I certify that the attached is a true and correct copy of HB18 which was filed of record on MAR 8 1989 and referred to the committee on: Public Health

Betty Murray
Chief Clerk of the House

1989 MAR 15 AM 8 48

HOUSE OF REPRESENTATIVES

FILED MAR 8 1989

By McKinney Edwards Rudd

H.B. No. 18

A BILL TO BE ENTITLED

AN ACT

relating to the office of rural health care, surveys of hospitals and physicians, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers; providing civil penalties.

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

SECTION 1. This Act may be cited as the Omnibus Rural Health Care Rescue Act.

SECTION 2. Article 4414b, Revised Statutes, is amended by adding Sections 1.11 and 1.12 to read as follows:

Sec. 1.11. OFFICE OF RURAL HEALTH CARE. (a) The office of rural health care is in the department to promote access to health care in rural areas.

(b) The commissioner shall appoint a director to administer the office of rural health care. The director must have a history of involvement with rural health care practice or issues.

(c) The office of rural health care, in consultation with the advisory committee on rural health care, shall establish mechanisms to ensure access to medical care in rural areas and to recruit and retain practitioners in those areas.

Sec. 1.12. IMPACT STATEMENT ON PROPOSED RULES. (a) Before

the adoption of a rule, including the amendment or repeal of a rule, the Texas Department of Health, the Texas Department of Human Services, and the Texas Department of Mental Health and Mental Retardation shall request an impact statement from the office of rural health care that describes the effect of the proposed rule on rural health care and makes recommendations concerning the proposed rule.

(b) Each agency covered by this section shall consider fully the recommendations of the office of rural health care concerning the proposed rule.

SECTION 3. Article 4414b, Revised Statutes, is amended by adding Section 1.13 to read as follows:

Sec. 1.13. ADVISORY COMMITTEE ON RURAL HEALTH CARE. (a) The board shall appoint a committee to advise the board and the office of rural health care on the health care needs of rural residents and the delivery of health care to rural populations.

(b) The board shall appoint the advisory committee to provide for a balanced representation of the geographical regions of the state.

(c) The advisory committee is composed of nine members, including:

(1) two physicians licensed to practice in this state who have been in active practice in a rural area for the five years preceding appointment;

(2) one professional nurse registered to practice in this state who has been in active practice in a rural area for the five years preceding appointment;

(3) one hospital administrator who is a member of the Academy of Hospital Administrators and who has been actively engaged in hospital administration in a rural area for the five years preceding appointment;

(4) one allied health practitioner who is licensed, registered, or certified by the state licensing board for the practitioner's speciality, or who is accredited by a recognized professional organization if licensing, registration, or certification is not required by law, and who has practiced in a rural area for the five years preceding appointment; and

(5) three public members who reside in rural areas.

(d) A person is not eligible to be appointed or to serve as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the health care field;

(2) is employed by a health care facility, corporation, or agency, or by a corporation authorized to underwrite health care insurance;

(3) governs or administers a health care facility, corporation, or agency;

(4) has a financial interest, other than a consumer's interest, in a health care facility, corporation, or agency; or

(5) meets the criteria for appointment provided by Subsections (c)(1) through (c)(4) of this section.

(e) Advisory committee members serve for staggered six-year terms, with the terms of three members expiring August 31 of each odd-numbered year.

(f) A vacancy on the advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(g) A member of the advisory committee is entitled to reimbursement for expenses incurred in performing duties under this section. The reimbursement may not exceed the amount specified in the General Appropriations Act for travel and per diem allowances for state employees.

(h) The advisory committee may elect a chairman, vice-chairman, and secretary from among its members and may adopt rules for the conduct of its activities.

SECTION 4. Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended by adding Section 5 to read as follows:

Sec. 5. SURVEYS OF PHYSICIANS ON MEDICAL STAFF. The Texas Department of Health shall ensure that a licensed physician involved in direct patient care as defined by the Texas State Board of Medical Examiners is included on each survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) to survey physicians on the medical staff of a hospital.

SECTION 5. The Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) is amended by adding Section 5B to read as follows:

Sec. 5B. (a) In this section:

(1) "Active labor" means labor at a time at which:

(A) delivery is imminent;

(B) there is inadequate time to safely transfer

the patient to another hospital before delivery; or

(C) a transfer may threaten the health and safety of the patient or unborn child.

(2) "Emergency medical condition" means a medical condition that is manifested by acute symptoms, including severe pain, of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's life in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any body organ or part.

(3) "Emergency services" means services that are usually and customarily available at a hospital and that must be provided immediately for further medical examination and treatment as required to:

(A) stabilize an emergency medical condition; or

(B) provide for the care of a woman in active labor or, if the hospital is not equipped for that service, provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

(4) "Emergency hospital patient transfer" means the transfer of a patient with an emergency medical condition or in active labor in a manner that conforms with board rules relating to hospital patient transfers from a hospital that is not capable of providing the appropriate level of emergency services to a general hospital that is capable of providing the appropriate level of

emergency services.

(5) "Person" means:

(A) an individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative; or

(B) a hospital district, county, municipality, or other political subdivision, and includes a department, division, board, or other agency of a political subdivision.

(b) Except as authorized by rules adopted by the Texas Board of Health, a person who owns or operates a general hospital, is an officer or employee of a general hospital, or is a member of the medical staff of a general hospital may not deny emergency services available at that hospital to an individual because the individual is unable to pay for the services when:

(1) the individual is the subject of an emergency hospital patient transfer request from a transferring physician and a transferring hospital;

(2) the individual is diagnosed as being in active labor or as having an emergency medical condition and is determined to be in need of emergency services that are available at the prospective receiving general hospital by a receiving physician who is a member of the medical staff of that hospital; and

(3) both the transferring physician and the receiving physician who is a member of the medical staff of the prospective receiving general hospital agree that the transferring hospital cannot provide the appropriate level of care but that the receiving general hospital does have appropriate facilities, services, and

1 staff for providing that care.

2 (c) A receiving physician and a receiving general hospital
3 that provide emergency services to an individual after an emergency
4 hospital patient transfer authorized under Subsection (b) of this
5 section may return the transferred individual to the transferring
6 physician and the transferring hospital if the return transfer is
7 conducted in a manner that conforms with the hospital patient
8 transfer rules adopted by the Texas Board of Health under this Act.
9 The transferring physician and transferring hospital that
10 originated the emergency hospital patient transfer may not refuse
11 to accept the return of the individual if the original transferring
12 hospital has appropriate facilities, services, and staff and the
13 return transfer is conducted in a manner that conforms with board
14 rules.

15 (d) The governing body of each hospital shall adopt binding
16 policies relating to the provision of emergency services to
17 hospital transfer patients that are consistent with board rules.
18 If possible, each governing body shall implement its policy
19 relating to the provision of emergency services by adopting
20 emergency services agreements with other hospitals.

21 (e) The board may adopt rules to implement and enforce this
22 section.

23 (f) This section does not relieve an individual of the
24 individual's obligation to pay for services provided by a hospital
25 if the individual can pay for those services.

26 SECTION 6. Section 7(a), Texas Hospital Licensing Law
27 (Article 4437f, Vernon's Texas Civil Statutes), is amended to read

as follows:

(a) Applications for licenses shall be made to the Licensing Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that:

(1) there are one or more physicians on the medical staff of the hospital;

(2) these physicians are currently licensed by the Texas State Board of Medical Examiners; and

(3) the Governing Body of the hospital has adopted and implemented a patient transfer policy in accordance with Sections 5(b) and (d) of this Act <u>and an emergency hospital patient transfer policy in accordance with Section 5B of this Act</u>.

SECTION 7. Section 9B(d), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) If a hospital does not timely adopt, implement, and enforce a patient transfer policy in accordance with Sections 5(b) and (d) of this Act <u>and an emergency hospital patient transfer policy in accordance with Section 5B of this Act</u>, the facility is subject to a civil penalty of not more than $1,000 for each day of violation and for each act of violation. In determining the amount of the penalty, the district court shall consider the facility's history of previous violations, the seriousness of the violation, if the health and safety of the public was threatened by the violation, and the demonstrated good faith of the facility.

SECTION 8. Section 9C, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9C. A person harmed by the failure of a hospital to timely adopt, implement, or enforce a patient transfer policy in accordance with Sections 5(b) and (d) of this Act, or an emergency hospital patient transfer policy in accordance with Section 5B of this Act, may petition the district court of the county in which the person resides, or if the person is not a resident of the state, a district court of Travis County, for appropriate injunctive relief. Such person also may pursue remedies for civil damages existing under current common law.

SECTION 9. Section 74.001, Civil Practice and Remedies Code, is designated as Subchapter A with a heading to read as follows:

SUBCHAPTER A. PROVISIONS RELATING TO NONMEDICAL PERSONNEL

SECTION 10. Chapter 74, Civil Practice and Remedies Code, is amended by adding Subchapter B and by renumbering and amending Section 74.002 to read as follows:

SUBCHAPTER B. PROVISIONS RELATING TO MEDICAL PERSONNEL

Sec. 74.011. DEFINITIONS. In this subchapter:

(1) "Emergency medical care" means care given for a medical condition that is manifested by acute symptoms, including severe pain, of sufficient severity that the absence of immediate medical attention could result in:

(A) placing the patient's health in jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any body organ or

part.

(2) "Emergency prehospital care" means care provided to the sick or injured before or during transportation to a medical facility, including any necessary stabilization of the sick or injured in connection with that transportation.

(3) "Gross negligence" has the meaning assigned by Section 41.001.

Sec. 74.012. PERSONS CERTIFIED AS EMERGENCY MEDICAL SERVICES PERSONNEL [~~74.002.--UNLICENSED--MEDICAL--PERSONNEL~~]. (a) Persons who are training or are certified as emergency medical services personnel under the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) and [~~not--licensed--in--the--healing arts~~] who in good faith administer emergency care that is not grossly negligent [~~as-emergency-medical-service-personnel~~] are not liable in civil damages for an act performed in administering the care [~~unless-the-act-is--wilfully--or--wantonly--negligent~~]. This section applies without regard to whether the care is provided for or in expectation of remuneration.

(b) A claimant under this section must prove gross negligence by clear and convincing evidence, and the burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence.

Sec. 74.013. TRAINING PROGRAMS. (a) A state agency, political subdivision of the state, or a private organization that sponsors, authorizes, supports, finances, or supervises the training of emergency medical services personnel in a program approved by the Texas Department of Health is not liable for civil

damages for an act or omission that is not grossly negligent and that relates to the delivery of care during the training program.

(b) A person who is certified by the Texas Department of Health as a program instructor, examiner, or course coordinator under the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) is not liable for civil damages for an act or omission that is not grossly negligent and that relates to the delivery of care during a training program for emergency medical services personnel.

Sec. 74.014. PHYSICIANS GIVING INSTRUCTIONS. (a) A physician who acts in good faith while giving instructions that are not grossly negligent relating to emergency prehospital care to a specially skilled emergency medical technician or a paramedic emergency medical technician is not liable for civil damages as a result of issuing the instructions.

(b) A specially skilled emergency medical technician or a paramedic emergency medical technician who follows the instructions of a physician and renders care that is not grossly negligent and that is rendered in good faith is not liable for civil damages as a result of following the physician's instructions.

Sec. 74.015. EMERGENCY CARE. (a) A hospital in this state, an employee or person acting on behalf of the hospital who works in the facility and provides patient care, and a physician or person licensed in the healing arts who in good faith renders emergency medical care that is not grossly negligent is not liable for civil damages as a result of the medical care.

(b) The protections provided by Subsection (a) do not apply

to medical care or treatment:

(1) that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient; or

(2) that is unrelated to the original medical emergency.

(c) A claimant under this section must prove gross negligence by clear and convincing evidence, and the burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence.

(d) In an action for damages that involves a claim of negligence arising from the provision of emergency medical care, the trier of fact shall consider, together with all other relevant matters:

(1) whether the person providing care lacked the patient's medical history or was unable to obtain a full medical history, including the knowledge of preexisting medical conditions, allergies, and medications;

(2) the lack of a preexisting physician-patient relationship;

(3) the circumstances constituting the emergency; and

(4) the degree of care and skill ordinarily exercised by reputable members of the physician's profession in the same or similar locality, in like cases, and under similar emergency circumstances.

(e) In an action for damages that involves a claim of negligence against a physician who provided emergency medical care,

the court may admit expert medical testimony as to the standard of care only from physicians who have practiced in the same speciality as the defendant on at least a half-time basis during the preceding two years.

SECTION 11. Subchapter L, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Sections 12.02 and 12.03 to read as follows:

Sec. 12.02. LIABILITY FOR OBSTETRICAL CARE FOR INDIGENT PERSONS. A physician, hospital, or other health care provider that provides obstetrical care for an indigent person, including medical or health care under the medical assistance program established by Chapter 32, Human Resources Code, or the Maternal and Infant Health Improvement Act (Article 4447y, Vernon's Texas Civil Statutes), is liable in an action based on a health care liability claim only to the extent provided for state government under Section 101.023(a), Civil Practice and Remedies Code, unless the physician, hospital, or other health care provider would otherwise qualify under Section 101.023(b) or (c), Civil Practice and Remedies Code, in which case those limits apply.

Sec. 12.03. LIABILITY FOR EMERGENCY OBSTETRICAL CARE. (a) In this section, "active labor" means labor at a time at which:

(1) delivery is imminent;

(2) there is inadequate time to safely transfer the patient to another hospital before delivery; or

(3) a transfer may pose a threat to the health and safety of the patient or unborn child.

(b) A physician, hospital, or other health care provider is not liable for damages arising from an emergency obstetrical procedure performed by the physician, hospital, or other health care provider for a woman in active labor as diagnosed by the physician if the physician, hospital, or other health care provider has not previously provided any obstetrical care for the woman.

(c) This section does not apply to damages arising from an act or failure to act that is grossly negligent or intentional.

SECTION 12. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. PERIODIC PAYMENT OF FUTURE DAMAGES

Sec. 13.01. DEFINITION. In this subchapter, "judgment creditor" means a person to whom periodic payments under this subchapter are paid.

Sec. 13.02. PERIODIC PAYMENT OF FUTURE DAMAGES REQUIRED. (a) If a physician or health care provider is found to be liable on a health care liability claim for future damages totalling more than $100,000, the court shall order that all future damages be paid by the physician or health care provider by means of periodic payments.

(b) The court shall provide that the future medical expenses of the judgment creditor are to be paid by means of periodic payments for the lifetime of the judgment creditor, without regard to the life expectancy of the judgment creditor at the time the trier of fact found the physician or health care provider liable for future damages.

(c) The periodic payments must include interest that accrues at the rate provided by Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes).

Sec. 13.03. CONTINUING JURISDICTION. (a) A court that enters a judgment or order for periodic payments under this subchapter retains jurisdiction over the action and the parties to the action until all payments have been made, or for one year after the death of all judgment creditors, whichever occurs first.

(b) Continuing jurisdiction by the court under this section does not affect the finality of the judgment for any purpose, including appeal.

Sec. 13.04. DEATH OF JUDGMENT CREDITOR. On the death of a judgment creditor, the physician or health care provider's liability for the future medical expenses of the judgment creditor ends.

SECTION 13. Section 32.022, Human Resources Code, is amended to read as follows:

Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES [~~COMMITTEE~~]. (a) The board, on the recommendation of the commissioner, shall appoint a medical care advisory committee to advise the board and the department in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's goal of providing access to high quality, comprehensive medical and health care services to medically indigent [~~needy~~] persons in the state. To ensure that qualified applicants receive services, the committee shall consider changes in the process the department uses to

determine eligibility.

