenant governor, and the speaker of the house of
13 representatives that:

14 (1) evaluates the efficiency and effectiveness of
15 client services in the Temporary Assistance for Needy Families
16 program;

17 (2) evaluates the status of the coordination among
18 agencies and compliance with this section;

19 (3) recommends measures to increase self-sufficiency
20 of recipients of Temporary Assistance for Needy Families cash
21 assistance and to improve the delivery of services to these
22 recipients; and

23 (4) evaluates the effectiveness of job-training
24 programs funded under the Workforce Investment Act of 1998 [~~Job~~
25 ~~Training Partnership Act~~] (29 U.S.C. Section 2801 [~~1501~~] et seq.)
26 or a successor program in obtaining employment outcomes for
27 recipients of Temporary Assistance for Needy Families cash

1 assistance.

2 (h) This section does not authorize the Health and Human
3 Services Commission to transfer programs to or from the commission
4 [~~department~~] and another agency serving clients of the Temporary
5 Assistance for Needy Families program or the federal supplemental
6 nutrition assistance [~~food stamp~~] program administered under
7 Chapter 33 without explicit legislative authorization.

8 (i) The executive commissioner may not promulgate rules
9 relating to eligibility for the [Health and Human Services
10 ~~Commission and any state agency providing]~~ program services
11 described by Subsection (a) and the Texas Workforce Commission may
12 not promulgate rules in accordance with Subsection (b)(1) without
13 holding a public hearing.

14 SECTION 4.060. Sections 31.0128, 31.0129, and 31.0135,
15 Human Resources Code, are amended to read as follows:

16 Sec. 31.0128. COORDINATED INTERAGENCY PLAN. (a) The
17 commission [~~department~~] and the Texas Workforce Commission shall
18 jointly develop [~~and adopt~~] a memorandum of understanding
19 establishing[, subject to the approval of the Health and Human
20 ~~Services Commission.~~ The memorandum of understanding must
21 ~~establish]~~ guidelines for a coordinated interagency case
22 management plan to:

23 (1) identify each recipient of financial assistance
24 who has, in comparison to other recipients, higher levels of
25 barriers to employment; and

26 (2) provide coordinated services that address those
27 barriers to assist the recipient in finding and retaining

1 employment.

2 (b) The commission [~~department~~] and the Texas Workforce
3 Commission shall:

4 (1) jointly develop [~~and adopt~~] a memorandum of
5 understanding[, ~~subject to the approval of the Health and Human~~
6 ~~Services Commission,~~] that establishes a coordinated interagency
7 case management plan consistent with the guidelines established
8 under Subsection (a); and

9 (2) using existing resources, [~~by rule~~] implement in
10 accordance with agency rules the plan to the maximum extent
11 possible through local [~~department and commission~~] offices of the
12 agency in local workforce development areas in which a local
13 workforce development board is not established.

14 (c) The executive commissioner and the Texas Workforce
15 Commission [~~Each agency~~] by rule shall adopt the memoranda of
16 understanding required by this section and all revisions to the
17 memoranda.

18 (d) In a local workforce development area in which a local
19 workforce development board is established, the Texas Workforce
20 Commission shall require in the [~~commission's~~] contract between the
21 Texas Workforce Commission and [with] the board that the board, in
22 cooperation with local Health and Human Services Commission
23 [~~department~~] offices, develop and implement a coordinated
24 interagency case management plan consistent with the guidelines
25 established under Subsection (a).

26 (e) On the [~~department's~~] formulation of recommendations
27 and strategies by the Health and Human Services Commission under

1 Section 31.0129(b), the commission [department] and the Texas
2 Workforce Commission shall, as necessary, revise and update a
3 memorandum of understanding and coordinated interagency case
4 management plan under this section to include the recommendations
5 and strategies.

6 Sec. 31.0129. COORDINATED PLAN TO IMPROVE INTERAGENCY
7 TRANSITIONS. (a) The Health and Human Services Commission
8 [department], the Texas Workforce Commission, and representatives
9 of local workforce development boards shall conduct a survey of
10 best practices used to transition clients between local Health and
11 Human Services Commission [department] offices and workforce
12 centers.

13 (b) The Health and Human Services Commission [department]
14 shall:

15 (1) analyze information collected by a survey under
16 Subsection (a); and

17 (2) formulate recommendations and strategies to
18 improve practices used to transition clients between local
19 commission [department] offices and workforce centers.

20 (c) Using existing resources, the Health and Human Services
21 Commission [department] and local workforce development boards
22 shall adopt policies to implement the recommendations and
23 strategies contained in the revised and updated memorandum of
24 understanding under Section 31.0128.

25 Sec. 31.0135. PARENTING SKILLS TRAINING. (a) The
26 commission [department], in cooperation with the Texas Education
27 Agency, the Department of Family and Protective [and Regulatory]

1 Services, the Texas A&M AgriLife [~~Agricultural~~] Extension Service,
2 or any other public or private entity, shall develop a parenting
3 skills training program to assist a recipient of assistance under
4 this chapter, including a child who receives assistance on behalf
5 of a dependent child. The program shall include nutrition
6 education, budgeting and survival skills, and instruction on the
7 necessity of physical and emotional safety for children.

8 (b) The commission [~~department~~] shall require that a
9 caretaker relative or parent who is receiving assistance under this
10 chapter on behalf of a dependent child receive appropriate
11 parenting skills training as needed. The training must include one
12 or more components of the parenting skills training program that
13 the commission [~~department~~] determines will be useful to the
14 caretaker relative or parent.

15 (c) In this section, "caretaker relative" means a person who
16 is listed under Section 31.002(a)(5) in whose home residence a
17 dependent child lives [~~as a relative eligible to receive assistance~~
18 ~~under 42 U.S.C. Section 602(a)]~~.

19 SECTION 4.061. Sections 31.015(a), (c), (d), (e), and (f),
20 Human Resources Code, are amended to read as follows:

21 (a) Subject to available federal funding, the commission
22 [~~department~~] shall develop and implement a healthy marriage
23 development program for recipients of financial assistance under
24 this chapter.

25 (c) The commission [~~department~~] shall provide to a
26 recipient of financial assistance under this chapter additional
27 financial assistance of not more than \$20 for the recipient's

1 participation in a course offered through the healthy marriage
2 development program up to a maximum payment of \$60 a month.

3 (d) The commission [department] may provide the courses or
4 may contract with any person, including a community or faith-based
5 organization, for the provision of the courses. The commission
6 [department] must provide all participants with an option of
7 attending courses in a non-faith-based organization.

8 (e) The executive commissioner [department] shall develop
9 rules as necessary for the administration of the healthy marriage
10 development program.

11 (f) The commission [department] must ensure that the
12 courses provided by the commission [department] and courses
13 provided through contracts with other organizations will be
14 sensitive to the needs of individuals from different religions,
15 races, and genders.

16 SECTION 4.062. Sections 31.016, 31.017, and 31.018, Human
17 Resources Code, are amended to read as follows:

18 Sec. 31.016. SERVICE REFERRALS FOR CERTAIN RECIPIENTS. To
19 the extent practicable using existing revenue, the executive
20 commissioner [department], by rule, shall develop and the
21 commission shall implement a plan to:

22 (1) identify recipients of financial assistance that
23 are at risk of exhausting their benefits under Section 31.0065; and

24 (2) provide referrals for the recipient and the
25 recipient's family to appropriate preventive and support services,
26 including faith-based services.

27 Sec. 31.017. HEALTHY MARRIAGES AND STRONG FAMILIES GRANT

1 PROGRAM. (a) The commission [Health and Human Services
2 ~~Commission~~] may administer a grant program to provide grants in
3 amounts not to exceed \$50,000 to programs that provide marriage
4 education services and support the development of healthy marriages
5 or strengthening of families. Grant recipients may use grant money
6 to provide direct services to participants, develop a program,
7 enlarge program capacity, or pay other program expenses, including
8 provider training and technical assistance expenses.

9 (b) In selecting grant recipients, the commission [Health
10 and Human Services Commission] shall give preference to applicants:
11 (1) whose programs will contribute to the geographic
12 diversity of program locations; or
13 (2) who operate small programs, but who seek to
14 maximize service delivery and build capacity.

15 (c) The commission [Health and Human Services Commission]
16 shall require that each grant recipient provide program services at
17 no cost to participants.

18 (d) The commission [Health and Human Services Commission]
19 may contract with private entities to provide marriage education
20 training and curriculum, technical assistance, and other support to
21 grant recipients. In selecting entities to provide these
22 services, the commission shall consider whether a prospective
23 provider has knowledge and understanding of the needs of grant
24 recipients operating programs in different areas of this state.

25 (e) The executive commissioner [~~of the Health and Human~~
26 ~~Services Commission~~] may adopt rules to implement this section.

27 Sec. 31.018. MARRIAGE AND FAMILY PROGRAM FUNDING. (a) To

1 the extent authorized by federal law, the commission [~~Health and~~
2 ~~Human Services Commission~~] shall spend a minimum of one percent of
3 money received under the federal Temporary Assistance for Needy
4 Families block grant during each state fiscal year to fund programs
5 that support the development of healthy marriages or the
6 strengthening of families, including the healthy marriage
7 development program under Section 31.015 and the healthy marriages
8 and strong families grant program under Section 31.017.

9 (b) Using not more than 10 percent of the money required to
10 be spent as provided by Subsection (a), the commission [~~Health and~~
11 ~~Human Services Commission~~], through a contract or agreement with a
12 public senior college or university, as defined by Section 61.003,
13 Education Code, shall establish a process for evaluating the best
14 practices and outcomes of programs funded under Subsection (a).

15 SECTION 4.063. Sections 31.031(a), (b), (c), (d), (e), and
16 (f), Human Resources Code, are amended to read as follows:

17 (a) The executive commissioner [~~department~~] by rule shall
18 prescribe the form for applications for assistance authorized by
19 this chapter and the manner of their submission.

20 (b) The commission [~~department~~] may require the applicant
21 to state the amount of property in which he or she has an interest,
22 the amount of income which he or she has at the time the application
23 is filed, and other information.

24 (c) The commission [~~department~~] shall require the applicant
25 to provide proof to the commission [~~department~~] that each person
26 who will receive assistance under this chapter is:

27 (1) a United States citizen or has a satisfactory

1 immigration status under Title IV, Personal Responsibility and Work
2 Opportunity Reconciliation Act of 1996 (8 U.S.C. Sections
3 1601-1646) [as defined in Title IV, Social Security Act (42 U.S.C.
4 Section 602(a)(33)), in effect as of the effective date of this
5 Act]; and

6 (2) a resident of this state.

7 (d) The commission [~~department~~] shall require the applicant
8 to provide proof to the commission [~~department~~] that each child
9 five years of age or younger, or a child who is not enrolled in
10 public school, for whom the applicant will receive assistance:

11 (1) has been immunized in accordance with Section
12 161.004, Health and Safety Code;

13 (2) is currently receiving an immunization series in
14 accordance with Section 161.004, Health and Safety Code, if the
15 child is of sufficient age; or

16 (3) is exempted under Section 161.004(d), Health and
17 Safety Code.

18 (e) An applicant who cannot provide the proof required by
19 Subsection (d) at the time of application shall provide the proof
20 not later than the 180th day after the date the commission
21 [~~department~~] determines the applicant is eligible for financial
22 assistance.

23 (f) The commission [~~department~~] shall provide the applicant
24 with information regarding immunization services available in the
25 applicant's residential area. If the applicant does not read or
26 comprehend English, the commission [~~department~~] shall provide the
27 information in a language that the applicant reads or comprehends.

1 SECTION 4.064. Sections 31.0315(d) and (e), Human Resources
2 Code, are amended to read as follows:

3 (d) The commission [department] may waive the requirements
4 of this section if it determines that there exists a reasonable
5 explanation why it is impossible to provide the information
6 required under Subsection (a), (b), or (c) or if it would not be in
7 the best interests of the child to provide the information. In
8 determining whether the best interests of the child warrant waiving
9 the information requirements of this section, the commission
10 [department] shall consider all relevant provisions of federal law
11 and regulations.

12 (e) The commission [department] shall forward to the
13 attorney general's office information received under this section.

14 SECTION 4.065. Section 31.032, Human Resources Code, is
15 amended to read as follows:

16 Sec. 31.032. INVESTIGATION AND DETERMINATION OF
17 ELIGIBILITY. (a) On receipt of an application for assistance
18 authorized by this chapter, the commission [department] shall
19 investigate and record the applicant's circumstances in order to
20 ascertain the facts supporting the application and to obtain other
21 information it may require.

22 (b) After completing its investigation, the commission
23 [department] shall determine whether the applicant is eligible for
24 the assistance, the type and amount of assistance, the date on which
25 the assistance shall begin, and the manner in which payments shall
26 be made.

27 (c) The commission [department] shall promptly notify the

1 applicant of its final action.

2 (d) In determining whether an applicant is eligible for
3 assistance, the commission [department] shall exclude from the
4 applicant's available resources:

5 (1) \$1,000 for the applicant's household, including a
6 household in which there is a person with a disability or a person
7 who is at least 60 years of age; and

8 (2) the fair market value of the applicant's ownership
9 interest in a motor vehicle, but not more than [~~the amount~~
10 ~~determined according to the following schedule:~~

11 [(A) ~~\$4,550 on or after September 1, 1995, but~~
12 ~~before October 1, 1995;~~

13 [(B) ~~\$4,600 on or after October 1, 1995, but~~
14 ~~before October 1, 1996;~~

15 [(C) ~~\$5,000 on or after October 1, 1996, but~~
16 ~~before October 1, 1997; and~~

17 [(D)] \$5,000 plus or minus an amount to be
18 determined annually beginning on October 1, 1997, to reflect
19 changes in the new car component of the Consumer Price Index for All
20 Urban Consumers published by the Bureau of Labor Statistics.

21 (e) If federal regulations governing the maximum allowable
22 resources under the supplemental nutrition assistance [~~food stamp~~]
23 program, 7 C.F.R. [CFR] Part 273, are revised, the executive
24 commissioner [department] shall adjust the standards that
25 determine available resources under Subsection (d) to reflect those
26 revisions.

27 SECTION 4.066. Sections 31.0322(a), (c), (d), (e), and (g),

1 Human Resources Code, are amended to read as follows:

2 (a) The executive commissioner [department], the Texas
3 Workforce Commission, and the Title IV-D agency by rule shall adopt
4 procedures under which requirements relating to financial
5 assistance and related services, including time limits, child
6 support enforcement, paternity establishment, work activity, and
7 residency, may be waived or modified for an individual who is a
8 victim of family violence if application of the requirements would:

9 (1) adversely affect the individual's ability to
10 attain financial independence;

11 (2) make it more difficult for the individual to
12 escape family violence; or

13 (3) place the individual at greater risk for
14 additional family violence.

15 (c) The commission [department], the Texas Workforce
16 Commission, and the Title IV-D agency may not deny an individual
17 access to education, training, employment, or other services
18 because the individual is a victim of family violence.

19 (d) The commission [department] shall coordinate the
20 development and implementation of procedures under this section in
21 collaboration with the Texas Workforce Commission, the Title IV-D
22 agency, and at least one statewide advocacy group for victims of
23 family violence.

24 (e) The commission [department], the Texas Workforce
25 Commission, the Title IV-D agency, and each local workforce
26 development board, using existing resources, shall provide not less
27 than four hours of training regarding family violence to each

1 employee or other person who on behalf of the commission
2 [~~department~~], Texas Workforce Commission [~~commission~~], agency, or
3 board:

4 (1) provides information relating to requirements
5 described by Subsection (a) and the availability of waivers or
6 modifications of those requirements to an individual seeking or
7 receiving financial assistance;

8 (2) recommends or grants waivers or modifications
9 authorized by this section of requirements described by Subsection
10 (a);

11 (3) recommends or imposes sanctions for
12 noncooperation or noncompliance with requirements described by
13 Subsection (a); or

14 (4) assesses employment readiness or provides
15 employment planning or employment retention services to an
16 individual receiving financial assistance.

17 (g) Before the application of a sanction or penalty based on
18 an individual's failure to cooperate with the commission
19 [~~department~~] or Title IV-D agency, as required by Section
20 [31.0031\(d\)\(1\)](#), or failure to comply with the work or participation
21 requirements imposed by Section [31.012](#), the agency recommending or
22 applying the sanction or penalty must make reasonable attempts to
23 contact the individual to determine the cause of the failure to
24 cooperate or comply. If the agency determines that family violence
25 contributed to the failure, the agency shall ensure that a person
26 trained in family violence issues in accordance with Subsection (e)
27 interviews the individual to identify the types of services

1 necessary to assist the individual in safely and successfully
2 entering the workforce.

3 SECTION 4.067. Sections 31.0324(b) and (c), Human Resources
4 Code, are amended to read as follows:

5 (b) The executive commissioner [department] by rule shall
6 develop and the commission shall implement a process that provides
7 for the grandparent of a child receiving financial assistance under
8 this chapter to serve as a protective payee to:

9 (1) receive and use the assistance on behalf of the
10 child; and

11 (2) apply for financial assistance and be interviewed
12 instead of the child's parent at any subsequent review of
13 eligibility required by the commission [department].

14 (c) The commission [department] shall[~~+~~

15 [~~(1)~~] limit the use of the process established by
16 Subsection (b) to situations in which the commission [department]
17 determines the parent is not using the assistance for the child's
18 needs as required by Section 31.0355(a)~~+~~ and the executive
19 commissioner shall

20 [~~(2)~~] establish by rule the circumstances under which
21 the grandparent may be removed as a protective payee.

22 SECTION 4.068. Sections 31.0326, 31.033, 31.034, and
23 31.035, Human Resources Code, are amended to read as follows:

24 Sec. 31.0326. VERIFICATION OF IDENTITY AND PREVENTION OF
25 DUPLICATE PARTICIPATION. The commission [Health and Human
26 Services Commission] shall use appropriate technology to:

27 (1) confirm the identity of applicants for benefits

1 under the financial assistance program; and
2 (2) prevent duplicate participation in the program by
3 a person.

4 Sec. 31.033. REINVESTIGATION AND REDETERMINATION OF
5 ELIGIBILITY. (a) The commission [department] may require periodic
6 reconsideration of continued eligibility for assistance.

7 (b) After reconsideration of continuing eligibility, the
8 commission [department] may change the amount of assistance or
9 withdraw it if the commission [department] finds that the
10 recipient's circumstances have altered sufficiently to warrant
11 that action.

12 (c) The commission [department] may cancel or suspend
13 assistance for a period of time if the commission [department]
14 finds that the recipient is currently ineligible to receive it.

15 (d) The commission [department] shall notify the recipient
16 immediately of its decision to change or withdraw assistance.

17 (e) A recipient of assistance must notify the commission
18 [department] immediately if he or she comes into possession of
19 income or resources in excess of the amount previously reported.

20 Sec. 31.034. APPEAL FROM LOCAL ELIGIBILITY OFFICES
21 [ADMINISTRATIVE UNITS]. (a) An applicant for or recipient of
22 financial assistance authorized by this chapter may appeal to the
23 commission [department] an action or failure to act by a local
24 eligibility office [administrative unit] relating to the financial
25 assistance. The commission [department] shall grant the applicant
26 or recipient an opportunity for a hearing after reasonable notice.

27 (b) An applicant or recipient, or his or her authorized

1 agent, may submit a written request for the information contained
2 in the [~~unit's~~] records of the local eligibility office on which the
3 action being appealed is based, and the local eligibility office
4 [~~unit~~] shall advise the person making the request of the
5 information within a reasonable time prior to the hearing.
6 Information not provided to the requesting party may not be
7 considered by the commission [~~department~~] at the hearing as a basis
8 for decision.

9 Sec. 31.035. METHOD OF PAYMENT. (a) The commission
10 [~~department~~] shall periodically furnish the comptroller with a list
11 of persons eligible for financial assistance under this chapter and
12 the amount to which each person is entitled.

13 (b) The comptroller shall draw payments [~~warrants~~] for the
14 specified amounts on the proper accounts [~~of the Texas Department~~
15 ~~of Human Services fund~~] and shall transmit the payments [~~warrants~~]
16 to the commission [~~commissioner~~]. The commission [~~commissioner~~]
17 shall supervise the delivery of the payments [~~warrants~~] to the
18 persons entitled to them.

19 SECTION 4.069. Sections 31.0355(a) and (c), Human Resources
20 Code, are amended to read as follows:

21 (a) Financial assistance granted to a person under this
22 chapter may be used only to purchase goods and services that are
23 considered essential and necessary for the welfare of the family,
24 including food, clothing, housing, utilities, child care, and
25 incidentals such as transportation and medicine or medical supplies
26 or equipment not covered by Medicaid. The executive commissioner
27 [~~department~~] by rule shall define what constitutes essential and

1 necessary goods and services for purposes of this subsection.

2 (c) The commission [department] shall encourage housing
3 authorities, utility companies, public transportation companies,
4 and other nonfood retailers to accept payment for goods and
5 services described by Subsection (a) through the state's electronic
6 benefits transfer (EBT) system.

7 SECTION 4.070. Sections 31.036, 31.037, 31.038, 31.039, and
8 31.042, Human Resources Code, are amended to read as follows:

9 Sec. 31.036. ELIGIBILITY OF PERSON LEAVING THE STATE. A
10 recipient of assistance who moves out of the state is no longer
11 eligible for the assistance. However, a recipient's temporary
12 absence from the state for reasons and for periods of time approved
13 by the commission [department] does not terminate the recipient's
14 eligibility for assistance.

15 Sec. 31.037. PAYMENT OF FINANCIAL ASSISTANCE FUNDS ON DEATH
16 OF RECIPIENT. (a) If a person dies during a month for which the
17 person is eligible for financial assistance and has not spent all of
18 that month's financial assistance payment [endorsed or cashed the
19 warrant issued for financial assistance during that month], the
20 commission [department] may pay financial assistance to the person
21 who was responsible for caring for the recipient at the time of his
22 or her death and who is responsible for paying the obligations
23 incurred by the recipient.

24 (b) The executive commissioner [department] shall adopt
25 rules prescribing the method of determining the person entitled to
26 receive the deceased recipient's financial assistance, the manner
27 of payment of the funds, and limitations on the payments.

1 (c) Payments to persons responsible for deceased recipients
2 under this section may be made only in the manner and to the extent
3 permissible under the laws and regulations governing the
4 disbursement of funds received through the United States Department
5 of Health and Human Services [~~, Education, and Welfare~~].

6 Sec. 31.038. CANCELLATION OF UNUSED BENEFITS [~~UNCASHED~~
7 WARRANTS]. The commission [~~department~~] may cancel [a] financial
8 assistance benefits [~~warrant~~] that have [~~has~~] not been spent
9 [~~cashed~~] within a reasonable period of time after issuance. The
10 cancellation must be performed in the manner required by rules of
11 the comptroller.

12 Sec. 31.039. ISSUANCE OF REPLACEMENT FINANCIAL ASSISTANCE
13 WARRANTS AND ELECTRONIC BENEFITS TRANSFER CARDS. (a) The
14 comptroller may issue a replacement financial assistance warrant to
15 a recipient who has failed to receive or has lost the original
16 warrant in accordance with Section **403.054**, Government Code.

17 (b) The commission may issue a replacement electronic
18 benefits transfer card to a recipient who failed to receive or lost
19 the original card.

20 Sec. 31.042. PRORATION OF FINANCIAL ASSISTANCE. If at any
21 time state funds are not available to pay in full all financial
22 assistance authorized in this chapter, the executive commissioner
23 [~~department~~] may direct the proration of the financial assistance.

24 SECTION 4.071. Sections **31.043(a)** and (b), Human Resources
25 Code, are amended to read as follows:

26 (a) To extend the period of supported employment for
27 families who receive financial assistance under this chapter, the

1 commission [~~department~~] may use a form of fill-the-gap budgeting or
2 another method under which the commission [~~department~~] disregards
3 earnings of family members who obtain employment while receiving
4 the assistance.

5 (b) The commission [~~department~~] may limit the percentage of
6 earnings disregarded, impose a time limit on how long the earnings
7 are disregarded, or gradually reduce the percentage of earnings
8 disregarded in order to remain within available funding.

9 SECTION 4.072. Section 31.044(b), Human Resources Code, is
10 amended to read as follows:

11 (b) The commission [~~department~~] shall close an account that
12 has not been used by the account holder during the preceding 12
13 months.

14 SECTION 4.073. Sections 32.003(1) and (4), Human Resources
15 Code, are amended to read as follows:

16 (1) "Health and human services agencies" has the
17 meaning assigned by Section 531.001, Government Code [~~"Board"~~ means
18 the Health and Human Services Commission or the governing body of an
19 agency operating part of the medical assistance program, as
20 appropriate].

21 (4) "Medical assistance" and "Medicaid" include
22 [includes] all of the health care and related services and benefits
23 authorized or provided under federal law for needy individuals of
24 this state.

25 SECTION 4.074. Section 32.021, Human Resources Code, is
26 amended by amending Subsections (a), (b), (c), (d), (e), (f), (h),
27 (l), (m), (o), (p), (q), and (r) and adding Subsection (a-1) to read

1 as follows:

2 (a) The commission [department] is the single state agency
3 designated to administer the medical assistance program provided in
4 this chapter in accordance with 42 U.S.C. Section 1396a(a)(5).
5 Subject to applicable federal law, the commission may delegate the
6 operation of a part of the medical assistance program to another
7 state agency. Notwithstanding any delegation, the commission
8 retains ultimate authority over the medical assistance program.

9 (a-1) To the extent the commission delegates the operation
10 of a part of the medical assistance program to another state agency,
11 or to the extent that state law assigns a function of the medical
12 assistance program to another health and human services agency
13 operating under the commission's oversight, a reference in this
14 chapter to the commission with respect to that part of the medical
15 assistance program means the state agency to which the operation of
16 that part is delegated or assigned.

17 (b) The commission [department] shall enter into agreements
18 with any federal agency designated by federal law to administer
19 medical assistance when the commission [department] determines the
20 agreements to be compatible with the state's participation in the
21 medical assistance program and within the limits of appropriated
22 funds. The commission [department] shall cooperate with federal
23 agencies designated by federal law to administer medical assistance
24 in any reasonable manner necessary to qualify for federal funds.

25 (c) The executive commissioner [department] shall establish
26 methods of administration and adopt necessary rules for the proper
27 and efficient operation of the medical assistance program.

1 (d) The commission [department] shall include in its
2 contracts for the delivery of medical assistance by nursing
3 facilities provisions for monetary penalties to be assessed for
4 violations as required by 42 U.S.C. Section 1396r, including
5 without limitation the Omnibus Budget Reconciliation Act (OBRA),
6 Pub. [P.] L. No. 100-203, Nursing Home Reform Amendments of 1987,
7 provided that the executive commissioner [department] shall:

8 (1) provide for an informal dispute resolution process
9 in the commission [~~Health and Human Services Commission~~] as
10 provided by Section 531.058, Government Code; and
11 (2) develop rules to adjudicate claims in contested
12 cases, including claims unresolved by the informal dispute
13 resolution process of the commission [~~Health and Human Services~~
14 ~~Commission~~].

15 (e) Rules governing the application of penalties shall
16 include the following:

17 (1) specific and objective criteria which describe the
18 scope and severity of a contract violation which results in a
19 recommendation for each specific penalty. Penalties must be
20 appropriate to the violation, and the most severe financial
21 penalties must be reserved for situations which create an immediate
22 and serious threat to the health and safety of residents;
23 "immediate and serious threat" means a situation in which there is a
24 high probability that serious harm or injury to residents
25 [~~patients~~] could occur at any time or already has occurred and may
26 well occur again if residents [~~patients~~] are not protected
27 effectively from the harm or if the threat is not removed;

1 (2) a system to ensure standard and consistent
2 application of penalties among surveyors and different areas of the
3 state;

4 (3) due process for nursing facilities providers,
5 including an appeals procedure consistent with Chapter 2001,
6 Government Code; and

7 (4) per diem and/or minimum penalties. The executive
8 commissioner [department] may by rule prescribe a minimum penalty
9 period; however, once a facility gives the Department of Aging and
10 Disability Services [department] notice that deficiencies have
11 been corrected, if surveyors are unable to revisit the facility
12 within five days and the deficiencies are later shown to be
13 corrected, the per diem penalties cease as of the day the facility
14 gave notice to the Department of Aging and Disability Services
15 [department] or on the last day of the minimum penalty period
16 established by the executive commissioner [department], whichever
17 is later.

18 (f) To encourage facilities to provide the best possible
19 care, the commission [department] shall develop an incentive
20 program to recognize facilities providing the highest quality care
21 to Medicaid residents.

22 (h) Medicaid nursing facilities shall also comply with
23 state licensure rules, which may be more stringent than the
24 requirements for certification. The Department of Aging and
25 Disability Services [department] shall use appropriate civil,
26 administrative, or criminal remedies authorized by state or federal
27 law with respect to a facility that is in violation of a

1 certification or licensing requirement.

2 (1) The commission [~~department~~] may not include as a
3 reimbursable item to a nursing facility an administrative or civil
4 penalty assessed against the facility under this chapter or under
5 Chapter 242, Health and Safety Code.

6 (m) Notwithstanding any provision of law to the contrary,
7 the commission [~~department~~] shall terminate a nursing facility's
8 provider agreement if the Department of Aging and Disability
9 Services [~~department~~] has imposed required Category 2 or Category 3
10 remedies on the facility three times within a 24-month period. The
11 executive commissioner [~~of the Health and Human Services~~
12 ~~Commission~~] by rule shall establish criteria under which the
13 requirement to terminate the provider agreement may be waived. In
14 this subsection, "Category 2 remedies" and "Category 3 remedies"
15 have the meanings assigned by 42 C.F.R. Section 488.408.

16 (o) In any circumstance in which a nursing facility would
17 otherwise be required to admit a resident transferred from another
18 facility, because of an emergency or otherwise, the nursing
19 facility may not admit a resident whose needs cannot be met through
20 service from the facility's staff or in cooperation with community
21 resources or other providers under contract. If a nursing facility
22 refuses to admit a resident under this subsection, the nursing
23 facility shall provide a written statement of the reasons for the
24 refusal to the Department of Aging and Disability Services
25 [~~department~~] within a period specified by [~~department~~] rule. A
26 nursing facility that fails to provide the written statement, or
27 that includes false or misleading information in the statement, is

1 subject to monetary penalties assessed in accordance with this
2 chapter.

3 (p) In order to increase the personal needs allowance under
4 Section 32.024(w) [~~32.024(v), as added by Chapter 1333, Acts of the~~
5 ~~76th Legislature, Regular Session, 1999~~], the commission
6 [~~department~~] shall develop an early warning system to detect fraud
7 in the handling of the personal needs allowance and other funds of
8 residents of long-term care facilities.

9 (q) The commission [~~department~~] shall include in its
10 contracts for the delivery of medical assistance by nursing
11 facilities clearly defined minimum standards that relate directly
12 to the quality of care for residents of those facilities. [~~The~~
13 ~~department shall consider the recommendations made by the nursing~~
14 ~~facility quality assurance team under section 32.060 in~~
15 ~~establishing the standards.~~] The commission [~~department~~] shall
16 include in each contract:

17 (1) specific performance measures by which the
18 commission [~~department~~] may evaluate the extent to which the
19 nursing facility is meeting the standards; and

20 (2) provisions that allow the commission [~~department~~]
21 to terminate the contract if the nursing facility is not meeting the
22 standards.

23 (r) The commission [~~department~~] may not award a contract for
24 the delivery of medical assistance to a nursing facility that does
25 not meet the minimum standards that would be included in the
26 contract as required by Subsection (q). The commission
27 [~~department~~] shall terminate a contract for the delivery of medical

1 assistance by a nursing facility that does not meet or maintain the
2 minimum standards included in the contract in a manner consistent
3 with the terms of the contract.

4 SECTION 4.075. Sections 32.0211 and 32.0212, Human
5 Resources Code, are amended to read as follows:

6 Sec. 32.0211. RESTRICTIONS ON EXECUTIVE COMMISSIONERS,
7 FORMER MEMBERS OF A [THE] BOARD, COMMISSIONERS, AND THEIR BUSINESS
8 PARTNERS. (a) After service in the commission or a health and
9 human services agency, including an agency that formerly operated
10 part of the medical assistance program but that has been abolished,
11 [department] ends, a former executive commissioner, member of the
12 board, or [a former] commissioner of the applicable agency may not
13 knowingly represent a person before an agency or court:

14 (1) in a matter related to the medical assistance
15 program in which the agency the person served [department] or the
16 federal government has a direct interest and in which the executive
17 commissioner, board member, or commissioner participated
18 personally while employed with the agency [department]; or

19 (2) for two years after the date on which service ends
20 in a matter related to the medical assistance program if the
21 commission, the health and human services agency, [department] or
22 the federal government has a direct interest in the matter, the
23 matter was pending during the executive commissioner's or
24 commissioner's [his] last year of service to the applicable agency
25 [department], and the matter was one for which the executive
26 commissioner [board member] or commissioner had responsibility.

27 (b) Subsection (a) [of this section] does not apply to a

1 former executive commissioner, board member, or commissioner who
2 holds one of the following positions and is acting in the scope of
3 that position:

4 (1) employee or officer of federal, state, or local
5 government;

6 (2) employee of a nonprofit hospital or medical
7 research organization; or

8 (3) employee of an accredited degree-granting college
9 or university.

10 (c) The [A] current executive commissioner [~~board member~~]
11 or a current commissioner of a health and human services agency may
12 not knowingly participate in the course of the executive
13 commissioner's or commissioner's [~~his~~] service in a matter related
14 to the medical assistance program in which the agency the person
15 serves [~~department~~] or the federal government has a direct interest
16 and in which the executive commissioner or commissioner, or the
17 executive commissioner's or commissioner's spouse [~~he, his spouse~~],
18 minor child, or business partner, has a substantial financial
19 interest.

20 (d) A business partner of a current executive commissioner
21 [~~board member~~] or a current commissioner of a health and human
22 services agency may not knowingly represent a person before an
23 agency or court in a matter related to the medical assistance
24 program:

25 (1) in which the executive commissioner [~~board member~~]
26 or commissioner participates or has participated personally and
27 substantially; or

1 (2) that is under the official responsibility of the
2 executive commissioner [~~board member~~] or commissioner.

3 (e) A past [~~Past~~] or present executive commissioner, a past
4 board member of a health and human services agency, including an
5 abolished agency, [~~members~~] or a past or present commissioner of a
6 health and human services agency is [~~commissioners are~~] subject to
7 a civil penalty of \$5,000 for each violation of this section. A
8 partner of a current executive commissioner [~~board member~~] or
9 commissioner is subject to a civil penalty of \$2,500 for each
10 violation of this section. Each appearance before an agency or
11 court constitutes a separate offense.

12 (f) If it appears that this section has been violated, the
13 commission [~~department~~] may request the attorney general to conduct
14 a suit in the name of the State of Texas to enjoin the prohibited
15 activity and to recover the penalty provided for in this section.

16 Sec. 32.0212. DELIVERY OF MEDICAL ASSISTANCE.
17 Notwithstanding any other law and subject to Section 533.0025,
18 Government Code, the commission [~~department~~] shall provide medical
19 assistance for acute care services through the Medicaid managed
20 care system implemented under Chapter 533, Government Code, or
21 another Medicaid capitated managed care program.

22 SECTION 4.076. Sections 32.0213(a), (c), (d), and (e),
23 Human Resources Code, are amended to read as follows:

24 (a) The executive commissioner [~~department~~] by rule shall
25 establish procedures for:

26 (1) controlling the number of Medicaid beds in nursing
27 facilities;

1 (2) decertification of unused Medicaid beds in nursing
2 facilities; and

3 (3) reallocation of nursing facility [~~home~~] beds
4 decertified under Subdivision (2) to other nursing facilities.

5 (c) The executive commissioner [~~department~~] may exempt a
6 nursing facility from the procedures established under this section
7 if the facility:

8 (1) is affiliated with a state-supported medical
9 school;

10 (2) is located on land owned or controlled by the
11 state-supported medical school; and

12 (3) serves as a teaching facility for physicians and
13 related health care professionals.

14 (d) The executive commissioner [~~of the Health and Human~~
15 ~~Services Commission~~] by rule may require an applicant for Medicaid
16 beds in a nursing facility under a Medicaid bed waiver application
17 to provide a performance bond in the amount of \$500,000 or other
18 financial security as determined by the Department of Aging and
19 Disability Services [~~department~~] to ensure that the applicant
20 provides the Medicaid beds granted to the applicant under the
21 waiver within the time frame required by the Department of Aging and
22 Disability Services [~~department~~]. A performance bond provided
23 under this subsection must:

24 (1) be executed by a corporate surety [~~entity~~] in
25 accordance with Subchapter A, Chapter 3503, Insurance Code;

26 (2) be in a form approved by the Department of Aging
27 and Disability Services [~~department~~]; and

1 (3) clearly and prominently display on the face of the
2 bond or on an attachment to the bond:

3 (A) the name, mailing address, physical address,
4 and telephone number, including the area code, of the surety
5 company to which any notice of claim should be sent; or

6 (B) the toll-free telephone number maintained by
7 the Texas Department of Insurance under Subchapter B, Chapter 521,
8 Insurance Code, and a statement that the address of the surety
9 company to which any notice of claim should be sent may be obtained
10 from the Texas Department of Insurance by calling the toll-free
11 telephone number.

12 (e) The executive commissioner [department] may not require
13 an applicant for Medicaid beds in a nursing facility to obtain a
14 performance bond from a specific insurance or surety agency, agent,
15 or broker.

16 SECTION 4.077. Section 32.0214(a), Human Resources Code, is
17 amended to read as follows:

18 (a) If the commission [department] determines that it is
19 cost-effective and feasible and subject to Subsection (b), the
20 commission [department] shall require each recipient of medical
21 assistance to designate a primary care provider with whom the
22 recipient will have a continuous, ongoing professional
23 relationship and who will provide and coordinate the recipient's
24 initial and primary care, maintain the continuity of care provided
25 to the recipient, and initiate any referrals to other health care
26 providers.

27 SECTION 4.078. Sections 32.0215(a), (b), (d), and (e),

1 Human Resources Code, are amended to read as follows:

2 (a) The commission [department] may include in a contract
3 for the delivery of medical assistance by a home or community care
4 provider a provision for monetary penalties to be assessed for a
5 contract violation or any violation of home or community care
6 requirements, as required by 42 U.S.C. Section 1396t(j).

7 (b) The executive commissioner [department] shall adopt
8 [develop] rules governing the application of civil money penalties,
9 including rules prescribing:

10 (1) criteria that describe when and how a civil money
11 penalty may be assessed and the amount of the penalty;

12 (2) a system to ensure standard and consistent
13 application of the penalties throughout the state; and

14 (3) an administrative appeals process to adjudicate
15 claims in contested cases in accordance with Chapter 2001,
16 Government Code.

17 (d) A penalty must be appropriate to the violation. The
18 commission [department] may assess incrementally more severe
19 penalties for repeated or uncorrected violations.

20 (e) The commission [department] shall review a penalized
21 provider within 10 working days after the provider notifies the
22 Department of Aging and Disability Services [department] that the
23 deficiency that caused the imposition of the penalty has been
24 corrected. If the commission [department] is unable to review the
25 provider within that 10-working-day period, the penalty ceases on
26 the earlier of the last day of the minimum penalty period or the
27 date the provider gives notice to the Department of Aging and

1 Disability Services [department].

2 SECTION 4.079. Sections 32.022, 32.023, and 32.0231, Human
3 Resources Code, are amended to read as follows:

4 Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES.

5 (a) The executive [~~board~~, ~~on the recommendation of the~~]
6 commissioner[~~r~~] shall appoint a medical care advisory committee to
7 advise the executive commissioner [~~board~~] and the commission
8 [~~department~~] in developing and maintaining the medical assistance
9 program and in making immediate and long-range plans for reaching
10 the program's goal of providing access to high quality,
11 comprehensive medical and health care services to medically
12 indigent persons in the state. To ensure that qualified applicants
13 receive services, the committee shall consider changes in the
14 process the commission [~~department~~] uses to determine eligibility.

15 (b) The executive commissioner [~~board~~] shall appoint the
16 committee in compliance with the requirements of the federal agency
17 administering medical assistance. The appointments shall provide
18 for a balanced representation of the general public, providers,
19 consumers, and other persons, state agencies, or groups with
20 knowledge of and interest in the committee's field of work.

21 (c) The executive commissioner [~~department~~] shall adopt
22 rules for membership on the committee to provide for efficiency of
23 operation, rotation, stability, and continuity.

24 (d) The executive [~~board~~, ~~on the recommendation of the~~]
25 commissioner[~~r~~] may appoint regional and local medical care
26 advisory committees and other advisory committees as considered
27 necessary.

1 (e) The executive [board, on the recommendation of the]
2 commissioner[~~T~~] shall appoint a hospital payment advisory
3 committee. The committee shall advise the executive commissioner
4 [~~board~~] and the commission [~~department~~] on necessary changes in
5 hospital payment methodologies for inpatient hospital prospective
6 payments and on adjustments for disproportionate share hospitals
7 that will ensure reasonable, adequate, and equitable payments to
8 hospital providers and that will address the essential role of
9 rural hospitals. The executive commissioner [~~board~~] shall appoint
10 to the committee persons with knowledge of and an interest in
11 hospital payment issues.

12 Sec. 32.023. COOPERATION WITH OTHER STATE AGENCIES. (a)
13 The commission's [~~department's~~] plan for administering medical
14 assistance must include procedures for using health services
15 administered by other state agencies pursuant to cooperative
16 arrangements.

17 (b) The commission [~~department~~] may enter into agreements
18 with appropriate state agencies that will enable the commission
19 [~~department~~] to implement Title XIX of the federal Social Security
20 Act (42 U.S.C. Section 1396 et seq.) to provide medical assistance
21 for individuals in institutions or in alternate care arrangements.
22 The agreements must comply with federal law and rules. The
23 commission [~~department~~] may make medical assistance payments in
24 accordance with the agreements. The agreements are not subject to
25 Chapter 771, Government Code [~~the Interagency Cooperation Act~~
26 ~~(Article 4413(32), Vernon's Texas Civil Statutes)~~].

27 (c) State agencies responsible for the administration or

1 supervision of facilities to which medical assistance payments may
2 be made under federal law shall enter into the agreements with the
3 commission [department] and maintain compliance with the
4 agreements so that the commission [department] may receive federal
5 matching funds to support the medical assistance program.

6 (d) The commission [department] may pay medical assistance
7 to other facilities as required under federal law and rules.

8 Sec. 32.0231. ANNOUNCEMENT OF FUNDING OR PROGRAM CHANGE.

9 (a) The executive commissioner [department] shall publish notice
10 in the Texas Register of:

11 (1) any attempt to obtain a waiver of federal
12 regulations in the medical assistance program;

13 (2) any attempt to obtain or the receipt of funding
14 under Title XIX of the federal Social Security Act (42 U.S.C.
15 Section 1396 [301] et seq.) for a pilot program; and

16 (3) any amendment to the state medical assistance
17 plan.

18 (b) The notice must include the name and telephone number of
19 a commission [department] employee who can provide information
20 relating to the matter for which notice was published under this
21 section.

22 (c) The commission [department] shall provide to any
23 requestor information relating to a matter for which notice was
24 published, including the effect and cost of the change, any
25 possible cost savings, the criteria for receiving services, and the
26 number of people to be served.

27 SECTION 4.080. Sections 32.024(a), (b), (c), (c-1), (d),

1 (e), (f), (g), (h), (l), (n), (o), (p), (q), (r), (s), (t), (t-1),
2 (u), (v), (w), (x), (y), (z), (z-1), (aa), (bb), (cc), (ff), (gg),
3 (ii), and (jj), Human Resources Code, are amended to read as
4 follows:

5 (a) The commission [department] shall provide medical
6 assistance to all persons who receive financial assistance from the
7 state under Chapter 31 [~~of this code~~] and to other related groups of
8 persons if the provision of medical assistance to those persons is
9 required by federal law and rules as a condition for obtaining
10 federal matching funds for the support of the medical assistance
11 program.

12 (b) The commission [department] may provide medical
13 assistance to other persons who are financially unable to meet the
14 cost of medical services if federal matching funds are available
15 for that purpose. The executive commissioner [department] shall
16 adopt rules governing the eligibility of those persons for the
17 services.

18 (c) The executive commissioner [department] shall establish
19 standards governing the amount, duration, and scope of services
20 provided under the medical assistance program. The standards may
21 not be lower than the minimum standards required by federal law and
22 rule as a condition for obtaining federal matching funds for
23 support of the program[~~, and may not be lower than the standards in~~
~~effect on August 27, 1967. Standards or payments for the vendor~~
~~drug program may not be lower than those in effect on January 1,~~
~~1973]~~.

27 (c-1) The commission [department] shall ensure that money

1 spent for purposes of the demonstration project for women's health
2 care services under former Section 32.0248[~~, Human Resources Code,~~]
3 or a similar successor program is not used to perform or promote
4 elective abortions, or to contract with entities that perform or
5 promote elective abortions or affiliate with entities that perform
6 or promote elective abortions.

7 (d) The executive commissioner [~~department~~] may establish
8 standards that increase the amount, duration, and scope of the
9 services provided only if federal matching funds are available for
10 the optional services and payments and if the executive
11 commissioner [~~department~~] determines that the increase is feasible
12 and within the limits of appropriated funds. The executive
13 commissioner [~~department~~] may establish and maintain priorities
14 for the provision of the optional medical services.

15 (e) The commission [~~department~~] may not authorize the
16 provision of any service to any person under the program unless
17 federal matching funds are available to pay the cost of the service.

18 (f) The executive commissioner [~~department~~] shall set the
19 income eligibility cap for persons qualifying for nursing facility
20 [~~home~~] care at an amount that is not less than \$1,104 and that does
21 not exceed the highest income for which federal matching funds are
22 payable. The executive commissioner [~~department~~] shall set the cap
23 at a higher amount than the minimum provided by this subsection if
24 appropriations made by the legislature for a fiscal year will
25 finance benefits at the higher cap for at least the same number of
26 recipients of the benefits during that year as were served during
27 the preceding fiscal year, as estimated by the commission

1 [department]. In setting an income eligibility cap under this
2 subsection, the executive commissioner [department] shall consider
3 the cost of the adjustment required by Subsection (g) [~~of this~~
4 ~~section~~].

5 (g) During a fiscal year for which the cap described by
6 Subsection (f) [~~of this section~~] has been set, the executive
7 commissioner [department] shall adjust the cap in accordance with
8 any percentage change in the amount of benefits being paid to social
9 security recipients during the year.

10 (h) Subject to the amount of the cap set as provided by
11 Subsections (f) and (g) [~~of this section~~], and to the extent
12 permitted by federal law, the income eligibility cap for the
13 community care for aged and disabled persons program shall be the
14 same as the income eligibility cap for nursing facility [~~home~~]
15 care. The executive commissioner [department] shall ensure that
16 the eligibility requirements for persons receiving other services
17 under the medical assistance program are not affected.

18 (l) The executive commissioner [department] shall set the
19 income eligibility cap for medical assistance for pregnant women
20 and infants up to age one at not less than 130 percent of the federal
21 poverty guidelines.

22 (n) The executive commissioner, [department] in the [~~its~~]
23 adoption of rules and standards governing the scope of hospital and
24 long-term services, shall authorize the providing of respite care
25 by hospitals.

26 (o) The executive commissioner [department], in the [~~its~~]
27 rules and standards governing the scope of hospital and long-term

1 services, shall establish a swing bed program in accordance with
2 federal regulations to provide reimbursement for skilled nursing
3 patients who are served in hospital settings provided that the
4 length of stay is limited to 30 days per year and the hospital is
5 located in a county with a population of 100,000 or less. If the
6 swing beds are used for more than one 30-day length of stay per
7 year, per patient, the hospital must comply with the minimum
8 licensing standards [~~Minimum Licensing Standards~~] as mandated by
9 Chapter 242, Health and Safety Code, and the Medicaid standards for
10 nursing facility [~~home~~] certification, as promulgated by the
11 executive commissioner [~~department~~].

12 (p) The commission [~~department~~] shall provide home
13 respiratory therapy services for ventilator-dependent persons to
14 the extent permitted by federal law.

15 (q) The commission [~~department~~] shall provide physical
16 therapy services.

17 (r) The commission [~~department~~], from funds otherwise
18 appropriated to the commission [~~department~~] for the early and
19 periodic screening, diagnosis, and treatment program, shall
20 provide to a child who is 14 years of age or younger, permanent
21 molar sealants as dental service under that program as follows:

22 (1) sealant shall be applied only to the occlusal
23 buccal and lingual pits and fissures of a permanent molar within
24 four years of its eruption;

25 (2) teeth to be sealed must be free of proximal caries
26 and free of previous restorations on the surface to be sealed;

27 (3) if a second molar is the prime tooth to be sealed,

1 a non-restored first molar may be sealed at the same sitting, if the
2 fee for the first molar sealing is no more than half the usual
3 sealant fee;

4 (4) the sealing of premolars and primary molars will
5 not be reimbursed; and

6 (5) replacement sealants will not be reimbursed.

7 (s) The executive commissioner [department], in the [its]
8 rules governing the early and periodic screening, diagnosis, and
9 treatment program, shall:

10 (1) revise the periodicity schedule to allow for
11 periodic visits at least as often as the frequency recommended by
12 the American Academy of Pediatrics and allow for interperiodic
13 screens without prior approval when there are indications that it
14 is medically necessary; and

15 (2) require, as a condition for eligibility for
16 reimbursement under the program for the cost of services provided
17 at a visit or screening, that a child younger than 15 years of age be
18 accompanied at the visit or screening by:

19 (A) the child's parent or guardian; or

20 (B) another adult, including an adult related to
21 the child, authorized by the child's parent or guardian to
22 accompany the child.

23 (t) The executive commissioner [department] by rule shall
24 require a physician, nursing facility, health care provider, or
25 other responsible party to obtain authorization from the commission
26 [department] or a person authorized to act on behalf of the
27 commission [department] on the same day or the next business day

1 following the day of transport when an ambulance is used to
2 transport a recipient of medical assistance under this chapter in
3 circumstances not involving an emergency and the request is for the
4 authorization of the provision of transportation for only one day.
5 If the request is for authorization of the provision of
6 transportation on more than one day, the executive commissioner
7 [~~department~~] by rule shall require a physician, nursing facility,
8 health care provider, or other responsible party to obtain a single
9 authorization before an ambulance is used to transport a recipient
10 of medical assistance under this chapter in circumstances not
11 involving an emergency. The rules must provide that:

12 (1) except as provided by Subdivision (3), a request
13 for authorization must be evaluated based on the recipient's
14 medical needs and may be granted for a length of time appropriate to
15 the recipient's medical condition;

16 (2) except as provided by Subdivision (3), a response
17 to a request for authorization must be made not later than 48 hours
18 after receipt of the request;

19 (3) a request for authorization must be immediately
20 granted and must be effective for a period of not more than 180 days
21 from the date of issuance if the request includes a written
22 statement from a physician that:

23 (A) states that alternative means of
24 transporting the recipient are contraindicated; and

25 (B) is dated not earlier than the 60th day before
26 the date on which the request for authorization is made;

27 (4) a person denied payment for ambulance services

1 rendered is entitled to payment from the nursing facility, health
2 care provider, or other responsible party that requested the
3 services if:

4 (A) payment under the medical assistance program
5 is denied because of lack of prior authorization; and

6 (B) the person provides the nursing facility,
7 health care provider, or other responsible party with a copy of the
8 bill for which payment was denied;

9 (5) a person denied payment for services rendered
10 because of failure to obtain prior authorization or because a
11 request for prior authorization was denied is entitled to appeal
12 the denial of payment to the commission [department]; and

13 (6) the commission [department] or a person authorized
14 to act on behalf of the commission [department] must be available to
15 evaluate requests for authorization under this subsection not less
16 than 12 hours each day, excluding weekends and state holidays.

17 (t-1) The executive commissioner [department], in the [its]
18 rules governing the medical transportation program, may not
19 prohibit a recipient of medical assistance from receiving
20 transportation services through the program to obtain renal
21 dialysis treatment on the basis that the recipient resides in a
22 nursing facility.

23 (u) The executive commissioner [department] by rule shall
24 require a health care provider who arranges for durable medical
25 equipment for a child who receives medical assistance under this
26 chapter to:

27 (1) ensure that the child receives the equipment

1 prescribed, the equipment fits properly, if applicable, and the
2 child or the child's parent or guardian, as appropriate considering
3 the age of the child, receives instruction regarding the
4 equipment's use; and

5 (2) maintain a record of compliance with the
6 requirements of Subdivision (1) in an appropriate location.

7 (v) The executive commissioner [department] by rule shall
8 provide a screening test for hearing loss in accordance with
9 Chapter 47, Health and Safety Code, and any necessary diagnostic
10 follow-up care related to the screening test to a child younger than
11 30 days old who receives medical assistance.

12 (w) The executive commissioner [department] shall set a
13 personal needs allowance of not less than \$60 a month for a resident
14 of a convalescent or nursing facility [home] or related institution
15 licensed under Chapter 242, Health and Safety Code, assisted living
16 [personal care] facility, ICF-IID [ICF-MR] facility, or other
17 similar long-term care facility who receives medical
18 assistance. The commission [department] may send the personal
19 needs allowance directly to a resident who receives Supplemental
20 Security Income (SSI) (42 U.S.C. Section 1381 et seq.). This
21 subsection does not apply to a resident who is participating in a
22 medical assistance waiver program administered by the commission
23 [department].

24 (x) The commission [department] shall provide dental
25 services annually to a resident of a nursing facility who is a
26 recipient of medical assistance under this chapter. The dental
27 services must include:

1 (1) a dental examination by a licensed dentist;
2 (2) a prophylaxis by a licensed dentist or licensed
3 dental hygienist, if practical considering the health of the
4 resident; and

5 (3) diagnostic dental x-rays, if possible.

6 (y) The commission [department] shall provide medical
7 assistance to a person in need of treatment for breast or cervical
8 cancer who is eligible for that assistance under the Breast and
9 Cervical Cancer Prevention and Treatment Act of 2000 (Pub. L.
10 No. 106-354) for a continuous period during which the person
11 requires that treatment. The executive commissioner [department]
12 shall simplify the provider enrollment process for a provider of
13 that medical assistance and shall adopt rules to provide for
14 certification of presumptive eligibility of a person for that
15 assistance. In determining a person's eligibility for medical
16 assistance under this subsection, the executive commissioner
17 [department], to the extent allowed by federal law, may not require
18 a personal interview.

19 (z) In the executive commissioner's [~~its~~] rules and
20 standards governing the vendor drug program, the executive
21 commissioner [department], to the extent allowed by federal law and
22 if the executive commissioner [department] determines the policy to
23 be cost-effective, may ensure that a recipient of prescription drug
24 benefits under the medical assistance program does not, unless
25 authorized by the commission [department] in consultation with the
26 recipient's attending physician or advanced practice nurse,
27 receive under the medical assistance program:

1 (1) more than four different outpatient brand-name
2 prescription drugs during a month; or

3 (2) more than a 34-day supply of a brand-name
4 prescription drug at any one time.

5 (z-1) Subsection (z) does not affect any other limit on
6 prescription medications otherwise prescribed by commission
7 [~~department~~] rule.

8 (aa) The commission [~~department~~] shall incorporate
9 physician-oriented instruction on the appropriate procedures for
10 authorizing ambulance service into current medical education
11 courses.

12 (bb) The commission [~~department~~] may not provide an
13 erectile dysfunction medication under the Medicaid vendor drug
14 program to a person required to register as a sex offender under
15 Chapter 62, Code of Criminal Procedure, to the maximum extent
16 federal law allows the commission [~~department~~] to deny that
17 medication.

18 (cc) In this subsection, "deaf" and "hard of hearing" have
19 the meanings assigned by Section 81.001. Subject to the
20 availability of funds, the commission [~~department~~] shall provide
21 interpreter services as requested during the receipt of medical
22 assistance under this chapter to:

23 (1) a person receiving that assistance who is deaf or
24 hard of hearing; or

25 (2) a parent or guardian of a person receiving that
26 assistance if the parent or guardian is deaf or hard of hearing.

27 (ff) The executive commissioner [~~department~~] shall

1 establish a separate provider type for prosthetic and orthotic
2 providers for purposes of enrollment as a provider of and
3 reimbursement under the medical assistance program. The executive
4 commissioner [department] may not classify prosthetic and orthotic
5 providers under the durable medical equipment provider type.

6 (gg) Notwithstanding any other law, including Sections
7 843.312 and 1301.052, Insurance Code, the commission [department]
8 shall ensure that advanced practice registered nurses and physician
9 assistants may be selected by and assigned to recipients of medical
10 assistance as the primary care providers of those recipients. The
11 commission [department] must require that advanced practice
12 registered nurses and physician assistants be treated in the same
13 manner as primary care physicians with regard to:

14 (1) selection and assignment as primary care
15 providers; and

16 (2) inclusion as primary care providers in any
17 directory of providers of medical assistance maintained by the
18 commission [department].

19 (ii) The commission [department] shall provide medical
20 assistance reimbursement to a pharmacist who is licensed to
21 practice pharmacy in this state, is authorized to administer
22 immunizations in accordance with rules adopted by the Texas State
23 Board of Pharmacy, and administers an immunization to a recipient
24 of medical assistance to the same extent the commission
25 [department] provides reimbursement to a physician or other health
26 care provider participating in the medical assistance program for
27 the administration of that immunization.

1 (jj) The executive commissioner [department] shall
2 establish a separate provider type for prescribed pediatric
3 extended care centers licensed under Chapter 248A, Health and
4 Safety Code, for purposes of enrollment as a provider for and
5 reimbursement under the medical assistance program.

6 SECTION 4.081. Section 32.024(i), Human Resources Code, as
7 amended by Chapters 198 (H.B. 2292) and 1251 (S.B. 1862), Acts of
8 the 78th Legislature, Regular Session, 2003, is reenacted and
9 amended to read as follows:

10 (i) [Subject to appropriated state funds, the] The
11 executive commissioner [department] in adopting [~~its adoption of~~]
12 rules may establish a medically needy program that serves pregnant
13 women, children, and caretakers who have high medical expenses,
14 subject to the availability of appropriated funds.

15 SECTION 4.082. Sections 32.0241, 32.0242, and 32.0243,
16 Human Resources Code, are amended to read as follows:

17 Sec. 32.0241. REVIEW OF WAIVER REQUEST. The commission
18 [department] shall, at least biennially, review the feasibility of
19 requesting a waiver for the elderly under Section 1915(c), federal
20 Social Security Act (42 U.S.C. Section 1396n), if the reimbursement
21 rates for nursing facilities [homes] under the medical assistance
22 program have increased since the preceding review.

23 Sec. 32.0242. VERIFICATION OF CERTAIN INFORMATION. To the
24 extent possible, the commission [department] shall verify an
25 applicant's residential address at the time the application for
26 medical assistance is filed.

27 Sec. 32.0243. PERIODIC REVIEW OF ELIGIBILITY FOR CERTAIN

1 RECIPIENTS. (a) The commission [department], in cooperation with
2 the United States Social Security Administration, shall
3 periodically review the eligibility of a recipient of medical
4 assistance who is eligible on the basis of the recipient's
5 eligibility for Supplemental Security Income (SSI) benefits under
6 42 U.S.C. Section 1381 et seq., as amended.

7 (b) In reviewing the eligibility of a recipient as required
8 by Subsection (a), the commission [department] shall ensure that
9 only recipients who reside in this state and who continue to be
10 eligible for Supplemental Security Income (SSI) benefits under 42
11 U.S.C. Section 1381 et seq., as amended, remain eligible for
12 medical assistance.

13 SECTION 4.083. The heading to Section [32.0244](#), Human
14 Resources Code, is amended to read as follows:

15 Sec. 32.0244. NURSING FACILITY [HOME] BEDS IN CERTAIN
16 COUNTIES.

17 SECTION 4.084. Sections [32.0244](#)(a), (c), and (d), Human
18 Resources Code, are amended to read as follows:

19 (a) At the request of the commissioners court of a county in
20 which not more than two nursing facilities are certified to
21 participate in the state Medicaid program, and subject to
22 Subsection (d), the commission [department] may contract for
23 additional nursing facility [home] beds under the state Medicaid
24 program in the county without regard to the occupancy rate of
25 available Medicaid beds.

26 (c) A commissioners court shall determine whether to
27 proceed with a request after considering all comments and proposals

1 received in response to the notices provided under Subsection (b).
2 If the commissioners court proceeds with the request, the court may
3 recommend that the commission [department] contract with a specific
4 nursing facility that submitted a proposal. In determining whether
5 to proceed with the request and whether to recommend a specific
6 nursing facility, the commissioners court shall consider:

7 (1) the demographic and economic needs of the county;
8 (2) the quality of existing nursing facility services
9 under the state Medicaid program in the county;
10 (3) the quality of the proposals submitted; and
11 (4) the degree of community support for additional
12 nursing facility services.

13 (d) The commission [department] may not contract under this
14 section for more than 120 additional nursing facility [~~home~~] beds
15 per county per year and may not exceed 500 additional nursing
16 facility [~~home~~] beds statewide in a calendar year.

17 SECTION 4.085. Section 32.0245, Human Resources Code, is
18 amended to read as follows:

19 Sec. 32.0245. NURSING FACILITY [~~HOME~~] BEDS FOR CERTAIN
20 FACILITIES TREATING ALZHEIMER'S DISEASE. The commission
21 [department] shall waive for a nursing facility a restriction
22 imposed by state law on the authority to contract under the state
23 Medicaid program for nursing facility [~~home~~] beds based on the
24 percentage of beds that are occupied in a geographical area if the
25 facility:

26 (1) is affiliated with a medical school operated by
27 the state;

1 (2) is participating in a research program for the
2 care and treatment of persons with Alzheimer's disease; and
3 (3) is designed to separate and treat Alzheimer's
4 disease by stage or functional level.

5 SECTION 4.086. Section 32.02451, Human Resources Code, is
6 amended to read as follows:

7 Sec. 32.02451. ADDITIONAL PERSONAL NEEDS ALLOWANCE FOR
8 GUARDIANSHIP EXPENSES OF CERTAIN RECIPIENTS. (a) In this section,
9 "applied income" has the meaning assigned by Section 1155.201,
10 Estates [670, Texas Probate] Code.

11 (b) To the extent allowed by federal law, the commission
12 [~~department~~], in computing the applied income of a recipient of
13 medical assistance, shall deduct in the manner provided by this
14 section an additional personal needs allowance from the earned and
15 unearned income of the recipient or, if applicable, the recipient
16 and the recipient's spouse, for compensation and costs ordered to
17 be deducted under Section 1155.202, Estates [670, Texas Probate]
18 Code. Subject to Subsection (f), a deduction ordered by the court
19 under Section 1155.202, Estates [670, Texas Probate] Code, is
20 effective beginning on the later of:

21 (1) the month in which the order is signed; or
22 (2) the first month of medical assistance eligibility
23 for which the recipient is subject to a copayment.

24 (c) The commission [~~department~~] shall compute the applied
25 income of a recipient of medical assistance as follows:

26 (1) the commission [~~department~~] shall deduct from the
27 earned and unearned income the personal needs allowance authorized

1 by Section 32.024(w) before making any other deduction;
2 (2) if after the deduction under Subdivision (1) the
3 recipient has remaining income, the commission [department] shall
4 deduct the lesser of the following:

5 (A) the amount of the remaining income; or
6 (B) the amount of the additional personal needs
7 allowance for compensation and costs ordered to be deducted under
8 Section 1155.202, Estates [~~670, Texas Probate~~] Code; and

9 (3) if after the deductions under Subdivisions (1) and
10 (2) the recipient has remaining income, the commission [department]
11 shall deduct any other authorized allowances.

12 (d) The amount of income remaining, if any, after the
13 commission [department] makes the deductions as provided by
14 Subsection (c) is the amount of the applied income of the recipient
15 of medical assistance.

16 (e) The executive commissioner [~~of the Health and Human~~
17 ~~Services Commission~~] shall adopt rules providing a procedure by
18 which a recipient of medical assistance for whom amounts are
19 ordered deducted under Section 1155.202, Estates [~~670, Texas~~
20 ~~Probate~~] Code, may submit to the commission [department] a copy of
21 the court order issued under that section to receive a deduction of
22 those amounts from the recipient's income as provided by this
23 section.

24 (f) The commission [department] may not allow a deduction
25 for the additional personal needs allowance for compensation and
26 costs ordered to be deducted under Section 1155.202, Estates [~~670,~~
27 ~~Texas Probate~~] Code, if the order is issued after the recipient of

1 medical assistance dies.

2 SECTION 4.087. Sections 32.0247(b), (c), (d), and (e),
3 Human Resources Code, are amended to read as follows:

4 (b) The commission [~~department~~] shall provide medical
5 assistance, in accordance with commission [~~department~~] rules, to an
6 independent foster care adolescent who:

7 (1) is not otherwise eligible for medical assistance;
8 and

9 (2) is not covered by a health benefits plan offering
10 adequate benefits, as determined by the commission [~~Health and~~
11 ~~Human Services Commission~~].

12 (c) To the extent allowed by federal law, the executive
13 commissioner [~~the department~~] shall by rule establish a specific
14 set of income, assets, or resources allowable for recipients under
15 this section. The income level shall not be less than 200 percent
16 or more than 400 percent of the federal poverty level. Allowable
17 asset or resource levels shall not be less than:

18 (1) the levels allowed for individuals who are in
19 foster care; and

20 (2) the levels allowed for a person under 19 years of
21 age who is eligible for the medical assistance program.

22 (d) In setting allowable income, asset, or resource levels,
23 the executive commissioner [~~department~~] shall, to the extent
24 allowed by federal law, exclude:

25 (1) any financial benefit used for the purpose of
26 educational or vocational training, such as scholarships, student
27 loans, or grants;

1 (2) any financial benefit used for the purpose of
2 housing; and

3 (3) any grants or subsidies obtained as a result of the
4 Foster Care Independence Act of 1999 (Pub. L. No. 106-169).

5 (e) The Department of Family and Protective [~~and~~
6 ~~Regulatory~~] Services shall certify the income, assets, or resources
7 of each individual on the date the individual exits substitute
8 care. An individual qualifying for medical assistance as
9 established by this section shall remain eligible for 12 calendar
10 months after certification and after each recertification.

11 SECTION 4.088. Section [32.02471](#)(b), Human Resources Code,
12 is amended to read as follows:

13 (b) The commission [~~department~~] shall provide medical
14 assistance to a person who:

15 (1) is 21 years of age or older but younger than 23
16 years of age;

17 (2) would be eligible to receive assistance as an
18 independent foster care adolescent under Section [32.0247](#) if the
19 person were younger than 21 years of age; and

20 (3) is enrolled in an institution of higher education,
21 as defined by Section [61.003](#)(8), Education Code, or a private or
22 independent institution of higher education, as defined by Section
23 [61.003](#)(15), Education Code, that is located in this state and is
24 making satisfactory academic progress as determined by the
25 institution.

26 SECTION 4.089. Section [32.025](#), Human Resources Code, is
27 amended to read as follows:

1 Sec. 32.025. APPLICATION FOR MEDICAL ASSISTANCE. (a) A
2 recipient of benefits under Chapter 31 [~~of this code~~] or
3 supplemental security income from the federal government is
4 automatically eligible for medical assistance, and an application
5 for benefits under these programs constitutes an application for
6 medical assistance.

7 (b) The executive commissioner [~~department~~] shall prescribe
8 application forms for persons who are not recipients of benefits
9 under Chapter 31 [~~of this code~~] or supplemental security income
10 from the federal government and shall adopt rules for processing
11 the applications.

12 (c) The commission [~~department~~] shall inform applicants for
13 nursing facility [~~home~~] care of any community services which might
14 be available under the community care for the aged and disabled
15 program.

16 (d) The executive commissioner [~~department~~] shall adopt an
17 application form and procedures for a request for medical
18 assistance provided to a child under 19 years of age. To the extent
19 allowed by federal law and except as otherwise provided by this
20 section, the application form and procedures must be the same as the
21 form and procedures adopted under Section [62.103](#), Health and Safety
22 Code. The executive commissioner [~~department~~] shall coordinate the
23 form and procedures adopted under this subsection with the form and
24 procedures adopted under Section [62.103](#), Health and Safety Code, to
25 ensure that there is a single consolidated application for a child
26 under 19 years of age to seek medical assistance or to request
27 coverage under the state child health plan under Chapter 62, Health

1 and Safety Code.

2 (e) The executive commissioner [department] shall permit an
3 application requesting medical assistance for a child under 19
4 years of age to be conducted by mail instead of through a personal
5 appearance at an [a department] office, unless the executive
6 commissioner [department] determines that the information needed
7 to verify eligibility cannot be obtained in that manner. The
8 executive commissioner [department] by rule may develop procedures
9 requiring an application for a child described by this subsection
10 to be conducted through a personal interview with a commission
11 [department] representative only if the executive commissioner
12 [department] determines that information needed to verify
13 eligibility cannot be obtained in any other manner.

14 (f) The executive commissioner by rule may develop
15 procedures by which:

16 (1) any office of a health and human services agency
17 may accept an application requesting medical assistance for a child
18 under 19 years of age; and

19 (2) the commission [department] may contract with
20 hospital districts, hospitals, including state-owned teaching
21 hospitals, federally qualified health centers, and county health
22 departments to accept applications requesting medical assistance
23 for a child under 19 years of age.

24 SECTION 4.090. Sections 32.0251, 32.0255, 32.026, 32.0261,
25 and 32.02611, Human Resources Code, are amended to read as follows:

26 Sec. 32.0251. ELIGIBILITY NOTIFICATION AND REVIEW FOR
27 CERTAIN CHILDREN. (a) The executive commissioner [department]

1 shall establish and the commission shall implement procedures under
2 which the commission [department] automatically reviews a child's
3 eligibility for medical assistance if:

- 4 (1) the child originally establishes eligibility for
5 medical assistance on the basis of receipt of financial assistance
6 under Chapter 31, as provided by Section 32.025(a); and
7 (2) that receipt of financial assistance under Chapter
8 31 ceases.

9 (b) If the review required by this section indicates that
10 the child may be eligible for medical assistance on a basis other
11 than receipt of financial assistance under Chapter 31, the
12 commission [department] may provide for provisional eligibility
13 for medical assistance for the child pending a recertification
14 review. The provisional eligibility period authorized by this
15 subsection may not exceed one month.

16 (c) In addition to the review required by this section, the
17 commission [department] shall also promote continued medical
18 assistance for a child described by Subsection (a) through:

19 (1) revising client education and notification
20 policies relating to a child's eligibility for medical assistance;
21 and

22 (2) providing specific notification of a child's
23 potential eligibility for medical assistance to the child's parent
24 or other caretaker at the time the parent or caretaker is notified
25 of:

26 (A) a scheduled eligibility recertification
27 review; or

1 (B) the termination of financial assistance.

2 Sec. 32.0255. TRANSITIONAL MEDICAL ASSISTANCE. (a) The
3 commission [~~state~~] shall provide transitional medical assistance,
4 in accordance with state rules and federal law, to a person who was
5 receiving financial assistance under Chapter 31 but is no longer
6 eligible to receive the assistance because:

10 (b) Except as provided by Section 31.012(c), the commission
11 [state] may provide the medical assistance only until the earlier
12 of:

18 Sec. 32.026. CERTIFICATION OF ELIGIBILITY AND NEED FOR
19 MEDICAL ASSISTANCE. (a) The executive commissioner [department]
20 shall promulgate rules for determining and certifying a person's
21 eligibility and need for medical assistance.

22 (b) The executive commissioner [department] shall
23 promulgate rules to provide for determination and certification of
24 presumptive eligibility for any pregnant woman who applies for
25 Medicaid and who meets the basic eligibility requirements under
26 Title XIX of the federal Social Security Act (42 U.S.C. Section 1396
27 et seq.).

1 (c) Medical assistance payments may not be made on a
2 person's behalf until the person's eligibility and need for medical
3 assistance have been certified in accordance with commission [~~the~~
4 ~~department's~~] rules.

5 (d) In adopting rules under this section, the executive
6 commissioner [~~department~~] shall ensure, to the extent allowed by
7 federal law, that documentation and verification procedures used in
8 determining and certifying the eligibility and need for medical
9 assistance of a child under 19 years of age, including the
10 documentation and verification procedures used to evaluate the
11 assets and resources of the child, the child's parents, or the
12 child's other caretaker for that purpose, if applicable, are the
13 same as the documentation and verification procedures used to
14 determine and certify a child's eligibility for coverage under
15 Chapter 62, Health and Safety Code, except that the documentation
16 and verification procedures adopted in accordance with this
17 subsection may not be more stringent than the documentation and
18 verification procedures existing on January 1, 2001, for
19 determination and certification of a child's eligibility for
20 coverage under Chapter 62, Health and Safety Code.

21 (d-1) In adopting rules under this section, the executive
22 commissioner [~~of the Health and Human Services Commission~~] shall,
23 to the extent allowed by federal law, develop and implement an
24 expedited process for determining eligibility for and enrollment in
25 the medical assistance program for an active duty member of the
26 United States armed forces, reserves, or National Guard or of the
27 state military forces, or the spouse or dependent of that person.

1 (e) The executive commissioner [department] shall permit a
2 recertification review of the eligibility and need for medical
3 assistance of a child under 19 years of age to be conducted by
4 telephone or mail instead of through a personal appearance at an [~~a~~
5 ~~department~~] office, unless the commission [department] determines
6 that the information needed to verify eligibility cannot be
7 obtained in that manner. The executive commissioner [department]
8 by rule may develop procedures to determine whether there is a need
9 for a recertification review of a child described by this
10 subsection to be conducted through a personal interview with a
11 commission [department] representative. Procedures developed
12 under this subsection shall be based on objective, risk-based
13 factors and conditions and shall focus on a targeted group of
14 recertification reviews for which there is a high probability that
15 eligibility will not be recertified.

16 (f) In adopting rules under this section, the executive
17 commissioner [department] shall ensure, to the extent allowed by
18 federal law, that forms and procedures used in conducting a
19 recertification review of the eligibility and need for medical
20 assistance of a child under 19 years of age, including
21 documentation and verification procedures, are the same as the
22 forms and procedures used to determine and certify a child's
23 renewal of coverage under Chapter 62, Health and Safety Code.

24 (g) Notwithstanding any other provision of this code, the
25 commission [department] may use information obtained from a third
26 party to verify the assets and resources of a person for purposes of
27 determining the person's eligibility and need for medical

1 assistance to the extent that verification is applicable under
2 federal law. Third-party information includes information
3 obtained from:

- 4 (1) a consumer reporting agency, as defined by Section
5 20.01, Business & Commerce Code;
6 (2) an appraisal district; or
7 (3) the Texas Department of Motor Vehicles vehicle
8 registration record database.

9 Sec. 32.0261. CONTINUOUS ELIGIBILITY. The executive
10 commissioner [department] shall adopt rules in accordance with 42
11 U.S.C. Section 1396a(e)(12), as amended, to provide for a period of
12 continuous eligibility for a child under 19 years of age who is
13 determined to be eligible for medical assistance under this
14 chapter. The rules shall provide that the child remains eligible
15 for medical assistance, without additional review by the commission
16 [department] and regardless of changes in the child's resources or
17 income, until the earlier of:

- 18 (1) the end of the six-month period following the date
19 on which the child's eligibility was determined; or
20 (2) the child's 19th birthday.

21 Sec. 32.02611. EXCLUSION OF ASSETS IN PREPAID TUITION
22 PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. (a) Except
23 as provided by Subsection (b), in determining eligibility and need
24 for medical assistance, the commission [department] may not
25 consider as assets or resources, to the extent applicable under
26 federal law, a right to assets held in or a right to receive
27 payments or benefits under:

1 (1) any fund or plan established under Subchapter G,
2 H, or I, Chapter 54, Education Code, including an interest in a
3 savings trust account, prepaid tuition contract, or related
4 matching account; or

5 (2) any qualified tuition program of any state that
6 meets the requirements of Section 529, Internal Revenue Code of
7 1986.

8 (b) In determining eligibility and need for medical
9 assistance for an applicant who may be eligible on the basis of the
10 applicant's eligibility for medical assistance for the aged, blind,
11 or disabled under 42 U.S.C. Section 1396a(a)(10), the commission
12 [~~department~~] may consider as assets or resources, to the extent
13 applicable under federal law, a right to assets held in or a right
14 to receive payments or benefits under any fund, plan, or tuition
15 program described by Subsection (a).

16 (c) Notwithstanding Subsection (b), the commission
17 [~~department~~] shall seek a federal waiver authorizing the commission
18 [~~department~~] to exclude, for purposes of determining the
19 eligibility of an applicant described by that subsection and to the
20 extent included under federal law, the right to assets held in or a
21 right to receive payments or benefits under any fund, plan, or
22 tuition program described by Subsection (a) if the fund, plan, or
23 tuition program was established before the 21st birthday of the
24 beneficiary of the fund, plan, or tuition program.

25 SECTION 4.091. Sections 32.02613(a), (l), (m), and (o),
26 Human Resources Code, are amended to read as follows:

27 (a) For purposes of this section, "long-term care services

1 and support" includes home health care, assisted living, and
2 nursing facility [~~home~~] services.

3 (l) The commission [~~department~~] shall educate applicants
4 for long-term care services and support under the medical
5 assistance program about options for life insurance policies,
6 including options that do not allow a life insurance policy to be
7 considered as an asset or resource in determining eligibility for
8 medical assistance.

9 (m) The executive commissioner [~~of the Health and Human~~
10 ~~Services Commission~~], in consultation with the commissioner of
11 insurance, shall adopt rules necessary to implement this section.

12 The rules must ensure that:

13 (1) proceeds from a life settlement contract are used
14 to reimburse a provider of long-term care services and support or
15 the state to offset the cost of medical assistance long-term care
16 services and support;

17 (2) eligibility and need for medical assistance are
18 determined without considering the balance of proceeds from a life
19 settlement contract as provided in this section; and

20 (3) payments to a provider of long-term care services
21 and support and applied income payments are made in accordance with
22 this chapter.

23 (o) Notwithstanding the provisions of this section, the
24 commission [~~department~~] may not implement a provision of this
25 section if the commission determines that implementation of the
26 provision is not cost-effective or feasible.

27 SECTION 4.092. Sections 32.0262 and 32.0263, Human

1 Resources Code, are amended to read as follows:

2 Sec. 32.0262. ELIGIBILITY TRANSITION. (a) The executive
3 commissioner [department] shall develop procedures to ensure that
4 all necessary information regarding a child who will be denied
5 continued medical assistance under this chapter because of an
6 increase in income, assets, or resources but who is eligible for
7 enrollment in the child health plan under Chapter 62, Health and
8 Safety Code, is promptly transmitted to the child health plan in
9 accordance with the standards established under Section 62.104(d),
10 Health and Safety Code.

11 (b) The executive commissioner [department] shall develop
12 procedures to ensure that the parent or caretaker of a child who
13 will be denied continued medical assistance under this chapter
14 because of a failure to keep an appointment, including an
15 appointment for recertification of eligibility, a failure to
16 provide information, or for another procedural reason, is promptly
17 contacted and informed of:

18 (1) the need to recertify eligibility for continued
19 medical assistance under this chapter; and

20 (2) the availability of medical coverage under the
21 child health plan under Chapter 62, Health and Safety Code.

22 (c) The commission [department] shall develop materials
23 under this section in consultation with [~~the Health and Human~~
24 ~~Services Commission and~~] the appropriate agencies administering
25 all or part of the child health plan under Chapter 62, Health and
26 Safety Code.

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

1 adopt procedures to assist a family whose child loses eligibility
2 for medical assistance under this chapter in making a transition to
3 the child health plan under Chapter 62, Health and Safety Code, with
4 no interruption in coverage.

5 Sec. 32.0263. HEALTH CARE ORIENTATION. (a) The commission
6 [~~department~~] shall require that the parent or guardian of a child
7 under 19 years of age who originally establishes eligibility for
8 medical assistance must:

9 (1) attend an in-person counseling session with a
10 commission [~~department~~] representative not later than the 31st day
11 after the date the child originally establishes eligibility; or

12 (2) accompany the child to an appointment with a
13 health care provider for a comprehensive health care orientation
14 not later than the 61st day after the date the child originally
15 establishes eligibility.

16 (b) The executive commissioner by rule shall develop
17 procedures to verify that:

18 (1) the parent or guardian of the child who originally
19 establishes eligibility complies with the requirement of
20 Subsection (a)(2), if applicable; and

21 (2) the child is provided a comprehensive health care
22 orientation at the appointment with the health care provider.

23 SECTION 4.093. Sections 32.027(a), (d), (f), (h), (i), and
24 (1), Human Resources Code, are amended to read as follows:

25 (a) Except as provided by Subsections (f) and[~~r~~] (g), [~~and~~
26 (~~h~~)] a recipient of medical assistance authorized in this chapter
27 may select any provider authorized by the commission [~~department~~]

1 to provide medical assistance.

2 (d) The commission [~~department~~] shall permit a recipient of
3 medical assistance under this chapter to receive services relating
4 to physical therapy from any person authorized to practice physical
5 therapy under Chapter 453, Occupations Code.

6 (f) The executive commissioner [~~of the Health and Human~~
7 ~~Services Commission~~] by rule may develop a system of selective
8 contracting with health care providers for the provision of
9 nonemergency inpatient hospital services to a recipient of medical
10 assistance under this chapter. In implementing this subsection,
11 the executive commissioner shall:

12 (1) seek input from consumer representatives and from
13 representatives of hospitals licensed under Chapter 241, Health and
14 Safety Code, and from organizations representing those hospitals;
15 and

16 (2) ensure that providers selected under the system
17 meet the needs of a recipient of medical assistance under this
18 chapter.

19 (h) A proposal or bid submitted by a hospital and any work
20 papers, cost reports, or other financial data used to prepare the
21 proposal or bid shall be confidential and not subject to required
22 disclosure by the commission [~~department~~] or the hospital under any
23 other statute until the executed contracts have been awarded.

24 (i) In its establishment of provider criteria for
25 hospitals, home health providers, or hospice providers, the
26 commission [~~department~~] shall accept licensure by the Department of
27 Aging and Disability Services or the Department of State Health

1 Services, as appropriate, [Texas Department of Health] or
2 certification by the Medicare program, Title XVIII of the Social
3 Security Act (42 U.S.C. Section 1395 et seq.).

4 (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 Section 505.002, Occupations Code, to perform any health care service or procedure covered under the medical assistance program if the selected person is authorized by law to perform the service or procedure. This subsection shall be liberally construed.

14 SECTION 4.094. Section 32.027(j), Human Resources Code, as added by Chapter 812 (H.B. 803), Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

17 (j) The commission [~~department~~] shall assure that a recipient of medical assistance under this chapter may select a nurse first assistant, as defined by Section 301.354 [~~301.1525~~], Occupations Code, to perform any health care service or procedure covered under the medical assistance program if:

22 (1) the selected nurse first assistant is authorized by law to perform the service or procedure; and

24 (2) the physician requests that the service or procedure be performed by the nurse first assistant.

26 SECTION 4.095. Subsection (j), Section 32.027, Human Resources Code, as added by Chapter 1014 (H.B. 1183), Acts of the

1 77th Legislature, Regular Session, 2001, is redesignated as
2 Subsection (k), Section 32.027, Human Resources Code, and amended
3 to read as follows:

4 (k) [(j)] The commission [~~department~~] shall assure that a
5 recipient of medical assistance under this chapter may select a
6 surgical assistant licensed under Chapter 206, Occupations Code, to
7 perform any health care service or procedure covered under the
8 medical assistance program if:

9 (1) the selected surgical assistant is authorized by
10 law to perform the service or procedure; and

11 (2) the physician requests that the service or
12 procedure be performed by the surgical assistant.

13 SECTION 4.096. Sections 32.028(a), (d), (e), (f), (g), (h),
14 (i), (j), (l), and (n), Human Resources Code, are amended to read as
15 follows:

16 (a) The executive commissioner [~~department~~] shall adopt
17 reasonable rules and standards governing the determination of fees,
18 charges, and rates for medical assistance payments.

19 (d) The executive commissioner [~~department~~] in the [~~its~~]
20 adoption of reasonable rules and standards governing the
21 determination of rates paid for inpatient hospital services on a
22 prospective payment basis shall:

23 (1) assure that the payment rates are reasonable and
24 adequate to meet the costs incurred by the hospital in rendering
25 services to Medicaid recipients;

26 (2) assure that the prospective payment methodology
27 for hospital services sets the hospital-specific standardized

1 amount at a minimum level of \$1,600; and

2 (3) assure that the adjustment in payment rates for
3 hospital services furnished by disproportionate share hospitals
4 takes into account the essential role of rural hospitals in
5 providing access to hospital services to medically indigent persons
6 in rural areas of the state.

7 (e) The executive commissioner [~~department~~] in the [~~its~~]
8 adoption of reasonable rules and standards governing the
9 determination of rates paid for services provided by a federally
10 qualified health center, as defined by 42 U.S.C. Section
11 1396d(1)(2)(B), shall assure that a center is reimbursed for 100
12 percent of reasonable costs incurred by the center in rendering
13 services to Medicaid recipients.

14 (f) The executive commissioner [~~department~~] in the [~~its~~]
15 adoption of reasonable rules and standards governing the
16 determination of rates paid for services provided by a rural health
17 clinic, as defined by 42 U.S.C. Section 1396d(1)(1), shall assure
18 that a clinic is reimbursed for 100 percent of reasonable costs
19 incurred by the clinic in rendering services to Medicaid
20 recipients.

21 (g) Subject to Subsection (i), the executive commissioner
22 [~~Health and Human Services Commission~~] shall ensure that the rules
23 governing the determination of rates paid for nursing facility
24 [~~home~~] services improve the quality of care by:

25 (1) providing a program offering incentives for
26 increasing direct care staff and direct care wages and benefits,
27 but only to the extent that appropriated funds are available after

1 money is allocated to base rate reimbursements as determined by the
2 commission's [~~Health and Human Services Commission's~~] nursing
3 facility rate setting methodologies; and

4 (2) if appropriated funds are available after money is
5 allocated for payment of incentive-based rates under Subdivision
6 (1), providing incentives that incorporate the use of a quality of
7 care index, a customer satisfaction index, and a resolved
8 complaints index developed by the commission.

9 (h) The executive commissioner [~~Health and Human Services~~
10 ~~Commission~~] shall ensure that the rules governing the determination
11 of rates paid for nursing facility [~~home~~] services provide for the
12 rate component derived from reported liability insurance costs to
13 be paid only to those facilities [~~homes~~] that purchase liability
14 insurance acceptable to the commission.

15 (i) The executive commissioner [~~Health and Human Services~~
16 ~~Commission~~] shall ensure that rules governing the incentives
17 program described by Subsection (g)(1):

18 (1) provide that participation in the program by a
19 nursing facility [~~home~~] is voluntary;

20 (2) do not impose on a nursing facility [~~home~~] not
21 participating in the program a minimum spending requirement for
22 direct care staff wages and benefits;

23 (3) do not set a base rate for a nursing facility
24 [~~home~~] participating in the program that is more than the base rate
25 for a nursing facility [~~home~~] not participating in the program; and

26 (4) establish a funding process to provide incentives
27 for increasing direct care staff and direct care wages and benefits

1 in accordance with appropriations provided.

2 (j) The executive commissioner [~~Health and Human Services~~
3 ~~Commission~~] shall adopt rules governing the determination of the
4 amount of reimbursement or credit for restocking drugs under
5 Section 562.1085, Occupations Code, that recognize the costs of
6 processing the drugs, including the cost of:

7 (1) reporting the drug's prescription number and date
8 of original issue;

9 (2) verifying whether the drug's expiration date or
10 the drug's recommended shelf life exceeds 120 days;

11 (3) determining the source of payment; and

12 (4) preparing credit records.