(b) The board shall appoint the committee in compliance with the requirements of the federal agency administering medical assistance. The appointments shall provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work.

(c) The department shall adopt rules for membership on the committee to provide for efficiency of operation, rotation, stability, and continuity.

(d) The board, on the recommendation of the commissioner, may appoint regional and local medical care advisory committees and other advisory committees as considered necessary.

(e) The board, on the recommendation of the commissioner, shall appoint a hospital payment advisory committee. The committee shall advise the board and the department on necessary changes in hospital payment methodologies for inpatient hospital prospective payments and on adjustments for disproportionate share hospitals that will ensure reasonable, adequate, and equitable payments to hospital providers and that will address the essential role of rural hospitals. The board shall appoint to the committee persons with knowledge of and an interest in hospital payment issues.

SECTION 14. Section 32.024, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department, in its rules and standards governing the scope of hospital and long-term services, shall allow hospitals to provide swing-bed and other long-term care services and shall

provide adequate reimbursement for those services.

SECTION 15. Section 32.028, Human Resources Code, is amended by adding Subsection (d) to read as follows:

(d) The department, in its rules and standards relating to rates paid for inpatient hospital services on a prospective payment basis, shall:

(1) ensure that the payment rates are reasonable and adequate to meet the costs incurred by the hospital in providing services to recipients of medical assistance, and that the rates are not reduced by a budgetary adjustment factor;

(2) ensure that the prospective payment methodology for hospital services sets the hospital-specific standardized amount at not less than $1,600; and

(3) establish an outlier adjustment in payment rates for hospital services involving exceptionally high costs that is based on a variable threshold that addresses the costs of urban and rural hospital providers and ensures that rural hospitals have a reasonable opportunity to qualify for the adjustment.

SECTION 16. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.917 to read as follows:

Sec. 51.917. RURAL HEALTH; FAMILY PRACTICE RESIDENCY PROGRAM. (a) The Texas Higher Education Coordinating Board, the State Rural Medical Education Board, medical schools, nursing schools, and schools of allied health sciences shall cooperate to improve and expand programs for rural areas by:

(1) expanding rural preceptor programs;

(2) developing relief service programs for rural

physicians and allied health personnel to facilitate ready access to continuing medical education; and

(3) requiring family practice residency programs to provide an opportunity for residents to have a one-month rotation through a rural setting.

(b) The office of rural health care in the Texas Department of Health shall coordinate efforts under Subsection (a) of this section.

(c) Each medical school shall incorporate a clerkship in family practice during the third core clinical year.

SECTION 17. Section 61.534, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher education, including loans for undergraduate education, received by a physician through a lender [~~in Texas~~].

(c) The coordinating board each fiscal biennium shall attempt to allocate all funds appropriated to it for the purpose of providing repayment assistance under this subchapter.

SECTION 18. Section 3, Article 5.15-1, Insurance Code, is amended to read as follows:

Sec. 3. RATE STANDARDS. Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written in

[~~inside~~] this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience <u>for all professional liability insurance for physicians and health care providers written</u> outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided

and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

SECTION 19. Section 4, Article 5.15-1, Insurance Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except for Subsection (d) of Article 5.15 of this code, the [~~The~~] provisions of Article 5.15, Insurance Code, shall apply to the filing of rates and rating information required under this article.

(d) An insurer who writes professional liability insurance for a physician or a health care provider may not use for a specific risk under such a liability policy a rate or premium that is greater than the rate or premium that has been filed by the insurer and approved by the State Board of Insurance under Article 5.15 of this code.

SECTION 20. Article 5.15-1, Insurance Code, is amended by adding Section 4B to read as follows:

Sec. 4B. RATE APPEALS. (a) Each insurer covered by this article shall adopt a procedure for reconsideration of a rate or premium charged a physician or health care provider for professional liability insurance coverage. The procedure shall include an opportunity for a hearing before officers or employees who have responsibility for determining rates and premiums to be charged for professional liability insurance and a requirement that the insurer reconsider the rate or premium and provide the physician or health care provider a written explanation of the rate or premium being charged.

(b) If a physician or health care provider is not satisfied with a decision under procedures established under Subsection (a) of this section, the physician or health care provider may appeal to the State Board of Insurance for a review of the rate or premium and a determination if the rate or premium being charged complies with criteria under Section 3 of this article. A decision of the State Board of Insurance under this subsection may not be appealed.

(c) The State Board of Insurance by rule shall establish criteria to be followed by insurers in establishing reconsideration procedures under Subsection (a) of this section and standards and procedures to be followed in review of rates and premiums by the board.

SECTION 21. In making the initial appointments to the advisory committee on rural health care, the board shall appoint three members to serve two-year terms, three members to serve four-year terms, and three members to serve six-year terms in order to stagger the terms.

SECTION 22. Sections 10 and 11 of this Act apply only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

SECTION 23. This Act takes effect September 1, 1989.

SECTION 24. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several

1 days in each house be suspended, and this rule is hereby suspended.

HOUSE COMMITTEE REPORT

1st Printing

By McKinney, Schlueter, Rudd, et al. H.B. No. 18

Substitute the following for H.B. No. 18:

By Clemons C.S.H.B. No. 18

A BILL TO BE ENTITLED

AN ACT

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(b) The commissioner shall appoint a director to administer the office of rural health care. The director must have a history of involvement with rural health care practice or issues.

(c) The office of rural health care, in consultation with the advisory committee on rural health care, shall establish mechanisms to ensure access to medical care in rural areas and to recruit and retain practitioners in those areas.

Sec. 1.12. IMPACT STATEMENT ON PROPOSED RULES. (a) Before

the adoption of a rule, including the amendment or repeal of a rule, the Texas Department of Health, the Texas Department of Human Services, and the Texas Department of Mental Health and Mental Retardation shall request an impact statement from the office of rural health care that describes the effect of the proposed rule on rural health care and makes recommendations concerning the proposed rule.

(b) Each agency covered by this section shall consider fully the recommendations of the office of rural health care concerning the proposed rule.

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Sec. 1.13. ADVISORY COMMITTEE ON RURAL HEALTH CARE. (a) The board shall appoint a committee to advise the board and the office of rural health care on the health care needs of rural residents and the delivery of health care to rural populations.

(b) The board shall appoint the advisory committee to provide for a balanced representation of the geographical regions of the state.

(c) The advisory committee is composed of nine members, including:

(1) two physicians licensed to practice in this state who have been in active practice in a rural area for the five years preceding appointment;

(2) one professional nurse registered to practice in this state who has been in active practice in a rural area for the five years preceding appointment;

(3) one hospital administrator who is a member of the Academy of Hospital Administrators and who has been actively engaged in hospital administration in a rural area for the five years preceding appointment;

(4) one allied health practitioner who is licensed, registered, or certified by the state licensing board for the practitioner's speciality, or who is accredited by a recognized professional organization if licensing, registration, or certification is not required by law, and who has practiced in a rural area for the five years preceding appointment; and

(5) three public members who reside in rural areas.

(d) A person is not eligible to be appointed or to serve as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the health care field;

(2) is employed by a health care facility, corporation, or agency, or by a corporation authorized to underwrite health care insurance;

(3) governs or administers a health care facility, corporation, or agency;

(4) has a financial interest, other than a consumer's interest, in a health care facility, corporation, or agency; or

(5) meets the criteria for appointment provided by Subsections (c)(1) through (c)(4) of this section.

(e) Advisory committee members serve for staggered six-year terms, with the terms of three members expiring August 31 of each odd-numbered year.

(f) A vacancy on the advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(g) A member of the advisory committee is entitled to reimbursement for expenses incurred in performing duties under this section. The reimbursement may not exceed the amount specified in the General Appropriations Act for travel and per diem allowances for state employees.

(h) The advisory committee may elect a chairman, vice-chairman, and secretary from among its members and may adopt rules for the conduct of its activities.

SECTION 4. Article 4414b, Revised Statutes, is amended by adding Section 1.14 to read as follows:

Sec. 1.14. HEALTH PROFESSIONS RESOURCE CENTER. (a) The department shall establish in the office of rural health care a comprehensive health professions resource center for the collection and analysis of educational and employment trends for health professions in this state.

(b) The department shall place high priority on collecting and disseminating data on health professions demonstrating an acute shortage in this state, including:

(1) data concerning nursing personnel; and

(2) the health professions in which shortages occur in rural areas.

(c) To the extent possible, the department may collect high priority health professions data from existing sources that the department determines are credible. The department may enter

agreements with those sources that establish guidelines concerning the identification, acquisition, transfer, and confidentiality of the data.

(d) At a minimum, the data collected by the department shall include the following in regard to health professionals:

(1) the number and geographic distribution;

(2) licensure or certification status;

(3) specialty areas, if applicable; and

(4) trends or changes in license holders according to number or geographic distribution.

(e) The department may use the data collected and analyzed under this article to publish reports regarding:

(1) the educational and employment trends for health professions;

(2) the supply and demand of health professions; and

(3) other issues, as necessary, concerning health professions in this state.

(f) The department shall report its findings annually to the legislature.

(g) The board may adopt rules to govern the reporting and collection of data.

(h) In this section, "health profession" means any health or allied health profession that is licensed, certified, or registered by a state board, agency, or association.

SECTION 5. Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended by adding Section 5 to read as follows:

1 Sec. 5. SURVEYS OF PHYSICIANS ON MEDICAL STAFF. The Texas
2 Department of Health shall ensure that a licensed physician
3 involved in direct patient care as defined by the Texas State Board
4 of Medical Examiners is included on a survey team sent under Title
5 XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.)
6 to survey physicians on the medical staff of a hospital.
7 SECTION 6. The Texas Hospital Licensing Law (Article 4437f,
8 Vernon's Texas Civil Statutes) is amended by adding Section 5B to
9 read as follows:
10 Sec. 5B. (a) In this section:
11 (1) "Active labor" means labor at a time at which:
12 (A) delivery is imminent;
13 (B) there is inadequate time to safely transfer
14 the patient to another hospital before delivery; or
15 (C) a transfer may threaten the health and
16 safety of the patient or unborn child.
17 (2) "Emergency medical condition" means a medical
18 condition that is manifested by acute symptoms, including severe
19 pain, of sufficient severity that the absence of immediate medical
20 attention could reasonably be expected to result in:
21 (A) placing the patient's life in serious
22 jeopardy;
23 (B) serious impairment to bodily functions; or
24 (C) serious dysfunction of any body organ or
25 part.
26 (3) "Emergency services" means services that are
27 usually and customarily available at a hospital and that must be

provided immediately for further medical examination and treatment as required to:

(A) stabilize an emergency medical condition; or

(B) provide for the care of a woman in active labor or, if the hospital is not equipped for that service, provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

(4) "Emergency hospital patient transfer" means the transfer of a patient with an emergency medical condition or in active labor in a manner that conforms with board rules relating to hospital patient transfers from a hospital that is not capable of providing the appropriate level of emergency services to a general hospital that is capable of providing the appropriate level of emergency services.

(5) "Person" means:

(A) an individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative; or

(B) a hospital district, county, municipality, or other political subdivision, and includes a department, division, board, or other agency of a political subdivision.

(b) Except as authorized by rules adopted by the Texas Board of Health, a person who owns or operates a general hospital, is an officer or employee of a general hospital, or is a member of the medical staff of a general hospital may not deny emergency services available at that hospital to an individual because the individual is unable to pay for the services when:

(1) the individual is the subject of an emergency hospital patient transfer made in accordance with a transfer agreement under Subsection (d) of this section; and

(2) the individual is diagnosed as being in active labor or as having an emergency medical condition and is determined to be in need of emergency services that are available at the prospective receiving general hospital by a receiving physician who is a member of the medical staff of that hospital.

(c) The governing body of each hospital shall adopt binding policies relating to the provision of emergency services to hospital transfer patients that are consistent with board rules. If possible, each governing body shall implement its policy relating to the provision of emergency services by adopting emergency services agreements with other hospitals.

(d) If a transfer agreement is executed between hospitals, the agreement shall address the transfer of both emergency and nonemergency patients and shall be submitted to the Licensing Agency. At a minimum, the transfer agreement must provide that:

(1) transfers will be accomplished in a medically appropriate manner as required by Section 5(b) of this Act and the rules adopted by the Texas Board of Health;

(2) the transfer or receipt of patients may not be based on the individual's inability to pay for the services provided by the transferring or receiving hospital;

(3) multiple transfer agreements may be entered into by a hospital based on the type or level of medical services available at other hospitals;

(4) the hospitals will recognize the right of an individual to request a transfer to the care of a physician and hospital of the individual's own choosing;

(5) the hospitals will recognize and comply with the requirements of the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes) relating to the transfer of patients to mandated providers; and

(6) a public hospital or hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services, and staff available for providing care to the patient.

(e) The Texas Board of Health may adopt rules to implement and enforce this section.

(f) This section does not relieve an individual of the individual's obligation to pay for services provided by a hospital if the individual can pay for those services.

SECTION 7. Section 7(a), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Applications for licenses shall be made to the Licensing Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that:

(1) there are one or more physicians on the medical staff of the hospital;

(2) these physicians are currently licensed by the

Texas State Board of Medical Examiners; and

(3) the Governing Body of the hospital has adopted and implemented a patient transfer policy in accordance with Sections 5(b) and (d) of this Act and an emergency hospital patient transfer policy in accordance with Section 5B of this Act.

SECTION 8. Section 9B(d), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) If a hospital does not timely adopt, implement, and enforce a patient transfer policy in accordance with Sections 5(b) and (d) of this Act and an emergency hospital patient transfer policy in accordance with Section 5B of this Act, the facility is subject to a civil penalty of not more than $1,000 for each day of violation and for each act of violation. In determining the amount of the penalty, the district court shall consider the facility's history of previous violations, the seriousness of the violation, if the health and safety of the public was threatened by the violation, and the demonstrated good faith of the facility.

SECTION 9. Section 9C, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9C. A person harmed by the failure of a hospital to timely adopt, implement, or enforce a patient transfer policy in accordance with Sections 5(b) and (d) of this Act, or an emergency hospital patient transfer policy in accordance with Section 5B of this Act, may petition the district court of the county in which the person resides, or if the person is not a resident of the

state, a district court of Travis County, for appropriate injunctive relief. Such person also may pursue remedies for civil damages existing under current common law.

SECTION 10. The Maternal and Infant Health Improvement Act (Article 4447y, Vernon's Texas Civil Statutes), is amended by adding Section 14 to read as follows:

Sec. 14. LIMITATION ON LIABILITY. In an action on a health care liability claim based on the provision of medical services under this Act in which final judgment is rendered against a physician, hospital, or other health care provider, the physician, hospital, or health care provider is not liable for noneconomic damages in an amount that exceeds $250,000 recoverable by or on behalf of an injured person or the estate of the injured person, including past, present, and future physical pain and suffering, mental anguish and suffering, loss of consortium, disfigurement, and any other nonpecuniary damages.

SECTION 11. Chapter 348, Acts of the 63rd Legislature, Regular Session, 1973 (Article 4498c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. The office of rural health care in the Texas Department of Health serves as the State Medical Education Board for purposes of Article III, Section 50a, of the Texas Constitution. [~~There--is-hereby-established-and-created-the-State Rural-Medical-Education-Board,-which-shall-have-the-general--powers and-duties-authorized-and-imposed-by-the-provisions-of-this-Act.~~

[~~Sec.-1a.--The-State-Rural-Medical-Education-Board-is-subject to--the--Texas-Sunset-Act-(Chapter-325,-Government-Code),-but-it-is~~

not-abolished-under-that-Act.--The-board-shall--be--reviewed--under the--Texas--Sunset--Act--during--the-period-in-which-state-agencies abolished-September-1-of-1993-and-of-every-12th-year-after-1993-are reviewed.