13 (l) The executive commissioner [~~commission~~] shall establish
14 a task force to develop the rules necessary to implement
15 Subsections (j) and (k). The task force must include
16 representatives of nursing facilities and pharmacists.

17 (n) The executive commissioner [~~commission~~] shall ensure
18 that rules governing the determination of rates paid for nursing
19 facility [~~home~~] services provide for the reporting of all revenue
20 and costs, without regard to whether a cost is an allowable cost for
21 reimbursement under the medical assistance program, except:

22 (1) as provided by Subsection (h); and

23 (2) a penalty imposed under this chapter or Chapter
24 242, Health and Safety Code.

25 SECTION 4.097. Sections 32.0281(a), (b), (c), and (e),
26 Human Resources Code, are amended to read as follows:

27 (a) The executive commissioner [~~department~~] shall by rule

1 describe the process used to determine payment rates for medical
2 assistance and shall notify providers, consumers, the Legislative
3 Budget Board, and the Governor's Office of Budget, Planning, and
4 Policy [~~governor's office for budget and planning~~] of that process.

5 (b) The executive commissioner [~~department~~] shall adopt
6 rules relating to payment rates that include:

7 (1) a description of the process used to determine
8 payment rates;

9 (2) a description of each cost of living index used in
10 calculating inflation rates and the procedure for determining the
11 level of inflation used in the executive commissioner's
12 [~~department's~~] calculations;

13 (3) the criteria for desk audits;

14 (4) the procedure for notifying providers of
15 exclusions and adjustments to reported expenses, if notification is
16 requested; and

17 (5) a method of adjusting rates if new legislation,
18 regulations, or economic factors affect costs.

19 (c) The commission [~~department~~] shall include in the Title
20 XIX State Medicaid Plan submitted to the federal government for
21 approval the procedures for making available to the public the data
22 and methodology used in establishing payment rates.

23 (e) An interested party may appeal an action taken by the
24 commission [~~department~~] under this section, and an appeal of such
25 action shall be governed by the procedures for a contested case
26 hearing under Chapter 2001, Government Code. The filing of an
27 appeal under this section shall not stay the implementation of

1 payment rates adopted by the executive commissioner [department] in
2 accordance with commission [~~its~~] rules.

3 SECTION 4.098. Section 32.0282, Human Resources Code, is
4 amended to read as follows:

5 Sec. 32.0282. PUBLIC HEARING ON RATES. (a) The commission
6 [department] shall hold a public hearing to allow interested
7 persons to present comments relating to proposed payment rates for
8 medical assistance.

9 (b) The commission [department] shall provide notice of
10 each hearing to the public.

11 SECTION 4.099. Section 32.0284(a), Human Resources Code, is
12 amended to read as follows:

13 (a) In this section, "supplemental[+
14 [~~(1) "Commission"~~ means the ~~Health and Human Services~~
15 Commission.]

16 [~~(2) "Supplemental~~] hospital payment program" means:
17 (1) [~~A~~] the disproportionate share hospitals
18 supplemental payment program administered according to 42 U.S.C.
19 Section 1396r-4; and

20 (2) [~~B~~] the uncompensated care payment program
21 established under the Texas Health Care Transformation and Quality
22 Improvement Program waiver issued under Section 1115 of the federal
23 Social Security Act (42 U.S.C. Section 1315).

24 SECTION 4.100. Section 32.029, Human Resources Code, is
25 amended to read as follows:

26 Sec. 32.029. METHODS OF PAYMENT. (a) The commission
27 [department] may prescribe a method of payment for medical

1 assistance claims by establishing a direct vendor payment program
2 that is administered by the commission [department], or by an
3 insurance plan, a hospital or medical service plan, or any other
4 health service plan authorized to do business in the state, or by a
5 combination of those plans.

6 (b) The commission [department] may use any fiscal
7 intermediary, method of payment, or combination of methods it finds
8 most satisfactory and economical. The commission [department] may
9 make whatever changes it finds necessary from time to time to
10 administer the program in an economical and equitable manner
11 consistent with simplicity of administration and the best interest
12 of the recipients of medical assistance.

13 (c) If the commission [department] elects to make direct
14 vendor payments, the payments shall be made by vouchers and
15 warrants drawn by the comptroller on the proper account. The
16 commission [department] shall furnish the comptroller with a list
17 of those vendors entitled to payments and the amounts to which each
18 is entitled. When the warrants are drawn, they must be delivered to
19 the commission [department], which shall supervise the delivery to
20 vendors.

21 (d) If at any time state funds are not available to fully pay
22 all claims for medical assistance, the executive commissioner
23 [board] shall prorate the claims.

24 (e) The commission [department] or its designee must notify
25 providers of health care services in clear and concise language of
26 the status of their claims on any claim not paid or denied within 30
27 days of receipt by the payor.

1 SECTION 4.101. Sections 32.0291(a) and (b), Human Resources
2 Code, are amended to read as follows:

3 (a) Notwithstanding any other law, the commission
4 [~~department~~] may:

5 (1) perform a prepayment review of a claim for
6 reimbursement under the medical assistance program to determine
7 whether the claim involves fraud or abuse; and

8 (2) as necessary to perform that review, withhold
9 payment of the claim for not more than five working days without
10 notice to the person submitting the claim.

11 (b) Subject to Section 531.102, Government Code, and
12 notwithstanding any other law, the commission [~~department~~] may
13 impose a payment hold on future claims submitted by a provider.

14 SECTION 4.102. Sections 32.031(a), (b), (d), and (e), Human
15 Resources Code, are amended to read as follows:

16 (a) The commission [~~department~~] may accept federal funds
17 for the support of the medical assistance program and may expend the
18 funds in the manner prescribed by this chapter or other laws. The
19 expenditures must be made in accordance with appropriate agreements
20 between the state and the federal government.

21 (b) The commission [~~department~~] may administer and expend
22 state funds appropriated for the program in accordance with
23 commission [~~its~~] rules and the provisions of this chapter.

24 (d) The executive commissioner [~~board~~] is empowered and
25 authorized to pursue the use of local funds as part of the state
26 share under the Medicaid program as provided by federal law and
27 regulation.

1 (e) Public hospitals, including hospitals owned, operated,
2 or leased by a governmental entity, including a municipality,
3 county, hospital district, or this state, and specifically
4 including a state teaching hospital, may transfer funds to the
5 commission [department] for use as the state share under the
6 Medicaid disproportionate share program.

7 SECTION 4.103. Section 32.0311, Human Resources Code, is
8 amended to read as follows:

9 Sec. 32.0311. DRUG REIMBURSEMENT UNDER CERTAIN PROGRAMS.
10 The commission [department] shall require a recipient of medical
11 assistance to exhaust drug benefits available under the medical
12 assistance program before reimbursing the recipient, pharmacist,
13 or other health care provider for drugs purchased by or on behalf of
14 the recipient under the Kidney Health Care Program or the Children
15 with Special Health Care Needs [~~Chronically Ill and Disabled~~
16 ~~Children's~~] Services Program.

17 SECTION 4.104. Section 32.0312, Human Resources Code, is
18 amended to read as follows:

19 Sec. 32.0312. REIMBURSEMENT FOR SERVICES ASSOCIATED WITH
20 PREVENTABLE ADVERSE EVENTS. The executive commissioner [~~of the~~
21 ~~Health and Human Services Commission~~] shall adopt rules regarding
22 the denial or reduction of reimbursement under the medical
23 assistance program for preventable adverse events that occur in a
24 hospital setting. In adopting the rules, the executive
25 commissioner:

26 (1) shall ensure that the commission imposes the same
27 reimbursement denials or reductions for preventable adverse events

1 as the Medicare program imposes for the same types of health
2 care-associated adverse conditions and the same types of health
3 care providers and facilities under a policy adopted by the federal
4 Centers for Medicare and Medicaid Services;

5 (2) shall consult an advisory committee on health care
6 quality, if established by the executive commissioner, to obtain
7 the advice of that committee regarding denial or reduction of
8 reimbursement claims for any other preventable adverse events that
9 cause patient death or serious disability in health care settings,
10 including events on the list of adverse events identified by the
11 National Quality Forum; and

12 (3) may allow the commission to impose reimbursement
13 denials or reductions for preventable adverse events described by
14 Subdivision (2).

15 SECTION 4.105. Sections [32.0313](#) and [32.0314](#), Human
16 Resources Code, are amended to read as follows:

17 Sec. 32.0313. INDUCED DELIVERIES OR CESAREAN SECTIONS
18 BEFORE 39TH WEEK. (a) The commission [department] shall achieve
19 cost savings with improved outcomes by adopting and implementing
20 quality initiatives that are evidence-based, tested, and fully
21 consistent with established standards of clinical care and that are
22 designed to reduce the number of elective or nonmedically indicated
23 induced deliveries or cesarean sections performed at a hospital on
24 a medical assistance recipient before the 39th week of gestation.

25 (b) The commission [department] shall coordinate with
26 physicians, hospitals, managed care organizations, and the
27 commission's [department's] billing contractor for the medical

1 assistance program to develop a process for collecting information
2 regarding the number of induced deliveries and cesarean sections
3 described by Subsection (a) that occur during prescribed periods.

4 Sec. 32.0314. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT
5 AND SUPPLIES. The executive commissioner [~~of the Health and Human~~
6 ~~Services Commission~~] shall adopt rules requiring the electronic
7 submission of any claim for reimbursement for durable medical
8 equipment and supplies under the medical assistance program.

9 SECTION 4.106. Sections 32.0315 and 32.032, Human Resources
10 Code, are amended to read as follows:

11 Sec. 32.0315. FUNDS FOR GRADUATE MEDICAL EDUCATION. (a)
12 Subject to appropriated state funds, the executive commissioner
13 [~~department~~] shall establish procedures and formulas for the
14 allocation of federal medical assistance funds that are directed to
15 be used to support graduate medical education in connection with
16 the medical assistance program.

17 (b) The executive commissioner [~~department~~] shall allocate
18 the funds in the manner the executive commissioner [~~department~~]
19 determines most effectively and equitably achieves the purposes for
20 which those federal funds are received, consistent with the needs
21 of this state for graduate medical education and the training of
22 resident physicians in accredited residency programs in
23 appropriate fields and specialties, taking into account other money
24 available to support graduate medical education. In determining
25 the needs of this state for graduate medical education, the
26 executive commissioner [~~department~~] shall give primary emphasis to
27 graduate medical education in primary care specialties and shall

1 also recognize the growth in residency training slots since 1997 in
2 the Lower Rio Grande Valley and other health care shortage areas of
3 this state.

4 (c) The executive commissioner [department] shall consult
5 with the Texas Higher Education Coordinating Board before adopting
6 or revising a formula under this section. At the request of the
7 executive commissioner [department], the coordinating board shall
8 provide the executive commissioner [department] with any
9 information the board possesses to assist the executive
10 commissioner [department] in administering this section.

11 Sec. 32.032. PREVENTION AND DETECTION OF FRAUD AND ABUSE.
12 The executive commissioner [department] shall adopt reasonable
13 rules for minimizing the opportunity for fraud and abuse, for
14 establishing and maintaining methods for detecting and identifying
15 situations in which a question of fraud or abuse in the program may
16 exist, and for referring cases where fraud or abuse appears to exist
17 to the appropriate law enforcement agencies for prosecution.

18 SECTION 4.107. Sections 32.0321(a), (b), (c), and (d),
19 Human Resources Code, are amended to read as follows:

20 (a) The executive commissioner [department] by rule may
21 require each provider of medical assistance in a provider type that
22 has demonstrated significant potential for fraud or abuse to file
23 with the commission [department] a surety bond in a reasonable
24 amount. The executive commissioner [department] by rule shall
25 require a provider of medical assistance to file with the
26 commission [department] a surety bond in a reasonable amount if the
27 commission [department] identifies a pattern of suspected fraud or

1 abuse involving criminal conduct relating to the provider's
2 services under the medical assistance program that indicates the
3 need for protection against potential future acts of fraud or
4 abuse.

5 (b) The bond under Subsection (a) must be payable to the
6 commission [department] to compensate the commission [department]
7 for damages resulting from or penalties or fines imposed in
8 connection with an act of fraud or abuse committed by the provider
9 under the medical assistance program.

10 (c) Subject to Subsection (d) or (e), the executive
11 commissioner [department] by rule may require each provider of
12 medical assistance that establishes a resident's trust fund account
13 to post a surety bond to secure the account. The bond must be
14 payable to the commission [department] to compensate residents of
15 the bonded provider for trust funds that are lost, stolen, or
16 otherwise unaccounted for if the provider does not repay any
17 deficiency in a resident's trust fund account to the person legally
18 entitled to receive the funds.

19 (d) The executive commissioner [department] may not require
20 the amount of a surety bond posted for a single facility provider
21 under Subsection (c) to exceed the average of the total average
22 monthly balance of all the provider's resident trust fund accounts
23 for the 12-month period preceding the bond issuance or renewal
24 date.

25 SECTION 4.108. Section 32.0322, Human Resources Code, is
26 amended to read as follows:

27 Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION;

1 ENROLLMENT OF PROVIDERS. (a) The commission [department] or the
2 office of inspector general established under Chapter 531,
3 Government Code, may obtain from any law enforcement or criminal
4 justice agency the criminal history record information that relates
5 to a provider under the medical assistance program or a person
6 applying to enroll as a provider under the medical assistance
7 program.

8 (a-1) The criminal history record information the
9 commission [department] and the office of inspector general are
10 authorized to obtain under Subsection (a) includes criminal history
11 record information relating to:

12 (1) a person with a direct or indirect ownership or
13 control interest, as defined by 42 C.F.R. Section 455.101, in a
14 provider of five percent or more; and

15 (2) a person whose information is required to be
16 disclosed in accordance with 42 C.F.R. Part 1001.

17 (b) Subject to Subsections (b-1) and (e), the executive
18 commissioner [~~of the Health and Human Services Commission~~] by rule
19 shall establish criteria for the commission [department] or the
20 commission's office of inspector general to suspend a provider's
21 billing privileges under the medical assistance program, revoke a
22 provider's enrollment under the program, or deny a person's
23 application to enroll as a provider under the program based on:

24 (1) the results of a criminal history check;

25 (2) any exclusion or debarment of the provider from
26 participation in a state or federally funded health care program;

27 (3) the provider's failure to bill for medical

1 assistance or refer clients for medical assistance within a
2 12-month period; or

3 (4) any of the provider screening or enrollment
4 provisions contained in 42 C.F.R. Part 455, Subpart E.

5 (b-1) In adopting rules under this section, the executive
6 commissioner [~~of the Health and Human Services Commission~~] shall
7 require revocation of a provider's enrollment or denial of a
8 person's application for enrollment as a provider under the medical
9 assistance program if the person has been excluded or debarred from
10 participation in a state or federally funded health care program as
11 a result of:

12 (1) a criminal conviction or finding of civil or
13 administrative liability for committing a fraudulent act, theft,
14 embezzlement, or other financial misconduct under a state or
15 federally funded health care program; or

16 (2) a criminal conviction for committing an act under
17 a state or federally funded health care program that caused bodily
18 injury to:

19 (A) a person who is 65 years of age or older;
20 (B) a person with a disability; or
21 (C) a person under 18 years of age.

22 (c) As a condition of eligibility to participate as a
23 provider in the medical assistance program, the executive
24 commissioner [~~of the Health and Human Services Commission~~] by rule
25 shall:

26 (1) require a provider or a person applying to enroll
27 as a provider to disclose:

15 (d) In adopting rules under this section, the executive
16 commissioner [~~of the Health and Human Services Commission~~] shall
17 adopt rules as authorized by and in conformity with 42 C.F.R.
18 Section 455.470 for the imposition of a temporary moratorium on
19 enrollment of new providers, or to impose numerical caps or other
20 limits on the enrollment of providers, that the commission
21 [~~department~~] or the commission's office of inspector general[~~, in~~
22 ~~consultation with the department,~~] determines have a significant
23 potential for fraud, waste, or abuse.

24 (e) The commission [department] may reinstate a provider's
25 enrollment under the medical assistance program or grant a person's
26 previously denied application to enroll as a provider, including a
27 person described by Subsection (b-1), if the commission

1 [department] finds:

2 (1) good cause to determine that it is in the best
3 interest of the medical assistance program; and

4 (2) the person has not committed an act that would
5 require revocation of a provider's enrollment or denial of a
6 person's application to enroll since the person's enrollment was
7 revoked or application was denied, as appropriate.

8 (f) The commission [department] must support a
9 determination made under Subsection (e) with written findings of
10 good cause for the determination.

11 SECTION 4.109. Sections 32.033(b), (d), (e), (f), (g), and
12 (h), Human Resources Code, are amended to read as follows:

13 (b) A person who applies for or receives medical assistance
14 shall inform the commission [department], at the time of
15 application or at any time during eligibility and receipt of
16 services, of any unsettled tort claim which may affect medical
17 needs and of any private accident or sickness insurance coverage
18 that is or may become available. A recipient shall inform the
19 commission [department] of any injury requiring medical attention
20 that is caused by the act or failure to act of some other person. An
21 applicant or a recipient shall inform the commission [department]
22 as required by this subsection within 60 days of the date the person
23 learns of his or her insurance coverage, tort claim, or potential
24 cause of action. An applicant or [a] recipient who knowingly and
25 intentionally fails to disclose the information required by this
26 subsection commits a Class C misdemeanor.

27 (d) A separate and distinct cause of action in favor of the

1 state is hereby created, and the commission [department] may,
2 without written consent, take direct civil action in any court of
3 competent jurisdiction. A suit brought under this section need not
4 be ancillary to or dependent upon any other action.

5 (e) The commission's [department's] right of recovery is
6 limited to the amount of the cost of medical care services paid by
7 the commission [department]. Other subrogation rights granted
8 under this section are limited to the cost of the services provided.

9 (f) The executive commissioner may waive the commission's
10 [department's] right of recovery in whole or in part when the
11 executive commissioner finds that enforcement would tend to defeat
12 the purpose of public assistance.

13 (g) The commission [department] may designate an agent to
14 collect funds the commission [department] has a right to recover
15 from third parties under this section. The commission [department]
16 shall use any funds collected to pay costs of administering the
17 medical assistance program.

18 (h) The executive commissioner [department] may adopt rules
19 for the enforcement of the commission's [its] right of recovery.

20 SECTION 4.110. Sections 32.034(a) and (b), Human Resources
21 Code, are amended to read as follows:

22 (a) The commission [department] has authority to adjudicate
23 claims of contested cases in accordance with Chapter 2001,
24 Government Code. When the commission [department] intends to
25 cancel its contract or impose monetary penalties under a contract
26 with a person providing medical assistance, the commission
27 [department] shall give reasonable notice and an opportunity for

1 hearing if one is requested. The executive commissioner
2 [department] shall adopt rules consistent with Chapter 2001,
3 Government Code, to implement this section, and hearings under this
4 section are contested cases under that act.

5 (b) The commission [department] may not terminate a
6 contract during the pendency of a hearing under this section. The
7 commission [department] may withhold payments during the pendency
8 of a hearing, but the commission [department] shall pay the
9 withheld payments and resume contract payments if the final
10 determination is favorable to the contractor. The commission's
11 [department's] authority to withhold payments shall be established
12 by contract.

13 SECTION 4.111. Section 32.035, Human Resources Code, is
14 amended to read as follows:

15 Sec. 32.035. APPEALS. The provisions of Section 31.034 [eff
16 ~~this code~~] governing the right of appeal of an applicant for or
17 recipient of financial assistance authorized under Chapter 31 [eff
18 ~~this code~~] also apply to applicants for medical assistance
19 authorized in this chapter.

20 SECTION 4.112. Sections 32.038 and 32.0381, Human Resources
21 Code, are amended to read as follows:

22 Sec. 32.038. COLLECTION OF INSURANCE PAYMENTS. (a) The
23 commission [department] may receive directly from an insurance
24 company any payments to which the commission [department] is
25 entitled under Section 1204.153, Insurance Code.

26 (b) The executive commissioner [department] shall adopt
27 rules to implement this section, including rules establishing

1 procedures relating to:

2 (1) notification to the commission [department] that a
3 child receiving benefits under Chapter 31 or this chapter [chapter
4 ~~32 of this code~~] is covered by an insurance policy under which the
5 commission [department] is eligible to receive direct payments;

6 (2) claims made by the commission [department] to
7 receive payments under Subsection (a) [~~of this section~~];

8 (3) notification to the commission [department] of any
9 change in the status of the child or the parent; and

10 (4) notification to the insurance company that the
11 commission [department] is to receive payments under Subsection (a)
12 [~~of this section~~].

13 (c) Commission [Department] rules relating to the notice
14 prescribed by Subsection (b)(4) [~~of this section~~] must require the
15 notice to be attached to the claim for insurance benefits when the
16 claim is first submitted to the insurance company.

17 Sec. 32.0381. ICF-IID [~~ICF-MR~~] PAYMENT RATES. (a) The
18 executive commissioner [board] shall set the payment rates for
19 ICF-IID [~~ICF-MR~~] facilities at least annually.

20 (b) The executive commissioner [board] shall adopt by rule
21 the methodology used by the executive commissioner [department] in
22 setting payment rates for ICF-IID [~~ICF-MR~~] facilities. The
23 methodology shall clearly define the procedures and methods used in
24 projecting the costs of economic and efficient facilities and the
25 procedures and methods used in setting payment rates that
26 reasonably reimburse facilities at each level of care and in each
27 class of providers, including size categories.

1 (c) The executive commissioner [board] shall ensure that
2 the methodology used in projecting costs and setting payment rates
3 and its implementation is the same for state-operated ICF-IID
4 [~~ICF-MR~~] facilities and for private ICF-IID [~~ICF-MR~~] facilities.
5 Methods used to project costs, including those involving the
6 handling of gifts, grants, and donations, upper limits on facility
7 and administrative costs, occupancy adjustments, and in assessing
8 the cost impact of new or revised requirements, must be the same for
9 state-operated and private facilities.

10 (d) To the extent allowed by federal law, any differences in
11 methodology or its implementation between state-operated
12 facilities and private facilities must be stated explicitly in the
13 rule, must be related to actual differences in the nature of the
14 expenses incurred by the class of providers, including size
15 categories, and must not favor state-operated facilities in setting
16 payment rates. When the proposed rule or amendments to the rule are
17 published for public comment, the executive commissioner must
18 certify that any differences in methodology between classes of
19 providers, including size categories, are necessitated by cost
20 structure and will not favor state-operated facilities in the
21 setting of payment rates.

22 SECTION 4.113. Section 32.039(a)(1), Human Resources Code,
23 is amended to read as follows:

24 (1) "Claim" means an application for payment of health
25 care services under Title XIX of the federal Social Security Act (42
26 U.S.C. Section 1396 et seq.) that is submitted by a person who is
27 under a contract or provider agreement with the commission

1 [department].

2 SECTION 4.114. Sections 32.039(b), (b-1), (c), (d), (e),
3 (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r),
4 (u), (v), (w), and (x), Human Resources Code, are amended to read as
5 follows:

6 (b) A person commits a violation if the person:

7 (1) presents or causes to be presented to the
8 commission [department] a claim that contains a statement or
9 representation the person knows or should know to be false;

10 (1-a) engages in conduct that violates Section
11 102.001, Occupations Code;

12 (1-b) solicits or receives, directly or indirectly,
13 overtly or covertly any remuneration, including any kickback,
14 bribe, or rebate, in cash or in kind for referring an individual to
15 a person for the furnishing of, or for arranging the furnishing of,
16 any item or service for which payment may be made, in whole or in
17 part, under the medical assistance program, provided that this
18 subdivision does not prohibit the referral of a patient to another
19 practitioner within a multispecialty group or university medical
20 services research and development plan (practice plan) for
21 medically necessary services;

22 (1-c) solicits or receives, directly or indirectly,
23 overtly or covertly any remuneration, including any kickback,
24 bribe, or rebate, in cash or in kind for purchasing, leasing, or
25 ordering, or arranging for or recommending the purchasing, leasing,
26 or ordering of, any good, facility, service, or item for which
27 payment may be made, in whole or in part, under the medical

1 assistance program;

2 (1-d) offers or pays, directly or indirectly, overtly
3 or covertly any remuneration, including any kickback, bribe, or
4 rebate, in cash or in kind to induce a person to refer an individual
5 to another person for the furnishing of, or for arranging the
6 furnishing of, any item or service for which payment may be made, in
7 whole or in part, under the medical assistance program, provided
8 that this subdivision does not prohibit the referral of a patient to
9 another practitioner within a multispecialty group or university
10 medical services research and development plan (practice plan) for
11 medically necessary services;

12 (1-e) offers or pays, directly or indirectly, overtly
13 or covertly any remuneration, including any kickback, bribe, or
14 rebate, in cash or in kind to induce a person to purchase, lease, or
15 order, or arrange for or recommend the purchase, lease, or order of,
16 any good, facility, service, or item for which payment may be made,
17 in whole or in part, under the medical assistance program;

18 (1-f) provides, offers, or receives an inducement in a
19 manner or for a purpose not otherwise prohibited by this section or
20 Section 102.001, Occupations Code, to or from a person, including a
21 recipient, provider, employee or agent of a provider, third-party
22 vendor, or public servant, for the purpose of influencing or being
23 influenced in a decision regarding:

24 (A) selection of a provider or receipt of a good
25 or service under the medical assistance program;

26 (B) the use of goods or services provided under
27 the medical assistance program; or

1 (C) the inclusion or exclusion of goods or
2 services available under the medical assistance program;

10 (B) fails to provide to the commission
11 [redacted] information required to be provided by law, commission
12 [redacted] rule, or contractual provision;

13 (C) engages in a fraudulent activity in
14 connection with the enrollment in the organization's managed care
15 plan of an individual eligible for medical assistance or in
16 connection with marketing the organization's services to an
17 individual eligible for medical assistance; or

18 (D) engages in actions that indicate a pattern
19 of:

23 (ii) wrongful delay of at least 45 days or a
24 longer period specified in the contract with the commission
25 [~~department~~], not to exceed 60 days, in making payment for a health
26 care benefit or service that the organization is required to
27 provide under the contract with the commission [~~department~~]; or

1 (3) fails to maintain documentation to support a claim
2 for payment in accordance with the requirements specified by
3 commission [department] rule or medical assistance program policy
4 or engages in any other conduct that a commission [department] rule
5 has defined as a violation of the medical assistance program.

6 (b-1) A person who commits a violation described by
7 Subsection (b)(3) is liable to the commission [department] for
8 either the amount paid in response to the claim for payment or the
9 payment of an administrative penalty in an amount not to exceed \$500
10 for each violation, as determined by the commission [department].

11 (c) A person who commits a violation under Subsection (b) is
12 liable to the commission [department] for:

13 (1) the amount paid, if any, as a result of the
14 violation and interest on that amount determined at the rate
15 provided by law for legal judgments and accruing from the date on
16 which the payment was made; and

17 (2) payment of an administrative penalty of an amount
18 not to exceed twice the amount paid, if any, as a result of the
19 violation, plus an amount:

20 (A) not less than \$5,000 or more than \$15,000 for
21 each violation that results in injury to an elderly person, as
22 defined by Section 48.002(a)(1) [48.002(1)], a [disabled] person
23 with a disability, as defined by Section 48.002(a)(8)(A)
24 [48.002(8)(A)], or a person younger than 18 years of age; or

25 (B) not more than \$10,000 for each violation that
26 does not result in injury to a person described by Paragraph (A).

27 (d) Unless the provider submitted information to the

1 commission [department] for use in preparing a voucher that the
2 provider knew or should have known was false or failed to correct
3 information that the provider knew or should have known was false
4 when provided an opportunity to do so, this section does not apply
5 to a claim based on the voucher if the commission [department]
6 calculated and printed the amount of the claim on the voucher and
7 then submitted the voucher to the provider for the provider's
8 signature. In addition, the provider's signature on the voucher
9 does not constitute fraud. The executive commissioner [department]
10 shall adopt rules that establish a grace period during which errors
11 contained in a voucher prepared by the commission [department] may
12 be corrected without penalty to the provider.

13 (e) In determining the amount of the penalty to be assessed
14 under Subsection (c)(2), the commission [department] shall
15 consider:

16 (1) the seriousness of the violation;
17 (2) whether the person had previously committed a
18 violation; and
19 (3) the amount necessary to deter the person from
20 committing future violations.

21 (f) If after an examination of the facts the commission
22 [department] concludes that the person committed a violation, the
23 commission [department] may issue a preliminary report stating the
24 facts on which it based its conclusion, recommending that an
25 administrative penalty under this section be imposed and
26 recommending the amount of the proposed penalty.

27 (g) The commission [department] shall give written notice

1 of the report to the person charged with committing the violation.
2 The notice must include a brief summary of the facts, a statement of
3 the amount of the recommended penalty, and a statement of the
4 person's right to an informal review of the alleged violation, the
5 amount of the penalty, or both the alleged violation and the amount
6 of the penalty.

7 (h) Not later than the 10th day after the date on which the
8 person charged with committing the violation receives the notice,
9 the person may either give the commission [department] written
10 consent to the report, including the recommended penalty, or make a
11 written request for an informal review by the commission
12 [department].

13 (i) If the person charged with committing the violation
14 consents to the penalty recommended by the commission [department]
15 or fails to timely request an informal review, the commission
16 [department] shall assess the penalty. The commission [department]
17 shall give the person written notice of its action. The person
18 shall pay the penalty not later than the 30th day after the date on
19 which the person receives the notice.

20 (j) If the person charged with committing the violation
21 requests an informal review as provided by Subsection (h), the
22 commission [department] shall conduct the review. The commission
23 [department] shall give the person written notice of the results of
24 the review.

25 (k) Not later than the 10th day after the date on which the
26 person charged with committing the violation receives the notice
27 prescribed by Subsection (j), the person may make to the commission

1 [department] a written request for a hearing. The hearing must be
2 conducted in accordance with Chapter 2001, Government Code.

3 (1) If, after informal review, a person who has been ordered
4 to pay a penalty fails to request a formal hearing in a timely
5 manner, the commission [department] shall assess the penalty. The
6 commission [department] shall give the person written notice of its
7 action. The person shall pay the penalty not later than the 30th
8 day after the date on which the person receives the notice.

9 (m) Within 30 days after the date on which the commission's
10 [board's] order issued after a hearing under Subsection (k) becomes
11 final as provided by Section 2001.144, Government Code, the person
12 shall:

13 (1) pay the amount of the penalty;

14 (2) pay the amount of the penalty and file a petition
15 for judicial review contesting the occurrence of the violation, the
16 amount of the penalty, or both the occurrence of the violation and
17 the amount of the penalty; or

18 (3) without paying the amount of the penalty, file a
19 petition for judicial review contesting the occurrence of the
20 violation, the amount of the penalty, or both the occurrence of the
21 violation and the amount of the penalty.

22 (n) A person who acts under Subsection (m)(3) within the
23 30-day period may:

24 (1) stay enforcement of the penalty by:

25 (A) paying the amount of the penalty to the court
26 for placement in an escrow account; or

27 (B) giving to the court a supersedeas bond that

1 is approved by the court for the amount of the penalty and that is
2 effective until all judicial review of the commission's
3 [~~department's~~] order is final; or

4 (2) request the court to stay enforcement of the
5 penalty by:

6 (A) filing with the court a sworn affidavit of
7 the person stating that the person is financially unable to pay the
8 amount of the penalty and is financially unable to give the
9 supersedeas bond; and

10 (B) giving a copy of the affidavit to the
11 executive commissioner by certified mail.

12 (o) If the executive commissioner receives a copy of an
13 affidavit under Subsection (n)(2), the executive commissioner may
14 file with the court, within five days after the date the copy is
15 received, a contest to the affidavit. The court shall hold a
16 hearing on the facts alleged in the affidavit as soon as practicable
17 and shall stay the enforcement of the penalty on finding that the
18 alleged facts are true. The person who files an affidavit has the
19 burden of proving that the person is financially unable to pay the
20 amount of the penalty and to give a supersedeas bond.

21 (p) If the person charged does not pay the amount of the
22 penalty and the enforcement of the penalty is not stayed, the
23 commission [~~department~~] may forward the matter to the attorney
24 general for enforcement of the penalty and interest as provided by
25 law for legal judgments. An action to enforce a penalty order under
26 this section must be initiated in a court of competent jurisdiction
27 in Travis County or in the county in which the violation was

1 committed.

2 (q) Judicial review of a commission [department] order or
3 review under this section assessing a penalty is under the
4 substantial evidence rule. A suit may be initiated by filing a
5 petition with a district court in Travis County, as provided by
6 Subchapter G, Chapter 2001, Government Code.

7 (r) If a penalty is reduced or not assessed, the commission
8 [department] shall remit to the person the appropriate amount plus
9 accrued interest if the penalty has been paid or shall execute a
10 release of the bond if a supersedeas bond has been posted. The
11 accrued interest on amounts remitted by the commission [department]
12 under this subsection shall be paid at a rate equal to the rate
13 provided by law for legal judgments and shall be paid for the period
14 beginning on the date the penalty is paid to the commission
15 [department] under this section and ending on the date the penalty
16 is remitted.

17 (u) Except as provided by Subsection (w), a person found
18 liable for a violation under Subsection (c) that resulted in injury
19 to an elderly person, as defined by Section 48.002(a)(1), a
20 [disabled] person with a disability, as defined by Section
21 48.002(a)(8)(A), or a person younger than 18 years of age may not
22 provide or arrange to provide health care services under the
23 medical assistance program for a period of 10 years. The executive
24 commissioner [department] by rule may provide for a period of
25 ineligibility longer than 10 years. The period of ineligibility
26 begins on the date on which the determination that the person is
27 liable becomes final.

1 (v) Except as provided by Subsection (w), a person found
2 liable for a violation under Subsection (c) that did not result in
3 injury to an elderly person, as defined by Section 48.002(a)(1), a
4 [disabled] person with a disability, as defined by Section
5 48.002(a)(8)(A), or a person younger than 18 years of age may not
6 provide or arrange to provide health care services under the
7 medical assistance program for a period of three years. The
8 executive commissioner [department] by rule may provide for a
9 period of ineligibility longer than three years. The period of
10 ineligibility begins on the date on which the determination that
11 the person is liable becomes final.

12 (w) The executive commissioner [department] by rule may
13 prescribe criteria under which a person described by Subsection (u)
14 or (v) is not prohibited from providing or arranging to provide
15 health care services under the medical assistance program. The
16 criteria may include consideration of:

17 (1) the person's knowledge of the violation;
18 (2) the likelihood that education provided to the
19 person would be sufficient to prevent future violations;
20 (3) the potential impact on availability of services
21 in the community served by the person; and
22 (4) any other reasonable factor identified by the
23 executive commissioner [department].

24 (x) Subsections (b)(1-b) through (1-f) do not prohibit a
25 person from engaging in:

26 (1) generally accepted business practices, as
27 determined by commission [department] rule, including:

1 (A) conducting a marketing campaign;
2 (B) providing token items of minimal value that
3 advertise the person's trade name; and
4 (C) providing complimentary refreshments at an
5 informational meeting promoting the person's goods or services;
6 (2) the provision of a value-added service if the
7 person is a managed care organization; or
8 (3) other conduct specifically authorized by law,
9 including conduct authorized by federal safe harbor regulations (42
10 C.F.R. Section 1001.952).

11 SECTION 4.115. Sections 32.042(b), (b-1), (d), (e), (f),
12 (g), and (i), Human Resources Code, are amended to read as follows:

13 (b) The state's Medicaid third-party recovery division
14 shall identify state medical assistance recipients who have
15 third-party health coverage or insurance as provided by this
16 subsection. The commission [department] may:

17 (1) provide to an insurer Medicaid data tapes that
18 identify medical assistance recipients and request that the insurer
19 identify each enrollee, beneficiary, subscriber, or policyholder
20 of the insurer whose name also appears on the Medicaid data tape; or

21 (2) request that an insurer provide to the commission
22 [department] identifying information for each enrollee,
23 beneficiary, subscriber, or policyholder of the insurer.

24 (b-1) An insurer from which the commission [department]
25 requests information under Subsection (b) shall provide that
26 information, except that the insurer is only required to provide
27 the commission [department] with the information maintained under

1 Subsection (a) by the insurer or made available to the insurer from
2 the plan. A plan administrator is subject to Subsection (b) and
3 shall provide information under that subsection to the extent the
4 information is made available to the plan administrator from the
5 insurer or plan.

6 (d) An insurer shall provide the information required under
7 Subsection (b)(1) only if the commission [department] certifies
8 that the identified individuals are applicants for or recipients of
9 services under Medicaid or are legally responsible for an applicant
10 for or recipient of Medicaid services.

11 (e) The commission [department] shall enter into an
12 agreement to reimburse an insurer or plan administrator for
13 necessary and reasonable costs incurred in providing information
14 requested under Subsection (b)(1), not to exceed \$5,000 for each
15 data match made under that subdivision. If the commission
16 [department] makes a data match using information provided under
17 Subsection (b)(2), the commission [department] shall reimburse the
18 insurer or plan administrator for reasonable administrative
19 expenses incurred in providing the information. The reimbursement
20 for information under Subsection (b)(2) may not exceed \$5,000 for
21 initially producing information with respect to a person, or \$200
22 for each subsequent production of information with respect to the
23 person. The commission [department] may enter into an agreement
24 with an insurer or plan administrator that provides procedures for
25 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

1 information or medical records. The procedures agreed to under
2 this subsection must state the time and manner the procedures take
3 effect.

4 (f) Information required to be furnished to the commission
5 [~~department~~] under this section is limited to information necessary
6 to determine whether health benefits have been or should have been
7 claimed and paid under a health insurance policy or plan for medical
8 care or services received by an individual for whom Medicaid
9 coverage would otherwise be available.

10 (g) Information regarding an individual certified to an
11 insurer as an applicant for or recipient of medical assistance may
12 only be used to identify the records or information requested and
13 may not violate the confidentiality of the applicant or recipient.
14 The commission [~~department~~] shall establish guidelines not later
15 than the date on which the procedures agreed to under Subsection (e)
16 take effect.

17 (i) In this section:

18 (1) "Insurer" means a group hospital service [~~health~~
19 ~~services~~] corporation, a health maintenance organization, a
20 self-funded or self-insured welfare or benefit plan or program to
21 the extent the regulation of the plan or program is not preempted by
22 federal law, and any other entity that provides health coverage in
23 this state through an employer, union, trade association, or other
24 organization or other source.

25 (2) "Plan administrator" means a third-party
26 administrator, prescription drug payer or administrator, pharmacy
27 benefit manager, or dental payer or administrator.

1 SECTION 4.116. Sections 32.0421(a) and (c), Human Resources
2 Code, are amended to read as follows:

3 (a) The commission [department] may impose an
4 administrative penalty on a person who does not comply with a
5 request for information made under Section 32.042(b).

6 (c) The enforcement of the penalty may be stayed during the
7 time the order is under judicial review if the person pays the
8 penalty to the clerk of the court or files a supersedeas bond with
9 the court in the amount of the penalty. A person who cannot afford
10 to pay the penalty or file the bond may stay the enforcement by
11 filing an affidavit in the manner required by the Texas Rules of
12 Civil Procedure for a party who cannot afford to file security for
13 costs, subject to the right of the commission [department] to
14 contest the affidavit as provided by those rules.

15 SECTION 4.117. Sections 32.0422(a), (j-1), and (k), Human
16 Resources Code, are amended to read as follows:

17 (a) In this section, "group" [+

18 [+(1) "Commission" means the Health and Human Services
19 Commission.]

20 [+(2) "Executive commissioner" means the executive
21 commissioner of the Health and Human Services Commission.]

22 [+(3) "Group" health benefit plan" means a plan
23 described by Section 1207.001, Insurance Code.

24 (j-1) An individual described by Subsection (e-1) who
25 enrolls in a group health benefit plan is not ineligible for home
26 and community-based services provided under a Section 1915(c)
27 waiver program or another federal home and community-based services

1 waiver program solely based on the individual's enrollment in the
2 group health benefit plan, and the individual may receive those
3 services if the individual is otherwise eligible for the
4 program. The individual is otherwise limited to the health
5 benefits coverage provided under the health benefit plan in which
6 the individual is enrolled, and the individual may not receive any
7 benefits or services under the medical assistance program other
8 than the premium payment as provided by Subsection (f-1) and, if
9 applicable, waiver program services described by this subsection.

10 (k) The commission may not require or permit an individual
11 who is enrolled in a group health benefit plan under this section to
12 participate in the Medicaid managed care program under Chapter 533,
13 Government Code[~~, or a Medicaid managed care demonstration project~~
14 ~~under section 32.041~~].

15 SECTION 4.118. Sections [32.0424](#)(a), (c), and (d), Human
16 Resources Code, are amended to read as follows:

17 (a) A third-party health insurer is required to provide to
18 the commission [~~department~~], on the commission's [~~department's~~]
19 request, information in a form prescribed by the executive
20 commissioner [~~department~~] necessary to determine:

21 (1) the period during which an individual entitled to
22 medical assistance, the individual's spouse, or the individual's
23 dependents may be, or may have been, covered by coverage issued by
24 the health insurer;

25 (2) the nature of the coverage; and

26 (3) the name, address, and identifying number of the
27 health plan under which the person may be, or may have been,

1 covered.

2 (c) A third-party health insurer shall respond to any
3 inquiry by the commission [department] regarding a claim for
4 payment for any health care item or service reimbursed by the
5 commission [department] under the medical assistance program not
6 later than the third anniversary of the date the health care item or
7 service was provided.

8 (d) A third-party health insurer may not deny a claim
9 submitted by the commission [department] or the commission's
10 [department's] designee for which payment was made under the
11 medical assistance program solely on the basis of the date of
12 submission of the claim, the type or format of the claim form, or a
13 failure to present proper documentation at the point of service
14 that is the basis of the claim, if:

15 (1) the claim is submitted by the commission
16 [department] or the commission's [department's] designee not later
17 than the third anniversary of the date the item or service was
18 provided; and

19 (2) any action by the commission [department] or the
20 commission's [department's] designee to enforce the state's rights
21 with respect to the claim is commenced not later than the sixth
22 anniversary of the date the commission [department] or the
23 commission's [department's] designee submits the claim.

24 SECTION 4.119. Section 32.04242, Human Resources Code, is
25 amended to read as follows:

26 Sec. 32.04242. PAYOR OF LAST RESORT. The executive
27 commissioner [~~of the Health and Human Services Commission~~] shall

1 adopt rules to ensure, to the extent allowed by federal law, that
2 the Medicaid program:

3 (1) is the payor of last resort; and
4 (2) provides reimbursement for services, including
5 long-term care services, only if, and to the extent, other adequate
6 public or private sources of payment are not available.

7 SECTION 4.120. Section 32.0425(a)(1), Human Resources
8 Code, is amended to read as follows:

9 (1) "Qualified rehabilitation professional" means a
10 person who:

11 (A) holds a certification as an assistive
12 technology professional or a rehabilitation engineering
13 technologist issued by, and is in good standing with, the
14 Rehabilitation Engineering and Assistive Technology Society of
15 North America, provided that the requirements for that
16 certification are at least as stringent as the requirements in
17 effect on January 1, 2009; or

18 (B) is otherwise qualified to conduct the
19 professional activities of a person who holds a certification
20 described by Paragraph (A), as determined by rules adopted by the
21 executive commissioner ~~[of the Health and Human Services~~
~~Commission]~~.

23 SECTION 4.121. Sections 32.0425(b) and (c), Human Resources
24 Code, are amended to read as follows:

25 (b) The commission ~~[department]~~ may provide medical
26 assistance reimbursement for the provision of, or the performance
27 of a major modification to, a wheeled mobility system only if:

1 (1) the system is delivered to a recipient by a medical
2 assistance provider that is, or directly employs or contracts with,
3 a qualified rehabilitation professional and that professional was
4 present and involved in any clinical assessment of the recipient
5 that is required for obtaining the system; and

6 (2) at the time the wheeled mobility system is
7 delivered to the recipient, the qualified rehabilitation
8 professional:

9 (A) is present for and directs a fitting to
10 ensure that the system is appropriate for the recipient; and
11 (B) verifies that the system functions relative
12 to the recipient.

13 (c) The executive commissioner [~~of the Health and Human~~
14 ~~Services Commission~~] shall adopt rules specifying:

15 (1) the scope, including any required components, of
16 the fitting and verification of functionality required by
17 Subsection (b);

18 (2) documentation of the fitting and verification of
19 functionality that must be submitted as part of a claim for
20 reimbursement for the provision or modification of a wheeled
21 mobility system; and

22 (3) the appropriate reimbursement methodology for
23 compensating the evaluation and final fitting services provided by
24 qualified rehabilitation professionals involved in the provision
25 or modification of wheeled mobility systems.

26 SECTION 4.122. Sections [32.043](#)(b) and (d), Human Resources
27 Code, are amended to read as follows:

1 (b) The public hospital shall acquire goods or services by
2 any procurement method approved by the commission [~~Health and Human~~
3 ~~Services Commission~~] that provides the best value to the public
4 hospital. The public hospital shall document that it considered
5 all relevant factors under Subsection (c) in making the
6 acquisition.

7 (d) The state auditor or the commission [~~department~~] may
8 audit the public hospital's acquisitions of goods and services to
9 the extent that state money or federal money appropriated by the
10 state is used to acquire the goods and services.

11 SECTION 4.123. Section 32.044(d), Human Resources Code, is
12 amended to read as follows:

13 (d) The executive commissioner [~~department~~] with the
14 assistance of [~~the Health and Human Services Commission and~~] the
15 comptroller shall adopt rules under this section that allow the
16 public or private hospital to make purchases through group
17 purchasing programs except when the commission [~~department~~] has
18 reason to believe that a better value is available through another
19 procurement method.

20 SECTION 4.124. Sections 32.045, 32.046, 32.0461, 32.0462,
21 32.0463, 32.047, 32.048, and 32.049, Human Resources Code, are
22 amended to read as follows:

23 Sec. 32.045. ENHANCED REIMBURSEMENT. The commission
24 [~~department~~] shall develop a procedure for:

25 (1) identifying each service provided under the
26 medical assistance program for which the state is eligible to
27 receive enhanced reimbursement of costs from the federal

1 government; and

2 (2) ensuring that the state seeks the highest level of
3 federal reimbursement available for each service provided.

4 Sec. 32.046. SANCTIONS AND PENALTIES RELATED TO THE
5 PROVISION OF PHARMACY PRODUCTS. (a) The executive commissioner
6 [of the Health and Human Services Commission] shall adopt rules
7 governing sanctions and penalties that apply to a provider who
8 participates in the vendor drug program or is enrolled as a network
9 pharmacy provider of a managed care organization contracting with
10 the commission under Chapter 533, Government Code, or its
11 subcontractor and who submits an improper claim for reimbursement
12 under the program.

13 (b) The commission [department] shall notify each provider
14 in the vendor drug program that the provider is subject to sanctions
15 and penalties for submitting an improper claim.

16 Sec. 32.0461. VENDOR DRUG PROGRAM; COMPETITIVE BIDDING.
17 (a) In consultation and coordination with the State Council on
18 Competitive Government, the commission [~~Texas Department of~~
19 ~~Health~~] shall seek competitive bids for the claims processing
20 function of the vendor drug program. [~~The department and the Texas~~
21 ~~Department of Human Services may submit a bid proposal under this~~
22 ~~section in the same manner as a private entity.~~]

23 (b) The commission [~~Texas Department of Health~~] shall
24 require any person seeking to contract for services under this
25 section to comply with competitive bidding procedures adopted by
26 the executive commissioner [~~that department~~].

27 (c) The commission [~~Texas Department of Health~~] may award a

1 contract under this section to another person only if the
2 department and the State Council on Competitive Government
3 determine that the provision of services under that contract would
4 be more cost-effective and the time to process claims under the
5 contract would be the same as or faster than having employees of the
6 commission [department] continue to process claims.

7 Sec. 32.0462. VENDOR DRUG PROGRAM; PRICING STANDARD. (a)
8 Notwithstanding any other provision of state law, the commission
9 [department] shall:

10 (1) consider a nationally recognized, unbiased
11 pricing standard for prescription drugs in determining
12 reimbursement amounts under the vendor drug program; and
13 (2) update reimbursement amounts under the vendor drug
14 program at least weekly.

15 (b) The executive commissioner shall adopt rules
16 implementing this section. In adopting rules, the executive
17 commissioner shall ensure that implementation of this section does
18 not adversely affect the amount of federal funds available to the
19 state for providing benefits under the vendor drug program.

20 Sec. 32.0463. MEDICATIONS AND MEDICAL SUPPLIES. The
21 executive commissioner [department] may adopt rules establishing
22 procedures for the purchase and distribution of medically
23 necessary, over-the-counter medications and medical supplies under
24 the medical assistance program that were previously being provided
25 by prescription if the executive commissioner [department]
26 determines it is more cost-effective than obtaining those
27 medications and medical supplies through a prescription.

1 Sec. 32.047. PROHIBITION OF CERTAIN HEALTH CARE SERVICE
2 PROVIDERS. (a) A person is permanently prohibited from providing
3 or arranging to provide health care services under the medical
4 assistance program if:

5 (1) the person is convicted of an offense arising from
6 a fraudulent act under the program; and

7 (2) the person's fraudulent act results in injury to an
8 elderly person, as defined by Section 48.002(a)(1), a [disabled]
9 person with a disability, as defined by Section 48.002(a)(8)(A), or
10 a person younger than 18 years of age.

11 (b) The executive commissioner [~~of the Health and Human~~
12 ~~Services Commission~~] shall adopt rules for prohibiting a person
13 from participating in the medical assistance program as a health
14 care provider for a reasonable period, as determined by the
15 executive commissioner, if the person:

16 (1) fails to repay overpayments under the program; or
17 (2) owns, controls, manages, or is otherwise
18 affiliated with and has financial, managerial, or administrative
19 influence over a provider who has been suspended or prohibited from
20 participating in the program.

21 Sec. 32.048. MANAGED CARE INFORMATION AND TRAINING PLAN.
22 (a) Subject to the availability of funds, the commission
23 [~~department~~] shall develop a comprehensive plan to provide
24 information and training about the requirements of a managed care
25 plan to recipients of medical assistance, providers of medical
26 assistance, local health and human services agencies, and other
27 interested parties in each service area in which the commission

1 provides [department plans to provide] medical assistance through a
2 managed care plan.

3 (b) The commission [department] shall include in the
4 comprehensive plan:

5 (1) [180 days of initial information and training in a
6 service area beginning not later than the 90th day before the date
7 on which the department plans to begin to provide medical
8 assistance through a managed care plan in that service area;

9 [(2) additional] information and training at regular
10 intervals determined by the commission [department]; and

11 (2) [(3)] performance measures to evaluate the
12 effectiveness of the information and training.

13 (c) In developing the comprehensive plan, the commission
14 [department] shall consult with the Medicaid medical care advisory
15 committee.

16 Sec. 32.049. MANAGED CARE CONTRACT COMPLIANCE. (a) The
17 commission [department] shall review each managed care
18 organization that has contracted with the commission [department]
19 to provide medical assistance to medical assistance recipients
20 through a managed care plan issued by the organization to determine
21 whether the organization is prepared to meet its contractual
22 obligations.

23 (b)(1) The commission [department] shall require each
24 managed care organization that has contracted with the commission
25 [department] to submit an implementation plan not later than the
26 90th day before the date on which the managed care organization
27 [department] plans to begin to provide medical assistance through a

1 managed care plan in a service area. The implementation plan must
2 include:

3 (A) specific staffing patterns by function for
4 all operations, including enrollment, information systems, member
5 services, quality improvement, claims management, case management,
6 and provider and enrollee training; and

7 (B) specific time frames for demonstrating
8 preparedness for implementation before the date on which the
9 managed care organization [department] plans to begin to provide
10 medical assistance through a managed care plan in a service area.

11 (2) The commission [department] shall respond within
12 10 working days if the implementation plan does not adequately meet
13 preparedness guidelines.

14 (3) The commission [department] shall require each
15 managed care organization that has contracted with the commission
16 [department] to submit status reports on the implementation plan
17 not later than the 60th day and the 30th day before the date on which
18 the managed care organization [department] plans to begin to
19 provide medical assistance through a managed care plan in a service
20 area and every 30th day after the managed care organization
21 [department] begins to provide medical assistance through a managed
22 care plan in a service area until the 180th day of operations.

23 (c) The commission [department] shall conduct a compliance
24 and readiness review of each managed care organization that
25 contracts with the state not later than the 15th day before the date
26 on which the [department plans to begin the enrollment] process of
27 enrolling recipients in a managed care plan issued by the managed

1 care organization is to begin in a service area and again not later
2 than the 15th day before the date on which the managed care
3 organization [department] plans to begin to provide medical
4 assistance through a managed care plan in that [a] service area.
5 The review shall include an on-site inspection and tests of service
6 authorization and claims payment systems, complaint processing
7 systems, and any other process or system required by the contract.

8 (d) The commission [department] may delay enrollment of
9 medical assistance recipients in a managed care plan if the review
10 reveals that the managed care organization is not prepared to meet
11 its contractual obligations.

12 SECTION 4.125. Sections 32.050(a), (b), (d), and (e), Human
13 Resources Code, are amended to read as follows:

14 (a) At least annually the commission [department] shall
15 identify each individual receiving medical assistance under the
16 medical assistance program who is eligible to receive similar
17 assistance under the Medicare program.

18 (b) The commission [department] shall analyze claims
19 submitted for payment for a service provided under the medical
20 assistance program to an individual identified under Subsection (a)
21 to ensure that payment is sought first under the Medicare program to
22 the extent allowed by law.

23 (d) Except as provided by Subsection (e), a nursing
24 facility, a home health services provider, or any other similar
25 long-term care services provider that is Medicare-certified and
26 provides care to individuals who are eligible for Medicare must:

27 (1) seek reimbursement from Medicare before billing

1 the medical assistance program for services provided to an
2 individual identified under Subsection (a); and

3 (2) as directed by the commission [department], appeal
4 Medicare claim denials for payment services provided to an
5 individual identified under Subsection (a).

6 (e) A home health services provider is not required to seek
7 reimbursement from Medicare before billing the medical assistance
8 program for services provided to a person who is eligible for
9 Medicare and who:

10 (1) has been determined as not being homebound; or
11 (2) meets other criteria determined by the executive
12 commissioner [department].

13 SECTION 4.126. Section 32.051, Human Resources Code, is
14 amended to read as follows:

15 Sec. 32.051. MISDIRECTED BILLING. To the extent authorized
16 by federal law, the commission [department] shall develop a
17 procedure for the state to:

18 (1) match claims for payment for medical assistance
19 provided under the medical assistance program against data
20 available from other entities, including the United States
21 Department of Veterans Affairs [Administration] and nursing
22 facilities, to determine alternative responsibility for payment of
23 the claims; and

24 (2) ensure that the appropriate entity bears the cost
25 of a claim.

26 SECTION 4.127. Sections 32.052(c) and (d), Human Resources
27 Code, are amended to read as follows:

1 (c) In developing and providing services subject to this
2 section, the commission [department] shall:

3 (1) fully assess a child at the time the child applies
4 for assistance to determine all appropriate services for the child
5 under the medical assistance program, including both waiver and
6 nonwaiver services;

7 (2) ensure that permanency planning is implemented to
8 identify and establish the family support necessary to maintain a
9 child's permanent living arrangement with a family;

10 (3) implement a transition and referral process to
11 prevent breaks in services when a child is leaving a medical
12 assistance waiver program or moving between service delivery
13 systems due to a change in the child's disability status or needs,
14 aging out of the current delivery system, or moving between
15 geographic areas within the state;

16 (4) identify and provide core services addressing a
17 child's developmental needs and the needs of the child's family to
18 strengthen and maintain the child's family;

19 (5) provide for comprehensive coordination and use of
20 available services and resources in a manner that ensures support
21 for families in keeping their children at home;

22 (6) ensure that eligibility requirements, assessments
23 for service needs, and other components of service delivery are
24 designed to be fair and equitable for all families, including
25 families with parents who work outside the home; and

26 (7) provide for a broad array of service options and a
27 reasonable choice of service providers.

1 (d) To ensure that services subject to this section are cost
2 neutral and not duplicative of other services provided under the
3 medical assistance program, the commission [department] shall
4 coordinate the provision of services subject to this section with
5 services provided under the Texas Health Steps Comprehensive Care
6 Program.

7 SECTION 4.128. Sections 32.053(a), (b), (c), (e), (f), (h),
8 and (i), Human Resources Code, are amended to read as follows:

9 (a) The commission [department], as an integral part of the
10 medical assistance program, shall develop and implement a program
11 of all-inclusive care for the elderly (PACE) in accordance with
12 Section 4802 of the Balanced Budget Act of 1997 (Pub. L. No.
13 105-33), as amended. The commission [department] shall provide
14 medical assistance to a participant in the PACE program in the
15 manner and to the extent authorized by federal law.

16 (b) The executive commissioner [~~of the Health and Human~~
17 ~~Services Commission~~] shall adopt rules as necessary to implement
18 this section. In adopting rules, the executive commissioner shall:

19 (1) use the Bienvivir Senior Health Services of El
20 Paso initiative as a model for the program;

21 (2) ensure that a person is not required to hold a
22 certificate of authority as a health maintenance organization under
23 Chapter 843, Insurance Code, to provide services under the PACE
24 program;

25 (3) ensure that participation in the PACE program is
26 available as an alternative to enrollment in a Medicaid managed
27 care plan under Chapter 533, Government Code, for eligible

1 recipients, including recipients eligible for assistance under
2 both the medical assistance and Medicare programs;

3 (4) ensure that managed care organizations that
4 contract under Chapter 533, Government Code, consider the
5 availability of the PACE program when considering whether to refer
6 a recipient to a nursing facility [home] or other long-term care
7 facility; and

8 (5) establish protocols for the referral of eligible
9 persons to the PACE program.

10 (c) The commission [~~department~~] may not contract with a
11 person to provide services under the PACE program unless the
12 person:

13 (1) purchases reinsurance in an amount determined by
14 the commission [~~department~~] that is sufficient to ensure the
15 person's continued solvency; or

16 (2) has the financial resources sufficient to cover
17 expenses in the event of the person's insolvency.

18 (e) The Department of Aging and Disability Services and area
19 agencies on aging shall develop and implement a coordinated plan to
20 promote PACE program sites operating under this section. The
21 executive commissioner [~~department~~] shall adopt policies and
22 procedures, including operating guidelines, to ensure that
23 caseworkers and any other appropriate department staff discuss the
24 benefits of participating in the PACE program with long-term care
25 clients.

26 (f) The commission [~~department~~] shall consider the PACE
27 program as a community-based service option under any "Money

1 Follows the Person" demonstration project or other initiative that
2 is designed to eliminate barriers or mechanisms that prevent or
3 restrict the flexible use of funds under the medical assistance
4 program to enable a recipient to receive long-term services or
5 supports in a setting of the recipient's choice.

6 (h) The executive commissioner [commission] shall adopt a
7 standard reimbursement methodology for the payment of all PACE
8 organizations for purposes of encouraging a natural increase in the
9 number of PACE program sites throughout the state.

10 (i) To the extent allowed by the General Appropriations Act,
11 the commission [~~Health and Human Services Commission~~] may transfer
12 general revenue funds appropriated to the commission for the
13 medical assistance program to the Department of Aging and
14 Disability Services to provide PACE services in PACE program
15 service areas to eligible recipients whose medical assistance
16 benefits would otherwise be delivered as home and community-based
17 services through the STAR + PLUS Medicaid managed care program and
18 whose personal incomes are at or below the level of income required
19 to receive Supplemental Security Income (SSI) benefits under 42
20 U.S.C. Section 1381 et seq.

21 SECTION 4.129. Sections 32.054(c), (d), and (e), Human
22 Resources Code, are amended to read as follows:

23 (c) In providing dental services under the medical
24 assistance program, the commission [~~department~~] shall:

25 (1) ensure that a stainless steel crown is not used as
26 a preventive measure;

27 (2) require a dentist participating in the medical

1 assistance program to document, through x-rays or other methods
2 established by commission [department] rule, the dental necessity
3 for a stainless steel crown before the crown is applied;

4 (3) require a dentist participating in the medical
5 assistance program to comply with a minimum standard of
6 documentation and recordkeeping for each of the dentist's patients,
7 regardless of whether the patient's costs are paid privately or
8 through the medical assistance program;

9 (4) replace the 15-point system used for determining
10 the dental necessity for hospitalization and general anesthesia
11 with a more objective and comprehensive system developed by the
12 commission [department]; and

13 (5) take all necessary action to eliminate unlawful
14 acts described by Section 36.002 in the provision of dental
15 services under the medical assistance program, including:

16 (A) aggressively investigating and prosecuting
17 any dentist who abuses the system for reimbursement under the
18 medical assistance program; and

19 (B) conducting targeted audits of dentists whose
20 billing activities under the medical assistance program are
21 excessive or otherwise inconsistent with the billing activities of
22 other similarly situated dentists.

23 (d) In setting reimbursement rates for dental services
24 under the medical assistance program, the executive commissioner
25 [department] shall:

26 (1) [reduce the amount of the hospitalization fee in
27 effect on December 1, 2000, and redistribute amounts made available

1 ~~through reduction of that fee to other commonly billed dental~~
2 ~~services for which adequate accountability measures exist;~~

3 ~~[~~(2)~~ eliminate the nutritional consultation fee and~~
4 ~~redistribute amounts made available through elimination of that fee~~
5 ~~to other commonly billed dental services for which adequate~~
6 ~~accountability measures exist;~~

7 [~~(3)~~] provide for reimbursement of a behavior
8 management fee only if:

9 (A) the patient receiving dental treatment has
10 been previously diagnosed with an intellectual or developmental
11 disability [~~mental retardation~~] or a mental disability or disorder,
12 and extraordinary behavior management techniques are necessary for
13 therapeutic dental treatment because of the patient's
14 uncooperative behavior; and

15 (B) the dentist includes in the patient's records
16 and on the claim form for reimbursement a narrative description of:

17 (i) the specific behavior problem
18 demonstrated by the patient that required the use of behavior
19 management techniques;

20 (ii) the dentist's initial efforts to
21 manage the patient's behavior through routine behavior management
22 techniques; and

23 (iii) the dentist's extraordinary behavior
24 management techniques subsequently required to manage the
25 patient's behavior; and

26 (2) [~~(4)~~] redistribute amounts made available through
27 limitation of the behavior management fee under Subdivision (1)

1 [43] to other commonly billed dental services for which adequate
2 accountability measures exist.

3 (e) The commission [department] shall develop the minimum
4 standard described by Subsection (c)(3) in cooperation with the
5 State Board of Dental Examiners.

6 SECTION 4.130. Sections [32.055](#)(a) and (c), Human Resources
7 Code, are amended to read as follows:

8 (a) The commission [department] shall develop and implement
9 a catastrophic case management system to be used in providing
10 medical assistance to persons with catastrophic health problems.

11 (c) The commission [department] shall identify the services
12 to be provided by a case manager assigned under the system. The
13 services must include assessment of the recipient's needs and
14 coordination of all available medical services and payment options.
15 The services may include other support services such as:

16 (1) assistance with making arrangements to receive
17 care from medical facilities;

18 (2) assistance with travel and lodging in connection
19 with receipt of medical care;

20 (3) education of the recipient and the recipient's
21 family members regarding the nature of the recipient's health
22 problems;

23 (4) referral to appropriate support groups; and

24 (5) any other service likely to result in better care
25 provided in a cost-effective manner.

26 SECTION 4.131. Sections [32.0551](#) and [32.056](#), Human Resources
27 Code, are amended to read as follows:

1 Sec. 32.0551. OPTIMIZATION OF CASE MANAGEMENT SYSTEMS. The
2 commission [~~Health and Human Services Commission~~] shall:

3 (1) create and coordinate staffing and other
4 administrative efficiencies for case management initiatives across
5 the commission and health and human services agencies[, as defined
6 by Section 531.001, Government Code]; and

7 (2) optimize federal funding revenue sources and
8 maximize the use of state funding resources for case management
9 initiatives across the commission and health and human services
10 agencies.

11 Sec. 32.056. COMPLIANCE WITH TEXAS HEALTH STEPS
12 COMPREHENSIVE CARE PROGRAM. The executive commissioner by rule
13 shall develop procedures to ensure that recipients of medical
14 assistance who are eligible for Texas Health Steps Comprehensive
15 Care Program comply with the regimen of care prescribed by the
16 [~~Texas Health Steps~~] program.

17 SECTION 4.132. Sections 32.057(a), (b), (c), (d), (e), and
18 (f), Human Resources Code, are amended to read as follows:

19 (a) The commission [~~department~~] shall request contract
20 proposals from providers of disease management programs to provide
21 program services to recipients of medical assistance who:

22 (1) have a disease or other chronic health condition,
23 such as heart disease, hemophilia, chronic kidney disease and its
24 medical complications, diabetes, respiratory illness, end-stage
25 renal disease, HIV infection, or AIDS, that the commission
26 [~~department~~] determines is a disease or condition that needs
27 disease management; and

3 (b) The commission [department] may contract with a public
4 or private entity to:

- 5 (1) write the requests for proposals;
- 6 (2) determine how savings will be measured;
- 7 (3) identify populations that need disease
- 8 management;

9 (4) develop appropriate contracts; and

10 (5) assist the commission [department] in:

11 (A) developing the content of disease management

12 programs; and

(B) obtaining funding for those programs.

14 (c) The executive commissioner [of the Health and Human
15 Services Commission,] by rule[~~T~~] shall prescribe the minimum
16 requirements a provider of a disease management program must meet
17 to be eligible to receive a contract under this section. The
18 provider must, at a minimum, be required to:

1 program through which the recipient receives services.

2 (d) The commission [department] may not award a contract for
3 a disease management program under this section unless the contract
4 includes a written guarantee of state savings on expenditures for
5 the group of medical assistance recipients covered by the program.

6 (e) The commission [department] may enter into a contract
7 under this section with a comprehensive hemophilia diagnostic
8 treatment center that receives funding through a maternal and child
9 health services block grant under Section 501(a)(2), Social
10 Security Act (42 U.S.C. Section 701(a)(2) [Section 701]), and the
11 center shall be considered a disease management provider.

12 (f) Directly or through a provider of a disease management
13 program that enters into a contract with the commission
14 [department] under this section, the commission [department]
15 shall, as appropriate and to the extent possible without cost to the
16 state:

17 (1) identify recipients of medical assistance under
18 this chapter or, at the discretion of the commission [department],
19 enrollees in the child health plan under Chapter 62, Health and
20 Safety Code, who are eligible to participate in federally funded
21 disease management research programs operated by research-based
22 disease management providers; and

23 (2) assist and refer eligible persons identified by
24 the commission [department] under Subdivision (1) to participate in
25 the research programs described by Subdivision (1).

26 SECTION 4.133. Sections 32.058(a) and (g), Human Resources
27 Code, are amended to read as follows:

1 (a) In this section:

2 (1) "Department" means the Department of Aging and
3 Disability Services.

4 (2) "Medical [~~, "medical~~] assistance waiver program"
5 means a program operated [~~administered~~] by the Department of Aging
6 and Disability Services, other than the Texas home living waiver
7 program, that provides services under a waiver granted in
8 accordance with 42 U.S.C. Section 1396n(c).

9 (g) The executive commissioner [~~of the Health and Human~~
10 ~~Services Commission~~] may adopt rules to implement Subsections (d),
11 (e), and (f).

12 SECTION 4.134. Section 32.059, Human Resources Code, is
13 amended to read as follows:

14 Sec. 32.059. USE OF RESPIRATORY THERAPISTS FOR RESPIRATORY
15 THERAPY SERVICES. The executive commissioner [~~department~~] by rule
16 shall require that respiratory therapy services for
17 ventilator-dependent persons furnished as part of a plan of care
18 under this chapter be provided by a respiratory care practitioner
19 [~~therapist~~] authorized to practice respiratory care under Chapter
20 604, Occupations Code, when:

21 (1) respiratory therapy is determined by the
22 recipient's treating physician to be the most effective method of
23 treatment; and

24 (2) the use of a respiratory care practitioner
25 [~~therapist~~] is practicable and cost-neutral or cost-effective.

26 SECTION 4.135. Section 32.061, Human Resources Code, is
27 amended to read as follows:

1 Sec. 32.061. COMMUNITY ATTENDANT SERVICES PROGRAM. (a)
2 Any home and community-based services that the commission
3 [~~department~~] provides under Section 1929, Social Security Act (42
4 U.S.C. Section 1396t) and its subsequent amendments to functionally
5 disabled individuals who have income that exceeds the limit
6 established by federal law for Supplemental Security Income (SSI)
7 (42 U.S.C. Section 1381 et seq.) and its subsequent amendments
8 shall be provided through the community attendant services program.

9 (b) In determining an applicant's eligibility for home and
10 community-based services described by Subsection (a), the
11 commission [~~department~~] shall exclude \$20 of unearned or earned
12 income from the applicant's monthly income.

13 SECTION 4.136. Sections 32.062(a) and (c), Human Resources
14 Code, are amended to read as follows:

15 (a) The following are not admissible as evidence in a civil
16 action:

17 (1) any finding by the Department of Aging and
18 Disability Services [~~department~~] that an institution licensed
19 under Chapter 242, Health and Safety Code, has violated a standard
20 for participation in the medical assistance program under this
21 chapter; or

22 (2) the fact of the assessment of a monetary penalty
23 against an institution under Section 32.021 or the payment of the
24 penalty by an institution[~~or~~

25 [~~(3) any information exchanged between the department~~
26 ~~and a nursing facility under Section 531.912, Government Code~~].

27 (c) Notwithstanding any other provision of this section,

1 evidence described by Subsection (a) is admissible as evidence in a
2 civil action only if:

3 (1) the evidence relates to a material violation of
4 this chapter or a rule adopted under this chapter or assessment of a
5 monetary penalty with respect to:

6 (A) the particular incident and the particular
7 individual whose personal injury is the basis of the claim being
8 brought in the civil action; or

9 (B) a finding by the Department of Aging and
10 Disability Services [department] that directly involves
11 substantially similar conduct that occurred at the institution
12 within a period of one year before the particular incident that is
13 the basis of the claim being brought in the civil action; [and]

14 (2) the evidence of a material violation has been
15 affirmed by the entry of a final adjudicated and unappealable order
16 of the Department of Aging and Disability Services [department]
17 after formal appeal; and

18 (3) the record is otherwise admissible under the Texas
19 Rules of Evidence.

20 SECTION 4.137. Section 32.063, Human Resources Code, is
21 amended to read as follows:

22 Sec. 32.063. THIRD-PARTY BILLING VENDORS. (a) A
23 third-party billing vendor may not submit a claim with the
24 commission [department] for reimbursement on behalf of a provider
25 of medical services under the medical assistance program unless the
26 vendor has entered into a contract with the commission [department]
27 authorizing that activity.

1 (b) To the extent practical, the contract shall contain
2 provisions comparable to the provisions contained in contracts
3 between the commission [department] and providers of medical
4 services, with an emphasis on provisions designed to prevent fraud
5 or abuse under the medical assistance program. At a minimum, the
6 contract must require the third-party billing vendor to:

7 (1) provide documentation of the vendor's authority to
8 bill on behalf of each provider for whom the vendor submits claims;

9 (2) submit a claim in a manner that permits the
10 commission [department] to identify and verify the vendor, any
11 computer or telephone line used in submitting the claim, any
12 relevant user password used in submitting the claim, and any
13 provider number referenced in the claim; and

14 (3) subject to any confidentiality requirements
15 imposed by federal law, provide the commission [department], the
16 office of the attorney general, or authorized representatives with:

17 (A) access to any records maintained by the
18 vendor, including original records and records maintained by the
19 vendor on behalf of a provider, relevant to an audit or
20 investigation of the vendor's services or another function of the
21 commission [department] or office of the attorney general relating
22 to the vendor; and

23 (B) if requested, copies of any records described
24 by Paragraph (A) at no charge to the commission [department], the
25 office of the attorney general, or authorized representatives.

26 (c) On receipt of a claim submitted by a third-party billing
27 vendor, the commission [department] shall send a remittance notice

1 directly to the provider referenced in the claim. The notice must:
2 (1) include detailed information regarding the claim
3 submitted on behalf of the provider; and
4 (2) require the provider to review the claim for
5 accuracy and notify the commission [department] promptly regarding
6 any errors.

7 (d) The commission [department] shall take all action
8 necessary, including any modifications of the commission's
9 [department's] claims processing system, to enable the commission
10 [department] to identify and verify a third-party billing vendor
11 submitting a claim for reimbursement under the medical assistance
12 program, including identification and verification of any computer
13 or telephone line used in submitting the claim, any relevant user
14 password used in submitting the claim, and any provider number
15 referenced in the claim.

16 (e) The commission [department] shall audit each
17 third-party billing vendor subject to this section at least
18 annually to prevent fraud and abuse under the medical assistance
19 program.

20 SECTION 4.138. Section 32.064(a), Human Resources Code, is
21 amended to read as follows:

22 (a) To the extent permitted under Title XIX, Social Security
23 Act (42 U.S.C. Section 1396 et seq.), as amended, and any other
24 applicable law or regulations, the executive commissioner [Health
25 and Human Services Commission] shall adopt provisions requiring
26 recipients of medical assistance to share the cost of medical
27 assistance, including provisions requiring recipients to pay:

7 SECTION 4.139. Section 32.0641, Human Resources Code, is
8 amended to read as follows:

9 Sec. 32.0641. RECIPIENT ACCOUNTABILITY PROVISIONS;

10 COST-SHARING REQUIREMENT TO IMPROVE APPROPRIATE UTILIZATION OF

11 SERVICES. (a) To the extent permitted under and in a manner that is

12 consistent with Title XIX, Social Security Act (42 U.S.C. Section

13 1396 et seq.) and any other applicable law or regulation or under a

14 federal waiver or other authorization, the executive commissioner

15 [of the Health and Human Services Commission] shall adopt, after

16 consulting with the Medicaid and CHIP Quality-Based Payment

17 Advisory Committee established under Section 536.002, Government

18 Code, cost-sharing provisions that encourage personal

19 accountability and appropriate utilization of health care

20 services, including a cost-sharing provision applicable to a

21 recipient who chooses to receive a nonemergency medical service

22 through a hospital emergency room.

23 (b) The commission [department] may not seek a federal
24 waiver or other authorization under this section that would:

1 (2) waive any provision under Section 1867, Social
2 Security Act (42 U.S.C. Section 1395dd).

3 SECTION 4.140. Section 32.067(b), Human Resources Code, is
4 amended to read as follows:

5 (b) The commission [~~department~~] shall assure that any
6 agency licensed to provide home health services under Chapter 142,
7 Health and Safety Code, and not only a certified agency licensed
8 under that chapter, may provide home health services to individuals
9 enrolled in the Texas Health Steps Comprehensive Care Program.

10 SECTION 4.141. Section 32.068(c), Human Resources Code, is
11 amended to read as follows:

12 (c) The executive commissioner [~~of the Health and Human~~
13 ~~Services Commission~~] shall adopt rules necessary to implement this
14 section. The executive commissioner may by rule adopt limited
15 exceptions to the requirements of this section.

16 SECTION 4.142. Section 32.069, Human Resources Code, is
17 amended to read as follows:

18 Sec. 32.069. CHRONIC KIDNEY DISEASE MANAGEMENT INITIATIVE.
19 A provider of disease management programs under Section 32.057
20 [~~32.059, as added by Chapter 208, Acts of the 78th Legislature,~~
21 ~~Regular Session, 2003,~~] shall develop a program to provide
22 screening for and diagnosis and treatment of chronic kidney disease
23 and its medical complications under the medical assistance program.
24 The program must use generally recognized clinical practice
25 guidelines and laboratory assessments that identify chronic kidney
26 disease on the basis of impaired kidney function or the presence of
27 kidney damage.

1 SECTION 4.143. Section 32.070, Human Resources Code, is
2 amended to read as follows:

3 Sec. 32.070. AUDITS OF PROVIDERS. (a) In this section,
4 "provider" means an individual, firm, partnership, corporation,
5 agency, association, institution, or other entity that is or was
6 approved by the commission [department] to provide medical
7 assistance under contract or provider agreement with the commission
8 [department].

9 (b) The executive commissioner [~~of the Health and Human~~
10 ~~Services Commission~~] shall adopt rules governing the audit of
11 providers in the medical assistance program.

12 (c) The rules must:

13 (1) provide that the agency conducting the audit must
14 notify the provider, and the provider's corporate headquarters, if
15 the provider is a pharmacy that is incorporated, of the impending
16 audit not later than the seventh day before the date the field audit
17 portion of the audit begins;

18 (2) limit the period covered by an audit to three
19 years;

20 (3) provide that the agency conducting the audit must
21 accommodate the provider's schedule to the greatest extent possible
22 when scheduling the field audit portion of the audit;

23 (4) require the agency conducting the audit to conduct
24 an entrance interview before beginning the field audit portion of
25 the audit;

26 (5) provide that each provider must be audited under
27 the same standards and parameters as other providers of the same

1 type;

2 (6) provide that the audit must be conducted in
3 accordance with generally accepted government auditing standards
4 issued by the Comptroller General of the United States or other
5 appropriate standards;

6 (7) require the agency conducting the audit to conduct
7 an exit interview at the close of the field audit portion of the
8 audit with the provider to review the agency's initial findings;

9 (8) provide that, at the exit interview, the agency
10 conducting the audit shall:

11 (A) allow the provider to:

12 (i) respond to questions by the agency;

13 (ii) comment, if the provider desires, on
14 the initial findings of the agency; and

15 (iii) correct a questioned cost by
16 providing additional supporting documentation that meets the
17 auditing standards required by Subdivision (6) if there is no
18 indication that the error or omission that resulted in the
19 questioned cost demonstrates intent to commit fraud; and

20 (B) provide to the provider a preliminary audit
21 report and a copy of any document used to support a proposed
22 adjustment to the provider's cost report;

23 (9) permit the provider to produce documentation to
24 address any exception found during an audit not later than the 10th
25 day after the date the field audit portion of the audit is
26 completed;

27 (10) provide that the agency conducting the audit

1 shall deliver a draft audit report to the provider not later than
2 the 60th day after the date the field audit portion of the audit is
3 completed;

4 (11) permit the provider to submit to the agency
5 conducting the audit a written management response to the draft
6 audit report or to appeal the findings in the draft audit report not
7 later than the 30th day after the date the draft audit report is
8 delivered to the provider;

9 (12) provide that the agency conducting the audit
10 shall deliver the final audit report to the provider not later than
11 the 180th day after the date the field audit portion of the audit is
12 completed or the date on which a final decision is issued on an
13 appeal made under Subdivision (13), whichever is later; and

14 (13) establish an ad hoc review panel, composed of
15 providers practicing or doing business in this state appointed by
16 the executive commissioner [of the Health and Human Services
17 Commission], to administer an informal process through which:

18 (A) a provider may obtain an early review of an
19 audit report or an unfavorable audit finding without the need to
20 obtain legal counsel; and

21 (B) a recommendation to revise or dismiss an
22 unfavorable audit finding that is found to be unsubstantiated may
23 be made by the review panel to the agency, provided that the
24 recommendation is not binding on the agency.

25 (d) This section does not apply to a computerized audit
26 conducted using the Medicaid Fraud Detection [Audit] System or an
27 audit or investigation of fraud and abuse conducted by the Medicaid

1 fraud control unit of the office of the attorney general, the office
2 of the state auditor, the office of the inspector general, or the
3 Office of Inspector General in the United States Department of
4 Health and Human Services.

5 SECTION 4.144. Sections [32.071\(a\), \(c\), \(d\), \(e\), \(f\), and](#)
6 (g), Human Resources Code, are amended to read as follows:

7 (a) The commission [department] shall develop and implement
8 a comprehensive medical assistance education campaign for
9 recipients and providers to ensure that care is provided in such a
10 way as to improve patient outcomes and maximize cost-effectiveness.
11 The commission [department] shall ensure that educational
12 information developed under this section is demographically
13 relevant and appropriate for each recipient or provider to whom the
14 information is provided.

15 (c) The commission [department] shall evaluate whether
16 certain risk groups may disproportionately increase their
17 appropriate use of the health care system as a result of targeted
18 elements of an education campaign. If the commission [department]
19 determines that certain risk groups will respond with more
20 appropriate use of the system, the commission [department] shall
21 develop and implement the appropriate targeted educational
22 elements.

23 (d) The commission [department] shall develop a system for
24 reviewing recipient prescription drug use and educating providers
25 with respect to that drug use in a manner that emphasizes reducing
26 inappropriate prescription drug use and the possibility of adverse
27 drug interactions.

1 (e) The commission [department] shall coordinate the
2 medical assistance education campaign with area health education
3 centers, federally qualified health centers, as defined by 42
4 U.S.C. Section 1396d(1)(2)(B), and other stakeholders who use
5 public funds to educate recipients and providers about the health
6 care system in this state. The commission [department] shall make
7 every effort to maximize state funds by working through these
8 partners to maximize receipt of additional federal funding for
9 administrative and other costs.

10 (f) The commission [department] shall coordinate with other
11 state and local agencies to ensure that community-based health
12 workers, health educators, state eligibility determination
13 employees who work in hospitals and other provider locations, and
14 promoters are used in the medical assistance education campaign, as
15 appropriate.

16 (g) The commission [department] shall ensure that all state
17 agencies that work with recipients, all administrative persons who
18 provide eligibility determination and enrollment services, and all
19 service providers use the same curriculum for recipient and
20 provider education, as appropriate.

21 SECTION 4.145. Section 32.072(b), Human Resources Code, is
22 amended to read as follows:

23 (b) The commission [department] may require an
24 ophthalmologist or therapeutic optometrist selected as provided by
25 this section by a recipient of medical assistance who is otherwise
26 required to have a primary care physician or other gatekeeper or
27 health care coordinator to forward to the recipient's physician,

1 gatekeeper, or health care coordinator information concerning the
2 eye health care services provided to the recipient.

3 SECTION 4.146. Sections 32.073(b) and (c), Human Resources
4 Code, are amended to read as follows:

5 (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.

10 (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.

20 SECTION 4.147. Section 32.074(b), Human Resources Code, is
21 amended to read as follows:

22 (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.

1 SECTION 4.148. Section 32.075(c), Human Resources Code, is
2 amended to read as follows:

3 (c) The commission [department] shall provide employment
4 assistance and supported employment to participants in the waiver
5 programs identified in Subsection (b).

6 SECTION 4.149. Section 32.201(1), Human Resources Code, is
7 amended to read as follows:

8 (1) "Electronic health record" means electronically
9 originated and maintained health and claims information regarding
10 the health status of an individual that may be derived from multiple
11 sources and includes the following core functionalities:

12 (A) a patient health and claims information or
13 data entry function to aid with medical diagnosis, nursing
14 assessment, medication lists, allergy recognition, demographics,
15 clinical narratives, and test results;

16 (B) a results management function that may
17 include computerized laboratory test results, diagnostic imaging
18 reports, interventional radiology reports, and automated displays
19 of past and present medical or laboratory test results;

20 (C) a computerized physician order entry of
21 medication, care orders, and ancillary services;

22 (D) clinical decision support that may include
23 electronic reminders and prompts to improve prevention, diagnosis,
24 and management; and

25 (E) electronic communication and connectivity
26 that allows online communication:

27 (i) among physicians and health care

1 providers; and

2 (ii) among the commission [~~Health and Human~~
3 ~~Services Commission~~], the operating agencies, and participating
4 providers.

5 SECTION 4.150. Sections 32.202(a) and (b), Human Resources
6 Code, are amended to read as follows:

7 (a) To the extent allowed by federal law, the executive
8 commissioner may adopt rules allowing the commission [~~Health and~~
9 ~~Human Services Commission~~] to permit, facilitate, and implement the
10 use of health information technology for the medical assistance
11 program to allow for electronic communication among the commission,
12 the operating agencies, and participating providers for:

13 (1) eligibility, enrollment, verification procedures,
14 and prior authorization for health care services or procedures
15 covered by the medical assistance program, as determined by the
16 executive commissioner, including diagnostic imaging;

17 (2) the update of practice information by
18 participating providers;

19 (3) the exchange of recipient health care information,
20 including electronic prescribing and electronic health records;

21 (4) any document or information requested or required
22 under the medical assistance program by the commission [~~Health and~~
23 ~~Human Services Commission~~], the operating agencies, or
24 participating providers; and

25 (5) the enhancement of clinical and drug information
26 available through the vendor drug program to ensure a comprehensive
27 electronic health record for recipients.

1 (b) If the executive commissioner determines that a need
2 exists for the use of health information technology in the medical
3 assistance program and that the technology is cost-effective, the
4 commission [~~Health and Human Services Commission~~] may, for the
5 purposes prescribed by Subsection (a):

6 (1) acquire and implement the technology; or
7 (2) evaluate the feasibility of developing and, if
8 feasible, develop[~~T~~] the technology through the use or expansion of
9 other systems or technologies the commission uses for other
10 purposes, including[~~+~~]

11 [(A) ~~the technologies used in the pilot program~~
12 ~~implemented under Section 531.1063, Government Code, and~~
13 [(B)] the health passport developed under
14 Section 266.006, Family Code.]

15 SECTION 4.151. Section 32.252, Human Resources Code, is
16 amended to read as follows:

17 Sec. 32.252. PARTNERSHIP FOR LONG-TERM CARE PROGRAM. The
18 partnership for long-term care program is administered as part of
19 the medical assistance program by the commission [~~department~~] with
20 the assistance of the Texas Department of Insurance. The program
21 must be consistent with provisions governing the expansion of a
22 state long-term care partnership program established under the
23 federal Deficit Reduction Act of 2005 (Pub. L. No. 109-171).

24 SECTION 4.152. Sections 32.253(b) and (c), Human Resources
25 Code, are amended to read as follows:

26 (b) The commission [~~department~~] may not consider the
27 resources of an individual who has used all or part of the

1 individual's benefits under an approved plan to the extent those
2 resources are the subject of a dollar-for-dollar asset disregard in
3 determining:

4 (1) eligibility for medical assistance under the
5 medical assistance program;

6 (2) the amount of medical assistance provided; or

7 (3) any subsequent recovery by this state from the
8 individual's estate for medical assistance provided to the
9 individual.

10 (c) The commission [department] may not provide to an
11 individual eligible for medical assistance under this section those
12 medical assistance services covered under the medical assistance
13 program that are also covered by the individual's benefits under
14 the approved plan until the individual has fully exhausted the
15 individual's benefits under the plan.

16 SECTION 4.153. Sections [32.254](#) and [32.255](#), Human Resources
17 Code, are amended to read as follows:

18 Sec. 32.254. RECIPROCAL AGREEMENTS. The commission
19 [department] may enter into reciprocal agreements with other states
20 to extend asset protection to a resident of this state who purchased
21 a long-term care benefit plan in another state that has a
22 substantially similar asset disregard program.

23 Sec. 32.255. TRAINING; INFORMATION AND TECHNICAL
24 ASSISTANCE. The commission [~~Health and Human Services Commission~~]
25 shall provide information and technical assistance to the Texas
26 Department of Insurance regarding that department's role in
27 ensuring that each individual who sells a long-term care benefit

1 plan under the partnership for long-term care program receives
2 training and demonstrates evidence of an understanding of these
3 plans as required by Section [1651.105](#), Insurance Code. The
4 training must satisfy the training requirements imposed under the
5 provisions governing the expansion of a state long-term care
6 partnership program established under the federal Deficit
7 Reduction Act of 2005 (Pub. L. No. 109-171).

8 SECTION 4.154. Sections [33.0005](#) and [33.0006](#), Human
9 Resources Code, are amended to read as follows:

10 Sec. 33.0005. DEFINITIONS. In this chapter:

11 (1) "Commissioner" means the commissioner of
12 agriculture.

13 (1-a) "Department" means the Department of
14 Agriculture[+

15 [~~(A) with respect to the food stamp program, the~~
16 ~~Health and Human Services Commission, and~~

17 [~~(B) with respect to any other nutritional~~
18 ~~assistance program or special nutrition program listed in~~
19 ~~Subdivision (3), the Health and Human Services Commission or the~~
20 ~~agency of this state that operates the program, as applicable].~~

21 (2) "Executive commissioner" means the executive
22 commissioner of the Health and Human Services Commission[or the
23 chief administrative officer of an agency of this state operating a
24 nutritional assistance program, as applicable].

25 (3) "Supplemental nutrition assistance program" and
26 "SNAP" mean the program operated pursuant to 7 U.S.C. Section 2011
27 et seq. [~~"Nutritional assistance program"~~ or ~~"special nutrition~~

1 ~~program" includes the following programs authorized by federal law~~
2 ~~that provide nutritional assistance to needy individuals in this~~
3 ~~state:~~

- 4 [~~(A) the food stamp program;~~
- 5 [~~(B) the child and adult care food program;~~
- 6 [~~(C) the summer food service program;~~
- 7 [~~(D) the food distribution program;~~
- 8 [~~(E) the emergency food assistance program; and~~
- 9 [~~(F) the commodity supplemental food program.~~]

10 Sec. 33.0006. OPERATION OF SNAP [~~FOOD STAMP PROGRAM~~]. The
11 commission [~~Health and Human Services Commission~~] operates the
12 supplemental nutrition assistance [~~food stamp~~] program.

13 SECTION 4.155. Section 33.002, Human Resources Code, is
14 amended to read as follows:

15 Sec. 33.002. DISTRIBUTION OF COMMODITIES AND SNAP BENEFITS
16 [~~FOOD STAMPS~~]. (a) The department is responsible for the
17 distribution of commodities and the commission is responsible for
18 the distribution of supplemental nutrition assistance program
19 benefits [~~food stamps~~] allocated respectively to the department and
20 the commission by the federal government.

21 (b) The department and commission may enter into agreements
22 with federal agencies that are required as a prerequisite to the
23 allocation of the commodities or supplemental nutrition assistance
24 program benefits [~~food stamps~~]. The department and commission may
25 enter into agreements with eleemosynary institutions, schools, and
26 other eligible agencies and recipients of the commodities and
27 supplemental nutrition assistance program benefits [~~food stamps~~].

1 The department [administering the distribution of federal surplus
2 commodities and other resources] may cooperate with a municipality
3 or county as necessary to properly administer the [~~that~~]
4 distribution of federal surplus commodities and other resources for
5 which the department is responsible.

6 (c) The department and the executive commissioner, as
7 applicable, shall establish policies and rules that will ensure the
8 widest and most efficient distribution of the commodities and
9 supplemental nutrition assistance program benefits [~~food stamps~~]
10 to those eligible to receive them.

11 (d) The commission [~~department~~] shall continually monitor
12 the expedited issuance of supplemental nutrition assistance
13 program [~~food stamp~~] benefits to ensure that each region in the
14 state complies with federal regulations and that those households
15 eligible for expedited issuance are identified, processed, and
16 certified within the timeframes prescribed within the federal
17 regulations.

18 (e) The commission [~~department~~] shall screen all applicants
19 for expedited issuance of supplemental nutrition assistance
20 program benefits on a priority basis within one working day.
21 Applicants who meet the federal criteria for expedited issuance and
22 have an immediate need for food assistance shall receive those
23 benefits [~~either a manual Authorization-to-Purchase card or the~~
24 ~~immediate issuance of food stamp coupons~~] within one working day.

25 (f) The commission [~~department~~] shall conspicuously post in
26 each local supplemental nutrition assistance program benefits
27 [~~food stamp~~] office a notice of the availability of and procedure

1 for applying for expedited issuance.

2 (g) The commission [department] may, within federal limits,
3 modify the one-day screening and service delivery requirements
4 prescribed by Subsection (e) if the commission [department]
5 determines that the modification is necessary to reduce fraud in
6 the supplemental nutrition assistance [~~food stamp~~] program.

7 SECTION 4.156. Sections 33.0021(a) and (c), Human Resources
8 Code, are amended to read as follows:

9 (a) The commission [department] shall develop general
10 informational materials that contain eligibility guidelines for
11 supplemental nutrition assistance program benefits under this
12 chapter and that clearly and simply explain the process for
13 applying for benefits, as well as indicate the availability of
14 expedited benefits [~~food stamps~~], the existence of toll-free
15 telephone hotlines, and the existence of a procedure in each region
16 to handle complaints. These informational materials shall be
17 nonpromotional in nature.

18 (c) The commission [department] shall distribute the
19 materials to community action agencies, legal services offices, and
20 emergency food programs and other programs likely to have contact
21 with potential applicants.

22 SECTION 4.157. Section 33.0023, Human Resources Code, is
23 amended to read as follows:

24 Sec. 33.0023. SNAP [~~FOOD STAMP~~] INFORMATION MATCHING
25 SYSTEM. (a) To detect and prevent fraud in the supplemental
26 nutrition assistance [~~food stamp~~] program, the commission
27 [department], through the use of a computerized matching system,

1 shall compare at least semiannually commission [~~department~~]
2 information relating to supplemental nutrition assistance program
3 benefits [~~food stamp~~] transactions and redemptions by benefits
4 recipients [~~of food stamps~~] and retailers with information obtained
5 from the comptroller and other appropriate state agencies relating
6 to those recipients and retailers.

7 (b) The commission [~~department~~], the comptroller, and the
8 appropriate agencies shall take all necessary measures to protect
9 the confidentiality of information provided under this section, in
10 compliance with all existing state and federal privacy guidelines.

11 (c) In this section, "retailer" means a business approved
12 for participation in the supplemental nutrition assistance [~~food~~
13 ~~stamp~~] program.

14 SECTION 4.158. Section 33.003(a), Human Resources Code, is
15 amended to read as follows:

16 (a) The department may establish distribution districts and
17 employ distributing agents or may make other arrangements necessary
18 to provide for the efficient distribution of commodities [~~and food~~
19 ~~stamps~~].

20 SECTION 4.159. Section 33.004, Human Resources Code, is
21 amended to read as follows:

22 Sec. 33.004. COMMODITY DISTRIBUTION PROGRAM ADVISORY
23 BOARDS. (a) The department may establish state or district-level
24 advisory boards to facilitate the operations of the commodity
25 distribution program [~~or food stamp programs~~].

26 (b) The advisory boards shall be of the size, membership,
27 and experience that the [~~executive~~] commissioner determines to be

1 essential for the accomplishment of the purposes of this chapter
2 and not in conflict with or duplicative of other laws on this
3 subject.

4 SECTION 4.160. Section 33.006, Human Resources Code, is
5 amended to read as follows:

6 Sec. 33.006. HANDLING CHARGES. (a) The department may
7 assess reasonable handling charges against the recipients of
8 commodities [~~or food stamps~~] to cover the cost of distribution. The
9 total operation must be conducted on a nonprofit basis.

10 (b) The department shall make the assessments at the times
11 and in the amounts that it considers necessary for the proper
12 administration of the commodity distribution program [~~programs~~].
13 However, the assessments must be uniform in each distribution
14 district and may not exceed \$1 per recipient per year.

15 SECTION 4.161. Section 33.008, Human Resources Code, is
16 amended to read as follows:

17 Sec. 33.008. SALE OF USED COMMODITY CONTAINERS. The
18 department may sell used commodity containers. Proceeds from the
19 sales in each distribution district shall be deposited in the
20 general revenue [~~commodity distribution~~] fund [~~and used for the~~
21 ~~commodity distribution program~~].

22 SECTION 4.162. Section 33.011, Human Resources Code, is
23 amended to read as follows:

24 Sec. 33.011. PROHIBITED ACTIVITIES; PENALTIES. (a) A
25 person commits an offense if the person knowingly uses, alters, or
26 transfers a supplemental nutrition assistance program electronic
27 [~~food stamp~~] benefit transfer card [~~permits~~] in any manner not

1 authorized by law. An offense under this subsection is a Class A
2 misdemeanor if the value of the supplemental nutrition assistance
3 program electronic [~~food stamp~~] benefit transfer card [~~permits~~] is
4 less than \$200 and a felony of the third degree if the value [~~of the~~
5 ~~food stamp benefit permits~~] is \$200 or more.

6 (b) A person commits an offense if the person knowingly
7 possesses a supplemental nutrition assistance program electronic
8 [~~food stamp~~] benefit transfer card [~~permits~~] when not authorized by
9 law to possess the card [~~them~~], knowingly redeems supplemental
10 nutrition assistance program benefits [~~food stamp benefit permits~~]
11 when not authorized by law to redeem them, or knowingly redeems
12 supplemental nutrition assistance program benefits [~~food stamp~~
13 ~~benefit permits~~] for purposes not authorized by law. An offense
14 under this subsection is a Class A misdemeanor if the value of the
15 supplemental nutrition assistance program electronic benefit
16 transfer card possessed, or the program benefits redeemed, [~~food~~
17 ~~stamp benefit permits~~] is less than \$200 and a felony of the third
18 degree if the value of the supplemental nutrition assistance
19 program electronic benefit transfer card possessed, or the program
20 benefits redeemed, [~~food stamp benefit permits~~] is \$200 or more.

21 [c) A person commits an offense if the person knowingly
22 possesses blank authorizations to participate in the food stamp
23 program when not authorized by law to possess them. An offense
24 under this subsection is a felony of the third degree.]

25 (d) When cash, exchange value, or supplemental nutrition
26 assistance program electronic [~~food stamp~~] benefit transfer cards
27 [~~permits~~] of various values are obtained in violation of this

1 section pursuant to one scheme or continuing course of conduct,
2 whether from the same or several sources, the conduct may be
3 considered as one offense and the values aggregated in determining
4 the grade of the offense.

5 (e) The commission [department] may contract with county
6 commissioners courts to provide funds to pay for professional and
7 support services necessary for the enforcement of any criminal
8 offense that involves illegally obtaining, possessing, or misusing
9 supplemental nutrition assistance program benefits [~~food stamps~~].

10 (f) For the purposes of Subsections (a) and (b), the value
11 of a supplemental nutrition assistance program electronic [~~food~~
12 ~~stamp~~] benefit transfer card [~~permits~~] is the cash or exchange
13 value obtained in violation of this section.

14 (g) In this section, "supplemental nutrition assistance
15 program benefits [~~food stamp benefit permits~~]" includes [+
16 [~~(1) food stamp coupons,~~
17 [~~(2)~~] electronic benefit transfer (EBT) cards [~~+ and~~
18 [~~(3) authorizations to participate in the food stamp~~
19 ~~program~~].

20 SECTION 4.163. Sections 33.012, 33.013, 33.015, 33.022,
21 33.023, 33.0231, and 33.025, Human Resources Code, are amended to
22 read as follows:

23 Sec. 33.012. CHEMICAL DEPENDENCY TREATMENT PROGRAM AS
24 REPRESENTATIVE. The commission [department] shall provide an
25 individual's supplemental nutrition assistance program [~~food~~
26 ~~stamp~~] allotment to the residential chemical dependency treatment
27 program in which the person resides to the extent allowed under

1 Section 8(f), Food Stamp Act of 1977 (7 U.S.C. Section 2017(e)), if
2 the individual designates the program as the individual's
3 authorized representative.

4 Sec. 33.013. INFORMATION AND REFERRAL SERVICES. (a) Each
5 local supplemental nutrition assistance program benefits [~~food~~
6 ~~stamp~~] office shall compile and maintain a current list of
7 emergency food providers in the area served by the local
8 supplemental nutrition assistance program benefits [~~food stamp~~]
9 office and refer individuals who need food to local programs that
10 may be able to provide assistance.

11 (b) The commission [~~department~~] shall establish regional or
12 statewide toll-free telephone hotlines to provide emergency food
13 information and to refer needy individuals to local programs that
14 may be able to provide assistance. The commission [~~department~~]
15 shall publish the telephone number for referrals in the emergency
16 telephone numbers section of local telephone books. The commission
17 [~~department~~] shall display this telephone number in all of its
18 offices.

19 (c) Where emergency food programs do not exist, the
20 commission [~~department office~~] shall assist community groups in
21 establishing emergency food assistance programs.

22 (d) The commission [~~department~~] may establish other local,
23 regional, or statewide programs to provide emergency food
24 information and referral services where needed and where none
25 presently exist.

26 Sec. 33.015. INITIAL ESTABLISHMENT AND RECERTIFICATION OF
27 ELIGIBILITY FOR CERTAIN PERSONS. (a) In administering the

1 supplemental nutrition assistance [~~food stamp~~] program, the
2 commission [~~department~~] shall, except as provided by Subsection
3 (c), allow a person to comply with initial eligibility
4 requirements, including any initial interview, and with subsequent
5 periodic eligibility recertification requirements by telephone
6 instead of through a personal appearance at commission [~~department~~]
7 offices if:

8 (1) the person and each member of the person's
9 household:

10 (A) have no earned income; and
11 (B) are elderly or persons with disabilities
12 [~~disabled~~]; or

13 (2) the person is subject to a hardship, as determined
14 by commission rule [~~the department~~].

15 (b) For purposes of rules under Subsection (a)(2), a
16 hardship includes a situation in which a person is prevented from
17 personally appearing at commission [~~department~~] offices because
18 the person is:

19 (1) subject to a work or training schedule;
20 (2) subject to transportation difficulties;
21 (3) subject to other difficulties arising from the
22 person's residency in a rural area;

23 (4) subject to prolonged severe weather;
24 (5) ill; or
25 (6) needed to care for a member of the person's
26 household.

27 (c) The commission [~~department~~] may require a person

1 described by Subsection (a) to personally appear at commission
2 [department] offices to establish initial eligibility or to comply
3 with periodic eligibility recertification requirements if the
4 commission [department] considers a personal appearance necessary
5 to:

6 (1) protect the integrity of the supplemental
7 nutrition assistance [~~food stamp~~] program; or

8 (2) prevent an adverse determination regarding the
9 person's eligibility that would be less likely to occur if the
10 person made a personal appearance.

11 (d) A person described by Subsection (a) may elect to
12 personally appear at commission [department] offices to establish
13 initial eligibility or to comply with periodic eligibility
14 recertification requirements.

15 (e) The commission [department] shall require a person
16 exempted under this section from making a personal appearance at
17 commission [department] offices to provide verification of the
18 person's entitlement to the exemption on initial eligibility
19 certification and on each subsequent periodic eligibility
20 recertification. If the person does not provide verification and
21 the commission [department] considers the verification necessary
22 to protect the integrity of the supplemental nutrition assistance
23 [~~food stamp~~] program, the commission [department] shall initiate a
24 fraud referral to the commission's [department's] office of
25 inspector general.

26 Sec. 33.022. APPLICATION ASSISTANCE. (a) On request of an
27 applicant for supplemental nutrition assistance program benefits,

1 the commission [department] shall assist the applicant in filling
2 out forms and completing the application process.

3 (b) The commission [department] shall inform each applicant
4 of the availability of assistance.

5 Sec. 33.023. INFORMATION VERIFICATION. (a) The commission
6 [department] shall develop and implement for expedited issuance a
7 uniform procedure for verifying information required of an
8 applicant for supplemental nutrition assistance program benefits.

9 (b) In developing the uniform procedure, the commission
10 [department] shall attempt to minimize the cost and complexity of
11 the procedure to the applicant.

12 (c) The commission [department] shall not require an
13 applicant [applicants] for expedited service to verify more
14 eligibility items than the minimum necessary to conform to the
15 federal regulations and shall assist the applicant in obtaining
16 materials needed to verify an application. The commission
17 [department] shall not deny or delay determination of eligibility
18 due to lack of verification of items that may be postponed if they
19 cannot be verified within the timeframes prescribed by the federal
20 regulations.

21 (d) The commission [department] shall post a notice in each
22 of its offices indicating to whom an applicant for or client of the
23 supplemental nutrition assistance program can talk to resolve
24 problems or complaints. This notice should indicate persons
25 available to handle problems in local, regional, and state offices.
26 Notification of the existence of each office and complaint
27 procedures shall be posted in each supplemental nutrition

1 assistance program benefits [~~food stamp~~] office and in materials
2 made available to applicants regarding the application process.

3 Sec. 33.0231. VERIFICATION OF IDENTITY AND PREVENTION OF
4 DUPLICATE PARTICIPATION IN SNAP. The commission [~~department~~] shall
5 use appropriate technology to:

6 (1) confirm the identity of applicants for benefits
7 under the supplemental nutrition assistance program; and

8 (2) prevent duplicate participation in the program by
9 a person.

10 Sec. 33.025. NUTRITION EDUCATION AND OUTREACH FOR THOSE
11 ELIGIBLE FOR SNAP BENEFITS [~~FOOD STAMPS~~]. (a) The commission
12 [~~department~~] shall develop and implement a plan of operation to
13 provide nutrition education and outreach to persons eligible for
14 supplemental nutrition assistance program benefits [~~food stamps~~].

15 (b) The plan of operation for education and outreach shall:

16 (1) ensure that low-income consumers are provided with
17 informational materials that include but are not limited to
18 information on:

19 (A) food budgeting for low-income consumers;

20 (B) purchasing and preparing low-cost
21 nutritional meals;

22 (C) basic nutrition and healthy foods;

23 (D) the availability of supplemental nutrition
24 assistance program benefits [~~food stamps~~];

25 (E) the eligibility requirements for
26 supplemental nutrition assistance program benefits [~~food stamps~~];
27 and

1 (F) the application procedures for receiving
2 supplemental nutrition assistance program benefits [~~food stamps~~];

3 (2) identify a target population for the informational
4 activities, which may include:

5 (A) recipients of the Special Supplemental
6 Nutrition [~~Food~~] Program for Women, Infants and Children;

7 (B) families which have children who are eligible
8 for the free or reduced-priced meals programs;

9 (C) recipients of commodity surplus foods;

10 (D) senior citizens attending nutrition sites
11 and participating in nutritional activities;

12 (E) clients of emergency food pantries;

13 (F) farm workers or migrants; and

14 (G) others who may benefit from the information
15 including but not limited to senior citizens, persons with
16 disabilities, and working poor families;

17 (3) identify geographical areas, if any, which
18 specifically will be targeted; and

19 (4) ensure that all informational activities are
20 multilingual and available in accessible alternative formats.

21 (c) The commission [~~department~~] shall submit the plan of
22 operation to the Food and Nutrition Service of the United States
23 Department of Agriculture for approval, making the commission
24 [~~department~~] eligible for reimbursement for 50 percent of the cost
25 of the informational activities.

26 (d) The commission [~~department~~] shall cooperate with other
27 state agencies that currently operate nutrition education

1 programs.

2 (e) The commission [~~department~~] shall enlist the assistance
3 of pro bono public relations firms where available.

4 SECTION 4.164. Section 33.026(c), Human Resources Code, is
5 amended to read as follows:

6 (c) The department may, with respect to [~~department's~~
7 ~~advisory committee on~~] the federal Child and Adult Care Food
8 Program [~~may~~]:

9 (1) conduct public hearings in accordance with
10 department procedures;

11 (2) refer issues relating to the program to the
12 commissioner [~~board~~] for discussion; and

13 (3) recommend modifications to the department's
14 training programs for sponsoring organizations and other persons
15 participating in the program.

16 SECTION 4.165. Section 33.0271(h), Human Resources Code, is
17 amended to read as follows:

18 (h) The department [~~executive commissioner~~] by rule may
19 establish procedures that would allow an entity that had the
20 entity's application to participate in the Child and Adult Care
21 Food Program denied or authority to participate in the program
22 revoked under Subsection (g) to appeal the department's
23 determination under that subsection.

24 SECTION 4.166. Section 33.028, Human Resources Code, is
25 amended to read as follows:

26 Sec. 33.028. GRANT PROGRAMS FOR NUTRITION EDUCATION. (a)
27 The department [~~Department of Agriculture~~] shall develop a program

1 under which the department awards grants to:

2 (1) participants in the Child and Adult Care Food
3 Program, the Head Start program, or other early childhood education
4 programs to operate nutrition education programs for children who
5 are at least three years of age but younger than five years of age;
6 and

7 (2) community and faith-based initiatives that
8 provide recreational, social, volunteer, leadership, mentoring, or
9 developmental programs to incorporate nutrition education into
10 programs provided for children younger than 19 years of age.

11 (b) The department [Department of Agriculture] may solicit
12 and accept gifts, grants, and donations from any public or private
13 source for the purposes of this section.

14 (c) The department [Department of Agriculture] may adopt
15 rules as necessary to administer the grant programs established
16 under this section.

17 SECTION 4.167. Sections 34.002(a) and (d), Human Resources
18 Code, are amended to read as follows:

19 (a) The Health and Human Services Commission[, the
20 ~~department,~~] and the Texas Workforce Commission, with the
21 participation of local workforce development boards, shall jointly
22 develop and implement a state program of temporary assistance and
23 related support services that is distinct from the financial
24 assistance program authorized by Chapter 31.

25 (d) If federal law is enacted that imposes work
26 participation rate requirements on two-parent families for
27 purposes of the financial assistance program under Chapter 31 that

1 are substantively identical to those that federal law imposes on
2 one-parent families for purposes of that program, the Health and
3 Human Services Commission [department] may, on the effective date
4 of the federal law relating to the work participation rate
5 requirements for two-parent families, provide for establishment of
6 that recipient's eligibility for financial assistance under
7 Chapter 31 instead of under this chapter in a manner that avoids
8 disruption of benefits for which the recipient is eligible.

9 SECTION 4.168. Sections 34.003(a) and (c), Human Resources
10 Code, are amended to read as follows:

11 (a) The executive commissioner [~~Health and Human Services~~
12 ~~Commission, the department,~~] and the Texas Workforce Commission
13 shall adopt all rules necessary for implementation of the state
14 program, including rules regarding eligibility, work requirements,
15 work exemptions, time limits, and related support services.

16 (c) The Health and Human Services Commission[~~, the~~
17 ~~department,~~] and the Texas Workforce Commission shall form an
18 interagency work group to develop the rules required under this
19 section. The interagency work group shall provide for
20 participation in development of the rules by representatives of
21 local workforce development boards.

22 SECTION 4.169. Section 34.004, Human Resources Code, is
23 amended to read as follows:

24 Sec. 34.004. PROCEDURES APPLICABLE TO PERSONS RESIDING IN
25 MINIMUM SERVICE COUNTIES. The Health and Human Services
26 Commission[~~, the department,~~] and the Texas Workforce Commission
27 shall develop and implement procedures to:

1 (1) determine the date on which a person's eligibility
2 for temporary assistance and related support services based on
3 residency in a minimum service county, as defined by the Texas
4 Workforce Commission, will cease as a result of the county's
5 reclassification; and

6 (2) provide for establishment of that person's
7 eligibility for financial assistance and related support services
8 under Chapter 31 in a manner that avoids disruption of benefits for
9 which the person is eligible.

10 SECTION 4.170. Section 34.006, Human Resources Code, is
11 amended to read as follows:

12 Sec. 34.006. STUDY. The Texas Workforce Commission, in
13 collaboration with local workforce development boards and the
14 appropriate standing committees of the senate and house of
15 representatives, shall:

16 (1) study methods to improve the delivery of workforce
17 services to persons residing in minimum service counties, as
18 defined by the Texas Workforce Commission [commission]; and

19 (2) develop recommendations to improve the delivery of
20 services described by Subdivision (1).

21 SECTION 4.171. Section 35.001(3), Human Resources Code, is
22 amended to read as follows:

23 (3) "Department" means the [~~Texas~~] Department of Aging
24 and Disability [~~Human~~] Services.

25 SECTION 4.172. Section 35.002, Human Resources Code, is
26 amended to read as follows:

27 Sec. 35.002. ADOPTION OF RULES AND IMPLEMENTATION OF

1 PROGRAM. The executive commissioner [department] shall adopt rules
2 to implement and administer this chapter, including:

3 (1) procedures and guidelines for determining
4 eligibility standards relating to financial qualifications and the
5 need for services and for determining eligibility criteria for
6 selecting clients to receive assistance;

7 (2) standards and procedures for approving qualified
8 programs and support services;

9 (3) procedures for conducting a periodic review of
10 clients;

11 (4) procedures and guidelines for determining when
12 assistance duplicates other support programs or results in
13 excessive support to a client;

14 (5) reasonable payment rates for qualified programs
15 and support services under this chapter; and

16 (6) a copayment system in accordance with Section
17 35.007 [~~of this code~~].

18 SECTION 4.173. Sections 35.003(a), (b), (c), and (f), Human
19 Resources Code, are amended to read as follows:

20 (a) The department's rules must provide that an applicant
21 for assistance is eligible to receive assistance if the applicant
22 resides in this state and meets the department's eligibility
23 criteria for income and need [~~and is not eligible for services under~~
24 ~~Subchapter A, Chapter 535, Health and Safety Code~~]. A family or a
25 person with a disability living independently may apply for
26 assistance.

27 (b) The department shall determine in accordance with

1 department rules eligibility for support services from the results
2 of current evaluations, program plans, and medical reports. Those
3 documents shall be provided to the department on request. The
4 department, if it considers necessary, shall provide any additional
5 evaluations.

6 (c) The department shall determine the applicant's needs
7 and the support services for which the applicant is eligible in
8 accordance with department rules and after consulting with the
9 applicant.

10 (f) If requested by the applicant, the commission's appeals
11 division [department] shall hold a hearing on the denial of an
12 application.

13 SECTION 4.174. Section 35.004(b), Human Resources Code, is
14 amended to read as follows:

15 (b) The executive commissioner [department] by rule may add
16 services and programs for which the department may provide
17 assistance.

18 SECTION 4.175. Sections 35.005(a) and (b), Human Resources
19 Code, are amended to read as follows:

20 (a) The department may grant assistance of not more than
21 \$3,600 a year to a client and make periodic distributions or a
22 lump-sum distribution according to the client's needs. The
23 commissioner of aging and disability services or the commissioner's
24 designee may grant additional amounts on consideration of an
25 individual client's needs.

26 (b) In addition to the assistance authorized by Subsection
27 (a) [~~of this section~~], the department may award to a client a

1 one-time [~~onetime~~] grant of assistance of not more than \$3,600 for
2 architectural renovation or other capital expenditure to improve or
3 facilitate the care, treatment, therapy, general living
4 conditions, or access of a person with a disability. The
5 commissioner of aging and disability services or the commissioner's
6 designee may grant additional amounts on consideration of an
7 individual client's needs.

8 SECTION 4.176. Section 35.007, Human Resources Code, is
9 amended to read as follows:

10 Sec. 35.007. COPAYMENT SYSTEM. In accordance with
11 department rules, the [~~The~~] department shall establish a copayment
12 system with each client using a scale for payments determined
13 according to the client's need for financial assistance to acquire
14 the necessary support services and the client's ability to pay for
15 those services.

16 SECTION 4.177. Section 35.008(a), Human Resources Code, is
17 amended to read as follows:

18 (a) The executive commissioner [~~department~~] by rule shall
19 establish a reasonable charge for each authorized support service.

20 SECTION 4.178. Section 35.009, Human Resources Code, is
21 amended to read as follows:

22 Sec. 35.009. CLIENT RESPONSIBILITY FOR PAYMENT. Each
23 client shall pay:

24 (1) the client's copayment;
25 (2) the amount of charges in excess of the amount
26 determined by the executive commissioner [~~department~~] to be
27 reasonable; and

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(3) the amount of charges incurred in excess of the maximum amount of assistance authorized by this chapter to be provided by the department.

4 SECTION 4.179. Section 36.001(3), Human Resources Code, is
5 amended to read as follows:

(3) "Fiscal agent" means:

13 SECTION 4.180. Section 36.002, Human Resources Code, is
14 amended to read as follows:
15 Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful
16 act if the person

22 (2) knowingly conceals or fails to disclose
23 information that permits a person to receive a benefit or payment
24 under the Medicaid program that is not authorized or that is greater
25 than the benefit or payment that is authorized;

26 (3) knowingly applies for and receives a benefit or
27 payment on behalf of another person under the Medicaid program and

1 converts any part of the benefit or payment to a use other than for
2 the benefit of the person on whose behalf it was received;

3 (4) knowingly makes, causes to be made, induces, or
4 seeks to induce the making of a false statement or
5 misrepresentation of material fact concerning:

6 (A) the conditions or operation of a facility in
7 order that the facility may qualify for certification or
8 recertification required by the Medicaid program, including
9 certification or recertification as:

10 (i) a hospital;

11 (ii) a nursing facility or skilled nursing
12 facility;

13 (iii) a hospice;

14 (iv) an ICF-IID [~~intermediate care facility~~
15 ~~for the mentally retarded~~];

16 (v) an assisted living facility; or

17 (vi) a home health agency; or

18 (B) information required to be provided by a
19 federal or state law, rule, regulation, or provider agreement
20 pertaining to the Medicaid program;

21 (5) except as authorized under the Medicaid program,
22 knowingly pays, charges, solicits, accepts, or receives, in
23 addition to an amount paid under the Medicaid program, a gift,
24 money, a donation, or other consideration as a condition to the
25 provision of a service or product or the continued provision of a
26 service or product if the cost of the service or product is paid
27 for, in whole or in part, under the Medicaid program;

1 (6) knowingly presents or causes to be presented a
2 claim for payment under the Medicaid program for a product provided
3 or a service rendered by a person who:

4 (A) is not licensed to provide the product or
5 render the service, if a license is required; or

6 (B) is not licensed in the manner claimed;

7 (7) knowingly makes or causes to be made a claim under
8 the Medicaid program for:

9 (A) a service or product that has not been
10 approved or acquiesced in by a treating physician or health care
11 practitioner;

12 (B) a service or product that is substantially
13 inadequate or inappropriate when compared to generally recognized
14 standards within the particular discipline or within the health
15 care industry; or

16 (C) a product that has been adulterated, debased,
17 mislabeled, or that is otherwise inappropriate;

18 (8) makes a claim under the Medicaid program and
19 knowingly fails to indicate the type of license and the
20 identification number of the licensed health care provider who
21 actually provided the service;

22 (9) conspires to commit a violation of Subdivision
23 (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (12), or (13);

24 (10) is a managed care organization that contracts
25 with the commission [Health and Human Services Commission] or other
26 state agency to provide or arrange to provide health care benefits
27 or services to individuals eligible under the Medicaid program and

1 knowingly:

2 (A) fails to provide to an individual a health
3 care benefit or service that the organization is required to
4 provide under the contract;

5 (B) fails to provide to the commission or
6 appropriate state agency information required to be provided by
7 law, commission or agency rule, or contractual provision; or

8 (C) engages in a fraudulent activity in
9 connection with the enrollment of an individual eligible under the
10 Medicaid program in the organization's managed care plan or in
11 connection with marketing the organization's services to an
12 individual eligible under the Medicaid program;

13 (11) knowingly obstructs an investigation by the
14 attorney general of an alleged unlawful act under this section;

15 (12) knowingly makes, uses, or causes the making or
16 use of a false record or statement material to an obligation to pay
17 or transmit money or property to this state under the Medicaid
18 program, or knowingly conceals or knowingly and improperly avoids
19 or decreases an obligation to pay or transmit money or property to
20 this state under the Medicaid program; or

21 (13) knowingly engages in conduct that constitutes a
22 violation under Section 32.039(b).

23 SECTION 4.181. Section 36.003(a), Human Resources Code, is
24 amended to read as follows:

25 (a) A state agency, including the commission [~~Health and~~
26 ~~Human Services Commission~~], the [~~Texas~~] Department of State Health
27 [~~Human~~] Services, the [~~Texas~~] Department of Aging and Disability

1 Services [~~Health, the Texas Department of Mental Health and Mental~~
2 ~~Retardation~~], and [~~or~~] the Department of Family and Protective [~~and~~
3 ~~Regulatory~~] Services, shall provide the attorney general access to
4 all documentary materials of persons and Medicaid recipients under
5 the Medicaid program to which that agency has access. Documentary
6 material provided under this subsection is provided to permit
7 investigation of an alleged unlawful act or for use or potential use
8 in an administrative or judicial proceeding.

9 SECTION 4.182. Sections 36.005(a), (b), and (b-2), Human
10 Resources Code, are amended to read as follows:

11 (a) A health and human services agency, as defined by
12 Section 531.001, Government Code:

13 (1) shall suspend or revoke:
14 (A) a provider agreement between the agency and a
15 person, other than a person who operates a nursing facility or an
16 ICF-IID [~~ICF-MR facility~~], found liable under Section 36.052; and
17 (B) a permit, license, or certification granted
18 by the agency to a person, other than a person who operates a
19 nursing facility or an ICF-IID [~~ICF-MR facility~~], found liable
20 under Section 36.052; and

21 (2) may suspend or revoke:
22 (A) a provider agreement between the agency and a
23 person who operates a nursing facility or an ICF-IID [~~ICF-MR~~
24 ~~facility~~] and who is found liable under Section 36.052; or
25 (B) a permit, license, or certification granted
26 by the agency to a person who operates a nursing facility or an
27 ICF-IID [~~ICF-MR facility~~] and who is found liable under Section

1 36.052.

2 (b) A provider found liable under Section 36.052 for an
3 unlawful act may not, for a period of 10 years, provide or arrange
4 to provide health care services under the Medicaid program or
5 supply or sell, directly or indirectly, a product to or under the
6 Medicaid program. The executive commissioner [of the Health and
7 Human Services Commission] may by rule:

8 (1) provide for a period of ineligibility longer than
9 10 years; or

10 (2) grant a provider a full or partial exemption from
11 the period of ineligibility required by this subsection if the
12 executive commissioner finds that enforcement of the full period of
13 ineligibility is harmful to the Medicaid program or a beneficiary
14 of the program.

15 (b-2) Subsections (b) and (b-1) do not apply to a provider
16 who operates a nursing facility or an ICF-IID [~~ICF-MR facility~~].

17 SECTION 4.183. Section 36.052(a), Human Resources Code, is
18 amended to read as follows:

19 (a) Except as provided by Subsection (c), a person who
20 commits an unlawful act is liable to the state for:

21 (1) the amount of any payment or the value of any
22 monetary or in-kind benefit provided under the Medicaid program,
23 directly or indirectly, as a result of the unlawful act, including
24 any payment made to a third party;

25 (2) interest on the amount of the payment or the value
26 of the benefit described by Subdivision (1) at the prejudgment
27 interest rate in effect on the day the payment or benefit was

1 received or paid, for the period from the date the benefit was
2 received or paid to the date that the state recovers the amount of
3 the payment or value of the benefit;

4 (3) a civil penalty of:

5 (A) not less than \$5,500 or the minimum amount
6 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
7 exceeds \$5,500, and not more than \$15,000 or the maximum amount
8 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
9 exceeds \$15,000, for each unlawful act committed by the person that
10 results in injury to an elderly person, as defined by Section
11 48.002(a)(1), a [disabled] person with a disability, as defined by
12 Section 48.002(a)(8)(A), or a person younger than 18 years of age;
13 or

14 (B) not less than \$5,500 or the minimum amount
15 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
16 exceeds \$5,500, and not more than \$11,000 or the maximum amount
17 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
18 exceeds \$11,000, for each unlawful act committed by the person that
19 does not result in injury to a person described by Paragraph (A);
20 and

21 (4) two times the amount of the payment or the value of
22 the benefit described by Subdivision (1).

23 SECTION 4.184. Section 36.110(a-1), Human Resources Code,
24 is amended to read as follows:

25 (a-1) If the state does not proceed with an action under
26 this subchapter, the person bringing the action is entitled, except
27 as provided by Subsection (b), to receive at least 25 percent but

1 not more than 30 percent of the proceeds of the action. The
2 entitlement of a person under this subsection is not affected by any
3 subsequent intervention in the action by the state in accordance
4 with Section 36.104(b-1) [~~36.104(b)~~].

5 SECTION 4.185. Sections 40.002(a), (b), and (c), Human
6 Resources Code, are amended to read as follows:

7 (a) The Department of Family and Protective Services is
8 composed of the council, the commissioner, an administrative staff,
9 and other ~~[officers and]~~ employees necessary to efficiently carry
10 out the purposes of this chapter.

11 (b) Notwithstanding any other law, the department shall:

12 (1) provide protective services for children and
13 elderly persons and ~~disabled~~ persons with disabilities,
14 including investigations of alleged abuse, neglect, or
15 exploitation in facilities of the Department of State Health
16 Services and the [Texas] Department of Aging [Mental Health] and
17 Disability Services [Mental Retardation] or the [its] successor
18 agency for either of those agencies;

19 (2) provide family support and family preservation
20 services that respect the fundamental right of parents to control
21 the education and upbringing of their children;

22 (3) license, register, and enforce regulations
23 applicable to child-care facilities, child-care administrators,
24 and child-placing agency administrators; and

25 (4) implement and manage programs intended to provide
26 early intervention or prevent at-risk behaviors that lead to child
27 abuse, delinquency, running away, truancy, and dropping out of

1 school.

2 (c) The department is the state agency designated to
3 cooperate with the federal government in the administration of
4 programs under:

5 (1) Parts B and E, Title IV, federal Social Security
6 Act (42 U.S.C. Sections 620 et seq. and 670 et seq.); [and]

7 (2) the Child Abuse Prevention and Treatment Act (42
8 U.S.C. Section 5101 et seq.); and

9 (3) other federal law for which the department has
10 administrative responsibility.

11 SECTION 4.186. Sections 40.0041(a), (d), and (f), Human
12 Resources Code, are amended to read as follows:

13 (a) The executive commissioner by rule [department] shall
14 develop and implement a uniform process for receiving and resolving
15 complaints against the department throughout the state. The
16 process shall include:

17 (1) statewide procedures through which the public,
18 consumers, and service recipients are informed:

19 (A) of the right to make a complaint against the
20 department, including the mailing addresses and telephone numbers
21 of appropriate department personnel responsible for receiving
22 complaints and providing related assistance; and

23 (B) of the department's procedures for resolving
24 a complaint, including the right to appeal a decision made at the
25 local level;

26 (2) development and statewide distribution of a form
27 or telephone system that may be used to make a complaint;

9 (d) The executive commissioner [executive director] shall
10 develop a consistent, statewide process for addressing an appeal by
11 a person dissatisfied with the resolution of a complaint at the
12 regional level. The process shall include an opportunity for
13 appeal of a complaint without the participation of the department's
14 ombudsman office.

15 (f) The department shall periodically prepare and deliver
16 reports to the executive commissioner [board] and the commissioner
17 [~~executive director~~] regarding the number, type, and resolution of
18 complaints made in the state against the department.

19 SECTION 4.187. Sections 40.005(a), (b), and (c), Human
20 Resources Code, are amended to read as follows:

21 (a) The executive commissioner [department] shall establish
22 and the department shall enforce rules governing the custody, use,
23 and preservation of the department's records, papers, files, and
24 communications.

25 (b) The executive commissioner [department] shall prescribe
26 safeguards to govern the use or disclosure of information relating
27 to a recipient of a department service or to an investigation the

1 department conducts in performing its duties and responsibilities.
2 The safeguards must be consistent with the purposes of the
3 department's programs and must comply with applicable state and
4 federal law and department rules.

5 (c) Notwithstanding any other provision of law, the
6 executive commissioner [department] by rule may prescribe a process
7 by which an administrative law judge may disclose requested
8 confidential information that the department possesses. The rules
9 must provide that the information may be disclosed by the
10 administrative law judge only if the administrative law judge:

11 (1) provides notice to the department and any
12 interested party; and

13 (2) determines after an in camera review of the
14 information that disclosure is essential to the administration of
15 justice and will not endanger the life or safety of any individual.

16 SECTION 4.188. Section 40.027(c), Human Resources Code, is
17 amended to read as follows:

18 (c) Subject to the control of the executive commissioner,
19 the commissioner shall:

20 (1) act as the department's chief administrative
21 officer;

22 (2) in accordance with the procedures prescribed by
23 Section 531.00551, Government Code, assist the executive
24 commissioner in the development and implementation of policies and
25 guidelines needed for the administration of the department's
26 functions;

27 (3) in accordance with the procedures adopted by the

1 executive commissioner under Section 531.00551, Government Code,
2 assist the executive commissioner in the development of rules
3 relating to the matters within the department's jurisdiction,
4 including the delivery of services to persons and the rights and
5 duties of persons who are served or regulated by the department; and
6 (4) serve as a liaison between the department and
7 commission.

8 SECTION 4.189. Section 40.0315, Human Resources Code, is
9 amended to read as follows:

10 Sec. 40.0315. INVESTIGATION UNIT FOR ADULT PROTECTIVE
11 SERVICES. (a) The adult protective services division of the
12 department shall maintain an investigation unit to investigate
13 allegations of abuse, neglect, and exploitation of elderly persons
14 and [~~disabled~~] persons with disabilities reported to the division.

15 (b) An investigator in the unit shall determine whether an
16 elderly person or [~~disabled~~] person with a disability who is the
17 subject of a report made under Section 48.051(a) may have suffered
18 from abuse, neglect, or exploitation as a result of the criminal
19 conduct of another person. If the investigator determines that
20 criminal conduct may have occurred, the investigator shall
21 immediately notify:

22 (1) the commission's office of inspector general if
23 the [~~disabled~~] person with a disability who is the subject of the
24 report resides in a state supported living center or the ICF-IID
25 [~~ICF-MR~~] component of the Rio Grande State Center; and

26 (2) the appropriate law enforcement agency, unless the
27 law enforcement agency reported the alleged abuse, neglect, or

1 exploitation to the department.

2 SECTION 4.190. Sections 40.032(a), (b), (c), (d), (e), and
3 (f), Human Resources Code, are amended to read as follows:

4 (a) The department [~~executive director~~] may employ
5 personnel necessary to administer the department's duties.

6 (b) The department [~~executive director or the executive~~
7 ~~director's designated representative~~] shall develop an
8 intradepartmental career ladder program that addresses
9 opportunities for mobility and advancement for employees within the
10 department. The program shall require the intradepartmental
11 posting of all positions concurrently with any public posting.

12 (c) The department [~~executive director or the executive~~
13 ~~director's designated representative~~] shall develop a system of
14 annual performance evaluations based on measurable job tasks. All
15 merit pay for department employees must be based on the system
16 established under this subsection.

17 (d) The department [~~executive director or the executive~~
18 ~~director's designated representative~~] shall provide [~~to members of~~
19 ~~the board and~~] to the department's employees, as often as is
20 necessary, information regarding their qualifications for office
21 or employment under this chapter and their responsibilities under
22 applicable laws relating to standards of conduct for state officers
23 or employees.

24 (e) The department [~~executive director or the executive~~
25 ~~director's designated representative~~] shall prepare and maintain a
26 written policy statement to ensure implementation of a program of
27 equal employment opportunity under which all personnel

1 transactions are made without regard to race, color, disability,
2 sex, religion, age, or national origin. The policy statement must
3 include:

4 (1) personnel policies, including policies relating
5 to recruitment, evaluation, selection, appointment, training, and
6 promotion of personnel, that comply with Chapter 21, Labor Code;

7 (2) a comprehensive analysis of the department's
8 workforce that meets federal and state laws, rules, and regulations
9 and instructions adopted under those laws, rules, and regulations;

10 (3) procedures by which a determination can be made
11 about the extent of underuse in the department's workforce of all
12 persons for whom federal or state laws, rules, and regulations and
13 instructions adopted under those laws, rules, and regulations
14 encourage a more equitable balance; and

15 (4) reasonable methods to appropriately address those
16 areas of underuse.

17 (f) The policy statement required under Subsection (e)
18 shall:

19 (1) be filed with the governor's office;

20 (2) cover an annual period;

21 (3) be updated at least annually; and

22 (4) be reviewed by the Texas Workforce Commission
23 civil rights division [~~on Human Rights~~] for compliance with
24 Subsection (e)(1).

25 SECTION 4.191. Section 40.0321(d), Human Resources Code, is
26 amended to read as follows:

27 (d) The department may [~~shall~~] not require a salary

1 supplement as a condition for creating or maintaining a position in
2 the region.

3 SECTION 4.192. Section 40.0322(a), Human Resources Code, is
4 amended to read as follows:

5 (a) In hiring department employees whose duties include
6 providing services as part of, or relating to, the provision of
7 adult protective services directly to an elderly person or
8 [disabled] person with a disability, the commissioner shall ensure
9 that the department hires, as often as possible, persons with
10 professional credentials related to adult protective services,
11 including persons who are licensed master social workers, as
12 defined by Section 505.002, Occupations Code, or licensed
13 professional counselors.

14 SECTION 4.193. Section 40.0323, Human Resources Code, is
15 amended to read as follows:

16 Sec. 40.0323. COORDINATION REGARDING RECRUITMENT FOR AND
17 CURRICULUM OF CERTAIN CERTIFICATE OR DEGREE PROGRAMS. Subject to
18 the availability of funds, the department and the Texas Higher
19 Education Coordinating Board jointly shall develop strategies to:

20 (1) promote certificate or degree programs in the
21 fields of social work and psychology to individuals enrolled in or
22 admitted to institutions of higher education in this state; and

23 (2) ensure that persons receiving a certificate or
24 degree, including a graduate degree, in social work or psychology
25 from an institution of higher education in this state have the
26 knowledge and skills regarding protective services that are
27 provided directly to elderly persons or [disabled] persons with

1 disabilities and necessary for successful employment by the adult
2 protective services division of the department.

3 SECTION 4.194. Section 40.033(a), Human Resources Code, is
4 amended to read as follows:

5 (a) Subject to rules adopted by the executive commissioner,
6 the [The] department may establish a merit system for its
7 employees.

8 SECTION 4.195. Sections 40.035(a), (b), and (d), Human
9 Resources Code, are amended to read as follows:

10 (a) The department shall develop and implement a training
11 program that each newly hired or assigned department employee must
12 complete before:

13 (1) initiating an investigation of a report of alleged
14 abuse, neglect, or exploitation of an elderly person or [disabled]
15 person with a disability under Chapter 48; or

16 (2) providing protective services to elderly persons
17 or [disabled] persons with disabilities under that chapter.

18 (b) The training program must:

19 (1) provide the person with appropriate comprehensive
20 information regarding:

21 (A) the incidence and types of reports of abuse,
22 neglect, and exploitation of elderly persons or [disabled] persons
23 with disabilities that are received by the department, including
24 information concerning false reports; and

25 (B) the use and proper implementation of:

26 (i) the risk assessment criteria developed
27 under Section 48.004;

1 (ii) the criteria used by caseworkers to
2 determine whether elderly persons or [disabled] persons with
3 disabilities lack capacity to consent to receive protective
4 services; and

21 (A) investigation of suspected identity theft
22 and other forms of financial exploitation and suspected
23 self-neglect; and

24 (B) establishment and maintenance of working
25 relationships with community organizations and other local
26 providers who provide services to elderly persons and [disabled]
27 persons with disabilities;

1 (4) include on-the-job training, which must require
2 another department caseworker with more experience to accompany and
3 train the caseworker in the field;

4 (5) provide for the development of individualized
5 training plans;

6 (6) include training in working with law enforcement
7 agencies and the court system when legal intervention is sought for
8 investigations or emergency orders;

9 (7) to the maximum extent possible, include nationally
10 recognized best practices in addition to the best practices
11 required under Subdivision (2); and

12 (8) include testing, progress reports, or other
13 evaluations to assess the performance of trainees.

14 (d) The department shall develop and implement appropriate
15 continuing education programs for employees of the adult protective
16 services division who have completed initial training under this
17 section. The continuing education programs must include nationally
18 recognized best practices to the maximum extent possible and must
19 be designed to provide an annual update regarding changes in:

20 (1) adult protective services division policies and
21 procedures; and

22 (2) applicable law, including statutory changes
23 affecting the adult protective services division or elderly persons
24 or disabled persons with disabilities served by the division.

25 SECTION 4.196. Section 40.0505, Human Resources Code, is
26 amended to read as follows:

27 Sec. 40.0505. POWERS AND DUTIES OF COMMISSIONER; EFFECT OF

1 CONFLICT WITH OTHER LAW [OF HEALTH AND HUMAN SERVICES]. [The
2 ~~commissioner of health and human services has the powers and duties~~
3 ~~relating to the board and executive director as provided by Section~~
4 ~~531.0055, Government Code.]~~ To the extent a power or duty given to
5 the ~~commissioner [board or executive director]~~ by this chapter or
6 another law conflicts with Section 531.0055, Government Code,
7 Section 531.0055 controls.

8 SECTION 4.197. Subchapter C, Chapter 40, Human Resources
9 Code, is amended by adding Sections 40.0506 and 40.0507 to read as
10 follows:

11 Sec. 40.0506. MANAGEMENT AND DIRECTION BY EXECUTIVE
12 COMMISSIONER. The department's powers and duties prescribed by
13 this chapter and other law, including enforcement activities and
14 functions, are subject to the executive commissioner's oversight
15 under Chapter 531, Government Code, to manage and direct the
16 operations of the department.

17 Sec. 40.0507. CONTRACTING AND AUDITING AUTHORITY;
18 DELEGATION. (a) The executive commissioner, as authorized by
19 Section 531.0055, Government Code, may delegate to the department
20 the executive commissioner's authority under that section for
21 contracting and auditing relating to the department's powers,
22 duties, functions, and activities.

23 (b) If the executive commissioner does not make a delegation
24 under Subsection (a), a reference in law to the department with
25 respect to the department's contracting or auditing authority means
26 the executive commissioner. If the executive commissioner makes a
27 delegation under Subsection (a), a reference in law to the

1 department's contracting or auditing authority means the authority
2 the executive commissioner has delegated to the department.

3 (c) If the executive commissioner revokes all or part of a
4 delegation made under Subsection (a), a reference in law to the
5 department with respect to a function for which the delegation was
6 revoked means the executive commissioner or another entity to which
7 the executive commissioner delegates that authority.

8 (d) It is the legislature's intent that the executive
9 commissioner retain the authority over and responsibility for
10 contracting and auditing at each health and human services agency
11 as provided by Section 531.0055, Government Code. A statute that
12 becomes law on or after January 1, 2015, that references the
13 contracting or auditing authority of the department does not give
14 the department direct contracting or auditing authority unless the
15 statute expressly provides that the contracting or auditing
16 authority:

17 (1) is given directly to the department; and
18 (2) is an exception to the exclusive contracting and
19 auditing authority given to the executive commissioner under
20 Section 531.0055, Government Code.

21 SECTION 4.198. Sections 40.0521(a) and (b), Human Resources
22 Code, are amended to read as follows:

23 (a) The executive commissioner [department] shall adopt and
24 the department shall implement rules that require an investigating
25 employee to document indications of domestic violence, including
26 elder, spousal, and child abuse. The department may develop forms
27 to facilitate the documentation process.

1 (b) The executive commissioner [department] by rule shall
2 require that written information, printed in English and Spanish,
3 concerning community services that are available to victims of
4 domestic violence be distributed to those victims. The department
5 may coordinate its efforts under this subsection with local law
6 enforcement agencies already providing that information.

7 SECTION 4.199. Section 40.0523, Human Resources Code, is
8 amended to read as follows:

9 Sec. 40.0523. INFANT MORTALITY PREVENTION EDUCATION
10 PROGRAM. (a) The department [~~and the Children's Trust Fund of~~
11 ~~Texas Council jointly~~] shall develop and implement a statewide
12 education program designed to prevent infant mortality. [~~The~~
13 ~~department and the council shall develop and mutually agree to a~~
14 ~~memorandum of understanding to clearly define the responsibilities~~
15 ~~of the department and the council under this section.~~]

16 (b) In developing and implementing the program, the
17 department [~~and the Children's Trust Fund of Texas Council~~] shall
18 request the assistance of individuals, governmental entities,
19 private organizations, and other entities with specific knowledge
20 of infant mortality prevention.

21 (c) The executive commissioner [~~board and the Children's~~
22 ~~Trust Fund of Texas Council~~] shall adopt rules to implement this
23 section.

24 SECTION 4.200. Section 40.0524(b), Human Resources Code, is
25 amended to read as follows:

26 (b) Members of a multidisciplinary team may exchange
27 information relating to a report of child abuse or neglect as

1 necessary to facilitate a thorough investigation of the report.
2 The executive commissioner [~~department~~] may adopt rules governing
3 the exchange of information between team members.

4 SECTION 4.201. Sections [40.0527](#)(a) and (c), Human Resources
5 Code, are amended to read as follows:

6 (a) Subject to the availability of funds, the executive
7 commissioner by rule shall develop and the department shall
8 implement a statewide public awareness campaign designed to educate
9 the public regarding the abuse, neglect, and exploitation of
10 elderly persons and [~~disabled~~] persons with disabilities.

11 (c) A public awareness strategy implemented for the program
12 must include:

13 (1) the provision of information on the incidence and
14 types of reports of abuse, neglect, and exploitation of elderly
15 persons or [~~disabled~~] persons with disabilities; and

16 (2) practices that can reduce the incidences of abuse,
17 neglect, and exploitation of elderly persons or [~~disabled~~] persons
18 with disabilities in this state.

19 SECTION 4.202. Section [40.059](#), Human Resources Code, is
20 amended to read as follows:

21 Sec. 40.059. FEES. The executive commissioner by rule
22 [~~department~~] may set and the department may collect [~~charge~~]
23 appropriate fees in the administration and delivery of services.

24 SECTION 4.203. Section [40.060](#), Human Resources Code, is
25 amended to read as follows:

26 Sec. 40.060. INDEMNIFICATION FOR LEGAL EXPENSES. If a
27 present or former employee of the department who is or was involved

1 in activities relating to the protection of children or elderly
2 persons or [disabled] persons with disabilities is criminally
3 prosecuted for conduct involving the person's misfeasance or
4 nonfeasance in the course and scope of the person's employment and
5 is found not guilty after a trial or appeal or if the complaint or
6 indictment is dismissed without a plea of guilty or nolo contendere
7 being entered, the department may indemnify the person or the
8 person's estate for the reasonable attorney's fees incurred in
9 defense of the prosecution up to a maximum of \$10,000.

10 SECTION 4.204. Section 40.062, Human Resources Code, is
11 amended to read as follows:

12 Sec. 40.062. EXEMPTION FROM CERTAIN COSTS AND FEES. The
13 department is not required to pay any cost or fee otherwise imposed
14 for court proceedings or other services, including a:

15 (1) filing fee or fee for issuance or service of
16 process imposed by Section 110.002, Family Code, or by Section
17 51.317, 51.318(b)(2), or 51.319, Government Code;

18 (2) transfer fee imposed by Section 110.002 or
19 110.005, Family Code;

20 (3) court reporter fee imposed by Section 51.601,
21 Government Code;

22 (4) judicial fund fee imposed by Section [Sections
23 51.701 and] 51.702, Government Code;

24 (5) judge's fee imposed by Section 25.0008 or 25.0029,
25 Government Code;

26 (6) cost or security fee imposed by Section 53.051,
27 53.052, 1053.051, [12] or 1053.052, Estates [622, Probate] Code; or

1 (7) fee imposed by a county officer under Section
2 118.011 or 118.052, Local Government Code.

3 SECTION 4.205. Section 40.065(b), Human Resources Code, is
4 amended to read as follows:

5 (b) The department shall develop and implement a
6 communication plan to ensure statewide public and government
7 awareness of child abuse or neglect investigated by the department.
8 The plan shall include information detailing the procedure followed
9 by the department during the investigation and the responsibilities
10 of the department in child abuse cases. In implementing the plan,
11 the department shall establish a process for expediting the
12 reporting of child abuse or neglect to the department. The
13 executive commissioner [department] shall adopt rules to implement
14 this subsection.

15 SECTION 4.206. Section 40.066(b), Human Resources Code, is
16 amended to read as follows:

17 (b) The memorandum of understanding shall require the chief
18 administrative law judge, the department, and the commissioner
19 [~~executive director~~] to cooperate in connection with a contested
20 case hearing and may authorize the State Office of Administrative
21 Hearings to perform any administrative act, including the giving of
22 notice, that is required to be performed by the department or
23 commissioner [~~executive director~~].

24 SECTION 4.207. Section 40.068(c), Human Resources Code, is
25 amended to read as follows:

26 (c) The department shall spend funds in a guardianship of a
27 client's estate in compliance with Title 3, Estates Code [~~Chapter~~

1 ~~XIII, Texas Probate Code].~~

2 SECTION 4.208. Sections 40.101(2) and (3), Human Resources
3 Code, are amended to read as follows:

4 (2) "Primary prevention" means services and
5 activities available to the community at large or to families to
6 prevent child abuse and neglect before it occurs. The term includes
7 infant mortality prevention education programs.

8 (3) "Operating fund" means the Department of Family
9 and Protective [and Regulatory] Services child abuse and neglect
10 prevention operating fund account.

11 SECTION 4.209. Sections 40.105(a) and (e), Human Resources
12 Code, are amended to read as follows:

13 (a) The child abuse and neglect prevention trust fund
14 account is an account in the general revenue fund. Money in the
15 trust fund is dedicated to child abuse and neglect primary
16 prevention programs.

17 (e) All marriage license fees and other fees collected for
18 and deposited in the trust fund and interest earned on the trust
19 fund balance shall be appropriated each biennium only to the
20 operating fund for primary child abuse and neglect prevention
21 programs.

22 SECTION 4.210. Section 40.106(a), Human Resources Code, is
23 amended to read as follows:

24 (a) The ~~[Department of Protective and Regulatory Services~~
25 ~~child abuse and neglect prevention]~~ operating fund ~~[account]~~ is an
26 account in the general revenue fund.

27 SECTION 4.211. Sections 42.041(d) and (e), Human Resources

1 Code, are amended to read as follows:

2 (d) A facility exempt from the provisions of Subsection (a)
3 [of this section] that desires to receive or participate in federal
4 or state funding shall be required to comply with all other
5 provisions of this chapter and with all regulations promulgated
6 under this chapter.

7 (e) The exemptions provided by Subsection (b) [of this
8 section] do not affect the authority of local, regional, or state
9 health department officials, the state fire marshal, or local fire
10 prevention officials to inspect child-care facilities.

11 SECTION 4.212. Sections 42.042(a), (b), (e), (f), (g),
12 (g-1), (h), (i), (l), (n), and (p), Human Resources Code, are
13 amended to read as follows:

14 (a) The executive commissioner [department] shall adopt
15 [make] rules to carry out the provisions of this chapter.

16 (b) The department shall conduct a comprehensive review of
17 all rules and standards at least every six years. For purposes of
18 this subsection, the six-year period begins on the latest of the
19 date of:

20 (1) the conclusion of the review of the rules and
21 standards;

22 (2) a decision by the department not to revise the
23 rules and standards;

24 (3) a decision by the executive commissioner [board]
25 not to revise the rules and standards; or

26 (4) executive commissioner [board] action adopting
27 new standards.

1 (e) The executive commissioner [department] shall
2 promulgate minimum standards that apply to licensed child-care
3 facilities and to registered family homes covered by this chapter
4 and that will:

5 (1) promote the health, safety, and welfare of
6 children attending a facility or registered family home;

7 (2) promote safe, comfortable, and healthy physical
8 facilities and registered family homes for children;

9 (3) ensure adequate supervision of children by
10 capable, qualified, and healthy personnel;

11 (4) ensure adequate and healthy food service where
12 food service is offered;

13 (5) prohibit racial discrimination by child-care
14 facilities and registered family homes;

15 (6) require procedures for parental and guardian
16 consultation in the formulation of children's educational and
17 therapeutic programs;

18 (7) prevent the breakdown of foster care and adoptive
19 placement; and

20 (8) ensure that a child-care facility or registered
21 family home:

22 (A) follows the directions of a child's physician
23 or other health care provider in providing specialized medical
24 assistance required by the child; and

25 (B) maintains for a reasonable time a copy of any
26 directions from the physician or provider that the parent provides
27 to the facility or home.

1 (f) In promulgating minimum standards for the provision of
2 child-care services, the executive commissioner [~~department~~] shall
3 recognize the various categories of services, including services
4 for specialized care, the various categories of children and their
5 particular needs, and the differences in the organization and
6 operation of child-care facilities and general residential
7 operations. Standards for general residential operations must
8 require an intake study before a child is placed in an operation.
9 The intake study may be conducted at a community mental health and
10 intellectual disability [~~mental retardation~~] center.

11 (g) In promulgating minimum standards the executive
12 commissioner [~~department~~] may recognize and treat differently the
13 types of services provided by the following:

- 14 (1) registered family homes;
15 (2) child-care facilities, including general
16 residential operations, foster group homes, foster homes, group
17 day-care homes, and day-care centers;
18 (3) child-placing agencies;
19 (4) agency foster homes;
20 (5) agency foster group homes;
21 (6) before-school or after-school programs; and
22 (7) school-age programs.

23 (g-1) The executive commissioner in adopting [In
24 ~~determining~~] and the department in enforcing minimum standards for
25 a school-age program[~~, the department~~] shall consider commonly
26 accepted training methods for the development of a skill, talent,
27 ability, expertise, or proficiency that are implemented with the

1 consent of the parent or guardian of the participant and that are
2 fundamental to the core purpose of the program.

3 (h) The executive commissioner ~~[department]~~ shall
4 promulgate minimum standards for child-placing agencies.

5 (i) Before the executive commissioner adopts ~~[adopting]~~
6 minimum standards, the department shall:

7 (1) convene a temporary work group to advise the
8 executive commissioner ~~[department]~~ regarding the proposed
9 standards, composed of at least six members who represent the
10 diverse geographic regions of this state, including:

11 (A) a department official designated by the
12 commissioner to facilitate the work group's activities;

13 (B) a person with demonstrated expertise or
14 knowledge regarding the different types and classifications of
15 child-care facilities, homes, agencies, or programs that will be
16 covered by the proposed standards;

17 (C) a parent with experience related to one of
18 the different types or classifications of child-care facilities,
19 homes, agencies, or programs that will be covered by the proposed
20 standards; and

21 (D) a representative of a nonprofit entity
22 licensed under this chapter; and

23 (2) send a copy of the proposed standards to each
24 licensee covered by the proposed standards at least 60 days before
25 the standards take effect to provide the licensee an opportunity to
26 review and to send written suggestions to the department.

27 (l) In promulgating minimum standards for the regulation of

1 family homes that register with the department, the executive
2 commissioner [~~department~~] must address the minimum qualifications,
3 education, and training required of a person who operates a family
4 home registered with the department.

5 (n) Not later than the 60th day before the date the
6 executive commissioner [~~board~~] adopts a revision to the minimum
7 standards for child-care facilities, the executive commissioner
8 [~~department~~] shall present the revision to the appropriate
9 legislative oversight committees that have jurisdiction over
10 child-care facilities for review and comment.

11 (p) The executive commissioner [~~department~~] by rule shall
12 prescribe minimum training standards for an employee of a regulated
13 child-care facility, including the time required for completing the
14 training. The executive commissioner [~~department~~] may not require
15 an employee to repeat required training if the employee has
16 completed the training within the time prescribed by department
17 rule. The department's local offices shall make available at the
18 local office locations a copy of the rules regarding minimum
19 training standards, information enabling the owner or operator of a
20 regulated facility to apply for training funds from other agencies
21 to lower facility costs, and any other materials the department may
22 develop to assist the owner or operator or other entity in providing
23 the training.

24 SECTION 4.213. Sections [42.0421](#)(a), (b), (c), (e), (f), and
25 (h), Human Resources Code, are amended to read as follow:

26 (a) The minimum training standards prescribed by the
27 executive commissioner [~~department~~] under Section [42.042](#)(p) for an

1 employee, director, or operator of a day-care center, group
2 day-care home, or registered family home must include:

3 (1) 24 hours of initial training that must be
4 completed not later than the 90th day after the employee's first day
5 of employment for an employee of a day-care center who has no
6 previous training or less than two years of employment experience
7 in a regulated child-care facility, eight hours of which must be
8 completed before the employee is given responsibility for a group
9 of children;

10 (2) 24 hours of annual training for each employee of a
11 day-care center or group day-care home, excluding the director,
12 which must include at least six hours of training in one or more of
13 the following areas:

14 (A) child growth and development;
15 (B) guidance and discipline;
16 (C) age-appropriate curriculum; and
17 (D) teacher-child interaction; and

18 (3) 30 hours of annual training for each director of a
19 day-care center or group day-care home, or operator of a registered
20 family home, which must include at least six hours of training in
21 one or more of the following areas:

22 (A) child growth and development;
23 (B) guidance and discipline;
24 (C) age-appropriate curriculum; and
25 (D) teacher-child interaction.

26 (b) The minimum training standards prescribed by the
27 executive commissioner [department] under Section 42.042(p) must

1 require an employee of a licensed day-care center or group day-care
2 home who provides care for children younger than 24 months of age to
3 receive special training regarding the care of those children. The
4 special training must be included as a component of the initial
5 training required by Subsection (a)(1) and as a one-hour component
6 of the annual training required by Subsections (a)(2) and (a)(3).

7 The special training must include information on:

- 8 (1) recognizing and preventing shaken baby syndrome;
9 (2) preventing sudden infant death syndrome; and
10 (3) understanding early childhood brain development.

11 (c) The executive commissioner [department] by rule shall
12 require an operator of a registered family home who provides care
13 for a child younger than 24 months of age to complete one hour of
14 annual training on:

- 15 (1) recognizing and preventing shaken baby syndrome;
16 (2) preventing sudden infant death syndrome; and
17 (3) understanding early childhood brain development.

18 (e) In addition to other training required by this section,
19 the executive commissioner [department] by rule shall require an
20 owner, operator, or employee of a day-care center, group day-care
21 home, registered family home, general residential operation
22 [~~child-care institution~~], foster group home, or agency foster group
23 home who transports a child under the care of the facility whose
24 chronological or developmental age is younger than nine years of
25 age to complete at least two hours of annual training on
26 transportation safety.

27 (f) The training required by this section must be

1 appropriately targeted and relevant to the age of the children who
2 will receive care from the individual receiving training and must
3 be provided by a person who:

4 (1) is a training provider registered with the Texas
5 Early Childhood Professional [Care and Education Career]
6 Development System's Texas Trainer Registry that is maintained by
7 the Texas Head Start State Collaboration Office;

8 (2) is an instructor at a public or private secondary
9 school, an institution of higher education, as defined by Section
10 61.003, Education Code, or a private college or university
11 accredited by a recognized accrediting agency who teaches early
12 childhood development or another relevant course, as determined by
13 rules adopted by the commissioner of education and the commissioner
14 of higher education;

15 (3) is an employee of a state agency with relevant
16 expertise;

17 (4) is a physician, psychologist, licensed
18 professional counselor, social worker, or registered nurse;

19 (5) holds a generally recognized credential or
20 possesses documented knowledge relevant to the training the person
21 will provide;

22 (6) is a registered family home care provider or
23 director of a day-care center or group day-care home in good
24 standing with the department, if applicable, and who:

25 (A) has demonstrated core knowledge in child
26 development and caregiving; and

27 (B) is only providing training at the home or

1 center in which the provider or director and the person receiving
2 training are employed; or

3 (7) has at least two years of experience working in
4 child development, a child development program, early childhood
5 education, a childhood education program, or a Head Start or Early
6 Head Start program and:

7 (A) has been awarded a Child Development
8 Associate (CDA) credential; or

9 (B) holds at least an associate's degree in child
10 development, early childhood education, or a related field.

11 (h) In adopting the minimum training standards under
12 Section 42.042(p), the executive commissioner [~~department~~] may not
13 require more training hours than the number of hours prescribed by
14 Subsection (a) for a day-care center, group day-care home, or [a]
15 registered family home.

16 SECTION 4.214. Section 42.0422, Human Resources Code, is
17 amended to read as follows:

18 Sec. 42.0422. RESTRAINT AND SECLUSION. A person providing
19 services to a resident of a general residential operation,
20 including a state-operated facility that is a residential treatment
21 center or a general residential operation serving children with
22 intellectual disabilities [~~mental retardation~~], shall comply with
23 Chapter 322, Health and Safety Code, and the rules adopted under
24 that chapter.

25 SECTION 4.215. Section 42.0423(h), Human Resources Code, is
26 amended to read as follows:

27 (h) The executive commissioner [~~of the Health and Human~~

1 ~~Services Commission~~] shall adopt rules and forms necessary to
2 implement this section.

3 SECTION 4.216. Section 42.0424(d), Human Resources Code, is
4 amended to read as follows:

5 (d) The executive commissioner [department] shall adopt
6 rules to implement this section.

7 SECTION 4.217. Sections 42.0425(a) and (b), Human Resources
8 Code, are amended to read as follows:

9 (a) The executive commissioner [department] by rule shall
10 regulate assessment services provided by child-care facilities or
11 child-placing agencies. A child-care facility or child-placing
12 agency may not provide assessment services unless specifically
13 authorized by [the] department rule.

14 (b) The executive commissioner [department] by rule shall
15 establish minimum standards for assessment services. The standards
16 must provide that consideration is given to the individual needs of
17 a child, the appropriate place for provision of services, and the
18 factors listed in Section 42.042(e).

19 SECTION 4.218. Sections 42.043(a), (c), and (f), Human
20 Resources Code, are amended to read as follows:

21 (a) The executive commissioner [department] shall adopt
22 [make] rules for the immunization of children in facilities
23 regulated under this chapter.

24 (c) The executive commissioner [~~Texas Department of~~
25 ~~Health~~] shall adopt [make] rules for the provisional admission of
26 children to facilities regulated under this chapter and may modify
27 or delete any of the immunizations listed in Subsection (b) [~~of this~~

1 ~~section~~] or require additional immunizations as a requirement for
2 admission to a facility.

3 (f) The [Texas] Department of State Health Services shall
4 provide the immunizations required by this section to children in
5 areas where there is no local provision of these services.

6 SECTION 4.219. Section 42.0431, Human Resources Code, is
7 amended to read as follows:

8 Sec. 42.0431. ENFORCEMENT OF SCREENING REQUIREMENTS
9 RELATING TO VISION, HEARING, AND OTHER SPECIAL SENSES AND
10 COMMUNICATION DISORDERS. (a) The executive commissioner
11 [~~department~~], after consultation with the [Texas] Department of
12 State Health Services, shall adopt rules necessary to ensure that
13 children receiving care at a day-care center or group day-care home
14 licensed under this chapter are screened for vision, hearing, and
15 any other special senses or communication disorders in compliance
16 with rules adopted [~~by the Texas Board of Health~~] under Section
17 36.004, Health and Safety Code.

18 (b) Each day-care center or group day-care home licensed
19 under this chapter shall maintain individual screening records for
20 children attending the facility who are required to be screened,
21 and the department may inspect those records at any reasonable
22 time. The department shall coordinate the monitoring inspections
23 in compliance with protocol agreements adopted between the
24 department and the [Texas] Department of State Health Services
25 pursuant to Section 42.0442.

26 SECTION 4.220. Section 42.0442(b), Human Resources Code, is
27 amended to read as follows:

1 (b) The department shall form an interagency task force with
2 the [Texas] Department of State Health Services, the [Texas]
3 Department of Aging and Disability [Human] Services, and the Texas
4 Workforce Commission to develop an inspection protocol that will
5 coordinate inspections by those agencies. The protocol must assign
6 the required items for inspection by each agency and facilitate the
7 sharing of inspection data and compliance history.

8 SECTION 4.221. Section 42.04425(b), Human Resources Code,
9 is amended to read as follows:

10 (b) The department shall make the data collected by the
11 department available to another state agency or political
12 subdivision of the state for the purpose of administering programs
13 or enforcing laws within the jurisdiction of that agency or
14 subdivision. If feasible using available information systems, the
15 department shall make the data directly available to the [Texas]
16 Department of State Health Services, the [Texas] Department of
17 Aging and Disability [Human] Services, and the Texas Workforce
18 Commission through electronic information systems. The
19 department, the [Texas] Department of State Health Services, the
20 [Texas] Department of Aging and Disability [Human] Services, and
21 the Texas Workforce Commission shall jointly plan the development
22 of child-care inspection databases that, to the extent feasible,
23 are similar in their design and architecture to promote the sharing
24 of data.

25 SECTION 4.222. Section 42.0443(e), Human Resources Code, is
26 amended to read as follows:

27 (e) The executive commissioner [department] shall adopt

1 rules necessary to implement this section.

2 SECTION 4.223. Section 42.0445(b), Human Resources Code, is
3 amended to read as follows:

4 (b) The executive commissioner [department] may adopt rules
5 to implement this section.

6 SECTION 4.224. Section 42.045(c), Human Resources Code, is
7 amended to read as follows:

8 (c) If a child-placing agency terminates operation as a
9 child-placing agency, it shall, after giving notice to the
10 department, transfer its files and records concerning adopted
11 children, their biological families, and their adoptive families to
12 the vital statistics unit of the Department of State Health
13 Services [Bureau of Vital Statistics] or, after giving notice to
14 the vital statistics unit [Bureau of Vital Statistics], to a
15 facility licensed by the department to place children for adoption.

16 SECTION 4.225. Section 42.048(b), Human Resources Code, is
17 amended to read as follows:

18 (b) When issuing a license, the department may impose
19 restrictions on a facility, including [but not limited to] the
20 number of children to be served and the type of children to be
21 served.

22 SECTION 4.226. Section 42.050(a), Human Resources Code, is
23 amended to read as follows:

24 (a) A license holder may apply for a new license in
25 compliance with the requirements of this chapter and department
26 [~~the~~] rules [~~promulgated by the department~~].

27 SECTION 4.227. Sections 42.052(g) and (i), Human Resources

1 Code, are amended to read as follows:

2 (g) The certification requirements of this section do not
3 apply to a Texas Juvenile Justice Department [~~Youth Commission~~
4 ~~facility, a Texas Juvenile Probation Commission~~] facility, or a
5 facility providing services solely for the Texas Juvenile Justice
6 Department [~~Youth Commission~~].

7 (i) The department shall provide to a listed family home a
8 copy of the listing. A listing must contain a provision that
9 states: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR
10 REGISTERED WITH THE DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND~~
11 ~~REGULATORY~~] SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE
12 INSPECTED." The operator of a listed home is not required to
13 display the listing in a prominent place at the home but shall make
14 the listing available for examination. The executive commissioner
15 [~~department~~] by rule shall provide for a sufficient period to allow
16 operators of family homes to comply with the listing requirement of
17 this section.

18 SECTION 4.228. Section 42.0522, Human Resources Code, is
19 amended to read as follows:

20 Sec. 42.0522. PUBLIC ADVERTISING OF FAMILY HOMES. (a) A
21 family home may not place a public advertisement that uses the title
22 "registered family home" or any variation of that phrase unless the
23 home is registered under this chapter. Any public advertisement
24 for a registered family home that uses the title "registered family
25 home" must contain a provision in bold type stating: "THIS HOME IS
26 REGISTERED WITH THE DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND~~
27 ~~REGULATORY~~] SERVICES BUT IS NOT LICENSED OR REGULARLY INSPECTED."

1 (b) A family home may not place a public advertisement that
2 uses the title "listed family home" or any variation of that phrase
3 unless the home is listed as provided by this chapter. Any public
4 advertisement for a listed family home that uses the title "listed
5 family home" must contain a provision in bold type stating: "THIS
6 HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH
7 THE DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND REGULATORY~~] SERVICES.
8 IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED."

9 SECTION 4.229. Section 42.053(d), Human Resources Code, is
10 amended to read as follows:

11 (d) The department shall revoke or suspend the license of a
12 child-placing agency if an agency foster home or agency foster
13 group home operated by the licensed agency fails to comply with
14 Subsection (c) [~~of this section~~].

15 SECTION 4.230. Section 42.0535(e), Human Resources Code, is
16 amended to read as follows:

17 (e) The executive commissioner [~~department,~~] by rule[~~r~~]
18 shall develop a process by which a child-placing agency shall
19 report to the department:

20 (1) the name of any verified foster home or foster
21 group home that has been closed for any reason, including a
22 voluntary closure;

23 (2) information regarding the reasons for the closure
24 of the foster home or foster group home; and

25 (3) the name and other contact information of a person
26 who may be contacted by another child-placing agency to obtain the
27 records relating to the closed foster home or foster group home that

1 are required to be maintained and made available under this
2 section.

3 SECTION 4.231. Section 42.054(g), Human Resources Code, is
4 amended to read as follows:

5 (g) The provisions of Subsections (b) through (f) [~~of this~~
6 ~~section~~] do not apply to:

7 (1) licensed foster homes and licensed foster group
8 homes;

9 (2) nonprofit facilities regulated under this chapter
10 that provided 24-hour care for children in the managing
11 conservatorship of the department during the 12-month period
12 immediately preceding the anniversary date of the facility's
13 license;

14 (3) facilities operated by a nonprofit corporation or
15 foundation that provides 24-hour residential care and does not
16 charge for the care provided; or

17 (4) a family home listed under Section 42.0523 in
18 which the relative child-care provider cares for the child in the
19 child's own home.

20 SECTION 4.232. Section 42.055(b), Human Resources Code, is
21 amended to read as follows:

22 (b) The executive commissioner [~~department~~] by rule shall
23 determine the design, size, and wording of the sign.

24 SECTION 4.233. Section 42.056(c), Human Resources Code, is
25 amended to read as follows:

26 (c) The executive commissioner [~~department~~] by rule shall
27 require a child-care facility, child-placing agency, or registered

1 family home to pay to the department a fee in an amount not to exceed
2 the administrative costs the department incurs in conducting a
3 background and criminal history check under this section.

4 SECTION 4.234. Section 42.058, Human Resources Code, is
5 amended to read as follows:

6 Sec. 42.058. COMPETITIVE BIDDING OR ADVERTISING RULES. (a)
7 The executive commissioner [board] may not adopt rules restricting
8 competitive bidding or advertising by a license holder or
9 registration holder except to prohibit false, misleading, or
10 deceptive practices or to prevent a violation of this chapter.

11 (b) Rules [~~In its rules~~] to prohibit false, misleading, or
12 deceptive practices[, ~~the board~~] may not include a rule that:

13 (1) restricts the use of any medium for advertising;
14 (2) restricts the use of a license holder's or
15 registration holder's personal appearance or voice in an
16 advertisement;

17 (3) relates to the size or duration of an
18 advertisement by the license holder or registration holder; or

19 (4) restricts the license holder's or registration
20 holder's advertisement under a trade name.

21 SECTION 4.235. Section 42.060(c), Human Resources Code, is
22 amended to read as follows:

23 (c) The executive commissioner [department] by rule shall
24 prescribe requirements regarding the placement, installation, and
25 number of carbon monoxide detectors and maintenance procedures for
26 those detectors.

27 SECTION 4.236. Section 42.0705, Human Resources Code, is

1 amended to read as follows:

2 Sec. 42.0705. RANGE OF PENALTIES. The department shall
3 revoke or suspend a license or registration, place on probation a
4 person whose license or registration has been suspended, or
5 reprimand a license holder or registration holder for a violation
6 of this chapter or a department rule [~~of the board~~]. If a license
7 or registration suspension is probated, the department may require
8 the license holder or registration holder to:

9 (1) report regularly to the department on matters that
10 are the basis of the probation;

11 (2) limit services to the areas prescribed by the
12 department;

13 (3) continue or review professional education until
14 the license holder or registration holder attains a degree of skill
15 satisfactory to the department in those areas that are the basis of
16 the probation; or

17 (4) take corrective action relating to the violation
18 on which the probation is based.

19 SECTION 4.237. Sections 42.072(a), (b), (d), (e), and (f),
20 Human Resources Code, are amended to read as follows:

21 (a) The department may suspend, deny, revoke, or refuse to
22 renew the license, listing, registration, or certification of
23 approval of a facility or family home that does not comply with the
24 requirements of this chapter, department [~~the~~] standards and rules
25 [~~of the department~~], or the specific terms of the license, listing,
26 registration, or certification. The department may revoke the
27 probation of a person whose license, listing, or registration is

1 suspended if the person violates a term of the conditions of
2 probation.

3 (b) If the department proposes to take an action under
4 Subsection (a), the person is entitled to a hearing conducted by the
5 State Office of Administrative Hearings. Proceedings for a
6 disciplinary action are governed by the administrative procedure
7 law, Chapter 2001, Government Code. An action under this section,
8 including a revocation of a person's license, is a contested case as
9 defined by Chapter 2001, Government Code, and is subject to
10 judicial review under the substantial evidence rule in accordance
11 with that chapter. Rules of practice adopted by the executive
12 commissioner [board] under Section 2001.004, Government Code,
13 applicable to the proceedings for a disciplinary action may not
14 conflict with rules adopted by the State Office of Administrative
15 Hearings.

16 (d) The executive commissioner [department] by rule may
17 provide for denial of an application or renewal for a licensed
18 facility or for listing or registering a family home or may revoke a
19 facility's license or a family home's listing or registration based
20 on findings of background or criminal history as a result of a
21 background or criminal history check.

22 (e) A person may continue to operate a facility or family
23 home during an appeal of a license, listing, or registration
24 revocation unless the operation of the facility or family home
25 poses a risk to the health or safety of children. The executive
26 commissioner shall by rule establish the criteria for determining
27 whether the operation of a facility or family home poses a risk to

1 the health or safety of children. The department shall notify the
2 facility or family home of the criteria the department used to
3 determine that the operation of the facility or family home poses a
4 risk to health or safety and that the facility or family home may
5 not operate. A person who has been notified by the department that
6 the facility or home may not operate under this section may seek
7 injunctive relief from a district court in Travis County or in the
8 county in which the facility or home is located to allow operation
9 during the pendency of an appeal. The court may grant injunctive
10 relief against the department's [~~agency's~~] action only if the court
11 finds that the child-care operation does not pose a health or safety
12 risk to children. A court granting injunctive relief under this
13 subsection shall have no other jurisdiction over an appeal of final
14 department [~~agency~~] action unless conferred by Chapter 2001,
15 Government Code.

16 (f) The department shall deny an application or renewal for
17 listing or registering a family home or shall revoke a family home's
18 listing or registration if the results of a background or criminal
19 history check conducted by the department under Section 42.056 show
20 that a person has been convicted of an offense under Title 5[~~7~~] or
21 6, Penal Code, or Chapter 43, Penal Code.

22 SECTION 4.238. Section 42.077(b), Human Resources Code, is
23 amended to read as follows:

24 (b) If a person who operates a facility or family home that
25 has had its license, listing, or registration revoked or suspended
26 later applies for a new license, listing, or registration to
27 operate the same facility or family home, the department shall

1 charge the person an application fee set by the executive
2 commissioner by rule in an amount necessary to reimburse the
3 department for the cost of the notice relating to that facility or
4 family home.

5 SECTION 4.239. Section 42.078(d), Human Resources Code, is
6 amended to read as follows:

7 (d) Monetary penalties may [~~shall~~] not be assessed for
8 violations that are the result of clerical errors.

9 SECTION 4.240. Section 42.152(b), Human Resources Code, is
10 amended to read as follows:

11 (b) A small employer is not required to obtain a permit to
12 operate an employer-based day-care facility under this subchapter
13 if the employer holds a license to operate a child-care facility
14 that is issued by the department under Subchapter C. An employer
15 that holds that license must comply with the applicable provisions
16 of Subchapter C, the applicable department rules [~~of the~~
17 ~~department~~], and any specific terms of the license.

18 SECTION 4.241. Section 42.153(c), Human Resources Code, is
19 amended to read as follows:

20 (c) The department may charge an applicant an
21 administrative fee set by the executive commissioner by rule in a
22 reasonable amount that is sufficient to cover the costs of the
23 department in processing the application.

24 SECTION 4.242. Section 42.159(e), Human Resources Code, is
25 amended to read as follows:

26 (e) The department shall require the small employer to pay
27 to the department a fee set by the executive commissioner by rule in

1 an amount not to exceed the administrative costs the department
2 incurs in conducting a background and criminal history check under
3 this section.

4 SECTION 4.243. Section 42.162(c), Human Resources Code, is
5 amended to read as follows:

6 (c) The department may charge a small employer issued a
7 permit under this subchapter a reasonable fee set by the executive
8 commissioner by rule for the cost of services provided by the
9 department in formulating, monitoring, and implementing a
10 corrective action plan under this section.

11 SECTION 4.244. Section 42.202(b), Human Resources Code, is
12 amended to read as follows:

13 (b) A shelter is not required to obtain a permit to provide
14 shelter care under this subchapter if the shelter holds a license to
15 operate a child-care facility that is issued by the department
16 under Subchapter C. A shelter that holds that license must comply
17 with the applicable provisions of Subchapter C, the applicable
18 department rules [of the department], and any specific terms of the
19 license.

20 SECTION 4.245. Section 42.203(c), Human Resources Code, is
21 amended to read as follows:

22 (c) The department may charge an applicant an
23 administrative fee set by the executive commissioner by rule in a
24 reasonable amount that is sufficient to cover the costs of the
25 department in processing the application.

26 SECTION 4.246. Section 42.206(e), Human Resources Code, is
27 amended to read as follows:

1 (e) The department shall require the shelter to pay to the
2 department a fee set by the executive commissioner by rule in an
3 amount not to exceed the administrative costs the department incurs
4 in conducting a background and criminal history check under this
5 section.

6 SECTION 4.247. Section 42.209(c), Human Resources Code, is
7 amended to read as follows:

8 (c) The department may charge a shelter issued a permit
9 under this subchapter a reasonable fee set by the executive
10 commissioner by rule for the cost of services provided by the
11 department in formulating, monitoring, and implementing a
12 corrective action plan under this section.

13 SECTION 4.248. Section 43.005, Human Resources Code, is
14 amended to read as follows:

15 Sec. 43.005. RULES. The executive commissioner [board] may
16 adopt [make] rules to administer the provisions of this chapter.

17 SECTION 4.249. Section 43.0055, Human Resources Code, is
18 amended to read as follows:

19 Sec. 43.0055. COMPETITIVE BIDDING OR ADVERTISING RULES.
20 (a) The executive commissioner [department] may not adopt rules
21 restricting competitive bidding or advertising by a license holder
22 except to prohibit false, misleading, or deceptive practices.

23 (b) Rules [~~In its rules~~] to prohibit false, misleading, or
24 deceptive practices[~~, the department~~] may not include a rule that:

25 (1) restricts the use of any medium for advertising;
26 (2) restricts the use of a license holder's personal
27 appearance or voice in an advertisement;

1 (3) relates to the size or duration of an
2 advertisement by the license holder; or
3 (4) restricts the license holder's advertisement under
4 a trade name.

5 SECTION 4.250. Section 43.006, Human Resources Code, is
6 amended to read as follows:

7 Sec. 43.006. FEES. The executive commissioner by rule
8 ~~[board]~~ may set and the department may collect ~~[charge]~~ fees for
9 administering an examination and issuing an initial license,
10 renewal license, or provisional license in amounts necessary to
11 cover the costs of administering this chapter.

12 SECTION 4.251. Section 43.009(b), Human Resources Code, is
13 amended to read as follows:

14 (b) The department ~~[board]~~ shall recognize, prepare, or
15 administer continuing education programs for license holders. The
16 continuing education requirement may be fulfilled by studies in the
17 areas of legal aspects of child care, concepts related to the field
18 of social work, or other subjects approved by the department.

19 SECTION 4.252. Chapter 44, Human Resources Code, is amended
20 to read as follows:

21 CHAPTER 44. ADMINISTRATION OF FEDERAL AND STATE DAY-CARE PROGRAMS

22 SUBCHAPTER A. FEDERALLY ESTABLISHED DAY-CARE PROGRAMS

23 Sec. 44.001. DESIGNATED AGENCY. The Texas Workforce
24 Commission is the state agency designated to administer a day-care
25 program established by federal law and financed partially or
26 totally by federal funds.

27 Sec. 44.002. ADMINISTRATIVE RULES. (a) The Texas

1 Workforce Commission shall promulgate rules to carry out the
2 administrative provisions of the program consistent with federal
3 law and regulations.

4 (b) The rules must include procedures to allow operators of
5 day-care centers to review and comment on proposed rules and
6 policies.