[Sec.-2.--The--State--Rural--Medical--Education--Board--shall consist--of-six-(6)-members,-who-shall-be-appointed-by-the-Governor with-the-advice-and-consent-of-the-Senate,-and-who-shall--have--the following--qualifications:---Three--(3)--of--the--members--shall-be legally-qualified-practicing-physicians,-who--shall--have--had--not less--than--five--(5)--years--experience--in-the-actual-practice-of medicine-within-the-State-of-Texas-in-rural--areas--as--defined--by this-Act,-of-good-professional-standing-and-graduates-of-recognized medical--colleges,--three--(3)--of--whose--members-shall-consist-of citizens-of-this-State-who-have-maintained-residence-for--a--period of--not-less-than-five-(5)-years-in-a-rural-area-as-defined-by-this Act.

[The-terms-of-office-of-members-of-said-Board--shall--be--for six--(6)--years--except-the-terms-of-office-of-members-appointed-to the-initial-Board-shall-be-two-for-two-years,-two--for--four--years and--two--for-six-years.--The-initial-appointments-shall-be-made-to insure-that-there-shall-always-be-an-equal--number--of--said--Board members--with--the--same--term--of-both-qualifications-as-described above.--Any-vacancy--in--an--unexpired--term--shall--be--filled--by appointment--of--the--Governor--with--the-advice-and-consent-of-the Senate-for-the-unexpired-term.--The--members--of--the--State--Rural Medical--Education--Board--shall-qualify-by-taking-a-Constitutional Oath-of-office-before-an-officer--authorized--to--administer--oaths

with--this--State,--and,--upon-presentation-of-such-oath-of-office, together-with-a-certificate-of-their-appointment,-the-Secretary--of State--shall--issue-commissions-to-them,-which-shall-be-evidence-of their-authority-to-act-as-such.

[Sec.-3.--The-Board-shall--meet--within--30--days--after--the effective-date-of-this-Act-and-elect-a-Chairman,-Vice-Chairman,-and Secretary--from--among--its--members.---The-vote-of-the-majority-of Board-members-is-sufficient-for-passage-of-any-business-or-proposal which-comes-before-the-Board.

[Sec.-4.--A-member-of-the-Board-is-not-entitled-to--a--salary for--duties--performed-as-a-member-of-the-Board.--However,-a-member is-entitled-to-$25-for-each-day-he-is-in-attendance-at-meetings--or hearings--or--on--authorized--business-of-the-Board,-including-time spent-in-traveling-to-and-from-the-place-of-the-meeting,-hearing-or other-authorized-business,-and-is-entitled-to-a--reimbursement--for travel-and-other-necessary-expenses-incurred-in-performing-official duties,---as--evidenced--by--vouchers--approved--by--the--Executive Secretary.

[Sec.-5.--The-State-Rural-Medical-Education-Board-shall--have the-following-powers-and-duties:

[(a)--The--Chairman,--or--in--his--absence-the-Vice-Chairman, shall-preside-at-all-meetings-of-the-Board.--In-the-absence-of-both the-Chairman-and-the-Vice-Chairman-from-any-meeting-of--the--Board, the--members-of-the-Board-present-may-select-one-of-their-number-to serve-as-Chairman-for-the-meeting.

[(b)--The--Board--shall--have--regular--meetings---at---times specified-by-a-majority-vote-of-the-Board.

[~~(c)--The-Chairman-may-call-special-meetings-at-any-time.--He shall--call-a-special-meeting-on-written-request-signed-by-at-least three-members-of-the-Board.~~

[~~(d)--A--majority--of--the--Board--constitutes--a--quorum--to transact-business.~~

[~~(e)--To--make--rules--and-regulations-for-its-government-and that-of-its-officers-and-employees,-and-to-prescribe-the-duties--of its-officers,-consultants-and-employees.~~

[~~(f)--To--employ-a-director-and-other-such-clerical-employees as-it-may-deem-necessary-within-the-limits-of-funds-made--available for--such-purposes.--The-director-shall-keep-the-books,-records-and accounts-of-the-Board-and-shall-prepare-and-countersign-all-checks, vouchers-and-warrants-drawn-upon-the-funds-of-the--Board,--and--the same--shall--be--signed-by-the-Chairman-of-the-Board.--The-Director shall-also-be-the-Treasurer-of-the-Board-and-shall-keep-and-account for-all-funds-of-the-Board,-and-shall-execute--and--file--with--the Board--a-surety-bond-in-the-sum-of-$20,000,-payable-to-the-State-of Texas,-and-conditioned-upon-the-faithful-performance-of-his-duties, said-premium-to-be-paid-out-of-funds-of-the-Board.~~

[~~Sec.-6.~~] It shall be the duty of the <u>office of rural health care</u> [~~Board~~] to receive and pass upon, allow or disallow all applications for loans, grants or scholarships made by students who are bona fide citizens and residents of the State of Texas and who have a desire to become physicians, and who are acceptable for enrollment in a qualified medical school. The purpose of such loans, grants or scholarships shall be to enable such applicants to obtain a standard medical education which will qualify them to

become licensed, practicing physicians and surgeons within the State of Texas. It shall be the duty of the office of rural health care [~~Board~~] to make a careful and full investigation of the ability, character and qualifications of each applicant and to determine his fitness to become a recipient of such loan or scholarship, and for that purpose the office of rural health care [~~Board~~] may propound such examination to each applicant which it deems proper, and the Texas Board of Health [~~said Board~~] may prescribe such rules and regulations as it deems necessary and proper to carry out the purposes and intentions of this Act. The investigation of the applicant shall include an investigation of the ability of the applicant, who is unable to pay, or of the parents of such applicant, to pay his own tuition at such a medical school and the office of rural health care [~~Board~~] in granting such loans and scholarships shall give preference to qualified applicants, or whose parents are unable to pay the applicant's tuition at such a medical school.

The office of rural health care [~~said--Board~~] shall have authority to grant to each applicant deemed by the office of rural health care [~~Board~~] to be qualified to receive the same, a loan, grant or scholarship for the purpose of acquiring a medical education as herein provided for, upon such terms and conditions to be imposed by the office of rural health care [~~Board~~] as provided for in this Act. The office of rural health care [~~Board~~] shall, except in those cases which it deems proper, make every effort to grant loans to applicants rather than grants or scholarships. Before awarding funds, the office of rural health care [~~Board~~] may

review candidates for loans, grants or scholarships to determine their intent concerning the location of future practice.

Sec. 2 [7]. Applicants who are granted loans, grants or scholarships by the office of rural health care [Board] shall receive an amount which may defray his or her tuition and other expenses in any reputable, accepted and accredited medical school or medical college or school listed by the World Health Organization, or a scholarship to any such medical college or school for a term not exceeding four (4) years, same to be paid at such time and in such manner as may be determined by the office of rural health care [Board]. The loans, grants and scholarships herein provided may be proportioned in any such manner as to pay to the medical school to which any applicant is admitted such funds as are required by that school, and the balance to be paid directly to the applicant; all of which shall be under such terms and conditions as may be provided under rules and regulations of the office of rural health care [Board]. The said loans, grants, or scholarships shall be based upon the condition that the full amount thereof shall be repaid to the State of Texas in cash in full with ten (10) percent interest from the date of each payment by the State on such loan, grant or scholarship or by satisfaction of other conditions of the office of rural health care [Board] or this Act. If the applicant practices his profession in a rural area as defined by this Act the office of rural health care [Board] is authorized and shall credit one-fifth of the loan, grant or scholarship together with interest thereon to the applicant for each year of such practice as certified by the office of rural

health care [~~Board~~]. At the end of the second full year of practice in a rural area as provided for herein, the applicant shall be privileged to pay off the balance of the loan, grant or scholarship as the case may be with accrued interest thereon, and upon such payment shall be relieved from further obligation under his contract. Should the applicant default under his contract at any time the full principal and accrued interest plus a penalty of 100 percent of the outstanding balance plus attorneys' fees as defined by said contract shall be due and owing to the State.

Sec. 3 [~~7A~~]. Texas residents who attend a medical school within the United States shall have first priority in the distribution of loan funds. Funds shall then be made available to Texas residents who attend a medical school outside the United States. A "Texas resident," as used in this Act, shall be a person who has actually resided in the State of Texas for two (2) years immediately prior to becoming an applicant hereunder.

Sec. 4 [~~8~~]. Each applicant before being granted a loan, grant or scholarship shall enter into a contract with the office of rural health care [~~Board~~], which shall be deemed a contract within the State of Texas, agreeing to the terms and conditions upon which the loan or scholarship shall be granted to him, which said contract shall include such terms and provisions as will carry out the full purpose and intent of this Act, and the form thereof shall be prepared and approved by the Attorney General of this State, and shall be signed by the director of the office of rural health care and [~~Chairman of the Board, countersigned by the Secretary, and shall be signed by~~] the applicant. For the purposes of this Act

the disabilities and minorityhood of all applicants granted loans or scholarships hereunder shall be and the same are hereby removed and said applicants are declared to be full lawful age for the purpose of entering into the contract hereinabove provided for, and such contract so executed by any applicant is hereby declared to be a valid and binding contract the same as though the said applicant were of the full age of twenty-one (21) years and upward. The office of rural health care [~~Board~~] is hereby vested with the full and complete authority and power to sue in its own name any applicant for any balance due the office of rural health care [~~Board~~] upon any such contract.

Sec. 5 [~~9~~]. It shall be the duty of the office of rural health care [~~Board~~] to contact and make inquiry of such of the medical colleges or schools as herein provided as it deems proper, and make such arrangements and enter into such contracts, within the limitations as to cost as herein provided, for the admission of students granted loans or scholarships by the office of rural health care [~~Board~~], such contracts to be approved by the Attorney General of this State, and money obligations of such contracts so made by the office of rural health care [~~Board~~] with any such college shall be paid for out of the funds to be provided by law for such purposes, and all students granted loans, grants or scholarships shall attend the medical school with which the office of rural health care [~~Board~~] has entered a contract, or any accredited medical school or college in which said applicant may obtain admission, and which is approved by the office of rural health care [~~Board~~].

Sec. 6 [~~10~~]. The Texas Board of Health [~~board~~] shall promulgate and adopt rules and regulations for the cancellation of any contract made between the office of rural health care [~~it~~] and any applicant for loans or scholarships upon such cause deemed sufficient by the office of rural health care [~~Board~~]. And the office of rural health care [~~Board~~] shall have authority to cancel such contracts which it may lawfully cancel made with any of the colleges or schools as herein provided.

Sec. 7 [~~11~~]. All payments of funds or loans or scholarships hereunder shall be made by requisition of the office of rural health care [~~Board~~] signed by the director and [~~Chairman-and-the Secretary~~] directed to the Comptroller of the Public Accounts, who shall thereupon issue a warrant on the Treasury of the State of Texas for the amount fixed in the requisition and payable to the person designated thereon, which said warrant upon presentation shall be paid by the Treasurer out of any funds appropriated by the Legislature for the purpose provided for under this Act.

Sec. 8 [~~12~~]. The office of rural health care [~~Board~~] may contract with any insurance company or companies licensed to do business in Texas for issuance on the life of any applicant an amount sufficient to retire the principal and interest owed under a loan made under the provisions of this Act, the costs of the insurance shall be paid by the student borrower. No contract for insurance provided for in this section may be approved except by the office of rural health care [~~Board--during--a--regular--meeting attended-by-a-quorum-of-the-total-Board-membership~~].

Sec. 9 [~~13~~]. The office of rural health care [~~Board~~] may

extend the time for beginning repayment for unusual or financial hardships with approval of the Attorney General.

Sec. 10 [~~14~~]. Upon any default as provided for herein the office of rural health care [~~Board~~] shall turn the same over to the Attorney General for prosecution and suit for the remaining sum shall be instituted by the Attorney General, or any county or district attorney acting for him, in the county of the person's residence, the county in which is located the institution at which the person was last enrolled, or in Travis County, unless the Attorney General finds reasonable justification for delaying suit and so advises the office of rural health care [~~Board~~] in writing.

[~~Sec. 15. The Board may appoint advisory committees from outside its members as it deems necessary to assist in achieving the purposes of this Act.~~]

Sec. 11 [~~16~~]. In achieving the goals outlined in this Act and the performance of functions assigned to it, the office of rural health care [~~Board~~] may contract with any other State governmental agency as authorized by law, with any agency of the United States, and with corporations, associations, partnerships, and individuals.

Sec. 12 [~~17~~]. The office of rural health care [~~Board~~] may accept gifts, grants or donations of real or personal property from any individual, group, association, or corporation or the United States, subject to limitations or conditions set by law. The gifts, grants, or donations of money shall be deposited in the Texas Rural Medical Education [~~Board~~] fund, separately accounted for, and expended in accordance with the specific purposes for

which given and under such conditions as are imposed by the donor and as provided by law.

Sec. 13 [~~18~~]. All transactions under this Act are subject to audit by the State Auditor.

Sec. 14 [~~19~~]. The office of rural health care [~~board~~] shall make a report of its activities under this Act [~~the--operation--of the--State--Rural-Medical-Education-Board~~] to the Governor annually and to the Legislature not later than December 1, prior to the Regular Session of the Legislature.

Sec. 15 [~~20~~]. Rural areas as defined in this Act shall mean residence in or intention to practice in a county of the State of Texas which according to the last preceding Federal Census had a population of less than 30,000.

SECTION 12. Section 74.001, Civil Practice and Remedies Code, is designated as Subchapter A with a heading to read as follows:

SUBCHAPTER A. PROVISIONS RELATING TO NONMEDICAL PERSONNEL

SECTION 13. Chapter 74, Civil Practice and Remedies Code, is amended by adding Subchapter B and by renumbering and amending Section 74.002 to read as follows:

SUBCHAPTER B. PROVISIONS RELATING TO MEDICAL PERSONNEL

Sec. 74.011. DEFINITIONS. In this subchapter:

(1) "Emergency medical care" means care given for a medical condition that is manifested by acute symptoms, including severe pain, of sufficient severity that the absence of immediate medical attention could result in:

(A) placing the patient's health in jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any body organ or part.

(2) "Emergency prehospital care" means care provided to the sick or injured before or during transportation to a medical facility, including any necessary stabilization of the sick or injured in connection with that transportation.

(3) "Gross negligence" has the meaning assigned by Section 41.001.

Sec. 74.012. PERSONS CERTIFIED AS EMERGENCY MEDICAL SERVICES PERSONNEL [~~74.002.--UNLICENSED--MEDICAL--PERSONNEL~~]. (a) Persons who are training or are certified as emergency medical services personnel under the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) and [~~not--licensed--in--the--healing arts~~] who in good faith administer emergency care that is not grossly negligent [~~as-emergency-medical-service-personnel~~] are not liable in civil damages for an act performed in administering the care [~~unless-the-act-is--wilfully--or--wantonly--negligent~~]. This section applies without regard to whether the care is provided for or in expectation of remuneration.

(b) A claimant under this section must prove gross negligence by clear and convincing evidence, and the burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence.

Sec. 74.013. TRAINING PROGRAMS. (a) A state agency, political subdivision of the state, or a private organization that sponsors, authorizes, supports, finances, or supervises the

training of emergency medical services personnel in a program approved by the Texas Department of Health is not liable for civil damages for an act or omission that is not grossly negligent and that relates to the delivery of care during the training program.