7 Sec. 44.003. ADMINISTRATION OF FEDERAL-LOCAL PROGRAM. (a)
8 If the program is to be funded through political subdivisions of the
9 state or local agencies approved by the Texas Workforce Commission
10 [~~commission~~] matching federal grants, the Texas Workforce
11 Commission [~~commission~~] shall promulgate procedures for effective
12 delivery of services consistent with this section and with federal
13 law and regulations.

14 (b) If the services are provided through contracting with
15 operators of day-care programs on request from political
16 subdivisions or local agencies, the Texas Workforce Commission
17 [~~commission~~] may not promulgate standards for selection of the type
18 of programs more restrictive than required by federal law or
19 regulations.

20 (c) The executive director of the Texas Workforce
21 Commission [~~commission~~] shall establish an accounting system
22 consistent with federal law and regulations which will provide that
23 an operator of a day-care program contracting with the Texas
24 Workforce Commission [~~commission~~]:

25 (1) shall receive prepayment in accordance with
26 policies and procedures mutually agreed on by the comptroller and
27 the Texas Workforce Commission [~~commission~~]; and

1 (2) shall be paid on the basis of legitimate and
2 reasonable expenses, insofar as possible, given federal
3 regulations and department policy, instead of being paid on the
4 basis of the number of children attending or the number of children
5 enrolled in the program, provided that on being monitored by the
6 Texas Workforce Commission [~~commission~~], the contracting operator
7 can substantiate that there were sufficient preparations in the
8 development of the services offered.

9 (d) The executive director of the Texas Workforce
10 Commission [~~commission~~] shall establish procedures for hearing
11 complaints by operators of day-care programs contracting with the
12 Texas Workforce Commission [~~commission~~] relating to the failure of
13 the Texas Workforce Commission [~~commission~~] to comply with
14 Subsection (c).

15 SUBCHAPTER B. DAY-CARE CENTERS

16 Sec. 44.031. ESTABLISHMENT. (a) The Texas Workforce
17 Commission [~~commission~~] may establish day-care centers for all
18 children who qualify for services under Section 44.032. Where in
19 the opinion of the executive director of the Texas Workforce
20 Commission [~~commission~~] it appears feasible for the furtherance of
21 the objectives of this legislation, the Texas Workforce Commission
22 [~~commission~~] may establish cooperative agreements with other state
23 agencies.

24 (b) The Texas Workforce Commission [~~commission~~] is not
25 required to establish a day-care center or to provide services
26 under this subchapter unless funds are appropriated for that
27 purpose.

1 Sec. 44.032. ELIGIBILITY. (a) Except as provided by
2 Subsection (b), to be eligible for admission to a day-care center
3 authorized under this subchapter, a child must be at least six weeks
4 of age and:

5 (1) the child must be eligible for state assistance
6 under the aid to families with dependent children program and the
7 child's caretaker must be employed, enrolled in a job training
8 program authorized by the Texas Workforce Commission, registered to
9 work by the Texas Workforce Commission [~~that commission~~], or
10 permanently and totally disabled; or

11 (2) the child must be from a family eligible under
12 federal law or regulations to participate in a partially or totally
13 federally funded welfare or social services program.

14 (b) Additional children of the same age group may also be
15 admitted to a center under additional standards established by the
16 Texas Workforce Commission [~~commission~~].

17 (c) To reduce rapid turnover of children in care and to
18 ensure maximum stability for the child to the extent possible
19 within federal guidelines, once a child meets the initial
20 eligibility standards and is enrolled in a child-care program, the
21 child remains eligible for not less than one year after the date of
22 enrollment.

23 Sec. 44.033. FEES. (a) A fee for services rendered by the
24 day-care center may not be charged for a child who is eligible for
25 state assistance under the aid to families with dependent children
26 program.

27 (b) A fee that is scaled to family income for services

1 rendered by the day-care program may be charged for a child who is
2 not eligible for state assistance under the aid to families with
3 dependent children program.

4 Sec. 44.034. STANDARDS; RECOMMENDATIONS. (a) If the Texas
5 Workforce Commission establishes day-care centers under this
6 subchapter, the department shall prescribe standards of operation
7 and performance for the centers that will ensure proper nutrition,
8 social adjustment, health services, and appropriate growth and
9 development for children admitted.

10 (b) The executive director of the Texas Workforce
11 Commission [~~commission~~] shall prescribe procedures for receiving
12 recommendations relating to the operation of the centers from
13 parents, guardians, or custodians of children admitted to the
14 centers, operators of the centers, and other interested persons.

15 Sec. 44.035. CONTRACTS. (a) The executive director of the
16 Texas Workforce Commission may contract for services authorized
17 under this subchapter with an individual, organization,
18 association, or corporation meeting the standards established
19 under Section 44.034 and the standards for child-care facilities
20 licensed by the department [~~Department of Protective and Regulatory~~
21 ~~services~~].

22 (b) The fees paid to the center under the contract may not
23 exceed the amount it would cost the state to provide the same
24 services.

25 (c) The executive director of the Texas Workforce
26 Commission [~~commission~~] shall terminate a contract with a day-care
27 center that fails to maintain the department's standards.

1 (d) When the executive director of the Texas Workforce
2 Commission [~~commission~~] intends to cancel a contract with a
3 day-care center, the executive director shall give the center
4 reasonable notice and an opportunity for a hearing if one is
5 requested. The Texas Workforce Commission [~~commission~~] shall adopt
6 rules consistent with Chapter 2001, Government Code, to implement
7 this section. Hearings under this section are contested cases
8 under that chapter.

9 Sec. 44.036. ANNUAL EVALUATION OF DAY-CARE CENTERS. If the
10 Texas Workforce Commission [~~commission~~] establishes day-care
11 centers or provides services under this subchapter, the Texas
12 Workforce Commission [~~commission~~], with the assistance of the
13 department, shall evaluate the performance of the centers each
14 state fiscal year. This evaluation shall be sent to the governor
15 and to the Legislative Budget Board not later than the 100th day
16 after the last day of the state fiscal year covered by the
17 evaluation.

18 SECTION 4.253. The heading to Chapter 48, Human Resources
19 Code, is amended to read as follows:

20 CHAPTER 48. INVESTIGATIONS AND PROTECTIVE SERVICES FOR ELDERLY
21 PERSONS AND [DISABLED] PERSONS WITH DISABILITIES

22 SECTION 4.254. Section 48.001, Human Resources Code, is
23 amended to read as follows:

24 Sec. 48.001. PURPOSE. The purpose of this chapter is to
25 provide for the authority to investigate the abuse, neglect, or
26 exploitation of an elderly [~~or disabled~~] person or person with a
27 disability and to provide protective services to that person.

1 SECTION 4.255. Sections [48.002\(a\)\(2\)](#), (3), (5), (6), and
2 (8), Human Resources Code, are amended to read as follows:

3 (2) "Abuse" means:

4 (A) the negligent or wilful infliction of injury,
5 unreasonable confinement, intimidation, or cruel punishment with
6 resulting physical or emotional harm or pain to an elderly [or
7 disabled] person or person with a disability by the person's
8 caretaker, family member, or other individual who has an ongoing
9 relationship with the person; or

10 (B) sexual abuse of an elderly [or disabled]
11 person or person with a disability, including any involuntary or
12 nonconsensual sexual conduct that would constitute an offense under
13 Section [21.08](#), Penal Code (indecent exposure) or Chapter 22, Penal
14 Code (assaultive offenses), committed by the person's caretaker,
15 family member, or other individual who has an ongoing relationship
16 with the person.

17 (3) "Exploitation" means the illegal or improper act
18 or process of a caretaker, family member, or other individual who
19 has an ongoing relationship with an elderly [or disabled] person or
20 person with a disability that involves using, or attempting to use,
21 the resources of the elderly [or disabled] person or person with a
22 disability, including the person's social security number or other
23 identifying information, for monetary or personal benefit, profit,
24 or gain without the informed consent of the [elderly or disabled]
25 person.

26 (5) "Protective services" means the services
27 furnished by the department or by another [~~a~~] protective services

1 agency to an elderly [or disabled] person or person with a
2 disability who has been determined to be in a state of abuse,
3 neglect, or exploitation or to a relative or caretaker of an elderly
4 [or disabled] person or person with a disability if the department
5 determines the services are necessary to prevent the elderly [or
6 disabled] person or person with a disability from returning to a
7 state of abuse, neglect, or exploitation. These services may
8 include social casework, case management, and arranging for
9 psychiatric and health evaluation, home care, day care, social
10 services, health care, respite services, and other services
11 consistent with this chapter. The term does not include the
12 services of the department or another protective services agency in
13 conducting an investigation regarding alleged abuse, neglect, or
14 exploitation of an elderly [or disabled] person or person with a
15 disability.

16 (6) "Protective services agency" means a public or
17 private agency, corporation, board, or organization that provides
18 protective services to elderly [or disabled] persons or persons
19 with disabilities in the state of abuse, neglect, or exploitation.

20 (8) "Person with a disability [~~Disabled person~~]" means
21 a person with a mental, physical, or intellectual or developmental
22 disability that substantially impairs the person's ability to
23 provide adequately for the person's care or protection and who is:

24 (A) 18 years of age or older; or
25 (B) under 18 years of age and who has had the
26 disabilities of minority removed.

27 SECTION 4.256. Section 48.002(b), Human Resources Code, is

1 amended to read as follows:

2 (b) The definitions of "abuse," "neglect," and
3 "exploitation" adopted by the executive commissioner [department]
4 as prescribed by Section 48.251 apply to an investigation of abuse,
5 neglect, or exploitation under Subchapter [~~in a facility subject to~~
6 ~~Subchapters~~] F or [and] H.

7 SECTION 4.257. Section 48.004, Human Resources Code, is
8 amended to read as follows:

9 Sec. 48.004. RISK ASSESSMENT. The executive commissioner
10 by rule shall develop and maintain risk assessment criteria for use
11 by department personnel in determining whether an elderly [~~or~~
12 ~~disabled~~] person or person with a disability is in imminent risk of
13 abuse, neglect, or exploitation or in a state of abuse, neglect, or
14 exploitation and needs protective services. The criteria must:

15 (1) provide for a comprehensive assessment of the
16 person's:

17 (A) environmental, physical, medical, mental
18 health, and financial condition;

19 (B) social interaction and support; and

20 (C) need for legal intervention; and

21 (2) specify the circumstances under which a caseworker
22 must consult with a supervisor regarding a case.

23 SECTION 4.258. Section 48.007, Human Resources Code, is
24 amended to read as follows:

25 Sec. 48.007. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN
26 ABUSE, NEGLECT, OR EXPLOITATION INVESTIGATIONS. The commission
27 [~~Health and Human Services Commission~~], the department, the

1 Department of Aging and Disability Services, the office of
2 independent ombudsman for state supported living centers, and the
3 commission's [~~Health and Human Services Commission's~~] office of
4 inspector general shall enter into a memorandum of understanding
5 regarding investigations of alleged abuse, neglect, or
6 exploitation of residents or clients of state supported living
7 centers or the ICF-IID [~~ICF-MR~~] component of the Rio Grande State
8 Center that delineates the responsibilities of each agency and
9 office under this chapter, Chapter 261, Family Code, and Chapter
10 555, Health and Safety Code, and amend the memorandum of
11 understanding as necessary to reflect changes in those
12 responsibilities. During the negotiation of the memorandum of
13 understanding, the agencies and offices shall jointly determine
14 whether the forensic training received by relevant staff of the
15 Department of Family and Protective Services is adequate.
16 Specifically, the agencies and offices shall assess and, if
17 necessary, develop a plan to enhance the ability of department
18 staff to identify and report incidences that constitute a potential
19 criminal offense. The commission [~~Health and Human Services~~
20 ~~Commission~~] is the final arbiter of any dispute regarding the
21 memorandum of understanding under this section.

22 SECTION 4.259. Sections 48.051(a), (b), and (d), Human
23 Resources Code, are amended to read as follows:

24 (a) Except as prescribed by Subsection (b), a person having
25 cause to believe that an elderly [~~or disabled~~] person or person with
26 a disability is in the state of abuse, neglect, or exploitation,
27 including a [~~disabled~~] person with a disability who is receiving

1 services as described by Section 48.252, shall report the
2 information required by Subsection (d) immediately to the
3 department.

4 (b) If a person has cause to believe that an elderly [~~or~~
5 ~~disabled~~] person or person with a disability, other than a
6 [disabled] person with a disability receiving services as described
7 by Section 48.252, has been abused, neglected, or exploited in a
8 facility operated, licensed, certified, or registered by a state
9 agency, the person shall report the information to the state agency
10 that operates, licenses, certifies, or registers the facility for
11 investigation by that agency.

12 (d) The report may be made orally or in writing. It shall
13 include:

14 (1) the name, age, and address of the elderly [~~or~~
15 ~~disabled~~] person or person with a disability;

16 (2) the name and address of any person responsible for
17 the care of the elderly person or person with a disability [~~disabled~~
18 person's care];

19 (3) the nature and extent of the condition of the
20 elderly person or person with a disability [~~disabled person's~~
21 condition];

22 (4) the basis of the reporter's knowledge; and

23 (5) any other relevant information.

24 SECTION 4.260. Section 48.052(a), Human Resources Code, is
25 amended to read as follows:

26 (a) A person commits an offense if the person has cause to
27 believe that an elderly [~~or disabled~~] person or person with a

1 disability has been abused, neglected, or exploited or is in the
2 state of abuse, neglect, or exploitation and knowingly fails to
3 report in accordance with this chapter. An offense under this
4 subsection is a Class A misdemeanor, except that the offense is a
5 state jail felony if it is shown on the trial of the offense that the
6 abused, neglected, or exploited [disabled] person is [was] a person
7 with an intellectual disability [~~mental retardation~~] who resided in
8 a state supported living center, the ICF-IID [~~ICF-MR~~] component of
9 the Rio Grande State Center, or a facility licensed under Chapter
10 252, Health and Safety Code, and the actor knew that the [disabled]
11 person had suffered serious bodily injury as a result of the abuse,
12 neglect, or exploitation.

13 SECTION 4.261. Section 48.101(f), Human Resources Code, is
14 amended to read as follows:

15 (f) The department or investigating state agency may
16 establish procedures to exchange with another state agency or
17 governmental entity information that is necessary for the
18 department, state agency, or entity to properly execute its
19 respective duties and responsibilities to provide services to
20 elderly [~~or disabled~~] persons or persons with disabilities under
21 this chapter or other law. An exchange of information under this
22 subsection does not affect whether the information is subject to
23 disclosure under Chapter 552, Government Code.

24 SECTION 4.262. Sections 48.102(a) and (d), Human Resources
25 Code, are amended to read as follows:

26 (a) The department shall send a written report of the
27 department's investigation of alleged abuse, neglect, or

1 exploitation of an [a disabled] adult with a disability at a school,
2 as appropriate, to the Texas Education Agency, the agency
3 responsible for teacher certification, the local school board or
4 the school's governing body, and the school principal or director,
5 unless the principal or director is alleged to have committed the
6 abuse, neglect, or exploitation. The entity to which the report is
7 sent shall take appropriate action.

8 (d) The executive commissioner [~~department~~] shall adopt
9 rules necessary to implement this section.

10 SECTION 4.263. Section 48.103(a), Human Resources Code, is
11 amended to read as follows:

12 (a) On determining after an investigation that an elderly
13 [~~or disabled~~] person or person with a disability has been abused,
14 exploited, or neglected by an employee of a home and community
15 support services agency licensed under Chapter 142, Health and
16 Safety Code, the department shall:

17 (1) notify the state agency responsible for licensing
18 the home and community support services agency of the department's
19 determination;

20 (2) notify any health and human services agency, as
21 defined by Section 531.001, Government Code, that contracts with
22 the home and community support services agency for the delivery of
23 health care services of the department's determination; and

24 (3) provide to the licensing state agency and any
25 contracting health and human services agency access to the
26 department's records or documents relating to the department's
27 investigation.

1 SECTION 4.264. Sections 48.151(b) and (c), Human Resources
2 Code, are amended to read as follows:

3 (b) The executive commissioner [department] shall adopt
4 rules for conducting investigations under this chapter.

5 (c) The executive commissioner [department] by rule may
6 assign priorities and prescribe investigative procedures for
7 conducting investigations according to the degree of severity and
8 immediacy of the alleged harm to the individual. Notwithstanding
9 Subsection (a), the [department's] priorities and procedures may
10 provide that an investigation is not required to be initiated
11 within 24 hours in all cases.

12 SECTION 4.265. Section 48.152(a), Human Resources Code, is
13 amended to read as follows:

14 (a) An investigation by the department or a state agency
15 shall include an interview with the elderly [or disabled] person or
16 person with a disability, if appropriate, and with persons thought
17 to have knowledge of the circumstances. If the elderly [or
18 disabled] person or person with a disability refuses to be
19 interviewed or cannot be interviewed because of a physical or
20 mental impairment, the department shall continue the investigation
21 by interviewing other persons thought to have knowledge relevant to
22 the investigation.

23 SECTION 4.266. Section 48.1522, Human Resources Code, is
24 amended to read as follows:

25 Sec. 48.1522. REPORTS OF CRIMINAL CONDUCT TO LAW
26 ENFORCEMENT AGENCY. (a) Except as provided by Subsection (b), if
27 during the course of the department's or another state agency's

1 investigation of reported abuse, neglect, or exploitation a
2 caseworker of the department or other state agency, as applicable,
3 or the caseworker's supervisor has cause to believe that the
4 elderly [or disabled] person or person with a disability has been
5 abused, neglected, or exploited by another person in a manner that
6 constitutes a criminal offense under any law, including Section
7 [22.04](#), Penal Code, the caseworker or supervisor shall:

- 8 (1) immediately notify an appropriate law enforcement
9 agency, unless the law enforcement agency reported the alleged
10 abuse, neglect, or exploitation to the department; and
11 (2) provide the law enforcement agency with a copy of
12 the investigation report of the department or other state agency,
13 as applicable, in a timely manner.

14 (b) If during the course of the department's investigation
15 of reported abuse, neglect, or exploitation a caseworker of the
16 department or the caseworker's supervisor has cause to believe that
17 a [disabled] person with a disability who is a resident or client of
18 a state supported living center or the ICF-IID [~~ICF-MR~~] component
19 of the Rio Grande State Center has been abused, neglected, or
20 exploited by another person in a manner that constitutes a criminal
21 offense under any law, including Section [22.04](#), Penal Code, in
22 addition to the report to the appropriate law enforcement agency
23 required by Subsection (a), the caseworker shall immediately notify
24 the commission's office of inspector general and promptly provide
25 the commission's office of inspector general with a copy of the
26 department's investigation report.

27 SECTION 4.267. Section [48.153\(a\)](#), Human Resources Code, is

1 amended to read as follows:

2 (a) To implement an investigation of reported abuse,
3 neglect, or exploitation, the probate court, or the county court
4 when no probate court exists, may authorize entry of the place of
5 residence of the elderly [or disabled] person or person with a
6 disability.

7 SECTION 4.268. Section 48.154(a), Human Resources Code, is
8 amended to read as follows:

9 (a) The department or another state agency, as appropriate,
10 shall have access to any records or documents, including
11 client-identifying information, financial records, and medical and
12 psychological records, necessary to the performance of the
13 department's or state agency's duties under this chapter. The
14 duties include but are not limited to the investigation of abuse,
15 neglect, or exploitation or the provisions of services to an
16 elderly [or disabled] person or person with a disability. A person,
17 agency, or institution that has a record or document that the
18 department or state agency needs to perform its duties under this
19 chapter shall, without unnecessary delay, make the record or
20 document available to the department or state agency that requested
21 the record or document.

22 SECTION 4.269. Section 48.155, Human Resources Code, is
23 amended to read as follows:

24 Sec. 48.155. INTERFERENCE WITH INVESTIGATION OR SERVICES
25 PROHIBITED. (a) A person, including a guardian and
26 notwithstanding Section 1151.001 [675], Estates [~~Texas Probate~~]
27 Code, may not interfere with:

1 (1) an investigation by the department or by another
2 [a] protective services agency of alleged abuse, neglect, or
3 exploitation of an elderly [~~or disabled~~] person or person with a
4 disability; or

5 (2) the provision of protective services to an elderly
6 [~~or disabled~~] person or person with a disability.

7 (b) The department or another [a] protective services
8 agency may petition the appropriate court to enjoin any
9 interference with:

10 (1) an investigation of alleged abuse, neglect, or
11 exploitation; or

12 (2) the provision of protective services such as
13 removal of the elderly [~~or disabled~~] person or person with a
14 disability to safer surroundings or safeguarding the person's
15 resources from exploitation.

16 SECTION 4.270. Section 48.201, Human Resources Code, is
17 amended to read as follows:

18 Sec. 48.201. APPLICATION OF SUBCHAPTER. Except as
19 otherwise provided, this subchapter does not apply to an [~~a Texas~~
20 ~~Department of Mental Health and Mental Retardation~~] investigation
21 under Subchapter F or H.

22 SECTION 4.271. Section 48.202, Human Resources Code, is
23 amended to read as follows:

24 Sec. 48.202. SERVICE DETERMINATION BY DEPARTMENT OR AGENCY.
25 (a) In an investigation the department or state agency, as
26 appropriate, shall determine:

27 (1) whether the person needs protective services from

1 the department;

2 (2) what services are needed;

3 (3) whether services are available from the

4 department, from the state agency, or in the community and how they

5 can be provided;

6 (4) whether the person, acting alone, would be capable

7 of obtaining needed services and could bear the cost or would be

8 eligible for services from the department or state agency;

9 (5) whether a caretaker would be willing to provide

10 services or would agree to their provision;

11 (6) whether the elderly [or disabled] person or person

12 with a disability desires the services;

13 (7) whether the person needs legal intervention to

14 resolve the person's abuse, neglect, or exploitation and, if so,

15 what type of intervention is needed; and

16 (8) other pertinent data.

17 (b) If the department or state agency, as appropriate,

18 determines under Subsection (a)(1) that a person needs protective

19 services, the department or agency shall, in determining how those

20 services can be provided as required by Subsection (a)(3),

21 determine whether the person may be [~~is~~] eligible for

22 community-based long-term [care] services and supports and whether

23 those services and supports are available. If the person is

24 eligible for those services and supports, but the services and

25 supports are not immediately available, the department or state

26 agency shall ensure that the person is placed on an appropriate

27 waiting list for the services and supports and that the person's

1 abuse, neglect, or exploitation is resolved before the department
2 closes the case.

3 SECTION 4.272. Section 48.203, Human Resources Code, is
4 amended to read as follows:

5 Sec. 48.203. VOLUNTARY PROTECTIVE SERVICES. (a) An
6 elderly [or disabled] person or person with a disability may
7 receive voluntary protective services if the person requests or
8 consents to receive those services.

9 (b) The elderly [or disabled] person or person with a
10 disability who receives protective services shall participate in
11 all decisions regarding the person's [his or her] welfare, if able
12 to do so.

13 (c) The least restrictive alternatives should be made
14 available to the elderly [or disabled] person or person with a
15 disability who receives protective services.

16 (d) Except as provided by Section 48.208, if an elderly [or
17 disabled] person or person with a disability withdraws from or
18 refuses consent to voluntary protective services, the services may
19 not be provided.

20 SECTION 4.273. Section 48.204, Human Resources Code, is
21 amended to read as follows:

22 Sec. 48.204. AGENCY POWERS. A protective services agency
23 may furnish protective services to an elderly [or disabled] person
24 or person with a disability with the person's consent or to a
25 relative or caretaker of the [an elderly or disabled] person on
26 behalf of the [elderly or disabled] person with the relative's or
27 caregiver's consent or, if the elderly [or disabled] person or

1 person with a disability lacks the capacity to consent, without
2 that person's consent as provided by this chapter.

3 SECTION 4.274. Sections **48.205**(b) and (d), Human Resources
4 Code, are amended to read as follows:

5 (b) The department shall use existing resources and
6 services of public and private agencies in providing protective
7 services. If the department does not have existing resources to
8 provide direct protective services to elderly [~~or disabled~~] persons
9 or persons with disabilities, the department, subject to the
10 availability of funds, shall contract with protective services
11 agencies for the provision of those services, especially to
12 [~~elderly or disabled~~] persons residing in rural or remote areas of
13 this state or not previously served by the department.

14 (d) The responsibilities prescribed by this chapter are
15 exclusive of those designated to other state or federal agencies
16 authorized or required by law to provide protective services to
17 elderly [~~or disabled~~] persons or persons with disabilities
18 determined to be in the state of abuse, neglect, or exploitation.

19 SECTION 4.275. Section **48.206**, Human Resources Code, is
20 amended to read as follows:

21 Sec. 48.206. COST OF SERVICES. If the elderly [~~or disabled~~]
22 person or person with a disability receiving the protective
23 services is determined to be financially able to contribute to the
24 payments for those services, the provider shall receive a
25 reasonable reimbursement from the person's assets.

26 SECTION 4.276. Sections **48.208**(b), (c), (c-1), (c-2),
27 (c-3), (c-4), (c-5), (d), (d-1), (e-1), (f), (g), and (h), Human

1 Resources Code, are amended to read as follows:

2 (b) If the department determines that an elderly [~~or~~
3 ~~disabled~~] person or person with a disability is suffering from
4 abuse, neglect, or exploitation presenting a threat to life or
5 physical safety, that the person lacks capacity to consent to
6 receive protective services, and that no consent can be obtained,
7 the department may petition the probate or statutory or
8 constitutional county court that has probate jurisdiction in the
9 county in which the [~~elderly or disabled~~] person resides for an
10 emergency order authorizing protective services.

11 (c) The petition shall be verified and shall include:

12 (1) the name, age, and address of the elderly [~~or~~
13 ~~disabled~~] person or person with a disability who needs protective
14 services;

15 (2) the nature of the abuse, neglect, or exploitation;

16 (3) the services needed; and

17 (4) a medical report signed by a physician stating
18 that the person is suffering from abuse, neglect, or exploitation
19 presenting a threat to life or physical safety and stating that the
20 person is physically or mentally incapable of consenting to
21 services unless the court finds that an immediate danger to the
22 person's health or safety [~~of the elderly or disabled person~~]
23 exists and there is not sufficient time to obtain the medical
24 report.

25 (c-1) Notwithstanding Subsection (c)(4), in lieu of a
26 medical report described by Subsection (c)(4), the petition may
27 include an assessment of the [~~elderly or disabled person's~~] health

1 status of the elderly person or person with a disability as
2 described by Subsection (c-2) or psychological status as described
3 by Subsection (c-3), or a medical opinion of the [elderly or
4 disabled] person's health status as described by Subsection (c-4),
5 if the department determines, after making a good faith effort,
6 that a physician from whom the department may obtain the medical
7 report is unavailable. The department shall ensure that the person
8 who performs an assessment of the [elderly or disabled person's]
9 health or psychological status of the elderly person or person with
10 a disability has training and experience in performing the
11 applicable assessment.

12 (c-2) Except as provided by Subsection (c-4), an assessment
13 of the [elderly or disabled person's] health status of the elderly
14 person or person with a disability must be performed by a physician
15 assistant or advanced practice nurse. The person performing the
16 assessment shall sign a report stating:

17 (1) that the elderly [or disabled] person or person
18 with a disability is reported to be suffering from abuse, neglect,
19 or exploitation, which may present a threat to the person's life or
20 physical safety;

21 (2) whether the elderly [or disabled] person or person
22 with a disability has provided the person's medical history to the
23 physician assistant or advanced practice nurse, as applicable; and

24 (3) that in the professional opinion of the physician
25 assistant or advanced practice nurse, as applicable, the issuance
26 of an emergency order authorizing protective services without the
27 [elderly or disabled person's] consent of the elderly person or

1 person with a disability is necessary under the circumstances.

2 (c-3) An assessment of the [elderly or disabled person's]
3 psychological status of the elderly person or person with a
4 disability must be performed by a licensed professional counselor,
5 licensed psychologist, or master social worker who has training and
6 expertise in issues related to abuse, neglect, and exploitation.

7 The person performing the assessment shall sign a report stating:

8 (1) that the elderly [or disabled] person or person
9 with a disability is reported to be suffering from abuse, neglect,
10 or exploitation, which may present a threat to the person's life or
11 physical safety; and

12 (2) that in the professional opinion of the licensed
13 professional counselor, licensed psychologist, or master social
14 worker, as applicable, the issuance of an emergency order
15 authorizing protective services without the [elderly or disabled
16 person's] consent of the elderly person or person with a disability
17 is necessary under the circumstances.

18 (c-4) A registered nurse may perform a nursing assessment of
19 the [elderly or disabled person's] health status of the elderly
20 person or person with a disability. If the registered nurse, based
21 on the registered nurse's professional nursing judgment,
22 determines that the [elderly or disabled] person is likely to be
23 suffering from abuse, neglect, or exploitation, which may present a
24 threat to the person's life or physical safety, the registered
25 nurse shall report that assessment to a physician. After the
26 registered nurse reports the assessment, the physician shall sign a
27 written opinion stating whether:

1 (1) the elderly [or disabled] person or person with a
2 disability is reported to be suffering from abuse, neglect, or
3 exploitation, which may present a threat to the person's life or
4 physical safety; and

5 (2) the issuance of an emergency order authorizing
6 protective services without the [~~elderly or disabled person's~~]
7 consent of the elderly person or person with a disability is
8 necessary under the circumstances.

9 (c-5) The physician may use the registered nurse's
10 assessment of the [~~elderly or disabled person's~~] health status of
11 the elderly person or person with a disability as the basis of the
12 physician's professional opinion under Subsection (c-4).

13 (d) On finding that there is reasonable cause to believe
14 that abuse, neglect, or exploitation presents a threat to life or
15 physical safety for the elderly [or disabled] person or person with
16 a disability and that the [~~elderly or disabled~~] person lacks
17 capacity to consent to services, the court may:

18 (1) order removal of the [~~elderly or disabled~~] person
19 to safer surroundings;

20 (2) order medical services; and

21 (3) order other available services necessary to remove
22 conditions creating the threat to life or physical safety,
23 including the services of law enforcement officers or emergency
24 medical services personnel.

25 (d-1) If the court renders an order that is based on a
26 petition including an assessment under Subsection (c-2) or (c-3) or
27 a medical opinion under Subsection (c-4), the court shall order

1 that the elderly [or disabled] person or person with a disability be
2 examined by a physician not later than 72 hours after the time the
3 provision of protective services begins. After performing the
4 examination, the physician shall sign and submit to the court a
5 medical report stating the physician's opinion whether the [elderly
6 or disabled] person is:

7 (1) suffering from abuse, neglect, or exploitation
8 presenting a threat to life or physical safety; and

9 (2) physically or mentally incapable of consenting to
10 services.

11 (e-1) An emergency order that was rendered based on a
12 petition that included an assessment under Subsection (c-2) or
13 (c-3) or a medical opinion under Subsection (c-4) immediately
14 terminates if the medical report issued under Subsection (d-1)
15 states the physician's opinion that the elderly [or disabled]
16 person or person with a disability:

17 (1) is not suffering from abuse, neglect, or
18 exploitation presenting a threat to life or physical safety; or

19 (2) is physically or mentally capable of consenting to
20 services.

21 (f) Any medical facility, emergency medical services
22 provider, or physician who provides treatment to or who transports
23 an elderly [or disabled] person or person with a disability
24 pursuant to an emergency order under Subsection (d) or an emergency
25 authorization under Subsection (h) is not liable for any damages
26 arising from the treatment or transportation, except those damages
27 resulting from the negligence of the facility, provider, or

1 physician.

2 (g) The court shall appoint an attorney ad litem to
3 represent the elderly [~~or disabled~~] person or person with a
4 disability in any proceeding brought by the department under this
5 section. A reasonable fee, as determined by the court, shall be
6 paid to the attorney ad litem from the general fund of the county.

7 (h) If the department cannot obtain an emergency order under
8 this section because the court is closed on a Saturday, Sunday, or
9 legal holiday or after 5 p.m., the department may remove or
10 authorize an appropriate transportation service, including an
11 emergency medical services provider, to remove the elderly [~~or~~
12 ~~disabled~~] person or person with a disability to safer surroundings,
13 authorize medical treatment, or authorize or provide other
14 available services necessary to remove conditions creating the
15 threat to life or physical safety. The department must obtain an
16 emergency order under this section not later than 4 p.m. on the
17 first succeeding business day after the date on which protective
18 services are provided. If the department does not obtain an
19 emergency order, the department shall cease providing protective
20 services and, if necessary, make arrangements for the immediate
21 return of the person to the place from which the person was removed,
22 to the person's place of residence in the state, or to another
23 suitable place.

24 SECTION 4.277. Sections 48.209(a) and (d), Human Resources
25 Code, are amended to read as follows:

26 (a) The department shall refer an individual to the
27 Department of Aging and Disability Services for guardianship

1 services under Subchapter E, Chapter 161, if the individual is:

2 (1) a minor in the conservatorship of the department

3 who:

4 (A) is 16 years of age or older; and

5 (B) the department has reason to believe will,
6 because of a physical or mental condition, be substantially unable
7 to provide for the individual's own food, clothing, or shelter, to
8 care for the individual's own physical health, or to manage the
9 individual's own financial affairs when the individual becomes an
10 adult; or

11 (2) an elderly [~~or disabled~~] person or person with a
12 disability who:

13 (A) has been found by the department to be in a
14 state of abuse, neglect, or exploitation; and

15 (B) the department has reason to believe is an
16 incapacitated person as defined by Section 1002.017(2)
17 [~~601(14)(B)~~], Estates [~~Texas Probate~~] Code.

18 (d) Nothing in this section shall prohibit the department
19 from also making a referral of an individual to a court having
20 probate jurisdiction in the county where the individual is
21 domiciled or found, if the court has requested the department to
22 notify the court of any individuals who may be appropriate for a
23 court-initiated guardianship proceeding under Chapter 1102
24 [~~Section 683~~], Estates [~~Texas Probate~~] Code. In making a referral
25 under this subsection and if requested by the court, the department
26 shall, to the extent allowed by law, provide the court with all
27 relevant information in the department's records relating to the

1 individual. The court, as part of this process, may not require the
2 department to:

3 (1) perform the duties of a guardian ad litem or court
4 investigator as prescribed by Chapter 1102 [~~Section 683~~], Estates
5 [~~Texas Probate~~] Code; or

6 (2) gather additional information not contained in the
7 department's records.

8 SECTION 4.278. Section [48.211](#), Human Resources Code, is
9 amended to read as follows:

10 Sec. 48.211. REPORT TO GUARDIANSHIP COURT. If the elderly
11 [~~or disabled~~] person or person with a disability has a guardian, a
12 written notification of the findings of the investigation shall be
13 sent to the court to which the guardian is accountable.

14 SECTION 4.279. The heading to Subchapter F, Chapter 48,
15 Human Resources Code, is amended to read as follows:

16 SUBCHAPTER F. INVESTIGATIONS IN CERTAIN FACILITIES, COMMUNITY
17 CENTERS, AND LOCAL MENTAL HEALTH AND INTELLECTUAL AND DEVELOPMENTAL
18 DISABILITY [~~MENTAL RETARDATION~~] AUTHORITIES

19 SECTION 4.280. Section [48.251](#), Human Resources Code, is
20 amended to read as follows:

21 Sec. 48.251. DEFINITIONS. The executive commissioner
22 [~~department~~] by rule shall adopt definitions of "abuse," "neglect,"
23 and "exploitation" to govern investigations [~~an investigation~~]
24 under this subchapter and Subchapter H.

25 SECTION 4.281. Section [48.252](#), Human Resources Code, is
26 amended to read as follows:

27 Sec. 48.252. INVESTIGATION OF REPORTS IN CERTAIN FACILITIES

1 AND IN COMMUNITY CENTERS. (a) The department shall receive and
2 investigate reports of the abuse, neglect, or exploitation of an
3 individual with a disability receiving services:

4 (1) in:

5 (A) a mental health facility operated by the
6 Department of State Health Services; or
7 (B) a facility licensed under Chapter 252, Health
8 and Safety Code;

9 (2) in or from a community center, a local mental
10 health authority, or a local intellectual and developmental
11 disability [~~mental retardation~~] authority; or

12 (3) through a program providing services to that
13 person by contract with a mental health facility operated by the
14 Department of State Health Services, a community center, a local
15 mental health authority, or a local intellectual and developmental
16 disability [~~mental retardation~~] authority.

17 (b) The department shall receive and shall investigate
18 reports of the abuse, neglect, or exploitation of an individual
19 with a disability receiving services:

20 (1) in a state supported living center or the ICF-IID
21 [~~ICF-MR~~] component of the Rio Grande State Center; or

22 (2) through a program providing services to that
23 person by contract with a state supported living center or the
24 ICF-IID [~~ICF-MR~~] component of the Rio Grande State Center.

25 (c) The executive commissioner [~~department~~] by rule shall
26 define who is "an individual with a disability receiving services."

27 (d) In this section, "community center," "local mental

1 health authority," and "local intellectual and developmental
2 disability [~~mental retardation~~] authority" have the meanings
3 assigned by Section 531.002, Health and Safety Code.

4 SECTION 4.282. Section 48.254, Human Resources Code, is
5 amended to read as follows:

6 Sec. 48.254. FORWARDING OF CERTAIN REPORTS. In accordance
7 with department rules, the department shall forward a copy of the
8 initial intake report and a copy of the completed investigation
9 report relating to alleged or suspected abuse, neglect, or
10 exploitation to the appropriate facility, community center, local
11 mental health authority, local intellectual and developmental
12 disability [~~mental retardation~~] authority, or program providing
13 mental health or intellectual disability [~~mental retardation~~]
14 services under contract with the facility, community center, or
15 authority.

16 SECTION 4.283. Sections 48.255(a), (b), (c), (d), (e), and
17 (f), Human Resources Code, are amended to read as follows:

18 (a) The department, the Department of Aging and Disability
19 Services, and the Department of State Health Services shall develop
20 [~~joint~~] rules to facilitate investigations in state mental health
21 facilities and state supported living centers.

22 (b) The executive commissioner [~~Department, the Department~~
23 ~~of Aging and Disability Services, and the Department of State~~
24 ~~Health Services~~] by rule [~~joint rules~~] shall establish procedures
25 for resolving disagreements between the department and the
26 Department of Aging and Disability Services or the Department of
27 State Health Services concerning the department's investigation

1 findings.

2 (c) The department, the Department of Aging and Disability
3 Services, and the Department of State Health Services shall develop
4 and propose to the executive commissioner [joint] rules to
5 facilitate investigations in community centers, local mental
6 health authorities, and local intellectual and developmental
7 disability [~~mental retardation~~] authorities.

8 (d) A confirmed investigation finding by the department may
9 not be changed by a superintendent of a state mental health
10 facility, by a director of a state supported living center, by a
11 director of a community center, or by a local mental health
12 authority or local intellectual and developmental disability
13 [~~mental retardation~~] authority.

14 (e) The executive commissioner [~~department~~] shall provide
15 by rule for an appeals process by the alleged victim of abuse,
16 neglect, or exploitation under this section.

17 (f) The executive commissioner [~~department~~] by rule may
18 assign priorities to an investigation conducted by the department
19 under this section. The primary criterion used by the executive
20 commissioner [~~department~~] in assigning a priority must be the risk
21 that a delay in the investigation will impede the collection of
22 evidence.

23 SECTION 4.284. Section 48.256(a), Human Resources Code, is
24 amended to read as follows:

25 (a) The department, the Department of Aging and Disability
26 Services, and the Department of State Health Services shall, at the
27 direction of the executive commissioner, jointly develop and

1 implement a single system to track reports and investigations under
2 this subchapter.

3 SECTION 4.285. Sections [48.301\(a\), \(b\), \(c\), \(e\), \(f\), and](#)
4 (g), Human Resources Code, are amended to read as follows:

5 (a) If the department receives a report of suspected abuse,
6 neglect, or exploitation of an elderly [or disabled] person or
7 person with a disability, other than a [disabled] person with a
8 disability who is receiving services as described by Section
9 [48.252](#), in a facility operated, licensed, certified, or registered
10 by a state agency, the department shall refer the report to that
11 agency.

12 (b) A state agency that receives a report under this section
13 shall make a thorough investigation promptly after receiving a
14 report that an elderly [or disabled] person or person with a
15 disability has been or may be abused, neglected, or exploited in a
16 facility operated, licensed, certified, or registered by the
17 agency. The primary purpose of the investigation is the protection
18 of the elderly [or disabled] person or person with a disability.

19 (c) Each state agency that may receive reports under this
20 section, or the person responsible for adopting rules for that
21 state agency, shall adopt rules relating to the investigation and
22 resolution of reports received under this section.

23 (e) A state agency that receives a complaint relating to an
24 investigation conducted under this section shall refer the
25 complaint to its governing board, if applicable, or other person or
26 entity designated to receive such complaints for review and
27 appropriate action.

1 (f) The executive commissioner [Health and Human Services
2 ~~Commission~~] by rule shall adopt minimum standards for the
3 investigation of suspected abuse, neglect, or exploitation of an
4 elderly [~~or disabled~~] person or person with a disability under this
5 section.

6 (g) A rule or policy adopted by or for a state agency [~~or~~
7 ~~institution~~] under Subsection (c) must be consistent with the
8 minimum standards adopted by the executive commissioner [Health and
9 ~~Human Services Commission~~].

10 SECTION 4.286. Section 48.302, Human Resources Code, is
11 amended to read as follows:

12 Sec. 48.302. APPROVAL OF RULES. The executive commissioner
13 [~~Health and Human Services Commission~~] shall review and approve the
14 rules required by Section 48.301(c) to ensure that all agencies
15 implement appropriate standards for the conduct of investigations
16 and that uniformity exists among agencies in the investigation and
17 resolution of reports.

18 SECTION 4.287. Section 48.303(a), Human Resources Code, is
19 amended to read as follows:

20 (a) The department shall enter into [~~adopt~~] a memorandum of
21 understanding with each state agency that operates, licenses,
22 certifies, or registers a facility in which elderly [~~or disabled~~]
23 persons or persons with disabilities are located that clarifies
24 each agency's responsibility under this chapter.

25 SECTION 4.288. Section 48.304, Human Resources Code, is
26 amended to read as follows:

27 Sec. 48.304. STATISTICS. (a) A [~~Each~~] state agency[, other]

1 ~~than the Texas Department of Mental Health and Mental Retardation,~~]
2 that operates, licenses, certifies, or registers a facility in
3 which elderly [or disabled] persons or persons with disabilities
4 are located shall compile and maintain statistics on the incidence
5 of abuse, neglect, or exploitation of elderly [or disabled] persons
6 or persons with disabilities that occurs in the facilities. A state
7 agency is not required to compile and maintain statistics on the
8 incidence of abuse, neglect, or exploitation of an individual with
9 a disability described under Section 48.252.

10 (b) The agency shall make the statistics available to the
11 commission [~~Health and Human Services Commission~~] on request.

12 SECTION 4.289. Section 48.402, Human Resources Code, is
13 amended to read as follows:

14 Sec. 48.402. RULES RELATING TO REPORTABLE CONDUCT. The
15 executive commissioner [~~department~~] may adopt rules to further
16 define reportable conduct.

17 SECTION 4.290. Section 51.0021, Human Resources Code, is
18 amended to read as follows:

19 Sec. 51.0021. FAMILY VIOLENCE SERVICES PLAN. (a) The
20 commission [~~department~~] shall develop and maintain a plan for
21 delivering family violence services in this state.

22 (b) In developing the plan under this section, the
23 commission [~~department~~] shall consider the geographic distribution
24 of services and the need for services, including the need for
25 increasing services for underserved populations.

26 SECTION 4.291. Section 51.003, Human Resources Code, is
27 amended to read as follows:

1 Sec. 51.003. CONTRACTS. (a) The commission [department] shall contract for services with family violence centers with consideration given to the plan for family violence services under Section 51.0021. These contracts are to expand existing family violence center services and may not result in reducing financial support a family violence center receives from another source. The contracts shall not provide for more than 75 percent of the cost of the family violence center program. The commission [department] shall develop a declining scale of state financial support for family violence centers, declining over a six-year period from the initiation of each individual contract, with no more than 50 percent of a family violence center program's funding to be provided by the state after the sixth year. The balance each year shall be provided from other sources. The executive commissioner [department] may adopt rules which will allow exceptions to the above scale in individual instances when a family violence center shall demonstrate that exigent circumstances require such a waiver.

18 (b) The commission [department] may contract with family violence special projects for services. The commission [department] shall consider the plan for family violence services under Section 51.0021 in contracting with family violence special projects.

23 (c) The commission [department] shall contract statewide for activities that support and advance the work of family violence centers. Activities contracted for under this subsection must include the provision of technical assistance and training for family violence centers. The commission [department] may contract

1 for the provision of public education, consultation to the
2 commission [department], research, evaluation, and liaison and
3 training for other professionals who work with victims of family
4 violence, including professionals in the criminal justice,
5 medical, and social services fields, and for community or civic
6 groups.

7 (d) The commission [department] shall award all contracts
8 made under Subsection (c) through a competitive bidding process
9 unless that process would not be cost-effective.

10 SECTION 4.292. Section 51.004, Human Resources Code, is
11 amended to read as follows:

12 Sec. 51.004. CONTRACT BIDS. (a) To be eligible for a
13 contract under Section 51.003(a), a family violence shelter center
14 must:

15 (1) provide temporary lodging and direct delivery of
16 services for adults and their dependents;

17 (2) have been in actual operation offering shelter
18 services 24 hours a day with a capacity for not less than five
19 persons for at least one year before the date on which the contract
20 is awarded;

21 (3) demonstrate that the center, through the services
22 it provides, is addressing a need in the community consistent with
23 the plan for family violence services under Section 51.0021; and

24 (4) submit a contract application on forms prescribed
25 by the commission [department].

26 (b) To be eligible for a contract under Section 51.003(a), a
27 family violence nonresidential center must:

1 (1) provide, as its primary purpose, direct delivery
2 of services to adult victims of family violence;

3 (2) demonstrate a system of referring victims of
4 family violence to at least one family violence shelter center or
5 other safe temporary lodging;

6 (3) have been operating and providing comprehensive
7 services, including the services described by Section
8 51.005(b)(3), to victims of family violence for at least one year
9 before the date on which the contract is awarded;

10 (4) demonstrate that the center, through the services
11 it provides, is addressing a need in the community consistent with
12 the plan for family violence services under Section 51.0021; and

13 (5) submit a contract application on forms prescribed
14 by the commission [department].

15 (c) The commission [department] shall consider the
16 following factors in awarding contracts under Section 51.003(a):

17 (1) the family violence center's eligibility for and
18 use of funds from the federal government, philanthropic
19 organizations, and voluntary sources;

20 (2) community support for the family violence center,
21 as evidenced by financial contributions from civic organizations,
22 local governments, and individuals;

23 (3) evidence that the family violence center provides
24 services that encourage self-sufficiency and effectively uses
25 community resources;

26 (4) evidence of involvement with local law enforcement
27 officials; and

1 (5) support for the family violence center through
2 volunteer work, especially volunteer effort by persons who have
3 been victims of family violence.

4 (d) To be eligible for a contract under Section 51.003(b), a
5 family violence special project must:

6 (1) provide:

7 (A) community education relating to family
8 violence; or

9 (B) direct delivery of services for adult victims
10 of family violence or their children;

11 (2) demonstrate a system of referring victims of
12 family violence to at least one family violence shelter center or
13 other safe temporary lodging;

14 (3) demonstrate that the project, through the services
15 it provides, is addressing a need in the community consistent with
16 the plan for family violence services under Section 51.0021;

17 (4) demonstrate that the underserved or special
18 population to be served by the project is involved in the project's
19 design and implementation, if applicable; and

20 (5) submit a contract application on forms prescribed
21 by the commission [department].

22 (e) The commission [department] shall use a noncompetitive
23 procurement procedure if the commission [department] determines
24 that there is no competition between eligible family violence
25 centers for a service area. If the commission [department]
26 determines that there is competition between eligible family
27 violence centers for a service area, the commission [department]

1 shall award a contract through a competitive procurement procedure.

2 SECTION 4.293. Section 51.005, Human Resources Code, is
3 amended to read as follows:

4 Sec. 51.005. CONTRACT SPECIFICATIONS. (a) The commission
5 [~~department~~] shall contract only with public or private nonprofit
6 organizations that fulfill the requirements of this chapter.

7 (b) The contracts shall require the persons operating a
8 family violence center to:

9 (1) make a quarterly and an annual financial report on
10 a form prescribed by the commission [~~department~~];

11 (2) cooperate with inspections the commission
12 [~~department~~] makes to ensure services standards and fiscal
13 responsibility; and

14 (3) provide, as its primary purpose, services to
15 victims of family violence that include:

16 (A) 24-hour-a-day shelter, except that a family
17 violence nonresidential center may provide access to a
18 24-hour-a-day shelter;

19 (B) a 24-hour-a-day crisis hotline, except that a
20 family violence nonresidential center may provide access to a
21 24-hour-a-day crisis hotline operated by another organization
22 located in the nonresidential center's service area;

23 (C) access to emergency medical care;

24 (D) intervention services, including safety
25 planning, understanding and support, information, education,
26 referrals, and other resource assistance;

27 (E) access to emergency transportation;

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(F) legal assistance in the civil and criminal justice systems, including:

3 (i) identifying individual needs, legal
4 rights, and legal options; and

7 (G) information about educational arrangements
8 for children:

9 (H) information about training for and seeking
10 employment:

(I) cooperation with criminal justice officials;

12 (J) community education;

13 (K) a referral system to existing community
14 services; and

15 (L) a volunteer recruitment and training
16 program.

17 (c) The contracts may require the persons operating a family
18 violence center to use intake and case study forms. Forms required
19 shall be developed by the commission [department] with consultation
20 as outlined in Section 51.008.

21 SECTION 4.294. Section 51.0051, Human Resources Code, is
22 amended to read as follows:

23 Sec. 51.0051. MAXIMIZING FEDERAL FUNDING FOR PROGRAMS TO
24 BENEFIT VICTIMS OF FAMILY VIOLENCE. To maximize the state's
25 receipt of federal matching funds for emergency assistance under
26 Part A, Title IV, Social Security Act (42 U.S.C. Section 601 et
27 seq.):

1 (1) [~~r~~] the commission [~~department~~] shall:
2 (A) [~~(1)~~] ensure that a contract made under
3 Section 51.003 includes provisions necessary to maximize federal
4 funding for services for victims of family violence; and

5 (B) [~~(2)~~] file amendments to the state's plan for
6 aid and services to needy families with children under Part A, Title
7 IV, Social Security Act (42 U.S.C. Section 601 et seq.), that are
8 necessary to maximize federal funding; and

9 (2) the executive commissioner shall [~~(3)~~] establish
10 by rule any reporting procedures that federal law requires as a
11 condition of receiving federal matching funds.

12 SECTION 4.295. Section 51.006, Human Resources Code, is
13 amended to read as follows:

14 Sec. 51.006. REPORT. (a) Not later than November 1 of each
15 even-numbered year, the commission [~~department~~] shall publish a
16 report that summarizes reports from family violence centers under
17 contract with the commission [~~department~~] and that analyzes the
18 effectiveness of the contracts authorized by this chapter. The
19 reports must include information on the expenditure of funds
20 authorized under this chapter, the services provided, the number of
21 persons for whom a service was provided, and any other information
22 relating to the provision of family violence services. [~~The report~~
23 ~~may be combined with the report required by Section 21.011.~~] Copies
24 of the report shall be submitted to the governor, the lieutenant
25 governor, the speaker of the house of representatives, the
26 Legislative Budget Board, and the standing committees of the senate
27 and house of representatives having primary jurisdiction over the

1 commission [department].

2 (b) The report required under Subsection (a) may be
3 published electronically on the commission's [department's]
4 Internet website. The commission [department] shall notify each
5 agency entitled to receive a copy of the report that the report is
6 available on the commission's [department's] Internet website on or
7 before the date the report is due.

8 SECTION 4.296. Section 51.007, Human Resources Code, is
9 amended to read as follows:

10 Sec. 51.007. CONFIDENTIALITY. The commission [department]
11 may not disclose any information that would identify:

12 (1) a particular family violence center location;
13 (2) a board member of a family violence center or
14 family violence special project; or
15 (3) a person working at or receiving services through
16 a family violence center or family violence special project.

17 SECTION 4.297. Section 51.008, Human Resources Code, is
18 amended to read as follows:

19 Sec. 51.008. CONSULTATIONS. In implementing this chapter,
20 the commission [department] shall consult with individuals and
21 groups having knowledge of and experience in the problems of family
22 violence.

23 SECTION 4.298. Section 51.009, Human Resources Code, is
24 amended to read as follows:

25 Sec. 51.009. GRANTS AND FUNDS. The commission [department]
26 may seek other funds that may be available for the contracts
27 authorized by this chapter.

1 SECTION 4.299. Section 51.010, Human Resources Code, is
2 amended to read as follows:

3 Sec. 51.010. RULES. The executive commissioner
4 [~~department~~] may adopt rules necessary to implement this chapter.

5 SECTION 4.300. Section 51.011, Human Resources Code, is
6 amended to read as follows:

7 Sec. 51.011. FUNDING. (a) In order to finance the program
8 created by this chapter, the commission [~~department~~] is authorized
9 to solicit and receive grants of money from either private or public
10 sources, including appropriation by the legislature from the
11 general revenue fund of the State of Texas, and in that regard it is
12 hereby declared that the need for and importance of this program
13 require priority and preferential consideration in appropriation.

14 (b) The commission [~~department~~] may use not more than six
15 percent of the annual legislative appropriation to the family
16 violence program for administration of this chapter and not more
17 than six percent annually for the contracts described in Section
18 51.003(c).

19 SECTION 4.301. Section 51.012, Human Resources Code, is
20 amended to read as follows:

21 Sec. 51.012. COORDINATION OF SERVICES. The commission
22 [~~department~~] and the Department of Family and Protective [and
23 Regulatory] Services shall coordinate the provision of violence
24 prevention services for children.

25 SECTION 4.302. Chapter 54, Human Resources Code, is amended
26 to read as follows:

1 CHAPTER 54. PROTECTIVE ORDERS SOUGHT BY DEPARTMENT OF FAMILY AND
2 PROTECTIVE [~~AND REGULATORY~~] SERVICES

3 Sec. 54.001. PROTECTIVE ORDERS. The executive commissioner
4 [~~Department of Protective and Regulatory Services~~] shall adopt
5 rules to provide procedures for the filing of protective orders by
6 the Department of Family and Protective Services for the protection
7 of a member of a family or household as provided by Title 4 [Section
8 71.04], Family Code.

9 Sec. 54.002. NOTICE TO NONABUSIVE PARENT OR HOUSEHOLD
10 MEMBER. The Department of Family and Protective [~~and Regulatory~~]
11 Services shall provide prior notice to a nonabusive parent or adult
12 member of a household of the department's intent to file an
13 application for a protective order for a child or older person and
14 shall request the assistance of the person receiving the notice in
15 developing a safety plan for household members and the child or
16 older person for whom the order is sought. The department shall
17 exercise reasonable safety precautions to protect a nonabusive
18 parent or other member of a household while providing notice and
19 requesting assistance under this section.

20 SECTION 4.303. The heading to Chapter 73, Human Resources
21 Code, is amended to read as follows:

22 CHAPTER 73. [~~INTERAGENCY COUNCIL ON~~] EARLY CHILDHOOD INTERVENTION
23 SERVICES

24 SECTION 4.304. Section 73.001, Human Resources Code, is
25 amended by amending Subdivisions (1) and (2) and adding Subdivision
26 (4) to read as follows:

27 (1) "Commission" means the Health and Human Services

1 Commission ["Board" means the board of the Interagency Council on
2 Early Childhood Intervention].

3 (2) "Department" means the Department of Assistive and
4 Rehabilitative Services ["Council" means the Interagency Council
5 on Early Childhood Intervention].

6 (4) "Executive commissioner" means the executive
7 commissioner of the Health and Human Services Commission.

8 SECTION 4.305. Section 73.003, Human Resources Code, is
9 amended to read as follows:

10 Sec. 73.003. STRATEGIC PLAN. The department [~~council~~]
11 shall develop and implement a strategic plan for a statewide system
12 of early childhood intervention services, as required by Part C
13 [~~Subchapter VIII~~], Individuals with Disabilities Education Act
14 (IDEA) (20 U.S.C. Section 1431 [~~1471~~] et seq.), and its subsequent
15 amendments, to ensure that the provisions of this chapter are
16 properly implemented by the agencies affected.

17 SECTION 4.306. Section 73.004, Human Resources Code, is
18 amended to read as follows:

19 Sec. 73.004. ADVISORY COMMITTEE. (a) The governor shall
20 appoint an advisory committee to assist the department [~~council~~] in
21 the performance of its duties under this chapter. The executive
22 commissioner [~~council~~] shall establish the size and composition of
23 the committee by rule, consistent with federal regulations and
24 state rules. The commissioner of assistive and rehabilitative
25 services [~~governor or the council~~] may also appoint ex officio
26 members to serve for specific purposes to assist the department
27 [~~council~~] in the performance of its duties under this chapter.

1 (b) The committee shall meet and serve in accordance with
2 department [~~under the~~] rules [~~of the board~~], but the committee
3 shall elect its own presiding officer. The committee may be divided
4 into regional committees to assist the department [~~council~~] in
5 community-level program planning and implementation under this
6 chapter.

7 (c) The advisory committee is not subject to Chapter 2110,
8 Government Code [~~Article 6252-33, Revised Statutes~~].

9 SECTION 4.307. Section 73.0041, Human Resources Code, is
10 amended to read as follows:

11 Sec. 73.0041. ADVISORY COMMITTEE DUTIES. The advisory
12 committee established under Section 73.004 shall perform the duties
13 and responsibilities required of an advisory committee under 20
14 U.S.C. Section 1441 [~~Subchapter VIII, Individuals with~~
15 ~~Disabilities Education Act (IDEA) (20 U.S.C. Section 1471 et~~
16 ~~seq.)~~] and its subsequent amendments.

17 SECTION 4.308. Section 73.0045, Human Resources Code, is
18 amended to read as follows:

19 Sec. 73.0045. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
20 CONFLICT WITH OTHER LAW [~~OF COMMISSIONER OF HEALTH AND HUMAN~~
21 ~~SERVICES~~]. [~~The commissioner of health and human services has the~~
22 ~~powers and duties relating to the board and the executive director~~
23 ~~of the board as provided by Section 531.0055, Government Code.~~] To
24 the extent a power or duty given to the commissioner of assistive
25 and rehabilitative services [~~board or executive director~~] by this
26 chapter or another law conflicts with Section 531.0055, Government
27 Code, Section 531.0055 controls.

1 SECTION 4.309. Section 73.005, Human Resources Code, is
2 amended to read as follows:

3 Sec. 73.005. ISSUES RELATED TO INTERVENTION SERVICES;
4 LEGISLATIVE PROPOSALS ~~[BOARD POWERS AND DUTIES]~~. (a) The
5 executive commissioner ~~[board]~~ with the advice of the advisory
6 committee shall address contemporary issues affecting intervention
7 services in the state including:

- 8 (1) successful intervention strategies;
9 (2) personnel preparation and continuing education;
10 (3) screening services;
11 (4) day or respite care services;
12 (5) public awareness; and
13 (6) contemporary research.

14 (b) The executive commissioner ~~[board]~~ with the advice of
15 the advisory committee shall advise the legislature on legislation
16 that is needed to maintain a statewide system of quality
17 intervention services for children with developmental delay who are
18 under three years of age and the families of those children. The
19 department ~~[council]~~ may develop and submit legislation to the
20 legislature or comment on pending legislation that affects this
21 population.

22 SECTION 4.310. Section 73.0051, Human Resources Code, is
23 amended to read as follows:

24 Sec. 73.0051. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
25 AND DEPARTMENT UNDER CHAPTER ~~[COUNCIL]~~. (a) The department
26 ~~[council]~~ is the lead agency designated by the governor under Part C
27 ~~[Subchapter VIII]~~, Individuals with Disabilities Education Act

1 (IDEA) (20 U.S.C. Section 1431 [~~1471~~] et seq.), and its subsequent
2 amendments, for the administration, supervision, and monitoring of
3 a statewide comprehensive system of early intervention services
4 that will ensure that all infants and toddlers in this state who are
5 below the age of three and have developmental needs or are at risk
6 of developmental delay receive services that are provided in
7 partnership with their families and in the context of their local
8 community.

9 (b) The executive commissioner [~~council~~] by rule shall:

10 (1) provide for compliance with the terms and
11 provisions of applicable federal and state laws in the
12 administration of programs and the delivery of services under this
13 chapter;

14 (2) establish a program to monitor fiscal and program
15 implementation under this chapter; and

16 (3) establish appropriate sanctions for providers who
17 fail to comply with statutory and regulatory fiscal and program
18 requirements under this chapter.

19 (c) The department [~~council~~] may enter into, administer,
20 and monitor contracts with providers for programs and projects
21 authorized under this chapter.

22 (d) The department [~~council~~] shall periodically monitor
23 program activities and fiscal performance of the entities funded
24 under this chapter to:

25 (1) determine compliance with federal and state
26 requirements;

27 (2) assess the performance of the entities in

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- 1 identifying children under three years of age with developmental
- 2 delay in populations at risk of developmental delay; and
- 3 (3) issue reports regarding program monitoring.

4 (e) The department [~~council~~] may apply for and accept gifts,
5 grants, and donations from public and private sources for use in
6 programs authorized under this chapter. The department [~~council~~]
7 shall deposit money received under this section into the state
8 treasury.

(f) The department [council] shall:

19 (g) The department [~~council~~] shall make periodic reports
20 relating to the department's functions under this chapter as
21 required by law to other agencies, the legislature, appropriate
22 committees, the governor, and the [~~Secretary of the~~] United States
23 secretary of education [~~Department of Education~~].

24 (h) The department [council] shall ensure that all programs
25 and department [council] functions under this chapter are conducted
26 in a nondiscriminatory manner.

(i) The department [council] shall include parents when

1 deciding the appropriate treatment for the needs of their child or
2 children under this chapter. After establishing an initial and
3 ongoing treatment plan for a child, the department [council] shall
4 ensure that the child's parents continue to be included in all
5 decisions relating to the services provided to the child, including
6 the determination of the most appropriate setting for the child to
7 receive services. The department [council] shall ensure that a
8 child's parents receive written notification of the progress toward
9 meeting the child's treatment plan. The notification must include
10 details to assist parents in meeting the child's treatment goals.

11 (j) The department [council] shall provide [~~not limit~~]
12 services under this chapter in the child's [~~to solely~~] natural
13 environments but must [~~shall also~~] make alternatives available when
14 early intervention cannot be achieved satisfactorily in a natural
15 environment.

16 (k) The department [council] shall cooperate with the
17 commission [~~Health and Human Services Commission~~] to select an
18 appropriate automated system or systems currently used by a state
19 agency to plan, manage, and maintain records of client services
20 under this chapter. If cost-effective, the department [council]
21 may use the automated system or systems to carry out other
22 appropriate department [council] administrative functions under
23 this chapter.

24 (l) The executive commissioner [council] by rule may
25 establish a system of payments by families of children receiving
26 services under this chapter, including a schedule of sliding fees,
27 in a manner consistent with 34 C.F.R. Sections 303.13(a)(3)

1 [303.12(a)(3)(iv)], 303.520, and 303.521.

2 SECTION 4.311. Section 73.006(b), Human Resources Code, is
3 amended to read as follows:

4 (b) The [lay] members of the [board and] advisory committee
5 are entitled to reimbursement for reasonable and necessary expenses
6 incurred in the performance of [board or] advisory committee
7 duties, including reimbursement for child care.

8 SECTION 4.312. Section 73.007, Human Resources Code, is
9 amended to read as follows:

10 Sec. 73.007. PUBLIC AWARENESS AND TRAINING. The department
11 [~~council~~] shall develop and implement:

12 (1) a general public awareness strategy focusing on
13 the importance of prenatal care and early identification of infants
14 and toddlers with developmental delay and the availability of
15 resources to meet their needs; and

16 (2) a statewide plan for conducting training and
17 technical assistance for service providers, primary referral
18 sources, and families with children under three years of age with
19 developmental delay.

20 SECTION 4.313. Section 73.008(a), Human Resources Code, is
21 amended to read as follows:

22 (a) The department [~~council~~] shall develop and implement a
23 statewide strategy for:

24 (1) the early identification of children under three
25 years of age with developmental delay;

26 (2) improving the early identification of children
27 under three years of age with developmental delay in populations at

1 risk of developmental delay, through measures such as:

(A) targeting at-risk populations and appropriate geographical regions; and

11 SECTION 4.314. Sections 73.009(a) and (b), Human Resources
12 Code, are amended to read as follows:

13 (a) The department shall develop and the executive
14 commissioner [~~council~~] shall establish policies concerning
15 services described by this section. A child under three years of
16 age and the child's family may be referred for services described by
17 this section if the child is:

18 (1) identified as having a developmental delay
19 [developmentally delayed];

20 (2) suspected of having a developmental delay [~~being~~
21 ~~developmentally delayed~~]; or

22 (3) considered at risk of developmental delay.

23 (b) For each child referred, the department [council] shall
24 ensure the performance of [+]

25 [(1) seek] appropriate medical or developmental
26 screening or evaluation, and if such screening services or
27 evaluation services are not available, the department [council]

1 shall ensure that [provide those services either directly or by
2 ~~contract; and~~

3 [(2) refer] the child is referred to a public or
4 private program that can meet the child's needs.

5 SECTION 4.315. Section 73.011, Human Resources Code, is
6 amended to read as follows:

7 Sec. 73.011. PROVIDER SELECTION. (a) The department
8 [~~council~~] shall select providers of services authorized under this
9 chapter on a best value basis in a manner that:

10 (1) maximizes federal, private, and local sources of
11 funding; and

12 (2) promotes competition when possible.

13 (b) The department [~~council~~] shall determine best value as
14 required by Subsection (a) when the department [~~council~~] initially
15 awards a contract to a provider and when the department [~~council~~]
16 considers renewal of a provider's contract.

17 (c) In determining whether a provider will provide best
18 value to the department [~~council~~], the department [~~council~~] shall
19 consider:

20 (1) the past performance of the provider;

21 (2) the quality of the provider's services;

22 (3) the cost of the provider's services;

23 (4) the ability of the provider to maximize federal,
24 private, and local sources of funding;

25 (5) the ability of the provider to comply with state
26 and federal program requirements;

27 (6) the availability of the provider to deliver

1 required services; and

2 (7) any other relevant factor.

3 SECTION 4.316. Section 73.022, Human Resources Code, is
4 amended by amending Subsections (a) and (b) and adding Subsection
5 (a-1) to read as follows:

6 (a) The executive commissioner [council] shall:

7 (1) ensure compliance with requirements necessary to
8 obtain federal funds in the maximum amount and the most
9 advantageous proportions possible for programs funded under this
10 chapter; and

11 (2) seek funding in a manner that maximizes the total
12 amount of money available from federal, private, and local sources
13 for programs funded under this chapter.[+]

14 (a-1) The department shall:

15 (1) [+3] apply for, receive, administer, and spend
16 federal and state funds for Part C [~~Subchapter III~~], Individuals
17 with Disabilities Education Act (IDEA) (20 U.S.C. Section 1431 et
18 seq.), and its subsequent amendments, dealing with infants and
19 toddlers from birth to age three with developmental delay and their
20 families; and

21 (2) [+4] authorize and account for the
22 classification and spending of maintenance of effort and carryover
23 funds from all sources in carrying out the programs funded under
24 this chapter.

25 (b) All money paid to the department [council] under this
26 chapter shall be deposited in the state treasury and may be used
27 only for the administration of this chapter.

1 SECTION 4.317. Section 73.024, Human Resources Code, is
2 amended to read as follows:

3 Sec. 73.024. APPLICATION OF OPEN MEETINGS LAW, [+] OPEN
4 RECORDS LAW, AND[+] ADMINISTRATIVE PROCEDURE LAW TO ADVISORY
5 COMMITTEE. The ~~board, council, and~~ advisory committee is [~~are~~]
6 subject to the requirements of the open meetings law, Chapter 551,
7 Government Code, the open records law, Chapter 552, Government
8 Code, and Chapter 2001, Government Code.

9 SECTION 4.318. The heading to Title 4, Human Resources
10 Code, is amended to read as follows:

11 TITLE 4. SERVICES FOR PERSONS WHO ARE [THE] DEAF OR HARD OF HEARING

12 SECTION 4.319. The heading to Chapter 81, Human Resources
13 Code, is amended to read as follows:

14 CHAPTER 81. FUNCTIONS OF DEPARTMENT OF ASSISTIVE AND
15 REHABILITATIVE SERVICES RELATING TO PERSONS WHO ARE [TEXAS

16 ~~COMMISSION FOR THE~~] DEAF OR [AND] HARD OF HEARING

17 SECTION 4.320. Section 81.001, Human Resources Code, is
18 amended by adding Subdivisions (2-a) and (5) to read as follows:

19 (2-a) "Department" means the Department of Assistive
20 and Rehabilitative Services.

21 (5) "Executive commissioner" means the executive
22 commissioner of the Health and Human Services Commission.

23 SECTION 4.321. Section 81.0055, Human Resources Code, is
24 amended to read as follows:

25 Sec. 81.0055. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
26 CONFLICT WITH OTHER LAW [~~OF COMMISSIONER OF HEALTH AND HUMAN~~
27 ~~SERVICES~~]. [~~The commissioner of health and human services has the~~

1 ~~powers and duties relating to the commission and the executive~~
2 ~~director of the commission as provided by Section 531.0055,~~
3 ~~Government Code.]~~ To the extent a power or duty given to the
4 commissioner of assistive and rehabilitative services [~~commission~~
5 ~~or executive director~~] by this chapter, or another law relating to
6 services for persons who are deaf or hard of hearing, conflicts with
7 Section 531.0055, Government Code, Section 531.0055 controls.

8 SECTION 4.322. Section 81.006, Human Resources Code, is
9 amended to read as follows:

10 Sec. 81.006. DUTIES AND POWERS OF DEPARTMENT AND EXECUTIVE
11 COMMISSIONER UNDER CHAPTER. (a) The department [~~commission~~]
12 shall:

13 (1) develop and implement a statewide program of
14 advocacy and education to ensure continuity of services to persons
15 who are deaf, deaf-blind, or hard of hearing;

16 (2) provide direct services to persons who are deaf or
17 hard of hearing, including communication access, information and
18 referral services, advocacy services, services to elderly persons
19 who are deaf or hard of hearing, and training in accessing basic
20 life skills;

21 (3) work to ensure more effective coordination and
22 cooperation among public and nonprofit organizations providing
23 social and educational services to individuals who are deaf or hard
24 of hearing;

25 (4) maintain a registry of available qualified
26 interpreters for persons who are deaf or hard of hearing by updating
27 the registry at least quarterly and making the registry available

1 to interested persons at cost;

2 (5) establish a system to approve and provide courses
3 and workshops for the instruction and continuing education of
4 interpreters for persons who are deaf or hard of hearing;

5 (6) assist institutions of higher education that have
6 or are [in] initiating training programs for interpreters for
7 persons who are deaf or hard of hearing [and develop guidelines for
8 instruction to promote uniformity of signs taught within those
9 programs];

10 (6-a) develop guidelines for the curricula for the
11 programs described by Subdivision (6) to promote uniformity of the
12 skills taught within those programs;

13 (7) with the assistance of the Texas Higher Education
14 Coordinating Board, develop standards for evaluation of the
15 programs described by Subdivision (6); and

16 (8) develop guidelines to clarify the circumstances
17 under which interpreters certified by the department [commission]
18 are qualified to interpret effectively, accurately, and
19 impartially, both receptively and expressively, using any
20 necessary specialized vocabulary.

21 (b) The department [commission] may:

22 (1) appoint one or more advisory committees to consult
23 with and advise the department under this chapter [commission];

24 (2) [establish and] collect training fees and accept
25 gifts, grants, and donations of money, personal property, or real
26 property for use in expanding and improving services to persons of
27 this state who are deaf or hard of hearing;

1 (3) [adopt rules necessary to implement this chapter;
2 [+4)] contract with or provide grants to agencies,
3 organizations, or individuals as necessary to implement this
4 chapter;

5 (4) collect [+(5) establish] a reasonable fee from
6 [and charge] interpreters for training to defray the cost of
7 conducting the training;

8 (5) [+6] develop guidelines for trilingual
9 interpreter services; and

10 (6) [+7] provide training programs for persons who
11 provide trilingual interpreter services.

12 (c) The executive commissioner shall establish the fees
13 described by Subsections (b)(2) and (4).

14 (d) The executive commissioner may adopt rules necessary to
15 implement this chapter, including rules adopting standards and
16 guidelines under this section.

17 [+(e) The commission shall develop and implement policies
18 that clearly define the respective responsibilities of the
19 governing body of the commission and the staff of the commission.]

20 (f) The executive commissioner [commission] shall establish
21 and the department shall collect [charge] reasonable fees for some
22 or all department [commission] publications to cover the
23 department's [commission's] publication costs. However, the
24 department [commission] shall waive the fee if a person who is deaf
25 or hard of hearing is financially unable to pay for the publication,
26 and may waive the fees for publications provided to certain
27 entities. The executive commissioner [commission] shall adopt

1 rules to implement this subsection. The rules must specify the
2 standards used for determining ability to pay for a publication and
3 must specify the types of entities for which the fees will be
4 waived.

5 SECTION 4.323. Section 81.007, Human Resources Code, is
6 amended to read as follows:

7 Sec. 81.007. BOARD FOR EVALUATION OF INTERPRETERS. (a) The
8 department [commission] may establish a program in accordance with
9 this section for the certification of interpreters who have reached
10 varying levels of proficiency in communication skills necessary to
11 facilitate communication between persons who are deaf or hard of
12 hearing and persons who are not deaf or hard of hearing.

13 (b) The department [commission] shall appoint an advisory
14 board of seven persons to assist in administering the interpreter
15 certification program. A board member may not receive
16 compensation, but is entitled to reimbursement of the travel
17 expenses incurred by the member while conducting the business of
18 the board, as provided in the General Appropriations Act.

19 (c) The [Subject to approval of the commission, the] board
20 shall develop, subject to the department's approval, and the
21 executive commissioner shall adopt [prescribe] qualifications for
22 each of several levels of certification based on proficiency. The
23 board [and] shall evaluate and certify interpreters using these
24 qualifications.

25 (d) A qualified board member may serve as an evaluator under
26 Subsection (c), and the department [commission] shall compensate
27 the board member for services performed as an evaluator.

1 (e) The executive commissioner by rule shall set and the
2 department [~~commission~~] shall collect [~~charge~~] fees for written and
3 performance examinations, for annual certificate renewal, and for
4 recertification. The fees must be in an amount sufficient to
5 recover the costs of the certification program.

6 (f) The department [~~commission~~] may waive any prerequisite
7 to obtaining a certificate for an applicant after reviewing the
8 applicant's credentials and determining that the applicant holds a
9 certificate issued by another jurisdiction that has certification
10 requirements substantially equivalent to those of this state.

11 (g) The executive commissioner [~~commission~~] by rule may
12 adopt a system under which certificates are valid for a five-year
13 period, subject to the certificate holder's payment of an annual
14 certificate renewal fee. After expiration of the five-year period,
15 an interpreter must be recertified by the department [~~commission~~].
16 The department [~~commission~~] may recertify an interpreter who:

17 (1) receives specified continuing education credits;
18 or

19 (2) achieves an adequate score on a specified
20 examination.

21 (h) The executive commissioner [~~commission~~] shall adopt
22 rules specifying the grounds for denying, suspending, or revoking
23 an interpreter's certificate.

24 (i) The department [~~commission~~] shall determine the
25 frequency for conducting the interpreter examinations. The
26 department [~~commission~~] shall conduct the interpreter
27 examinations:

1 (1) in a space that can be obtained free of charge; or
2 (2) at a facility selected in compliance with Section
3 [2113.106](#), Government Code.

4 (k) The department [~~commission~~] shall compensate an
5 evaluator based on a fee schedule as determined by department
6 [~~commission~~] rule.

7 (1) The department [~~commission~~] shall recognize, prepare,
8 or administer continuing education programs for its certificate
9 holders. A certificate holder must participate in the programs to
10 the extent required by the department [~~commission~~] to keep the
11 person's certificate.

12 SECTION 4.324. Section [81.0071](#), Human Resources Code, is
13 amended to read as follows:

14 Sec. 81.0071. EXAMINATION RESULTS. (a) Not later than the
15 60th day after the date on which a certification examination is
16 administered under this chapter, the department [~~commission~~] shall
17 notify each examinee of the results of the examination. However, if
18 an examination is graded or reviewed by a national testing service,
19 the department [~~commission~~] shall notify examinees of the results
20 of the examination not later than the 14th day after the date on
21 which the department [~~commission~~] receives the results from the
22 testing service. If the notice of the examination results will be
23 delayed for longer than 90 days after the examination date, the
24 department [~~commission~~] shall notify each examinee of the reason
25 for the delay before the 90th day.

26 (c) The department [~~commission~~] may require a testing
27 service to notify a person of the results of the person's

1 examination.

2 SECTION 4.325. Section 81.0072, Human Resources Code, is
3 amended to read as follows:

4 Sec. 81.0072. REVOCATION OR SUSPENSION OF CERTIFICATE. (a)
5 The department [~~commission~~], based on the recommendation of the
6 Board for Evaluation of Interpreters, may revoke or suspend a
7 certificate or place a certificate holder on probation for a
8 violation of a statute, rule, or policy of the department
9 [~~commission~~]. If a certificate holder is placed on probation, the
10 department [~~commission~~] may require the practitioner:

11 (1) to report regularly to the department [~~commission~~]
12 on matters that are the basis of the probation;

13 (2) to limit practice to those areas prescribed by the
14 department [~~commission~~]; or

15 (3) to continue or renew professional education until
16 a satisfactory degree of skill has been attained in those areas that
17 are the basis of the probation.

18 (b) If the department [~~commission~~] proposes to suspend or
19 revoke a certificate or place a certificate holder on probation,
20 the certificate holder is entitled to a hearing before the
21 department [~~commission~~] or a hearings officer appointed by the
22 department [~~commission~~]. All final decisions to suspend or revoke
23 a certificate or place a certificate holder on probation shall be
24 made by the department [~~commission~~].

25 SECTION 4.326. Sections 81.0073(a), (b), (c), (e), and (f),
26 Human Resources Code, are amended to read as follows:

27 (a) A person who is otherwise eligible to renew a

1 certificate may renew an unexpired certificate by paying the
2 required renewal fee to the department [~~commission~~] before the
3 expiration date of the certificate. A person whose certificate has
4 expired may not engage in activities that require a certificate
5 until the certificate has been renewed.

6 (b) A person whose certificate has been expired for 90 days
7 or less may renew the certificate by paying to the department
8 [~~commission~~] a renewal fee that is equal to 1-1/2 times the normally
9 required renewal fee.

10 (c) A person whose certificate has been expired for more
11 than 90 days but less than one year may renew the certificate by
12 paying to the department [~~commission~~] a renewal fee that is equal to
13 two times the normally required renewal fee.

14 (e) A person who was certified in this state, moved to
15 another state, and is currently certified and has been in practice
16 in the other state for the two years preceding the date of
17 application may obtain a new certificate without reexamination.
18 The person must pay to the department [~~commission~~] a fee that is
19 equal to two times the normally required renewal fee for the
20 certificate.

21 (f) Not later than the 30th day before the date a person's
22 certificate is scheduled to expire, the department [~~commission~~]
23 shall send written notice of the impending expiration to the person
24 at the person's last known address according to the records of the
25 department [~~commission~~].

26 SECTION 4.327. Section 81.0074, Human Resources Code, is
27 amended to read as follows:

1 Sec. 81.0074. PROVISIONAL CERTIFICATE. (a) The department
2 [commission] may issue a provisional certificate to an applicant
3 currently certified in another jurisdiction who seeks a certificate
4 in this state and who:

5 (1) has been certified in good standing as an
6 interpreter for at least two years in another jurisdiction,
7 including a foreign country, that has certification requirements
8 substantially equivalent to the requirements of this chapter;

9 (2) has passed a national or other examination
10 recognized by the department [commission] relating to the practice
11 of interpretation for people who are deaf or hard of hearing; and

12 (3) is sponsored by a person certified by the
13 department [commission] under this chapter with whom the
14 provisional certificate holder will practice during the time the
15 person holds a provisional certificate.

16 (b) The department [commission] may waive the requirement
17 of Subsection (a)(3) for an applicant if the department
18 [commission] determines that compliance with that subdivision
19 [subsection] would be a hardship to the applicant.

20 (c) A provisional certificate is valid until the date the
21 department [commission] approves or denies the provisional
22 certificate holder's application for a certificate. The department
23 [commission] shall issue a certificate under this chapter to the
24 provisional certificate holder if:

25 (1) the provisional certificate holder is eligible to
26 be certified under Section 81.007(f); or

27 (2) the provisional certificate holder passes the part

1 of the examination under this chapter that relates to the
2 applicant's knowledge and understanding of the laws and rules
3 relating to the practice of interpretation for people who are deaf
4 or hard of hearing in this state, and:

5 (A) the department [commission] verifies that
6 the provisional certificate holder meets the academic and
7 experience requirements for a certificate under this chapter; and

8 (B) the provisional certificate holder satisfies
9 any other certification requirements under this chapter.

10 (d) The department [commission] must approve or deny a
11 provisional certificate holder's application for a certificate not
12 later than the 180th day after the date the provisional certificate
13 is issued. The department [commission] may extend the 180-day
14 period if the results of an examination have not been received by
15 the department [commission] before the end of that period.

16 (e) The executive commissioner by rule [commission] may
17 establish a fee for provisional certificates in an amount
18 reasonable and necessary to cover the cost of issuing the
19 certificate.

20 SECTION 4.328. Section 81.013, Human Resources Code, is
21 amended to read as follows:

22 Sec. 81.013. PRIVATE OUTDOOR TRAINING PROGRAMS FOR CHILDREN
23 WHO ARE DEAF OR HARD OF HEARING. (a) The department [commission]
24 may contract with private entities to provide for the participation
25 of children who are deaf or hard of hearing at outdoor recreational
26 programs operated for the purpose of providing skill training and
27 recreational experiences for children who are deaf or hard of

1 hearing. Outdoor training programs under this section may also
2 provide for participation by the parents of children who are deaf or
3 hard of hearing.

4 (b) In selecting children to attend programs under this
5 section, the department [~~commission~~] shall select qualified
6 children from across the state that [~~the commission thinks~~] will
7 benefit from the program.

8 (c) The department [~~commission~~] may request criminal
9 history record information on any person who applies for a staff
10 position in an outdoor training program from the Department of
11 Public Safety in accordance with Section [411.1131](#), Government Code.

12 SECTION 4.329. Section [81.015](#), Human Resources Code, is
13 amended to read as follows:

14 Sec. 81.015. ADVERTISEMENT. (a) The executive commissioner
15 [~~commission~~] may not adopt rules restricting competitive bidding or
16 advertising by a person regulated by the department under this
17 chapter [~~commission~~] except to prohibit false, misleading, or
18 deceptive practices by the person.

19 (b) The executive commissioner [~~commission~~] may not include
20 in department [~~its~~] rules to prohibit false, misleading, or
21 deceptive practices by a person regulated by the department under
22 this chapter [~~commission~~] a rule that:

23 (1) restricts the person's use of any medium for
24 advertising;

25 (2) restricts the person's personal appearance or use
26 of the person's [~~his~~] voice in an advertisement;

27 (3) relates to the size or duration of an

1 advertisement by the person; or

2 (4) restricts the person's advertisement under a trade
3 name.

4 (c) The department [~~commission~~] may advertise to promote
5 awareness and use of the programs, services, and activities
6 conducted by the department under this chapter [~~commission~~]. The
7 department [~~commission~~] may not use money derived from state tax
8 revenue to pay for advertisements under this subsection.

9 SECTION 4.330. Section 81.016, Human Resources Code, is
10 amended to read as follows:

11 Sec. 81.016. CONTRACTS FOR SERVICES. (a) Before the
12 department [~~commission~~] contracts with or provides grant funding to
13 an agency, organization, or individual to provide direct services
14 to persons who are deaf or hard of hearing, the department
15 [~~commission~~] shall make reasonable efforts to notify all potential
16 service providers of the availability and purpose of the contract
17 or grant.

18 (b) The notice shall include a request that all interested
19 service providers submit within a specified period a contract or
20 grant proposal for the department's [~~commission's~~] consideration.
21 The notice must also clearly state the criteria that the department
22 [~~commission~~] will consider in determining which applicant will be
23 awarded the contract or grant.

24 (c) The department [~~commission~~] shall review all proposals
25 submitted under this section and shall award the contract or grant
26 to the applicant that the department [~~commission~~] determines is
27 best able to provide the needed services. The department

1 [commission] may not award contracts or grants to a former employee
2 of the department's Office for Deaf and Hard of Hearing Services
3 [commission] within two years after the person's employment with
4 that office [~~the commission~~] ceased.

5 (d) To ensure an equitable distribution of contract or grant
6 funds, the department [~~commission~~] shall develop a formula, based
7 on population and region, to allocate those funds among the
8 agencies, organizations, or individuals that are awarded the
9 contracts or grants.

10 (e) The executive commissioner [~~commission~~] shall adopt
11 rules to implement this section.

12 SECTION 4.331. Sections 81.017(a) and (c), Human Resources
13 Code, are amended to read as follows:

14 (a) The department [~~commission~~] and each of the following
15 agencies shall adopt a memorandum of understanding to coordinate
16 the delivery of services to persons who are deaf or hard of hearing
17 and to reduce duplication of services:

18 (1) the Department of Aging and Disability Services;
19 (2) the Department of State Health Services;
20 (3) the Texas Workforce Commission;
21 (4) the Health and Human Services Commission;
22 (5) the Texas Higher Education Coordinating Board;
23 (6) the Texas Education Agency;
24 (7) [~~The Department of Assistive and Rehabilitative~~
25 ~~Services,~~]

26 [~~8~~] the Texas School for the Deaf;
27 (8) [~~9~~] the Texas Department of Criminal Justice;

1 and

2 (9) [+10] any other state agency that provides or is
3 required by law to provide services to persons who are deaf or hard
4 of hearing.

5 (c) Not later than the last month of each state fiscal year,
6 the department [~~commission~~] and the other agencies shall review
7 their respective memorandums.

8 SECTION 4.332. Section 81.019, Human Resources Code, is
9 amended to read as follows:

10 Sec. 81.019. SYMBOLS OR OTHER FORMS OF IDENTIFICATION FOR
11 PERSONS WITH HEARING IMPAIRMENTS [~~IMPAIRED PERSONS~~]. (a) The
12 department [~~commission~~] shall design and provide for the issuance
13 of a symbol or other form of identification that may be attached to
14 a motor vehicle regularly operated by a person who is deaf or hard
15 of hearing.

16 (b) A person who is deaf or hard of hearing may apply to the
17 department [~~commission~~] for the symbol or other form of
18 identification. The department [~~commission~~] may require acceptable
19 medical proof that a person is deaf or hard of hearing and may
20 collect [~~set~~] a fee for each symbol or other form of identification
21 to defray the costs of administering this section. The executive
22 commissioner shall establish the fee.

23 (c) The department [~~commission~~] may contract with a state or
24 local agency for the distribution of the symbol or other form of
25 identification.

26 SECTION 4.333. Section 81.020, Human Resources Code, is
27 amended to read as follows:

1 Sec. 81.020. ASSISTANCE REGARDING TELECOMMUNICATIONS
2 DEVICES. The department [~~commission~~] may not advertise,
3 distribute, or publish the name or address or other related
4 information received by the department [~~commission~~] about an
5 individual who applies for assistance regarding telecommunications
6 devices.