(b) A person who is certified by the Texas Department of Health as a program instructor, examiner, or course coordinator under the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) is not liable for civil damages for an act or omission that is not grossly negligent and that relates to the delivery of care during a training program for emergency medical services personnel.

Sec. 74.014. PHYSICIANS GIVING INSTRUCTIONS. (a) A physician who acts in good faith while giving instructions that are not grossly negligent relating to emergency prehospital care to a specially skilled emergency medical technician or a paramedic emergency medical technician is not liable for civil damages as a result of issuing the instructions.

(b) A specially skilled emergency medical technician or a paramedic emergency medical technician who follows the instructions of a physician and renders care that is not grossly negligent and that is rendered in good faith is not liable for civil damages as a result of following the physician's instructions.

Sec. 74.015. EMERGENCY CARE. (a) A hospital in this state, an employee or person acting on behalf of the hospital who works in the facility and provides patient care, and a physician or person licensed in the healing arts who in good faith renders emergency medical care that is not grossly negligent are not liable for civil

damages as a result of the medical care.

(b) The protections provided by Subsection (a) do not apply to medical care or treatment:

(1) that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient;

(2) that is unrelated to the original medical emergency; or

(3) that is provided by a hospital, that relates to the transfer or receipt of an emergency patient, and for which there is not a transfer agreement between the transferring and receiving hospitals.

(c) A claimant under this section must prove gross negligence by clear and convincing evidence, and the burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence.

(d) In an action for damages that involves a claim of negligence arising from the provision of emergency medical care, the trier of fact shall consider, together with all other relevant matters:

(1) whether the person providing care lacked the patient's medical history or was unable to obtain a full medical history, including the knowledge of preexisting medical conditions, allergies, and medications;

(2) the lack of a preexisting physician-patient relationship;

(3) the circumstances constituting the emergency; and

(4) the degree of care and skill ordinarily exercised

by reputable members of the physician's profession in the same or similar locality, in like cases, and under similar emergency circumstances.

SECTION 14. Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

SUBCHAPTER G. PROOF [~~RES-IPSA-LOQUITUR~~]

Sec. 7.01. APPLICATION OF RES IPSA LOQUITUR. The common-law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of this state as of August 29, 1977 [~~the--effective--date--of--this subchapter~~].

Sec. 7.02. STANDARD OF MEDICAL CARE OR HEALTH CARE. (a) In a suit involving a health care liability claim against a physician or health care provider for the injury to or death of a patient, the person bringing the suit may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the person shows that the physician or health care provider did not use the degree of care and skill that:

(1) may reasonably be expected of a prudent, competent physician or health care provider in the same or similar circumstances, using resources available in the locale of the physician or health care provider; and

(2) is commensurate with the care and skill of other physicians or health care providers of similar training,

experience, or certification.

(b) The existence of a bad result of the treatment by the physician or health care provider is not evidence that the physician or health care provider departed from accepted standards of medical care.

SECTION 15. Subchapter J, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

SUBCHAPTER J. STATUTE OF LIMITATIONS

Sec. 10.01. LIMITATIONS ON HEALTH CARE LIABILITY CLAIMS. (a) Notwithstanding any other law, no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed[~~, provided that, minors under the age of 12 years shall have until their 14th birthday in which to file, or have filed on their behalf, the claim~~]. Except as herein provided, this subchapter applies to all persons regardless of minority or other legal disability.

(b) [~~Sec. 10.02. CAUSES OF ACTION COVERED BY OTHER LAW.~~] Causes of action accruing between August 29, 1977, [~~the effective date of this Act~~] and the effective date of Article 5.82, Insurance Code, shall be filed pursuant to Section 4 of Article 5.82.

Sec. 10.02. HEALTH CARE LIABILITY CLAIMS BROUGHT BY MINORS. (a) Minors must file notice concerning a health care liability claim within eight years after the date of the occurrence of the breach or tort or after the date the medical or health care

1 treatment that is the subject of the notice or the hospitalization
2 for which the notice is made is completed. However, the notice may
3 not be given later than the minor's 20th birthday.
4 (b) In this section, "notice" means actual notice to the
5 health care provider or written notice to the health care provider
6 from the parent or legal guardian of the minor. The notice,
7 whether actual or written, must reasonably describe the facts,
8 conditions, or circumstances that would cause a reasonably prudent
9 person to make inquiry that, if pursued, would lead to the
10 discovery of an injury.
11 (c) If actual or written notice is not received by the
12 health care provider within eight years as provided by Subsection
13 (a) of this section, the minor's cause of action is barred.
14 (d) If actual or written notice is received by the health
15 care provider within eight years as provided by Subsection (a) of
16 this section, the minor's cause of action is barred on the minor's
17 20th birthday.
18 SECTION 16. The Medical Liability and Insurance Improvement
19 Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is
20 amended by adding Subchapter M to read as follows:
21 SUBCHAPTER M. PERIODIC PAYMENT OF FUTURE DAMAGES
22 Sec. 13.01. DEFINITION. In this subchapter, "judgment
23 creditor" means a person to whom periodic payments under this
24 subchapter are paid.
25 Sec. 13.02. PERIODIC PAYMENT OF FUTURE DAMAGES REQUIRED.
26 (a) If a physician or health care provider is found to be liable
27 on a health care liability claim for future damages totalling more

than $100,000, the court shall order that all future damages be paid by the physician or health care provider by means of periodic payments.

(b) The court shall provide that the future medical expenses of the judgment creditor are to be paid by means of periodic payments for the lifetime of the judgment creditor, without regard to the life expectancy of the judgment creditor at the time the trier of fact found the physician or health care provider liable for future damages.

(c) The periodic payments must include interest that accrues at the rate provided by Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes).

Sec. 13.03. CONTINUING JURISDICTION. (a) A court that enters a judgment or order for periodic payments under this subchapter retains jurisdiction over the action and the parties to the action until all payments have been made, or for one year after the death of all judgment creditors, whichever occurs first.

(b) Continuing jurisdiction by the court under this section does not affect the finality of the judgment for any purpose, including appeal.

Sec. 13.04. DEATH OF JUDGMENT CREDITOR. On the death of a judgment creditor, the physician or health care provider's liability for the future medical expenses of the judgment creditor ends.

SECTION 17. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is amended by adding Subchapter N to read as follows:

1 SUBCHAPTER N. EXPERT WITNESSES

2 Sec. 14.01. QUALIFICATION OF EXPERT WITNESS IN SUIT AGAINST
3 PHYSICIAN. In a suit involving a health care liability claim
4 against a physician or health care provider for injury to or death
5 of a patient, a person may qualify as an expert witness on the
6 issue of whether the physician or health care provider departed
7 from accepted standards of medical care or health care in a manner
8 that proximately resulted in the injury or death only if:

9 (1) the person is actively practicing and was actively
10 practicing at the time the claim arose in the same specialty as the
11 physician or health care provider against whom the claim is
12 brought; and

13 (2) the person has actual knowledge and had actual
14 knowledge at the time the claim arose of the accepted standards of
15 medical care or health care in the locale where the claim arose.

16 Sec. 14.02. AFFIDAVIT OF EXPERT WITNESS. (a) In a suit for
17 damages involving a health care liability claim, the plaintiff must
18 file with the petition an affidavit of an expert who is competent
19 to testify. The affidavit shall set forth specifically the alleged
20 acts or omissions on which the claim is based and the factual basis
21 for each claim. The court shall dismiss the suit if the affidavit
22 is not filed with the petition.

23 (b) The contemporaneous filing requirement of Subsection (a)
24 of this section does not apply when the statute of limitations
25 would expire before the affidavit can be prepared. The plaintiff
26 has the burden of proof to show that the affidavit could not be
27 obtained before the statute of limitations expires. In that case,

the plaintiff shall file the affidavit not later than the 60th day after the date on which the petition is filed. The court may, on motion, after hearing, and for good cause, extend that time as it determines justice requires.

(c) If the affidavit is filed as provided by Subsection (b) of this section, the defendant must file an answer to the petition not later than the 30th day after the date on which the affidavit is filed.

Sec. 14.03. CONFLICT WITH TEXAS RULES OF CIVIL EVIDENCE. (a) To the extent that this subchapter conflicts with the Texas Rules of Civil Evidence, this subchapter controls.

(b) Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this subchapter.

SECTION 18. Section 32.022, Human Resources Code, is amended to read as follows:

Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES [~~COMMITTEE~~]. (a) The board, on the recommendation of the commissioner, shall appoint a medical care advisory committee to advise the board and the department in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's goal of providing access to high quality, comprehensive medical and health care services to medically indigent [~~needy~~] persons in the state. To ensure that qualified applicants receive services, the committee shall consider changes in the process the department uses to determine eligibility.

(b) The board shall appoint the committee in compliance with the requirements of the federal agency administering medical assistance. The appointments shall provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work.

(c) The department shall adopt rules for membership on the committee to provide for efficiency of operation, rotation, stability, and continuity.

(d) The board, on the recommendation of the commissioner, may appoint regional and local medical care advisory committees and other advisory committees as considered necessary.

(e) The board, on the recommendation of the commissioner, shall appoint a hospital payment advisory committee. The committee shall advise the board and the department on necessary changes in hospital payment methodologies for inpatient hospital prospective payments and on adjustments for disproportionate share hospitals that will ensure reasonable, adequate, and equitable payments to hospital providers and that will address the essential role of rural hospitals. The board shall appoint to the committee persons with knowledge of and an interest in hospital payment issues.

SECTION 19. Section 32.024, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department, in its rules and standards governing the scope of hospital and long-term services, shall allow hospitals to provide swing-bed and other long-term care services and shall provide adequate reimbursement for those services.

SECTION 20. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.040 to read as follows:

Sec. 32.040. LIMITATION ON LIABILITY. In an action on a health care liability claim based on the delivery of a pregnant woman's child under the medical assistance program in which final judgment is rendered against a physician, hospital, or other health care provider, the physician, hospital, or health care provider is not liable for noneconomic damages in an amount that exceeds $250,000 recoverable by or on behalf of an injured person or the estate of the injured person, including past, present, and future physical pain and suffering, mental anguish and suffering, loss of consortium, disfigurement, and any other nonpecuniary damages.

SECTION 21. Section 32.028, Human Resources Code, is amended by adding Subsection (d) to read as follows:

(d) The department, in its rules and standards relating to rates paid for inpatient hospital services on a prospective payment basis, shall ensure that the prospective payment methodology for hospital services sets the hospital-specific standardized amount at not less than $1,600.

SECTION 22. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.917 to read as follows:

Sec. 51.917. RURAL HEALTH; FAMILY PRACTICE RESIDENCY PROGRAM. (a) The Texas Higher Education Coordinating Board, the office of rural health care in the Texas Department of Health, medical schools, nursing schools, and schools of allied health sciences shall cooperate to improve and expand programs for rural areas by:

(1) expanding rural preceptor programs;

(2) developing relief service programs for rural physicians and allied health personnel to facilitate ready access to continuing medical education; and

(3) requiring family practice residency programs to provide an opportunity for residents to have a one-month rotation through a rural setting.

(b) The office of rural health care in the Texas Department of Health shall coordinate efforts under Subsection (a) of this section.

(c) Each medical school shall incorporate a clerkship in family practice during the third core clinical year.

SECTION 23. Section 61.534, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher education, including loans for undergraduate education, received by a physician through a lender [~~in Texas~~].

(c) The coordinating board each fiscal biennium shall attempt to allocate all funds appropriated to it for the purpose of providing repayment assistance under this subchapter.

SECTION 24. Section 3, Article 5.15-1, Insurance Code, is amended to read as follows:

Sec. 3. RATE STANDARDS. Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective

loss and expense experience for all professional liability insurance for physicians and health care providers written in [~~inside~~] this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is

insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

SECTION 25. Section 4, Article 5.15-1, Insurance Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except for Subsection (d) of Article 5.15 of this code, the [~~The~~] provisions of Article 5.15, Insurance Code, shall apply to the filing of rates and rating information required under this article.

(d) An insurer who writes professional liability insurance for a physician or a health care provider may not use for a specific risk under such a liability policy a rate or premium that is greater than the rate or premium that has been filed by the insurer and approved by the State Board of Insurance under Article 5.15 of this code.

SECTION 26. Article 5.15-1, Insurance Code, is amended by adding Section 4B to read as follows:

Sec. 4B. RATE APPEALS. (a) Each insurer covered by this article shall adopt a procedure for reconsideration of a rate or premium charged a physician or health care provider for professional liability insurance coverage. The procedure shall include an opportunity for a hearing before officers or employees who have responsibility for determining rates and premiums to be charged for professional liability insurance and a requirement that the insurer reconsider the rate or premium and provide the

physician or health care provider a written explanation of the rate or premium being charged.

(b) If a physician or health care provider is not satisfied with a decision under procedures established under Subsection (a) of this section, the physician or health care provider may appeal to the State Board of Insurance for a review of the rate or premium and a determination if the rate or premium being charged complies with criteria under Section 3 of this article. A decision of the State Board of Insurance under this subsection may not be appealed.

(c) The State Board of Insurance by rule shall establish criteria to be followed by insurers in establishing reconsideration procedures under Subsection (a) of this section and standards and procedures to be followed in review of rates and premiums by the board.

SECTION 27. In making the initial appointments to the advisory committee on rural health care, the board shall appoint three members to serve two-year terms, three members to serve four-year terms, and three members to serve six-year terms in order to stagger the terms.

SECTION 28. (a) The office of rural health care in the Texas Department of Health assumes all rights, privileges, powers, and duties under any contract entered into by the State Rural Medical Education Board before September 1, 1989.

(b) The property and records in the custody of the State Rural Medical Education Board on the effective date of this Act shall be transferred to the office of rural health care in the Texas Department of Health not later than December 31, 1989.

(c) All appropriations to the State Rural Medical Education Board may be expended by the office of rural health care in the Texas Department of Health.

SECTION 29. Sections 10, 13, 14, 15, 17, and 20 of this Act apply only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

SECTION 30. This Act takes effect September 1, 1989.

SECTION 31. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

4-18-89
(date)

The Honorable Gib Lewis
Speaker of the House of Representatives

Sir:

We, your COMMITTEE ON PUBLIC HEALTH,

to whom was referred H.B. 18 (measure) have had the same under consideration and beg to report back with the recommendation that it

( ) do pass, without amendment.
( ) do pass, with amendment(s).
(X) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. (X) yes ( ) no

An actuarial analysis was requested. ( ) yes (X) no

An author's fiscal statement was requested. ( ) yes (X) no

A criminal justice policy impact statement was prepared. ( ) yes (X) no

A water development policy impact statement was requested. ( ) yes (X) no

( ) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars for placement on the ( ) Local, ( ) Consent, or ( ) Resolutions Calendar.

This measure ( ) proposes new law. (X) amends existing law.

House Sponsor of Senate Measure _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Wright, Ch.	X			
Clemons, V.C.	X			
Madla, C.B.O.	X			
Harris	X			
Hilderbran	X			
McDonald			X	
Park	X			
Schoolcraft	X			
Rodriguez		X		

Total
7 aye
1 nay
1 present, not voting
0 absent

Brad Wright
CHAIRMAN

Deborah K. Walk
COMMITTEE COORDINATOR

1

C.S.H.B.18
H.B. 18

By: Clemons
McKinney
Schlueter, Rudd, et al.