7 SECTION 4.334. Section 81.021, Human Resources Code, is
8 amended to read as follows:

9 Sec. 81.021. SPECIALIZED LICENSE PLATE PROGRAM. The
10 department [~~commission~~] shall develop and the executive
11 commissioner shall adopt rules and guidelines for the use of funds
12 collected from the sale of specialized license plates under Section
13 504.619 [~~502.2722~~], Transportation Code, that are deposited in
14 accordance with Section 504.6012, Transportation Code, and
15 appropriated to the department [~~commission in accordance with that~~
16 ~~section~~] for direct services programs, training, and education.

17 SECTION 4.335. Section 82.001(1), Human Resources Code, is
18 amended to read as follows:

19 (1) "Qualified interpreter" means a person employed as
20 an interpreter who holds a current certification issued by the
21 Board for Evaluation of Interpreters, or another current
22 certificate that the Department of Assistive and Rehabilitative
23 Services [~~Texas Commission for the Deaf and Hard of Hearing~~]
24 determines is comparable or appropriate and approves.

25 SECTION 4.336. The heading to Title 5, Human Resources
26 Code, is amended to read as follows:

27 TITLE 5. SERVICES FOR THE BLIND AND PERSONS WITH VISUAL

1 DISABILITIES [VISUALLY HANDICAPPED]

2 SECTION 4.337. The heading to Chapter 91, Human Resources

3 Code, is amended to read as follows:

4 CHAPTER 91. FUNCTIONS OF DEPARTMENT OF ASSISTIVE AND REHABILITATIVE

5 SERVICES RELATING TO [TEXAS COMMISSION FOR] THE BLIND AND PERSONS

6 WITH VISUAL DISABILITIES

7 SECTION 4.338. Section 91.002, Human Resources Code, is

8 amended by amending Subdivisions (3) and (4) and adding

9 Subdivisions (3-a), (3-b), and (3-c) to read as follows:

10 (3) "Child with visual impairments" means a child who
11 is blind or visually impaired or who has a visual condition that
12 requires treatment, psychological assistance counseling, or other
13 assistance that the department [~~commission~~] can provide.

14 (3-a) "Commissioner" means the commissioner of
15 assistive and rehabilitative services.

16 (3-b) "Department" means the Department of Assistive
17 and Rehabilitative Services.

18 (3-c) "Executive commissioner" means the executive
19 commissioner of the Health and Human Services Commission.

20 (4) "Visual disability [~~handicap~~]" includes
21 blindness, an eye condition for which there is a medical prognosis
22 indicating that the condition is of a progressive nature and may
23 deteriorate either to blindness or to a substantial loss of vision,
24 and physical or psychological disabilities [~~handicaps~~] that
25 accompany or complement a disorder or imperfection of the eye.

26 SECTION 4.339. The heading to Section 91.012, Human
27 Resources Code, is amended to read as follows:

1 Sec. 91.012. AUTHORITY OF COMMISSIONER [EXECUTIVE
2 ~~DIRECTOR~~].

3 SECTION 4.340. Section 91.012(d), Human Resources Code, is
4 amended to read as follows:

5 (d) The commissioner may [~~executive director~~]:

6 (1) [~~shall appoint personnel necessary to efficiently~~
7 ~~accomplish commission purposes,~~

8 [~~(2) may~~] delegate to an employee a power of the
9 commissioner under this chapter or Subchapter E, Chapter 117,
10 [~~executive director~~] except the power to [~~adopt rules or~~] appoint
11 personnel;

12 (2) [~~(3) shall establish appropriate administrative~~
13 ~~units within commission programs,~~

14 [~~(4) may~~] accept and use gifts and grants to the
15 department [~~commission~~] to carry out the purposes of this title or
16 Subchapter E, Chapter 117, if the commissioner [~~commission~~]
17 determines that the conditions of the gift or grant are consistent
18 with this title or Subchapter E, Chapter 117; and

19 (3) [~~(5) may~~] take other actions that the
20 commissioner [~~executive director~~] considers necessary or
21 appropriate to carry out the department's [~~commission~~] purposes
22 under this chapter or Subchapter E, Chapter 117.

23 SECTION 4.341. Section 91.014(a), Human Resources Code, is
24 amended to read as follows:

25 (a) All sums of money paid to the department [~~commission~~]
26 under this title or Subchapter E, Chapter 117, shall be deposited in
27 the state treasury [~~State Treasury and may be used only for the~~

1 ~~administration of this title~~].

2 SECTION 4.342. The heading to Section 91.016, Human
3 Resources Code, is amended to read as follows:

4 Sec. 91.016. COMPENSATION OF CERTAIN EMPLOYEES [~~PERSONNEL~~
5 ~~POLICIES~~].

6 SECTION 4.343. Section 91.016(e), Human Resources Code, is
7 amended to read as follows:

8 (e) The executive commissioner [~~commission~~] by rule may
9 develop and the department may implement policies allowing shift
10 differentials to be paid to employees in the vocational
11 rehabilitation program under Subchapter E, Chapter 117.

12 SECTION 4.344. The heading to Section 91.018, Human
13 Resources Code, is amended to read as follows:

14 Sec. 91.018. COMPLAINTS [~~RELATIONS WITH PUBLIC~~].

15 SECTION 4.345. Section 91.018(c), Human Resources Code, is
16 amended to read as follows:

17 (c) Except as required by federal regulations for resolving
18 complaints received from people who are receiving service from the
19 department, under this chapter or Subchapter E, Chapter 117
20 [~~commission~~], the department [~~commission~~] shall maintain a file in
21 the manner prescribed by Section 117.072(a) on each written
22 complaint filed with the department [~~commission~~]. [~~The file must~~
23 ~~include:~~]

24 [+(1) ~~the name of the person who filed the complaint;~~

25 [+(2) ~~the date the complaint is received by the~~
26 ~~commission;~~

27 [+(3) ~~the subject matter of the complaint;~~

1 [(4) the name of each person contacted in relation to
2 ~~the complaint;~~

3 [(5) a summary of the results of the review or
4 ~~investigation of the complaint; and~~

5 [(6) an explanation of the reason the file was closed
6 if the agency closed the file without taking action other than to
7 ~~investigate the complaint.~~]

8 SECTION 4.346. The heading to Subchapter C, Chapter 91,
9 Human Resources Code, is amended to read as follows:

10 SUBCHAPTER C. GENERAL POWERS AND DUTIES [OF THE COMMISSION]

11 SECTION 4.347. Section 91.0205, Human Resources Code, is
12 amended to read as follows:

13 Sec. 91.0205. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
14 CONFLICT WITH OTHER LAW [OF COMMISSIONER OF HEALTH AND HUMAN
15 SERVICES]. [~~The commissioner of health and human services has the~~
16 ~~powers and duties relating to the commission and executive director~~
17 ~~as provided by Section 531.0055, Government Code.~~] To the extent a
18 power or duty given to the commissioner [~~commission or executive~~
19 ~~director~~] by this chapter, or another law relating to services for
20 the blind or persons with visual disabilities, conflicts with
21 Section 531.0055, Government Code, Section 531.0055 controls.

22 SECTION 4.348. Section 91.021, Human Resources Code, is
23 amended to read as follows:

24 Sec. 91.021. RESPONSIBILITY FOR [VISUALLY HANDICAPPED]
25 PERSONS WITH VISUAL DISABILITIES. (a) The department [~~commission~~]
26 has primary responsibility for providing all services to [~~visually~~
27 ~~handicapped~~] persons with visual disabilities except welfare

1 services and services for children provided by regularly
2 established educational agencies and state authorities.

3 (b) The department [~~commission~~] shall negotiate interagency
4 agreements with other state agencies to provide services for
5 individuals who have both a visual disability [~~handicap~~] and
6 another disability [~~handicapping condition~~] so that those
7 [~~multiply handicapped~~] individuals with multiple disabilities may
8 be provided the most beneficial services with the greatest possible
9 economy.

10 (c) The department [~~commission~~] and other concerned state
11 agencies may not refuse to enter into an interagency agreement
12 developed to advance the state's policies regarding the
13 rehabilitation or education of the blind and persons with visual
14 disabilities [~~visually handicapped~~]. In negotiating the
15 agreements the agencies shall seek to extend and improve the
16 regular services provided by the agencies and to effectively use
17 all specialty and fiscal resources that are available. The
18 agencies shall give careful consideration to avoiding unnecessary
19 duplication or overlap of their respective efforts.

20 (d) The department [~~commission~~] shall enter into agreements
21 with the federal government to implement federal legislation
22 authorizing the provision of services to persons with visual
23 disabilities [~~the visually handicapped~~]. The department
24 [~~commission~~] shall use [~~adopt~~] methods of administration required
25 by the federal government for the proper and efficient
26 implementation of the agreements, and shall comply with other
27 federal requirements necessary to secure the full benefits of the

1 federal legislation.

2 (e) The department [~~commission~~] and other concerned state
3 agencies may not refuse to enter into interagency agreements
4 designed to secure the full benefits of federal legislation
5 authorizing services for persons with visual disabilities [~~the~~
6 ~~visually handicapped~~].

7 (f) The department [~~commission~~] shall:

8 (1) serve as an information center and referral
9 resource for persons with visual disabilities [~~the visually~~
10 ~~handicapped~~]; and

11 (2) develop mechanisms and procedures that tend to
12 assist [~~visually handicapped~~] individuals with visual disabilities
13 in bridging gaps between educational, institutional,
14 rehabilitative, vocational, and related types of services operated
15 by public and private nonprofit organizations throughout the state.

16 SECTION 4.349. Section 91.022, Human Resources Code, is
17 amended to read as follows:

18 Sec. 91.022. SERVICE DELIVERY. (a) The department
19 [~~commission~~] shall establish and maintain, in accordance with
20 department rules [~~by rule~~], guidelines for the delivery of services
21 by the department under this chapter and Subchapter E, Chapter 117
22 [~~commission~~]. The guidelines must be consistent with state and
23 federal law and regulations and must include guidelines [~~rules~~]
24 relating to:

25 (1) oversight and monitoring of the service delivery;
26 (2) guidance to counselors on the service delivery
27 procedures;

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5 (b) The department [~~commission~~] shall establish written
6 procedures relating to the evaluation of services delivered by the
7 department under this chapter and Subchapter E, Chapter 117,
8 [~~commission~~] to provide guidance to counselors and department
9 [~~commission~~] employees. These procedures must include methods to
10 evaluate:

- 11 (1) client progress;
- 12 (2) service delivery effectiveness; and
- 13 (3) counselor performance.

14 SECTION 4.350. Section 91.023, Human Resources Code, is
15 amended to read as follows:

16 Sec. 91.023. ASSISTANCE WITH REHABILITATION SERVICES. The
17 department [~~commission~~] may furnish materials, tools, books, and
18 other necessary apparatus and assistance for use in rehabilitating
19 the blind and [~~visually handicapped~~] persons with visual
20 disabilities.

21 SECTION 4.351. Sections 91.027(a) and (c), Human Resources
22 Code, are amended to read as follows:

23 (a) To the extent that funds are available under Sections
24 521.421(j) and 521.422(b), Transportation Code, the department
25 [~~commission~~] shall operate a Blindness Education, Screening, and
26 Treatment Program to provide:

(1) blindness prevention education and screening and

1 treatment to prevent blindness for residents who are not covered
2 under an adequate health benefit plan; and

3 (2) transition services to [blind disabled]
4 individuals with visual disabilities eligible for vocational
5 rehabilitation services under Section 117.102 [91.052].

6 (c) The executive commissioner [commission] by rule shall
7 prescribe eligibility requirements for the program.

8 SECTION 4.352. Sections 91.028(a), (b), (c), (d), (e), and
9 (g), Human Resources Code, are amended to read as follows:

10 (a) The department [commission] may provide services to
11 children with visual impairments to supplement the services
12 provided by other state agencies if the department [commission]
13 determines that the provision of the services is appropriate and
14 that the services will assist the children in achieving financial
15 self-sufficiency and a fuller and richer life. It is the intention
16 of the legislature that all state agencies concerned with children
17 with visual impairments cooperate fully to achieve this purpose.

18 (b) The executive commissioner [commission] shall
19 establish, by rule, the income level at which the Medicaid
20 eligibility of a client applying for services under Subsection (a)
21 shall be verified.

22 (c) The department [commission] shall verify the Medicaid
23 eligibility of a client applying for services under Subsection (a)
24 whose income level is equal to or less than the income level
25 established by the executive commissioner [commission] under
26 Subsection (b).

27 (d) The department [commission] shall verify the Medicaid

1 eligibility of a client who is required by the department
2 [~~commission~~] to apply for Medicaid not later than the 90th day after
3 the date the application for services from the department under
4 Subsection (a) [~~commission~~] is made.

5 (e) In verifying Medicaid eligibility, an employee of the
6 department [~~commission~~] shall:

7 (1) examine appropriate state or private Medicaid
8 eligibility databases; and

9 (2) record on each client's case records [~~application~~
10 ~~for services~~] whether Medicaid eligibility was verified, the source
11 of the verification, and the date of the verification.

12 (g) A person may use the information provided under
13 Subsection (f) in accordance with department [~~commission~~] rules[~~✓~~]
14 only for purposes directly connected with the administration of the
15 children's program and for the investigation of a complaint filed
16 against an agency, employee, or contracted provider of services.

17 SECTION 4.353. Section 91.0301, Human Resources Code, is
18 amended to read as follows:

19 Sec. 91.0301. LOANS FOR VISUAL AIDS. (a) The department
20 [~~commission~~] may establish a program to make loans to finance the
21 purchase of technological aids for [~~visually handicapped~~] persons
22 with visual disabilities. Interest on the loans may not exceed 10
23 percent a year.

24 (b) The executive commissioner [~~director~~] may promulgate
25 rules to administer the loan program[, ~~subject to approval of the~~
26 commission].

27 SECTION 4.354. Section 91.031, Human Resources Code, is

1 amended to read as follows:

2 Sec. 91.031. CONTRACTS FOR SERVICE. (a) The department
3 [~~commission~~] shall include in its contracts with service providers
4 under this chapter or Subchapter E, Chapter 117, provisions
5 relating to:

6 (1) clearly defined and measurable program
7 performance standards that directly relate to the service provided;
8 (2) clearly defined penalties for nonperformance of a
9 contract term; and

10 (3) clearly specified accounting, reporting, and
11 auditing requirements applicable to money received under the
12 contract.

13 (b) The department [~~commission~~] shall monitor a service
14 provider's performance under a contract for service under this
15 chapter or Subchapter E, Chapter 117. In monitoring performance,
16 the department [~~commission~~] shall:

17 (1) use a risk-assessment methodology to institute
18 statewide monitoring of contract compliance of service providers;
19 and

20 (2) evaluate service providers based on clearly
21 defined and measurable program performance objectives.

22 SECTION 4.355. Section 91.032, Human Resources Code, is
23 amended to read as follows:

24 Sec. 91.032. CONTRACTS FOR ASSISTIVE [ADAPTIVE]
25 TECHNOLOGY. The department [~~commission~~] shall include in a
26 contract under this chapter or Subchapter E, Chapter 117, with a
27 supplier of assistive [~~adaptive~~] technology equipment provisions

1 that require the supplier to provide training for clients receiving
2 the assistive [~~adaptive~~] technology equipment.

3 SECTION 4.356. Subchapter D, Chapter 91, Human Resources
4 Code, is transferred to Chapter 117, Human Resources Code,
5 redesignated as Subchapter E, Chapter 117, Human Resources Code,
6 and amended to read as follows:

7 SUBCHAPTER E [D]. VOCATIONAL REHABILITATION OF INDIVIDUALS WITH
8 VISUAL IMPAIRMENTS [THE BLIND]

9 Sec. 117.101 [~~91.051~~]. DEFINITIONS. In this subchapter:

10 (1) "Program" means the vocational rehabilitation
11 program authorized in this subchapter.

12 (2) "Substantial impediment to employment"
13 [~~(3) "Employment handicap"~~] means a physical or mental condition
14 that obstructs or impairs, or if not corrected will probably
15 obstruct or impair, an individual's performance in an occupation.

16 [~~(4) "Disabled individual"~~ means a person who has a
17 substantial employment handicap.]

18 (3) "Individual with a visual impairment"
19 [~~(5) "Blind disabled individual"~~] means a person who is blind or
20 who has a visual condition for which medical prognosis indicates a
21 progressive deterioration that may result in a substantial
22 impediment to employment [vocational handicap].

23 (4) [~~(6)~~] "Vocational rehabilitation" or "vocational
24 rehabilitation services" means services that are provided directly
25 by the department [commission] or through a public or private
26 agency and that the department [director] determines are necessary
27 to compensate an [a blind disabled] individual with a visual

1 impairment for a substantial impediment to an employment
2 [handicap] so that the individual may engage in a remunerative
3 occupation. The terms include, but are not limited to, medical and
4 vocational diagnosis; vocational guidance, counseling, and
5 placement; rehabilitation training; physical restoration;
6 transportation; occupational licenses; customary occupational
7 tools and equipment; maintenance; training books and materials;
8 and other goods and services for which the department [commission]
9 receives financial support under federal law.

10 (5) [+] "Rehabilitation training" means all
11 necessary training provided to an [a blind disabled] individual
12 with a visual impairment to compensate for a substantial impediment
13 to an employment [handicap]. The term includes, but is not
14 limited to, manual, preconditioning, prevocational, vocational,
15 and supplementary training and training to achieve broader and more
16 lucrative skills and capacities.

17 (6) [+] "Physical restoration" means medical,
18 surgical, or therapeutic treatment necessary to correct or
19 substantially reduce a substantial impediment to [blind disabled
20 individual's] employment of an individual with a visual impairment
21 [handicap] within a reasonable period of time. The term includes,
22 but is not limited to, medical, surgical, dental, and psychiatric
23 treatment, nursing services, hospital care, convalescent home
24 care, drugs, medical and surgical supplies, and prosthetic
25 appliances. The term excludes treatment to cure acute or
26 transitory conditions.

27 (7) [+] "Prosthetic appliance" means an artificial

1 device necessary to support or replace a part of the body or to
2 increase the acuity of a sensory organ.

3 (8) [10] "Occupational license" means a license,
4 permit, or other written authorization required by a governmental
5 unit as a condition for engaging in an occupation.

6 (9) [11] "Maintenance" means money payments not
7 exceeding the estimated cost of subsistence during vocational
8 rehabilitation.

9 (10) "Blind" has the meaning assigned by Section
10 91.002.

11 Sec. 117.102 [91.052]. VOCATIONAL REHABILITATION PROGRAM
12 FOR INDIVIDUALS WITH VISUAL IMPAIRMENTS [THE BLIND]. (a) The
13 department [commission] shall conduct a program to provide
14 vocational rehabilitation services to eligible [blind disabled]
15 individuals with visual impairments.

16 (b) To achieve the purposes of the program, the department
17 [commission] may:

18 (1) cooperate with other public and private agencies
19 in studying the problems involved in providing vocational
20 rehabilitation and in establishing, developing, and providing
21 necessary or desirable facilities and services;

22 (2) enter into reciprocal agreements with other states
23 to provide vocational rehabilitation for the residents of the
24 states concerned; and

25 (3) conduct research and compile statistics relating
26 to the vocational rehabilitation of [blind disabled] individuals
27 with visual impairments.

1 Sec. 117.103 [~~91.053~~]. COOPERATION WITH FEDERAL
2 GOVERNMENT. (a) The department [~~commission~~] shall cooperate with
3 the federal government to accomplish the purposes of federal laws
4 relating to vocational rehabilitation and closely related
5 activities.

6 (b) The department [~~commission~~] shall negotiate agreements
7 or plans with the federal government and shall use [~~adopt~~]
8 efficient methods of administration and comply with other
9 conditions required to secure the full benefits of the federal
10 laws. If the department [~~commission~~] determines that a provision
11 of state law precludes conformity with a federal requirement and
12 limits federal financial support, the department [~~commission~~]:

13 [~~(1)~~] may waive or modify the state law to the extent
14 necessary to obtain the full benefits of the federal law[~~, and~~
15 [~~(2)~~] ~~shall include in the report required by Section~~
16 ~~91.019 a description of the manner in which state law conflicts with~~
17 ~~federal law~~].

18 Sec. 117.104 [~~91.055~~]. ELIGIBILITY FOR VOCATIONAL
19 REHABILITATION SERVICES. The department [~~commission~~] shall
20 provide vocational rehabilitation services to an [~~a blind disabled~~]
21 individual with a visual impairment eligible for those services
22 under federal law.

23 Sec. 117.105 [~~91.056~~]. RECEIPT AND DISBURSEMENT OF FUNDS.
24 (a) The comptroller is custodian of federal funds received by the
25 state to implement federal law relating to vocational
26 rehabilitation.

27 (b) The commissioner [~~executive director~~] shall certify for

1 disbursement funds available for the vocational rehabilitation
2 program in accordance with regulations.

3 (c) The comptroller shall disburse state and federal
4 vocational rehabilitation funds on certification by the
5 commissioner [~~executive director~~].

6 Sec. 117.106 [~~91.058~~]. HEARINGS. An applicant for or
7 recipient of vocational rehabilitation services who is aggrieved by
8 an action or inaction under the program is entitled to a hearing by
9 the department [~~commission~~] in accordance with law.

10 Sec. 117.107 [~~91.059~~]. MISUSE OF INFORMATION. Except for
11 purposes directly connected with the administration of the
12 vocational rehabilitation program and according to department
13 [~~commission~~] rules, no person may solicit, disclose, receive, use,
14 or knowingly permit the use of records or other information
15 concerning an applicant for or recipient of vocational
16 rehabilitation services that is directly or indirectly acquired by
17 an officer or employee of the state or its political subdivisions in
18 the course of his or her official duties.

19 SECTION 4.357. Section 91.081(a), Human Resources Code, is
20 amended to read as follows:

21 (a) The purpose of this subchapter is to establish a
22 comprehensive central state depository for braille, large print,
23 slow speed records and machines, tape recordings and tape players,
24 and related forms of media that will enable the Texas State Library
25 and Archives Commission, the Texas Education Agency, the department
26 [~~Texas Commission for the Blind~~], volunteer organizations involved
27 in the production of braille or recorded materials for the blind,

1 the Library of Congress, and related types of organizations to work
2 together more closely and effectively.

3 SECTION 4.358. Section 91.082, Human Resources Code, is
4 amended to read as follows:

5 Sec. 91.082. ESTABLISHMENT OF CENTRAL MEDIA DEPOSITORY.

6 (a) The Texas State Library and Archives Commission shall
7 generally supervise the establishment and operation of a central
8 media depository in Austin to house materials and devices required
9 by the blind and [visually handicapped] individuals with visual
10 disabilities or by other individuals who are unable to use ordinary
11 printed materials.

12 (b) With the approval of the Texas State Library and
13 Archives Commission [~~library and archives commission~~], the
14 agencies and organizations maintaining and operating the central
15 media depository shall develop and periodically evaluate and modify
16 specific arrangements for administrative support, sharing of staff
17 and equipment, and related matters involved in the operation of the
18 program.

19 SECTION 4.359. Section 91.083, Human Resources Code, is
20 amended to read as follows:

21 Sec. 91.083. ANCILLARY SERVICES. The Texas State Library
22 and Archives Commission [~~library and archives commission~~] shall
23 allow the central media depository to be used for the repair of
24 special media and equipment required by individuals who are unable
25 to use ordinary print and for research and demonstration, training,
26 and the production of materials in special media by volunteer
27 organizations.

1 SECTION 4.360. Chapter 94, Human Resources Code, is amended
2 to read as follows:

3 CHAPTER 94. VENDING FACILITIES OPERATED BY BLIND PERSONS

4 Sec. 94.001. DEFINITIONS. In this chapter:

5 (1) "Blind person" means a person having not more than
6 20/200 visual acuity in the better eye with correcting lenses or
7 visual acuity greater than 20/200 but with a limitation in the field
8 of vision such that the widest diameter of the visual field subtends
9 an angle no greater than 20 degrees.

10 (1-a) "Department" means the Department of Assistive
11 and Rehabilitative Services.

12 (1-b) "Executive commissioner" means the executive
13 commissioner of the Health and Human Services Commission.

14 (2) "Vending facility" means a facility in which food,
15 drinks, drugs, novelties, souvenirs, tobacco products, notions, or
16 related items are sold regularly. The term excludes facilities
17 consisting solely of vending machines that do not compete directly
18 or indirectly with a facility that is or could be operated by a
19 [vocationally handicapped] person with a disability.

20 (3) "State property" means land and buildings owned,
21 leased, or otherwise controlled by the state.

22 (4) "Agency" means the state agency in charge of state
23 property.

24 (5) "Disability" ["Handicapped"] means a physical or
25 mental condition that the department [commission or rehabilitation
26 commission] determines to constitute a substantial vocational
27 disadvantage.

1 [~~(6)~~ "Commission" means the Texas Commission for the
2 ~~Blind.~~

3 [~~(7)~~ "Rehabilitation commission" means the Texas
4 ~~Rehabilitation Commission.]~~

5 Sec. 94.002. LICENSE OR PERMIT REQUIRED. (a) No person may
6 operate a vending facility or a facility with vending machines or
7 other coin-operated devices on state property unless the person is
8 licensed to do so by the department [~~commission~~] or is authorized to
9 do so by an agency granted a permit to arrange for vending
10 facilities.

11 (b) Subsection (a) [~~of this section~~] does not apply to a
12 building in which the Texas Facilities [~~State Purchasing and~~
13 ~~General Services~~] Commission leases space to a private tenant under
14 Subchapter E, Chapter 2165, Government Code.

15 Sec. 94.003. LICENSING PROCEDURE. (a) On its own
16 initiative or at the request of an agency that controls state
17 property, the department [~~commission~~] shall survey the property, or
18 blueprints and other available information concerning the
19 property, to determine whether the installation of a vending
20 facility is feasible and consonant with the department's
21 [~~commission's~~] vocational rehabilitation objectives.

22 (b) If the installation of the facility is feasible, the
23 department [~~commission~~] shall either license a blind person to
24 operate a facility to be installed by the department [~~commission~~]
25 or [~~allow the rehabilitation commission to~~] install a facility to
26 be operated by a [~~handicapped~~] person with a disability who is not
27 blind according to rules and procedures [~~comparable to those~~]

1 adopted by the executive commissioner [commission. The commission
2 and the rehabilitation commission may enter into agreements
3 relating to management services and related forms of necessary
4 assistance].

5 Sec. 94.004. LOCATION OF VENDING FACILITIES. (a) With the
6 concurrence of the agency in charge of state property, the
7 department [commission] shall designate the location of vending
8 facilities that have been requested by the agency.

9 (b) The agency responsible for state property shall alter
10 the property to make it suitable for the proper operation of the
11 vending facilities. To this end, the agency in charge of
12 constructing new state property shall consult with the department
13 [commission] during the planning stage on the construction.

14 Sec. 94.005. ISSUANCE OF LICENSES; ELIGIBILITY. (a) The
15 department [commission] may issue a license to operate its vending
16 facilities on state property to blind citizens of the state who are
17 capable of operating the facilities in a manner that is reasonably
18 satisfactory to all parties concerned.

19 (b) Before issuing a license to a person, the department
20 [commission] shall determine whether the person has the physical,
21 psychological, and personal traits and abilities required to
22 operate a vending facility in a satisfactory manner.

23 (c) The department [commission] shall maintain a roster of
24 the names of each person who has been certified as suitable for
25 licensing. If two or more equally qualified persons are listed on
26 the roster and apply for a license to operate an available vending
27 facility, the department [commission] shall issue the license to

1 the person who is most in need of employment.

2 (d) The granting of a license does not vest the licensee
3 with property or other rights which may constitute the basis of a
4 cause of action, at law or in equity, against the state or its
5 officers or employees.

6 Sec. 94.006. EXPIRATION, RENEWAL, AND REVOCATION OF
7 LICENSES. (a) A license or general permit to operate a vending
8 facility on state property is valid for a period of three years from
9 the date it is issued.

10 (b) The department [~~commission~~] shall review each license
11 or permit prior to its expiration and shall issue a new or different
12 license or permit as the circumstances warrant.

13 (c) The department [~~commission~~] and the agency may consent
14 mutually to revoke a general permit prior to its expiration if
15 changed circumstances warrant that action.

16 (d) A blind person's wilful failure to comply with the
17 department's [~~commission's~~] rules or the provisions of this chapter
18 constitutes grounds for the automatic revocation of the person's
19 license.

20 (e) The executive commissioner [~~commission~~] shall adopt
21 substantive and procedural rules governing the revocation of
22 licenses.

23 Sec. 94.007. OPERATION OF VENDING FACILITIES BY CERTAIN
24 PERSONS WHO ARE NOT BLIND [~~UNDER THE REHABILITATION COMMISSION~~].

25 [(a)] If the department [~~commission~~] determines that a blind
26 person could not properly operate a vending facility at a
27 particular location, the department [~~rehabilitation commission~~]

1 may survey the property to determine whether a [handicapped] person
2 with a [whose] disability that is not of a visual nature could
3 operate the facility in a proper manner.

4 [(b) The commission and the rehabilitation commission may
5 develop procedures and methods of exchanging information necessary
6 to implement cooperative activities.]

7 [(c) The installation and operation of a vending facility by
8 the rehabilitation commission must conform to the provisions of
9 this chapter applicable to vending facilities installed by the
10 commission.]]

11 Sec. 94.008. CLOSING CERTAIN FACILITIES PROHIBITED.
12 Neither a vending facility operated by an [a blind or otherwise
13 vocationally handicapped] individual with a disability, nor a
14 vending facility location surveyed by the department, [commission]
15 may be closed as a result of the transfer of state property from one
16 agency to another, the alteration of a state building, or the
17 reorganization of a state agency unless the department [commission
18 or the rehabilitation commission] agrees to the closing.

19 Sec. 94.009. EMPLOYMENT OF ASSISTANTS. (a) If an
20 individual licensed to operate a vending facility on state property
21 requires an assistant, a qualified [visually handicapped] person
22 with a disability of a visual nature must be given preference for
23 employment. If the department [commission] determines that a
24 [visually handicapped] person with a disability of a visual nature
25 could not perform the labor for which an assistant is required, or
26 if a [visually handicapped] person with a disability of a visual
27 nature is not available, a [handicapped] person with a [whose]

1 disability that is not of a visual nature must be given preference
2 for employment. If no [handicapped] person with a disability is
3 available for the job, preference must be given to a person who is
4 socially, culturally, economically, or educationally
5 disadvantaged.

6 (b) An assistant employed by a blind person licensed by the
7 department [~~commission~~] must be approved by the department
8 [~~commission~~], and the deliberate refusal of a blind licensee to
9 comply with this section constitutes grounds for the revocation of
10 his or her license.

11 Sec. 94.010. COMPETING VENDING MACHINES. (a) If the
12 department [~~commission~~] and an agency agree to the installation and
13 operation of an additional vending facility or vending machine on
14 property that already has a department-sponsored
15 [~~commission-sponsored~~] vending facility, no additional permit or
16 license is required. However, the installation of a competing
17 vending facility consisting of vending machines or other
18 coin-operated devices must be authorized by the department
19 [~~commission~~]. The department's [~~commission's~~] authorization must
20 be made with a view toward providing the greatest economic benefits
21 for blind persons consonant with supplying the additional services
22 required at the building.

23 (b) State agencies shall cooperate and negotiate in good
24 faith to accomplish the purposes of this chapter.

25 (c) Individuals with disabilities [~~Vocationally~~
26 ~~handicapped individuals~~] who operate vending facilities on state
27 property are entitled to receive all commissions from vending

1 machines installed on the same property. If two or more vending
2 facilities are operated by individuals with disabilities
3 [~~vocationally handicapped persons~~] in a building in which vending
4 machines are installed, the department [~~commission~~] shall divide
5 the commissions from the vending machines among the [~~handicapped~~]
6 operators with disabilities in a manner that will achieve equity
7 and equality in the incomes of those [~~the handicapped~~] operators.
8 If the department has [~~commission and the rehabilitation commission~~]
9 ~~have~~] decided not to locate a vending facility in a building, the
10 agency to whom a general permit has been issued shall determine the
11 assignment of the commissions from vending machines installed in
12 the building.

13 Sec. 94.011. VENDING FACILITY EQUIPMENT AND STOCK. (a) The
14 department [~~commission~~] may supply a blind vending facility
15 operator with equipment and initial stock necessary for the
16 operator to begin business.

17 (b) The department [~~commission~~] shall collect and set aside
18 from the proceeds of the operation of its vending facilities enough
19 money:

20 (1) to insure a sufficient amount of initial stock for
21 the facilities and for their proper maintenance;

22 (2) to pay the costs of supervision and other expenses
23 incidental to the operation of the facilities; and

24 (3) to pay other program costs to the extent necessary
25 to assure fair and equal treatment of the blind persons licensed to
26 operate the facilities and to the extent allowed under federal
27 programs that provide financial support to the department

1 [commission].

2 (c) Except for purchasing and installing original
3 equipment, the operation of department-sponsored
4 [~~commission-sponsored~~] vending facilities must be as
5 self-supporting and self-sustaining as possible. To achieve this
6 end, the department [commission] shall periodically review and,
7 when necessary, revise its schedules for collecting and setting
8 aside money from the proceeds of its vending facilities.

9 Sec. 94.012. DUTIES AND PRIVILEGES OF PARTIES. (a) The
10 executive commissioner [commission] may promulgate rules and the
11 department may initiate procedures necessary to implement this
12 chapter.

13 (b) A blind person licensed to operate a vending facility on
14 state property shall operate the facility in accordance with law
15 and the department's [commission's] rules and policies.

16 (c) The agency in charge of state property shall cooperate
17 with the department [commission] and its blind licensees to
18 accomplish the purposes of this chapter. The agency shall also
19 furnish all necessary utility service, including connections and
20 outlets required for the installation of the facility, janitorial
21 and garbage disposal services where feasible, and other related
22 assistance.

23 Sec. 94.013. TRAINING PROGRAMS. The department
24 [~~commission~~] may establish training or experimentation locations
25 necessary to train blind persons who desire to be licensed to
26 operate vending facilities and to develop techniques which will
27 allow blind persons to operate the facilities or related types of

1 small businesses more efficiently and productively.

2 Sec. 94.014. CONFORMITY WITH FEDERAL STATUTES. (a) This
3 chapter shall be construed in a manner consistent with the
4 requirements of federal programs that provide financial assistance
5 to the department [~~commission~~].

6 (b) If a provision of this chapter conflicts with a federal
7 program requirement, the department [~~commission~~] may waive or
8 modify the provision to the extent necessary to secure the full
9 benefits of the federal program.

10 Sec. 94.015. APPLICATION OF CHAPTER. (a) This chapter does
11 not apply to:

12 (1) property over which the federal government
13 maintains partial or complete control;

14 (2) property maintained and operated by
15 state-supported institutions of higher education; provided,
16 however, that the department [~~commission~~] may enter into agreements
17 with state institutions of higher education concerning the use of
18 blind labor in vending facilities at the institutions; or

19 (3) property purchased by the state or an agency of the
20 state, property to which title is transferred from one state agency
21 to another, or property control of which is transferred from one
22 state agency to another, if:

23 (A) at the time of purchase or transfer of title
24 or control, a vending facility is being operated on the property
25 under lease, license, or contract; and

26 (B) prior to the time of purchase or transfer of
27 title or control, the provisions of this chapter were rendered

1 inapplicable to such property by this section or other law.

2 (b) This chapter does not apply to vending facilities
3 operated by an institution for persons with mental illness or
4 intellectual disabilities that is under the control of the
5 Department of State Health Services, the Department of Aging and
6 Disability Services, or a successor to one of those departments
7 ~~[Texas Department of Mental Health and Mental Retardation, or its~~
8 ~~successor]~~, if the vending facilities are operated without profit
9 for the benefit of the patients at the institution.

10 (c) This chapter does not prohibit the department
11 ~~[commission]~~ from selecting blind persons to operate other suitable
12 types of vending facilities or business enterprises, and the
13 chapter does not prohibit the installation of automated vending
14 facilities serviced by blind persons.

15 Sec. 94.016. BUSINESS ENTERPRISES PROGRAM. (a) The
16 department ~~[commission]~~ is authorized to administer the Business
17 Enterprises Program in accordance with the provisions of the
18 Randolph-Sheppard Act (20 U.S.C. Section 107 et seq.).

19 (b) The department ~~[commission]~~ is authorized to administer
20 a retirement program for individuals licensed to operate vending
21 facilities in accordance with applicable state and federal laws.

22 (c) A trust fund for a retirement program for individuals
23 licensed to operate vending facilities under the Business
24 Enterprises Program is established with the comptroller ~~[of public~~
25 ~~accounts]~~. This trust fund will be set up in the state treasury.

26 (d) All federal vending machine income shall be credited to
27 this Business Enterprises Program trust fund. Vending machine

1 income, as defined by 34 C.F.R. Section 395.1(z), means receipts
2 (other than those of a blind vendor) from vending machine
3 operations on federal property, after deducting the cost of goods
4 sold (including reasonable service and maintenance costs) in
5 accordance with customary business practices of commercial vending
6 concerns, where the machines are operated, serviced, or maintained
7 by, or with the approval of, a department, agency, or
8 instrumentality of the United States, or commissions paid (other
9 than to a blind vendor) by a commercial vending concern which
10 operates, services, and maintains vending machines on federal
11 property for, or with the approval of, a department, agency, or
12 instrumentality of the United States.

13 (e) All expenditures authorized by the Randolph-Sheppard
14 Act from federal vending revenue funds shall be paid from the
15 Business Enterprises Program trust fund.

16 (f) The department [~~commission~~] may contract with a
17 professional management service to administer the Business
18 Enterprises Program trust fund. In administering the trust fund,
19 the professional management service may acquire, exchange, sell, or
20 retain any kind of investment that a prudent investor, exercising
21 reasonable care, skill, and caution, would acquire, exchange, sell,
22 or retain under the circumstances, taking into consideration the
23 investment of all the assets of the trust fund.

24 (g) With the approval of the comptroller, the department
25 [~~commission~~] may select a commercial bank, depository trust
26 company, or other entity to serve as a custodian of the Business
27 Enterprises Program trust fund's securities, and money realized

1 from those securities, pending completion of an investment
2 transaction. Money realized from those securities must be:

3 (1) reinvested not later than one business day after
4 the date it is received; or

5 (2) deposited in the treasury not later than the fifth
6 business day after the date it is received.

7 SECTION 4.361. Title 6, Human Resources Code, is amended to
8 conform to Chapter 101, Human Resources Code, as it existed on
9 August 31, 2006, and to Section 1.20(a)(1), Chapter 198 (H.B.
10 2292), Acts of the 78th Legislature, Regular Session, 2003, by
11 adding Chapter 101A to read as follows:

12 CHAPTER 101A. STATE SERVICES FOR THE AGING

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 101A.001. DEFINITIONS. In this chapter:

15 (1) "Commissioner" means the commissioner of aging and
16 disability services.

17 (2) "Department" means the Department of Aging and
18 Disability Services.

19 (3) "Executive commissioner" means the executive
20 commissioner of the Health and Human Services Commission.

21 Sec. 101A.002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
22 CONFLICT WITH OTHER LAW. To the extent a power or duty given to the
23 commissioner by this chapter or another law relating to state
24 services for the aging conflicts with Section 531.0055, Government
25 Code, Section 531.0055 controls.

26 Sec. 101A.003. COOPERATION WITH FEDERAL AND STATE AGENCIES.

27 (a) The department is the state agency designated to handle federal

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1 programs relating to the aging that require action within the state
2 and that are not the specific responsibility of another state
3 agency under federal or state law.

4 (b) The department is not intended to supplant or to take
5 over from the counties and municipalities of this state or from
6 other state agencies or facilities any of the specific
7 responsibilities relating to services for the aging that they hold.
8 The department shall cooperate with federal and state agencies,
9 counties, and municipalities and private agencies or facilities in
10 the state in accomplishing the purposes of this chapter.

SUBCHAPTER B . POWERS AND DUTIES OF DEPARTMENT AND EXECUTIVE

COMMISSIONER

13 Sec. 101A.051. RULES. The executive commissioner shall
14 adopt rules governing the functions of the department under this
15 chapter, including rules that prescribe the policies and procedures
16 followed by the department in the administration of any local
17 services programs, employment programs for the aged, volunteer
18 programs for the aged, or other programs.

19 Sec. 101A.052. GENERAL FUNCTIONS OF DEPARTMENT RELATED TO
20 AGING SERVICES. (a) The department shall provide expertise and
21 advice to state agencies and the legislature and other elected
22 officials on aging issues, including recommendations to meet the
23 needs of this state's elderly population.

24 (b) The department shall develop and strengthen the
25 services available for the aged in the state by coordinating
26 services provided by governmental and private agencies and
27 facilities.

1 (c) The department shall extend and expand services for the
2 aged by coordinating the interest and efforts of local communities
3 in studying the problems of the aged citizens of this state.

4 (d) The department shall encourage, promote, and aid in the
5 establishment of area agencies on aging for the development of
6 programs and services on a local level that improve the living
7 conditions of the aged by enabling them to more fully enjoy and
8 participate in family and community life.

9 (e) The department shall sponsor voluntary community
10 rehabilitation and recreational facilities to improve the general
11 welfare of the aged.

12 (f) The department shall cooperate with state and federal
13 agencies and other organizations in conducting studies and surveys
14 on the special problems of the aged in matters such as mental and
15 physical health, housing, family relationships, employment,
16 income, vocational rehabilitation, recreation, transportation,
17 insurance, legal rights, and education. The department shall make
18 appropriate reports and recommendations to the governor and to
19 state and federal agencies.

20 (g) The department shall conduct research and long-range
21 planning regarding long-term care, community care, and other issues
22 that affect elderly individuals.

23 (h) The department shall make recommendations to the
24 governor, the legislature, and state agencies regarding:

25 (1) opportunities to coordinate programs for elderly
26 individuals;

27 (2) unnecessary duplication in providing services to

1 elderly individuals; and

2 (3) gaps in services to elderly individuals.

3 (i) The department shall:

4 (1) cooperate with the Texas Department of Housing and
5 Community Affairs to provide affordable housing for elderly
6 individuals and for families in which an elderly individual is head
7 of the household;

8 (2) assess the need for housing for elderly
9 individuals and for families in which an elderly individual is head
10 of the household in different localities;

11 (3) set standards relating to the design and
12 construction of housing for elderly individuals;

13 (4) provide planning assistance to builders; and

14 (5) publicize the availability of the housing program
15 to potential developers and residents.

16 Sec. 101A.053. OLDER AMERICANS ACT; STATE PLAN. (a) The
17 department shall develop this state's plan on aging, as required by
18 the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.).

19 (b) The department shall conduct a statewide needs
20 assessment for long-term care and other services for older
21 individuals and their caregivers. The assessment shall include
22 input from:

23 (1) area agencies on aging;

24 (2) regional and local state agency staff; and

25 (3) community-based organizations.

26 SUBCHAPTER C. PROGRAMS AND SERVICES

27 Sec. 101A.101. COMMUNITY SENIOR CITIZENS EMPLOYMENT

1 ~~PROGRAMS.~~ (a) In this section, "suitable employment" means
2 employment that is commensurate with the individual's skills and
3 ability and for which compensation is paid equal to the federal
4 minimum wage rate.

5 (b) The Texas Workforce Commission may administer a
6 community program for persons 55 years of age or older who lack
7 suitable employment and have family incomes under federal poverty
8 guidelines.

9 (c) The Texas Workforce Commission may contract with a
10 public agency or a private, nonprofit organization with experience
11 in managing similar programs to employ persons under this program
12 in providing recreation, beautification, conservation, or
13 restoration services, or public service employment positions for
14 state, county, city, or regional governments or school districts.

15 The Texas Workforce Commission may not contract with an
16 organization that is not a subscriber under the state workers'
17 compensation law or that does not pay the federal minimum wage rate
18 or the prevailing wage rate for the particular job, whichever is
19 greater.

20 (d) The state shall finance 80 percent of the cost of the
21 program, and the governments receiving the services shall finance
22 20 percent of the cost.

23 Sec. 101A.102. VOLUNTARY COMMUNITY SERVICES PROGRAMS. (a)
24 The department shall ensure that state funds appropriated to the
25 department for programs to recruit elderly persons to perform
26 voluntary community services or for programs under Senior Corps are
27 disbursed to local public agencies or private, nonprofit

1 corporations that operate those programs.

2 (b) A public agency or private, nonprofit corporation may
3 not receive state money under this section if it is not able to
4 qualify for federal matching money for the same purpose.

5 (c) The executive commissioner by rule shall establish
6 guidelines or formulas to determine the proportion of state money
7 distributed to each public agency or private, nonprofit corporation
8 under this section. The executive commissioner by rule may
9 establish additional qualifications to receive the state money.

10 (d) State funds disbursed under this section may not be used
11 to pay compensation to volunteer workers, except for participants
12 in the Foster Grandparent and Senior Companion Programs of Senior
13 Corps, or for purposes other than financing the operation or
14 administration of the volunteer programs, but it may be used to
15 defray expenses incurred by volunteers in the performance of
16 volunteer work. The executive commissioner by rule may further
17 limit the purposes for which the state money may be spent.

18 Sec. 101A.103. TEXAS CARES PROGRAM. (a) The executive
19 commissioner by rule may establish and the department may operate a
20 Texas Cares program to provide persons eligible for discount drug
21 price programs offered by pharmaceutical companies with:

22 (1) information regarding the availability of those
23 programs; and

24 (2) in appropriate circumstances, assistance in
25 enrolling in those programs.

26 (b) The department may solicit and accept gifts, grants, and
27 donations from any source to use in funding the Texas Cares program.

1 (c) The executive commissioner shall design the Texas Cares
2 program to meet the primary goal of increasing awareness in
3 appropriate populations of the availability of discount drug price
4 programs offered by pharmaceutical companies. To the extent that
5 adequate resources are available, the department shall:

6 (1) make information regarding discount drug price
7 programs readily available on the department's Internet site;

8 (2) Maintain a toll-free telephone number through
9 which a person may obtain information regarding discount drug price
10 programs; and

11 (3) make brochures or other written informational
12 materials regarding discount drug price programs available on
13 request by a pharmacist, physician, representative of an
14 organization serving senior citizens, or other interested person.

15 (d) The department may:

16 (1) conduct community outreach and education
17 activities to increase awareness of the availability of discount
18 drug price programs offered by pharmaceutical companies;

19 (2) solicit and train volunteers to perform functions
20 associated with the Texas Cares program, including:

21 (A) providing assistance to eligible persons in
22 enrolling in discount drug price programs offered by pharmaceutical
23 companies; and

24 (B) conducting community outreach and education
25 activities; and

26 (3) coordinate operation of the Texas Cares program
27 with the activities of area agencies on aging.

1 Sec. 101A.104. PUBLIC INFORMATION ON COST OF LONG-TERM
2 CARE. The department shall develop programs to provide information
3 to the public relating to:

4 (1) the cost of long-term care;
5 (2) the limits on Medicaid eligibility;
6 (3) the adequacy or inadequacy of other financing
7 options, including Medicare; and
8 (4) possible methods of financing long-term care,
9 including group insurance policies and other methods designed to
10 assist individuals.

11 Sec. 101A.105. SERVICES OF OTHER AGENCIES. The department
12 may accept services performed by other agencies to accomplish the
13 purposes of this chapter.

14 Sec. 101A.106. REVIEW OF ADMINISTRATIVE COSTS AND PROGRAMS.
15 (a) The executive commissioner by rule shall define
16 "administrative costs" as used in this section. However, if a
17 standard definition of administrative costs is required by law to
18 be used by state agencies, the executive commissioner shall use
19 that definition.

20 (b) To determine the administrative costs incurred by an
21 entity, including an area agency on aging and including an entity
22 that spends money distributed by the department under Section
23 101A.101 or 101A.102 in engaging in a program that is funded in any
24 part by money derived from the department under this chapter, the
25 department shall request appropriate information from the entity.

26 (c) The executive commissioner shall establish the maximum
27 amount of administrative costs that may be incurred by the entity in

1 engaging in the program.

2 (d) The department periodically shall review the actions of
3 entities receiving funds from the department under this chapter and
4 shall document its review. The review of an entity that spends
5 money distributed under Section 101A.102 must include on-site
6 evaluations of the entity and must include the review of
7 documentation, which shall be required by the department, of the
8 services performed by the aged in programs under Section 101A.102.

9 Sec. 101A.107. REPORT ON UNIT COSTS. The department shall
10 file with the Legislative Budget Board and the Governor's Office of
11 Budget, Planning, and Policy a report that clearly identifies the
12 unit cost of each service, other than services related to community
13 service volunteering and subsidized employment services, provided
14 by an area agency on aging. The report must be filed twice each year
15 on or before the date specified by the Legislative Budget Board.
16 The report must be in the form required by the Legislative Budget
17 Board.

18 SUBCHAPTER D. OPTIONS FOR INDEPENDENT LIVING PROGRAM

19 Sec. 101A.151. DEFINITIONS. In this subchapter:

20 (1) "Case management" means the process of assessing
21 service needs, developing a plan of care, and arranging for and
22 monitoring delivery of care to an elderly person under this
23 subchapter.

24 (2) "Case management unit" is an entity that
25 coordinates and administers case management.

26 (3) "Elderly person" means a person who is 60 years of
27 age or older.

1 (4) "Service area" means a geographical area of the
2 state designated for purposes of planning, development, and overall
3 administration of services provided under this subchapter.

4 Sec. 101A.152. OPTIONS FOR INDEPENDENT LIVING PROGRAM. (a)
5 The department shall establish a statewide Options for Independent
6 Living program to help elderly persons remain at home despite
7 limited self-care capacities and to prevent institutionalization.

8 (b) The Options for Independent Living program shall
9 provide short-term support services to elderly persons for the
10 purposes of:

11 (1) restoring functional capacities after illness or
12 hospitalization; and

13 (2) educating and preparing elderly persons and their
14 caregivers to provide self-care.

15 Sec. 101A.153. PERSONS TO BE SERVED. (a) The Options for
16 Independent Living program shall give priority to an elderly
17 person who:

18 (1) has recently suffered a major illness or health
19 care crisis or has recently been hospitalized;

20 (2) lives in a rural area;

21 (3) has insufficient caregiver support;

22 (4) has a mild to moderate impairment or a temporary
23 severe impairment; and

24 (5) is in great economic or social need, with
25 particular attention to low-income minority older persons.

26 (b) In awarding funding under this subchapter, the
27 department shall serve priority populations consistent with the

1 Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.).

2 Sec. 101A.154. PROVISION OF SERVICES. (a) Support services
3 shall include:

- 4 (1) case management;
- 5 (2) homemaking assistance, including personal care;
- 6 (3) residential repair and modification;
- 7 (4) benefits counseling;
- 8 (5) respite care;
- 9 (6) emergency response;
- 10 (7) education and training for caregivers;
- 11 (8) home-delivered meals;
- 12 (9) transportation; and
- 13 (10) other appropriate services identified by the case

14 manager and client through the assessment and care planning
15 process.

16 (b) A case manager shall conduct an individual assessment of
17 an elderly person's needs and shall, in consultation with the
18 elderly person and the elderly person's family, create a plan of
19 care that specifies the type, amount, frequency, and duration of
20 support services the elderly person needs.

21 (c) A plan of care must coordinate the available public and
22 private services and resources that are most appropriate to meet
23 the elderly person's needs.

24 (d) An area agency on aging may not directly provide
25 homemaker, home health, residential repair, respite, meal
26 delivery, or transportation service unless the area agency:

- 27 (1) receives no response to a request for proposals

1 that meets department standards; and

2 (2) has exhausted all other procurement options
3 available under department rules.

4 (e) An area agency on aging that wants to provide directly a
5 service not available through a local public or private entity must
6 obtain approval from the department in accordance with department
7 rules governing the granting of such approval.

8 Sec. 101A.155. CASE MANAGEMENT UNITS. (a) The department
9 shall designate one or more case management units for each service
10 area to provide case management services according to department
11 rules and standards.

12 (b) The department shall designate an area agency on aging
13 as a case management unit for a service area. The area agency on
14 aging may act as the case management unit, after obtaining approval
15 from the department in accordance with department rules governing
16 the granting of such approval, or the area agency on aging may
17 subcontract with a local service agency or hospital to act as the
18 case management unit.

19 (c) A case manager must be an employee of a case management
20 unit.

21 (d) The department shall periodically review a case
22 management unit.

23 Sec. 101A.156. ADMINISTRATION OF PROGRAM. (a) The
24 department shall administer the Options for Independent Living
25 program through grants to area agencies on aging.

26 (b) Area agencies on aging shall maintain their service
27 provision levels in effect on September 1, 1989, independent of the

1 Options for Independent Living program. Funds made available under
2 this program may not be used to supplant service funds for services
3 provided on September 1, 1989.

4 (c) An area agency on aging that receives funds under this
5 section shall ensure the availability of the services for which the
6 funds were granted.

7 Sec. 101A.157. FEES. (a) The executive commissioner by
8 rule shall establish a copayment system using a sliding scale that
9 is based on an elderly person's income.

10 (b) An elderly person whose income exceeds the basic income
11 and resources requirements for eligibility for the community care
12 for aged and disabled program of the department, but whose income is
13 less than 200 percent of that level, shall pay a portion of the cost
14 of support services provided to the person by a case management unit
15 according to the fee scale.

16 (c) An elderly person whose income exceeds 200 percent of
17 the level established by the department for the community care for
18 aged and disabled program shall pay the full cost of support
19 services provided by a case management unit.

20 (d) A local case management unit shall collect and account
21 for all fees imposed for services provided by the case management
22 unit and shall submit reports to the department as prescribed by
23 department rules.

24 (e) Fees collected shall be used to defray program costs and
25 to expand the Options for Independent Living program.

26 Sec. 101A.158. ANNUAL REPORT. (a) The department shall
27 annually report on the Options for Independent Living program to

1 the governor and the presiding officer of each house of the
2 legislature.

3 (b) The report must include information concerning the
4 manner in which the department has provided services under the
5 Options for Independent Living program to elderly persons entitled
6 to priority under Section 101A.153(a).

7 (c) The report must be submitted not later than November 1
8 of each even-numbered year.

9 SUBCHAPTER E. FUNDING

10 Sec. 101A.201. AUTHORITY TO ACCEPT, EXPEND, AND TRANSFER
11 FUNDS. The department may accept, expend, and transfer federal and
12 state funds appropriated for programs authorized by federal and
13 state law and administered by the department under this chapter.
14 The department may accept, expend, and transfer funds received in
15 relation to this chapter from any source, including a county,
16 municipality, or public or private agency. The funds shall be
17 deposited in the state treasury and may be used for the purposes of
18 this chapter, subject to any conditions attached to the funds.

19 Sec. 101A.202. CONTRIBUTIONS TO LOCAL ORGANIZATIONS:
20 CERTAIN COUNTIES. (a) This section applies only to counties having
21 a population of not less than 22,140 and not more than 22,340 and to
22 cities and towns within those counties.

23 (b) Each county and each city or town to which this section
24 applies may cooperate with the department in carrying out the
25 department's purposes under this chapter on a local level by
26 contributing funds to any local organization the functions of which
27 are to cooperate with the department in carrying out those

1 purposes. The organization must operate with the approval and
2 sanction of the department.

3 (c) The operation of buildings, facilities, services, and
4 programs by an organization for other community services or
5 benefits does not prohibit the contribution of the funds under this
6 section for the part of the organization's program for the aging if
7 that part of the program is approved by the department.

8 Sec. 101A.203. FUNDING TO AREA AGENCIES ON AGING. (a) The
9 executive commissioner by rule shall adopt a formula that meets the
10 intent of the Older Americans Act of 1965 (42 U.S.C. Section 3001 et
11 seq.) for allocating among area agencies on aging funds that the
12 department receives under the Act.

13 (b) The formula must provide for the allocation of the funds
14 among the area agencies on aging according to the most recent
15 population estimates available from the Health and Human Services
16 Commission.

17 (c) The executive commissioner shall update the formula
18 biennially and the department shall include the formula and
19 population estimates in each state plan on aging.

20 (d) Unless otherwise provided for by department rules
21 regarding the carryover of unexpended funds allocated under this
22 section, at the end of a fiscal year excess unexpended funds of an
23 area agency on aging's allocations for that fiscal year shall be
24 deducted from the allocation for the new fiscal year and that same
25 amount of new fiscal year funds shall be reallocated. The executive
26 commissioner by rule shall adopt a reallocation formula that
27 includes performance as a criterion, in addition to other criteria

1 adopted by the executive commissioner.

2 (e) The funds that the department receives under the Older
3 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) shall be
4 allocated and reallocated to area agencies on aging under the
5 formulas adopted under this section.

6 Sec. 101A.204. TRUSTS FOR CERTAIN RECIPIENTS OF MEDICAL
7 ASSISTANCE. (a) An area agency on aging may contract with one or
8 more private attorneys to establish trusts described by 42 U.S.C.
9 Section 1396p(d)(4)(B) for the benefit of recipients of medical
10 assistance under Chapter 32 who, without the establishment of these
11 trusts, would become ineligible for medical assistance.

12 (b) The department shall allocate available state funds to
13 the area agencies on aging for use in contracting for the
14 establishment of trusts under Subsection (a).

15 SUBCHAPTER F. OFFICE OF STATE LONG-TERM CARE OMBUDSMAN

16 Sec. 101A.251. DEFINITIONS. In this subchapter:

17 (1) "Elderly resident" means a resident of a long-term
18 care facility who is 60 years of age or older.

19 (2) "Long-term care facility" means a facility that
20 serves persons who are 60 years of age or older and that is licensed
21 or regulated or that is required to be licensed or regulated by the
22 department under Chapter 242 or 247, Health and Safety Code.

23 (3) "Office" means the office of the state long-term
24 care ombudsman.

25 (4) "Representative" means an employee or volunteer
26 specifically designated by the office as a representative of the
27 office.

1 (5) "State ombudsman" means the chief administrator of
2 the office.

3 Sec. 101A.252. OPERATION OF OFFICE. (a) The department
4 shall operate the office of the state long-term care ombudsman.

5 (b) The department may operate the office directly or by
6 contract or memorandum of agreement with a public agency or other
7 appropriate private nonprofit organization. The department may not
8 use an agency or organization that is:

9 (1) responsible for licensing or certifying long-term
10 care services; or

11 (2) an association of long-term care facilities or of
12 any other residential facility that serves persons who are 60 years
13 of age or older, or an affiliate of such an association.

14 (c) The department shall consider the views of elderly
15 persons, provider organizations, advocacy groups, and area
16 agencies on aging in planning and operating the office.

17 (d) The department shall ensure that a person involved in
18 designating the state ombudsman or in designating an employee or
19 representative of the office does not have a conflict of interest.

20 Sec. 101A.253. ROLE OF OFFICE. The office and the ombudsman
21 program shall operate in cooperation with any regulatory agency
22 funded and mandated by the Older Americans Act of 1965 (42 U.S.C.
23 Section 3001 et seq.) and state statute.

24 Sec. 101A.254. POWERS AND DUTIES OF STATE OMBUDSMAN AND
25 OFFICE. (a) The state ombudsman and the office have the powers and
26 duties required by state and federal law.

27 (b) The office may use appropriate administrative, legal,

1 and other remedies to assist elderly residents as provided by
2 department rules.

3 Sec. 101A.255. OMBUDSMEN. (a) The office shall recruit
4 volunteers and citizen organizations to participate in the
5 ombudsman program. A paid staff member of an area agency on aging
6 network or a nonprofit social service agency may be an ombudsman.
7 An ombudsman is a representative of the office.

8 (b) The office shall provide training to ombudsmen as
9 required by this subchapter and federal law.

10 (c) The office shall coordinate ombudsman services with the
11 protection and advocacy systems that exist for persons with
12 developmental disabilities or mental illness.

13 Sec. 101A.256. LEGAL ASSISTANCE. The department shall
14 ensure that the office receives adequate legal advice and
15 representation. The attorney general shall represent the ombudsman
16 or a representative if a suit or other legal action is brought or
17 threatened to be brought against that person in connection with the
18 person's performance of the official duties of the office.

19 Sec. 101A.257. INVESTIGATIONS. (a) The office shall have
20 access to elderly residents and shall investigate and resolve
21 complaints made by or on behalf of elderly residents.

22 (b) The department shall ensure that each ombudsman who
23 investigates complaints has received proper training and has been
24 approved by the office as qualified to investigate complaints.

25 Sec. 101A.258. ACCESS TO RECORDS AND CONFIDENTIALITY. (a)
26 The state ombudsman or the state ombudsman's designee, specifically
27 identified by the commissioner, shall have access to patient care

1 records of elderly residents of long-term care facilities. The
2 executive commissioner by rule shall establish procedures for
3 obtaining access to the records. All records and information to
4 which the state ombudsman or the state ombudsman's designee obtains
5 access remain confidential.

6 (b) The office shall ensure that the identity of a
7 complainant or any facility resident may be disclosed only with the
8 written consent of the person or the person's legal representative
9 or on court order.

10 (c) The information in files maintained by the office may be
11 disclosed only by the ombudsman who has authority over the
12 disposition of the files.

13 Sec. 101A.259. REPORTING SYSTEM. The office shall maintain
14 a statewide ombudsman uniform reporting system to collect and
15 analyze information relating to complaints and conditions in
16 long-term care facilities as long as such system does not duplicate
17 other state reporting systems. The office shall provide the
18 information to the department and the Health and Human Services
19 Commission.

20 Sec. 101A.260. ANALYSIS OF LAWS. The office shall analyze
21 and monitor the development and implementation of federal, state,
22 and local laws, rules, regulations, and policies relating to
23 long-term care facilities and services and shall recommend any
24 changes the office considers necessary.

25 Sec. 101A.261. PUBLIC INFORMATION. The office shall
26 provide information to public agencies, legislators, and others
27 that relates to the problems and concerns of elderly residents.

1 Sec. 101A.262. ANNUAL REPORT. (a) The office shall prepare
2 an annual report that contains:

3 (1) information and findings relating to the problems
4 and complaints of elderly residents; and

5 (2) policy, regulatory, and legislative
6 recommendations to solve the problems, resolve the complaints, and
7 improve the quality of the elderly residents' care and lives.

8 (b) The report must be submitted to the governor and the
9 presiding officer of each house of the legislature not later than
10 November 1 of each even-numbered year.

11 Sec. 101A.263. LIMITATION OF LIABILITY. An ombudsman or a
12 representative is not liable for civil damages or subject to
13 criminal prosecution for performing official duties unless the
14 ombudsman or representative acts in bad faith or with a malicious
15 purpose.

16 Sec. 101A.264. CRIMINAL PENALTY. (a) A person commits an
17 offense if the person:

18 (1) intentionally interferes with an ombudsman
19 attempting to perform official duties; or

20 (2) commits or attempts to commit an act of
21 retaliation or reprisal against any resident or employee of a
22 long-term care facility for filing a complaint or providing
23 information to an ombudsman.

24 (b) An offense under this section is a Class B misdemeanor.

25 (c) The department shall assure that criminal sanctions
26 will be initiated only after all administrative procedures are
27 exhausted.

1 SECTION 4.362. Section 102.001(1), Human Resources Code, is
2 amended to read as follows:

3 (1) "Convalescent and nursing home" means an
4 institution licensed by the [Texas] Department of Aging and
5 Disability [Human] Services under Chapter 242, Health and Safety
6 Code.

7 SECTION 4.363. Sections 102.003(d), (i), and (t), Human
8 Resources Code, are amended to read as follows:

9 (d) An [A mentally retarded] elderly individual with an
10 intellectual disability who has a court-appointed guardian of the
11 person may participate in a behavior modification program involving
12 use of restraints or adverse stimuli only with the informed consent
13 of the guardian.

14 (i) An elderly individual may manage the individual's
15 personal financial affairs. The elderly individual may authorize
16 in writing another person to manage the individual's financial
17 affairs [money]. The elderly individual may choose the manner of
18 financial management, which may include management through or under
19 [in which the individual's money is managed, including] a money
20 management program, a representative payee program, a financial
21 power of attorney, a trust, or a similar method, and the individual
22 may choose the least restrictive of these methods. A person
23 designated to manage an elderly individual's financial affairs
24 [money] shall do so in accordance with each applicable program
25 policy, law, or rule. On request of the elderly individual or the
individual's representative, the person designated to manage the
elderly individual's financial affairs [money] shall make

1 available the related financial records and provide an accounting
2 relating to the financial management [~~of the money~~]. An elderly
3 individual's designation of another person to manage the
4 individual's financial affairs [~~money~~] does not affect the
5 individual's ability to exercise another right described by this
6 chapter. If an elderly individual is unable to designate another
7 person to manage the individual's financial affairs and a guardian
8 is designated by a court, the guardian shall manage the
9 individual's financial affairs [~~money~~] in accordance with the
10 Estates [Probate] Code and other applicable laws.

11 (t) An elderly individual may:

12 (1) make a living will by executing a directive under
13 Subchapter B, Chapter 166 [~~the Natural Death Act (Chapter 672)~~,
14 Health and Safety Code~~[+]~~];

15 (2) execute a medical [~~durable~~] power of attorney [~~for~~
16 ~~health care~~] under Subchapter D, Chapter 166, Health and Safety
17 [~~135, Civil Practice and Remedies~~] Code; or

18 (3) designate a guardian in advance of need to make
19 decisions regarding the individual's health care should the
20 individual become incapacitated.

21 SECTION 4.364. Section 103.001, Human Resources Code, is
22 amended to read as follows:

23 Sec. 103.001. PURPOSE. It is the purpose of this chapter to
24 establish programs of quality adult day care and day health care
25 that will enable persons with disabilities who have medical or
26 functional impairments and elderly [and handicapped] persons [with
27 medical or functional impairments] to maintain maximum

1 independence and to prevent premature or inappropriate
2 institutionalization. It is the purpose of this chapter to provide
3 adequately regulated supervision for elderly persons and
4 [handicapped] persons with disabilities while enabling them to
5 remain in a family environment and affording the family a measure of
6 normality in its daily activities. The legislature intends to
7 provide for the development of policies and programs that will:

- 8 (1) provide alternatives to institutionalization;
- 9 (2) establish facilities for adult day care and day
10 health care throughout the state that offer services and are
11 accessible to economically disadvantaged persons; and
- 12 (3) prevent inappropriate institutionalization.

13 SECTION 4.365. Section 103.003, Human Resources Code, is
14 amended by amending Subdivisions (1), (3), and (5) and adding
15 Subdivision (4-a) to read as follows:

16 (1) "Adult day-care facility" means a facility that
17 provides services under an adult day-care program on a daily or
18 regular basis but not overnight to four or more elderly persons or
19 [handicapped] persons with disabilities who are not related by
20 blood, marriage, or adoption to the owner of the facility.

21 (3) "Department" means the [Texas] Department of Aging
22 and Disability [Human] Services.

23 (4-a) "Executive commissioner" means the executive
24 commissioner of the Health and Human Services Commission.

25 (5) "Person with a disability" [Handicapped person]
26 means a person whose functioning is sufficiently impaired to
27 require frequent medical attention, counseling, physical therapy,

1 therapeutic or corrective equipment, or another person's
2 attendance and supervision.

3 SECTION 4.366. The heading to Section [103.004](#), Human
4 Resources Code, is amended to read as follows:

5 Sec. 103.004. DEPARTMENT AND EXECUTIVE COMMISSIONER
6 DUTIES.

7 SECTION 4.367. Sections [103.004](#)(a) and (b), Human Resources
8 Code, are amended to read as follows:

9 (a) The executive commissioner ~~[department]~~ shall adopt
10 rules for implementing this chapter.

11 (b) The executive commissioner ~~[department]~~ shall set
12 standards for:

13 (1) the health and welfare of persons attending a
14 facility;

15 (2) the eligibility of persons to attend a facility;

16 (3) the scope of services provided by a facility;

17 (4) adequate supervision for persons attending a
18 facility;

19 (5) the professional staff and other personnel at a
20 facility;

21 (6) adequate and healthful food service, where it may
22 be offered;

23 (7) procedures for consultation with family members,
24 case workers, or other persons responsible for the welfare of a
25 person attending a facility; and

26 (8) prohibiting racial discrimination.

27 SECTION 4.368. Section [103.005](#), Human Resources Code, is

1 amended to read as follows:

2 Sec. 103.005. LICENSING DUTIES. The executive commissioner
3 ~~[department]~~ shall:

4 (1) adopt rules for the licensing procedures for a
5 licensed facility; and

6 (2) set standards for the safety and sanitation
7 requirements for a licensed facility.

8 SECTION 4.369. Section 103.006(b), Human Resources Code, is
9 amended to read as follows:

10 (b) The license expires two years from the date of its
11 issuance. The executive commissioner ~~[of the Health and Human~~
12 ~~Services Commission]~~ by rule may adopt a system under which
13 licenses expire on various dates during the two-year period. For
14 the year in which a license expiration date is changed, the
15 department shall prorate the license fee on a monthly basis. Each
16 license holder shall pay only that portion of the license fee
17 allocable to the number of months for which the license is valid. A
18 license holder shall pay the total license renewal fee at the time
19 of renewal.

20 SECTION 4.370. Sections 103.0075(a) and (c), Human
21 Resources Code, are amended to read as follows:

22 (a) The executive commissioner ~~[department]~~ by rule shall
23 adopt a procedure under which a person proposing to construct or
24 modify an adult day-care facility may submit building plans to the
25 department for review for compliance with the department's
26 architectural requirements before beginning construction or
27 modification. In adopting the procedure, the executive

1 commissioner [department] shall set reasonable deadlines by which
2 the department must complete review of submitted plans.

3 (c) The department may charge a reasonable fee adopted by
4 the executive commissioner by rule for conducting a review under
5 this section.

6 SECTION 4.371. Section 103.012(d), Human Resources Code, is
7 amended to read as follows:

8 (d) The executive commissioner [department] shall establish
9 gradations of penalties in accordance with the relative seriousness
10 of the violation.

11 SECTION 4.372. Sections 103.014(g), (h), and (i), Human
12 Resources Code, are amended to read as follows:

13 (g) Not later than the 20th day after the date on which a
14 notice under Subsection (f)(2) is received, the person charged with
15 the violation may:

16 (1) give to the department written notice that the
17 person agrees with the department's report and consents to the
18 recommended penalty; or

19 (2) make a written request for a hearing as provided
20 under department rules.

21 (h) If the person charged with the violation consents to the
22 penalty recommended by the department or does not timely respond to
23 a notice sent under Subsection (c) or (f)(2), the department
24 [~~department's commissioner or the commissioner's designee~~] shall
25 assess the recommended penalty [~~recommended by the department~~].

26 (i) If the department [~~department's commissioner or the~~
27 ~~commissioner's designee~~] assesses the recommended penalty, the

1 department shall give written notice of the decision to the person
2 charged with the violation and the person shall pay the penalty.

3 SECTION 4.373. Section 103.015(d), Human Resources Code, is
4 amended to read as follows:

5 (d) Based on the findings of fact and conclusions of law,
6 and the recommendation of the administrative law judge, the
7 department [~~department's commissioner or the commissioner's~~
8 ~~designee~~] by order shall find:

9 (1) a violation has occurred and assess an
10 administrative penalty; or

11 (2) a violation has not occurred.

12 SECTION 4.374. Sections 103.016(a), (b), (f), and (g),
13 Human Resources Code, are amended to read as follows:

14 (a) The department [~~department's commissioner or the~~
15 ~~commissioner's designee~~] shall give notice of the findings made
16 under Section 103.015(d) to the person charged with a
17 violation. If the department [~~commissioner or the commissioner's~~
18 ~~designee~~] finds that a violation has occurred, the department
19 [~~commissioner or the commissioner's designee~~] shall give to the
20 person charged written notice of:

21 (1) the findings;

22 (2) the amount of the administrative penalty;

23 (3) the rate of interest payable with respect to the
24 penalty and the date on which interest begins to accrue; and

25 (4) the person's right to judicial review of the
26 department's order [~~of the commissioner or the commissioner's~~
27 ~~designee~~].

1 (b) Not later than the 30th day after the date on which the
2 ~~department's order [of the department's commissioner or the~~
3 ~~commissioner's designee]~~ is final, the person assessed the penalty
4 shall:

5 (1) pay the full amount of the penalty; or
6 (2) file a petition for judicial review contesting the
7 occurrence of the violation, the amount of the penalty, or both the
8 occurrence of the violation and the amount of the penalty.

9 (f) If the amount of the penalty is reduced or the
10 assessment of a penalty is not upheld on judicial review, the
11 ~~department [department's commissioner or the commissioner's~~
12 ~~designee]~~ shall:

13 (1) remit to the person charged the appropriate amount
14 of any penalty payment plus accrued interest; or
15 (2) execute a release of the supersedeas bond if one
16 has been posted.

17 (g) Accrued interest on the amount remitted by the
18 ~~department [department's commissioner or the commissioner's~~
19 ~~designee]~~ under Subsection (f)(1) shall be paid:

20 (1) at a rate equal to the rate charged on loans to
21 depository institutions by the New York Federal Reserve Bank; and
22 (2) for the period beginning on the date the penalty is
23 paid and ending on the date the penalty is remitted to the person
24 charged with the violation.

25 SECTION 4.375. The heading to Chapter 105, Human Resources
26 Code, is amended to read as follows:

27 CHAPTER 105. RESIDENTIAL FACILITIES FOR PERSONS WITH DISABILITIES

1 OR WHO ARE [THE] ELDERLY

2 SECTION 4.376. Section 105.001(1), Human Resources Code, is
3 amended to read as follows:

4 (1) "Establishment" means a facility providing
5 sleeping accommodations to two or more qualifying adult residents,
6 at least 80 percent of whom are 65 years of age or older or are
7 persons with disabilities [~~disabled~~], and offering, for a fee, one
8 or more supportive services through contract with an agency
9 licensed under Chapter 142, Health and Safety Code, or with another
10 entity.

11 SECTION 4.377. The heading to Chapter 111, Human Resources
12 Code, is amended to read as follows:

13 CHAPTER 111. REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS WITH
14 DISABILITIES [~~TEXAS REHABILITATION COMMISSION~~]

15 SECTION 4.378. Section 111.002, Human Resources Code, is
16 amended by amending Subdivisions (2) and (5) and adding
17 Subdivisions (2-a) and (2-b) to read as follows:

18 (2) "Commissioner" means the commissioner of
19 assistive and rehabilitative services [~~chief administrative~~
20 ~~officer of the commission~~].

21 (2-a) "Department" means the Department of Assistive
22 and Rehabilitative Services.

23 (2-b) "Executive commissioner" means the executive
24 commissioner of the Health and Human Services Commission.

25 (5) "Rehabilitation services" means any equipment,
26 supplies, goods, or services necessary to enable an individual with
27 a disability to engage in a gainful occupation or to achieve maximum

1 personal independence. To enable an individual with a disability
2 to engage in a gainful occupation or achieve maximum personal
3 independence, the department [~~commission~~] may engage in or contract
4 for activities, including but not limited to:

5 (A) evaluation of rehabilitation potential,
6 including diagnostic and related services incidental to the
7 determination of eligibility for services and the nature and scope
8 of services to be provided;

9 (B) counseling and guidance;

10 (C) physical and mental restoration services
11 necessary to correct or substantially modify a physical or mental
12 condition that is stable or slowly progressive;

13 (D) training;

14 (E) maintenance for additional costs incurred
15 while participating in rehabilitation services;

16 (F) transportation;

17 (G) placement in suitable employment;

18 (H) postemployment services necessary to
19 maintain suitable employment;

20 (I) obtaining occupational licenses, including
21 any license, permit, or other written authority required by a
22 state, city, or other governmental unit to be obtained in order to
23 enter an occupation or small business, and providing tools,
24 equipment, initial stocks, goods, and supplies; and

25 (J) providing other equipment, supplies,
26 services, or goods that can reasonably be expected to benefit an
27 individual with a disability in terms of employment in a gainful

1 occupation or achievement of maximum personal independence.

2 SECTION 4.379. Section 111.016, Human Resources Code, is
3 amended to read as follows:

4 Sec. 111.016. REHABILITATION COUNCIL OF TEXAS. The
5 Rehabilitation Council of Texas operates [~~is created by this~~
6 ~~section~~] in accordance with the federal Rehabilitation Act
7 Amendments of 1992, Pub. L. 102-569, and the federal Rehabilitation
8 Act Amendments of 1998, Pub. L. 105-220. The executive
9 commissioner [~~board~~] shall adopt rules for the implementation of
10 regulations and the administration of the council.

11 SECTION 4.380. Section 111.0161, Human Resources Code, is
12 amended to read as follows:

13 Sec. 111.0161. ADVICE OF ADVISORY COMMITTEES [~~REPORT TO~~
14 ~~BOARD~~]. (a) Each advisory committee established by law or rule to
15 advise the department under this chapter or Subchapter F, Chapter
16 117, [commission] shall report to and advise the commissioner and
17 executive commissioner [~~board~~] on the committee's activities and
18 the results of the committee's work. For the purpose of performing
19 its advisory functions, each committee shall work with the
20 commissioner, the department's [~~commission's~~] staff, and the
21 executive commissioner [~~board~~].

22 (b) The executive commissioner [~~board~~] shall adopt rules to
23 implement this section.

24 SECTION 4.381. The heading to Section 111.018, Human
25 Resources Code, is amended to read as follows:

26 Sec. 111.018. GENERAL DUTIES OF EXECUTIVE COMMISSIONER AND
27 COMMISSIONER RELATING TO REHABILITATION SERVICES FOR CERTAIN

1 INDIVIDUALS WITH DISABILITIES [ADMINISTRATIVE REGULATIONS AND
2 POLICIES].

3 SECTION 4.382. Sections 111.018(a) and (b), Human Resources
4 Code, are amended to read as follows:

5 (a) The executive commissioner [board] shall:

6 (1) adopt policies and rules to effectively carry out
7 the purposes of this chapter and Subchapter F, Chapter 117; and

8 (2) supervise the commissioner's administration of
9 this chapter and Subchapter F, Chapter 117.

10 (b) In carrying out his or her duties under this chapter and
11 Subchapter F, Chapter 117, the commissioner shall, with the
12 approval of the executive commissioner [board], implement policies
13 addressing personnel standards, the protection of records and
14 confidential information, the manner and form of filing
15 applications, eligibility, investigation, and determination for
16 rehabilitation and other services, procedures for hearings, and
17 other regulations relating to this chapter or Subchapter F, Chapter
18 117, [subject to this section] as necessary to carry out the
19 purposes of this chapter and Subchapter F, Chapter 117.

20 SECTION 4.383. Section 111.019, Human Resources Code, is
21 amended to read as follows:

22 Sec. 111.019. PLANNING. The commissioner [~~commission~~]
23 shall make long-range and intermediate plans for the scope and
24 development of the program and make decisions regarding the
25 allocation of resources in carrying out the plans.

26 SECTION 4.384. Section 111.0205, Human Resources Code, is
27 amended to read as follows:

1 Sec. 111.0205. WORK INCENTIVES AND SUPPLEMENTAL SECURITY
2 INCOME (SSI). The department [~~commission~~] shall employ staff [~~a~~
3 ~~person~~] at the department's [~~commission's~~] central office to:

4 (1) train counselors to understand and use work
5 incentives in relation to services under this chapter or Subchapter
6 F, Chapter 117; and

7 (2) review cases to ensure that department
8 [~~commission~~] clients receiving services under this chapter or
9 Subchapter F, Chapter 117, are informed of the availability of and
10 assisted in obtaining work incentives and Supplemental Security
11 Income (SSI) (42 U.S.C. Section 1381 et seq.).

12 SECTION 4.385. Section 111.021, Human Resources Code, is
13 amended to read as follows:

14 Sec. 111.021. REPORTS. (a) The commissioner shall prepare
15 and submit to the executive commissioner [~~board~~] annual reports of
16 activities and expenditures under this chapter and Subchapter F,
17 Chapter 117, and, prior to each regular session of the legislature,
18 estimates of funds required for carrying out the purposes of this
19 chapter and Subchapter F, Chapter 117.

20 (c) The department [~~commission~~] shall post on the Internet
21 in an accessible format the reports required under this section and
22 any other agency performance data relating to this chapter or
23 Subchapter F, Chapter 117, required to be reported to this state or
24 the federal government. If a report or performance data contains
25 confidential information, the department [~~commission~~] shall remove
26 the confidential information before posting the report or
27 performance data.

1 SECTION 4.386. Section 111.022, Human Resources Code, is
2 amended to read as follows:

3 Sec. 111.022. DISBURSEMENT OF FUNDS. The department
4 [~~commission~~] shall make certification for disbursement, in
5 accordance with regulations, of funds available for carrying out
6 the purposes of this chapter or Subchapter F, Chapter 117.

7 SECTION 4.387. Section 111.023, Human Resources Code, is
8 amended to read as follows:

9 Sec. 111.023. OTHER DUTIES. The executive commissioner
10 [~~board~~] shall take other action as necessary or appropriate to
11 carry out the purposes of this chapter or Subchapter F, Chapter 117.

12 SECTION 4.388. The heading to Subchapter C, Chapter 111,
13 Human Resources Code, is amended to read as follows:

14 SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT [~~COMMISSION~~]

15 SECTION 4.389. Section 111.0505, Human Resources Code, is
16 amended to read as follows:

17 Sec. 111.0505. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
18 CONFLICT WITH OTHER LAW [~~OF COMMISSIONER OF HEALTH AND HUMAN~~
19 ~~SERVICES~~]. [~~The commissioner of health and human services has the~~
20 ~~powers and duties relating to the commission and commissioner as~~
21 ~~provided by Section 531.0055, Government Code.~~] To the extent a
22 power or duty given to the [~~commission or~~] commissioner by this
23 chapter, or another law relating to rehabilitation services for
24 individuals with disabilities, conflicts with Section 531.0055,
25 Government Code, Section 531.0055 controls.

26 SECTION 4.390. Section 111.051, Human Resources Code, is
27 amended to read as follows:

1 Sec. 111.051. DEPARTMENT [COMMISSION] AS PRINCIPAL
2 AUTHORITY. The department [~~Texas Rehabilitation Commission~~] is the
3 principal authority in the state on rehabilitation of individuals
4 with disabilities[, except for those matters relating to
5 individuals whose disabilities are of a visual nature]. All other
6 state agencies engaged in rehabilitation activities and related
7 services to individuals with [~~whose~~] disabilities [~~are not of a~~
8 ~~visual nature~~] shall coordinate those activities and services with
9 the department [~~commission~~].

10 SECTION 4.391. Section 111.052, Human Resources Code, is
11 amended to read as follows:

12 Sec. 111.052. GENERAL FUNCTIONS OF DEPARTMENT RELATING TO
13 REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS WITH DISABILITIES.
14 (a) The department [~~commission~~] shall, to the extent of resources
15 available and priorities established by the executive commissioner
16 [~~board~~], provide rehabilitation services directly or through
17 public or private resources to individuals determined by the
18 department [~~commission~~] to be eligible for the services under a
19 vocational rehabilitation program or other program established to
20 provide rehabilitation [~~rehabilitative~~] services.

21 (b) In carrying out the purposes of this chapter and
22 Subchapter F, Chapter 117, the department [~~commission~~] may:

23 (1) cooperate with other departments, agencies,
24 political subdivisions, and institutions, both public and private,
25 in providing the services authorized by this chapter and Subchapter
26 F, Chapter 117, to eligible individuals, in studying the problems
27 involved, and in planning, establishing, developing, and providing

1 necessary or desirable programs, facilities, and services,
2 including those jointly administered with state agencies;

3 (2) enter into reciprocal agreements with other
4 states;

5 (3) establish or construct rehabilitation facilities
6 and workshops, contract with or provide grants to agencies,
7 organizations, or individuals as necessary to implement this
8 chapter and Subchapter F, Chapter 117, make contracts or other
9 arrangements with public and other nonprofit agencies,
10 organizations, or institutions for the establishment of workshops
11 and rehabilitation facilities, and operate facilities for carrying
12 out the purposes of this chapter and Subchapter F, Chapter 117;

13 (4) conduct research and compile statistics relating
14 to the provision of services to or the need for services by
15 [disabled] individuals with disabilities;

16 (5) provide for the establishment, supervision,
17 management, and control of small business enterprises to be
18 operated by individuals with significant disabilities where their
19 operation will be improved through the management and supervision
20 of the department [~~commission~~];

21 (6) contract with schools, hospitals, private
22 industrial firms, and other agencies and with doctors, nurses,
23 technicians, and other persons for training, physical restoration,
24 transportation, and other rehabilitation services; and

25 (7) assess the statewide need for services necessary
26 to prepare students with disabilities for a successful transition
27 to employment, establish collaborative relationships with each

1 school district with education service centers to the maximum
2 extent possible within available resources, and develop strategies
3 to assist vocational rehabilitation counselors in identifying and
4 reaching students in need of transition planning.

5 SECTION 4.392. Sections [111.0525\(b\)](#) and (c), Human
6 Resources Code, are amended to read as follows:

7 (b) The department [~~commission~~] shall enter into an
8 agreement with the Department of Aging and Disability Services and
9 the [~~Texas~~] Department of State Health Services [~~Mental Health and~~
10 ~~Mental Retardation~~] to reduce duplication and fragmentation of
11 employment services by defining each agency's role and
12 responsibilities for shared client populations.

13 (c) The department [~~commission~~] shall establish a formal
14 referral process with the Texas Workforce Commission to ensure that
15 appropriate vocational rehabilitation clients are referred to and
16 receive services provided by the Texas Workforce Commission or
17 local workforce development boards [~~agencies~~].

18 SECTION 4.393. Section [111.053](#), Human Resources Code, is
19 amended to read as follows:

20 Sec. 111.053. COOPERATION WITH THE FEDERAL GOVERNMENT. (a)
21 The department [~~commission~~] shall make agreements, arrangements,
22 or plans to cooperate with the federal government in carrying out
23 the purposes of this chapter and Subchapter F, Chapter 117, or of
24 any federal statutes pertaining to rehabilitation, and to this end
25 may adopt methods of administration that are found by the federal
26 government to be necessary, and that are not contrary to existing
27 state laws, for the proper and efficient operation of the

1 agreements, arrangements, or plans for rehabilitation.

2 (b) To the extent resources are made available by the
3 federal government, the department [~~commission~~] may make
4 agreements, arrangements, or plans to cooperate with the federal
5 government in carrying out the purposes of any federal statute
6 pertaining to the disability determination function under the
7 Social Security Act and to this end shall adopt methods of
8 administration that are found by the federal government to be
9 necessary to the disability determination function and that are not
10 contrary to existing state laws.

11 SECTION 4.394. Section 111.054, Human Resources Code, is
12 amended to read as follows:

13 Sec. 111.054. OBTAINING FEDERAL FUNDS. The department
14 [~~commission~~] may comply with any requirements necessary to obtain
15 federal funds relating to this chapter or Subchapter F, Chapter
16 117, in the maximum amount and most advantageous proportion
17 possible.

18 SECTION 4.395. Section 111.055(a), Human Resources Code, is
19 amended to read as follows:

20 (a) All money paid to the department [~~commission~~] under this
21 chapter or Subchapter F, Chapter 117, shall be deposited in the
22 state treasury [~~State Treasury and may be used only for the~~
23 ~~administration of this chapter~~].

24 SECTION 4.396. Section 111.0553, Human Resources Code, is
25 amended to read as follows:

26 Sec. 111.0553. PROCUREMENT METHODS. (a) The executive
27 commissioner [~~commission~~] shall adopt [~~develop~~] and the department

1 shall [~~, following review and approval by the board,~~] implement in
2 relation to this chapter and Subchapter F, Chapter 117, agency-wide
3 procurement procedures to:

4 (1) ensure compliance with the best-value purchasing
5 requirements of Section 2155.144(c), Government Code;

6 (2) document that a best-value review of vendors has
7 occurred;

8 (3) document the reasons for selecting a vendor;

9 (4) negotiate price discounts with high-volume
10 vendors;

11 (5) consolidate purchases with other agencies,
12 including the [Texas] Department of State Health Services and the
13 comptroller, to achieve best value; and

14 (6) provide effective public notification to
15 potential vendors of planned department [commission] purchases.