BILL ANALYSIS

BACKGROUND

Texas leads the nation in the closing of rural hospitals. Under current Texas law, there is no state office to effectively monitor and establish guidelines for the problem of rural health care delivery in Texas. The Special Task Force on Rural Health Care Delivery in Texas addressed this issue, and many of its recommendations are addressed in the provisions of C.S.H.B. 18.

PURPOSE

C.S.H.B. 18 establishes the office of rural health care, and a rural health care advisory committee in the Texas Department of Health; creates a comprehensive health professions resource center within the office of rural health care; provides efforts to prevent emergency patient transfer refusals; changes liability in relation to emergency services care; places a limit on health care liability claims for non-economic damages for services under the Maternal and Infant Improvement Act, and for claims involving Medicaid services; designates the office of rural health care serve as the State Medical Education Board; provides a definition of standard of care, and provides for health care liability claims brought by a minor;sets qualification standards and affidavit requirements for expert witnesses; requires the improvement and expansion of medical programs for rural areas by the Coordinating Board and the office of rural health; gives the State Board of Insurance authority to set liability rates, doing away with the "consent to rate" practice, and sets up an appeal process.

SECTION BY SECTION ANALYSIS

SECTION 1: Provides that this Act may be cited as the Omnibus Rural Health Care Rescue Act.

SECTION 2: Amends Article 4414b, Revised Statutes, by adding Sections 1.11 and 1.12, as follows:

Sec. 1.11. OFFICE OF RURAL HEALTH CARE.

(a) Sets up the office of rural health care in the Texas Department of Health to promote access to rural health care.

(b) Requires the commissioner of the department to appoint a director to administer the office of rural health care, with a background of involvement with rural health care practice or issues.

(c) Requires the office of rural health care and the advisory committee on rural health care to establish guidelines for access to rural medical care, and to recruit and retain practitioners.

Sec. 1.12. IMPACT STATEMENT ON PROPOSED RULES.

(a) The department, the Texas Department of Human Services, and the Texas Department of Mental Health and Mental Retardation must request an impact statement from the office of rural health describing the effect of a proposed rule and recommendations regarding the proposed rule, before the adoption, amendment, or repeal of a rule.

(b) TDH, TDHS, and TDMHMR must fully consider the recommendations of the office of rural health care concerning the proposed rule.

SECTION 3: Amends Article 4414b, Revised Statutes, by adding Section 1.13, as follows:

Sec. 1.13. ADVISORY COMMITTEE ON RURAL HEALTH CARE.

(a) Requires the Texas Board of Health to appoint an advisory committee to advise the board and the office of rural health on rural residents health care needs and rural health care delivery.

(b) Requires the board to appoint the advisory committee, providing for a balanced geographical representation.

(c) The advisory committee is composed of nine members, including:

(1) two licensed Texas physicians in active rural practice for the five years preceding appointment;

(2) one licensed Texas professional nurse in active rural practice for the five years preceding appointment;

(3) one hospital administrator who is a member of the Academy of Hospital Administrators, actively engaged in rural hospital administration for the five years preceding appointment;

(4) one licensed, certified, registered, or accredited allied health practitioner who has practiced in a rural area for the five years preceding appointment; and

(5) three public members residing in rural areas.

(d) Provides that a person is not eligible for appointment or service as a public member if the person or person's spouse is licensed by an occupational regulatory agency in the health care field, is employed by a health care facility, corporation, agency, or corporation underwriting health care insurance, governs a health care entity, has a financial interest in a health care entity, or meets the Subsections (c)(1)-(c)(4) appointment criteria.

(e)The term for an advisory committee member is a staggered six-year term, with three of the member's terms expiring August 31 of odd-numbered years.

(f) Vacancies are filled by appointment criteria.

(g) Advisory committee members are entitled to reimbursement for expenses incurred while performing duties in an amount specified in the General Appropriations Act.

(h) The advisory committee is allowed to adopt rules relating to the conduct of its activities, and to elect officers.

SECTION 4: Amends Article 4414b, Revised Statutes, by adding Section 1.14, as follows:

Sec. 1.14. HEALTH PROFESSIONS RESOURCE CENTER.(a) Requires the department to set up a health professions resource center for the collection and analysis of certain trends for state health professionals, in the office of rural health care.

(b) Requires the department to place a high priority on this data collection and dissemination, to include data concerning nursing personnel and health profession shortages in rural areas.

(c) The department is allowed to collect high priority data from determined credible existing sources, and may enter into agreements establishing guidelines relating to the identification, acquisition, transfer, and confidentiality of the data.

(d) Requires the data collected by the department to include, at a minimum, the number and geographic distribution, licensure status, applicable specialty areas, and trends and changes in license holders .

(e) The collected data may be used by the department to publish reports regarding health care professionals education and employment trends, supply and demand, and other issues concerning health care professionals.

(f) The findings must be reported by the department to the legislature each year.

(g) The Texas Board of Health is authorized to adopt rules governing the reporting and collection of this data.

(h) Defines "health profession" in this section.

SECTION 5: Amends Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, V.T.C.S.), by adding Section 5, to require the department to ensure that a licensed physician involved in direct patient care will be included on each team sent to survey physicians on a hospital medical staff.

SECTION 6: Amends The Texas Hospital Licensing Law (Article 4437f, V.T.C.S.), by adding Section 5B, as follows:

Sec.5B. (a)(1) Defines "Active Labor" as a time when delivery is imminent, there is inadequate time for safe transportation to another hospital, or the safety and health of the unborn child is threatened.

(2) Defines "Emergency medical condition" as acute symptoms, including severe pain, sufficiently severe enough that the absence of immediate medical attention could result in the jeopardizing of the patient's life, serious impairment to bodily functions, and dysfunction of any body organ or part.

(3) Defines "Emergency services" as those normally available at a hospital, and that must be immediately provided for further medical examination and treatment as needed to stabilize an emergency condition, and to provide care for a woman in active labor, or if the hospital is unequipped for that service, to provide the necessary treatment for transportation, without risk of serious harm, to an appropriate facility.

(4) Defines "Emergency hospital patient transfer" as the transfer of a patient with an emergency condition, or a patient in active labor, in a manner which conforms with board rules for hospital patient transfers for an unequipped hospital to a general hospital capable of providing the appropriate emergency services.

(5) Defines "Person" as an individual, firm, partnership, corporation, association, or joint stock company, including receiver, trustee, assignee, or similar representative, or a hospital district, certain government entities and divisions of a political subdivision.

(b) Unless authorized by Texas Board of Health rule, a person unable to pay for medical services may not be denied emergency medical services by a person owning, operating, serving as an officer or employee, or as a member of the medical staff of a general hospital with available services when the individual is not able to pay for the services when the patient is the subject of an emergency medical transfer, is diagnosed as being in active labor by a member of the medical staff who is a receiving physician, and if both the transferring and receiving physician agree that the transferring entity cannot provide appropriate care, and that the receiving entity has the appropriate facilities and service.

(c) Requires governing bodies of each hospital to adopt policies relating to the provision of emergency services to hospital transfers consistent with board rules. Requires each governing body to implement its emergency services policy in agreements with other hospitals, if possible.

(d) Requires executed transfer agreements between hospitals to address both emergency and nonemergency patient transfer, and be submitted to the Licensing Agency. The transfer agreement is required to provide medically appropriate transfers according to Section 5(b) and adopted board rules, not based on the individual's inability to pay, provide that multiple transfer agreements be entered into by a hospital based on the available medical services at other hospitals, that hospitals recognize the individual's right to request specific transfer, compliance with the requirements of the Indigent Health Care and Treatment Act relating to transfer, and that a public hospital or

hospital district will accept the transfer of its eligible residents if one has appropriate health care available for the patient.

(e)The board is allowed to adopt rules for implementation and enforcement of this section.

(f) An individual is not relieved of obligation to pay for hospital services, if the individual is able to pay for those services.

SECTION 7: Amends Section 7(a), Texas Hospital Licensing Law (Article 4437f, V.T.C.S.), by containing a provision for applications for hospital licenses to show evidence that an emergency hospital patient transfer policy in accordance with Section 5B of this Act has been adopted and implemented.

SECTION 8: Amends Section 9B(d), Texas Hospital Licensing Law (Article 4437f, V.T.C.S.), by subjecting a hospital to a civil penalty if an emergency hospital patient transfer policy in accordance with Section 5B of this Act is not adopted and implemented in a timely manner.

SECTION 9: Amends Section 9C, Texas Hospital Licensing Law (Article 4437f, V.T.C.S.), by including an emergency hospital patient transfer policy in accordance with Section 5B of this Act among hospitals which may be liable for civil damages if a person pursues remedies for the harm by the failure of a hospital to meet transfer policies.

SECTION 10: Amends The Maternal and Infant Health Improvement Act (Article 4447y, V.T.C.S.), by adding Section 14, to place a limitation on damages to a maximum recovery of $250,000 for non-economic damages in a health care liability claim involving rendered services by the Texas Maternal and Infant Health Improvement Act.

SECTION 11: Amends Chapter 348, Acts of the 63rd Legislature, Regular Session, 1973 (Article 4498c, V.T.C.S.), by providing for purposes of Article III, Section 50a, of the Texas Constitution, that the office of rural health care in the department serves as the State Medical Education Board. Deletes the provisions relating to the creation of the State Rural Medical Education Board, its board composition, terms, meeting and salary schedule, and powers and duties. Deletes the State Rural Medical Education Board from subsequent provisions relating to loans,grants, and applications, and adds the office of rural health care. Allows the Texas Board of Health to prescribe the necessary rules and regulations to satisfy the purposes and intentions of this Act, and is required to adopt rules and regulations providing for the cancellation of contracts, deleting the State Rural Medical Education Board. Also deletes the provision allowing the SRMEB from appointing outside advisory committee members.

SECTION 12: Designates Section 74.001, Civil Practice and Remedies Code as Subchapter A, with the following heading:

SUBCHAPTER A. PROVISIONS RELATING TO NONMEDICAL PERSONNEL

SECTION 13: Amends Chapter 74, Civil Practice and Remedies Code, by adding Subchapter B, and by renumbering and amending Section 74.002, as follows:

SUBCHAPTER B. PROVISIONS RELATING TO MEDICAL PERSONNEL

Sec. 74.011. DEFINITIONS. (1) Defines "Emergency medical care" as care given for a condition that is manifested by acute symptoms, with severe pain, and of sufficient severity that lack of immediate medical attention could result in the jeopardizing of the patient's health, as serious impairment to bodily functions, or as serious dysfunciton of a body organ or part.

(2) Defines "Emergency prehospital care" as care provided to the sick or injured prior to or during transportation to a medical facility, including necessary stabilization.

(3) Defines "Gross negligence" by the Section 41.001 definition.

Sec. 74.012. PERSONS CERTIFIED AS EMERGENCY MEDICAL SERVICES PERSONNEL. Clarifies that EMS personnel are immune from civil liability and that a claimant must prove gross negligence.

Sec. 74.013. TRAINING PROGRAMS. Provides immunity from civil liability for program instructors, examiners, or course coordinators under the EMS Act, and extends the immunity to entities that authorize, support, finance, or supervise the training of EMS personnel, for an act or omission that is not grossly negligent.

Sec. 74.014. PHYSICIANS GIVING INSTRUCTIONS. Provides immunity from civil liability for physicians who give instructions for patient care to EMS personnel, and extends the immunity to EMS personnel who follow the instructions, when those instructions are not grossly negligent.

Sec. 74.015. EMERGENCY CARE. Provides immunity from civil liability for hospitals, trauma centers and emergency care providers therein if the care is rendered without gross negligence. The immunity is not provided after patient stabilization, or if the care or treatment is unrelated to the original medical emergency, or if by provided by a hospital, that relates to the transfer or receipt of an emergency patient where there was no transfer agreement. A claimant must prove gross negligence by evidence. Outlines consideration for the trier of fact in actions for damages involving a claim of negligence.

SECTION 14: Amends Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, V.T.C.S.), as follows:

SUBCHAPTER G. PROOF.
Sec. 7.01.APPLICATION OF RES IPSA LOQUITUR. Changes the application date to August 29, 1977.

Sec. 7.02. STANDARD OF MEDICAL CARE OR HEALTH CARE. Provides a definition of standard of care which includes reasonable standard of care and use of resources available in the location, regarding suits involving a health care liability claim against a physician or health care provider for injury or death to a patient.

SECTION 15: Amends Subchapter J, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, V.T.C.S.), by providing that a minor or his legal representative may give notice of a claim within eight years of the occurrence of the breach or tort. Requires the notice tolls the statute of limitations and allows the minor or his representative to bring the lawsuit at any time until the minor reaches his majority. If no notice is given, the limitation period is eight years.

SECTION 16: Amends The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, V.T.C.S.), by adding Subchapter M, as follows:

SUBCHAPTER M. PERIODIC PAYMENT OF FUTURE DAMAGES

Sec. 13.01. Defines "judgment creditor" as a person to whom periodic payments under this subchapter are paid.

Sec. 13.02. Requires the court to order periodic payments for a health care liability claim totalling over $100,000, in the case where a physician or health care provider is found to be liable, and to order periodic payments for future medical expenses for the lifetime of the judgement creditor, without regard to the life expectancy of the judgement creditor. Requires the periodic payments to include interest accrued at the rate provided by Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, V.T.C.S.)

Sec. 13.03. The court ordering periodic payments retains jurisdiction over the action and parties until total payment is made, or for one year following the death of all judgement creditors. Continuing jurisdiction does not affect judgement finality or appeal.

Sec. 13.04. Provides that the physician or health care provider's liability for future medical expenses ends at the death of the judgement creditor.

SECTION 17: Amends TMLIIAT(Article 4590i, V.T.C.S.), by adding Subchapter N, as follows:

SUBCHAPTER N. EXPERT WITNESS
Sec. 14.01. QUALIFICATION OF EXPERT WITNESS IN SUIT AGAINST PHYSICIAN.

Provides that an expert competent to testify must be actively practicing, belong to the same field or specialty as the defendant, and have actual knowledge of the standard of care in the locale.

Sec. 14.02. AFFIDAVIT OF EXPERT WITNESS.

Provides that a suit is dismissed without the filing of an affidavit with a petition, specifically alleging the acts or omissions. This filing requirement does not apply when the statute of limitations would expire before affidavit preparation, with the burden of this proof on the plaintiff. Sets the affidavit filing requirements.

Sec. 14.03. CONFLICT WITH TEXAS RULES OF CIVIL EVIDENCE.

Provides this subchapter controls conflicts with the Texas Rules of Civil Evidence. Prohibits the supreme court from amending or adopting rules conflicting with this subchapter, notwithstanding Section 22.004, of the Government Code.

SECTION 18: Amends Section 32.022, Human Resources Code, as follows:

Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES. Provides that the board appointed medical care advisory committee is required to ensure that eligible applicants receive services by considering changes in the process the department uses for eligibility determination. Provides that the board, on the commissioner's recommendation, is required to appoint a hospital payment advisory committee to advise the board and department on changes in hospital payment methodologies, adjustments for disproportionate share hospitals, and address the essential role of rural hospitals. Committee members with knowledge of and interest in hospital payment issues will be appointed by the board.

SECTION 19: Amends Section 32.024, Human Resources Code, by adding Subsection (f), to require the Texas Department of Human Services to allow hospitals to provide swing-bed and other long-term care services, providing adequate reimbursement.

SECTION 20: Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.040, as follows:

Sec. 32.040. LIMITATION ON LIABILITY.

Provides for non-economic damages not to exceed $250,000 in a health care claim involving Medicaid services.

SECTION 21: Amends Section 32.028, Human Resources Code, by adding Subsection (d), to require the Texas Department of Human Services, in its rules and standards relating to inpatient hospital services rates, ensure that the prospective payment methodology sets the hospital-specific standardized amount at $1,600.