16 (b) Nothing in this section shall be construed to limit the
17 department's [commission's] ability to procure goods and services
18 from persons with disabilities.

19 SECTION 4.397. Section 111.056, Human Resources Code, is
20 amended to read as follows:

21 Sec. 111.056. GIFTS AND DONATIONS [TO THE COMMISSION]. The
22 department [commission] may receive and use gifts and donations for
23 carrying out the purposes of this chapter and Subchapter F, Chapter
24 117. No person may receive payment for solicitation of any funds.

25 SECTION 4.398. Sections 111.057(b) and (c), Human Resources
26 Code, are amended to read as follows:

27 (b) The department [commission] is authorized to provide

1 client and other information to and receive client and other
2 information from any state agency for the purpose of increasing and
3 enhancing services to clients and improving agency operations under
4 this chapter and Subchapter F, Chapter 117, except where federal
5 law or regulations preclude such sharing.

6 (c) The executive commissioner [~~commission~~] shall adopt
7 rules to carry out the purposes of this section.

8 SECTION 4.399. Section 111.059, Human Resources Code, is
9 amended to read as follows:

10 Sec. 111.059. SUBROGATION. (a) In furnishing a person
11 rehabilitation services, including medical care services, under
12 this chapter or Subchapter F, Chapter 117, the department
13 [~~commission~~] is subrogated to the person's right of recovery from:

14 (1) personal insurance;
15 (2) another person for personal injury caused by the
16 other person's negligence or wrongdoing; or
17 (3) any other source.

18 (b) The department's [~~commission's~~] right of subrogation is
19 limited to the cost of the services provided.

20 (c) The commissioner may totally or partially waive the
21 department's [~~commission's~~] right of subrogation when the
22 commissioner finds that enforcement would tend to defeat the
23 purpose of rehabilitation.

24 (d) The executive commissioner [~~commission~~] may adopt rules
25 for the enforcement of the department's [~~its~~] right of subrogation.

26 SECTION 4.400. Section 111.060, Human Resources Code, is
27 amended to read as follows:

1 Sec. 111.060. COMPREHENSIVE REHABILITATION ACCOUNT [~~FUND~~].
2 (a) The comprehensive rehabilitation account [~~fund~~] is an account
3 [~~created~~] in the general revenue fund [~~state treasury~~]. Money in
4 the account [~~fund~~] is derived from court costs collected under
5 Section 133.102, Local Government Code [~~Subchapter D, Chapter 102,~~
6 ~~Code of Criminal Procedure~~]. Money in the account [~~fund~~] may be
7 appropriated only to the department [~~commission~~] for the purposes
8 provided by Section 111.052.

9 (b) The comptroller, on requisition by the department
10 [~~commission~~], shall draw a warrant on the account [~~fund~~] for the
11 amount specified in that requisition for a use authorized in
12 Section 111.052, except that the total of warrants issued during a
13 state fiscal year may not exceed the amount appropriated for that
14 fiscal year. At the end of each state fiscal year, the comptroller
15 shall transfer to the general revenue fund [~~General Revenue Fund~~]
16 any unexpended balance in the comprehensive rehabilitation account
17 [~~fund~~] that exceeds \$1.5 million.

18 (c) The court costs remitted to the comptroller and
19 deposited in the general revenue fund [~~state treasury~~] pursuant to
20 this section are dedicated to the department [~~commission~~].

21 SECTION 4.401. Section 111.061, Human Resources Code, is
22 amended to read as follows:

23 Sec. 111.061. CONTRACT PAYMENT. The department
24 [~~commission~~] shall base payment under a contract for vocational
25 rehabilitation services on outcome-based performance standards
26 defined in the contract.

27 SECTION 4.402. Subchapter D, Chapter 111, Human Resources

1 Code, is transferred to Chapter 117, Human Resources Code,
2 redesignated as Subchapter F, Chapter 117, Human Resources Code,
3 and amended to read as follows:

4 SUBCHAPTER F [D]. VOCATIONAL REHABILITATION SERVICES FOR CERTAIN
5 INDIVIDUALS WITH DISABILITIES

6 Sec. 117.151. DEFINITIONS. In this subchapter,
7 "rehabilitation services" and "vocational rehabilitation program"
8 have the meanings assigned by Section 111.002.

9 Sec. 117.152 [111.070]. PROVISION OF SERVICES. (a) The
10 executive commissioner [~~board~~] by rule shall establish and maintain
11 guidelines for providing vocational rehabilitation services that
12 are consistent with state and federal laws and regulations and that
13 include:

14 (1) a system of organization for the delivery of
15 vocational rehabilitation services statewide;

16 (2) eligibility requirements for vocational
17 rehabilitation services;

18 (3) requirements for the rehabilitation planning
19 process;

20 (4) the types of services that may be provided to a
21 client through a vocational rehabilitation program; and

22 (5) requirements for client participation in the costs
23 of vocational rehabilitation services, including documentation
24 that a client has sought benefits for which the client is eligible
25 from sources other than the department [~~commission~~] and that may
26 assist the client in obtaining vocational rehabilitation goods or
27 services.

1 (b) The executive commissioner [board] shall annually
2 assess the effectiveness of the state's vocational rehabilitation
3 program.

4 Sec. 117.153 [~~111.071~~]. TRAINING AND SUPERVISION OF
5 COUNSELORS. (a) The department [~~commission~~] shall provide
6 specific guidance to vocational rehabilitation counselors under
7 this subchapter in:

8 (1) selecting vocational objectives according to a
9 client's skills, experience, and knowledge;

10 (2) documenting a client's impediment to employment;

11 (3) selecting rehabilitation services that are
12 reasonable and necessary to achieve a client's vocational
13 objective;

14 (4) measuring client progress toward the vocational
15 objective, including the documented, periodic evaluation of the
16 client's rehabilitation and participation; and

17 (5) determining eligibility of employed and
18 unemployed applicants for rehabilitation services using criteria
19 defined by department [board] rule to document whether a client is
20 substantially underemployed or at risk of losing employment.

21 (b) The executive commissioner [board] by rule shall
22 require monitoring and oversight of vocational rehabilitation
23 counselor performance and decision making in accordance with this
24 section.

25 Sec. 117.154 [~~111.072~~]. CLIENT ORIENTATION MATERIALS.
26 The department [~~commission~~] shall develop and distribute at intake
27 client orientation materials for the vocational rehabilitation

1 program that include information on the department's [~~commission's~~]
2 decision-making criteria.

3 SECTION 4.403. Section 112.001(4), Human Resources Code, is
4 amended to read as follows:

5 (4) "Applicable federal developmental disability
6 laws" refers to the various Acts of Congress [~~congress~~] providing
7 for assistance and services to persons with developmental
8 disabilities and codified as 42 U.S.C. Section 15001 [~~6000~~] et seq.

9 SECTION 4.404. Section 112.014(b), Human Resources Code, is
10 amended to read as follows:

11 (b) If a position on the council becomes vacant, the chair
12 shall provide written notice to the governor[, ~~agency commissioner,~~
13 ~~or executive director, as appropriate,~~] requesting a new
14 appointment to fill the remainder of the member's term.

15 SECTION 4.405. Section 112.022(a), Human Resources Code, is
16 amended to read as follows:

17 (a) The council shall hire an executive director in
18 accordance with 42 U.S.C. Section 15025 [~~6024(c)~~] and its
19 subsequent amendments to carry out the policies and activities
20 established by the council.

21 SECTION 4.406. Section 112.0221(c), Human Resources Code,
22 is amended to read as follows:

23 (c) The policy statement must:

24 (1) be updated annually;

25 (2) be reviewed by the Texas Workforce [~~state~~]
26 Commission civil rights division [~~on Human Rights~~] for compliance
27 with Subsection (b)(1); and

2 SECTION 4.407. Section 112.043, Human Resources Code, is
3 amended to read as follows:

4 Sec. 112.043. OFFICE FOR THE PREVENTION OF DEVELOPMENTAL
5 DISABILITIES; ADMINISTRATIVE ATTACHMENT. (a) The Office for the
6 Prevention of Developmental Disabilities is administratively
7 attached to the Health and Human Services Commission [Texas
8 ~~Department of Mental Health and Mental Retardation~~].

9 (b) The Health and Human Services Commission [~~Texas~~
10 ~~Department of Mental Health and Mental Retardation~~] shall:

11 (1) provide administrative assistance, services, and
12 materials to the office;

13 (2) accept, deposit, and disburse money made available
14 to the office;

17 (4) pay the salaries and benefits of the executive
18 director and staff of the office;

23 (6) apply for and receive on behalf of the office any
24 appropriations, gifts, or other money from the state or federal
25 government or any other public or private entity, subject to
26 limitations and conditions prescribed by legislative
27 appropriation;

1 (7) provide the office with adequate computer
2 equipment and support; and

3 (8) provide the office with adequate office space and
4 permit the executive committee to meet in facilities of the
5 commission [department].

6 (c) The executive director and staff of the office are
7 employees of the office and not employees of the Health and Human
8 Services Commission [~~Texas Department of Mental Health and Mental~~
9 ~~Retardation~~].

10 SECTION 4.408. Section 112.0472(c), Human Resources Code,
11 is amended to read as follows:

12 (c) The policy statement must:

13 (1) be updated annually;

14 (2) be reviewed by the Texas Workforce [~~state~~]
15 Commission civil rights division [~~on Human Rights~~] for compliance
16 with Subsection (b)(1); and

17 (3) be filed with the governor's office.

18 SECTION 4.409. Section 115.002(c), Human Resources Code, is
19 amended to read as follows:

20 (c) The ex officio members are:

21 (1) the executive director of the Texas Workforce
22 Commission;

23 (2) the commissioner of assistive and rehabilitative
24 services [~~the Texas Rehabilitation Commission,~~

25 [~~(3) the executive director of the Texas Commission~~
26 ~~for the Blind,~~

27 [~~(4) the executive director of the Texas Commission~~

1 ~~for the Deaf and Hard of Hearing~~; and

2 (3) [~~(5)~~] other officials designated by the governor
3 who serve with other state agencies that provide services to
4 persons with disabilities.

5 SECTION 4.410. Section 115.009, Human Resources Code, is
6 amended to read as follows:

7 Sec. 115.009. FUNCTIONS. The committee shall:

8 (1) serve as a central source of information and
9 education on the abilities, rights, problems, and needs of persons
10 with disabilities and, as necessary, issue reports;

11 (2) provide information to and advise the governor and
12 the governor's staff on matters relating to the full participation
13 of persons with disabilities in all aspects of life;

14 (3) before the end of each even-numbered year, submit
15 to the governor and to the legislature a report that includes:

16 (A) the status of the state's compliance with
17 federal and state laws pertaining to rights and opportunities for
18 persons with disabilities and recommendations to achieve further
19 compliance, if necessary;

20 (B) a long-range state plan for persons with
21 disabilities and recommendations to implement that plan; and

22 (C) any recommended changes in state laws
23 relating to persons with disabilities;

24 (4) serve as the state's liaison agency in working with
25 the President's Committee on Employment of Persons with
26 Disabilities and other entities involved in activities or concerns
27 affecting persons with disabilities;

1 (5) develop and work with a statewide network of
2 volunteer community-level committees to promote dissemination of
3 information about and implementation of federal and state laws
4 addressing rights and opportunities for persons with disabilities;

5 (6) evaluate the state's compliance with the [~~federal6 Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et
7 seq.) [~~Pub. L. No. 101-336~~] and other federal and state statutes
8 relating to rights and opportunities for persons with disabilities;~~

9 (7) provide information and technical assistance to
10 public and private agencies and businesses to promote and
11 facilitate implementation of the [~~federal~~] Americans with
12 Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) [~~Pub.~~
13 ~~L. No. 101-336~~] and other federal and state statutes relating to
14 rights and opportunities of persons with disabilities;

15 (8) collect and evaluate data on employment of persons
16 with disabilities by state agencies;

17 (9) work with legislative committees and with state
18 agencies on the development of laws and policies that affect
19 persons with disabilities;

20 (10) promote the compilation and publication of state
21 laws relating to persons with disabilities; and

22 (11) issue awards and other forms of recognition to
23 persons and organizations making outstanding contributions to the
24 employment of persons with disabilities and to public awareness of
25 issues impacting persons with disabilities.

26 SECTION 4.411. Section 117.021(b), Human Resources Code, is
27 amended to read as follows:

1 (b) The council is composed of nine members of the public
2 appointed by the governor with the advice and consent of the senate.
3 To be eligible for appointment to the council, a person must have
4 demonstrated an interest in and knowledge of problems and available
5 services related to early childhood intervention services or to
6 persons with disabilities, other than intellectual and
7 developmental disabilities, [delay and mental retardation] and
8 persons who are blind, deaf, or hard of hearing.

9 SECTION 4.412. Section 117.051(c), Human Resources Code, is
10 amended to read as follows:

11 (c) Subject to the control of the executive commissioner,
12 the commissioner shall:

13 (1) act as the department's chief administrative
14 officer;

15 (2) in accordance with the procedures prescribed by
16 Section 531.00551, Government Code, assist the executive
17 commissioner in the development and implementation of policies and
18 guidelines needed for the administration of the department's
19 functions;

20 (3) in accordance with the procedures adopted by the
21 executive commissioner under Section 531.00551, Government Code,
22 assist the executive commissioner in the development of rules
23 relating to the matters within the department's jurisdiction,
24 including the delivery of services to persons and the rights and
25 duties of persons who are served or regulated by the department; and

26 (4) serve as a liaison between the department and
27 commission.

1 SECTION 4.413. Section 117.056(c), Human Resources Code, is
2 amended to read as follows:

3 (c) The policy statement must be:

4 (1) updated annually;

5 (2) reviewed by the Texas Workforce [~~state~~] Commission
6 civil rights division [~~on Human Rights~~] for compliance with
7 Subsection (b)(1); and

8 (3) filed with the governor's office.

9 SECTION 4.414. Subchapter D, Chapter 117, Human Resources
10 Code, is amended by adding Sections 117.0711 and 117.0712 to read as
11 follows:

12 Sec. 117.0711. MANAGEMENT AND DIRECTION BY EXECUTIVE
13 COMMISSIONER. The department's powers and duties prescribed by
14 this chapter and other law, including enforcement activities and
15 functions, are subject to the executive commissioner's oversight
16 under Chapter 531, Government Code, to manage and direct the
17 operations of the department.

18 Sec. 117.0712. CONTRACTING AND AUDITING AUTHORITY;
19 DELEGATION. (a) The executive commissioner, as authorized by
20 Section 531.0055, Government Code, may delegate to the department
21 the executive commissioner's authority under that section for
22 contracting and auditing relating to the department's powers,
23 duties, functions, and activities.

24 (b) If the executive commissioner does not make a delegation
25 under Subsection (a), a reference in law to the department with
26 respect to the department's contracting or auditing authority means
27 the executive commissioner. If the executive commissioner makes a

1 delegation under Subsection (a), a reference in law to the
2 department's contracting or auditing authority means that
3 authority the executive commissioner has delegated to the
4 department.

5 (c) If the executive commissioner revokes all or part of a
6 delegation made under Subsection (a), a reference in law to the
7 department with respect to a function for which the delegation was
8 revoked means the executive commissioner or another entity to which
9 the executive commissioner delegates that authority.

10 (d) It is the legislature's intent that the executive
11 commissioner retain the authority over and responsibility for
12 contracting and auditing at each health and human services agency
13 as provided by Section 531.0055, Government Code. A statute
14 enacted on or after January 1, 2015, that references the
15 contracting or auditing authority of the department does not give
16 the department direct contracting or auditing authority unless the
17 statute expressly provides that the contracting or auditing
18 authority:

19 (1) is given directly to the department; and
20 (2) is an exception to the exclusive contracting and
21 auditing authority given to the executive commissioner under
22 Section 531.0055, Government Code.

23 SECTION 4.415. Section 121.0014(b), Human Resources Code,
24 is amended to read as follows:

25 (b) In this section, "health and human services agency"
26 means an agency listed by Section 531.001(4), Government Code
27 [~~Section 19, Article 4413(502), Revised Statutes~~].

1 SECTION 4.416. Section 121.003(a), Human Resources Code, is
2 amended to read as follows:

3 (a) Persons with disabilities have the same right as persons
4 without disabilities [~~the able-bodied~~] to the full use and
5 enjoyment of any public facility in the state.

6 SECTION 4.417. Section 122.003(i), Human Resources Code, is
7 amended to read as follows:

8 (i) If the comptroller [~~executive director~~ of the
9 ~~commission~~] has knowledge that a potential ground for removal
10 exists, the comptroller [~~executive director~~] shall notify the
11 presiding officer of the council of the potential ground. If the
12 presiding officer is notified under this section, or if the
13 presiding officer has knowledge that a potential ground for removal
14 exists, the presiding officer shall notify the governor and the
15 attorney general that a potential ground for removal exists. If the
16 potential ground for removal involves the presiding officer, the
17 comptroller [~~executive director~~] shall notify the next highest
18 officer of the council, who shall notify the governor and the
19 attorney general that a potential ground for removal exists.

20 SECTION 4.418. Section 122.0057(d), Human Resources Code,
21 is amended to read as follows:

22 (d) The council shall make reasonable attempts to have
23 balanced representation on all advisory committees, including
24 attempting to seek representation from:

25 (1) the Lighthouse for the Blind and Visually Impaired
26 community rehabilitation programs;

27 (2) the Goodwill community rehabilitation programs;

1 (3) [the Texas Department of Mental Health and Mental
2 Retardation community rehabilitation program;
3 [4] other community rehabilitation programs;
4 (4) [5] representatives from central nonprofit
5 agencies;
6 (5) [6] representatives of disability advocacy
7 groups;
8 (6) [7] government purchasing agents with knowledge
9 of this chapter;
10 (7) [8] private industry representatives with
11 knowledge of this chapter; and
12 (8) [9] private citizens with disabilities who
13 [have a disability and] have knowledge of the sale of products and
14 services.

15 SECTION 4.419. Sections 122.007(d) and (e), Human Resources
16 Code, are amended to read as follows:

17 (d) Before offering for sale products and services
18 manufactured or provided by persons with disabilities to state
19 agencies and political subdivisions, the council shall test the
20 goods and services in accordance with Section 2155.069, Government
21 Code, to the extent necessary to ensure quality. The council may
22 enter into a contract with a private or public entity to assist with
23 testing. The comptroller [~~commission~~] shall make awards under this
24 section based on proposed goods and services meeting formal state
25 specifications developed by the comptroller [~~commission~~] or
26 meeting commercial specifications approved by the comptroller
27 [~~commission~~].

1 (e) Requisitions for products and services required by
2 state agencies are processed by the comptroller [~~commission~~]
3 according to rules established by the comptroller [~~commission~~].

4 SECTION 4.420. Section 122.009(b), Human Resources Code, is
5 amended to read as follows:

6 (b) The comptroller [~~commission~~] is the depository for all
7 records concerning the council's operations.

8 SECTION 4.421. Sections 122.0095(a), (d), and (e), Human
9 Resources Code, are amended to read as follows:

10 (a) Each state agency that purchases products or services
11 through a program under this chapter shall:

12 (1) designate an agency employee to ensure that the
13 agency complies with this chapter; and

14 (2) report to the comptroller [~~commission~~] and the
15 council the purchase of products or services available from a
16 central nonprofit agency or community rehabilitation program under
17 this chapter, but purchased from another business that is not a
18 central nonprofit agency or community rehabilitation program under
19 this chapter.

20 (d) The comptroller [~~commission~~] shall post the reports
21 required by Subsection (a)(2) on the comptroller's [~~commission's~~]
22 website.

23 (e) The council shall review the information contained in
24 the reports under this section and Sections 122.012 and 122.016.
25 The comptroller [~~commission~~] shall assist the council in reviewing
26 and analyzing the reports in order to improve state agency
27 compliance with this chapter.

1 SECTION 4.422. Section 122.012, Human Resources Code, is
2 amended to read as follows:

3 Sec. 122.012. DUTIES OF COMPTROLLER [~~COMMISSION~~];
4 INTERAGENCY COOPERATION. (a) The comptroller [~~commission~~] shall
5 provide legal and other necessary support to the council in
6 accordance with legislative appropriation. The comptroller
7 [~~commission~~] shall assign an upper-level management employee to
8 ensure that the comptroller [~~commission~~] meets the requirements of
9 this chapter.

10 (b) State agencies responsible for the provision of
11 rehabilitation and related services to persons with disabilities
12 shall cooperate with the council in the operation of the program.
13 The Department of Assistive and Rehabilitative Services [~~Texas~~
14 ~~Commission for the Blind, the Texas Rehabilitation Commission,~~] and
15 other state human services agencies responsible for assisting
16 persons with disabilities may, through written agreements or
17 interagency contracts, provide space, storage, logistical support,
18 consultation, expert services, communications services, or
19 financial assistance with respect to any function or responsibility
20 of the council.

21 (c) The comptroller [~~commission~~] or a state agency may not
22 assume the marketing or fiscal responsibility for the expense of
23 marketing the products and services of persons with disabilities
24 under the program.

25 (d) The comptroller [~~commission~~] shall include the programs
26 administered under this chapter in the comptroller's [~~commission's~~]
27 procurement policy manuals.

1 (e) After any audit or review the comptroller [~~commission~~]
2 conducts with regard to state agency compliance with purchasing
3 laws and procedures, the comptroller [~~commission~~] shall report to
4 the council a state agency that is not complying with this chapter.

5 SECTION 4.423. Section [122.013](#)(b), Human Resources Code, is
6 amended to read as follows:

7 (b) The comptroller [~~commission~~] shall provide legal
8 support to assist the council in adopting rules under this section.

9 SECTION 4.424. Section [122.014](#), Human Resources Code, is
10 amended to read as follows:

11 Sec. 122.014. PRODUCT SPECIFICATIONS. Except as otherwise
12 provided by this section, a product manufactured for sale through
13 the comptroller [~~commission~~] to any office, department,
14 institution, or agency of the state under this chapter shall be
15 manufactured or produced according to specifications developed by
16 the comptroller [~~commission~~]. If the comptroller [~~commission~~] has
17 not adopted specifications for a particular product, the production
18 shall be based on commercial or federal specifications in current
19 use by industry for the manufacture of the product for sale to the
20 state.

21 SECTION 4.425. Section [122.016](#), Human Resources Code, is
22 amended to read as follows:

23 Sec. 122.016. EXCEPTIONS. (a) Exceptions from the
24 operation of the mandatory provisions of Section [122.014](#) may be
25 made in any case where:

26 (1) under the rules of the comptroller [~~commission~~],
27 the product or service so produced or provided does not meet the

1 reasonable requirements of the office, department, institution, or
2 agency; or

3 (2) the requisitions made cannot be reasonably
4 complied with through provision of products or services produced by
5 persons with disabilities.

6 (b) Each month, the comptroller [~~commission~~] shall provide
7 the council with a list of all items purchased under the exception
8 provided by Subsection (a) [~~of this section~~]. The council shall
9 adopt the form in which the list is to be provided and may require
10 the list to include the date of requisition, the type of product or
11 service requested, the reason for purchase under the exception, and
12 any other information that the council considers relevant to a
13 determination of why the product or service was not purchased in
14 accordance with Section [122.014](#).

15 (c) No office, department, institution, or agency may evade
16 the intent of this section by slight variations from standards
17 adopted by the comptroller [~~commission~~], when the products or
18 services produced or provided by persons with disabilities, in
19 accordance with established standards, are reasonably adapted to
20 the actual needs of the office, department, institution, or agency.

21 SECTION 4.426. Section [122.018](#), Human Resources Code, is
22 amended to read as follows:

23 Sec. 122.018. POLITICAL SUBDIVISIONS EXCLUDED. There are
24 excluded from the mandatory application of this chapter the
25 political subdivisions of the state that are not covered by Title V
26 of the federal [~~Federal~~] Rehabilitation Act of 1973, as amended (29
27 U.S.C. [~~U.S. Code~~] Sections 791 through 794f [~~790 through 794~~]).

1 This chapter does not prohibit a political subdivision from acting
2 as a willing buyer outside a bid system.

3 SECTION 4.427. Section [122.019\(f\)](#), Human Resources Code, is
4 amended to read as follows:

5 (f) A percentage of the management fee described by
6 Subsection (e) shall be paid to the council and is subject to
7 Section [122.023](#). The percentage shall be set by the council in the
8 amount necessary to reimburse the general revenue fund for direct
9 and reasonable costs incurred by the comptroller [~~commission~~], the
10 council, and the council staff in administering the council's
11 duties under this chapter.

12 SECTION 4.428. Section [122.022\(b\)](#), Human Resources Code, is
13 amended to read as follows:

14 (b) As part of the report filed under Subsection (a), the
15 council shall provide:

16 (1) the number of persons with disabilities, according
17 to their type of disability, who are employed in community
18 rehabilitation programs participating in the programs established
19 by this chapter or who are employed by businesses or workshops that
20 receive supportive employment from community rehabilitation
21 programs;

22 (2) the amount of annual wages paid to a person
23 participating in the program;

24 (3) a summary of the sale of products offered by a
25 community rehabilitation program;

26 (4) a list of products and services offered by a
27 community rehabilitation program;

1 (5) the geographic distribution of the community
2 rehabilitation programs;

3 (6) the number of [~~nondisabled~~] workers without
4 disabilities who are employed in community rehabilitation programs
5 under this chapter; and

6 (7) the average and range of weekly earnings for
7 workers with disabilities [~~disabled~~] and [~~nondisabled~~] workers
8 without disabilities who are employed in community rehabilitation
9 programs under this chapter.

10 SECTION 4.429. The heading to Chapter 123, Human Resources
11 Code, is amended to read as follows:

12 CHAPTER 123. COMMUNITY HOMES FOR [~~DISABLED~~] PERSONS WITH
13 DISABILITIES [~~LOCATION ACT~~]

14 SECTION 4.430. Section 123.001, Human Resources Code, is
15 amended to read as follows:

16 Sec. 123.001. SHORT TITLE. This chapter may be cited as the
17 Community Homes for [~~Disabled~~] Persons With Disabilities
18 [~~Location~~] Act.

19 SECTION 4.431. Section 123.002, Human Resources Code, is
20 amended to read as follows:

21 Sec. 123.002. DEFINITION. In this chapter, "person with a
22 disability" means a person whose ability to care for himself or
23 herself, perform manual tasks, learn, work, walk, see, hear, speak,
24 or breathe is substantially limited because the person has:

25 (1) an orthopedic, visual, speech, or hearing
26 impairment;

27 (2) Alzheimer's disease;

12 SECTION 4.432. Section 123.004, Human Resources Code, is
13 amended to read as follows:

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 of Aging and Disability [Human] Services as a provider under the
2 ICF-IID medical assistance program [~~serving persons in~~
3 ~~intermediate care facilities for persons with mental retardation~~];
4 or

5 (2) an assisted living facility licensed under Chapter
6 247, Health and Safety Code, provided that the exterior structure
7 retains compatibility with the surrounding residential dwellings.

8 SECTION 4.433. Section [123.010](#), Human Resources Code, is
9 amended to read as follows:

10 Sec. 123.010. ENSURING [THE] SAFETY OF RESIDENTS. The
11 [Texas] Department of Aging and Disability Services [~~Mental Health~~
12 ~~and Mental Retardation~~] shall make every reasonable effort to
13 ensure the safety of [~~community home~~] residents of a community home
14 operated by or under the regulatory jurisdiction of the department
15 and the residents of a neighborhood that is affected by the location
16 of the [~~a~~] community home.

17 SECTION 4.434. Chapter 132, Human Resources Code, is
18 amended to read as follows:

19 CHAPTER 132. FACILITATION OF DELIVERY OF HEALTH AND HUMAN SERVICES

20 Sec. 132.001. GOVERNOR'S AGENDA. (a) The governor shall
21 establish an agenda that addresses needed adjustments in federal
22 legislation, agency rules and regulations, programs, and policies
23 that affect:

24 (1) health and human services delivery;
25 (2) client and provider eligibility;
26 (3) administration; and
27 (4) funding.

1 (b) The governor shall develop and amend the agenda in
2 conjunction and cooperation with federal and state elected
3 officials, state agency staff, the executive commissioner of the
4 Health and Human Services Commission, and the executive director
5 ~~[directors]~~ of the Texas Workforce Commission ~~[state agencies~~
6 ~~providing health and human services programs]~~.

7 (c) The agenda must include:

8 (1) a list of specific issues of federal law or policy
9 identified and ranked by health and human services agencies;
10 (2) impact statements concerning the needed
11 adjustments to federal law or policy;
12 (3) a discussion of fiscal matters concerning each
13 ranked issue; and
14 (4) specific recommendations for changes in federal
15 law or policy.

16 (d) The governor shall submit the agenda to the Texas
17 congressional delegation and to the Office of State-Federal
18 Relations and shall annually amend the agenda and rank agenda
19 items. The agenda must identify issues of federal law, rules and
20 regulations, or programs of common concern to different state
21 agencies and programs.

22 Sec. 132.002. EXPANSION OF CLIENT ELIGIBILITY SCREENING AND
23 DETERMINATION. (a) Based on a cost-benefit analysis, the Health
24 and Human Services Commission ~~[Texas Department of Human Services]~~,
25 where feasible, shall relocate an employee with the ability to
26 certify eligibility for financial and medical programs to an office
27 or facility that would enhance client access.

1 (b) Based on a cost-benefit analysis, the Health and Human
2 Services Commission shall coordinate the expansion and use of
3 integrated eligibility screening instruments and the relocation of
4 state employees on a timetable determined by the commission.

5 Sec. 132.003. LOCATION OF OFFICES AND FACILITIES. (a) As
6 leases on office space expire, the Health and Human Services
7 Commission shall determine the needs for space and the location of
8 offices of the health and human services agencies to enable the
9 commission to achieve a cost-effective, one-stop or service center
10 method of service delivery.

11 (b) In this section, "health and human services agencies"
12 includes the:

13 (1) Department of Aging and Disability Services
14 [~~Interagency Council on Early Childhood Intervention Services~~];

15 (2) Department of State Health Services [~~Texas~~
16 ~~Department on Aging~~];

17 (3) Department of Family and Protective Services
18 [~~Texas Commission on Alcohol and Drug Abuse~~];

19 (4) Department of Assistive and Rehabilitative
20 Services [~~Texas Commission for the Blind~~]; and

21 (5) Health and Human Services Commission [~~Texas~~
22 ~~Commission for the Deaf and Hard of Hearing~~;

23 [~~(6) Texas Department of Health~~;

24 [~~(7) Texas Department of Human Services~~;

25 [~~(8) Texas Department of Mental Health and Mental~~
26 ~~Retardation~~;

27 [~~(9) Texas Rehabilitation Commission~~; and

1 [(10) Department of Protective and Regulatory
2 Services].

3 SECTION 4.435. The heading to Chapter 136, Human Resources
4 Code, is amended to read as follows:

5 CHAPTER 136. TEXAS COMMUNITY HEALTH CENTER REVOLVING LOAN

6 PROGRAM [~~FUND~~]

7 SECTION 4.436. Section 136.002, Human Resources Code, is
8 amended by adding Subdivision (3-a) to read as follows:

9 (3-a) "Executive commissioner" means the executive
10 commissioner of the Health and Human Services Commission.

11 SECTION 4.437. Section 136.003, Human Resources Code, is
12 amended to read as follows:

13 Sec. 136.003. GIFTS AND GRANTS [~~TRUST FUND~~]. [(a) The
14 ~~community health center revolving loan fund is a trust fund outside~~
15 ~~the state treasury held by a financial institution and administered~~
16 ~~by the commission as trustee on behalf of community health centers~~
17 ~~in this state.~~

18 [(b) ~~The fund is composed of:~~

19 [(1) ~~money appropriated to the fund by the~~
20 ~~legislature;~~

21 [(2) ~~gifts or grants received from public or private~~
22 ~~sources; and~~

23 [(3) ~~income from other money in the fund.~~

24 [(c)] The commission may accept [~~on behalf of the fund~~] gifts and grants for the use and benefit of the program.

25 SECTION 4.438. Section 136.007, Human Resources Code, is
26 amended to read as follows:

1 Sec. 136.007. SELF-FUNDING. The commission shall develop
2 the [fund] program as a revolving loan program [fund] that will
3 become self-funding over the life of the program.

4 SECTION 4.439. Section 136.009, Human Resources Code, is
5 amended to read as follows:

6 Sec. 136.009. RULES. (a) The executive commissioner
7 [~~commission~~] shall adopt rules to administer this chapter,
8 including rules that require:

9 (1) the commission to review the lending and servicing
10 practices of a development corporation to ensure the practices
11 conform to generally accepted accounting principles;

12 (2) an eligible community health center to enter into
13 an agreement with the development corporation that states the terms
14 of the loan made to the center;

15 (3) the development corporation to provide to the
16 commission semiannual reports giving details of the status of each
17 loan made under the program;

18 (4) the development corporation to require annual
19 audits of community health centers receiving loans under the
20 program; and

21 (5) the commission to provide oversight of the
22 development corporation as necessary to qualify the development
23 corporation for loan guarantees from federal and state programs.

24 (b) Under rules adopted by the executive commissioner
25 [~~commission~~], the development corporation may:

26 (1) make grants to eligible community health centers
27 from money other than money [~~that is received from the fund and~~]

1 that was derived from a legislative appropriation; or
2 (2) seek money [~~funds~~] from state or federal agencies
3 or private sources to supplement and complement the money [~~funds~~]
4 received under the program.

5 (c) The executive commissioner [commission] may adopt other
6 rules as necessary to accomplish the purposes of this chapter.

7 SECTION 4.440. Section 161.003, Human Resources Code, is
8 amended to read as follows:

9 Sec. 161.003. SUNSET PROVISION. The department
10 [Department of Aging and Disability Services] is subject to Chapter
11 325, Government Code (Texas Sunset Act). Unless continued in
12 existence as provided by that chapter, the department is abolished
13 and this chapter expires September 1, 2015.

14 SECTION 4.441. Section 161.021(b), Human Resources Code, is
15 amended to read as follows:

16 (b) The council is composed of nine members of the public
17 appointed by the governor with the advice and consent of the senate.
18 To be eligible for appointment to the council, a person must have
19 demonstrated an interest in and knowledge of issues and available
20 services related to the aging and persons with developmental
21 disabilities or an intellectual disability [mental retardation].

22 SECTION 4.442. Section 161.030, Human Resources Code, is
23 amended to read as follows:

24 Sec. 161.030. POLICYMAKING AND MANAGEMENT
25 RESPONSIBILITIES. The [executive] commissioner, with the advice of
26 the council and subject to the approval of the executive
27 commissioner, shall develop and the department shall implement

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1 policies that clearly delineate the policymaking responsibilities
2 of the executive commissioner from the management responsibilities
3 of the commission, the commissioner, and the staff of the
4 department.

5 SECTION 4.443. Section 161.051(c), Human Resources Code, is
6 amended to read as follows:

7 (c) Subject to the control of the executive commissioner,
8 the commissioner shall:

9 (1) act as the department's chief administrative
10 officer;

11 (2) in accordance with the procedures prescribed by
12 Section 531.00551, Government Code, assist the executive
13 commissioner in the development and implementation of policies and
14 guidelines needed for the administration of the department's
15 functions;

16 (3) in accordance with the procedures adopted by the
17 executive commissioner under Section 531.00551, Government Code,
18 assist the executive commissioner in the development of rules
19 relating to the matters within the department's jurisdiction,
20 including the delivery of services to persons and the rights and
21 duties of persons who are served or regulated by the department; and

22 (4) serve as a liaison between the department and
23 commission.

24 SECTION 4.444. The heading to Section 161.0515, Human
25 Resources Code, is amended to read as follows:

26 Sec. 161.0515. ASSISTANT COMMISSIONER FOR [OF] STATE
27 SUPPORTED LIVING CENTERS.

1 SECTION 4.445. Sections 161.0515(a), (d), and (e), Human
2 Resources Code, are amended to read as follows:

3 (a) The commissioner shall employ an assistant commissioner
4 for [ef] state supported living centers. The assistant
5 commissioner must be selected based on education, training,
6 experience, and demonstrated ability.

7 (d) The assistant commissioner shall coordinate with the
8 appropriate staff of the Department of State Health Services to
9 ensure that the ICF-IID [~~ICF-MR~~] component of the Rio Grande State
10 Center implements and enforces state law and rules that apply to the
11 operation of state supported living centers.

12 (e) The assistant commissioner shall consult with the
13 appropriate staff at the Department of State Health Services to
14 ensure that an individual with a dual diagnosis of mental illness
15 and an intellectual disability [~~mental retardation~~] who is a
16 resident of a state supported living center or the ICF-IID [~~ICF-MR~~]
17 component of the Rio Grande State Center is provided with
18 appropriate care and treatment.

19 SECTION 4.446. Section 161.056(c), Human Resources Code, is
20 amended to read as follows:

21 (c) The policy statement must be:

22 (1) updated annually;

23 (2) reviewed by the Texas Workforce [~~state~~] Commission
24 civil rights division [~~on Human Rights~~] for compliance with
25 Subsection (b)(1); and

26 (3) filed with the governor's office.

27 SECTION 4.447. Section 161.071, Human Resources Code, is

1 amended to read as follows:

2 Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The
3 department is responsible for administering human services
4 programs for the aging and persons with disabilities [disabled],
5 including:

6 (1) administering and coordinating programs to
7 provide community-based care and support services to promote
8 independent living for populations that would otherwise be
9 institutionalized;

10 (2) providing institutional care services, including
11 services through convalescent and nursing homes and related
12 institutions under Chapter 242, Health and Safety Code;

13 (3) providing and coordinating programs and services
14 for persons with disabilities, including programs for the
15 treatment, rehabilitation, or benefit of persons with
16 developmental disabilities or an intellectual disability [mental
17 retardation];

18 (4) operating state facilities for the housing,
19 treatment, rehabilitation, or benefit of persons with
20 disabilities, including state supported living centers [state
21 schools] for persons with an intellectual disability [mental
22 retardation];

23 (5) serving as the state unit on aging required by the
24 federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.)
25 and its subsequent amendments, including performing the general
26 functions under Section 101A.052 [101.022] to ensure:

27 (A) implementation of the federal Older

1 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its
2 subsequent amendments, including implementation of services and
3 volunteer opportunities under that Act for older residents of this
4 state through area agencies on aging;

5 (B) advocacy for residents of nursing facilities
6 through the office of the state long-term care ombudsman;

7 (C) fostering of the state and community
8 infrastructure and capacity to serve older residents of this state;
9 and

10 (D) availability of a comprehensive resource for
11 state government and the public on trends related to and services
12 and programs for an aging population;

13 (6) performing all licensing and enforcement
14 activities and functions related to long-term care facilities,
15 including licensing and enforcement activities related to
16 convalescent and nursing homes and related institutions under
17 Chapter 242, Health and Safety Code;

18 (7) performing all licensing and enforcement
19 activities related to assisted living facilities under Chapter 247,
20 Health and Safety Code;

21 (8) performing all licensing and enforcement
22 activities related to intermediate care facilities for persons with
23 an intellectual disability [mental retardation] under Chapter 252,
24 Health and Safety Code;

25 (9) performing all licensing and enforcement
26 activities and functions related to home and community support
27 services agencies under Chapter 142, Health and Safety Code; and

5 SECTION 4.448. Subchapter D, Chapter 161, Human Resources
6 Code, is amended by adding Sections 161.0711 and 161.0712 to read as
7 follows:

8 Sec. 161.0711. CONTRACTING AND AUDITING AUTHORITY;
9 DELEGATION. (a) The executive commissioner, as authorized by
10 Section 531.0055, Government Code, may delegate to the department
11 the executive commissioner's authority under that section for
12 contracting and auditing relating to the department's powers,
13 duties, functions, and activities.

14 (b) If the executive commissioner does not make a delegation
15 under Subsection (a), a reference in law to the department with
16 respect to the department's contracting or auditing authority means
17 the executive commissioner. If the executive commissioner makes a
18 delegation under Subsection (a), a reference in law to the
19 department's contracting or auditing authority means that
20 authority the executive commissioner has delegated to the
21 department.

22 (c) If the executive commissioner revokes all or part of a
23 delegation made under Subsection (a), a reference in law to the
24 department with respect to a function for which the delegation was
25 revoked means the executive commissioner or another entity to which
26 the executive commissioner delegates that authority.

(d) It is the legislature's intent that the executive

1 commissioner retain the authority over and responsibility for
2 contracting and auditing at each health and human services agency
3 as provided by Section 531.0055, Government Code. A statute
4 enacted on or after January 1, 2015, that references the
5 contracting or auditing authority of the department does not give
6 the department direct contracting or auditing authority unless the
7 statute expressly provides that the contracting or auditing
8 authority:

9 (1) is given directly to the department; and
10 (2) is an exception to the exclusive contracting and
11 auditing authority given to the executive commissioner under
12 Section 531.0055, Government Code.

13 Sec. 161.0712. MANAGEMENT AND DIRECTION BY EXECUTIVE
14 COMMISSIONER. The department's powers and duties prescribed by
15 this chapter and other law, including enforcement activities and
16 functions, are subject to the executive commissioner's oversight
17 under Chapter 531, Government Code, to manage and direct the
18 operations of the department.

19 SECTION 4.449. Sections 161.075(a)(1) and (2), Human
20 Resources Code, are amended to read as follows:

21 (1) "Area agency on aging" means an agency described
22 by 42 U.S.C. Section 3002(6) [3002(17)] and through which the
23 department ensures the implementation of services and volunteer
24 opportunities for older persons in this state as provided by
25 Section 161.071(5)(A).

26 (2) "Texas nonprofit organization" means a nonprofit
27 corporation:

1 (A) that is organized under the Texas Nonprofit
2 Corporation Law as described by Section 1.008(d), Business
3 Organizations Code [~~Non-Profit Corporation Act (Article 1396-1.01~~
4 ~~et seq., Vernon's Texas Civil Statutes)~~]; and

5 (B) the funding of which is managed by an
6 organization that is exempt from federal income tax under Section
7 501(a) of the Internal Revenue Code of 1986 by being listed as an
8 exempt organization in Section 501(c)(3) of that code.

9 SECTION 4.450. Section 161.077(a), Human Resources Code, is
10 amended to read as follows:

11 (a) The department, in consultation with the Department of
12 Family and Protective Services, shall develop and maintain an
13 electronic database to collect and analyze information regarding
14 the investigation and prevention of abuse, neglect, and
15 exploitation of individuals with an intellectual disability
16 [~~mental retardation~~] who reside in a publicly or privately operated
17 intermediate care facility for persons with an intellectual
18 disability [~~mental retardation~~] or in a group home, other than a
19 foster home, at which a Home and Community-based Services (HCS)
20 provider provides services and the results of regulatory
21 investigations or surveys performed by the department regarding
22 those facilities or providers.

23 SECTION 4.451. Section 161.078(b), Human Resources Code, is
24 amended to read as follows:

25 (b) Subsection (a) does not prevent the department from
26 establishing an age requirement with respect to other programs or
27 services offered to persons who are deaf-blind with [~~and have~~]

1 multiple disabilities, including the summer outdoor training
2 program for [deaf-blind multihandicapped] individuals who are
3 deaf-blind with multiple disabilities established under Section
4 22.036(c).

5 SECTION 4.452. Section 161.079(a)(2), Human Resources
6 Code, is amended to read as follows:

7 (2) "Local entity" means an area agency on aging or
8 other entity that provides services and support for older persons
9 or [disabled] persons with disabilities and their caregivers.

10 SECTION 4.453. Section 161.080(b), Human Resources Code, is
11 amended to read as follows:

12 (b) Notwithstanding any other law, a state supported living
13 center may provide nonresidential services to support an individual
14 if:

15 (1) the individual:

16 (A) is receiving services in a program funded by
17 the department;

18 (B) meets the eligibility criteria for the
19 intermediate care facility for persons with an intellectual
20 disability [disabilities] program; and

21 (C) resides in the area in which the
22 state supported living center is located; and

23 (2) the provision of services to the individual does
24 not interfere with the provision of services to a resident of the
25 state supported living center.

26 SECTION 4.454. Section 161.087(a), Human Resources Code, is
27 amended to read as follows:

1 (a) The department may accept gifts and grants of money,
2 personal property, and real property from public or private sources
3 to expand and improve the human services programs for the aging and
4 persons with disabilities [disabled] available in this state.

5 SECTION 4.455. Section 161.092, Human Resources Code, is
6 amended to read as follows:

7 Sec. 161.092. APPLICABILITY. This subchapter applies only
8 to administration of medication provided to certain persons with
9 intellectual and developmental disabilities who are served:

10 (1) in a small facility with not less than one and not
11 more than eight beds that is licensed or certified under Chapter
12 252, Health and Safety Code;

13 (2) in a medium facility with not less than 9 [nine]
14 and not more than 13 beds that is licensed or certified under
15 Chapter 252, Health and Safety Code; or

16 (3) by one of the following Section 1915(c) waiver
17 programs administered by the department [Department of Aging and
18 Disability Services] to serve persons with intellectual and
19 developmental disabilities:

20 (A) the Home and Community-Based Services waiver
21 program; or

22 (B) the Texas Home Living waiver program.

23 SECTION 4.456. Sections 161.101(a), (b), (c), (c-1), (c-2),
24 (d), and (f), Human Resources Code, are amended to read as follows:

25 (a) The department shall file an application under Section
26 1101.001 or 1251.003, Estates [~~682 or 875, Texas Probate~~] Code, to
27 be appointed guardian of the person or estate, or both, of a minor

1 referred to the department under Section [48.209\(a\)\(1\)](#) for
2 guardianship services if the department determines:

3 (1) that the minor, because of a mental or physical
4 condition, will be substantially unable to provide for the minor's
5 own food, clothing, or shelter, to care for the minor's own physical
6 health, or to manage the individual's own financial affairs when
7 the minor becomes an adult; and

8 (2) that a less restrictive alternative to
9 guardianship is not available for the minor.

10 (b) The department shall conduct a thorough assessment of
11 the conditions and circumstances of an elderly person or [disabled]
12 person with a disability referred to the department under Section
13 [48.209\(a\)\(2\)](#) for guardianship services to determine whether a
14 guardianship is appropriate for the individual or whether a less
15 restrictive alternative is available for the individual. In
16 determining whether a guardianship is appropriate, the department
17 may consider the resources and funds available to meet the needs of
18 the elderly person or [disabled] person with a disability. The
19 executive commissioner shall adopt rules for the administration of
20 this subsection.

21 (c) Subject to Subsection (c-1), if after conducting an
22 assessment of an elderly person or [disabled] person with a
23 disability under Subsection (b) the department determines that:

24 (1) guardianship is appropriate for the elderly person
25 or [disabled] person with a disability, the department shall:

26 (A) file an application under Section 1101.001 or
27 1251.003, Estates [682 or 875, Texas Probate] Code, to be appointed

1 guardian of the person or estate, or both, of the individual; or
2 (B) if the department determines that an
3 alternative person or program described by Section [161.102](#) is
4 available to serve as guardian, refer the individual to that person
5 or program as provided by that section; or

6 (2) a less restrictive alternative to guardianship is
7 available for the elderly person or [disabled] person with a
8 disability, the department shall pursue the less restrictive
9 alternative instead of taking an action described by Subdivision
10 (1).

11 (c-1) Not later than the 70th day after the date the
12 department receives a referral under Section [48.209\(a\)\(2\)](#) for
13 guardianship services, the department shall make the determination
14 required by Subsection (c) and, if the department determines that
15 guardianship is appropriate and that the department should serve as
16 guardian, file the application to be appointed guardian under
17 Section 1101.001 or 1251.003, Estates [682 or 875, Texas Probate]
18 Code. If the department determines that an alternative person or
19 program described by Section [161.102](#) is available to serve as
20 guardian, the department shall refer the elderly person or
21 [disabled] person with a disability to that alternative person or
22 program in a manner that would allow the alternative person or
23 program sufficient time to file, not later than the 70th day after
24 the date the department received the referral, an application to be
25 appointed guardian.

26 (c-2) With the approval of the Department of Family and
27 Protective Services, the department may extend, by not more than 30

1 days, a period prescribed by Subsection (c-1) if the extension is:
2 (1) made in good faith, including any extension for a
3 person or program described by Section 161.102 that intends to file
4 an application to be appointed guardian; and
5 (2) in the best interest of the elderly person or
6 [disabled] person with a disability.

7 (d) The department may not be required by a court to file an
8 application for guardianship, and except as provided by Subsection
9 (f) and Section 1203.108(b), Estates [~~695(c), Texas Probate~~] Code,
10 the department may not be appointed as permanent guardian for any
11 individual unless the department files an application to serve or
12 otherwise agrees to serve as the individual's guardian of the
13 person or estate, or both.

14 (f) On appointment by a probate court under Section
15 1203.108(b), Estates [~~695(c), Texas Probate~~] Code, the department
16 shall serve as the successor guardian of the person or estate, or
17 both, of a ward described by that section.

18 SECTION 4.457. Section 161.102(b), Human Resources Code, is
19 amended to read as follows:

20 (b) If requested by a court, the department shall notify the
21 court of any referral made to the department by the Department of
22 Family and Protective Services relating to any individual who is
23 domiciled or found in a county where the requesting court has
24 probate jurisdiction and who may be appropriate for a
25 court-initiated guardianship proceeding under Chapter 1102,
26 Estates [~~Section 683, Texas Probate~~] Code. In making a referral
27 under this subsection and if requested by the court, the department

1 shall, to the extent allowed by law, provide the court with all
2 relevant information in the department's records relating to the
3 individual. The court, as part of this process, may not require
4 the department to:

5 (1) perform the duties of a guardian ad litem or court
6 investigator as prescribed by Chapter 1102, Estates [Section 683,
7 ~~Texas Probate~~] Code; or

8 (2) gather additional information not contained in the
9 department's records.

10 SECTION 4.458. Section 161.103, Human Resources Code, is
11 amended to read as follows:

12 Sec. 161.103. CONTRACT FOR GUARDIANSHIP SERVICES. If
13 appropriate, the department may contract with a political
14 subdivision of this state, a guardianship program as defined by
15 Section 1002.016, Estates [Section 601, Texas Probate] Code, a
16 private agency, or another state agency for the provision of
17 guardianship services under this section.

18 SECTION 4.459. Section 161.105, Human Resources Code, is
19 amended to read as follows:

20 Sec. 161.105. OATH. A representative of the department
21 shall take the oath required by the Estates [Texas Probate] Code on
22 behalf of the department if the department is appointed guardian of
23 the person or estate, or both, of a ward under Title 3 [Chapter
24 ~~XII~~] of that code.

25 SECTION 4.460. Section 161.106, Human Resources Code, is
26 amended to read as follows:

27 Sec. 161.106. GUARDIANSHIP POWERS AND DUTIES. In serving

1 as guardian of the person or estate, or both, for an incapacitated
2 individual, the department has all the powers granted and duties
3 prescribed to a guardian under Title 3, Estates [~~Chapter XIII,~~
4 ~~Texas Probate~~] Code, or any other applicable law.

5 SECTION 4.461. Sections 161.107(a), (b), and (d), Human
6 Resources Code, are amended to read as follows:

7 (a) The department or a political subdivision of this state
8 or state agency with which the department contracts under Section
9 161.103 is not required to post a bond or pay any cost or fee
10 associated with a bond otherwise required by the Estates [~~Texas~~
11 ~~Probate~~] Code in guardianship matters.

12 (b) The department is not required to pay any cost or fee
13 otherwise imposed for court proceedings or other services,
14 including:

15 (1) a filing fee or fee for issuance of service of
16 process imposed by Section 51.317, 51.318(b)(2), or 51.319,
17 Government Code;

18 (2) a court reporter service fee imposed by Section
19 51.601, Government Code;

20 (3) a judicial fund fee imposed by Section 51.702,
21 Government Code;

22 (4) a judge's fee imposed by Section 25.0008 or
23 25.0029, Government Code;

24 (5) a cost or security fee imposed by Section 53.051,
25 53.052, 1053.051, or 1053.052, Estates [~~12 or 622, Texas Probate~~]
26 Code; or

27 (6) a fee imposed by a county officer under Section

1 118.011 or 118.052, Local Government Code.

2 (d) A political subdivision of this state or state agency
3 with which the department contracts under Section 161.103 is not
4 required to pay any cost or fee otherwise required by the Estates
5 [Texas Probate] Code.

6 SECTION 4.462. Section 161.108, Human Resources Code, is
7 amended to read as follows:

8 Sec. 161.108. SUCCESSOR GUARDIAN. The department shall
9 review each of the department's pending guardianship cases at least
10 annually to determine whether a more suitable person, including a
11 guardianship program or private professional guardian, is willing
12 and able to serve as successor guardian for a ward of the
13 department. If the department becomes aware of any person's
14 willingness and ability to serve as successor guardian, the
15 department shall notify the court in which the guardianship is
16 pending as required by Section 1203.151, Estates [~~Section 695A,~~
17 ~~Texas Probate~~] Code.

18 SECTION 4.463. Section 161.111(d), Human Resources Code, is
19 amended to read as follows:

20 (d) The executive commissioner [~~department~~] shall establish
21 a policy and procedures for the exchange of information with
22 another state agency or governmental entity, including a court,
23 with a local guardianship program to which an individual is
24 referred for services, or with any other entity who provides
25 services to a ward of the department, as necessary for the
26 department, state agency, governmental entity, or other entity to
27 properly execute its respective duties and responsibilities to

1 provide guardianship services or other needed services to meet the
2 needs of the ward under this subchapter or other law. An exchange
3 of information under this subsection does not constitute a release
4 for purposes of waiving the confidentiality of the information
5 exchanged.

6 SECTION 4.464. Section [161.351](#), Human Resources Code, is
7 amended to read as follows:

8 Sec. 161.351. LEGISLATIVE FINDINGS. The legislature finds
9 that:

10 (1) in 2008, 1.14 million older Texans were expected
11 to sustain falls;

12 (2) the risk factors associated with falling increase
13 with age;

14 (3) approximately 20 to 30 percent of older adults who
15 fall suffer moderate to severe injuries, resulting in almost 80,000
16 hospitalizations annually and constituting 40 percent of all
17 nursing facility [~~home~~] placements;

18 (4) according to the Centers for Disease Control and
19 Prevention of the United States Public Health Service, the total
20 direct cost of all fall-related injuries in 2000 for people 65 years
21 of age and older exceeded \$19 billion nationwide; and

22 (5) research shows that a well-designed fall
23 prevention program that includes risk factor assessments, a focused
24 physical activity program, and improvement of the home environment
25 can reduce the incidence of falls by 30 to 50 percent.

26 SECTION 4.465. (a) The following provisions of the Human
27 Resources Code are repealed:

- 1 (1) Section 21.001;
- 2 (2) Section 21.002;
- 3 (3) Section 21.003;
- 4 (4) Section 21.0031;
- 5 (5) Section 21.0032;
- 6 (6) Section 21.004;
- 7 (7) Section 21.005;
- 8 (8) Section 21.0051;
- 9 (9) Section 21.0052;
- 10 (10) Section 21.006;
- 11 (11) Section 21.00605;
- 12 (12) Section 21.0061;
- 13 (13) Section 21.008;
- 14 (14) Section 21.009;
- 15 (15) Section 21.010;
- 16 (16) Section 21.014;
- 17 (17) Section 21.015;
- 18 (18) Section 21.016;
- 19 (19) Section 21.018;
- 20 (20) Section 21.019;
- 21 (21) Sections 22.005(a), (b), (c), and (e);
- 22 (22) Section 22.010;
- 23 (23) Section 22.018(e);
- 24 (24) Section 22.0291;
- 25 (25) Section 22.034;
- 26 (26) Section 22.037;
- 27 (27) Section 22.038;

- 1 (28) Section 31.0037;
- 2 (29) Section 31.005(c);
- 3 (30) Section 31.009;
- 4 (31) Section 31.0125;
- 5 (32) Section 31.014;
- 6 (33) Section 31.031(g);
- 7 (34) Sections 31.0355(d), (e), and (f);
- 8 (35) Sections 32.003(2) and (3);
- 9 (36) Sections 32.024(j), (k), and (m);
- 10 (37) Section 32.0246;
- 11 (38) Section 32.027(b);
- 12 (39) Section 32.030;
- 13 (40) Section 32.041;
- 14 (41) Sections 32.052(e) and (f);
- 15 (42) Section 32.060;
- 16 (43) Section 32.101(1);
- 17 (44) Section 32.201(2);
- 18 (45) Section 32.251(5);
- 19 (46) Section 33.007;
- 20 (47) Section 33.010;
- 21 (48) Section 33.026(a);
- 22 (49) Section 33.051;
- 23 (50) Sections 40.001(2) and (4-a);
- 24 (51) Section 40.0562;
- 25 (52) Section 40.0563;
- 26 (53) Section 40.058(b-1);
- 27 (54) Section 42.0221;

- 1 (55) Section 48.002(a)(7);
- 2 (56) Section 73.002;
- 3 (57) Section 73.0021;
- 4 (58) Section 73.0022;
- 5 (59) Section 73.0023;
- 6 (60) Section 73.0024;
- 7 (61) Section 73.0025;
- 8 (62) Section 73.0052;
- 9 (63) Sections 73.006(a), (c), and (d);
- 10 (64) Sections 73.022(c), (d), and (e);
- 11 (65) Section 73.023;
- 12 (66) Section 74.006(c);
- 13 (67) Section 81.001(1);
- 14 (68) Section 81.002;
- 15 (69) Section 81.0021;
- 16 (70) Section 81.0022;
- 17 (71) Section 81.003;
- 18 (72) Section 81.004;
- 19 (73) Section 81.005;
- 20 (74) Section 81.0051;
- 21 (75) Section 81.008;
- 22 (76) Section 81.009;
- 23 (77) Section 81.014;
- 24 (78) Section 91.001;
- 25 (79) Section 91.002(1);
- 26 (80) Section 91.011;
- 27 (81) Sections 91.012(a), (b), and (c);

- 1 (82) Section 91.013;
- 2 (83) Section 91.014(b);
- 3 (84) Section 91.015;
- 4 (85) Sections 91.016(a), (b), (c), and (d);
- 5 (86) Section 91.017;
- 6 (87) Sections 91.018(a), (b), (d), (e), (f), and (g);
- 7 (88) Section 91.020;
- 8 (89) Chapter 101;
- 9 (90) Section 103.0075(d);
- 10 (91) Section 103.010(b);
- 11 (92) Sections 111.002(1) and (8);
- 12 (93) Sections 111.011, 111.012, 111.013, 111.0131,
- 13 111.0132, 111.014, and 111.015;
- 14 (94) Section 111.017, as amended by Chapters 393 (H.B.
- 15 1402) and 1460 (H.B. 2641), Acts of the 76th Legislature, Regular
- 16 Session, 1999;
- 17 (95) Sections 111.018(c), (d), (e), (f), (g), and (h);
- 18 (96) Section 111.020;
- 19 (97) Section 111.024;
- 20 (98) Section 111.025;
- 21 (99) Section 111.026;
- 22 (100) Section 111.055(b);
- 23 (101) Chapter 116;
- 24 (102) Section 121.0015;
- 25 (103) Sections 122.0011 and 122.002(2);
- 26 (104) Chapter 134; and
- 27 (105) Section 136.002(4).

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1 (b) Section 22.005(d), Human Resources Code, as amended by
2 Chapters 1050 (S.B. 71) and 1083 (S.B. 1179), Acts of the 82nd
3 Legislature, Regular Session, 2011, is repealed.

ARTICLE 5. OCCUPATIONS CODE

5 SECTION 5.001. Section 110.001(3), Occupations Code, is
6 amended to read as follows:

9 SECTION 5.002. Section 110.101, Occupations Code, is
10 amended to read as follows:

11 Sec. 110.101. EXECUTIVE DIRECTOR. The commissioner of
12 state [public] health services shall employ an executive director,
13 chosen with the advice and consent of the council, who is the
14 executive head of the council and performs its administrative
15 duties.

16 SECTION 5.003. Section 110.158(a), Occupations Code, is
17 amended to read as follows:

18 (a) The council may adopt rules consistent with this
19 chapter. In adopting rules, the council shall:

20 (1) consider the rules and procedures of the [board
21 ~~and the~~] department; and

22 (2) adopt procedural rules consistent with similar
23 existing rules and procedures of the [board or the] department.

24 SECTION 5.004. The heading to Section 110.159, Occupations
25 Code, is amended to read as follows:

26 Sec. 110.159. [COLLECTION OF] FEES.

27 SECTION 5.005. Section 110.159, Occupations Code, is

1 amended by adding Subsection (a-1) to read as follows:

2 (a-1) Notwithstanding Subsection (a), the council shall set
3 fees for issuing or renewing a license in amounts designed to allow
4 the department and the council to recover from the license holders
5 all of the direct and indirect costs to the department and to the
6 council in administering and enforcing this chapter.

7 SECTION 5.006. Section 110.202(a), Occupations Code, is
8 amended to read as follows:

9 (a) The executive head of each of the following agencies or
10 that person's designated representative shall serve as a member of
11 the interagency advisory committee:

12 (1) Texas Department of Criminal Justice;

13 (2) Texas Juvenile Justice Department [Probation
14 Commission];

15 (3) the department [Texas Department of Mental Health
16 and Mental Retardation];

17 (4) [~~Texas Youth Commission~~];

18 [~~(5)~~] Sam Houston State University;

19 (5) [~~(6)~~] Department of Family and Protective [~~and~~
20 ~~Regulatory~~] Services; and

21 (6) [~~(7)~~] Texas Council of Community [~~Mental Health~~
22 ~~and Mental Retardation~~] Centers.

23 SECTION 5.007. Section 110.255(a), Occupations Code, is
24 amended to read as follows:

25 (a) In an investigation of a complaint filed with the
26 council, the council may request that the commissioner of state
27 [~~public~~] health services or the commissioner's designee approve the

1 issuance of a subpoena. If the request is approved, the council may
2 issue a subpoena to compel the attendance of a relevant witness or
3 the production, for inspection or copying, of relevant evidence in
4 this state. The council may delegate the authority granted under
5 this subsection to the executive director of the council.

6 SECTION 5.008. Section 110.256(b), Occupations Code, is
7 amended to read as follows:

8 (b) The information described by Subsection (a) may be
9 disclosed to:

10 (1) persons involved with the council in a complaint
11 and investigation;

12 (2) professional sex offender treatment provider
13 licensing or disciplinary boards in other jurisdictions;

14 (3) an approved peer assistance program, as defined by
15 Section 467.001 [programs approved by the board under Chapter 467],
16 Health and Safety Code;

17 (4) law enforcement agencies; and

18 (5) persons engaged in bona fide research, if all
19 individual-identifying information is deleted.

20 SECTION 5.009. Section 110.302(b), Occupations Code, is
21 amended to read as follows:

22 (b) In developing the rules, the council shall coordinate
23 with the Texas Department of Criminal Justice [~~, the Texas Youth~~
24 ~~Commission,~~] and the Texas Juvenile Justice Department [~~Probation~~
25 ~~Commission~~].

26 SECTION 5.010. Subchapter G, Chapter 110, Occupations Code,
27 is amended by adding Section 110.3045 to read as follows:

1 Sec. 110.3045. LICENSE TERM. A license issued under this
2 chapter is valid for two years.

3 SECTION 5.011. Section 203.104(b), Occupations Code, is
4 amended to read as follows:

5 (b) A policy statement prepared under Subsection (a) must:
6 (1) cover an annual period;
7 (2) be updated annually;
8 (3) be reviewed by the Texas Workforce Commission
9 civil rights division [~~on Human Rights~~] for compliance with
10 Subsection (a)(1); and
11 (4) be filed with the governor.

12 SECTION 5.012. Section 203.152(a), Occupations Code, is
13 amended to read as follows:

14 (a) Subject to the approval of the executive commissioner,
15 the midwifery board by rule shall establish reasonable and
16 necessary fees that, in the aggregate, produce sufficient revenue
17 to cover the costs of administering this chapter. Fees for the
18 issuance or renewal of a license under this chapter shall be set in
19 amounts designed to allow the department and the midwifery board to
20 recover from the license holders all of the direct and indirect
21 costs to the department and to the midwifery board in administering
22 and enforcing this chapter.

23 SECTION 5.013. Section 203.252(c), Occupations Code, is
24 amended to read as follows:

25 (c) The term of the initial license begins on the date the
26 requirements are met and extends through March 1 [~~December 31~~] of
27 the second year after the year in which the initial license is

1 issued.

2 SECTION 5.014. Section 203.455, Occupations Code, is
3 amended to read as follows:

4 Sec. 203.455. HEARING. (a) If the person timely requests a
5 hearing, the midwifery board or its designee shall set a hearing and
6 give written notice of the hearing to the person. An administrative
7 law judge of the State Office of Administrative Hearings shall hold
8 the hearing. [The midwifery board or its designee may employ a
9 ~~hearings examiner for this purpose.~~]

10 (b) The administrative law judge [~~hearings examiner~~] shall
11 make findings of fact and conclusions of law and promptly issue to
12 the midwifery board a proposal for decision as to the occurrence of
13 the violation and the amount of the proposed administrative
14 penalty.

15 SECTION 5.015. Sections 203.502(b) and (c), Occupations
16 Code, are amended to read as follows:

17 (b) If the department [~~commissioner~~] or a health authority
18 determines that a person has violated this chapter and that the
19 violation creates an immediate threat to the health and safety of
20 the public, the department, [~~commissioner~~] or the health
21 authority[~~T~~] with the concurrence of the department
22 [~~commissioner~~], may request the attorney general or a district,
23 county, or city attorney to bring an action in a district court for
24 a restraining order to restrain the violation.

25 (c) If a person has violated this chapter, the department,
26 [~~commissioner~~] or a health authority[~~T~~] with the concurrence of the
27 department [~~commissioner~~], may bring an action in a district court

1 for an injunction to prohibit the person from continuing the
2 violation.

3 SECTION 5.016. Section 352.002, Occupations Code, is
4 amended by amending Subdivisions (3) and (4) and adding Subdivision
5 (5-a) to read as follows:

6 (3) "Contact lens prescription" means a written
7 specification from a physician, optometrist, or therapeutic
8 optometrist for therapeutic, corrective, or cosmetic contact
9 lenses that states the refractive power of the product and other
10 information required to be in the specification by the physician,
11 optometrist, therapeutic optometrist, Texas [State Board of]
12 Medical Board [Examiners], or Texas Optometry Board.

13 (4) "Department" means the [Texas] Department of State
14 Health Services.

15 (5-a) "Executive commissioner" means the executive
16 commissioner of the Health and Human Services Commission.

17 SECTION 5.017. Section 352.003(a), Occupations Code, is
18 amended to read as follows:

19 (a) This chapter does not:

20 (1) authorize a dispensing optician to perform an act
21 on the optician's own authority that the optician is not otherwise
22 authorized to perform, including an act that constitutes the
23 practice of medicine, therapeutic optometry, or optometry;

24 (2) prevent or restrict a person licensed in this
25 state under another law from engaging in the profession or
26 occupation for which the person is licensed without being
27 registered under this chapter;

1 (3) prevent or restrict an employee of a person
2 licensed in this state from performing an employment duty required
3 by the licensed person without being registered under this chapter;

4 (4) prevent or restrict an individual, firm, or
5 corporation from employing a person registered under this chapter
6 or from engaging in spectacle or contact lens dispensing through a
7 person registered under this chapter who is employed at the
8 location at which the dispensing occurs;

9 (5) prevent or restrict an individual, firm, or
10 corporation from employing a person as an assistant, trainee, or
11 apprentice to:

12 (A) engage in spectacle or contact lens
13 dispensing; or

14 (B) provide instruction in the care and handling
15 of contact lenses;

16 (6) prohibit the Texas [State Board of] Medical Board
17 [Examiners], the Texas Optometry Board, the attorney general, or
18 another person authorized by law from bringing an appropriate
19 action to enforce a state statute relating to the practice of
20 medicine, therapeutic optometry, or optometry without a license; or

21 (7) require that a person be registered:

22 (A) under this chapter to sell or dispense
23 contact lenses; or

24 (B) as a contact lens dispenser to work in a
25 contact lens manufacturing facility that does not sell its finished
26 product directly to the public.

27 SECTION 5.018. The heading to Subchapter B, Chapter 352,

1 Occupations Code, is amended to read as follows:

2 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND
3 DEPARTMENT [~~AND BOARD~~]

4 SECTION 5.019. Section 352.053, Occupations Code, is
5 amended to read as follows:

6 Sec. 352.053. RULEMAKING. (a) The executive commissioner
7 [~~board~~] shall adopt procedural rules to implement the registration
8 procedures under this chapter.

9 (b) The executive commissioner [~~board~~] may adopt
10 substantive and procedural rules relating to:

11 (1) establishing minimum requirements for the
12 registration of a dispensing optician;

13 (2) suspending, denying, or revoking a certificate of
14 registration or placing a certificate holder on probation;

15 (3) prescribing fees under this chapter; and

16 (4) adopting forms required by this chapter.

17 (c) The executive commissioner [~~board~~] may not adopt
18 substantive rules relating to this chapter other than substantive
19 rules described by Subsection (b) of this section, Section 352.055,
20 and Section 352.153.

21 SECTION 5.020. Section 352.054, Occupations Code, is
22 amended to read as follows:

23 Sec. 352.054. FEES. (a) The executive commissioner
24 [~~board~~] by rule shall prescribe fees in reasonable amounts
25 sufficient to cover the costs of administering this chapter,
26 including fees for:

27 (1) an initial application for a certificate of

1 registration;

2 (2) issuance of a certificate of registration;

3 (3) issuance of a renewal certificate of registration;

4 and

5 (4) issuance of a duplicate certificate of
6 registration or duplicate renewal certificate of registration.

7 (b) The executive commissioner shall set fees for issuing or
8 renewing a certificate of registration in amounts designed to allow
9 the department to recover from the certificate of registration
10 holders all of the department's direct and indirect costs in
11 administering and enforcing this chapter.

12 SECTION 5.021. Section 352.055, Occupations Code, is
13 amended to read as follows:

14 Sec. 352.055. RULES REGARDING ADVERTISING OR COMPETITIVE
15 BIDDING. (a) The executive commissioner [board] may not adopt
16 rules restricting advertising or competitive bidding by a
17 registrant except to prohibit false, misleading, or deceptive
18 practices.

19 (b) In the executive commissioner's [~~its~~] rules to prohibit
20 false, misleading, or deceptive practices, the executive
21 commissioner [board] may not include a rule that:

22 (1) restricts the use of any medium for advertising;

23 (2) restricts the use of a registrant's personal
24 appearance or voice in an advertisement;

25 (3) relates to the size or duration of an
26 advertisement by the registrant; or

27 (4) restricts the registrant's advertisement under a

1 trade name.

2 SECTION 5.022. Sections 352.102(a) and (b), Occupations
3 Code, are amended to read as follows:

4 (a) The department shall issue a certificate of
5 registration to an applicant who:

6 (1) applies and pays a registration fee;

7 (2) presents evidence satisfactory to the department
8 that the applicant has successfully completed the number of
9 classroom hours of training required by the executive commissioner
10 [board]; and

11 (3) passes the appropriate examination required under
12 Section 352.103.

13 (b) The executive commissioner [board] may not require more
14 than 30 classroom hours of training as a prerequisite to
15 registration.

16 SECTION 5.023. Section 352.104(a), Occupations Code, is
17 amended to read as follows:

18 (a) A person issued a certificate of registration shall
19 publicly display the certificate in an appropriate manner specified
20 by department [board] rule.

21 SECTION 5.024. Sections 352.151(a) and (b), Occupations
22 Code, are amended to read as follows:

23 (a) A certificate of registration is valid for two years
24 [~~one year~~] after the date of issuance.

25 (b) The executive commissioner [department] shall adopt a
26 system under which certificates of registration expire and are
27 renewed on various dates.

1 SECTION 5.025. Sections 352.152(a) and (b), Occupations
2 Code, are amended to read as follows:

3 (a) To renew a certificate of registration, a person must
4 submit an application for renewal in the manner prescribed by the
5 executive commissioner [board].

6 (b) The application must be accompanied by evidence that the
7 applicant has successfully completed the continuing education
8 courses required by department [board] rule.

9 SECTION 5.026. Section 352.153, Occupations Code, is
10 amended to read as follows:

11 Sec. 352.153. CONTINUING EDUCATION. (a) The executive
12 commissioner [board] shall provide for the recognition,
13 preparation, or administration of [recognize, prepare, or
14 administer] continuing education programs for [its] registrants. A
15 person registered under this chapter must participate in the
16 programs to the extent required by the executive commissioner
17 [board] to keep the person's certificate of registration.

18 (b) The executive commissioner [board] may not require more
19 than 10 classroom hours of continuing education courses each year.

20 SECTION 5.027. Section 352.251, Occupations Code, is
21 amended to read as follows:

22 Sec. 352.251. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.
23 The department shall deny an application for a certificate of
24 registration, suspend or revoke a certificate of registration, or
25 reprimand a person who is registered under this chapter if the
26 person:

27 (1) obtains a certificate of registration by means of

1 fraud, misrepresentation, or concealment of a material fact;

2 (2) sells, barters, or offers to sell or barter a

3 certificate of registration;

4 (3) violates a department rule [~~adopted by the board~~];

5 (4) violates Section 352.101; or

6 (5) practices medicine, therapeutic optometry, or

7 optometry without a license.

8 SECTION 5.028. Section 352.2525, Occupations Code, is
9 amended to read as follows:

10 Sec. 352.2525. PROBATION. The department [board] may place
11 on probation a person whose certificate of registration is
12 suspended. If the suspension is probated, the department [board]
13 may require the person to:

14 (1) report regularly to the department on matters that
15 are the basis of the probation;

16 (2) limit practice to the areas prescribed by the
17 department [board]; or

18 (3) continue or review professional education until
19 the person attains a degree of skill satisfactory to the department
20 [board] in those areas that are the basis of the probation.

21 SECTION 5.029. Section 352.304(b), Occupations Code, is
22 amended to read as follows:

23 (b) If the person accepts the department's determination,
24 the department [~~commissioner of public health or the commissioner's~~
25 ~~designee~~] by order shall approve the determination and assess the
26 proposed penalty.

27 SECTION 5.030. Section 352.305(b), Occupations Code, is

1 amended to read as follows:

2 (b) The hearings examiner shall:

3 (1) make findings of fact and conclusions of law; and

4 (2) promptly issue to the department [~~commissioner of~~
5 ~~public health or the commissioner's designee~~] a proposal for
6 decision as to the occurrence of the violation and the amount of any
7 proposed administrative penalty.

8 SECTION 5.031. The heading to Section 352.306, Occupations
9 Code, is amended to read as follows:

10 Sec. 352.306. DECISION BY DEPARTMENT [~~BOARD~~].

11 SECTION 5.032. Section 352.306(a), Occupations Code, is
12 amended to read as follows:

13 (a) Based on the findings of fact, conclusions of law, and
14 proposal for decision, the department [~~commissioner of public~~
15 ~~health or the commissioner's designee~~] by order may determine that:

16 (1) a violation occurred and assess an administrative
17 penalty; or

18 (2) a violation did not occur.

19 SECTION 5.033. Section 352.310(c), Occupations Code, is
20 amended to read as follows:

21 (c) The department may assess reasonable expenses and costs
22 against a person in an administrative hearing if, as a result of the
23 hearing, an administrative penalty is assessed against the person.

24 The person shall pay expenses and costs assessed under this
25 subsection not later than the 30th day after the date the order of
26 the department [~~commissioner of public health or the commissioner's~~
27 ~~designee~~] requiring the payment of expenses and costs is final. The

1 department may refer the matter to the attorney general for
2 collection of expenses and costs.

3 SECTION 5.034. Section 352.351(a), Occupations Code, is
4 amended to read as follows:

5 (a) The department [board], the attorney general, or the
6 district or county attorney for the county in which an alleged
7 violation of this chapter occurs shall, on receipt of a verified
8 complaint, bring an appropriate administrative or judicial
9 proceeding to enforce this chapter or a rule adopted under this
10 chapter.

11 SECTION 5.035. Section 353.002, Occupations Code, is
12 amended by amending Subdivisions (2) and (7) and adding Subdivision
13 (3-a) to read as follows:

14 (2) "Department" means the Department of State Health
15 Services [or the Health and Human Services Commission, as
16 consistent with the respective duties of those agencies under the
17 laws of this state].

18 (3-a) "Executive commissioner" means the executive
19 commissioner of the Health and Human Services Commission.

20 (7) "Physician" means a person licensed to practice
21 medicine by the Texas [State Board of] Medical Board [Examiners].

22 SECTION 5.036. Section 353.004, Occupations Code, is
23 amended to read as follows:

24 Sec. 353.004. PUBLIC INFORMATION ON PRESCRIPTION RELEASE.
25 (a) The department [board] and the Texas Optometry Board shall
26 prepare and provide to the public and appropriate state agencies
27 information regarding the release and verification of contact lens

1 prescriptions.

2 (b) The executive commissioner [board] may adopt rules
3 necessary to implement this section.

4 SECTION 5.037. Section 353.005, Occupations Code, is
5 amended to read as follows:

6 Sec. 353.005. RULES. (a) The executive commissioner [~~of~~
7 ~~the Health and Human Services Commission~~] shall adopt rules,
8 including rules that require a person dispensing contact lenses to
9 maintain certain information when verifying a prescription under
10 Section 353.1015, as necessary to:

11 (1) govern and implement verification procedures
12 under Section 353.1015; and

13 (2) enter into interagency and other agreements to
14 implement and enforce this chapter.

15 (b) The executive commissioner [~~of the Health and Human~~
16 ~~Services Commission~~] and the Texas Optometry Board shall each adopt
17 rules relating to contact lens prescriptions and the dispensing of
18 contact lenses, including rules that allow for interagency
19 agreements, as necessary to implement and enforce this chapter.

20 (c) In implementing rules under Subsection (b), the
21 executive commissioner [~~of the Health and Human Services~~
22 ~~Commission~~] and the Texas Optometry Board:

23 (1) shall cooperate with one another as necessary to
24 adopt rules that are consistent with the rules adopted by the other
25 agency; and

26 (2) may consult with the Texas [~~State Board of~~
27 Medical Board [~~Examiners~~] and the Texas State Board of Pharmacy.

1 SECTION 5.038. Section 353.053, Occupations Code, is
2 amended to read as follows:

3 Sec. 353.053. REQUIREMENTS FOR PERMIT ISSUANCE. The
4 department [board] shall issue a contact lens dispensing permit to
5 an applicant who:

6 (1) agrees in writing to comply with state and federal
7 laws and regulations regarding selling, delivering, or dispensing
8 contact lenses;

9 (2) has not had a contact lens dispensing permit
10 revoked or canceled for cause during the two-year period preceding
11 the application date;

12 (3) provides the department [board] with the trade
13 name and address of each location where the applicant intends to
14 conduct business;

15 (4) provides the department [board] with other
16 information the department [board] reasonably requires; and

17 (5) pays the required permit fee.

18 SECTION 5.039. Section 353.054, Occupations Code, is
19 amended to read as follows:

20 Sec. 353.054. TERM OF PERMIT. (a) A contact lens
21 dispensing permit issued under this subchapter is valid for two
22 years [one year].

23 (b) The department [board] may temporarily extend or
24 shorten the term of a permit to provide for the staggered renewal of
25 permits or for the [annual] renewal of all permits on the same date.

26 The department [board] shall prorate the permit fee to accomplish
27 that purpose.

1 SECTION 5.040. Section 353.055, Occupations Code, is
2 amended to read as follows:

3 Sec. 353.055. PERMIT RENEWAL. (a) To renew a contact lens
4 dispensing permit, a permit holder must apply in the manner
5 prescribed by department [board] rule and pay the permit fee.

6 (b) The department [board] may not require an applicant for
7 renewal of a permit to provide more information than is required for
8 issuance of an original permit.

9 SECTION 5.041. Section 353.056, Occupations Code, is
10 amended to read as follows:

11 Sec. 353.056. [ANNUAL] PERMIT FEE. (a) The executive
12 commissioner by rule shall set fees for the issuance or renewal of
13 permits under this chapter in amounts designed to allow the
14 department to recover from permit holders all of the direct and
15 indirect costs to the department in [board may adopt annual permit
16 fees in amounts reflecting the cost of] administering and enforcing
17 [~~the provisions of~~] this chapter [~~relating to regulating permit~~
18 ~~holders~~].

19 (b) The executive commissioner may set different fees
20 [~~Until changed by the board, the annual permit fee~~] for a contact
21 lens dispensing permit issued to [~~is~~]:

22 (1) [~~\$10 for~~] an optician who has registered with the
23 department;

24 (2) [~~\$25 for~~] an optician who has not registered with
25 the department; and

26 (3) [~~\$100 for~~] a business entity.

27 SECTION 5.042. Section 353.152, Occupations Code, is

1 amended to read as follows:

2 Sec. 353.152. REQUIREMENTS FOR CONTACT LENS PRESCRIPTION.

3 (a) A contact lens prescription must contain, at a minimum:

4 (1) the patient's name;

5 (2) the date the prescription was issued;

6 (3) the manufacturer of the contact lens to be
7 dispensed, if needed;

8 (4) the expiration date of the prescription;

9 (5) the signature of the physician, optometrist, or
10 therapeutic optometrist or a verification of the prescription
11 described by Section 353.1015;

12 (6) if the prescription is issued by an optometrist,
13 specification information required by Texas Optometry Board rule;
14 and

15 (7) if the prescription is issued by a physician,
16 specification information required by Texas [State Board of]
17 Medical Board [~~Examiners~~] rule.

18 (b) The Texas Optometry Board and the Texas [State Board of]
19 Medical Board [~~Examiners~~] may adopt rules regarding the contents of
20 a prescription for contact lenses.

21 SECTION 5.043. Section 353.202, Occupations Code, is
22 amended to read as follows:

23 Sec. 353.202. DISCIPLINARY ACTION. The department [~~board~~]
24 may suspend or revoke a person's contact lens dispensing permit or
25 place the permit holder on probation for a violation of this
26 chapter.

27 SECTION 5.044. Sections 353.204(b) and (c), Occupations

1 Code, are amended to read as follows:

2 (b) Except as otherwise provided by this section, the
3 department [~~board~~] is responsible for enforcing this chapter.

4 (c) The Texas [~~State Board of~~] Medical Board [~~Examiners~~] is
5 responsible for enforcing this chapter with regard to a violation
6 of this chapter by a physician. A violation of this chapter by a
7 physician is considered to be a violation of Subtitle B.

8 SECTION 5.045. Section [353.205](#), Occupations Code, is
9 amended to read as follows:

10 Sec. 353.205. ADMINISTRATIVE PENALTY. The department
11 [~~board~~] may impose an administrative penalty of not more than
12 \$1,000 for a violation of this chapter.

13 SECTION 5.046. Section [401.204](#)(a), Occupations Code, is
14 amended to read as follows:

15 (a) The board by rule shall establish fees in amounts that
16 are reasonable and necessary. The board shall set the fees for
17 issuing or renewing a license in amounts designed to allow the
18 department and the board to recover from the license holders all of
19 the direct and indirect costs to the department and to the board in
20 [so that the fees in the aggregate are sufficient to cover the costs
21 of] administering and enforcing this chapter.

22 SECTION 5.047. Section [401.2535](#)(a), Occupations Code, is
23 amended to read as follows:

24 (a) In an investigation of a complaint filed with the board,
25 the board may request that the department [~~commissioner of public~~
~~health or the commissioner's designee~~] approve the issuance of a
27 subpoena. If the request is approved, the board may issue a

1 subpoena to compel the attendance of a relevant witness or the
2 production, for inspection or copying, of relevant evidence that is
3 in this state.

4 SECTION 5.048. Section 401.351(a), Occupations Code, is
5 amended to read as follows:

6 (a) A license issued under this chapter is valid for two
7 years. The board by rule may adopt a system under which licenses
8 expire on various dates during the year.

9 SECTION 5.049. Section 401.352(a), Occupations Code, is
10 amended to read as follows:

11 (a) Each licensed speech-language pathologist or
12 audiologist must [annually] pay the nonrefundable fee for license
13 renewal. The board shall allow a 60-day grace period. After
14 expiration of the grace period, the board may renew a license on
15 payment of a penalty set by board rule.

16 SECTION 5.050. Section 401.553, Occupations Code, is
17 amended to read as follows:

18 Sec. 401.553. [REPORT AND] NOTICE OF VIOLATION AND PENALTY.
19 [(a)] If the department [commissioner of public health or the
20 commissioner's designee] determines that a violation occurred, the
21 department [commissioner or the designee may issue to the board a
22 report stating:

23 [(1) the facts on which the determination is based;
24 and

25 [(2) the commissioner's or the designee's
26 recommendation on the imposition of an administrative penalty,
27 including a recommendation on the amount of the penalty.

1 [(b) Within 14 days after the date the report is issued, the
2 ~~commissioner of public health or the commissioner's designee~~] shall
3 give written notice of the violation [~~report~~] to the person. The
4 notice must:

- 5 (1) include a brief summary of the alleged violation;
6 (2) state the amount of the [~~recommended~~]
7 administrative penalty recommended by the department; and
8 (3) inform the person of the person's right to a
9 hearing on the occurrence of the violation, the amount of the
10 penalty, or both.

11 SECTION 5.051. Section 401.554, Occupations Code, is
12 amended to read as follows:

13 Sec. 401.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
14 Within 10 days after the date the person receives the notice, the
15 person in writing may:

- 16 (1) accept the determination and recommended
17 administrative penalty of the department [~~commissioner of public~~
18 ~~health or the commissioner's designee~~]; or
19 (2) make a request for a hearing on the occurrence of
20 the violation, the amount of the penalty, or both.

21 (b) If the person accepts the determination and recommended
22 penalty of the department [~~commissioner of public health or the~~
23 ~~commissioner's designee~~], the board by order shall approve the
24 determination and impose the recommended penalty.

25 SECTION 5.052. Section 401.555(a), Occupations Code, is
26 amended to read as follows:

- 27 (a) If the person requests a hearing or fails to respond in a

1 timely manner to the notice, the department [~~commissioner of public~~
2 ~~health or the commissioner's designee~~] shall set a hearing and give
3 written notice of the hearing to the person.

4 SECTION 5.053. Sections 401.557(b) and (c), Occupations
5 Code, are amended to read as follows:

6 (b) Within the 30-day period prescribed by Subsection (a), a
7 person who files a petition for judicial review may:

8 (1) stay enforcement of the penalty by:

9 (A) paying the penalty to the court for placement
10 in an escrow account; or

11 (B) giving the court a supersedeas bond approved
12 by the court that:

13 (i) is for the amount of the penalty; and

14 (ii) is effective until all judicial review
15 of the board's order is final; or

16 (2) request the court to stay enforcement of the
17 penalty by:

18 (A) filing with the court a sworn affidavit of
19 the person stating that the person is financially unable to pay the
20 penalty and is financially unable to give the supersedeas bond; and

21 (B) giving a copy of the affidavit to the
22 department [~~commissioner of public health or the commissioner's~~
23 ~~designee~~] by certified mail.

24 (c) If the department [~~commissioner of public health or the~~
25 ~~commissioner's designee~~] receives a copy of an affidavit under
26 Subsection (b)(2), the department [~~commissioner or the designee~~]
27 may file with the court, within five days after the date the copy is

1 received, a contest to the affidavit.

2 SECTION 5.054. Section 402.001, Occupations Code, is
3 amended by adding Subdivision (3-a) to read as follows:

4 (3-a) "Executive commissioner" means the executive
5 commissioner of the Health and Human Services Commission.