SECTION 22: Amends Subchapter Z, Chapter 51, Education Code, by adding Section 51.917, as follows:

Sec. 51.917. RURAL HEALTH; FAMILY PRACTICE RESIDENCY PROGRAM. Requires the Texas Higher Education Coordinating Board, the State Rural Medical Education Board, medical schools, nursing schools, and allied health sciences schools to improve and expand specific programs for rural areas, with the office of rural health care in the Texas Department of Health required to coordinate the efforts.

SECTION 23: Amends Section 61.534, Education Code, by amending Subsection (a), and adding Subsection (c), by deleting the provision that a lender be

in Texas, and by requiring the coordinating board to attempt to allocate all funds appropriated to it for repayment assistance under this subchapter each fiscal biennium.

SECTION 24: Amends Section 3, Article 5.15-1, Insurance Code, by requiring rates to be made with consideration given to past and future loss and expense experience for all professional liability insurance for physicians and health care providers written in and outside the state.

SECTION 25: Amends Section 4, Article 5.15-1, Insurance Code, by amending Subsection (a) and adding Subsection (d), by prohibiting a professional liability insurance writer from using for a specific risk under such a liability policy, a rate or premium greater than the rate or premium filed by the insurer and approved by the State Board of Insurance under Article 5.15 of the Insurance Code.

SECTION 26: Amends Article 5.15-1, Insurance Code, by adding Section 4B, requiring insurers covered by this Article to adopt reconsideration procedures of a rate or premium charged a physician or health care provider for professional liability insurance coverage. The procedure shall include a hearing provision, and a requirement that the insurer reconsider the rate or premium, providing the physician or health care provider with a written explanation of the charged rate or premium.

SECTION 27: The initial appointees to the advisory committee on rural health care shall consist of three members at two-year terms, three member at four-year terms, and three members at six-year terms.

SECTION 28: Gives the office of rural health care in the Texas Department of Health all rights, privileges, powers, and duties under entered contracts by the State Rural Medical Education Board before September 1, 1989. Provides for the transfer of all property and records of the Board on the effective date of this Act to the office of rural health carenot later than December 31, 1989.Provides for the expenditure of the board's appropriations by the office of rural health care.

SECTION 29: Sections 10, 13, 14, 15, 17 and 20 of this Act apply only to causes of action that accrued on of after the effective date of this Act. All actions that accrued before this date are governed by existing law.

SECTION 30: The effective date is September 1, 1989.

SECTION 31: Emergency clause.

RULEMAKING AUTHORITY

It is the Committee's opinion that this bill grants rulemaking authority to the Advisory Committee on Rural Health Care in order to adopt rules for the conduct of its activities in Section 3 (h); in Section 4 (g), allowing the Texas Board of Health to adopt rules governing the reporting an collection of data; in Section 6 (e), allowing the Texas Board of Health to adopt rules to implement and enforce this section's patient transfer provisions; in Section 11, Sec. 1, allowing the Texas Board of Health to prescribe necessary rules and regulations to carry out the purposes and intentions of this Act relating to the office of rural health care serving as the State Medical Education Board for certain purposes, and in Sec. 6, requiring the board to adopt rules and regulations relating to contract cancellation; in Section 21 (d), requiring the Texas Department of Human Services, in its rules and standards relating to rates paid for inpatient hospital services on a prospective payment basis shall ensure that the prospective methodology for hospital services sets the hospital-specific standardized amount at not less than $1,600; in Section 26 (c) requiring the State Board of Insurance to establish by rule criteria for reconsideration procedures for insurers to follow.

COMPARISON OF ORIGINAL BILL TO SUBSTITUTE

C.S.H.B. 18 includes the establishment of a health professions resource center within the office of rural health care; makes changes in the provisions relating to the emergency transfer of patients, to provide for a

mechanism for transfer agreements between rural and urban hospitals for transfer of patients; Adds a limitation on damages to a maximum recovery of $250,000 for non-economic damages in a health care liability claim involving Maternal and Infant Health Improvement Act services, and for non-economic damages not to exceed $250,000 in a health care claim involving Medicaid services; designates the office of rural health care to serve as the State Medical Education Board for purposes of Article III, Section 50a, Texas Constitution; sets a standard of medical care or health care, including reasonable standard of care and use of resources available in the locale in a liability claim; contains a provision that a minor or his legal representative may give notice of a claim within 8 years of a breach or tort occurence, setting provisions for the notice, and statute of limitations; adds provisions for expert witnesses in suits against physicians, requiring the expert competent to testify to be actively practicing, belonging to the same field or specialty as the defendant, and having actual knowledge of the standard of care in the locale. Deletes from H.B. 18, the section specifically providing liability for obstetrical care for indigent persons, and removes the requirement that the Department of Human Services, in its rules and standards relating to rates paid for inpatient hospital services on a prospective payment basis, ensure reasonable and adequate rates, not reduced by a budgetary adjustment factor, and to establish an outlier adjustment in payment rates for services involving high costs, based on addressing the costs of urban and rural hospital providers, ensuring rural hospital's the opportunity to qualify for the adjustment.

SUMMARY OF COMMITTEE ACTION

Public notice was posted in accordance to the rules and a public hearing was held on April 3, 1989. The author, Rep. McKinney explained the bill. The following persons testified in support: Jim Bob Brame, Rural Physician, Task Force on Rural Health Care Delivery in Texas; William D. Gutermuth, Attorney, Special Task Force on Rural Health Care; Kenneth L. Mattox, Trauma Surgeon, American College of Surgeons; Tom B. Hancher, Physician, Texas Medical Association; Roland A. Goetz, Physician; Greg Hooser, Attorney, American College of Emergency Physicians/Texas Chapter; Larry Krupala, Hospital Administrator, Texas Hospital Association; Julie McCraney, Family Doctor, Texas Medical Association/Texas Academy of Family Physicians; Kenneth Colvin Sherman Jr., Doctor, American College of Emergency Physicians; Dr. W. Douglas Everett, Family Practice Residency Director, John Peter Smith Hospital;King Hillier, Director of Governmental Relations, Harris County Hospital District; Robert Schneider, Staff Attorney, Consumers Union; Susan Steeg, Staff Attorney, Dallas County Hospital District/Parkland Memorial Hospital; Tim Philpot, Hospital Administrator, John Peter Smith Hospital; Michael L. Craun, Trauma Surgeon, Harris Hospital/Fort Worth; Darryl Quigley, Ambulance Service Owner, Texas Ambulance Association; John A. Guest, Hospital Executive, Texas Hospital Association. The following persons wished to be shown in support: Jack Collier, Paramedic, Texas EMS Advisory Council; Dennis Barel, Controller, State Fireman's and Fire Marshals Association; John M. Geesbreght, Emergency Medicine, Harris Hospital; Patricia Mabe, Hospital Adminstrator, Harris Methodist Fort Worth;Lindy Rose, Director, Emergency Department,Harris Methodist Fort Worth; Leslie Lanham, Associate Director, Children's Defense Funds of Texas; David Marwitz, Assistant Director, State Affairs, Texas Farm Bureau. The following persons wished to be shown as resource witnesses: Mary S. Campbell, EMS Program Administrator, Texas Department of Health; Vander S.Phelps, Communications Specialist, Advisory Commission on State Emergency Communications; Maurice B. Shaw, Chief, Bureau Licensing and Certification, Texas Department of Health; Nance Kerrigan, Director, Health Facility Lincensure and Certification Division; Claudia Siegiel, Director of Medical Programs, Texas Higher Education Coordinating Board; Juanita Carrell, Associate Commissioner, Special Health Services, Texas Department of Health. The following persons testified in opposition: Tommy Jacks, Lawyer; Rebecca Flores Hurrington, Labor Organizer, United Farm Workers; Bill Whitehurst, Attorney; Paula Sweeney, Attorney. The following persons wished to be shown in opposition: Tom Smith, Director, Public Citizen; Charlotte Flynn, C-Convenor, Austin Gray Panthers.

C.S.H.B.18 By: Clemons
H.B. 18 McKinney

On April 5, 1989, the bill was referred to a subcommittee of the following members: Clemons-Chair, Hilderbran, McDonald, Park, and Schoolcraft. On April 6, 1989, the subcommittee met in a formal meeting and voted to report the measure as substituted.

On April 18, 1989, the committee met in a public hearing. A substitute measure by Clemons was adopted, without objection. On April 18, 1989, the full committee voted to report H.B. 18 to the House as substituted with the recommendation that it do pass by a record vote of 7 ayes, 1 nay, 1 present not voting, and 0 absent.

Public Health Committee
JPL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 20, 1989

TO: Honorable Brad Wright, Chair
Committee on Public Health
House of Representatives
Austin, Texas

In Re: Committee Substitute for House Bill No. 18

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Committee Substitute for House Bill No. 18 (relating to the office of rural health care, surveys of hospitals and physicians, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers; providing civil penalties) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would establish an office of rural health, an advisory committee on rural health, a comprehensive health professions resource center and require that a physician be included on those Title XVIII reviews for the purpose of surveying physicians on the medical staff of a hospital. In addition, the office of rural health would serve as the State Medical Education Board for purposes of Article III, Section 50a, of the Texas Constitution. Any changes in rural health care delivery would require the approval of the advisory committee.

The bill would also require the Department of Human Services to adjust its Medicaid reimbursement rates for hospitals. The most significant of these cost adjustments are the elimination of the 10% budgetary adjustment factor adopted in 1986 and the inclusion of an outlier adjustment for high cost patients.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost to the Department of Health out of the General Revenue Fund	Probable Cost Out of the General Revenue Fund to the Department of Human Services	Probable Cost to the Department of Human Services Out of Federal Funds	Change in Number of State Employees from FY 1989
1990	$371,763	$232,620	$367,380	+ 4.0
1991	362,132	220,980	379,020	+ 4.0
1992	362,132	209,460	390,540	+ 4.0
1993	362,132	206,100	393,900	+ 4.0
1994	362,132	207,000	393,000	+ 4.0

Similar annual costs would continue as long as the provisions of the bill are in effect.

Local units of government that provide health care services for indigent persons would realize a minimal increase in reimbursement. Similarly, state operated health care providers such as The University of Texas Medical Branch at Galveston would also realize a minimal increase in reimbursement.

Criminal Justice Policy Impact Statement: No change in the sanctions applicable to adults convicted of felony crimes is anticipated.

Source: Department of Health; Department of Human Services;
LBB Staff: JO, JWH, AL, CD/GR, LV

71FCSHB18

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 3, 1989

TO: Honorable Brad Wright, Chair
Committee on Public Health
House of Representatives
Austin, Texas

In Re: House Bill No. 18
By: McKinney/Schlueter

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 18 (relating to the office of rural health care, surveys of hospitals and physicians, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would establish an office of rural health, an advisory committee on rural health, and require that a physician be included on all Title XVIII surveys in order to survey physicians on the medical staff of a hospital. Any changes in rural health delivery would require the approval of the advisory committee.

The bill would also require the Department of Human Services to adjust its Medicaid reimbursement rates for hospitals. The most significant of these cost adjustments are the elimination of the 10% budgetary adjustment factor adopted in 1986 and the inclusion of an outlier adjustment for high cost patients.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost to the Department of Health out of the General Revenue Fund	Probable Cost Out of the General Revenue Fund to the Department of Human Services	Probable Cost to the Department of Human Services Out of Federal Funds	Change in Number of State Employees from FY 1989
1990	$556,430	$44,184,215	$69,780,744	+ 4.0
1991	546,799	45,450,745	77,959,112	+ 4.0
1992	546,799	45,397,263	84,643,594	+ 4.0
1993	546,799	47,191,642	90,193,053	+ 4.0
1994	546,799	50,202,442	95,311,882	+ 4.0

Similar annual costs would continue as long as the provisions of the bill are in effect.

Local units of government that provide health care services for indigent persons would realize increased reimbursement. Similarly, state operated health care providers such as The University of Texas Medical Branch at Galveston would also realize increased reimbursement.

Criminal Justice Policy Impact Statement: No change in the sanctions applicable to adults convicted of felony crimes is anticipated.

Source: Department of Health; Department of Human Services;
LBB Staff: JO, JWH, AL, CD/GR, PA

71FHB18

ADOPTED as amended

APR 27 1989

Chief Clerk
House of Representatives

Schlueter, Rudd

By McKinney, et al. H.B. No. 18

Substitute the following for H.B. No. 18:

By Clemons C.S.H.B. No. 18

A BILL TO BE ENTITLED

AN ACT

relating to the office of rural health care, surveys of hospitals and physicians, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers; providing civil penalties.

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

SECTION 1. This Act may be cited as the Omnibus Rural Health Care Rescue Act.

SECTION 2. Article 4414b, Revised Statutes, is amended by adding Sections 1.11 and 1.12 to read as follows:

Sec. 1.11. OFFICE OF RURAL HEALTH CARE. (a) The office of rural health care is in the department to promote access to health care in rural areas.

(b) The commissioner shall appoint a director to administer the office of rural health care. The director must have a history of involvement with rural health care practice or issues.

(c) The office of rural health care, in consultation with the advisory committee on rural health care, shall establish mechanisms to ensure access to medical care in rural areas and to recruit and retain practitioners in those areas.

Sec. 1.12. IMPACT STATEMENT ON PROPOSED RULES. (a) Before

the adoption of a rule, including the amendment or repeal of a rule, the Texas Department of Health, the Texas Department of Human Services, and the Texas Department of Mental Health and Mental Retardation shall request an impact statement from the office of rural health care that describes the effect of the proposed rule on rural health care and makes recommendations concerning the proposed rule.

(b) Each agency covered by this section shall consider fully the recommendations of the office of rural health care concerning the proposed rule.

SECTION 3. Article 4414b, Revised Statutes, is amended by adding Section 1.13 to read as follows:

Sec. 1.13. ADVISORY COMMITTEE ON RURAL HEALTH CARE. (a) The board shall appoint a committee to advise the board and the office of rural health care on the health care needs of rural residents and the delivery of health care to rural populations.

(b) The board shall appoint the advisory committee to provide for a balanced representation of the geographical regions of the state.

(c) The advisory committee is composed of nine members, including:

(1) two physicians licensed to practice in this state who have been in active practice in a rural area for the five years preceding appointment;

(2) one professional nurse registered to practice in this state who has been in active practice in a rural area for the five years preceding appointment;

(3) one hospital administrator who is a member of the Academy of Hospital Administrators and who has been actively engaged in hospital administration in a rural area for the five years preceding appointment;

(4) one allied health practitioner who is licensed, registered, or certified by the state licensing board for the practitioner's speciality, or who is accredited by a recognized professional organization if licensing, registration, or certification is not required by law, and who has practiced in a rural area for the five years preceding appointment; and

(5) three public members who reside in rural areas.

(d) A person is not eligible to be appointed or to serve as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the health care field;

(2) is employed by a health care facility, corporation, or agency, or by a corporation authorized to underwrite health care insurance;

(3) governs or administers a health care facility, corporation, or agency;

(4) has a financial interest, other than a consumer's interest, in a health care facility, corporation, or agency; or

(5) meets the criteria for appointment provided by Subsections (c)(1) through (c)(4) of this section.

(e) Advisory committee members serve for staggered six-year terms, with the terms of three members expiring August 31 of each odd-numbered year.

(f) A vacancy on the advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(g) A member of the advisory committee is entitled to reimbursement for expenses incurred in performing duties under this section. The reimbursement may not exceed the amount specified in the General Appropriations Act for travel and per diem allowances for state employees.

(h) The advisory committee may elect a chairman, vice-chairman, and secretary from among its members and may adopt rules for the conduct of its activities.

SECTION 4. Article 4414b, Revised Statutes, is amended by adding Section 1.14 to read as follows:

Sec. 1.14. HEALTH PROFESSIONS RESOURCE CENTER. (a) The department shall establish in the office of rural health care a comprehensive health professions resource center for the collection and analysis of educational and employment trends for health professions in this state.

(b) The department shall place high priority on collecting and disseminating data on health professions demonstrating an acute shortage in this state, including:

(1) data concerning nursing personnel; and

(2) the health professions in which shortages occur in rural areas.

(c) To the extent possible, the department may collect high priority health professions data from existing sources that the department determines are credible. The department may enter

agreements with those sources that establish guidelines concerning the identification, acquisition, transfer, and confidentiality of the data.

(d) At a minimum, the data collected by the department shall include the following in regard to health professionals:

(1) the number and geographic distribution;

(2) licensure or certification status;

(3) specialty areas, if applicable; and

(4) trends or changes in license holders according to number or geographic distribution.

(e) The department may use the data collected and analyzed under this article to publish reports regarding:

(1) the educational and employment trends for health professions;

(2) the supply and demand of health professions; and

(3) other issues, as necessary, concerning health professions in this state.

(f) The department shall report its findings annually to the legislature.

(g) The board may adopt rules to govern the reporting and collection of data.

(h) In this section, "health profession" means any health or allied health profession that is licensed, certified, or registered by a state board, agency, or association.

SECTION 5. Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended by adding Section 5 to read as follows:

Sec. 5. ~~SURVEYS OF PHYSICIANS ON MEDICAL STAFF.~~ The Texas Department of Health shall ensure that a licensed physician involved in direct patient care as defined by the Texas State Board of Medical Examiners is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) to survey physicians on the medical staff of a hospital.

SECTION 6. The Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) is amended by adding Section 5B to read as follows:

Sec. 5B. (a) In this section:

(1) "Active labor" means labor at a time at which:

(A) delivery is imminent;

(B) there is inadequate time to safely transfer the patient to another hospital before delivery; or

(C) a transfer may threaten the health and safety of the patient or unborn child.

(2) "Emergency medical condition" means a medical condition that is manifested by acute symptoms, including severe pain, of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's life in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any body organ or part.

(3) "Emergency services" means services that are usually and customarily available at a hospital and that must be

provided immediately for further medical examination and treatment as required to:

(A) stabilize an emergency medical condition; or

(B) provide for the care of a woman in active labor or, if the hospital is not equipped for that service, provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

(4) "Emergency hospital patient transfer" means the transfer of a patient with an emergency medical condition or in active labor in a manner that conforms with board rules relating to hospital patient transfers from a hospital that is not capable of providing the appropriate level of emergency services to a general hospital that is capable of providing the appropriate level of emergency services.

(5) "Person" means:

(A) an individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative; or

(B) a hospital district, county, municipality, or other political subdivision, and includes a department, division, board, or other agency of a political subdivision.

(b) Except as authorized by rules adopted by the Texas Board of Health, a person who owns or operates a general hospital, is an officer or employee of a general hospital, or is a member of the medical staff of a general hospital may not deny emergency services available at that hospital to an individual because the individual is unable to pay for the services when:

(1) the individual is the subject of an emergency hospital patient transfer made in accordance with a transfer agreement under Subsection (d) of this section; and

(2) the individual is diagnosed as being in active labor or as having an emergency medical condition and is determined to be in need of emergency services that are available at the prospective receiving general hospital by a receiving physician who is a member of the medical staff of that hospital.

(c) The governing body of each hospital shall adopt binding policies relating to the provision of emergency services to hospital transfer patients that are consistent with board rules. If possible, each governing body shall implement its policy relating to the provision of emergency services by adopting emergency services agreements with other hospitals.

(d) If a transfer agreement is executed between hospitals, the agreement shall address the transfer of both emergency and nonemergency patients and shall be submitted to the Licensing Agency. At a minimum, the transfer agreement must provide that:

(1) transfers will be accomplished in a medically appropriate manner as required by Section 5(b) of this Act and the rules adopted by the Texas Board of Health;

(2) the transfer or receipt of patients may not be based on the individual's inability to pay for the services provided by the transferring or receiving hospital;

(3) multiple transfer agreements may be entered into by a hospital based on the type or level of medical services available at other hospitals;

(4) the hospitals will recognize the right of an individual to request a transfer to the care of a physician and hospital of the individual's own choosing;

(5) the hospitals will recognize and comply with the requirements of the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes) relating to the transfer of patients to mandated providers; and

(6) a public hospital or hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services, and staff available for providing care to the patient.

(e) The Texas Board of Health may adopt rules to implement and enforce this section.

(f) This section does not relieve an individual of the individual's obligation to pay for services provided by a hospital if the individual can pay for those services.

SECTION 7. Section 7(a), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Applications for licenses shall be made to the Licensing Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that:

(1) there are one or more physicians on the medical staff of the hospital;

(2) these physicians are currently licensed by the

Texas State Board of Medical Examiners; and

(3) the Governing Body of the hospital has adopted and implemented a patient transfer policy in accordance with Sections 5(b) and (d) of this Act and an emergency hospital patient transfer policy in accordance with Section 5B of this Act.

SECTION 8. Section 9B(d), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) If a hospital does not timely adopt, implement, and enforce a patient transfer policy in accordance with Sections 5(b) and (d) of this Act and an emergency hospital patient transfer policy in accordance with Section 5B of this Act, the facility is subject to a civil penalty of not more than $1,000 for each day of violation and for each act of violation. In determining the amount of the penalty, the district court shall consider the facility's history of previous violations, the seriousness of the violation, if the health and safety of the public was threatened by the violation, and the demonstrated good faith of the facility.

SECTION 9. Section 9C, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9C. A person harmed by the failure of a hospital to timely adopt, implement, or enforce a patient transfer policy in accordance with Sections 5(b) and (d) of this Act, or an emergency hospital patient transfer policy in accordance with Section 5B of this Act, may petition the district court of the county in which the person resides, or if the person is not a resident of the

state, a district court of Travis County, for appropriate injunctive relief. Such person also may pursue remedies for civil damages existing under current common law.

SECTION 10. The Maternal and Infant Health Improvement Act (Article 4447y, Vernon's Texas Civil Statutes) is amended by adding Section 14 to read as follows:

Sec. 14. LIMITATION ON LIABILITY. In an action on a health care liability claim based on the provision of medical services under this Act in which final judgment is rendered against a physician, hospital, or other health care provider, the physician, hospital, or health care provider is not liable for noneconomic damages in an amount that exceeds $250,000 recoverable by or on behalf of an injured person or the estate of the injured person, including past, present, and future physical pain and suffering, mental anguish and suffering, loss of consortium, disfigurement, and any other nonpecuniary damages.

SECTION 11. Chapter 348, Acts of the 63rd Legislature, Regular Session, 1973 (Article 4498c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. The office of rural health care in the Texas Department of Health serves as the State Medical Education Board for purposes of Article III, Section 50a, of the Texas Constitution. [~~There--is-hereby-established-and-created-the-State Rural-Medical-Education-Board,-which-shall-have-the-general--powers and-duties-authorized-and-imposed-by-the-provisions-of-this-Act.~~

[~~Sec.-1a.--The-State-Rural-Medical-Education-Board-is-subject to--the--Texas-Sunset-Act-(Chapter-325,-Government-Code),-but-it-is~~

not-abolished-under-that-Act.--The-board-shall--be--reviewed--under the--Texas--Sunset--Act--during--the-period-in-which-state-agencies abolished-September-1-of-1993-and-of-every-12th-year-after-1993-are reviewed.

[Sec.-2.--The--State--Rural--Medical--Education--Board--shall consist--of-six-(6)-members,-who-shall-be-appointed-by-the-Governor with-the-advice-and-consent-of-the-Senate,-and-who-shall--have--the following--qualifications:---Three--(3)--of--the--members--shall-be legally-qualified-practicing-physicians,-who--shall--have--had--not less--than--five--(5)--years--experience--in-the-actual-practice-of medicine-within-the-State-of-Texas-in-rural--areas--as--defined--by this-Act,-of-good-professional-standing-and-graduates-of-recognized medical--colleges,--three--(3)--of--whose--members-shall-consist-of citizens-of-this-State-who-have-maintained-residence-for--a--period of--not-less-than-five-(5)-years-in-a-rural-area-as-defined-by-this Act.

[The-terms-of-office-of-members-of-said-Board--shall--be--for six--(6)--years--except-the-terms-of-office-of-members-appointed-to the-initial-Board-shall-be-two-for-two-years,-two--for--four--years and--two--for-six-years.--The-initial-appointments-shall-be-made-to insure-that-there-shall-always-be-an-equal--number--of--said--Board members--with--the--same--term--of-both-qualifications-as-described above.--Any-vacancy--in--an--unexpired--term--shall--be--filled--by appointment--of--the--Governor--with--the-advice-and-consent-of-the Senate-for-the-unexpired-term.--The--members--of--the--State--Rural Medical--Education--Board--shall-qualify-by-taking-a-Constitutional Oath-of-office-before-an-officer--authorized--to--administer--oaths

with--this--State,--and,--upon-presentation-of-such-oath-of-office, together-with-a-certificate-of-their-appointment,-the-Secretary--of State--shall--issue-commissions-to-them,-which-shall-be-evidence-of their-authority-to-act-as-such.

[Sec.-3.--The-Board-shall--meet--within--30--days--after--the effective-date-of-this-Act-and-elect-a-Chairman,-Vice-Chairman,-and Secretary--from--among--its--members.---The-vote-of-the-majority-of Board-members-is-sufficient-for-passage-of-any-business-or-proposal which-comes-before-the-Board.

[Sec.-4.--A-member-of-the-Board-is-not-entitled-to--a--salary for--duties--performed-as-a-member-of-the-Board.--However,-a-member is-entitled-to-$25-for-each-day-he-is-in-attendance-at-meetings--or hearings--or--on--authorized--business-of-the-Board,-including-time spent-in-traveling-to-and-from-the-place-of-the-meeting,-hearing-or other-authorized-business,-and-is-entitled-to-a--reimbursement--for travel-and-other-necessary-expenses-incurred-in-performing-official duties,---as--evidenced--by--vouchers--approved--by--the--Executive Secretary.

[Sec.-5.--The-State-Rural-Medical-Education-Board-shall--have the-following-powers-and-duties.

[(a)--The--Chairman,--or--in--his--absence-the-Vice-Chairman, shall-preside-at-all-meetings-of-the-Board.--In-the-absence-of-both the-Chairman-and-the-Vice-Chairman-from-any-meeting-of--the--Board, the--members-of-the-Board-present-may-select-one-of-their-number-to serve-as-Chairman-for-the-meeting.

[(b)--The--Board--shall--have--regular--meetings---at---times specified-by-a-majority-vote-of-the-Board.

[~~(c)--The Chairman may call special meetings at any time. --He shall--call a special meeting on written request signed by at least three members of the Board.~~

[~~(d)--A--majority--of--the--Board--constitutes--a--quorum--to transact business.~~

[~~(e)--To--make--rules--and-regulations-for-its-government-and that-of-its-officers-and-employees,-and-to-prescribe-the-duties--of its-officers,-consultants-and-employees.~~

[~~(f)--To--employ-a-director-and-other-such-clerical-employees as-it-may-deem-necessary-within-the-limits-of-funds-made--available for--such-purposes. --The-director-shall-keep-the-books,-records-and accounts-of-the-Board-and-shall-prepare-and-countersign-all-checks, vouchers-and-warrants-drawn-upon-the-funds-of-the--Board,--and--the same--shall--be--signed-by-the-Chairman-of-the-Board. --The-Director shall-also-be-the-Treasurer-of-the-Board-and-shall-keep-and-account for-all-funds-of-the-Board,-and-shall-execute--and--file--with--the Board--a-surety-bond-in-the-sum-of-$20,000,-payable-to-the-State-of Texas,-and-conditioned-upon-the-faithful-performance-of-his-duties, said-premium-to-be-paid-out-of-funds-of-the-Board.~~

[~~Sec. 6.~~] It shall be the duty of the <u>office of rural health care</u> [Board] to receive and pass upon, allow or disallow all applications for loans, grants or scholarships made by students who are bona fide citizens and residents of the State of Texas and who have a desire to become physicians, and who are acceptable for enrollment in a qualified medical school. The purpose of such loans, grants or scholarships shall be to enable such applicants to obtain a standard medical education which will qualify them to

become licensed, practicing physicians and surgeons within the State of Texas. It shall be the duty of the office of rural health care [Board] to make a careful and full investigation of the ability, character and qualifications of each applicant and to determine his fitness to become a recipient of such loan or scholarship, and for that purpose the office of rural health care [Board] may propound such examination to each applicant which it deems proper, and the Texas Board of Health [said-Board] may prescribe such rules and regulations as it deems necessary and proper to carry out the purposes and intentions of this Act. The investigation of the applicant shall include an investigation of the ability of the applicant, who is unable to pay, or of the parents of such applicant, to pay his own tuition at such a medical school and the office of rural health care [Board] in granting such loans and scholarships shall give preference to qualified applicants, or whose parents are unable to pay the applicant's tuition at such a medical school.

The office of rural health care [said--Board] shall have authority to grant to each applicant deemed by the office of rural health care [Board] to be qualified to receive the same, a loan, grant or scholarship for the purpose of acquiring a medical education as herein provided for, upon such terms and conditions to be imposed by the office of rural health care [Board] as provided for in this Act. The office of rural health care [Board] shall, except in those cases which it deems proper, make every effort to grant loans to applicants rather than grants or scholarships. Before awarding funds, the office of rural health care [Board] may

review candidates for loans, grants or scholarships to determine their intent concerning the location of future practice.

Sec. 2 [7]. Applicants who are granted loans, grants or scholarships by the office of rural health care [Board] shall receive an amount which may defray his or her tuition and other expenses in any reputable, accepted and accredited medical school or medical college or school listed by the World Health Organization, or a scholarship to any such medical college or school for a term not exceeding four (4) years, same to be paid at such time and in such manner as may be determined by the office of rural health care [Board]. The loans, grants and scholarships herein provided may be proportioned in any such manner as to pay to the medical school to which any applicant is admitted such funds as are required by that school, and the balance to be paid directly to the applicant; all of which shall be under such terms and conditions as may be provided under rules and regulations of the office of rural health care [Board]. The said loans, grants, or scholarships shall be based upon the condition that the full amount thereof shall be repaid to the State of Texas in cash in full with ten (10) percent interest from the date of each payment by the State on such loan, grant or scholarship or by satisfaction of other conditions of the office of rural health care [Board] or this Act. If the applicant practices his profession in a rural area as defined by this Act the office of rural health care [Board] is authorized and shall credit one-fifth of the loan, grant or scholarship together with interest thereon to the applicant for each year of such practice as certified by the office of rural

health care [Board]. At the end of the second full year of practice in a rural area as provided for herein, the applicant shall be privileged to pay off the balance of the loan, grant or scholarship as the case may be with accrued interest thereon, and upon such payment shall be relieved from further obligation under his contract. Should the applicant default under his contract at any time the full principal and accrued interest plus a penalty of 100 percent of the outstanding balance plus attorneys' fees as defined by said contract shall be due and owing to the State.