6 SECTION 5.055. Section 402.051(a), Occupations Code, is
7 amended to read as follows:

8 (a) The State Committee of Examiners in the Fitting and
9 Dispensing of Hearing Instruments is part of the department and
10 consists of nine members appointed by the governor with the advice
11 and consent of the senate as follows:

12 (1) six members licensed under this chapter who have
13 been residents of this state actually engaged in fitting and
14 dispensing hearing instruments for at least five years preceding
15 appointment, not more than one of whom may be licensed under Chapter
16 401;

17 (2) one member who is actively practicing as a
18 physician licensed by the Texas ~~[State Board of]~~ Medical Board
19 ~~[Examiners]~~ and who:

20 (A) has been a resident of this state for at least
21 two years preceding appointment;

22 (B) is a citizen of the United States; and

23 (C) specializes in the practice of
24 otolaryngology; and

25 (3) two members of the public.

26 SECTION 5.056. Section 402.056(c), Occupations Code, is
27 amended to read as follows:

1 (c) If the commissioner of state health services [~~the~~
2 ~~department~~] has knowledge that a potential ground for removal
3 exists, the commissioner shall notify the presiding officer of the
4 committee of the potential ground. The presiding officer shall
5 then notify the governor and the attorney general that a potential
6 ground for removal exists. If the potential ground for removal
7 involves the presiding officer, the commissioner shall notify the
8 next highest ranking officer of the committee, who shall then
9 notify the governor and the attorney general that a potential
10 ground for removal exists.

11 SECTION 5.057. Section 402.102, Occupations Code, is
12 amended to read as follows:

13 Sec. 402.102. RULES. (a) Subject to the approval of the
14 executive commissioner [~~board~~], the committee may adopt procedural
15 rules as necessary for the performance of the committee's duties.

16 (b) A license holder under this chapter is subject to the
17 rules adopted by the committee and approved by the executive
18 commissioner [~~board~~] under this chapter.

19 SECTION 5.058. Section 402.106(a), Occupations Code, is
20 amended to read as follows:

21 (a) The committee by rule shall adopt fees in amounts that
22 are reasonable and necessary. The committee shall set the fees for
23 issuing or renewing a license in amounts designed to allow the
24 department and the committee to recover from the license holders
25 all of the direct and indirect costs to the department and to the
26 committee in [~~so that the fees, in the aggregate, produce~~
27 ~~sufficient revenue to cover the costs of~~] administering and

1 enforcing this chapter.

2 SECTION 5.059. Sections 402.154(a) and (h), Occupations
3 Code, are amended to read as follows:

4 (a) In an investigation of a complaint filed with the
5 committee, the committee may request that the department
6 [~~commissioner of public health or the commissioner's designee~~]
7 approve the issuance of a subpoena. If the request is approved, the
8 committee may issue a subpoena to compel the attendance of a
9 relevant witness or the production, for inspection or copying, of
10 relevant evidence that is in this state.

11 (h) All information and materials subpoenaed or compiled by
12 the committee in connection with a complaint and investigation are
13 confidential and not subject to disclosure under Chapter 552,
14 Government Code, and not subject to disclosure, discovery,
15 subpoena, or other means of legal compulsion for their release to
16 anyone other than the committee or its agents or employees who are
17 involved in discipline of the holder of a license, except that this
18 information may be disclosed to:

19 (1) persons involved with the committee in a
20 disciplinary action against the holder of a license;

21 (2) professional licensing or disciplinary boards for
22 the fitting and dispensing of hearing instruments in other
23 jurisdictions;

24 (3) peer assistance programs approved by the executive
25 commissioner [~~board~~] under Chapter 467, Health and Safety Code;

26 (4) law enforcement agencies; and

27 (5) persons engaged in bona fide research, if all

1 individual-identifying information has been deleted.

2 SECTION 5.060. Section 402.451(b), Occupations Code, is
3 amended to read as follows:

4 (b) A license or permit holder may not:

5 (1) solicit a potential customer by telephone unless
6 the license or permit holder clearly discloses the holder's name
7 and business address and the purpose of the communication;

8 (2) use or purchase for use a list of names of
9 potential customers compiled by telephone by a person other than
10 the license or permit holder, the license or permit holder's
11 authorized agent, or another license or permit holder; or

12 (3) perform any act that requires a license from the
13 Texas Optometry Board or the Texas [State Board of] Medical Board
14 [Examiners].

15 SECTION 5.061. Section 402.452, Occupations Code, is
16 amended to read as follows:

17 Sec. 402.452. INVESTIGATION BY DEPARTMENT [BOARD]. The
18 [~~board, with the aid of the~~] department[~~T~~] shall investigate a
19 person who violates this chapter.

20 SECTION 5.062. Section 402.453(a), Occupations Code, is
21 amended to read as follows:

22 (a) A license holder may not treat the ear in any manner for
23 any defect or administer any drug or physical treatment unless the
24 license holder is a physician licensed to practice by the Texas
25 [State Board of] Medical Board [Examiners].

26 SECTION 5.063. Section 402.501, Occupations Code, is
27 amended to read as follows:

1 Sec. 402.501. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY
2 ACTION. The committee may refuse to issue or renew a license,
3 revoke or suspend a license or permit, place on probation a person
4 whose license or permit has been suspended, or reprimand a license
5 or permit holder who:

6 (1) makes a material misstatement in furnishing
7 information to the committee or to another state or federal agency;

8 (2) violates this chapter or a rule adopted under this
9 chapter;

10 (3) is convicted of a felony or misdemeanor that
11 includes dishonesty as an essential element or of a crime directly
12 related to the practice of fitting and dispensing hearing
13 instruments;

14 (4) makes a misrepresentation for the purpose of
15 obtaining or renewing a license, including falsifying the
16 educational requirements under this chapter;

17 (5) is professionally incompetent or engages in
18 malpractice or dishonorable, unethical, or unprofessional conduct
19 that is likely to deceive, defraud, or harm the public;

20 (6) aids or assists another person in violating this
21 chapter or a rule adopted under this chapter;

22 (7) does not provide information in response to a
23 written request made by the department [board] within 60 days;

24 (8) directly or indirectly knowingly employs, hires,
25 procures, or induces a person not licensed under this chapter to fit
26 and dispense hearing instruments unless the person is exempt under
27 this chapter;

- 1 (9) aids a person not licensed under this chapter in
- 2 the fitting or dispensing of hearing instruments unless the person
- 3 is exempt under this chapter;
- 4 (10) is habitually intoxicated or addicted to a
- 5 controlled substance;
- 6 (11) directly or indirectly gives to or receives from
- 7 a person a fee, commission, rebate, or other form of compensation
- 8 for a service not actually provided;
- 9 (12) violates a term of probation;
- 10 (13) wilfully makes or files a false record or report;
- 11 (14) has a physical illness that results in the
- 12 inability to practice the profession with reasonable judgment,
- 13 skill, or safety, including the deterioration or loss of motor
- 14 skills through aging;
- 15 (15) solicits a service by advertising that is false
- 16 or misleading;
- 17 (16) participates in subterfuge or misrepresentation
- 18 in the fitting or dispensing of a hearing instrument;
- 19 (17) knowingly advertises for sale a model or type of
- 20 hearing instrument that cannot be purchased;
- 21 (18) falsely represents that the service of a licensed
- 22 physician or other health professional will be used or made
- 23 available in the fitting, adjustment, maintenance, or repair of a
- 24 hearing instrument;
- 25 (19) falsely uses the term "doctor," "audiologist,"
- 26 "clinic," "clinical audiologist," "state licensed," "state
- 27 certified," "licensed hearing instrument dispenser," "board

1 certified hearing instrument specialist," "hearing instrument
2 specialist," or "certified hearing aid audiologist," or uses any
3 other term, abbreviation, or symbol that falsely gives the
4 impression that:

(B) the person providing a service has been recommended by a government agency or health provider;

19 (B) refrain from purchasing or contracting to
20 purchase products sold or offered for sale by another license or
21 permit holder under this chapter;

(22) with fraudulent intent fits and dispenses a hearing instrument under any name, including a false name or alias;

27 (24) violates a regulation of the federal Food and

1 Drug Administration or the Federal Trade Commission relating to
2 hearing instruments.

3 SECTION 5.064. Section 402.551(a), Occupations Code, is
4 amended to read as follows:

5 (a) The committee, with the department's [board's]
6 approval, may impose an administrative penalty on a person
7 described in this chapter for a violation of this chapter or a rule
8 adopted under this chapter.

9 SECTION 5.065. Subchapter B, Chapter 403, Occupations Code,
10 is amended by adding Section 403.053 to read as follows:

11 Sec. 403.053. FEES. The executive commissioner shall set
12 fees for the issuance or renewal of a license under this chapter in
13 amounts designed to allow the department to recover from the
14 license holders all of the direct and indirect costs to the
15 department in administering and enforcing this chapter.

16 SECTION 5.066. Subchapter C, Chapter 403, Occupations Code,
17 is amended by adding Section 403.1025 to read as follows:

18 Sec. 403.1025. TERM OF LICENSE. A license issued under this
19 chapter is valid for two years.

20 SECTION 5.067. Section 403.107(a), Occupations Code, is
21 amended to read as follows:

22 (a) To obtain a license, an applicant must:
23 (1) pass a written examination approved by the
24 department under Subsection (b); and
25 (2) pay fees set by the executive commissioner by
26 rule.

27 SECTION 5.068. Section 403.202, Occupations Code, is

1 amended to read as follows:

2 Sec. 403.202. PROHIBITED ACTIONS. A license holder may
3 not:

4 (1) obtain a license by means of fraud,
5 misrepresentation, or concealment of a material fact;

6 (2) sell, barter, or offer to sell or barter a license;
7 or

8 (3) engage in unprofessional conduct that endangers or
9 is likely to endanger the health, welfare, or safety of the public
10 as defined by department [~~executive commissioner~~] rule.

11 SECTION 5.069. Section 403.205(b), Occupations Code, is
12 amended to read as follows:

13 (b) The executive commissioner shall prescribe procedures
14 for appealing to the department [~~commissioner~~] a decision to
15 revoke, suspend, or refuse to renew a license.

16 SECTION 5.070. Section 403.251(a), Occupations Code, is
17 amended to read as follows:

18 (a) A person who violates this chapter, a rule adopted by
19 the executive commissioner under this chapter, or an order adopted
20 by the department [~~commissioner~~] under this chapter is liable for a
21 civil penalty not to exceed \$500 for each occurrence.

22 SECTION 5.071. Section 403.252(a), Occupations Code, is
23 amended to read as follows:

24 (a) If it appears to the department [~~commissioner~~] that a
25 person who is not licensed under this chapter is violating this
26 chapter or a rule adopted under this chapter, the department
27 [~~commissioner~~] after notice and an opportunity for a hearing may

1 issue a cease and desist order prohibiting the person from engaging
2 in the activity.

3 SECTION 5.072. Sections 451.001(5) and (6), Occupations
4 Code, are amended to read as follows:

5 (5) "Commissioner" means the commissioner of state
6 [public] health services.

7 (6) "Department" means the [Texas] Department of State
8 Health Services.

9 SECTION 5.073. Section 451.002, Occupations Code, is
10 amended to read as follows:

11 Sec. 451.002. INTERPRETATION; PRACTICE OF MEDICINE. This
12 chapter does not authorize the practice of medicine by a person not
13 licensed by the Texas Medical [State] Board [~~of Medical Examiners~~].

14 SECTION 5.074. Section 451.003, Occupations Code, is
15 amended to read as follows:

16 Sec. 451.003. APPLICABILITY. This chapter does not apply
17 to:

18 (1) a physician licensed by the Texas Medical [State]
19 Board [~~of Medical Examiners~~];

20 (2) a dentist, licensed under the laws of this state,
21 engaged in the practice of dentistry;

22 (3) a licensed optometrist or therapeutic optometrist
23 engaged in the practice of optometry or therapeutic optometry as
24 defined by statute;

25 (4) an occupational therapist engaged in the practice
26 of occupational therapy;

27 (5) a nurse engaged in the practice of nursing;

1 (6) a licensed podiatrist engaged in the practice of
2 podiatry as defined by statute;

3 (7) a physical therapist engaged in the practice of
4 physical therapy;

5 (8) a registered massage therapist engaged in the
6 practice of massage therapy;

7 (9) a commissioned or contract physician, physical
8 therapist, or physical therapist assistant in the United States
9 Army, Navy, Air Force, or Public Health Service; or

10 (10) an athletic trainer who does not live in this
11 state, who is licensed, registered, or certified by an authority
12 recognized by the board, and who provides athletic training in this
13 state for a period determined by the board.

14 SECTION 5.075. Section [451.106](#), Occupations Code, is
15 amended to read as follows:

16 Sec. 451.106. FEES. After consultation with the
17 [~~commissioner of public health or the~~] department, the board by
18 rule shall set fees under this chapter in amounts reasonable and
19 necessary to cover the cost of administering this chapter. The fees
20 for issuing or renewing a license must be in amounts designed to
21 allow the department and the board to recover from the license
22 holders all of the direct and indirect costs to the department and
23 to the board in administering and enforcing this chapter.

24 SECTION 5.076. Section [451.201\(a\)](#), Occupations Code, is
25 amended to read as follows:

26 (a) A license issued under Section [451.156](#) expires on the
27 second [~~first~~] anniversary of the date of issuance.

1 SECTION 5.077. Section 455.057, Occupations Code, is
2 amended to read as follows:

3 Sec. 455.057. CONTINUING EDUCATION. The executive
4 commissioner shall provide for the recognition, preparation, or
5 administration of [recognize, prepare, or administer] continuing
6 education programs for persons licensed under this chapter. A
7 licensed person must participate in the programs to the extent
8 required by the executive commissioner to keep the person's
9 license.

10 SECTION 5.078. Subchapter B, Chapter 455, Occupations Code,
11 is amended by adding Section 455.058 to read as follows:

12 Sec. 455.058. FEES. The executive commissioner shall set
13 fees for the issuance or renewal of a license under this chapter in
14 amounts designed to allow the department to recover from the
15 license holders all of the direct and indirect costs to the
16 department in administering and enforcing this chapter.

17 SECTION 5.079. Section 455.103(b), Occupations Code, is
18 amended to read as follows:

19 (b) A memorandum must:

20 (1) be adopted by the executive commissioner by rule;
21 and

22 (2) limit the total amount of the fees charged by the
23 department and the Texas Education Agency for licensing a massage
24 school to an amount equal to the amount of the fees the department
25 would charge for licensing the massage school in the absence of the
26 memorandum.

27 SECTION 5.080. Section 455.151(d), Occupations Code, is

1 amended to read as follows:

2 (d) The department may issue one or more types of licenses
3 not otherwise provided for by this chapter that authorize the
4 license holder to perform a service described by Subsection (c).
5 The executive commissioner [department] may adopt rules governing a
6 license issued under this subsection.

7 SECTION 5.081. Section 455.153, Occupations Code, is
8 amended to read as follows:

9 Sec. 455.153. APPLICATION FOR LICENSE. An applicant for a
10 license under this chapter must:

11 (1) submit an application on a form provided by the
12 department; and

13 (2) include with the application the application fee
14 set by the executive commissioner by rule [department].

15 SECTION 5.082. Section 455.1572(e), Occupations Code, is
16 amended to read as follows:

17 (e) The executive commissioner by rule [department] may
18 establish a fee for a provisional license [~~in an amount reasonable~~
19 ~~and necessary to cover the cost of issuing the license~~].

20 SECTION 5.083. Section 455.158, Occupations Code, is
21 amended to read as follows:

22 Sec. 455.158. STUDENT EXEMPTION FROM LICENSING
23 REQUIREMENTS. A student who provides massage therapy as part of an
24 internship program or without compensation is exempt from licensing
25 under this chapter if the student is enrolled in a state-approved
26 course of instruction that consists of at least 500 [~~300~~] hours.

27 SECTION 5.084. Sections 455.160(a) and (b), Occupations

1 Code, are amended to read as follows:

2 (a) A license issued under this chapter is valid for two
3 years [~~A person licensed under this chapter must periodically renew~~
4 ~~the person's license~~]. The license expires unless the license
5 holder submits an application for renewal accompanied by the
6 renewal fee prescribed by the executive commissioner by rule
7 [~~department~~] or by the late fee prescribed by this section.

8 (b) The executive commissioner [~~department~~] shall adopt a
9 system under which licenses expire on various dates during the
10 year. Fees must be prorated so that a licensed person pays only for
11 that part of the renewal period for which the license is issued
12 until the expiration date of the license.

13 SECTION 5.085. Sections 455.203(a) and (b), Occupations
14 Code, are amended to read as follows:

15 (a) A massage school must meet the minimum standards of
16 operation established by department [~~executive commissioner~~] rule.

17 (b) An instructor must meet the minimum requirements
18 established by department [~~executive commissioner~~] rule.

19 SECTION 5.086. Section 455.251(a), Occupations Code, is
20 amended to read as follows:

21 (a) The department may refuse to issue a license to a person
22 and shall suspend, revoke, or refuse to renew the license of a
23 person or shall reprimand a person licensed under this chapter if
24 the person:

25 (1) obtains a license by fraud, misrepresentation, or
26 concealment of material facts;

27 (2) sells, barters, or offers to sell or barter a

1 license;

2 (3) violates a rule adopted by the executive
3 commissioner under this chapter;

4 (4) engages in unprofessional conduct as defined by
5 department [executive commissioner] rule that endangers or is
6 likely to endanger the health, welfare, or safety of the public;

7 (5) violates an order or ordinance adopted by a
8 political subdivision under Chapter 243, Local Government Code; or

9 (6) violates this chapter.

10 SECTION 5.087. Section 455.304(b), Occupations Code, is
11 amended to read as follows:

12 (b) If the person accepts the department's determination,
13 the department [executive commissioner or the commissioner's
14 designee] by order shall approve the determination and require the
15 person to pay the recommended penalty.

16 SECTION 5.088. Section 455.305(b), Occupations Code, is
17 amended to read as follows:

18 (b) The hearings examiner shall:

19 (1) make findings of fact and conclusions of law; and

20 (2) promptly issue to the department [executive
21 commissioner or the commissioner's designee] a proposal for
22 decision as to the occurrence of the violation, and, if the examiner
23 determines a penalty is warranted, the amount of the proposed
24 administrative penalty.

25 SECTION 5.089. The heading to Section 455.306, Occupations
26 Code, is amended to read as follows:

27 Sec. 455.306. DECISION BY DEPARTMENT [EXECUTIVE

1 ~~COMMISSIONER~~].

2 SECTION 5.090. Section 455.306(a), Occupations Code, is
3 amended to read as follows:

4 (a) Based on the findings of fact, conclusions of law, and
5 recommendations of the hearings examiner, the department
6 [~~executive commissioner or the commissioner's designee~~] by order
7 may determine that:

8 (1) a violation occurred and may impose an
9 administrative penalty; or

10 (2) a violation did not occur.

11 SECTION 5.091. Section 455.310(b), Occupations Code, is
12 amended to read as follows:

13 (b) The department may assess reasonable expenses and costs
14 against a person in an administrative hearing if, as a result of the
15 hearing, an administrative penalty is assessed against the person.
16 The person shall pay expenses and costs assessed under this
17 subsection not later than the 30th day after the date the order of
18 the department [~~executive commissioner or the commissioner's~~
19 ~~designee~~] requiring the payment of expenses and costs is final. The
20 department may refer the matter to the attorney general for
21 collection of expenses and costs.

22 SECTION 5.092. Section 502.153(a), Occupations Code, is
23 amended to read as follows:

24 (a) The board by rule shall set fees in amounts reasonable
25 and necessary to cover the costs of administering this chapter. The
26 board shall set fees for the issuance or renewal of a license under
27 this chapter in amounts designed to allow the department and the

1 board to recover from the license holders all of the direct and
2 indirect costs to the department and to the board in administering
3 and enforcing this chapter.

4 SECTION 5.093. Section 502.2045(a), Occupations Code, is
5 amended to read as follows:

6 (a) In an investigation of a complaint filed with the board,
7 the board may request that the department [~~commissioner or the~~
~~commissioner's designee~~] approve the issuance of a subpoena. If
9 the request is approved, the board may issue a subpoena to compel
10 the attendance of a relevant witness or the production, for
11 inspection or copying, of relevant evidence that is in this state.

12 SECTION 5.094. Section 502.254(b), Occupations Code, is
13 amended to read as follows:

14 (b) An applicant for a license as a licensed marriage and
15 family therapist associate under Section 502.252(b) must:

16 (1) file an application on a form prescribed by the
17 board not later than the 90th day before the date of the
18 examination; and

19 (2) pay the examination fee set by the executive
20 commissioner of the Health and Human Services Commission by rule
21 [~~Texas Board of Health~~].

22 SECTION 5.095. Section 502.260(c), Occupations Code, is
23 amended to read as follows:

24 (c) A license holder whose license is on inactive status:

25 (1) is not required to pay a [~~an annual~~] renewal fee;
26 and

27 (2) may not perform an activity regulated under this

1 chapter.

2 SECTION 5.096. Section 502.401, Occupations Code, is
3 amended to read as follows:

4 Sec. 502.401. IMPOSITION OF PENALTY. The board
5 [~~commissioner~~] may impose an administrative penalty on a person
6 licensed or regulated under this chapter who violates this chapter
7 or a rule or order adopted under this chapter.

8 SECTION 5.097. Section 502.403, Occupations Code, is
9 amended to read as follows:

10 Sec. 502.403. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY.
11 [~~(a)~~] If the department [~~commissioner~~] determines that a violation
12 has occurred, the department [~~commissioner may issue to the board a~~
13 ~~report stating:~~

14 [~~(1) the facts on which the determination is based,~~
15 ~~and~~

16 [~~(2) the commissioner's recommendation on the~~
17 ~~imposition of the administrative penalty, including a~~
18 ~~recommendation on the amount of the penalty.~~

19 [~~(b) Not later than the 14th day after the date the report is~~
20 ~~issued, the commissioner]~~ shall give written notice of the
21 violation [~~report~~] to the person on whom the penalty may be imposed.

22 The notice may be given by certified mail. The notice must:

23 (1) include a brief summary of the alleged violation;
24 (2) state the amount of the administrative
25 [~~recommended~~] penalty recommended by the department; and

26 (3) inform the person of the person's right to a
27 hearing on the occurrence of the violation, the amount of the

1 penalty, or both.

2 SECTION 5.098. Section 502.404, Occupations Code, is
3 amended to read as follows:

4 Sec. 502.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
5 Not later than the 20th day after the date the person receives the
6 notice under Section 502.403, the person, in writing, may:

7 (1) accept the department's [~~commissioner's~~]
8 determination and recommended administrative penalty; or
9 (2) request a hearing on the occurrence of the
10 violation, the amount of the penalty, or both.

11 (b) If the person accepts the department's [~~commissioner's~~]
12 determination and recommended administrative penalty, the board by
13 order shall approve the determination and impose the recommended
14 penalty.

15 SECTION 5.099. Sections 502.407(b) and (c), Occupations
16 Code, are amended to read as follows:

17 (b) Within the 30-day period, a person who acts under
18 Subsection (a)(3) may:

19 (1) stay enforcement of the penalty by:
20 (A) paying the penalty to the court for placement
21 in an escrow account; or
22 (B) giving to the court a supersedeas bond
23 approved by the court for the amount of the penalty that is
24 effective until all judicial review of the board's order is final;
25 or

26 (2) request the court to stay enforcement of the
27 penalty by:

1 (A) filing with the court a sworn affidavit of
2 the person stating that the person is financially unable to pay the
3 penalty and is financially unable to give the supersedeas bond; and
4 (B) giving a copy of the affidavit to the
5 department [~~commissioner~~] by certified mail.

6 (c) If the department [~~commissioner~~] receives a copy of an
7 affidavit under Subsection (b)(2), the department [~~commissioner~~]
8 may file with the court a contest to the affidavit not later than
9 the fifth day after the date the copy is received.

10 SECTION 5.100. Section 502.408, Occupations Code, is
11 amended to read as follows:

12 Sec. 502.408. COLLECTION OF PENALTY. If the person does not
13 pay the administrative penalty and the enforcement of the penalty
14 is not stayed, the department [~~commissioner~~] may refer the matter
15 to the attorney general for collection.

16 SECTION 5.101. Section 503.151, Occupations Code, is
17 amended to read as follows:

18 Sec. 503.151. EXECUTIVE DIRECTOR. The commissioner of
19 state [~~public~~] health services, with the advice and consent of the
20 board, shall appoint an executive director for the board. The
21 executive director must be an employee of the department.

22 SECTION 5.102. Section 503.202(a), Occupations Code, is
23 amended to read as follows:

24 (a) The board by rule shall establish fees for the board's
25 services in amounts reasonable and necessary to cover the costs of
26 administering this chapter without accumulating an unnecessary
27 surplus. The board shall set fees for the issuance or renewal of a

1 license under this chapter in amounts designed to allow the
2 department and the board to recover from the license holders all of
3 the direct and indirect costs to the department and to the board in
4 administering and enforcing this chapter.

5 SECTION 5.103. Section 503.2545(a), Occupations Code, is
6 amended to read as follows:

7 (a) In an investigation of a complaint filed with the board,
8 the board may request that the department [~~commissioner of public~~
~~health or the commissioner's designee~~] approve the issuance of a
9 subpoena. If the request is approved, the board may issue a subpoena
10 to compel the attendance of a relevant witness or the production,
11 for inspection or copying, of relevant evidence that is in this
12 state.

14 SECTION 5.104. Section 503.503, Occupations Code, is
15 amended to read as follows:

16 Sec. 503.503. [REDACTED] NOTICE OF VIOLATION AND PENALTY.
17 [(a)] If the department [~~commissioner of public health or the~~
~~commissioner's designee~~] determines that a violation occurred, the
18 department [~~commissioner or the designee may issue to the board a~~
19 ~~report stating:~~

21 [(1) ~~the facts on which the determination is based,~~
22 ~~and~~

23 [(2) ~~the commissioner's or the designee's~~
24 ~~recommendation on the imposition of an administrative penalty,~~
25 ~~including a recommendation on the amount of the penalty.~~

26 [(b) ~~Within 14 days after the date the report is issued, the~~
27 ~~commissioner of public health or the commissioner's designee]~~ shall

1 give written notice of the violation [~~report~~] to the person. The
2 notice must:

- 3 (1) include a brief summary of the alleged violation;
4 (2) state the amount of the [~~recommended~~]
5 administrative penalty recommended by the department; and
6 (3) inform the person of the person's right to a
7 hearing on the occurrence of the violation, the amount of the
8 penalty, or both.

9 SECTION 5.105. Section 503.504, Occupations Code, is
10 amended to read as follows:

11 Sec. 503.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
12 Within 10 days after the date the person receives the notice, the
13 person in writing may:

- 14 (1) accept the determination and recommended
15 administrative penalty of the department [~~commissioner of public~~
16 ~~health or the commissioner's designee~~]; or
17 (2) make a request for a hearing on the occurrence of
18 the violation, the amount of the penalty, or both.

19 (b) If the person accepts the determination and recommended
20 penalty of the department [~~commissioner of public health or the~~
21 ~~commissioner's designee~~], the board by order shall approve the
22 determination and impose the recommended penalty.

23 SECTION 5.106. Section 503.505(a), Occupations Code, is
24 amended to read as follows:

- 25 (a) If the person requests a hearing or fails to respond in a
26 timely manner to the notice, the department [~~commissioner of public~~
27 ~~health or the commissioner's designee~~] shall set a hearing and give

1 written notice of the hearing to the person.

2 SECTION 5.107. Sections **503.507**(b) and (c), Occupations
3 Code, are amended to read as follows:

4 (b) Within the 30-day period prescribed by Subsection (a), a
5 person who files a petition for judicial review may:

6 (1) stay enforcement of the penalty by:

7 (A) paying the penalty to the court for placement
8 in an escrow account; or

9 (B) giving the court a supersedeas bond approved
10 by the court that:

11 (i) is for the amount of the penalty; and

12 (ii) is effective until all judicial review
13 of the board's order is final; or

14 (2) request the court to stay enforcement of the
15 penalty by:

16 (A) filing with the court a sworn affidavit of
17 the person stating that the person is financially unable to pay the
18 penalty and is financially unable to give the supersedeas bond; and

19 (B) giving a copy of the affidavit to the
20 ~~department [commissioner of public health or the commissioner's~~
21 ~~designee]~~ by certified mail.

22 (c) If the ~~department [commissioner of public health or the~~
23 ~~commissioner's designee]~~ receives a copy of an affidavit under
24 Subsection (b)(2), the ~~department [commissioner or the designee]~~
25 may file with the court, within five days after the date the copy is
26 received, a contest to the affidavit.

27 SECTION 5.108. Section **504.053**(a), Occupations Code, is

1 amended to read as follows:

2 (a) The executive commissioner by rule shall set
3 application, examination, license renewal, and other fees in
4 amounts sufficient to cover the costs of administering this
5 chapter. The fees for the issuance or renewal of a license under
6 this chapter shall be set in amounts designed to allow the
7 department to recover from the license holders all of the direct and
8 indirect costs to the department in administering and enforcing
9 this chapter. [The amount of the license renewal fee may not exceed
10 \$200.]

11 SECTION 5.109. Section 504.055(d), Occupations Code, is
12 amended to read as follows:

13 (d) The department may charge a fee in an amount set by the
14 executive commissioner by rule for the roster published under this
15 section.

16 SECTION 5.110. Section 504.1521(b), Occupations Code, is
17 amended to read as follows:

18 (b) The executive commissioner shall adopt rules necessary
19 to:

20 (1) register clinical training institutions that meet
21 the criteria established by the executive commissioner[~~or~~
22 ~~commissioner, or department~~] to protect the safety and welfare of
23 the people of this state; and

24 (2) certify clinical supervisors who hold
25 certification credentials approved by the department or by a person
26 designated by the department, such as the International
27 Certification and Reciprocity Consortium or another person that

1 meets the criteria established by the executive commissioner[~~or
2 commissioner, or department~~] to protect the safety and welfare of
3 the people of this state.

4 SECTION 5.111. Section 504.1525(a), Occupations Code, is
5 amended to read as follows:

6 (a) Except as provided by Subsection (b), the department may
7 not issue a license, registration, or certification under this
8 chapter to an applicant who has been:

9 (1) convicted or placed on community supervision
10 during the three years preceding the date of application in any
11 jurisdiction for an offense equal to a Class B misdemeanor
12 specified by department [~~executive commissioner~~] rule;

13 (2) convicted or placed on community supervision in
14 any jurisdiction for an offense equal to or greater than a Class A
15 misdemeanor specified by department [~~executive commissioner~~] rule;
16 or

17 (3) found to be incapacitated by a court on the basis
18 of a mental defect or disease.

19 SECTION 5.112. Section 504.158(c), Occupations Code, is
20 amended to read as follows:

21 (c) The executive commissioner by rule [~~department~~] may
22 establish a fee for a provisional license [~~in an amount reasonable
23 and necessary to cover the cost of issuing the license~~].

24 SECTION 5.113. Section 504.161(b), Occupations Code, is
25 amended to read as follows:

26 (b) The department may charge a person on whom criminal
27 history record information is sought a fee in an amount set by the

1 executive commissioner by rule [department] as reasonably
2 necessary to cover the costs of administering this section. A fee
3 collected under this subsection may be appropriated only to the
4 department to administer this section.

5 SECTION 5.114. Section 504.255(a), Occupations Code, is
6 amended to read as follows:

7 (a) A person whose license, registration, or certification
8 application is denied under Section 504.1525, whose license,
9 registration, or certification renewal is refused under Section
10 504.2025, or whose license, registration, or certification is
11 suspended under Section 504.2525 may appeal the denial, refusal to
12 renew, or suspension on the grounds that:

13 (1) the sole basis for the department's determination
14 is a conviction or placement on community supervision for an
15 offense described by Section 504.1525; and

16 (2) sufficient time, as determined by department
17 [~~executive commissioner~~] rule, has expired since the date of the
18 conviction or placement.

19 SECTION 5.115. Section 504.304(b), Occupations Code, is
20 amended to read as follows:

21 (b) If the person accepts the department's determination,
22 the department [~~commissioner or the commissioner's designee~~] by
23 order shall approve the determination and assess the proposed
24 penalty.

25 SECTION 5.116. Section 504.305(c), Occupations Code, is
26 amended to read as follows:

27 (c) The hearings examiner shall:

1 (1) make findings of fact and conclusions of law; and
2 (2) promptly issue to the department [~~commissioner or~~
3 ~~the commissioner's designee~~] a proposal for decision as to the
4 occurrence of the violation and the amount of any proposed
5 administrative penalty.

6 SECTION 5.117. Section 504.306(a), Occupations Code, is
7 amended to read as follows:

8 (a) Based on the findings of fact, conclusions of law, and
9 recommendations of the hearings examiner, the department
10 [~~commissioner or the commissioner's designee~~] by order may
11 determine that:

12 (1) a violation occurred and assess an administrative
13 penalty; or

14 (2) a violation did not occur.

15 SECTION 5.118. Section 504.310(c), Occupations Code, is
16 amended to read as follows:

17 (c) The department may assess reasonable expenses and costs
18 against a person in an administrative hearing if, as a result of the
19 hearing, an administrative penalty is assessed against the person.
20 The person shall pay expenses and costs assessed under this
21 subsection not later than the 30th day after the date the order of
22 the department [~~commissioner or the commissioner's designee~~]
23 requiring the payment of expenses and costs is final. The
24 department may refer the matter to the attorney general for
25 collection of expenses and costs.

26 SECTION 5.119. Section 505.201(b), Occupations Code, is
27 amended to read as follows:

1 (b) In adopting rules under this section, the board shall
2 consider the rules and procedures of the [Texas Board of Health and
3 the] department. The board shall adopt procedural rules, which may
4 not be inconsistent with similar rules and procedures of the [Texas
5 Board of Health or the] department.

6 SECTION 5.120. Sections 505.203(a) and (c), Occupations
7 Code, are amended to read as follows:

8 (a) The board by rule shall set fees in amounts reasonable
9 and necessary to cover the costs of administering this chapter. The
10 board shall set fees for the issuance or renewal of a license under
11 this chapter in amounts designed to allow the department and the
12 board to recover from the license holders all of the direct and
13 indirect costs to the department and to the board in administering
14 and enforcing this chapter.

15 (c) The [~~Unless the board determines that the fees would not~~
16 ~~cover the costs associated with administering the renewal of~~
17 ~~licenses and orders of recognition of specialty under this chapter,~~
18 ~~the]~~ board shall set:

19 (1) the renewal fee for a license or order of
20 recognition of specialty expired for 90 days or less in an amount
21 that is 1-1/4 times the amount of the renewal fee for an unexpired
22 license or order; and

23 (2) the renewal fee for a license or order of
24 recognition of specialty expired for more than 90 days but less than
25 one year in an amount that is 1-1/2 times the amount of the renewal
26 fee for an unexpired license or order.

27 SECTION 5.121. Section 505.2545(a), Occupations Code, is

1 amended to read as follows:

2 (a) In an investigation of a complaint filed with the
3 department and referred to the board, the board may request that the
4 department [~~commissioner or the commissioner's designee~~] approve
5 the issuance of a subpoena. If the request is approved, the board
6 may issue a subpoena to compel the attendance of a relevant witness
7 or the production, for inspection or copying, of relevant evidence
8 that is in this state.

9 SECTION 5.122. Section 505.401, Occupations Code, is
10 amended to read as follows:

11 Sec. 505.401. TERM OF LICENSE; STAGGERED EXPIRATION DATES.

12 (a) A license issued under this chapter is valid for two years.

13 (a-1) The board by rule shall adopt a system under which
14 licenses and orders of recognition of specialty expire on various
15 dates during the year.

16 (b) In the year in which the expiration date of an order of
17 recognition of specialty is changed, the total renewal fee is
18 payable.

19 SECTION 5.123. Section 505.553, Occupations Code, is
20 amended to read as follows:

21 Sec. 505.553. [REPORT AND] NOTICE OF VIOLATION AND PENALTY.

22 [+a]) If the department [~~executive director~~] determines that a
23 violation occurred, the department [~~director may issue to the board~~
24 ~~a report stating:~~

25 [+1) the facts on which the determination is based;
26 and

27 [+2) the director's recommendation on the imposition

1 ~~of an administrative penalty, including a recommendation on the~~
2 ~~amount of the penalty.~~

3 ~~[(b) Within 14 days after the date the report is issued, the~~
4 ~~executive director]~~ shall give written notice of the violation
5 ~~[report]~~ to the person. The notice must:

6 (1) include a brief summary of the alleged violation;
7 (2) state the amount of the ~~[recommended]~~
8 administrative penalty recommended by the department; and
9 (3) inform the person of the person's right to a
10 hearing on the occurrence of the violation, the amount of the
11 penalty, or both.

12 SECTION 5.124. Section 505.554, Occupations Code, is
13 amended to read as follows:

14 Sec. 505.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
15 Within 10 days after the date the person receives the notice, the
16 person in writing may:

17 (1) accept the determination and recommended
18 administrative penalty of the department ~~[executive director]~~; or
19 (2) make a request for a hearing on the occurrence of
20 the violation, the amount of the penalty, or both.

21 (b) If the person accepts the determination and recommended
22 penalty of the department ~~[executive director]~~, the board by order
23 shall approve the determination and impose the recommended penalty.

24 SECTION 5.125. Section 505.555(a), Occupations Code, is
25 amended to read as follows:

26 (a) If the person requests a hearing or fails to respond in a
27 timely manner to the notice, the department ~~[executive director]~~

1 shall set a hearing and give written notice of the hearing to the
2 person.

3 SECTION 5.126. Sections [505.557](#)(b) and (c), Occupations
4 Code, are amended to read as follows:

5 (b) Within the 30-day period prescribed by Subsection (a), a
6 person who files a petition for judicial review may:

7 (1) stay enforcement of the penalty by:

8 (A) paying the penalty to the court for placement
9 in an escrow account; or

10 (B) giving the court a supersedeas bond approved
11 by the court that:

12 (i) is for the amount of the penalty; and

13 (ii) is effective until all judicial review
14 of the board's order is final; or

15 (2) request the court to stay enforcement of the
16 penalty by:

17 (A) filing with the court a sworn affidavit of
18 the person stating that the person is financially unable to pay the
19 penalty and is financially unable to give the supersedeas bond; and

20 (B) giving a copy of the affidavit to the
21 department [~~executive director~~] by certified mail.

22 (c) If the department [~~executive director~~] receives a copy
23 of an affidavit under Subsection (b)(2), the department [~~director~~]
24 may file with the court, within five days after the date the copy is
25 received, a contest to the affidavit.

26 SECTION 5.127. Section [601.002](#), Occupations Code, is
27 amended to read as follows:

1 Sec. 601.002. DEFINITIONS. In this chapter:

2 (1) "Authorized person" means a person who meets or
3 exceeds the minimum educational standards of the department [board]
4 under Section 601.201.

5 (2) [~~"Board"~~ means the Texas Board of Health.]

6 [~~(3)~~] "Department" means the [~~Texas~~] Department of
7 State Health Services.

8 (3) [~~(4)~~] "Direct supervision" means supervision and
9 control by a medical radiologic technologist or a practitioner who:

10 (A) assumes legal liability for a student
11 employed to perform a radiologic procedure and enrolled in a
12 program that meets the requirements adopted under Section 601.053;
13 and

14 (B) is physically present during the performance
15 of the radiologic procedure to provide consultation or direct the
16 action of the student.

17 (4) [~~(5)~~] "Education program" means clinical training
18 or any other program offered by an organization approved by the
19 department [board] that:

20 (A) has a specified objective;

21 (B) includes planned activities for
22 participants; and

23 (C) uses an approved method for measuring the
24 progress of participants.

25 (5) "Executive commissioner" means the executive
26 commissioner of the Health and Human Services Commission.

27 (6) "Medical radiologic technologist" means a person

1 certified under this chapter who, under the direction of a
2 practitioner, intentionally administers radiation to another for a
3 medical purpose. The term does not include a practitioner.

4 (7) "Practitioner" means a person who:

5 (A) is licensed in this state as a doctor of:

6 (i) medicine;

7 (ii) osteopathy;

8 (iii) podiatry;

9 (iv) dentistry; or

10 (v) chiropractic; and

11 (B) prescribes radiologic procedures for other
12 persons.

13 (8) "Radiation" means ionizing radiation:

14 (A) in amounts beyond normal background levels;
15 and

16 (B) from a source such as a medical or dental
17 radiologic procedure.

18 (9) "Radiologic procedure" means a procedure or
19 article, including a diagnostic X-ray or a nuclear medicine
20 procedure, that:

21 (A) is intended for use in:

22 (i) the diagnosis of disease or other
23 medical or dental conditions in humans; or

24 (ii) the cure, mitigation, treatment, or
25 prevention of disease in humans; and

26 (B) achieves its intended purpose through the
27 emission of radiation.

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(10) "Radiologic technology" means the administration of radiation to a person for a medical purpose.

(11) "Registered nurse" means a person licensed by the Texas Board of Nursing to practice professional nursing.

5 SECTION 5.128. Subchapter B, Chapter 601, Occupations Code,
6 is amended to read as follows:

7 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER [BOARD]

AND DEPARTMENT

9 Sec. 601.051. CERTIFICATION PROGRAM. The [bureau of
10 ~~licensing and compliance of the~~] department shall administer the
11 certification program required by this chapter.

12 Sec. 601.052. RULES. The executive commissioner [board]
13 may adopt rules necessary to implement this chapter.

14 Sec. 601.053. MINIMUM STANDARDS. The executive
15 commissioner [board] by rule shall establish minimum standards for:

26 Sec. 601.054. APPROVAL AND REVIEW OF CURRICULA AND TRAINING
27 PROGRAMS. (a) An applicant for approval of a curriculum or

1 training program must apply to the department on a form prescribed
2 by the department and under rules adopted by the executive
3 commissioner [board].

4 (b) The department shall approve a curriculum or training
5 program that meets the minimum standards adopted under Section
6 **601.053**. The department may review the approval annually.

7 (c) The executive commissioner [~~board~~] may set a fee for
8 approval of a curriculum or training program not to exceed the
9 estimated amount that the department projects to be required for
10 the evaluation of the curriculum or training program.

11 Sec. 601.055. APPROVAL AND REVIEW OF INSTRUCTOR APPROVAL.

12 (a) An applicant for approval of an instructor must apply to the
13 department on a form prescribed by the department and under rules
14 adopted by the executive commissioner [~~board~~].

15 (b) The department shall approve an instructor who meets the
16 minimum standards adopted under Section **601.053**. The department
17 may review the approval annually.

18 Sec. 601.056. DANGEROUS OR HAZARDOUS PROCEDURES. (a) The
19 executive commissioner [~~board~~] with the assistance of [~~other~~]
20 appropriate state agencies shall identify by rule radiologic
21 procedures, other than radiologic procedures described by
22 Subsection (c), that are dangerous or hazardous and that may be
23 performed only by a practitioner or a medical radiologic
24 technologist certified under this chapter.

25 (b) In adopting rules under Subsection (a), the executive
26 commissioner [~~board~~] may consider whether the radiologic procedure
27 will be performed by a registered nurse or a licensed physician

1 assistant.

2 (c) Subsection (a) does not apply to a radiologic procedure
3 involving a dental X-ray machine, including a panarex or other
4 equipment designed and manufactured only for use in dental
5 radiography.

6 Sec. 601.057. FEES. The executive commissioner [board] may
7 set fees for examination, certificate issuance, registration of a
8 person under Section 601.202, and application processing under
9 Section 601.203 in amounts that are reasonable to cover the costs of
10 administering this chapter without the use of additional general
11 revenue. The fees for issuing or renewing a certificate must be in
12 amounts designed to allow the department to recover from the
13 certificate holders all of the department's direct and indirect
14 costs in administering and enforcing this chapter.

15 Sec. 601.058. RULES RESTRICTING ADVERTISING OR COMPETITIVE
16 BIDDING. (a) The executive commissioner [board] may not adopt
17 rules restricting advertising or competitive bidding by a medical
18 radiologic technologist except to prohibit false, misleading, or
19 deceptive practices.

20 (b) In adopting [~~its~~] rules to prohibit false, misleading,
21 or deceptive practices, the executive commissioner [board] may not
22 include a rule that:

23 (1) restricts the use of any medium for advertising;
24 (2) restricts the use of a medical radiologic
25 technologist's personal appearance or voice in an advertisement;
26 (3) relates to the size or duration of an
27 advertisement by the medical radiologic technologist; or

1 (4) restricts the medical radiologic technologist's
2 advertisement under a trade name.

3 SECTION 5.129. Sections [601.102\(a\)](#), (b), and (c),
4 Occupations Code, are amended to read as follows:

5 (a) The executive commissioner [board] shall establish
6 classes of certificates to include all radiologic procedures used
7 in the course and scope of the practice of practitioners licensed in
8 this state.

9 (b) The department [board] may issue to a person:

10 (1) a general certificate to perform radiologic
11 procedures; or

12 (2) a limited certificate that authorizes the person
13 to perform radiologic procedures only on specific parts of the
14 human body.

15 (c) The department [board] may issue to a person a temporary
16 general certificate or a temporary limited certificate that
17 authorizes the person to perform radiologic procedures for a period
18 not to exceed one year.

19 SECTION 5.130. Section [601.103](#), Occupations Code, is
20 amended to read as follows:

21 Sec. 601.103. APPLICATION; APPLICATION FEE. An applicant
22 for a certificate under this chapter must:

23 (1) apply to the department on a form prescribed by the
24 department and under rules adopted by the executive commissioner
25 [board]; and

26 (2) submit with the application a nonrefundable
27 application fee in an amount determined by the executive

1 commissioner [board].

2 SECTION 5.131. Section 601.104, Occupations Code, is
3 amended to read as follows:

4 Sec. 601.104. EXAMINATION. The executive commissioner
5 [board] may adopt rules providing for the preparation and
6 administration of [prepare and conduct] an examination for
7 applicants for a certificate.

8 SECTION 5.132. The heading to Section 601.105, Occupations
9 Code, is amended to read as follows:

10 Sec. 601.105. ISSUANCE OF CERTIFICATE; TERM.

11 SECTION 5.133. Section 601.105(b), Occupations Code, is
12 amended to read as follows:

13 (b) A certificate is valid for two years from the date of
14 issuance [a period established by the board].

15 SECTION 5.134. Section 601.107, Occupations Code, is
16 amended to read as follows:

17 Sec. 601.107. CERTIFICATION BY ENDORSEMENT. In adopting
18 minimum standards for certifying medical radiologic technologists,
19 the executive commissioner [board] may establish criteria for
20 issuing a certificate to a person licensed or otherwise registered
21 as a medical radiologic technologist by the American Registry of
22 Radiologic Technologists, the American Registry of Clinical
23 Radiography Technologists, or another state whose requirements for
24 licensure or registration were on the date of licensing or
25 registration substantially equal to the requirements of this
26 chapter.

27 SECTION 5.135. Section 601.108, Occupations Code, is

1 amended to read as follows:

2 Sec. 601.108. CONTINUING EDUCATION AND OTHER GUIDELINES.

3 (a) The executive commissioner [board] may establish guidelines.

4 (b) The executive commissioner [board] shall provide for
5 the preparation, recognition, or administration of [prepare,
6 recognize, or administer] continuing education programs for
7 medical radiologic technologists in which participation is
8 required, to the extent required by the department [board], to keep
9 the person's certificate.

10 SECTION 5.136. Section 601.109, Occupations Code, is
11 amended to read as follows:

12 Sec. 601.109. PROVISIONAL CERTIFICATE. (a) The department
13 [board] may issue a provisional certificate to an applicant
14 currently licensed or certified in another jurisdiction who seeks
15 certification in this state and who:

16 (1) has been licensed or certified in good standing as
17 a medical radiologic technologist for at least two years in another
18 jurisdiction, including a foreign country, that has licensing or
19 certification requirements substantially equivalent to the
20 requirements of this chapter;

21 (2) has passed a national or other examination
22 recognized by the department [board] relating to the practice of
23 radiologic technology; and

24 (3) is sponsored by a medical radiologic technologist
25 certified by the department [board] under this chapter with whom
26 the provisional certificate holder will practice during the time
27 the person holds a provisional certificate.

1 (b) The department [board] may waive the requirement of
2 Subsection (a)(3) for an applicant if the department [board]
3 determines that compliance with that subsection would be a hardship
4 to the applicant.

5 (c) A provisional certificate is valid until the date the
6 department [board] approves or denies the provisional certificate
7 holder's application for a certificate. The department [board]
8 shall issue a certificate under this chapter to the provisional
9 certificate holder if:

10 (1) the provisional certificate holder is eligible to
11 be certified under Section [601.107](#); or

12 (2) the provisional certificate holder passes the part
13 of the examination under Section [601.104](#) that relates to the
14 applicant's knowledge and understanding of the laws and rules
15 relating to the practice of radiologic technology in this state
16 and:

17 (A) the department [board] verifies that the
18 provisional certificate holder meets the academic and experience
19 requirements for a certificate under this chapter; and

20 (B) the provisional certificate holder satisfies
21 any other licensing requirements under this chapter.

22 (d) The department [board] must approve or deny a
23 provisional certificate holder's application for a certificate not
24 later than the 180th day after the date the provisional certificate
25 is issued. The department [board] may extend the 180-day period if
26 the results of an examination have not been received by the
27 department [board] before the end of that period.

1 (e) The executive commissioner by rule [board] may
2 establish a fee for a provisional certificate in an amount designed
3 to allow the department to recover from the certificate holders all
4 of the department's direct and indirect costs in administering and
5 enforcing this chapter [~~reasonable and necessary to cover the cost~~
6 ~~of issuing the certificate~~].

7 SECTION 5.137. Section 601.110(b), Occupations Code, is
8 amended to read as follows:

9 (b) The executive commissioner [board] by rule may adopt a
10 system under which certificates expire on various dates during the
11 year. For the year in which the certificate expiration date is
12 changed, the department shall prorate certificate fees on a monthly
13 basis so that each certificate holder pays only that portion of the
14 certificate fee that is allocable to the number of months during
15 which the certificate is valid. On renewal of the certificate on
16 the new expiration date, the total certificate renewal fee is
17 payable.

18 SECTION 5.138. Section 601.154, Occupations Code, is
19 amended to read as follows:

20 Sec. 601.154. HOSPITAL PROCEDURES. A person is not
21 required to hold a certificate issued under this chapter to perform
22 a radiologic procedure in a hospital if:

23 (1) the hospital participates in the federal Medicare
24 program or is accredited by the Joint Commission on Accreditation
25 of Hospitals; and

26 (2) the person has completed a training program
27 approved by the department [board] under Section 601.201.

1 SECTION 5.139. Section 601.156, Occupations Code, is
2 amended to read as follows:

3 Sec. 601.156. PROCEDURE PERFORMED AS PART OF CONTINUING
4 EDUCATION PROGRAM. A person is not required to hold a certificate
5 issued under this chapter or to comply with the registration
6 requirements adopted under Section 601.252 if the person is:

7 (1) licensed or otherwise registered as a medical
8 radiologic technologist by another state, the American Registry of
9 Radiologic Technologists, the American Registry of Clinical
10 Radiography Technologists, or a professional organization or
11 association recognized by the department [board];

12 (2) enrolled in a continuing education program that
13 meets the requirements adopted under Section 601.108; and

14 (3) performing a radiologic procedure as part of the
15 continuing education program for not more than 10 days.

16 SECTION 5.140. Section 601.201, Occupations Code, is
17 amended to read as follows:

18 Sec. 601.201. MANDATORY TRAINING. (a) The minimum
19 standards of the department [board] for approval of a curriculum or
20 an education program under Section 601.053 must include mandatory
21 training guidelines for a person, other than a practitioner or a
22 medical radiologic technologist, who intentionally uses radiologic
23 technology, including a person who does not hold a certificate
24 issued under this chapter and who is performing a radiologic
25 procedure at a hospital or under the direction of a practitioner,
26 other than a dentist.

27 (b) The training program approved by the department [board]

1 must contain an appropriate number of hours of education that must
2 be completed before the person may perform a radiologic procedure.

3 SECTION 5.141. Section [601.202](#), Occupations Code, is
4 amended to read as follows:

5 Sec. 601.202. REGISTRY. The executive commissioner [board]
6 by rule shall establish a registry of persons required to comply
7 with this subchapter.

8 SECTION 5.142. Section [601.302](#), Occupations Code, is
9 amended to read as follows:

10 Sec. 601.302. GROUNDS FOR CERTIFICATE DENIAL OR
11 DISCIPLINARY ACTION. The department may take action under Section
12 [601.301](#) against a person subject to this chapter for:

13 (1) obtaining or attempting to obtain a certificate
14 issued under this chapter by bribery or fraud;

15 (2) making or filing a false report or record made in
16 the person's capacity as a medical radiologic technologist;

17 (3) intentionally or negligently failing to file a
18 report or record required by law;

19 (4) intentionally obstructing or inducing another to
20 intentionally obstruct the filing of a report or record required by
21 law;

22 (5) engaging in unprofessional conduct, including the
23 violation of the standards of practice of radiologic technology
24 established by the department [board];

25 (6) developing an incapacity that prevents the
26 practice of radiologic technology with reasonable skill,
27 competence, and safety to the public as the result of:

20 SECTION 5.143. Section 601.305(b), Occupations Code, is
21 amended to read as follows:

22 (b) The department [board] may not reinstate a certificate
23 to a holder or issue a certificate to an applicant previously denied
24 a certificate unless the department [board] is satisfied that the
25 holder or applicant has complied with requirements set by the
26 department [board] and is capable of engaging in the practice of
27 radiologic technology.

1 SECTION 5.144. Section 601.354(b), Occupations Code, is
2 amended to read as follows:

3 (b) If the person accepts the department's determination,
4 the department [~~commissioner of public health or that~~
5 ~~commissioner's designee~~] by order shall approve the determination
6 and impose the proposed penalty.

7 SECTION 5.145. Section 601.355(b), Occupations Code, is
8 amended to read as follows:

9 (b) The hearings examiner shall make findings of fact and
10 conclusions of law and promptly issue to the department
11 [~~commissioner of public health or that commissioner's designee~~] a
12 proposal for decision as to the occurrence of the violation and the
13 amount of any proposed administrative penalty.

14 SECTION 5.146. The heading to Section 601.356, Occupations
15 Code, is amended to read as follows:

16 Sec. 601.356. DECISION BY DEPARTMENT [~~COMMISSIONER~~].

17 SECTION 5.147. Section 601.356(a), Occupations Code, is
18 amended to read as follows:

19 (a) Based on the findings of fact and conclusions of law and
20 the recommendations of the hearings examiner, the department
21 [~~commissioner of public health or the commissioner's designee~~] by
22 order may determine that:

23 (1) a violation has occurred and may impose an
24 administrative penalty; or
25 (2) a violation did not occur.

26 SECTION 5.148. Section 601.361(b), Occupations Code, is
27 amended to read as follows:

1 (b) The department may assess reasonable expenses and costs
2 against a person in an administrative hearing if, as a result of the
3 hearing, an administrative penalty is assessed against the person.
4 The person shall pay expenses and costs assessed under this
5 subsection not later than the 30th day after the date the order of
6 the department [~~commissioner of public health or that~~
7 ~~commissioner's designee~~] requiring the payment of expenses and
8 costs is final. The department may refer the matter to the attorney
9 general for collection of the expenses and costs.

10 SECTION 5.149. Sections 601.401(a) and (c), Occupations
11 Code, are amended to read as follows:

12 (a) If it appears that a person has violated, is violating,
13 or is threatening to violate this chapter or a rule adopted under
14 this chapter, the [~~board or the~~] department may bring an action to
15 enjoin the continued or threatened violation.

16 (c) At the request of the [~~board or the~~] department, the
17 attorney general shall bring an action in the name of the state for
18 the injunctive relief, to recover the civil penalty, or both.

19 SECTION 5.150. Section 602.002, Occupations Code, is
20 amended by amending Subdivisions (1) and (2) and adding Subdivision
21 (1-a) to read as follows:

22 (1) "Board" means the Texas Board of Licensure for
23 Professional Medical Physicists [~~in the Texas Department of~~
24 ~~Health~~].

25 (1-a) "Commissioner" means the commissioner of state
26 health services.

27 (2) "Department" means the [~~Texas~~] Department of State

1 Health Services.

2 SECTION 5.151. Section 602.056(c), Occupations Code, is
3 amended to read as follows:

4 (c) If the commissioner [~~of public health~~] has knowledge
5 that a potential ground for removal exists, the commissioner shall
6 notify the presiding officer of the board of the potential ground.
7 The presiding officer shall then notify the governor and the
8 attorney general that a potential ground for removal exists. If the
9 potential ground for removal involves the presiding officer, the
10 commissioner shall notify the next highest ranking officer of the
11 board, who shall then notify the governor and the attorney general
12 that a potential ground for removal exists.

13 SECTION 5.152. Section 602.101, Occupations Code, is
14 amended to read as follows:

15 Sec. 602.101. EXECUTIVE SECRETARY. The department
16 [~~commissioner of health~~], after consulting with the board, shall
17 designate an employee of the department to serve as the board's
18 executive secretary.

19 SECTION 5.153. Section 602.104, Occupations Code, is
20 amended to read as follows:

21 Sec. 602.104. DIVISION OF RESPONSIBILITIES. The board
22 shall develop and implement policies that clearly separate the
23 policy-making responsibilities of the board and the management
24 responsibilities of the commissioner [~~of public health~~], the
25 executive secretary, and the staff of the department.

26 SECTION 5.154. Section 602.105, Occupations Code, is
27 amended to read as follows:

1 Sec. 602.105. QUALIFICATIONS AND STANDARDS OF CONDUCT
2 INFORMATION. The commissioner [~~of public health~~] or the
3 commissioner's designee shall provide to members of the board, as
4 often as necessary, information regarding the requirements for
5 office under this chapter, including information regarding a
6 person's responsibilities under applicable laws relating to
7 standards of conduct for state officers.

8 SECTION 5.155. Section 602.151, Occupations Code, is
9 amended to read as follows:

10 Sec. 602.151. GENERAL POWERS AND DUTIES. The board shall:

11 (1) adopt and revise, with the [~~department's~~] approval
12 of the executive commissioner of the Health and Human Services
13 Commission, rules reasonably necessary to properly perform its
14 duties under this chapter;

15 (2) adopt an official seal;

16 (3) determine the qualifications and fitness of each
17 applicant for a license or license renewal;

18 (4) charge a fee[~~, in an amount necessary to cover the~~
19 ~~costs incurred by the board in administering this chapter,~~] for
20 processing and issuing or renewing a license;

21 (5) conduct examinations for licensure;

22 (6) issue, deny, renew, revoke, and suspend licenses;

23 (7) adopt and publish a code of ethics; and

24 (8) conduct hearings on complaints concerning
25 violations of this chapter or rules adopted under this chapter.

26 SECTION 5.156. Section 602.1525(a), Occupations Code, is
27 amended to read as follows:

1 (a) In an investigation of a complaint filed with the board,
2 the board may request that the commissioner [~~of public health~~] or
3 the commissioner's designee approve the issuance of a subpoena. If
4 the request is approved, the board may issue a subpoena to compel
5 the attendance of a relevant witness or the production, for
6 inspection or copying, of relevant evidence that is in this state.

7 SECTION 5.157. Subchapter D, Chapter 602, Occupations Code,
8 is amended by adding Section 602.155 to read as follows:

9 Sec. 602.155. FEES. The board shall set fees for the
10 issuance or renewal of a license under this chapter in amounts
11 designed to allow the department and the board to recover from the
12 license holders all of the direct and indirect costs to the
13 department and to the board in administering and enforcing this
14 chapter.

15 SECTION 5.158. Section 602.205, Occupations Code, is
16 amended to read as follows:

17 Sec. 602.205. TEMPORARY LICENSE. The board may issue a
18 temporary license to an applicant who has satisfied the educational
19 requirements for a license but who has not yet completed the
20 experience and examination requirements of Section 602.207. A
21 temporary license is valid for one year from the date of issuance.

22 SECTION 5.159. Section 602.210(a), Occupations Code, is
23 amended to read as follows:

24 (a) A license is valid for two years [~~one year~~] from the date
25 of issuance [~~granted~~] and may be renewed [~~annually~~].

26 SECTION 5.160. Section 602.213(e), Occupations Code, is
27 amended to read as follows:

1 (e) The board may establish a fee for provisional licenses
2 [in an amount reasonable and necessary to cover the cost of issuing
3 the license].

4 SECTION 5.161. Section 603.051(a), Occupations Code, is
5 amended to read as follows:

6 (a) The Texas State Perfusionist Advisory Committee
7 consists of five members appointed by the commissioner as follows:

8 (1) two licensed perfusionist members who have been
9 licensed under this chapter for at least three years before the date
10 of appointment;

11 (2) one physician member licensed by the Texas [State
12 Board of] Medical Board [Examiners] who is certified by that board
13 in cardiovascular surgery; and

14 (3) two members who represent the public.

15 SECTION 5.162. Section 603.102, Occupations Code, is
16 amended to read as follows:

17 Sec. 603.102. EXECUTIVE SECRETARY POWERS AND DUTIES. In
18 addition to performing other duties prescribed by this chapter and
19 by the department, the executive secretary shall:

20 (1) administer licensing activity under this chapter
21 for the department;

22 (2) keep full and accurate minutes of the committee's
23 transactions and proceedings;

24 (3) serve as custodian of the committee's files and
25 other records;

26 (4) prepare and recommend to the department plans and
27 procedures necessary to implement the objectives of this chapter,

1 including rules and proposals on administrative procedure;

2 (5) exercise general supervision over persons

3 employed by the department in the administration of this chapter;

4 (6) investigate complaints and present formal

5 complaints made under this chapter;

6 (7) attend all committee meetings as a nonvoting

7 participant;

8 (8) handle the committee's correspondence; and

9 (9) obtain, assemble, or prepare reports and other

10 information as directed or authorized by the committee.

11 SECTION 5.163. Section [603.106](#), Occupations Code, is
12 amended to read as follows:

13 Sec. 603.106. CAREER LADDER PROGRAM; PERFORMANCE
14 EVALUATIONS. (a) The department [~~commissioner~~] shall develop an
15 intra-agency career ladder program. The program must require
16 intra-agency posting of all nonentry level positions concurrently
17 with any public posting.

18 (b) The department [~~commissioner~~] shall develop a system of
19 annual performance evaluations based on measurable job tasks. All
20 merit pay for department employees under this chapter must be based
21 on the system established under this subsection.

22 SECTION 5.164. Section [603.107](#), Occupations Code, is
23 amended to read as follows:

24 Sec. 603.107. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.
25 (a) The department [~~commissioner~~] shall prepare and maintain a
26 written policy statement to ensure implementation of an equal
27 employment opportunity program under which all personnel

1 transactions are made without regard to race, color, disability,
2 sex, religion, age, or national origin. The policy statement must
3 include:

4 (1) personnel policies, including policies relating
5 to recruitment, evaluation, selection, application, training, and
6 promotion, that are in compliance with Chapter 21, Labor Code;

7 (2) a comprehensive analysis of the committee
8 workforce that meets federal and state guidelines;

9 (3) procedures by which a determination can be made of
10 significant underuse in the committee workforce of all persons for
11 whom federal or state guidelines encourage a more equitable
12 balance; and

13 (4) reasonable methods to appropriately address those
14 areas of underuse.

15 (b) A policy statement prepared under Subsection (a) must:

16 (1) cover an annual period;

17 (2) be updated annually;

18 (3) be reviewed by the Texas Workforce Commission
19 civil rights division [~~on Human Rights~~] for compliance with
20 Subsection (a)(1); and

21 (4) be filed with the governor.

22 SECTION 5.165. Section 603.151, Occupations Code, is
23 amended to read as follows:

24 Sec. 603.151. GENERAL POWERS AND DUTIES OF DEPARTMENT
25 [~~COMMISSIONER~~]. The department [~~commissioner~~] shall:

26 (1) establish the qualifications and fitness of
27 applicants for licenses, including renewed and reciprocal

1 licenses;

2 (2) revoke, suspend, or deny a license, probate a
3 license suspension, or reprimand a license holder for a violation
4 of this chapter, a rule adopted by the executive commissioner under
5 this chapter, or the code of ethics adopted by the executive
6 commissioner;

7 (3) spend money necessary to administer the
8 department's duties;

9 (4) request and receive necessary assistance from
10 another state agency, including a state educational institution;

11 (5) adopt an official seal; and

12 (6) [~~adopt and~~] publish the [~~a~~] code of ethics adopted
13 by the executive commissioner.

14 SECTION 5.166. Section 603.153, Occupations Code, is
15 amended to read as follows:

16 Sec. 603.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE
17 BIDDING. (a) The executive commissioner may not adopt a rule
18 restricting advertising or competitive bidding by a person
19 regulated by the department under this chapter except to prohibit a
20 false, misleading, or deceptive practice.

21 (b) The executive commissioner may not include in rules to
22 prohibit a false, misleading, or deceptive practice by a person
23 regulated by the department under this chapter a rule that:

24 (1) restricts the person's use of any medium for
25 advertising;

26 (2) restricts the person's personal appearance or use
27 of the person's voice in an advertisement;

1 (3) relates to the size or duration of any
2 advertisement by the person; or

3 (4) restricts the use by the person of a trade name in
4 advertising.

5 SECTION 5.167. Section 603.1535(b), Occupations Code, is
6 amended to read as follows:

7 (b) In rules under this section, the executive commissioner
8 shall list the specific offenses for which a conviction would
9 constitute grounds for the department [~~commissioner~~] to take action
10 under Section 53.021.

11 SECTION 5.168. Section 603.154, Occupations Code, is
12 amended to read as follows:

13 Sec. 603.154. FEES. (a) After consulting the commissioner
14 or the department, the executive commissioner shall set fees in
15 amounts reasonable and necessary to cover the costs of
16 administering this chapter.

17 (b) The executive commissioner shall set fees for the
18 issuance or renewal of a license under this chapter in amounts
19 designed to allow the department to recover from the license
20 holders all of the direct and indirect costs to the department in
21 administering and enforcing this chapter.

22 SECTION 5.169. Sections 603.159(a) and (c), Occupations
23 Code, are amended to read as follows:

24 (a) The executive commissioner shall develop and implement
25 a policy under this chapter to encourage the use of:

26 (1) negotiated rulemaking procedures under Chapter
27 2008, Government Code, for the adoption of rules; and

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5 (c) The department [commissioner] shall designate a trained
6 person to:

14 SECTION 5.170. Section 603.202(a), Occupations Code, is
15 amended to read as follows:

16 (a) The executive commissioner by rule shall establish
17 methods by which consumers and service recipients are notified of
18 the name, mailing address, and telephone number of the department
19 for the purpose of directing complaints under this chapter to the
20 department. The department may provide for that notice:

27 SECTION 5.171. Section 603.203(a), Occupations Code, is

1 amended to read as follows:

2 (a) The department shall maintain a system to promptly and
3 efficiently act on complaints filed with the department under this
4 chapter. The department shall maintain:

5 (1) information about the parties to the complaint and
6 the subject matter of the complaint;

7 (2) a summary of the results of the review or
8 investigation of the complaint; and

9 (3) information about the disposition of the
10 complaint.

11 SECTION 5.172. Sections 603.204(a) and (d), Occupations
12 Code, are amended to read as follows:

13 (a) The executive commissioner shall adopt rules concerning
14 the investigation of a complaint filed with the department under
15 this chapter. The rules shall:

16 (1) distinguish among categories of complaints;

17 (2) ensure that a complaint is not dismissed without
18 appropriate consideration;

19 (3) require that the department [~~commissioner~~] be
20 advised of a complaint that is dismissed and that a letter be sent
21 to the person who filed the complaint explaining the action taken on
22 the dismissed complaint;

23 (4) ensure that the person who filed the complaint has
24 an opportunity to explain the allegations made in the complaint;
25 and

26 (5) prescribe guidelines concerning the categories of
27 complaints that require the use of a private investigator and the

1 procedures for the department to obtain the services of a private
2 investigator.

3 (d) The executive secretary shall notify the department
4 [commissioner] of a complaint that is not resolved within the time
5 prescribed by the department [commissioner] for resolving the
6 complaint so that the department [commissioner] may take necessary
7 action on the complaint.

8 SECTION 5.173. Sections 603.2041(a), (h), and (i),
9 Occupations Code, are amended to read as follows:

10 (a) In an investigation of a complaint filed with the
11 department, the department may [request that the commissioner or
12 the commissioner's designee approve the issuance of a subpoena. If
13 the request is approved, the department may] issue a subpoena to
14 compel the attendance of a relevant witness or the production, for
15 inspection or copying, of relevant evidence that is in this state.

16 (h) All information and materials subpoenaed or compiled by
17 the department in connection with a complaint and investigation
18 under this chapter are confidential and not subject to disclosure
19 under Chapter 552, Government Code, and not subject to disclosure,
20 discovery, subpoena, or other means of legal compulsion for their
21 release to anyone other than the department or its agents or
22 employees involved in discipline of the holder of a license, except
23 that this information may be disclosed to:

24 (1) persons involved with the department in a
25 disciplinary action against the holder of a license under this
26 chapter;

27 (2) professional perfusionist licensing or

1 disciplinary boards in other jurisdictions;

2 (3) peer assistance programs approved by the
3 department under Chapter 467, Health and Safety Code;

4 (4) law enforcement agencies; and

5 (5) persons engaged in bona fide research, if all
6 individual-identifying information has been deleted.

7 (i) The filing of formal charges by the department against a
8 holder of a license under this chapter, the nature of those charges,
9 disciplinary proceedings of the department, and final disciplinary
10 actions, including warnings and reprimands, by the department are
11 not confidential and are subject to disclosure in accordance with
12 Chapter 552, Government Code.

13 SECTION 5.174. Section 603.205, Occupations Code, is
14 amended to read as follows:

15 Sec. 603.205. PUBLIC PARTICIPATION. (a) The department
16 [~~State Health Services Council~~] shall develop and implement
17 policies that provide the public with a reasonable opportunity to
18 appear before the department [~~State Health Services Council~~] and to
19 speak on any issue related to the practice of perfusion.

20 (b) The department [~~commissioner~~] shall prepare and
21 maintain a written plan that describes how a person who does not
22 speak English or who has a physical, mental, or developmental
23 disability may be provided reasonable access to the department's
24 programs under this chapter.

25 SECTION 5.175. Section 603.252(b), Occupations Code, is
26 amended to read as follows:

27 (b) The department [~~executive commissioner~~] shall prescribe

1 the application form and the executive commissioner by rule may
2 establish dates by which applications and fees must be received.

3 SECTION 5.176. Section 603.255(a), Occupations Code, is
4 amended to read as follows:

5 (a) The department shall notify an applicant in writing of
6 the receipt and investigation of the applicant's application and
7 any other relevant evidence relating to qualifications established
8 by department [~~an executive commissioner~~] rule not later than:

9 (1) the 45th day after the date a properly submitted
10 and timely application is received; and

11 (2) the 30th day before the next examination date.

12 SECTION 5.177. Section 603.259(c), Occupations Code, is
13 amended to read as follows:

14 (c) A provisionally licensed perfusionist must practice
15 under the supervision and direction of a licensed perfusionist
16 while performing perfusion. If the department finds that a
17 licensed perfusionist is not reasonably available to provide
18 supervision and direction and if the department approves an
19 application submitted to the department by the provisionally
20 licensed perfusionist, supervision and direction may be provided by
21 a physician who is licensed by the Texas [~~State Board of~~] Medical
22 Board [~~Examiners~~] and certified by the American Board of Thoracic
23 Surgery [~~Surgeons, Inc.~~] or certified in cardiovascular surgery by
24 the American Osteopathic Board of Surgery.

25 SECTION 5.178. Section 603.304(a), Occupations Code, is
26 amended to read as follows:

27 (a) To renew a license under this chapter, a person must

1 submit proof satisfactory to the department that the person has
2 complied with the continuing education requirements prescribed by
3 the executive commissioner [department].

4 SECTION 5.179. Section 603.402(b), Occupations Code, is
5 amended to read as follows:

6 (b) The executive commissioner shall prescribe procedures
7 for appealing to the department [~~commissioner~~] a decision to
8 revoke, suspend, or refuse to renew a license.

9 SECTION 5.180. Section 603.4515(a), Occupations Code, is
10 amended to read as follows:

11 (a) A person who violates this chapter, a rule adopted by
12 the executive commissioner under this chapter, or an order adopted
13 by the department [~~commissioner~~] under this chapter is liable for a
14 civil penalty not to exceed \$5,000 a day.

15 SECTION 5.181. Section 603.453(a), Occupations Code, is
16 amended to read as follows:

17 (a) If it appears to the department [~~commissioner~~] that a
18 person who is not licensed under this chapter is violating this
19 chapter, a rule adopted under this chapter, or another state
20 statute or rule relating to the practice of perfusion, the
21 department [~~commissioner~~] after notice and an opportunity for a
22 hearing may issue a cease and desist order prohibiting the person
23 from engaging in the activity.

24 SECTION 5.182. Section 603.502(c), Occupations Code, is
25 amended to read as follows:

26 (c) The executive commissioner by rule shall adopt an
27 administrative penalty schedule based on the criteria listed in

1 Subsection (b) for violations of this chapter or applicable rules
2 to ensure that the amounts of penalties imposed are appropriate to
3 the violation. The department [executive commissioner] shall
4 provide the administrative penalty schedule to the public on
5 request.

6 SECTION 5.183. Section 603.503, Occupations Code, is
7 amended to read as follows:

8 Sec. 603.503. [REPORT AND] NOTICE OF VIOLATION AND PENALTY.
9 [(a)] If the department [commissioner or the commissioner's
10 designee] determines that a violation occurred, the department
11 [commissioner or the designee may issue to the department a report
12 stating:

13 [(1) the facts on which the determination is based,
14 and

15 [(2) the commissioner's or the designee's
16 recommendation on the imposition of an administrative penalty,
17 including a recommendation on the amount of the penalty.

18 [(b) Within 14 days after the date the report is issued, the
19 commissioner or the commissioner's designee] shall give written
20 notice of the violation [report] to the person. The notice must:

21 (1) include a brief summary of the alleged violation;

22 (2) state the amount of the [recommended]
23 administrative penalty recommended by the department; and

24 (3) inform the person of the person's right to a
25 hearing on the occurrence of the violation, the amount of the
26 penalty, or both.

27 SECTION 5.184. Section 603.504, Occupations Code, is

1 amended to read as follows:

2 Sec. 603.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
3 Within 10 days after the date the person receives the notice, the
4 person in writing may:

5 (1) accept the determination and recommended
6 administrative penalty of the department [~~commissioner or the~~
7 ~~commissioner's designee~~]; or

8 (2) make a request for a hearing on the occurrence of
9 the violation, the amount of the penalty, or both.

10 (b) If the person accepts the determination and recommended
11 penalty of the department [~~commissioner or the commissioner's~~
12 ~~designee~~], the department [~~commissioner~~] by order shall approve the
13 determination and impose the recommended penalty.

14 SECTION 5.185. Sections 603.505(a) and (c), Occupations
15 Code, are amended to read as follows:

16 (a) If the person requests a hearing or fails to respond in a
17 timely manner to the notice, the department [~~commissioner or the~~
18 ~~commissioner's designee~~] shall set a hearing and give written
19 notice of the hearing to the person.

20 (c) The administrative law judge shall make findings of fact
21 and conclusions of law and promptly issue to the department
22 [~~commissioner~~] a proposal for a decision about the occurrence of
23 the violation and the amount of a proposed administrative penalty.

24 SECTION 5.186. Section 603.506, Occupations Code, is
25 amended to read as follows:

26 Sec. 603.506. DECISION BY DEPARTMENT [~~COMMISSIONER~~]. (a)
27 Based on the findings of fact, conclusions of law, and proposal for

1 decision, the department [~~commissioner~~] by order may determine
2 that:

3 (1) a violation occurred and impose an administrative
4 penalty; or

5 (2) a violation did not occur.

6 (b) The notice of the department's [~~commissioner's~~] order
7 given to the person must include a statement of the right of the
8 person to judicial review of the order.

9 SECTION 5.187. Sections 603.507(a) through (c),
10 Occupations Code, are amended to read as follows:

11 (a) Within 30 days after the date the department's
12 [~~commissioner's~~] order becomes final, the person shall:

13 (1) pay the administrative penalty; or
14 (2) file a petition for judicial review contesting the
15 occurrence of the violation, the amount of the penalty, or both.

16 (b) Within the 30-day period prescribed by Subsection (a), a
17 person who files a petition for judicial review may:

18 (1) stay enforcement of the penalty by:
19 (A) paying the penalty to the court for placement
20 in an escrow account; or
21 (B) giving the court a supersedeas bond approved
22 by the court that:

23 (i) is for the amount of the penalty; and
24 (ii) is effective until all judicial review
25 of the department's [~~commissioner's~~] order is final; or

26 (2) request the court to stay enforcement of the
27 penalty by:

7 (c) If the department [commissioner or the commissioner's
8 ~~designee~~] receives a copy of an affidavit under Subsection (b)(2),
9 the department [commissioner or the ~~designee~~] may file with the
10 court, within five days after the date the copy is received, a
11 contest to the affidavit.

12 SECTION 5.188. Sections 604.001(1) and (2), Occupations
13 Code, are amended to read as follows:

14 (1) ["Board" means the Texas Board of Health.]

15 [(2)] "Department" means the [Texas] Department of
16 State Health Services.

19 SECTION 5.189. The heading to Subchapter B, Chapter 604,
20 Occupations Code, is amended to read as follows:

21 SUBCHAPTER B . POWERS AND DUTIES OF EXECUTIVE COMMISSIONER [BOARD]
22 AND DEPARTMENT

23 SECTION 5.190. Section 604.051(a), Occupations Code, is
24 amended to read as follows:

25 (a) The department [department's bureau of licensing and
26 ~~compliance~~] shall administer the certification and permitting
27 program under this chapter.

1 SECTION 5.191. Section 604.052, Occupations Code, is
2 amended to read as follows:

3 Sec. 604.052. RULES. (a) The executive commissioner
4 [board] by rule shall establish minimum standards for issuing,
5 denying, renewing, suspending, suspending on an emergency basis, or
6 revoking a certificate or temporary permit under this chapter.

7 (b) The executive commissioner [board] may adopt rules
8 necessary to implement this chapter.

9 (c) The executive commissioner [board] may adopt rules
10 relating to certifying, examining, or disciplining a person under
11 this chapter only if necessary to protect the public health by
12 ensuring that only a qualified person practices respiratory care.

13 SECTION 5.192. Section 604.053, Occupations Code, is
14 amended to read as follows:

15 Sec. 604.053. FEES. (a) The executive commissioner by rule
16 [board] shall set fees for an application, examination,
17 certificate, temporary permit, permit and certificate renewal, and
18 certificate reinstatement.

19 (b) The executive commissioner by rule [board] shall set
20 fees in reasonable amounts that are sufficient to cover the costs of
21 administering this chapter. The executive commissioner shall set
fees for issuing or renewing a certificate or permit in amounts
designed to allow the department to recover from the certificate
and permit holders all of the department's direct and indirect
costs in administering and enforcing this chapter.

26 SECTION 5.193. Section 604.055, Occupations Code, is
27 amended to read as follows:

1 Sec. 604.055. PEER ASSISTANCE PROGRAM. The department may
2 establish, approve, and fund a peer assistance program in
3 accordance with Section [467.003](#), Health and Safety Code, and
4 department [board] rules.

5 SECTION 5.194. Section [604.057](#), Occupations Code, is
6 amended to read as follows:

7 Sec. 604.057. RULES REGARDING ADVERTISING OR COMPETITIVE
8 BIDDING. (a) The executive commissioner [board] may not adopt
9 rules restricting advertising or competitive bidding by a temporary
10 permit or certificate holder except to prohibit false, misleading,
11 or deceptive practices.

12 (b) In adopting [~~its~~] rules to prohibit false, misleading,
13 or deceptive practices, the executive commissioner [board] may not
14 include a rule that:

15 (1) restricts the use of any medium for advertising;
16 (2) restricts the use of a temporary permit or
17 certificate holder's personal appearance or voice in an
18 advertisement;

19 (3) relates to the size or duration of an
20 advertisement by the temporary permit or certificate holder; or

21 (4) restricts the temporary permit or certificate
22 holder's advertisement under a trade name.

23 SECTION 5.195. Section [604.101\(b\)](#), Occupations Code, is
24 amended to read as follows:

25 (b) A person may not practice respiratory care other than
26 under the direction of a qualified medical director or other
27 physician licensed by the Texas [~~State Board of~~] Medical Board

1 [Examiners].

2 SECTION 5.196. Section 604.103, Occupations Code, is
3 amended to read as follows:

4 Sec. 604.103. APPLICATION; APPLICATION FEE. An applicant
5 for a certificate or temporary permit must:

6 (1) apply to the department on a form prescribed by the
7 department and under rules adopted [prescribed] by the executive
8 commissioner [board]; and

9 (2) submit a nonrefundable application fee with the
10 application.

11 SECTION 5.197. Section 604.1041, Occupations Code, is
12 amended to read as follows:

13 Sec. 604.1041. EXAMINATION. The executive commissioner
14 [board] by rule shall establish examination requirements for a
15 certificate under this chapter. The executive commissioner [board]
16 may use the entry level examination prepared by the National Board
17 for Respiratory Care or an equivalent examination.

18 SECTION 5.198. Section 604.108(b), Occupations Code, is
19 amended to read as follows:

20 (b) A temporary permit is valid for the period set by
21 department [board] rule. The period may not be less than six months
22 or more than 12 months.

23 SECTION 5.199. Section 604.151(b), Occupations Code, is
24 amended to read as follows:

25 (b) The executive commissioner [board] by rule may adopt a
26 system under which certificates expire on various dates during the
27 year. For the year in which the certificate expiration date is

1 changed, the department shall prorate certificate fees on a monthly
2 basis so that each certificate holder pays only that portion of the
3 certificate fee that is allocable to the number of months during
4 which the certificate is valid. On renewal of the certificate on
5 the new expiration date, the total certificate renewal fee is
6 payable.

7 SECTION 5.200. Section 604.154, Occupations Code, is
8 amended to read as follows:

9 Sec. 604.154. CONTINUING EDUCATION REQUIREMENTS. (a) The
10 executive commissioner [board] shall establish for the renewal of a
11 certificate uniform continuing education requirements of not less
12 than 12 or more than 24 continuing education hours for each renewal
13 period.

14 (b) The executive commissioner [board] may adopt rules
15 relating to meeting the continuing education requirements in a
16 hardship situation.

17 SECTION 5.201. Section 604.156(b), Occupations Code, is
18 amended to read as follows:

19 (b) To resume the practice of respiratory care, the
20 practitioner must:

21 (1) notify the department;
22 (2) satisfy requirements adopted by the executive
23 commissioner [board]; and
24 (3) pay the reinstatement fee and the renewal fee for
25 the renewal period in which the practitioner will resume practice.

26 SECTION 5.202. Section 604.157(b), Occupations Code, is
27 amended to read as follows:

1 (b) The department may renew a temporary permit for not more
2 than one additional period, pending compliance with this chapter
3 and department [board] rules. The additional period may not be less
4 than six months or more than 12 months.

5 SECTION 5.203. Section 604.203, Occupations Code, is
6 amended to read as follows:

7 Sec. 604.203. DISCIPLINARY PROCEDURE. The procedure by
8 which the department takes a disciplinary action and the procedure
9 by which a disciplinary action is appealed are governed by:

10 (1) department [board] rules for a contested case
11 hearing; and

12 (2) Chapter 2001, Government Code.

13 SECTION 5.204. Section 604.304(b), Occupations Code, is
14 amended to read as follows:

15 (b) If the person accepts the department's determination,
16 the department [commissioner of public health or the commissioner's
17 designee] by order shall approve the determination and assess the
18 proposed penalty.

19 SECTION 5.205. Section 604.305, Occupations Code, is
20 amended to read as follows:

21 Sec. 604.305. HEARING. (a) If the person requests a
22 hearing in a timely manner, the department shall:

23 (1) set a hearing; and

24 (2) give written notice of the hearing to the person [+
25 and]

26 [(3) designate a hearings examiner to conduct the
27 hearing].

1 (b) The hearings examiner shall:
2 (1) make findings of fact and conclusions of law; and
3 (2) promptly issue to the department [~~commissioner of~~
4 ~~public health or the commissioner's designee~~] a proposal for
5 decision as to the occurrence of the violation and the amount of any
6 proposed administrative penalty.

7 SECTION 5.206. The heading to Section 604.306, Occupations
8 Code, is amended to read as follows:

9 Sec. 604.306. DECISION BY DEPARTMENT [~~COMMISSIONER OR~~
10 ~~DESIGNEE~~].

11 SECTION 5.207. Section 604.306(a), Occupations Code, is
12 amended to read as follows:

13 (a) Based on the findings of fact, conclusions of law, and
14 proposal for decision, the department [~~commissioner of public~~
15 ~~health or the commissioner's designee~~] by order may determine that:

16 (1) a violation occurred and impose an administrative
17 penalty; or

18 (2) a violation did not occur.

19 SECTION 5.208. Section 604.311(b), Occupations Code, is
20 amended to read as follows:

21 (b) The department may assess reasonable expenses and costs
22 against a person in an administrative hearing if, as a result of the
23 hearing, an administrative penalty is assessed against the person.
24 The person shall pay expenses and costs assessed under this
25 subsection not later than the 30th day after the date the order of
26 the department [~~commissioner of public health or the commissioner's~~
27 ~~designee~~] requiring the payment of expenses and costs is final. The

1 department may refer the matter to the attorney general for
2 collection of the expenses and costs.

3 SECTION 5.209. Section 605.002(5), Occupations Code, is
4 amended to read as follows:

5 (5) "Department" means the [Texas] Department of State
6 Health Services.

7 SECTION 5.210. Section 605.101, Occupations Code, is
8 amended to read as follows:

9 Sec. 605.101. EXECUTIVE DIRECTOR. With the advice of the
10 board, the department [~~commissioner~~] shall appoint an executive
11 director to administer this chapter.

12 SECTION 5.211. Section 605.105(b), Occupations Code, is
13 amended to read as follows:

14 (b) A policy statement prepared under Subsection (a) must:

15 (1) cover an annual period;

16 (2) be updated annually;

17 (3) be reviewed by the Texas Workforce Commission
18 civil rights division [~~on Human Rights~~] for compliance with
19 Subsection (a)(1); and

20 (4) be filed with the governor.

21 SECTION 5.212. Section 605.152(b), Occupations Code, is
22 amended to read as follows:

23 (b) If the General Appropriations Act does not set the
24 amount of the fees, the board shall set the fees in amounts
25 reasonable and necessary for the administration of this chapter.

26 The fees for issuing or renewing a license must be in amounts
27 designed to allow the department and the board to recover from the

1 license holders all of the direct and indirect costs to the
2 department and to the board in administering and enforcing this
3 chapter.

4 SECTION 5.213. Section 605.2021(a), Occupations Code, is
5 amended to read as follows:

6 (a) In an investigation of a complaint filed with the board,
7 the board may request that the department [~~commissioner or the~~
~~commissioner's designee~~] approve the issuance of a subpoena. If
9 the request is approved, the board may issue a subpoena to compel
10 the attendance of a relevant witness or the production, for
11 inspection or copying, of relevant evidence that is in this state.

12 SECTION 5.214. Section 605.403, Occupations Code, is
13 amended to read as follows:

14 Sec. 605.403. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY.
15 [(a)] If the department [~~commissioner or the commissioner's~~
~~designee~~] determines that a violation occurred, the department
17 [~~commissioner or the designee may issue to the board a report~~
18 stating:

19 [(1) ~~the facts on which the determination is based,~~
20 and

21 [(2) ~~the commissioner's or the designee's~~
22 recommendation on the imposition of an administrative penalty,
23 including a recommendation on the amount of the penalty.

24 [(b) ~~Within 14 days after the date the report is issued, the~~
25 ~~commissioner or the commissioner's designee~~] shall give written
26 notice of the violation [~~report~~] to the person. The notice must:

27 (1) include a brief summary of the alleged violation;

1 (2) state the amount of the [recommended]
2 administrative penalty recommended by the department; and
3 (3) inform the person of the person's right to a
4 hearing on the occurrence of the violation, the amount of the
5 penalty, or both.

6 SECTION 5.215. Section 605.404, Occupations Code, is
7 amended to read as follows:

8 Sec. 605.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
9 Within 10 days after the date the person receives the notice, the
10 person in writing may:

11 (1) accept the determination and recommended
12 administrative penalty of the department [~~commissioner or the~~
13 ~~commissioner's designee~~]; or

14 (2) make a request for a hearing on the occurrence of
15 the violation, the amount of the penalty, or both.

16 (b) If the person accepts the determination and recommended
17 penalty of the department [~~commissioner or the commissioner's~~
18 ~~designee~~], the board by order shall approve the determination and
19 impose the recommended penalty.

20 SECTION 5.216. Section 605.405(a), Occupations Code, is
21 amended to read as follows:

22 (a) If the person requests a hearing or fails to respond in a
23 timely manner to the notice, the department [~~commissioner or the~~
24 ~~commissioner's designee~~] shall set a hearing and give written
25 notice of the hearing to the person.

26 SECTION 5.217. Sections 605.407(b) and (c), Occupations
27 Code, are amended to read as follows:

1 (b) Within the 30-day period prescribed by Subsection (a), a
2 person who files a petition for judicial review may:

3 (1) stay enforcement of the penalty by:

4 (A) paying the penalty to the court for placement
5 in an escrow account; or

6 (B) giving the court a supersedeas bond approved
7 by the court that:

8 (i) is for the amount of the penalty; and

9 (ii) is effective until all judicial review
10 of the board's order is final; or

11 (2) request the court to stay enforcement of the
12 penalty by:

13 (A) filing with the court a sworn affidavit of
14 the person stating that the person is financially unable to pay the
15 penalty and is financially unable to give the supersedeas bond; and

16 (B) giving a copy of the affidavit to the
17 department [~~commissioner or the commissioner's designee~~] by
18 certified mail.

19 (c) If the department [~~commissioner or the commissioner's~~
20 ~~designee~~] receives a copy of an affidavit under Subsection (b)(2),
21 the department [~~commissioner or the designee~~] may file with the
22 court, within five days after the date the copy is received, a
23 contest to the affidavit.

24 SECTION 5.218. Section 701.106(b), Occupations Code, is
25 amended to read as follows:

26 (b) A policy statement prepared under Subsection (a) must:

27 (1) cover an annual period;

1 (2) be updated annually;
2 (3) be reviewed by the Texas Workforce Commission
3 civil rights division [~~on Human Rights~~] for compliance with
4 Subsection (a)(1); and
5 (4) be filed with the governor.

6 SECTION 5.219. Section 701.152(b), Occupations Code, is
7 amended to read as follows:

8 (b) In adopting rules, the dietitians board shall consider
9 the rules and procedures of the [~~Texas Board of Health and the~~]
10 department and shall adopt procedural rules not inconsistent with
11 similar rules and procedures of the department [~~those entities~~].

12 SECTION 5.220. Section 701.154(a), Occupations Code, is
13 amended to read as follows:

14 (a) After consulting the [~~commissioner or the~~] department,
15 the dietitians board by rule shall set fees in amounts reasonable
16 and necessary to cover the cost of administering this chapter. The
17 fees for issuing or renewing a license must be in amounts designed
18 to allow the department and the dietitians board to recover from the
19 license holders all of the direct and indirect costs to the
20 department and to the dietitians board in administering and
21 enforcing this chapter.

22 SECTION 5.221. Section 701.157, Occupations Code, is
23 amended to read as follows:

24 Sec. 701.157. POWERS AND DUTIES OF DEPARTMENT [~~TEXAS BOARD~~
25 ~~OF HEALTH~~]. To implement this chapter, the department [~~Texas Board~~
26 ~~of Health~~]:

27 (1) shall request and receive any necessary assistance

1 from state educational institutions or other state agencies;

2 (2) shall prepare information of consumer interest

3 describing the regulatory functions of the dietitians board, the

4 procedures by which consumer complaints are filed and resolved, and

5 the profession of dietetics;

6 (3) shall prepare a registry of licensed dietitians

7 and provisional licensed dietitians and make the registry available

8 to the public, license holders, and appropriate state agencies; and

9 (4) may request the attorney general or the

10 appropriate county or district attorney to institute a suit to

11 enjoin a violation of this chapter in addition to any other action,

12 proceeding, or remedy authorized by law.

13 SECTION 5.222. Section 701.301(b), Occupations Code, is

14 amended to read as follows:

15 (b) The dietitians board [~~Texas Board of Health~~] by rule may

16 adopt a system under which licenses expire on various dates during

17 the year. For the year in which the license expiration date is

18 changed, a license fee payable on the original expiration date

19 shall be prorated on a monthly basis so that the license holder pays

20 only that portion of the fee allocable to the number of months the

21 license is valid. The license holder shall pay the total license

22 renewal fee on renewal of the license on the new expiration date.

23 SECTION 5.223. Section 701.503, Occupations Code, is

24 amended to read as follows:

25 Sec. 701.503. REPORT AND NOTICE OF VIOLATION AND PENALTY.

26 (a) If the department [~~commissioner or the commissioner's~~

27 ~~designee~~] determines that a violation occurred, the department

1 [commissioner or the designee] may issue to the dietitians board a
2 report stating:

3 (1) the facts on which the determination is based; and
4 (2) the department's [commissioner's or the
5 ~~designee's~~] recommendation on the imposition of an administrative
6 penalty, including a recommendation on the amount of the penalty.

7 (b) Within 14 days after the date the report is issued, the
8 department [commissioner or the commissioner's designee] shall
9 give written notice of the report to the person. The notice must:

10 (1) include a brief summary of the alleged violation;
11 (2) state the amount of the recommended administrative
12 penalty; and

13 (3) inform the person of the person's right to a
14 hearing on the occurrence of the violation, the amount of the
15 penalty, or both.

16 SECTION 5.224. Section 701.504, Occupations Code, is
17 amended to read as follows:

18 Sec. 701.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
19 Within 10 days after the date the person receives the notice, the
20 person in writing may:

21 (1) accept the determination and recommended
22 administrative penalty of the department [commissioner or the
23 commissioner's designee]; or

24 (2) make a request for a hearing on the occurrence of
25 the violation, the amount of the penalty, or both.

26 (b) If the person accepts the determination and recommended
27 penalty of the department [commissioner or the commissioner's

1 ~~designee~~, the dietitians board by order shall approve the
2 determination and impose the recommended penalty.

3 SECTION 5.225. Section 701.505(a), Occupations Code, is
4 amended to read as follows:

5 (a) If the person requests a hearing or fails to respond in a
6 timely manner to the notice, the department [commissioner or the
7 commissioner's designee] shall set a hearing and give written
8 notice of the hearing to the person.

9 SECTION 5.226. Sections 701.507(b) and (c), Occupations
10 Code, are amended to read as follows:

11 (b) Within the 30-day period prescribed by Subsection (a), a
12 person who files a petition for judicial review may:

13 (1) stay enforcement of the penalty by:

14 (A) paying the penalty to the court for placement
15 in an escrow account; or

16 (B) giving the court a supersedeas bond approved
17 by the court that:

18 (i) is for the amount of the penalty; and

19 (ii) is effective until all judicial review
20 of the dietitians board's order is final; or

21 (2) request the court to stay enforcement of the
22 penalty by:

23 (A) filing with the court a sworn affidavit of
24 the person stating that the person is financially unable to pay the
25 penalty and is financially unable to give the supersedeas bond; and

26 (B) giving a copy of the affidavit to the
27 department [commissioner or the commissioner's designee] by

1 certified mail.

2 (c) If the department [~~commissioner or the commissioner's~~
3 ~~designee~~] receives a copy of an affidavit under Subsection (b)(2),
4 the department [~~commissioner or the designee~~] may file with the
5 court, within five days after the date the copy is received, a
6 contest to the affidavit.

7 SECTION 5.227. Section 1952.001, Occupations Code, is
8 amended to read as follows:

9 Sec. 1952.001. DEFINITIONS. In this chapter:

10 (1) [~~"Board"~~ means the ~~Texas Board of Health~~.

11 [42] "Code enforcement" means the inspection of
12 public or private premises for the purpose of:

13 (A) identifying environmental hazards,
14 including:

15 (i) fire or health hazards;
16 (ii) nuisance violations;
17 (iii) unsafe building conditions; and
18 (iv) violations of any fire, health, or
19 building regulation, statute, or ordinance; and

20 (B) improving and rehabilitating those premises
21 with regard to those hazards.

22 (2) [43] "Code enforcement officer" means an agent of
23 this state or a political subdivision of this state who engages in
24 code enforcement.

25 (3) [44] "Department" means the [Texas] Department
26 of State Health Services.

27 (4) "Executive commissioner" means the executive

1 commissioner of the Health and Human Services Commission.

2 SECTION 5.228. The heading to Subchapter B, Chapter 1952,
3 Occupations Code, is amended to read as follows:

4 SUBCHAPTER B. ~~[BOARD]~~ POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
5 AND DEPARTMENT

6 SECTION 5.229. Section 1952.051, Occupations Code, is
7 amended to read as follows:

8 Sec. 1952.051. RULES. The executive commissioner ~~[board]~~
9 by rule shall:

10 (1) adopt standards and education requirements
11 consistent with those established under Chapter 654, Government
12 Code, for the registration of:

13 (A) code enforcement officers; and

14 (B) code enforcement officers in training; and

15 (2) prescribe application forms for original and
16 renewal certificates of registration.

17 SECTION 5.230. Section 1952.052, Occupations Code, is
18 amended to read as follows:

19 Sec. 1952.052. FEES. (a) The executive commissioner
20 ~~[board]~~ shall set fees in amounts that are reasonable and necessary
21 to cover the cost of administering this chapter.

22 (b) The executive commissioner shall set fees for issuing or
23 renewing a certificate of registration in amounts designed to allow
24 the department to recover from the certificate of registration
25 holders all of the department's direct and indirect costs in
26 administering and enforcing this chapter.

27 SECTION 5.231. Section 1952.053(b), Occupations Code, is

1 amended to read as follows:

2 (b) The register must include:

3 (1) the name, residence, date of birth, and social
4 security number of the applicant;

5 (2) the name and address of the employer or business of
6 the applicant;

7 (3) the date of the application;

8 (4) the education and experience qualifications of the
9 applicant;

10 (5) the action taken by the department regarding the
11 application and the date of the action;

12 (6) the serial number of any certificate of
13 registration issued to the applicant; and

14 (7) any other information required by department
15 [board] rule.

16 SECTION 5.232. Section 1952.102, Occupations Code, is
17 amended to read as follows:

18 Sec. 1952.102. ELIGIBILITY TO REGISTER AS CODE ENFORCEMENT
19 OFFICER. To be eligible to receive a certificate of registration as
20 a code enforcement officer, a person must:

21 (1) have at least one year of full-time experience in
22 the field of code enforcement;

23 (2) pass the examination conducted by the department
24 or the department's designee;

25 (3) pay the application, examination, and
26 registration fees; and

27 (4) meet any other requirements prescribed by this

1 chapter or by department [~~board~~] rule.

2 SECTION 5.233. Section 1952.105, Occupations Code, is
3 amended to read as follows:

4 Sec. 1952.105. RENEWAL OR REINSTATEMENT OF CERTIFICATE.

5 (a) A certificate of registration issued under this chapter
6 expires on the second [~~first~~] anniversary of the date of issuance
7 and may be renewed biennially [~~annually~~] on payment of the required
8 renewal fee and on completion of the [~~annual~~] continuing education
9 requirements prescribed by department rule [~~the board~~].

10 (b) The department may reinstate as provided by department
11 [~~board~~] rule a certificate of registration that was revoked for
12 failure to pay the renewal fee.

13 SECTION 5.234. Section 1952.1051, Occupations Code, is
14 amended to read as follows:

15 Sec. 1952.1051. CONTINUING EDUCATION. The executive
16 commissioner [~~board~~] by rule shall prescribe [~~annual~~] continuing
17 education requirements for code enforcement officers and code
18 enforcement officers in training that:

19 (1) establish the number of hours of continuing
20 education required for renewal of a certificate of registration;

21 (2) establish an approved curriculum that includes
22 material regarding changes in applicable law; and

23 (3) provide that the approved curriculum may be taught
24 by suitable public agencies and by private entities approved by the
25 department.

26 SECTION 5.235. Section 1952.152, Occupations Code, is
27 amended to read as follows:

1 Sec. 1952.152. PROCEDURE. The denial, suspension, or
2 revocation of a certificate of registration under this chapter is
3 governed by:

4 (1) department [~~the board's~~] rules for a contested
5 case hearing; and

6 (2) Chapter 2001, Government Code.

7 SECTION 5.236. Section 1952.253, Occupations Code, is
8 amended to read as follows:

9 Sec. 1952.253. [~~REPORT AND~~] NOTICE OF VIOLATION AND
10 PENALTY. [~~(a)~~] If the department [~~commissioner of public health or~~
~~the commissioner's designee~~] determines that a violation occurred,
12 the department [~~commissioner or the designee may issue to the~~
13 ~~department a report stating:~~

14 [~~(1) the facts on which the determination is based,~~
15 ~~and~~

16 [~~(2) the commissioner's or the designee's~~
17 ~~recommendation on the imposition of an administrative penalty,~~
18 ~~including a recommendation on the amount of the penalty.~~

19 [~~(b) Within 14 days after the date the report is issued, the~~
20 ~~commissioner of public health or the commissioner's designee~~] shall
21 give written notice of the violation [~~report~~] to the person. The
22 notice must:

23 (1) include a brief summary of the alleged violation;

24 (2) state the amount of the [~~recommended~~]
25 administrative penalty recommended by the department; and

26 (3) inform the person of the person's right to a
27 hearing on the occurrence of the violation, the amount of the

1 penalty, or both.

2 SECTION 5.237. Section 1952.254, Occupations Code, is
3 amended to read as follows:

4 Sec. 1952.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a)

5 Within 10 days after the date the person receives the notice, the
6 person in writing may:

7 (1) accept the determination and recommended
8 administrative penalty of the department [~~commissioner of public~~
9 ~~health or the commissioner's designee~~]; or

10 (2) make a request for a hearing on the occurrence of
11 the violation, the amount of the penalty, or both.

12 (b) If the person accepts the determination and recommended
13 penalty of the department [~~commissioner of public health or the~~
14 ~~commissioner's designee~~], the department by order shall approve the
15 determination and impose the recommended penalty.

16 SECTION 5.238. Section 1952.255(a), Occupations Code, is
17 amended to read as follows:

18 (a) If the person requests a hearing or fails to respond in a
19 timely manner to the notice, the department [~~commissioner of public~~
20 ~~health or the commissioner's designee~~] shall set a hearing and give
21 written notice of the hearing to the person.

22 SECTION 5.239. Sections 1952.257(b) and (c), Occupations
23 Code, are amended to read as follows:

24 (b) Within the 30-day period prescribed by Subsection (a), a
25 person who files a petition for judicial review may:

26 (1) stay enforcement of the penalty by:

27 (A) paying the penalty to the court for placement

1 in an escrow account; or
2 (B) giving the court a supersedeas bond approved
3 by the court that:

15 (c) If the department [~~commissioner of public health or the~~
16 ~~commissioner's designee~~] receives a copy of an affidavit under
17 Subsection (b)(2), the department [~~commissioner or the designee~~]
18 may file with the court, within five days after the date the copy is
19 received, a contest to the affidavit.

20 SECTION 5.240. Section 1953.001, Occupations Code, is
21 amended to read as follows:

22 Sec. 1953.001. DEFINITIONS. In this chapter:

23 (1) "Department" [Board] means the Department
24 [Texas Board] of State Health Services.

(3) "Sanitarian" means a person trained in sanitary

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1 science to perform duties relating to education and inspections in
2 environmental sanitation.

3 (4) [43] "Sanitation" means the study, art, and
4 technique of applying scientific knowledge to improve the human
5 environment for the purpose of promoting public health and welfare.

6 SECTION 5.241. Section 1953.003, Occupations Code, is
7 amended to read as follows:

Sec. 1953.003. EXEMPTIONS. This chapter does not apply to a person, including a physician, dentist, engineer, or veterinarian, who is licensed by an agency of this state other than the department [board] and who, by nature of the person's employment or duties, might be construed as being subject to this chapter.

13 SECTION 5.242. Subchapter B, Chapter 1953, Occupations
14 Code, is amended to read as follows:

15 SUBCHAPTER B. [BOARD] POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
16 AND DEPARTMENT

17 Sec. 1953.051. GENERAL DUTIES OF DEPARTMENT [BOARD]. The
18 department [board] shall:

21 [+] administer continuing education requirements;
22 and

(2) [] prescribe necessary forms.

24 Sec. 1953.0511. RULES. The executive commissioner shall
25 adopt rules to administer and enforce this chapter.

26 Sec. 1953.052. FEES; PAYMENT OF ADMINISTRATIVE COSTS. (a)
27 The executive commissioner by rule [board] shall prescribe fees

1 under this chapter.

2 (b) General revenue of the state may not be used to pay the
3 costs of administering this chapter in an amount that exceeds the
4 amount of fees received under this chapter.

5 (c) If the fees are inadequate to pay the costs of
6 administering this chapter, the executive commissioner [board] may
7 increase the fees to an amount sufficient to pay those costs.

8 (d) The executive commissioner shall set fees for issuing or
9 renewing a certificate of registration in amounts designed to allow
10 the department to recover from the certificate of registration
11 holders all of the department's direct and indirect costs in
12 administering and enforcing this chapter.

13 Sec. 1953.053. REGISTER OF APPLICATIONS. (a) The
14 department [board] shall keep a register of each application for a
15 certificate of registration under this chapter.

16 (b) The register must include:

17 (1) the name, age, and place of residence of the
18 applicant;

19 (2) the name and address of the employer or business
20 connection of the applicant;

21 (3) the date of the application;

22 (4) complete information regarding the applicant's
23 education and experience qualifications;

24 (5) the date the department [board] reviewed and acted
25 on the application;

26 (6) a description of the department's [board's] action
27 on the application;

1 (7) the serial number of any certificate of
2 registration issued to the applicant; and
3 (8) any other information the department [board]
4 determines necessary.

5 Sec. 1953.054. RECORD OF PROCEEDINGS. The department
6 [board] shall keep a record of proceedings under this chapter.

7 Sec. 1953.055. REPORTS. The department [board] shall
8 maintain a copy of each annual report and each report prepared by
9 the state auditor issued in connection with this chapter.

10 SECTION 5.243. Sections 1953.102, 1953.103, and 1953.104,
11 Occupations Code, are amended to read as follows:

12 Sec. 1953.102. ELIGIBILITY REQUIREMENTS. (a) To be
13 eligible to receive a certificate of registration as a professional
14 sanitarian, a person must:

15 (1) hold at least a bachelor's degree from an
16 accredited college or university that includes at least 30 semester
17 hours in basic or applied science;

18 (2) complete any additional training in the basic
19 sciences or public health the executive commissioner [board]
20 determines necessary to effectively serve as a professional
21 sanitarian; and

22 (3) have at least two years of full-time experience in
23 sanitation.

24 (b) The executive commissioner [board] by rule may
25 establish other qualifications for registration.

26 Sec. 1953.103. RECIPROCAL REGISTRATION. The department
27 [board] under rules adopted by the executive commissioner [board]

1 may enter into an agreement with another state to provide for
2 reciprocal registration if the other state provides by statute for
3 the registration of sanitarians.

4 Sec. 1953.104. ISSUANCE OF CERTIFICATE: PROFESSIONAL
5 SANITARIAN; TERM. (a) The department [board] shall issue a
6 certificate of registration as a professional sanitarian to a
7 person who:

8 (1) applies on the form prescribed by the department
9 [board];

10 (2) pays the registration fee set by the executive
11 commissioner by rule [board];

12 (3) meets the eligibility requirements prescribed by
13 Section 1953.102; and

14 (4) passes an examination under Subchapter D.

15 (b) A certificate of registration is valid for two years.

16 SECTION 5.244. Section 1953.105(a), Occupations Code, is
17 amended to read as follows:

18 (a) The department [On approval by the board, the board]
19 shall issue a certificate of registration as a sanitarian in
20 training to a person who:

21 (1) is employed in sanitation;

22 (2) meets the eligibility requirements prescribed by
23 Section 1953.102, other than the requirements relating to
24 experience;

25 (3) pays a registration fee prescribed by the
26 executive commissioner by rule [board] for a sanitarian in
27 training; and

1 (4) passes an examination under Subchapter D.

2 SECTION 5.245. Section 1953.106, Occupations Code, is
3 amended to read as follows:

4 Sec. 1953.106. RENEWAL OR REINSTATEMENT OF CERTIFICATE.

5 (a) To renew a certificate of registration under this chapter, a
6 professional sanitarian must:

7 (1) pay to the department [board] a renewal fee
8 prescribed by the executive commissioner by rule [board]; and

9 (2) provide proof of completion of continuing
10 education contact hours as prescribed by the executive commissioner
11 [board].

12 (b) The department [board] may reinstate a certificate of
13 registration as provided by department [board] rules that was
14 revoked for failure to pay the renewal fee.

15 SECTION 5.246. Subchapters D and E, Chapter 1953,
16 Occupations Code, are amended to read as follows:

17 SUBCHAPTER D. EXAMINATION

18 Sec. 1953.151. EXAMINATION. (a) To obtain a certificate of
19 registration under this chapter, an applicant must pass a written
20 examination prescribed by the department [board] that provides
21 evidence satisfactory to the department [board] that the applicant
22 is qualified for registration under this chapter.

23 (b) An applicant for a certificate of registration may not
24 take the examination unless the applicant pays the examination fee
25 prescribed by the executive commissioner by rule [board].

26 (c) In evaluating an applicant's performance on the
27 examination, the department [board] shall carefully consider the

1 applicant's knowledge and understanding of the principles of
2 sanitation and the physical, biological, and social sciences.

3 Sec. 1953.152. EXAMINATION RESULTS. (a) Not later than the
4 30th day after the examination date, the department [board] shall
5 notify each examinee of the results of the examination. If an
6 examination is graded or reviewed by a national testing service,
7 the department [board] shall notify each examinee of the results of
8 the examination not later than the 14th day after the date the
9 department [board] receives the results from the testing service.

10 (b) If the notice of the results of an examination graded or
11 reviewed by a national testing service will not be given before the
12 91st day after the examination date, the department [board] shall
13 notify each examinee of the reason for the delay before the 90th
14 day.

15 (c) If requested in writing by a person who fails the
16 examination, the department [board] shall provide to the person an
17 analysis of the person's performance on the examination.

18 SUBCHAPTER E. CERTIFICATE DENIAL AND DISCIPLINARY PROCEDURES

19 Sec. 1953.201. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.

20 (a) The department [board] may deny a person's application for a
21 certificate of registration if:

22 (1) the person's certificate or license to engage in a
23 profession in this state or elsewhere has been revoked for
24 unprofessional conduct, fraud, deceit, negligence, or misconduct
25 in the practice of the profession; or

26 (2) satisfactory proof is presented to the department
27 [board] establishing that the person has been found guilty of

1 unprofessional conduct, fraud, deceit, negligence, or misconduct
2 in the practice of a profession.

3 (b) The department [board] may suspend or revoke a
4 certificate of registration if the certificate holder:

5 (1) practiced fraud or deceit in obtaining the
6 certificate; or

7 (2) acted in a manner constituting gross negligence,
8 incompetency, or misconduct in the practice of sanitation.

9 Sec. 1953.202. HEARING. The department [board] may not
10 deny an application for a certificate of registration or suspend or
11 revoke a person's certificate until a hearing is held and the person
12 is given the opportunity to answer any charges filed with the
13 department [board].

14 SECTION 5.247. Section 1953.301, Occupations Code, is
15 amended to read as follows:

16 Sec. 1953.301. IMPOSITION OF ADMINISTRATIVE PENALTY. The
17 department [board] may impose an administrative penalty on a person
18 registered under this chapter who violates this chapter or a rule or
19 order adopted under this chapter.

20 SECTION 5.248. Sections 1953.303 and 1953.304, Occupations
21 Code, are amended to read as follows:

22 Sec. 1953.303. [~~REPORT AND~~] NOTICE OF VIOLATION AND
23 PENALTY. [(a)] If the department [~~commissioner of public health or~~
24 ~~the commissioner's designee~~] determines that a violation occurred,
25 the department [~~commissioner or the designee may issue to the board~~
26 ~~a report stating:~~]

27 (1) ~~the facts on which the determination is based;~~

1 and

2 [(2) the commissioner's or the designee's
3 recommendation on the imposition of an administrative penalty,
4 including a recommendation on the amount of the penalty.

5 [(b) Within 14 days after the date the report is issued, the
6 commissioner of public health or the commissioner's designee] shall
7 give written notice of the violation [~~report~~] to the person. The
8 notice must:

9 (1) include a brief summary of the alleged violation;
10 (2) state the amount of the [~~recommended~~]
11 administrative penalty recommended by the department; and
12 (3) inform the person of the person's right to a
13 hearing on the occurrence of the violation, the amount of the
14 penalty, or both.

15 Sec. 1953.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
16 Within 10 days after the date the person receives the notice, the
17 person in writing may:

18 (1) accept the determination and recommended
19 administrative penalty [~~of the commissioner of public health or the~~
20 ~~commissioner's designee~~]; or

21 (2) make a request for a hearing on the occurrence of
22 the violation, the amount of the penalty, or both.

23 (b) If the person accepts the determination and recommended
24 penalty [~~of the commissioner of public health or the commissioner's~~
25 ~~designee~~], the department [~~board~~] by order shall approve the
26 determination and impose the recommended penalty.

27 SECTION 5.249. Sections 1953.305(a) and (c), Occupations

1 Code, are amended to read as follows:

2 (a) If the person requests a hearing or fails to respond in a
3 timely manner to the notice, the department [~~commissioner of public~~
4 ~~health or the commissioner's designee~~] shall set a hearing and give
5 written notice of the hearing to the person.

6 (c) The administrative law judge shall make findings of fact
7 and conclusions of law and promptly issue to the department [~~board~~]
8 a proposal for a decision about the occurrence of the violation and
9 the amount of a proposed administrative penalty.

10 SECTION 5.250. Section 1953.306, Occupations Code, is
11 amended to read as follows:

12 Sec. 1953.306. DECISION BY DEPARTMENT [~~BOARD~~]. (a) Based
13 on the findings of fact, conclusions of law, and proposal for
14 decision, the department [~~board~~] by order may determine that:

15 (1) a violation occurred and impose an administrative
16 penalty; or

17 (2) a violation did not occur.

18 (b) The notice of the department's [~~board's~~] order given to
19 the person must include a statement of the right of the person to
20 judicial review of the order.

21 SECTION 5.251. Sections 1953.307(a), (b), and (c),
22 Occupations Code, are amended to read as follows:

23 (a) Within 30 days after the date the department's [~~board's~~]
24 order becomes final, the person shall:

25 (1) pay the administrative penalty; or

26 (2) file a petition for judicial review contesting the
27 occurrence of the violation, the amount of the penalty, or both.

1 (b) Within the 30-day period prescribed by Subsection (a), a
2 person who files a petition for judicial review may:

3 (1) stay enforcement of the penalty by:

4 (A) paying the penalty to the court for placement
5 in an escrow account; or

6 (B) giving the court a supersedeas bond approved
7 by the court that:

8 (i) is for the amount of the penalty; and

9 (ii) is effective until all judicial review
10 of the department's [board's] order is final; or

11 (2) request the court to stay enforcement of the
12 penalty by:

13 (A) filing with the court a sworn affidavit of
14 the person stating that the person is financially unable to pay the
15 penalty and is financially unable to give the supersedeas bond; and

16 (B) giving a copy of the affidavit to the
17 department [commissioner of public health or the commissioner's
18 designee] by certified mail.

19 (c) If the department [commissioner of public health or the
20 commissioner's designee] receives a copy of an affidavit under
21 Subsection (b)(2), the department [commissioner or the designee]
22 may file with the court, within five days after the date the copy is
23 received, a contest to the affidavit.

24 SECTION 5.252. Section 1954.002, Occupations Code, is
25 amended by amending Subdivisions (7) and (8) and adding Subdivision
26 (10-a) to read as follows:

27 (7) "Commissioner" means the commissioner of state

1 [public] health services.

2 (8) "Department" means the [Texas] Department of State
3 Health Services.

4 (10-a) "Executive commissioner" means the executive
5 commissioner of the Health and Human Services Commission.

6 SECTION 5.253. The heading to Subchapter B, Chapter 1954,
7 Occupations Code, is amended to read as follows:

8 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER [BOARD]
9 AND DEPARTMENT

10 SECTION 5.254. Section 1954.051, Occupations Code, is
11 amended to read as follows:

12 Sec. 1954.051. GENERAL RULEMAKING AUTHORITY. The executive
13 commissioner [board] shall adopt substantive and procedural rules
14 as necessary or desirable for the executive commissioner [board],
15 the department, and the commissioner to discharge their powers and
16 duties under this chapter.

17 SECTION 5.255. Section 1954.052, Occupations Code, is
18 amended to read as follows:

19 Sec. 1954.052. RULES REGARDING ASBESTOS CONCENTRATION
20 LEVELS. (a) The executive commissioner [board] may adopt rules
21 defining the maximum airborne asbestos concentrations that are:

22 (1) permissible outside of a regulated containment
23 area during an abatement activity; and
24 (2) acceptable for final clearance.

25 (b) The executive commissioner [board] may not by rule
26 identify any level of asbestos concentration as a safe exposure
27 level because any exposure to airborne asbestos is considered to

1 involve some risk.

2 SECTION 5.256. Section 1954.053, Occupations Code, is
3 amended to read as follows:

4 Sec. 1954.053. RULES REGARDING PERFORMANCE STANDARDS AND
5 WORK PRACTICES. The executive commissioner [board] may adopt rules
6 specifying:

7 (1) performance standards at least as stringent as
8 applicable federal standards; and

9 (2) work practices that affect asbestos removal or
10 encapsulation in a public building.

11 SECTION 5.257. Section 1954.054, Occupations Code, is
12 amended to read as follows:

13 Sec. 1954.054. RULES RESTRICTING ADVERTISING OR
14 COMPETITIVE BIDDING. (a) The executive commissioner [board] may
15 not adopt a rule restricting advertising or competitive bidding by
16 a person licensed or registered under this chapter except to
17 prohibit a false, misleading, or deceptive practice.

18 (b) In adopting [~~its~~] rules to prohibit a false, misleading,
19 or deceptive practice, the executive commissioner [board] may not
20 include a rule that:

21 (1) restricts the use of any medium for advertising;

22 (2) restricts the use of the personal appearance or
23 voice of the person in an advertisement;

24 (3) relates to the size or duration of an
25 advertisement by the person; or

26 (4) restricts the person's advertisement under a trade
27 name.

1 SECTION 5.258. Section 1954.055, Occupations Code, is
2 amended to read as follows:

3 Sec. 1954.055. RECIPROCITY AGREEMENT. The executive
4 commissioner [department] may adopt rules under this chapter to
5 effect reciprocity agreements with other states.

6 SECTION 5.259. Section 1954.056(a), Occupations Code, is
7 amended to read as follows:

8 (a) The executive commissioner [board] shall set [adopt a
9 schedule of the] fees under [that are provided by] this chapter in
10 amounts that are [and any other fee that is] reasonable and
11 necessary. The executive commissioner shall set fees for issuing
12 or renewing a license in amounts designed to allow the department to
13 recover from the license holders all of the department's direct and
14 indirect costs in administering and enforcing this chapter.

15 SECTION 5.260. Section 1954.059(a), Occupations Code, is
16 amended to read as follows:

17 (a) The department shall inspect:

18 (1) an asbestos abatement contractor during an
19 abatement project at least annually; and

20 (2) other licensed organizations in accordance with
21 department [board] rules.

22 SECTION 5.261. Sections 1954.060(a) and (c), Occupations
23 Code, are amended to read as follows:

24 (a) The executive commissioner [board] may adopt and the
25 department may enforce rules regarding demolition and renovation
26 activities to protect the public from asbestos emissions. At a
27 minimum, the rules must be sufficient to permit the department to

1 obtain authority from the United States Environmental Protection
2 Agency to implement and enforce in this state the provisions of 40
3 C.F.R. Part 61, Subpart M, that establish the requirements
4 applicable to the demolition and renovation of a facility,
5 including the disposal of asbestos-containing waste materials.

6 (c) The department [board] may exempt a demolition or
7 renovation project from the rules relating to demolition and
8 renovation activities adopted under Subsection (a) if:

9 (1) the project has received an exemption from the
10 United States Environmental Protection Agency exempting the
11 project from federal regulations; or

12 (2) the department [board] determines that:

13 (A) the project will use methods for the
14 abatement or removal of asbestos that provide protection for the
15 public health and safety at least equivalent to the protection
16 provided by the procedures required under department [board] rule
17 for the abatement or removal of asbestos; and

18 (B) the project does not violate federal law.

19 SECTION 5.262. Section 1954.061, Occupations Code, is
20 amended to read as follows:

21 Sec. 1954.061. MEMORANDUM OF UNDERSTANDING REGARDING
22 CERTAIN SOLID WASTE FACILITIES. The executive commissioner [board]
23 and the Texas [Natural Resource Conservation] Commission on
24 Environmental Quality by rule shall adopt a joint memorandum of
25 understanding regarding the inspection of solid waste facilities
26 that receive asbestos.

27 SECTION 5.263. Section 1954.101(b), Occupations Code, is

1 amended to read as follows:

2 (b) In accordance with a schedule established by department
3 ~~board~~ rules, a person may not sponsor or certify an asbestos
4 training course required for licensing or registration under this
5 chapter unless the person is licensed as a training sponsor.

6 SECTION 5.264. Sections [1954.102](#)(a) and (c), Occupations
7 Code, are amended to read as follows:

8 (a) The executive commissioner ~~board~~ shall determine and
9 specify the scope, purpose, eligibility, qualifications, and
10 compliance requirements for each class of license and any other
11 license necessary for the executive commissioner and department
12 ~~board~~ to carry out their ~~its~~ duties under this chapter.

13 (c) A laboratory may be licensed as an asbestos laboratory
14 only if the laboratory:

15 (1) is accredited by the National Voluntary Laboratory
16 and Analytical Proficiency Accreditation or is enrolled in the EPA
17 Proficiency Analytical Testing rounds, as appropriate; or

18 (2) has similar qualifications as required by the
19 executive commissioner ~~board~~.

20 SECTION 5.265. Section [1954.105](#)(a), Occupations Code, is
21 amended to read as follows:

22 (a) An applicant for a license to engage in asbestos
23 abatement or in another asbestos-related activity for which a
24 license is required under this chapter must:

25 (1) submit an application to the department on a form
26 prescribed by the department; and

27 (2) pay to the department a nonrefundable application

1 fee in the amount set by the executive commissioner by rule [board].

2 SECTION 5.266. Section 1954.106(a), Occupations Code, is
3 amended to read as follows:

4 (a) To qualify for a license under this chapter, an
5 applicant must meet the requirements of this section and any other
6 requirements established by the executive commissioner [board],
7 including asbestos-related education or experience requirements.

8 SECTION 5.267. Section 1954.107(a), Occupations Code, is
9 amended to read as follows:

10 (a) An individual may apply for a restricted license as an
11 asbestos abatement supervisor without the experience the executive
12 commissioner [board] by rule may require to be licensed as an
13 asbestos abatement supervisor if the individual:

14 (1) is an employee of a building owner or manager; and
15 (2) meets all other qualifications or requirements for
16 a license.

17 SECTION 5.268. Sections 1954.108(a) and (b), Occupations
18 Code, are amended to read as follows:

19 (a) An application for registration or the renewal of
20 registration as an asbestos abatement worker must be made on a form
21 provided by the department. An application for registration must
22 be accompanied by a nonrefundable fee set by the executive
23 commissioner by rule [board in an amount not to exceed \$50].

24 (b) The executive commissioner [board] shall determine the
25 criteria for registration or the renewal of registration as an
26 asbestos abatement worker.

27 SECTION 5.269. Section 1954.109, Occupations Code, is

1 amended to read as follows:

2 Sec. 1954.109. EXAMINATIONS. The executive commissioner
3 [board] may:

4 (1) require or authorize the use of standardized
5 examinations for licensing or registration under this chapter; and

6 (2) set fees [~~in amounts not to exceed \$200~~] for the
7 administration of the examinations.

8 SECTION 5.270. Section 1954.151(a), Occupations Code, is
9 amended to read as follows:

10 (a) The department may grant a provisional license or
11 registration to an applicant for a license or registration in this
12 state who:

13 (1) has been licensed or registered in good standing
14 to perform the relevant asbestos-related activity for at least two
15 years in another jurisdiction, including a foreign country, that
16 has licensing or registration requirements substantially
17 equivalent to the requirements of this chapter;

18 (2) is currently licensed or registered in that
19 jurisdiction;

20 (3) has passed a national or other examination
21 recognized by the executive commissioner [board] relating to the
22 relevant asbestos-related activity, if the executive commissioner
23 [board] requires an examination under Section 1954.109 to obtain
24 the license or registration required to perform that activity; and

25 (4) is sponsored by a person licensed under this
26 chapter with whom the provisional license or registration holder
27 will practice during the time the person holds the provisional

1 license or registration.

2 SECTION 5.271. Section 1954.153, Occupations Code, is
3 amended to read as follows:

4 Sec. 1954.153. ELIGIBILITY FOR LICENSE OR REGISTRATION.

5 The department shall issue a license or registration under
6 Subchapter C to a provisional license or registration holder who is
7 eligible to be licensed or registered under rules adopted under
8 Section 1954.055 or who:

9 (1) passes the part of the examination under Section
10 1954.109 that relates to the applicant's knowledge and
11 understanding of the laws and rules relating to the performance of
12 the relevant asbestos-related activity in this state, if the
13 executive commissioner [board] requires an examination under
14 Section 1954.109 to obtain the license or registration required to
15 perform that activity;

16 (2) meets the relevant academic and experience
17 requirements for the license or registration, as verified by the
18 department; and

19 (3) satisfies any other applicable license or
20 registration requirement under this chapter.

21 SECTION 5.272. Section 1954.201, Occupations Code, is
22 amended to read as follows:

23 Sec. 1954.201. [ANNUAL] LICENSE EXPIRATION AND RENEWAL
24 [~~REQUIRED~~]. (a) A license issued under this chapter expires on the
25 second [~~first~~] anniversary of its effective date and may be [~~or~~
26 ~~unless the license is~~] renewed [~~for a one-year term~~] as provided by
27 this subchapter. A person whose license has expired may not engage

1 in an activity for which a license is required until the license is
2 renewed.

3 (b) The executive commissioner [board] by rule may adopt a
4 system under which licenses expire on various dates during the
5 year. For a year in which the license expiration date is changed,
6 the department shall prorate license fees on a monthly basis so that
7 each license holder pays only that portion of the license fee that
8 is allocable to the number of months during which the license is
9 valid. On renewal of the license on the new expiration date, the
10 total renewal fee is payable.

11 SECTION 5.273. Section 1954.203(a), Occupations Code, is
12 amended to read as follows:

13 (a) A person may renew an unexpired license for an
14 additional two-year [~~one-year~~] term if the person:

15 (1) is otherwise entitled to be licensed;

16 (2) submits to the department a renewal application on
17 the form required by the department;

18 (3) pays to the department a nonrefundable renewal fee
19 [~~in an amount not to exceed the amount of the application fee~~
20 ~~required under Section 1954.105(a)~~];

21 (4) has successfully completed:

22 (A) the requirements for renewal; and

23 (B) a current physical examination; and

24 (5) has complied with any final order resulting from a
25 violation of this chapter.

26 SECTION 5.274. Section 1954.205(a), Occupations Code, is
27 amended to read as follows:

1 (a) The executive commissioner [board] shall set the term of
2 registration of an asbestos abatement worker.

3 SECTION 5.275. Sections 1954.256(a), (b), and (d),
4 Occupations Code, are amended to read as follows:

5 (a) The executive commissioner [board] shall adopt an
6 asbestos training approval plan to approve the training required
7 for a person to be licensed or registered under this chapter. In
8 adopting the plan, the executive commissioner [board] shall adopt
9 by reference the Model Accreditation Plan developed by the United
10 States Environmental Protection Agency.

11 (b) The executive commissioner [board] may establish other
12 requirements or change the number, design, or content of the plan
13 adopted under Subsection (a) as the executive commissioner [board]
14 determines desirable, provided that the plan is at least as
15 comprehensive and stringent as the Model Accreditation Plan.

16 (d) A licensed training sponsor shall provide to the
17 department in accordance with department [board] rules a record of
18 the persons who attend an asbestos training course for licensing or
19 registration under this chapter.

20 SECTION 5.276. Section 1954.258, Occupations Code, is
21 amended to read as follows:

22 Sec. 1954.258. COMPLIANCE WITH [BOARD] STANDARDS NOT A
23 DEFENSE TO CIVIL LIABILITY. Compliance with any minimum standards
24 adopted by the executive commissioner [board] under this chapter
25 does not constitute a defense to a civil action for damages arising
26 from a work activity affecting asbestos.

27 SECTION 5.277. Section 1954.301(d), Occupations Code, is

1 amended to read as follows:

2 (d) The department may place on probation a person whose
3 license or registration is suspended. If a suspension is probated,
4 the department may require the person to:

5 (1) report regularly to the department on matters that
6 are the basis of the probation;

7 (2) limit practice to the areas prescribed by the
8 department [board]; or

9 (3) continue or review professional education until
10 the person attains a degree of skill satisfactory to the department
11 [board] in those areas that are the basis of the probation.

12 SECTION 5.278. Section 1954.302, Occupations Code, is
13 amended to read as follows:

14 Sec. 1954.302. GROUNDS FOR DISCIPLINE OF LICENSE HOLDER.
15 The executive commissioner [board] by rule shall adopt the criteria
16 for the department to take disciplinary action against a license
17 holder under Section 1954.301. At a minimum, the criteria must
18 require disciplinary action against a license holder who:

19 (1) commits fraud or deception in obtaining or
20 attempting to obtain a license or a contract to perform an
21 asbestos-related activity;

22 (2) fails at any time to meet the qualifications for a
23 license;

24 (3) violates a rule adopted under this chapter;

25 (4) violates an applicable federal or state standard
26 for asbestos-related activities; or

27 (5) falsifies or fails to maintain a record of an

1 asbestos-related activity required by a federal agency or by the
2 department.

3 SECTION 5.279. Section 1954.303, Occupations Code, is
4 amended to read as follows:

5 Sec. 1954.303. GROUNDS FOR DISCIPLINE OF REGISTERED PERSON.
6 The department shall take disciplinary action under Section
7 1954.301 against a person registered under this chapter who:

8 (1) fraudulently or deceptively assigns, obtains, or
9 attempts to assign or obtain a registration or the renewal of a
10 registration; or

11 (2) violates:

12 (A) a federal, state, or local asbestos law or
13 rule; or

14 (B) an order issued by the executive commissioner
15 [board] or department.

16 SECTION 5.280. Section 1954.306, Occupations Code, is
17 amended to read as follows:

18 Sec. 1954.306. ADMINISTRATIVE PROCEDURE. A notice and
19 hearing required under this subchapter and judicial review of a
20 final administrative decision issued under this subchapter are
21 governed by Chapter 2001, Government Code, and the department
22 [board] rules for contested case hearings.

23 SECTION 5.281. Section 1954.307, Occupations Code, is
24 amended to read as follows:

25 Sec. 1954.307. REAPPLICATION FOLLOWING LICENSE REVOCATION
26 OR SUSPENSION. A person whose license is revoked or suspended may
27 not reapply for a license until after the period stated in a

1 schedule established by department [board] rule.

2 SECTION 5.282. Subchapter H, Chapter 1954, Occupations
3 Code, is amended to read as follows:

4 SUBCHAPTER H. ADMINISTRATIVE PENALTY

5 Sec. 1954.351. IMPOSITION OF ADMINISTRATIVE PENALTY. The
6 department [commissioner] may impose an administrative penalty on a
7 person who violates this chapter or a rule adopted or order issued
8 under this chapter.

9 Sec. 1954.352. AMOUNT OF PENALTY. (a) The amount of an
10 administrative penalty may not exceed \$10,000 a day for each
11 violation. Each day a violation continues may be considered a
12 separate violation for purposes of imposing a penalty.

13 (b) In determining the amount of the penalty, the department
14 [commissioner] shall consider:

- 15 (1) the seriousness of the violation;
16 (2) any hazard created to the health and safety of the
17 public;
18 (3) the person's history of previous violations; and
19 (4) any other matter that justice may require.

20 Sec. 1954.353. OPPORTUNITY FOR HEARING; ORDER. (a) The
21 department [commissioner] may impose an administrative penalty
22 under this subchapter only after the person charged with a
23 violation is given the opportunity for a hearing.

24 (b) If a hearing is held, the department [commissioner]
25 shall make findings of fact and issue a written decision as to:

- 26 (1) the occurrence of the violation; and
27 (2) the amount of any penalty that is warranted.

1 (c) If the person charged with a violation fails to exercise
2 the opportunity for a hearing, the department [~~commissioner~~], after
3 determining that a violation occurred and the amount of the penalty
4 that is warranted, may impose a penalty and shall issue an order
5 requiring the person to pay any penalty imposed.

6 (d) Not later than the 30th day after the date an order is
7 issued after determining that a violation occurred, the department
8 [~~commissioner~~] shall inform the person charged with the violation
9 of the amount of any penalty imposed.

10 (e) The department [~~commissioner~~] may consolidate a hearing
11 under this section with another proceeding.

12 Sec. 1954.354. OPTIONS FOLLOWING DECISION [+ PAY OR
13 ~~APPEAL~~]. (a) Not later than the 30th day after the date the
14 department's [~~commissioner's~~] decision or order becomes final as
15 provided by Section 2001.144, Government Code, the person shall:

16 (1) pay the administrative penalty; or
17 (2) file a petition for judicial review contesting the
18 fact of the violation, the amount of the penalty, or both.

19 (b) Within the 30-day period, a person who acts under
20 Subsection (a)(2) may:

21 (1) stay enforcement of the penalty by:
22 (A) [(+) paying the penalty to the court
23 [~~commissioner~~] for placement in an escrow account; or
24 (B) posting with the court [(+) giving the
25 ~~commissioner~~] a supersedeas bond in a form approved by the court
26 [~~commissioner~~] that [+]

27 [(+)] is for the amount of the penalty[+] and

1 ~~(B)~~ is effective until judicial review of the
2 department's [commissioner's] decision or order is final; or
3 (2) request that the department stay enforcement of
4 the penalty by:

5 (A) filing with the court a sworn affidavit of
6 the person stating that the person is financially unable to pay the
7 penalty and is financially unable to give the supersedeas bond; and
8 (B) sending a copy of the affidavit to the
9 department.

10 (c) If the department receives a copy of an affidavit under
11 Subsection (b)(2), the department may file with the court, within
12 five days after the date the copy is received, a contest to the
13 affidavit. The court shall hold a hearing on the facts alleged in
14 the affidavit as soon as practicable and shall stay the enforcement
15 of the penalty on finding that the alleged facts are true. The
16 person who files an affidavit has the burden of proving that the
17 person is financially unable to pay the penalty or to give a
18 supersedeas bond.

19 Sec. 1954.355. COLLECTION OF PENALTY. At the request of the
20 department [commissioner], the attorney general may bring a civil
21 action to recover an administrative penalty imposed under this
22 subchapter.

23 Sec. 1954.356. JUDICIAL REVIEW. Judicial review of a
24 decision or order of the department [commissioner] imposing a
25 penalty under this subchapter is instituted by filing a petition
26 with a district court in Travis County and is under the substantial
27 evidence rule as provided by Subchapter G, Chapter 2001, Government

1 Code.

2 Sec. 1954.357. REMITTANCE OF PENALTY AND INTEREST OR
3 RELEASE OF BOND. If after judicial review the administrative
4 penalty is reduced or is not upheld by the court, the department
5 [~~commissioner~~] shall:

6 (1) remit the appropriate amount, plus accrued
7 interest, to the person not later than the 30th day after the date
8 of the determination, if the person paid the penalty; or

9 (2) execute a release of the bond, if the person gave a
10 bond.

11 SECTION 5.283. Sections 1955.001(1), (2), and (3),
12 Occupations Code, are amended to read as follows:

13 (1) [~~"Board"~~ means the ~~Texas Board of Health~~.

14 [~~(2)~~] "Child-occupied facility" means a building or
15 part of a building constructed before 1978, including a day-care
16 center, preschool, or kindergarten classroom, that is visited
17 regularly by the same child, six years of age or younger, at least
18 two days in any calendar week if the visits are for at least:

19 (A) three hours each day; and
20 (B) 60 hours each year.

21 (2) [~~(3)~~] "Department" means the [~~Texas~~] Department
22 of State Health Services.

23 (3) "Executive commissioner" means the executive
24 commissioner of the Health and Human Services Commission.

25 SECTION 5.284. Section 1955.002, Occupations Code, is
26 amended to read as follows:

27 Sec. 1955.002. RULES RESTRICTING ADVERTISING OR

1 COMPETITIVE BIDDING. (a) The executive commissioner [board] may
2 not adopt rules restricting advertising or competitive bidding by a
3 certified or accredited person except to prohibit false,
4 misleading, or deceptive practices.

5 (b) The executive commissioner [board] may not include in
6 the [~~its~~] rules to prohibit false, misleading, or deceptive
7 practices a rule that:

- 8 (1) restricts the use of any advertising medium;
- 9 (2) restricts the use of a certified or accredited
10 person's personal appearance or voice in an advertisement;
- 11 (3) relates to the size or duration of an
12 advertisement by the certified or accredited person; or
- 13 (4) restricts the certified or accredited person's
14 advertisement under a trade name.

15 SECTION 5.285. Section 1955.051(d), Occupations Code, is
16 amended to read as follows:

17 (d) Rules adopted by the executive commissioner under this
18 section must:

- 19 (1) set minimum training requirements for use by
20 accredited training providers;
- 21 (2) set standards for the reliability, effectiveness,
22 and safety of lead-based paint activities in target housing;
- 23 (3) set standards for accrediting training providers;
- 24 (4) require the use of certified and accredited
25 personnel in a lead-based paint activity in target housing or in a
26 child-occupied facility;
- 27 (5) be revised as necessary to:

1 (A) comply with federal law and rules; and
2 (B) maintain eligibility for federal funding;
3 (6) facilitate reciprocity and communication with
4 other states having a certification and accreditation program;
5 (7) provide for the revocation of the certification or
6 accreditation of a person certified or accredited by the
7 department; and
8 (8) provide for financial assurance for a person
9 certified or accredited by the department.

10 SECTION 5.286. Section 1955.052(a), Occupations Code, is
11 amended to read as follows:

12 (a) The executive commissioner [board] by rule may require a
13 person involved in a lead-based paint activity in target housing or
14 a public area that the department determines creates a public
15 health hazard to be certified. The department shall delay
16 implementation of the certification requirement for six months
17 after the date the rule is adopted.

18 SECTION 5.287. Section 1955.053, Occupations Code, is
19 amended to read as follows:

20 Sec. 1955.053. FEES. The executive commissioner by rule
21 [department] may impose a fee to cover the cost of administering the
22 program. The executive commissioner shall set fees for issuing or
renewing a certification or accreditation in amounts designed to
allow the department to recover from the certification and
accreditation holders all of the department's direct and indirect
costs in administering and enforcing this chapter.

27 SECTION 5.288. Section 1955.055, Occupations Code, is

1 amended to read as follows:

2 Sec. 1955.055. TERM OF CERTIFICATION OR ACCREDITATION;
3 EXPIRATION. (a) A certification or accreditation is valid for two
4 years.

5 (b) The executive commissioner [board] by rule may adopt a
6 system under which certifications or accreditations expire on
7 various dates during the year. For the year in which the expiration
8 date is changed, the department shall prorate certification or
9 accreditation fees on a monthly basis so that each certified or
10 accredited person pays only that portion of the certification or
11 accreditation fee that is allocable to the number of months during
12 which the certification or accreditation is valid. On renewal of
13 the certification or accreditation on the new expiration date, the
14 total certification or accreditation renewal fee is payable.

15 (c) [b] A person whose certification or accreditation has
16 expired may not engage in activities that require certification or
17 accreditation until the certification or accreditation has been
18 renewed.

19 SECTION 5.289. Section 1955.101, Occupations Code, is
20 amended to read as follows:

21 Sec. 1955.101. DISCIPLINARY ACTION BY DEPARTMENT. The
22 department shall revoke, suspend, or refuse to renew a
23 certification or accreditation or shall reprimand a certified or
24 accredited person for a violation of this chapter or a department
25 [board] rule.

26 SECTION 5.290. Section 1955.102, Occupations Code, is
27 amended to read as follows:

1 Sec. 1955.102. PROBATION. (a) The department [board] may
2 place on probation a person whose certification or accreditation is
3 suspended.

4 (b) The department [board] may require a person whose
5 certification or accreditation suspension is probated to:

6 (1) report regularly to the department on matters that
7 are the basis of the probation;

8 (2) limit practice to the areas prescribed by the
9 department [board]; or

10 (3) continue or review professional education until
11 the person attains a degree of skill satisfactory to the department
12 [board] in those areas that are the basis of the probation.

13 SECTION 5.291. Section 1955.103(b), Occupations Code, is
14 amended to read as follows:

15 (b) The executive commissioner [board] shall adopt rules
16 relating to the imposition and collection of an administrative
17 penalty.

18 SECTION 5.292. Section 1958.001, Occupations Code, is
19 amended to read as follows:

20 Sec. 1958.001. DEFINITIONS. In this chapter:

21 (1) ~~"Board"~~ means the Texas Board of Health.

22 (2) ~~"Commissioner"~~ means the commissioner of public
23 health.

24 (3) "Department" means the [Texas] Department of
25 State Health Services.

26 (2) "Executive commissioner" means the executive
27 commissioner of the Health and Human Services Commission.

1 (3) [~~(4)~~] "License" means a license issued under this
2 chapter.

3 (4) [~~(5)~~] "Mold" means any living or dead fungi or
4 related products or parts, including spores, hyphae, and
5 mycotoxins.

6 (5) [~~(6)~~] "Mold assessment" means:

7 (A) an inspection, investigation, or survey of a
8 dwelling or other structure to provide the owner or occupant with
9 information regarding the presence, identification, or evaluation
10 of mold;

11 (B) the development of a mold management plan or
12 remediation protocol; or

13 (C) the collection or analysis of a mold sample.

14 (6) [~~(7)~~] "Mold remediation" means the removal,
15 cleaning, sanitizing, demolition, or other treatment, including
16 preventive activities, of mold or mold-contaminated matter that was
17 not purposely grown at that location.

18 SECTION 5.293. Section 1958.053, Occupations Code, is
19 amended to read as follows:

20 Sec. 1958.053. GENERAL RULEMAKING AUTHORITY. The executive
21 commissioner [~~board~~] shall adopt substantive and procedural rules
22 as necessary or desirable for the [~~board,~~] department[, and
23 ~~commissioner~~] to discharge its [~~their~~] powers and duties under this
24 chapter.

25 SECTION 5.294. Section 1958.054, Occupations Code, is
26 amended to read as follows:

27 Sec. 1958.054. RULES REGARDING PERFORMANCE STANDARDS AND

1 WORK PRACTICES. The executive commissioner [board] by rule shall
2 establish minimum performance standards and work practices for
3 conducting a mold assessment or mold remediation in this state.

4 SECTION 5.295. Section 1958.055(a), Occupations Code, is
5 amended to read as follows:

6 (a) The executive commissioner [board] shall establish
7 reasonable and necessary fees to administer this chapter, including
8 fees for licenses, registrations, and examinations. [. The board
9 shall set the fees] in amounts [an amount] sufficient to recover the
10 costs of administering this chapter [, not to exceed the caps
11 established under Subsection (b)]. The executive commissioner
12 shall set fees for issuing or renewing a license in amounts designed
13 to allow the department to recover from the license holders all of
14 the department's direct and indirect costs in administering and
15 enforcing this chapter.

16 SECTION 5.296. Section 1958.056(b), Occupations Code, is
17 amended to read as follows:

18 (b) The executive commissioner [board] shall adopt rules
19 regarding compliance investigations.

20 SECTION 5.297. Section 1958.058, Occupations Code, is
21 amended to read as follows:

22 Sec. 1958.058. SAFETY STANDARDS. The executive
23 commissioner by rule [board] may develop and establish mold safety
24 standards for license holders if appropriate scientific
25 information exists regarding the effect of mold.

26 SECTION 5.298. Section 1958.059, Occupations Code, is
27 amended to read as follows:

1 Sec. 1958.059. CODE OF ETHICS. The executive commissioner
2 [board] by rule shall adopt a code of ethics for license holders
3 that promotes the education of mold assessors and mold remediatos
4 concerning the ethical, legal, and business principles that should
5 govern their conduct.

6 SECTION 5.299. Section 1958.101(b), Occupations Code, is
7 amended to read as follows:

8 (b) The executive commissioner [board] shall adopt rules
9 regarding:

10 (1) the scope of mold-related work for which a license
11 is required, including the supervision of employees or other
12 persons by license holders; and

13 (2) renewal requirements for a license issued under
14 this chapter.

15 SECTION 5.300. Subchapter C, Chapter 1958, Occupations
16 Code, is amended by adding Section 1958.1011 to read as follows:

17 Sec. 1958.1011. TERM OF LICENSE. A license issued under
18 this chapter is valid for two years.

19 SECTION 5.301. Section 1958.103, Occupations Code, is
20 amended to read as follows:

21 Sec. 1958.103. REGISTRATION REQUIREMENTS FOR EMPLOYEES.
22 The executive commissioner [board] may adopt rules to require the
23 registration of employees supervised by license holders.

24 SECTION 5.302. Section 1958.104, Occupations Code, is
25 amended to read as follows:

26 Sec. 1958.104. RULES REGARDING LICENSE APPLICATION. The
27 executive commissioner [board] shall adopt rules regarding a

1 license application. The executive commissioner [board] shall
2 adopt rules that establish minimum requirements for a license,
3 including:

- 4 (1) the type of license;
5 (2) [~~the term of the license,~~
6 [~~(3)~~] the qualifications for the license, including
7 any previous training required under Section 1958.106;
8 (3) [~~(4)~~] renewal requirements for the license,
9 including ongoing continuing education required under Section
10 1958.106; and
11 (4) [~~(5)~~] liability insurance requirements for the
12 license.

13 SECTION 5.303. Section 1958.106(a), Occupations Code, is
14 amended to read as follows:

15 (a) The executive commissioner [board] shall adopt rules
16 regarding training required under this chapter and continuing
17 education required for a license holder under this chapter.

18 SECTION 5.304. Section 1958.107, Occupations Code, is
19 amended to read as follows:

20 Sec. 1958.107. RECIPROCITY. The executive commissioner
21 [board] may adopt rules that facilitate reciprocity and
22 communication with other states that have a similar licensing
23 program.

24 SECTION 5.305. Section 1958.153(c), Occupations Code, is
25 amended to read as follows:

26 (c) The executive commissioner [board] shall adopt rules to
27 implement this section, including rules:

1 (1) describing the information that must be provided
2 in the notice; and
3 (2) authorizing verbal notification to the department
4 in an emergency.

5 SECTION 5.306. Section 1958.154(c), Occupations Code, is
6 amended to read as follows:

7 (c) The executive commissioner [board] shall adopt rules to
8 implement this section, other than rules described by Subsection
9 (d).

10 SECTION 5.307. Section 1958.155(c), Occupations Code, is
11 amended to read as follows:

12 (c) A license holder who is not an individual shall disclose
13 to the department the name, address, and occupation of each person
14 that has an ownership interest in the license holder. The license
15 holder shall report any changes in ownership to the department. The
16 executive commissioner [board] shall adopt rules to implement this
17 section, including rules regarding the form of the disclosure and
18 the time required to make disclosures or to report a change in
19 ownership.

20 SECTION 5.308. Section 1958.251, Occupations Code, is
21 amended to read as follows:

22 Sec. 1958.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The
23 department [commissioner] may impose an administrative penalty on a
24 person who violates this chapter or a rule adopted or order issued
25 under this chapter.

26 SECTION 5.309. Section 1958.252(b), Occupations Code, is
27 amended to read as follows:

1 (b) In determining the amount of the penalty, the department
2 [commissioner] shall consider:

3 (1) whether the violation was committed knowingly,

4 intentionally, or fraudulently;

5 (2) the seriousness of the violation;

6 (3) any hazard created to the health and safety of the
7 public;

8 (4) the person's history of previous violations; and

9 (5) any other matter that justice may require.

10 SECTION 5.310. Section 1958.253(a), Occupations Code, is
11 amended to read as follows:

12 (a) The department [commissioner] may choose not to impose
13 an administrative penalty under this subchapter if, not later than
14 the 10th day after the date of written notice of the violation under
15 Section 1958.254, the person provides conclusive evidence that the
16 circumstances giving rise to the violation have been corrected and
17 all actual damages are paid.

18 SECTION 5.311. Sections 1958.254(a), (c), (d), (e), and
19 (f), Occupations Code, are amended to read as follows:

20 (a) The department [commissioner] may impose an
21 administrative penalty under this subchapter only after the person
22 charged with a violation is given a written notice and the
23 opportunity for a hearing.

24 (c) If a hearing is held, the department [commissioner]
25 shall make findings of fact and issue a written decision as to:

26 (1) the occurrence of the violation; and

27 (2) the amount of any penalty that is warranted.

1 (d) If the person charged with a violation fails to exercise
2 the opportunity for a hearing, the department [~~commissioner~~], after
3 determining that a violation occurred and the amount of the penalty
4 that is warranted, may impose a penalty and shall issue an order
5 requiring the person to pay any penalty imposed.

6 (e) Not later than the 30th day after the date the
7 department [~~commissioner~~] issues an order after determining that a
8 violation occurred, the department [~~commissioner~~] shall inform the
9 person charged with the violation of the amount of any penalty
10 imposed.

11 (f) The department [~~commissioner~~] may consolidate a hearing
12 under this section with another proceeding.

13 SECTION 5.312. Section 1958.255, Occupations Code, is
14 amended to read as follows:

15 Sec. 1958.255. OPTIONS FOLLOWING DECISION [± PAY OR APPEAL].

16 (a) Not later than the 30th day after the date the department's
17 [~~commissioner's~~] decision or order becomes final as provided by
18 Section 2001.144, Government Code, the person shall:

19 (1) pay the administrative penalty; or

20 (2) file a petition for judicial review contesting the
21 fact of the violation, the amount of the penalty, or both.

22 (b) Within the 30-day period, a person who acts under
23 Subsection (a)(2) may:

24 (1) stay enforcement of the penalty by:

25 (A) [(+) paying the penalty to the court
26 [~~commissioner~~] for placement in an escrow account; or

27 (B) posting with the court [(+) giving the

1 ~~commissioner~~] a supersedeas bond in a form approved by the court

2 ~~commissioner~~] that[~~+~~

3 [~~(A)~~] is for the amount of the penalty[~~+~~] and

4 [~~(B)~~] is effective until judicial review of the

5 department's ~~commissioner's~~ decision or order is final; or

6 (2) request that the department stay enforcement of

7 the penalty by:

8 (A) filing with the court a sworn affidavit of

9 the person stating that the person is financially unable to pay the

10 penalty and is financially unable to give the supersedeas bond; and

11 (B) sending a copy of the affidavit to the

12 department.

13 (c) If the department receives a copy of an affidavit under

14 Subsection (b)(2), the department may file with the court, within

15 five days after the date the copy is received, a contest to the

16 affidavit. The court shall hold a hearing on the facts alleged in

17 the affidavit as soon as practicable and shall stay the enforcement

18 of the penalty on finding that the alleged facts are true. The

19 person who files an affidavit has the burden of proving that the

20 person is financially unable to pay the penalty or to give a

21 supersedeas bond.

22 SECTION 5.313. Section 1958.256, Occupations Code, is

23 amended to read as follows:

24 Sec. 1958.256. COLLECTION OF PENALTY. At the request of the

25 department ~~[commissioner]~~, the attorney general may bring a civil

26 action to recover an administrative penalty imposed under this

27 subchapter.

1 SECTION 5.314. Section 1958.257, Occupations Code, is
2 amended to read as follows:

3 Sec. 1958.257. JUDICIAL REVIEW. Judicial review of a
4 decision or order of the department [~~commissioner~~] imposing a
5 penalty under this subchapter is instituted by filing a petition
6 with a district court in Travis County and is under the substantial
7 evidence rule as provided by Subchapter G, Chapter 2001, Government
8 Code.

9 SECTION 5.315. Section 1958.258, Occupations Code, is
10 amended to read as follows:

11 Sec. 1958.258. REMITTANCE OF PENALTY AND INTEREST OR
12 RELEASE OF BOND. If after judicial review the administrative
13 penalty is reduced or is not upheld by the court, the department
14 [~~commissioner~~] shall:

15 (1) remit the appropriate amount, plus accrued
16 interest, to the person not later than the 30th day after the date
17 of the determination, if the person paid the penalty; or

18 (2) execute a release of the bond, if the person gave a
19 bond.

20 SECTION 5.316. Section 1958.301(b), Occupations Code, is
21 amended to read as follows:

22 (b) The department [~~commissioner~~] may request the attorney
23 general or the district, county, or city attorney having
24 jurisdiction to bring an action to collect a civil penalty under
25 this section.

26 SECTION 5.317. Section 1958.302, Occupations Code, is
27 amended to read as follows:

1 Sec. 1958.302. INJUNCTIVE RELIEF. The department
2 [~~commissioner~~] may request the attorney general or the district,
3 county, or city attorney having jurisdiction to bring an action for
4 a restraining order, injunction, or other relief the court
5 determines is appropriate if it appears to the department that a
6 person is violating or has violated this chapter or a rule adopted
7 under this chapter.

8 SECTION 5.318. The following provisions of the Occupations
9 Code are repealed:

- 10 (1) Section 110.001(1);
11 (2) Section 352.002(1);
12 (3) Section 353.002(1);
13 (4) Section 402.001(1);
14 (5) Section 403.001(1);
15 (6) Section 503.002(1-a);
16 (7) Section 503.206;
17 (8) Section 505.002(2-a);
18 (9) Section 603.2041(e);
19 (10) Section 605.002(2);
20 (11) Section 1954.002(6);
21 (12) Sections 1954.056(b), (c), and (d);
22 (13) Section 1958.055(b); and
23 (14) Chapter 2152.

24 ARTICLE 6. CHANGES AFFECTING OTHER CODES

25 SECTION 6.001. Section 15.001, Agriculture Code, is amended
26 to read as follows:

27 Sec. 15.001. DEFINITIONS. In this chapter [~~subchapter~~]:

1 (1) "Farmers market" means a location at which a group
2 of two or more farmers that are certified under the department's
3 farmers market certification program offer produce for retail sale.

4 (2) "Food coupon" means any redemptive coupon issued
5 by the [Texas] Department of State Health Services under this
6 chapter [subchapter] that is exchangeable only for produce at a
7 farmers market.

8 (3) "Produce" means fresh fruits or vegetables.

9 (4) "W.I.C. program" means the federal special
10 supplemental food program for women, infants, and children
11 administered by the [Texas] Department of State Health Services.

12 SECTION 6.002. Section 15.002, Agriculture Code, is amended
13 to read as follows:

14 Sec. 15.002. ESTABLISHMENT OF SPECIAL NUTRITION PROGRAM.
15 The [Texas] Department of State Health Services may establish a
16 special nutrition program to distribute to certain participants of
17 the W.I.C. program food coupons that are redeemable only at farmers
18 markets located in areas in which the program is implemented.

19 SECTION 6.003. Section 15.003, Agriculture Code, is amended
20 to read as follows:

21 Sec. 15.003. ELIGIBILITY; AMOUNT OF ALLOTMENT. (a) A
22 person is eligible to participate in the special nutrition program
23 if the person is enrolled in the W.I.C. program and resides in an
24 area in which the special nutrition program is implemented. The
25 [Texas] Department of State Health Services shall determine the
26 eligibility of potential participants.

27 (b) Only the [Texas] Department of State Health Services may

1 determine the dollar amount of each participant's monthly allotment
2 of food coupons.

3 SECTION 6.004. Section 15.005, Agriculture Code, is amended
4 to read as follows:

5 Sec. 15.005. RULES. The executive commissioner of the
6 Health and Human Services Commission [~~Texas Board of Health~~] shall
7 adopt rules under this chapter [~~subchapter~~] that provide for:

8 (1) the design, printing, and denominations of the
9 food coupons;

10 (2) the procedure for the delivery of the food coupons
11 to participants;

12 (3) the procedure for the redemption of food coupons
13 by the sellers of the produce; and

14 (4) other rules necessary for carrying out the
15 purposes of this chapter [~~subchapter~~].

16 SECTION 6.005. Section 15.007, Agriculture Code, is amended
17 to read as follows:

18 Sec. 15.007. PROGRAM FUNDS. The [~~Texas~~] Department of
19 State Health Services may accept gifts and grants from the federal
20 government, the state, and private sources as well as legislative
21 appropriations for the program authorized by this chapter
22 [~~subchapter~~]. The use of gifts and grants other than legislative
23 appropriations is subject, after their appropriation, only to
24 limitations contained in the gift or grant.

25 SECTION 6.006. Article 46B.001, Code of Criminal Procedure,
26 is amended to read as follows:

27 Art. 46B.001. DEFINITIONS. In this chapter:

1 (1) ~~"Department"~~ means the Department of State Health
2 ~~Services.~~

3 ~~(2)~~ "Inpatient mental health facility" has the
4 meaning assigned by Section 571.003, Health and Safety Code.

5 (2) "Intellectual disability" has the meaning
6 assigned by Section 591.003, Health and Safety Code.

7 (3) "Local mental health authority" has the meaning
8 assigned by Section 571.003, Health and Safety Code.

9 (4) "Local intellectual and developmental disability
10 ~~mental retardation~~] authority" has the meaning assigned by Section
11 531.002, Health and Safety Code.

12 (5) "Mental health facility" has the meaning assigned
13 by Section 571.003, Health and Safety Code.

14 (6) "Mental illness" has the meaning assigned by
15 Section 571.003, Health and Safety Code.

16 (7) ~~"Mental retardation" has the meaning assigned by~~
17 ~~Section 591.003, Health and Safety Code.~~

18 ~~(8)~~ "Residential care facility" has the meaning
19 assigned by Section 591.003, Health and Safety Code.

20 (8) ~~(9)~~ "Electronic broadcast system" means a
21 two-way electronic communication of image and sound between the
22 defendant and the court and includes secure Internet
23 videoconferencing.

24 SECTION 6.007. Article 46B.021(e), Code of Criminal
25 Procedure, is amended to read as follows:

26 (e) The court may appoint as experts under this chapter
27 qualified psychiatrists or psychologists employed by the local

1 mental health authority or local intellectual and developmental
2 disability [~~mental retardation~~] authority. The local mental health
3 authority or local intellectual and developmental disability
4 [~~mental retardation~~] authority is entitled to compensation and
5 reimbursement as provided by Article 46B.027.

6 SECTION 6.008. Article 46B.024, Code of Criminal Procedure,
7 is amended to read as follows:

8 Art. 46B.024. FACTORS CONSIDERED IN EXAMINATION. During an
9 examination under this subchapter and in any report based on that
10 examination, an expert shall consider, in addition to other issues
11 determined relevant by the expert, the following:

12 (1) the capacity of the defendant during criminal
13 proceedings to:

14 (A) rationally understand the charges against
15 the defendant and the potential consequences of the pending
16 criminal proceedings;

17 (B) disclose to counsel pertinent facts, events,
18 and states of mind;

19 (C) engage in a reasoned choice of legal
20 strategies and options;

21 (D) understand the adversarial nature of
22 criminal proceedings;

23 (E) exhibit appropriate courtroom behavior; and

24 (F) testify;

25 (2) as supported by current indications and the
26 defendant's personal history, whether the defendant:

27 (A) is a person with [~~has a~~] mental illness; or

1 (B) is a person with an intellectual disability
2 [~~mental retardation~~];

3 (3) whether the identified condition has lasted or is
4 expected to last continuously for at least one year;

5 (4) the degree of impairment resulting from the mental
6 illness or intellectual disability [~~mental retardation~~], if
7 existent, and the specific impact on the defendant's capacity to
8 engage with counsel in a reasonable and rational manner; and

9 (5) if the defendant is taking psychoactive or other
10 medication:

11 (A) whether the medication is necessary to
12 maintain the defendant's competency; and

13 (B) the effect, if any, of the medication on the
14 defendant's appearance, demeanor, or ability to participate in the
15 proceedings.

16 SECTION 6.009. Article [46B.025](#)(b), Code of Criminal
17 Procedure, is amended to read as follows:

18 (b) If in the opinion of an expert appointed under Article
19 [46B.021](#) the defendant is incompetent to proceed, the expert shall
20 state in the report:

21 (1) the symptoms, exact nature, severity, and expected
22 duration of the deficits resulting from the defendant's mental
23 illness or intellectual disability [~~mental retardation~~], if any,
24 and the impact of the identified condition on the factors listed in
25 Article [46B.024](#);

26 (2) an estimate of the period needed to restore the
27 defendant's competency, including whether the defendant is likely

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1 to be restored to competency in the foreseeable future; and
2 (3) prospective treatment options, if any,
3 appropriate for the defendant.

4 SECTION 6.010. Article 46B.027, Code of Criminal Procedure,
5 is amended to read as follows:

6 Art. 46B.027. COMPENSATION OF EXPERTS; REIMBURSEMENT OF
7 FACILITIES. (a) For any appointment under this chapter, the county
8 in which the indictment was returned or information was filed shall
9 pay for services described by Articles [46B.021\(a\)\(1\)](#) and (2). If
10 those services are provided by an expert who is an employee of the
11 local mental health authority or local intellectual and
12 developmental disability [~~mental retardation~~] authority, the
13 county shall pay the authority for the services.

14 (b) The county in which the indictment was returned or
15 information was filed shall reimburse a facility that accepts a
16 defendant for examination under this chapter for expenses incurred
17 that are [determined by the department to be] reasonably necessary
18 and incidental to the proper examination of the defendant.

19 SECTION 6.011. Articles 46B.073(c), (d), and (e), Code of
20 Criminal Procedure, are amended to read as follows:

21 (c) If the defendant is charged with an offense listed in
22 Article [17.032\(a\)](#), other than an offense listed in Article
23 [17.032\(a\)\(6\)](#), or the indictment alleges an affirmative finding
24 under Section 3g(a)(2), Article [42.12](#), the court shall enter an
25 order committing the defendant to the maximum security unit of any
26 facility designated by the Department of State Health Services
27 [redacted], to an agency of the United States operating a mental

1 hospital, or to a Department of Veterans Affairs hospital.

2 (d) If the defendant is not charged with an offense
3 described by Subsection (c) and the indictment does not allege an
4 affirmative finding under Section 3g(a)(2), Article [42.12](#), the
5 court shall enter an order committing the defendant to a mental
6 health facility or residential care facility determined to be
7 appropriate by the local mental health authority or local
8 intellectual and developmental disability [~~mental retardation~~]
9 authority.

10 (e) Notwithstanding Subsections (b), (c), and (d) and
11 notwithstanding the contents of the applicable order of commitment,
12 in a county in which the Department of State Health Services
13 [~~department~~] operates a jail-based restoration of competency pilot
14 program under Article [46B.090](#), a defendant for whom an order is
15 issued under this article committing the defendant to a mental
16 health facility or residential care facility shall be provided
17 competency restoration services at the jail under the pilot program
18 if the service provider at the jail determines the defendant will
19 immediately begin to receive services. If the service provider at
20 the jail determines the defendant will not immediately begin to
21 receive competency restoration services, the defendant shall be
22 transferred to the appropriate mental health facility or
23 residential care facility as provided by the court order. This
24 subsection expires September 1, 2017.

25 SECTION 6.012. Article [46B.076](#)(a), Code of Criminal
26 Procedure, is amended to read as follows:

27 (a) If the defendant is found incompetent to stand trial,

1 not later than the date of the order of commitment or of release on
2 bail, as applicable, the court shall send a copy of the order to the
3 facility [of the department] to which the defendant is committed or
4 the outpatient treatment program to which the defendant is
5 released. The court shall also provide to the facility or
6 outpatient treatment program copies of the following made available
7 to the court during the incompetency trial:

8 (1) reports of each expert;
9 (2) psychiatric, psychological, or social work
10 reports that relate to the mental condition of the defendant;
11 (3) documents provided by the attorney representing
12 the state or the attorney representing the defendant that relate to
13 the defendant's current or past mental condition;
14 (4) copies of the indictment or information and any
15 supporting documents used to establish probable cause in the case;
16 (5) the defendant's criminal history record; and
17 (6) the addresses of the attorney representing the
18 state and the attorney representing the defendant.

19 SECTION 6.013. Article [46B.077\(a\)](#), Code of Criminal
20 Procedure, is amended to read as follows:

21 (a) The facility to which the defendant is committed or the
22 outpatient treatment program to which the defendant is released on
23 bail shall:

24 (1) develop an individual program of treatment;
25 (2) assess and evaluate whether the defendant is
26 likely to be restored to competency in the foreseeable future; and
27 (3) report to the court and to the local mental health

1 authority or to the local intellectual and developmental disability
2 [mental retardation] authority on the defendant's progress toward
3 achieving competency.

4 SECTION 6.014. Article 46B.082(b), Code of Criminal
5 Procedure, is amended to read as follows:

6 (b) If before the 15th day after the date on which the court
7 received notification under Article 46B.079 a defendant committed
8 to a facility [of the department] or ordered to participate in an
9 outpatient treatment program has not been transported to the court
10 that issued the order under Article 46B.072 or 46B.073, as
11 applicable, the head of the facility to which the defendant is
12 committed or the provider of the outpatient treatment program in
13 which the defendant is participating shall cause the defendant to
14 be promptly transported to the court and placed in the custody of
15 the sheriff of the county in which the court is located. The county
16 in which the court is located shall reimburse the Department of
17 State Health Services or the Department of Aging and Disability
18 Services, as appropriate, [department] for the mileage and per diem
19 expenses of the personnel required to transport the defendant,
20 calculated in accordance with rates provided in the General
21 Appropriations Act for state employees.

22 SECTION 6.015. Article 46B.083(b), Code of Criminal
23 Procedure, is amended to read as follows:

24 (b) If the head of the facility or the outpatient treatment
25 program provider believes that the defendant is a person with an
26 intellectual disability [mental retardation], the head of the
27 facility or the outpatient treatment program provider shall have

1 submitted to the court an affidavit stating the conclusions reached
2 as a result of the examination.

3 SECTION 6.016. Article 46B.090, Code of Criminal Procedure,
4 is amended by amending Subsection (a) and adding Subsection (a-1)
5 to read as follows:

6 (a) In this article, "department" means the Department of
7 State Health Services.

8 (a-1) If the legislature appropriates to the department the
9 funding necessary for the department to operate a jail-based
10 restoration of competency pilot program as described by this
11 article, the department shall develop and implement the pilot
12 program in one or two counties in this state that choose to
13 participate in the pilot program. In developing the pilot program,
14 the department shall coordinate and allow for input from each
15 participating county.

16 SECTION 6.017. The heading to Article 46B.103, Code of
17 Criminal Procedure, is amended to read as follows:

18 Art. 46B.103. CIVIL COMMITMENT HEARING: INTELLECTUAL
19 DISABILITY [MENTAL RETARDATION].

20 SECTION 6.018. Articles 46B.103(a) and (d), Code of
21 Criminal Procedure, are amended to read as follows:

22 (a) If it appears to the court that the defendant may be a
23 person with an intellectual disability [~~mental retardation~~], the
24 court shall hold a hearing to determine whether the defendant is a
25 person with an intellectual disability [~~mental retardation~~].

26 (d) In the proceedings conducted under this subchapter for a
27 defendant described by Subsection (a):

1 (1) an application to have the defendant declared a
2 person with an intellectual disability [~~mental retardation~~] may not
3 be required;

4 (2) the provisions of Subtitle D, Title 7, Health and
5 Safety Code, relating to notice of hearing do not apply; and

6 (3) appeals from the criminal court proceedings are to
7 the court of appeals as in the proceedings for commitment to a
8 residential care facility under Subtitle D, Title 7, Health and
9 Safety Code.

10 SECTION 6.019. Article 46B.104, Code of Criminal Procedure,
11 is amended to read as follows:

12 Art. 46B.104. CIVIL COMMITMENT PLACEMENT: FINDING OF
13 VIOLENCE. A defendant committed to a facility as a result of
14 proceedings initiated under this chapter shall be committed to the
15 maximum security unit of any facility designated by the Department
16 of State Health Services [~~department~~] if:

17 (1) the defendant is charged with an offense listed in
18 Article 17.032(a), other than an offense listed in Article
19 17.032(a)(6); or

20 (2) the indictment charging the offense alleges an
21 affirmative finding under Section 3g(a)(2), Article 42.12.

22 SECTION 6.020. Articles 46B.105(a), (b), and (e), Code of
23 Criminal Procedure, are amended to read as follows:

24 (a) Unless a defendant is determined to be manifestly
25 dangerous by a [~~department~~] review board established under
26 Subsection (b), not later than the 60th day after the date the
27 defendant arrives at the maximum security unit, the defendant shall

1 be transferred to:

2 (1) a unit of an inpatient mental health facility

3 other than a maximum security unit;

4 (2) a residential care facility; or

5 (3) a program designated by a local mental health

6 authority or a local intellectual and developmental disability

7 [~~mental retardation~~] authority.

8 (b) The commissioner of state health services [~~mental~~

9 ~~health and mental retardation~~] shall appoint a review board of five

10 members, including one psychiatrist licensed to practice medicine

11 in this state and two persons who work directly with persons with

12 mental illness or an intellectual disability [~~mental retardation~~],

13 to determine whether the defendant is manifestly dangerous and, as

14 a result of the danger the defendant presents, requires continued

15 placement in a maximum security unit.

16 (e) If the superintendent of the facility at which the

17 maximum security unit is located disagrees with the determination,

18 the matter shall be referred to the commissioner of state health

19 services [~~mental health and mental retardation~~]. The commissioner

20 shall decide whether the defendant is manifestly dangerous.

21 SECTION 6.021. Article 46B.106(a), Code of Criminal

22 Procedure, is amended to read as follows:

23 (a) A defendant committed to a facility as a result of the

24 proceedings initiated under this chapter, other than a defendant

25 described by Article 46B.104, shall be committed to:

26 (1) a facility designated by the Department of State

27 Health Services or the Department of Aging and Disability Services,

1 as appropriate [department]; or

2 (2) an outpatient treatment program.

3 SECTION 6.022. Article 46B.107(a), Code of Criminal
4 Procedure, is amended to read as follows:

5 (a) The release of a defendant committed under this chapter
6 from the Department of State Health Services, the Department of
7 Aging and Disability Services [department], an outpatient
8 treatment program, or another [a] facility [of a defendant
9 committed under this chapter] is subject to disapproval by the
10 committing court if the court or the attorney representing the
11 state has notified the head of the facility or outpatient treatment
12 provider, as applicable, to which the defendant has been committed
13 that a criminal charge remains pending against the defendant.

14 SECTION 6.023. Articles 46B.151(a), (b), and (c), Code of
15 Criminal Procedure, are amended to read as follows:

16 (a) If a court is required by Article 46B.084(f) or by its
17 appropriate determination under Article 46B.071 to proceed under
18 this subchapter, or if the court is permitted by Article 46B.004(e)
19 to proceed under this subchapter, the court shall determine whether
20 there is evidence to support a finding that the defendant is either
21 a person with mental illness or a person with an intellectual
22 disability [mental retardation].

23 (b) If it appears to the court that there is evidence to
24 support a finding of mental illness or an intellectual disability
25 [mental retardation], the court shall enter an order transferring
26 the defendant to the appropriate court for civil commitment
27 proceedings and stating that all charges pending against the

1 defendant in that court have been dismissed. The court may order
2 the defendant:

3 (1) detained in jail or any other suitable place
4 pending the prompt initiation and prosecution by the attorney for
5 the state or other person designated by the court of appropriate
6 civil proceedings to determine whether the defendant will be
7 committed to a mental health facility or residential care facility;
8 or

9 (2) placed in the care of a responsible person on
10 satisfactory security being given for the defendant's proper care
11 and protection.

12 (c) Notwithstanding Subsection (b), a defendant placed in a
13 facility of the Department of State Health Services or the
14 Department of Aging and Disability Services [department] pending
15 civil hearing under this article may be detained in that facility
16 only with the consent of the head of the facility and pursuant to an
17 order of protective custody issued under Subtitle C, Title 7,
18 Health and Safety Code.

19 SECTION 6.024. Sections 51.933(b), (c), and (e), Education
20 Code, are amended to read as follows:

21 (b) The executive commissioner of the Health and Human
22 Services Commission [Texas Board of Health] may require
23 immunizations against the diseases listed in Subsection (a) and
24 additional diseases for students at any institution of higher
25 education who are pursuing a course of study in a human or animal
26 health profession, and the executive commissioner [board] may
27 require those immunizations for any students in times of an

1 emergency or epidemic in a county where the commissioner of state
2 [public] health services has declared such an emergency or
3 epidemic.

4 (c) An institution of higher education, in conjunction with
5 the [Texas] Department of State Health Services, should provide
6 individual notice to each student applying for admission regarding:

7 (1) the consequences of not being current on
8 immunization for certain diseases;

9 (2) the age groups most vulnerable to these vaccine
10 preventable diseases; and

11 (3) local providers of immunization services.

12 (e) The exception provided by Subsection (d)(1)(B) does not
13 apply in a time of emergency or epidemic declared by the
14 commissioner of state [public] health services.

15 SECTION 6.025. Sections [1104.406\(a\)](#) and (c), Estates Code,
16 are amended to read as follows:

17 (a) The department shall obtain criminal history record
18 information that is maintained by the Department of Public Safety
19 or the Federal Bureau of Investigation identification division
20 relating to each individual who is or will be providing
21 guardianship services to a ward of or referred by the department,
22 including:

23 (1) an employee of or an applicant selected for an
24 employment position with the department;

25 (2) a volunteer or an applicant selected to volunteer
26 with the department;

27 (3) an employee of or an applicant selected for an

1 employment position with a business entity or other person who
2 contracts with the department to provide guardianship services to a
3 ward referred by the department; [and]

4 (4) a volunteer or an applicant selected to volunteer
5 with a business entity or other person described by Subdivision
6 (3); and

7 (5) a contractor or an employee of a contractor who
8 provides services to a ward of the Department of Aging and
9 Disability Services under a contract with the estate of the ward.

10 (c) The department must annually obtain the information in
11 Subsection (a) regarding employees, contractors, or volunteers
12 providing guardianship services.

13 SECTION 6.026. The following provisions are repealed:

14 (1) the heading to Subchapter A, Chapter 15,
15 Agriculture Code; and

16 (2) Section 1, Chapter 112 (H.B. 434), Acts of the 55th
17 Legislature, Regular Session, 1957 (Article 12691-2, Vernon's
18 Texas Civil Statutes).

19 ARTICLE 7. EFFECTIVE DATE

20 SECTION 7.001. This Act takes effect immediately if it
21 receives a vote of two-thirds of all the members elected to each
22 house, as provided by Section 39, Article III, Texas Constitution.
23 If this Act does not receive the vote necessary for immediate
24 effect, this Act takes effect September 1, 2015.