Sec. 3 [7A]. Texas residents who attend a medical school within the United States shall have first priority in the distribution of loan funds. Funds shall then be made available to Texas residents who attend a medical school outside the United States. A "Texas resident," as used in this Act, shall be a person who has actually resided in the State of Texas for two (2) years immediately prior to becoming an applicant hereunder.

Sec. 4 [8]. Each applicant before being granted a loan, grant or scholarship shall enter into a contract with the office of rural health care [Board], which shall be deemed a contract within the State of Texas, agreeing to the terms and conditions upon which the loan or scholarship shall be granted to him, which said contract shall include such terms and provisions as will carry out the full purpose and intent of this Act, and the form thereof shall be prepared and approved by the Attorney General of this State, and shall be signed by the director of the office of rural health care and [~~Chairman of the Board, countersigned by the Secretary, and shall be signed by~~] the applicant. For the purposes of this Act

the disabilities and minorityhood of all applicants granted loans or scholarships hereunder shall be and the same are hereby removed and said applicants are declared to be full lawful age for the purpose of entering into the contract hereinabove provided for, and such contract so executed by any applicant is hereby declared to be a valid and binding contract the same as though the said applicant were of the full age of twenty-one (21) years and upward. The office of rural health care [Beard] is hereby vested with the full and complete authority and power to sue in its own name any applicant for any balance due the office of rural health care [Beard] upon any such contract.

Sec. 5 [9]. It shall be the duty of the office of rural health care [Beard] to contact and make inquiry of such of the medical colleges or schools as herein provided as it deems proper, and make such arrangements and enter into such contracts, within the limitations as to cost as herein provided, for the admission of students granted loans or scholarships by the office of rural health care [Beard], such contracts to be approved by the Attorney General of this State, and money obligations of such contracts so made by the office of rural health care [Beard] with any such college shall be paid for out of the funds to be provided by law for such purposes, and all students granted loans, grants or scholarships shall attend the medical school with which the office of rural health care [Beard] has entered a contract, or any accredited medical school or college in which said applicant may obtain admission, and which is approved by the office of rural health care [Beard].

Sec. 6 [~~10~~]. The Texas Board of Health [~~board~~] shall promulgate and adopt rules and regulations for the cancellation of any contract made between the office of rural health care [~~it~~] and any applicant for loans or scholarships upon such cause deemed sufficient by the office of rural health care [~~Board~~]. And the office of rural health care [~~Board~~] shall have authority to cancel such contracts which it may lawfully cancel made with any of the colleges or schools as herein provided.

Sec. 7 [~~11~~]. All payments of funds or loans or scholarships hereunder shall be made by requisition of the office of rural health care [~~Board~~] signed by the director and [~~Chairman-and-the Secretary~~] directed to the Comptroller of the Public Accounts, who shall thereupon issue a warrant on the Treasury of the State of Texas for the amount fixed in the requisition and payable to the person designated thereon, which said warrant upon presentation shall be paid by the Treasurer out of any funds appropriated by the Legislature for the purpose provided for under this Act.

Sec. 8 [~~12~~]. The office of rural health care [~~Board~~] may contract with any insurance company or companies licensed to do business in Texas for issuance on the life of any applicant an amount sufficient to retire the principal and interest owed under a loan made under the provisions of this Act, the costs of the insurance shall be paid by the student borrower. No contract for insurance provided for in this section may be approved except by the office of rural health care [~~Board--during--a--regular--meeting attended-by-a-quorum-of-the-total-Board-membership~~].

Sec. 9 [~~13~~]. The office of rural health care [~~Board~~] may

extend the time for beginning repayment for unusual or financial hardships with approval of the Attorney General.

Sec. 10 [~~14~~]. Upon any default as provided for herein the office of rural health care [~~Board~~] shall turn the same over to the Attorney General for prosecution and suit for the remaining sum shall be instituted by the Attorney General, or any county or district attorney acting for him, in the county of the person's residence, the county in which is located the institution at which the person was last enrolled, or in Travis County, unless the Attorney General finds reasonable justification for delaying suit and so advises the office of rural health care [~~Board~~] in writing.

[~~Sec. 15. The Board may appoint advisory committees from outside its members as it deems necessary to assist in achieving the purposes of this Act.~~]

Sec. 11 [~~16~~]. In achieving the goals outlined in this Act and the performance of functions assigned to it, the office of rural health care [~~Board~~] may contract with any other State governmental agency as authorized by law, with any agency of the United States, and with corporations, associations, partnerships, and individuals.

Sec. 12 [~~17~~]. The office of rural health care [~~Board~~] may accept gifts, grants or donations of real or personal property from any individual, group, association, or corporation or the United States, subject to limitations or conditions set by law. The gifts, grants, or donations of money shall be deposited in the Texas Rural Medical Education [~~Board~~] fund, separately accounted for, and expended in accordance with the specific purposes for

which given and under such conditions as are imposed by the donor and as provided by law.

Sec. 13 [~~18~~]. All transactions under this Act are subject to audit by the State Auditor.

Sec. 14 [~~19~~]. The office of rural health care [~~board~~] shall make a report of its activities under this Act [~~the--operation--of the--State--Rural-Medical-Education-Board~~] to the Governor annually and to the Legislature not later than December 1, prior to the Regular Session of the Legislature.

Sec. 15 [~~20~~]. Rural areas as defined in this Act shall mean residence in or intention to practice in a county of the State of Texas which according to the last preceding Federal Census had a population of less than 30,000.

SECTION 12. Section 74.001, Civil Practice and Remedies Code, is designated as Subchapter A with a heading to read as follows:

SUBCHAPTER A. PROVISIONS RELATING TO NONMEDICAL PERSONNEL

SECTION 13. Chapter 74, Civil Practice and Remedies Code, is amended by adding Subchapter B and by renumbering and amending Section 74.002 to read as follows:

SUBCHAPTER B. PROVISIONS RELATING TO MEDICAL PERSONNEL

Sec. 74.011. DEFINITIONS. In this subchapter:

(1) "Emergency medical care" means care given for a medical condition that is manifested by acute symptoms, including severe pain, of sufficient severity that the absence of immediate medical attention could result in:

(A) placing the patient's health in jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any body organ or part.

(2) "Emergency prehospital care" means care provided to the sick or injured before or during transportation to a medical facility, including any necessary stabilization of the sick or injured in connection with that transportation.

(3) "Gross negligence" has the meaning assigned by Section 41.001.

Sec. 74.012. PERSONS CERTIFIED AS EMERGENCY MEDICAL SERVICES PERSONNEL [~~74.002. UNLICENSED MEDICAL PERSONNEL~~]. (a) Persons who are training or are certified as emergency medical services personnel under the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) and [~~not licensed in the healing arts~~] who in good faith administer emergency care that is not grossly negligent [~~as emergency medical service personnel~~] are not liable in civil damages for an act performed in administering the care [~~unless the act is wilfully or wantonly negligent~~]. This section applies without regard to whether the care is provided for or in expectation of remuneration.

(b) A claimant under this section must prove gross negligence by clear and convincing evidence, and the burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence.

Sec. 74.013. TRAINING PROGRAMS. (a) A state agency, political subdivision of the state, or a private organization that sponsors, authorizes, supports, finances, or supervises the

training of emergency medical services personnel in a program approved by the Texas Department of Health is not liable for civil damages for an act or omission that is not grossly negligent and that relates to the delivery of care during the training program.

(b) A person who is certified by the Texas Department of Health as a program instructor, examiner, or course coordinator under the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) is not liable for civil damages for an act or omission that is not grossly negligent and that relates to the delivery of care during a training program for emergency medical services personnel.

Sec. 74.014. PHYSICIANS GIVING INSTRUCTIONS. (a) A physician who acts in good faith while giving instructions that are not grossly negligent relating to emergency prehospital care to a specially skilled emergency medical technician or a paramedic emergency medical technician is not liable for civil damages as a result of issuing the instructions.

(b) A specially skilled emergency medical technician or a paramedic emergency medical technician who follows the instructions of a physician and renders care that is not grossly negligent and that is rendered in good faith is not liable for civil damages as a result of following the physician's instructions.

Sec. 74.015. EMERGENCY CARE. (a) A hospital in this state, an employee or person acting on behalf of the hospital who works in the facility and provides patient care, and a physician or person licensed in the healing arts who in good faith renders emergency medical care that is not grossly negligent are not liable for civil

damages as a result of the medical care.

(b) The protections provided by Subsection (a) do not apply to medical care or treatment:

(1) that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient;

(2) that is unrelated to the original medical emergency; or

(3) that is provided by a hospital, that relates to the transfer or receipt of an emergency patient, and for which there is not a transfer agreement between the transferring and receiving hospitals.

(c) A claimant under this section must prove gross negligence by clear and convincing evidence, and the burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence.

(d) In an action for damages that involves a claim of negligence arising from the provision of emergency medical care, the trier of fact shall consider, together with all other relevant matters:

(1) whether the person providing care lacked the patient's medical history or was unable to obtain a full medical history, including the knowledge of preexisting medical conditions, allergies, and medications;

(2) the lack of a preexisting physician-patient relationship;

(3) the circumstances constituting the emergency; and

(4) the degree of care and skill ordinarily exercised

by reputable members of the physician's profession in the same or similar locality, in like cases, and under similar emergency circumstances.

SECTION 14. Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

SUBCHAPTER G. PROOF [~~RES-IPSA-LOQUITUR~~]

Sec. 7.01. APPLICATION OF RES IPSA LOQUITUR. The common-law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of this state as of August 29, 1977 [~~the--effective--date--of--this subchapter~~].

Sec. 7.02. STANDARD OF MEDICAL CARE OR HEALTH CARE. (a) In a suit involving a health care liability claim against a physician or health care provider for the injury to or death of a patient, the person bringing the suit may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the person shows that the physician or health care provider did not use the degree of care and skill that:

(1) may reasonably be expected of a prudent, competent physician or health care provider in the same or similar circumstances, using resources available in the locale of the physician or health care provider; and

(2) is commensurate with the care and skill of other physicians or health care providers of similar training,

experience, or certification.

(b) The existence of a bad result of the treatment by the physician or health care provider is not evidence that the physician or health care provider departed from accepted standards of medical care.

SECTION 15. Subchapter J, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

SUBCHAPTER J. STATUTE OF LIMITATIONS

Sec. 10.01. LIMITATIONS ON HEALTH CARE LIABILITY CLAIMS. (a) Notwithstanding any other law, no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed[~~,-provided that,--minors-under-the-age-of-12-years-shall-have-until-their-14th birthday-in-which-to-file,-or--have--filed--on--their--behalf,--the claim~~]. Except as herein provided, this subchapter applies to all persons regardless of minority or other legal disability.

(b) [~~Sec.-10.02.--CAUSES-OF-ACTION--COVERED--BY--OTHER--LAW.~~] Causes of action accruing between August 29, 1977, [~~the-effective date-of-this-Act~~] and the effective date of Article 5.82, Insurance Code, shall be filed pursuant to Section 4 of Article 5.82.

Sec. 10.02. HEALTH CARE LIABILITY CLAIMS BROUGHT BY MINORS. (a) Minors must file notice concerning a health care liability claim within eight years after the date of the occurrence of the breach or tort or after the date the medical or health care

1 treatment that is the subject of the notice or the hospitalization
2 for which the notice is made is completed. However, the notice may
3 not be given later than the minor's 20th birthday.
4 (b) In this section, "notice" means actual notice to the
5 health care provider or written notice to the health care provider
6 from the parent or legal guardian of the minor. The notice,
7 whether actual or written, must reasonably describe the facts,
8 conditions, or circumstances that would cause a reasonably prudent
9 person to make inquiry that, if pursued, would lead to the
10 discovery of an injury.
11 (c) If actual or written notice is not received by the
12 health care provider within eight years as provided by Subsection
13 (a) of this section, the minor's cause of action is barred.
14 (d) If actual or written notice is received by the health
15 care provider within eight years as provided by Subsection (a) of
16 this section, the minor's cause of action is barred on the minor's
17 20th birthday.
18 SECTION 16. The Medical Liability and Insurance Improvement
19 Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is
20 amended by adding Subchapter M to read as follows:
21 SUBCHAPTER M. PERIODIC PAYMENT OF FUTURE DAMAGES
22 Sec. 13.01. DEFINITION. In this subchapter, "judgment
23 creditor" means a person to whom periodic payments under this
24 subchapter are paid.
25 Sec. 13.02. PERIODIC PAYMENT OF FUTURE DAMAGES REQUIRED.
26 (a) If a physician or health care provider is found to be liable
27 on a health care liability claim for future damages totalling more

than $100,000, the court shall order that all future damages be paid by the physician or health care provider by means of periodic payments.

(b) The court shall provide that the future medical expenses of the judgment creditor are to be paid by means of periodic payments for the lifetime of the judgment creditor, without regard to the life expectancy of the judgment creditor at the time the trier of fact found the physician or health care provider liable for future damages.

(c) The periodic payments must include interest that accrues at the rate provided by Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes).

Sec. 13.03. CONTINUING JURISDICTION. (a) A court that enters a judgment or order for periodic payments under this subchapter retains jurisdiction over the action and the parties to the action until all payments have been made, or for one year after the death of all judgment creditors, whichever occurs first.

(b) Continuing jurisdiction by the court under this section does not affect the finality of the judgment for any purpose, including appeal.

Sec. 13.04. DEATH OF JUDGMENT CREDITOR. On the death of a judgment creditor, the physician or health care provider's liability for the future medical expenses of the judgment creditor ends.

SECTION 17. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. EXPERT WITNESSES

Sec. 14.01. QUALIFICATION OF EXPERT WITNESS IN SUIT AGAINST PHYSICIAN. In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient, a person may qualify as an expert witness on the issue of whether the physician or health care provider departed from accepted standards of medical care or health care in a manner that proximately resulted in the injury or death only if:

~~(1) the person~~ is actively practicing and was actively practicing at the time the claim arose in the same specialty as the physician or health care provider against whom the claim is brought; and

(2) the person has actual knowledge and had actual knowledge at the time the claim arose of the accepted standards of medical care or health care in the locale where the claim arose.

Sec. 14.02. AFFIDAVIT OF EXPERT WITNESS. (a) In a suit for damages involving a health care liability claim, the plaintiff must file with the petition an affidavit of an expert who is competent to testify. ~~The affidavit~~ shall set forth specifically the alleged ~~acts or~~ omissions on which the claim is based and the factual basis ~~for each claim~~. The court shall dismiss the suit if the affidavit is not filed with the petition.

(b) The contemporaneous filing requirement of Subsection (a) of this section does not apply when the statute of limitations would expire before the affidavit can be prepared. The plaintiff has the burden of proof to show that the affidavit could not be obtained before the statute of limitations expires. In that case,

the plaintiff shall file the affidavit not later than the 60th day after the date on which the petition is filed. The court may, on motion, after hearing, and for good cause, extend that time as it determines justice requires.

(c) If the affidavit is filed as provided by Subsection (b) of this section, the defendant must file an answer to the petition not later than the 30th day after the date on which the affidavit is filed.

Sec. 14.03. CONFLICT WITH TEXAS RULES OF CIVIL EVIDENCE. (a) To the extent that this subchapter conflicts with the Texas Rules of Civil Evidence, this subchapter controls.

(b) Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this subchapter.

SECTION 18. Section 32.022, Human Resources Code, is amended to read as follows:

Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES [~~COMMITTEE~~]. (a) The board, on the recommendation of the commissioner, shall appoint a medical care advisory committee to advise the board and the department in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's goal of providing access to high quality, comprehensive medical and health care services to medically indigent [~~needy~~] persons in the state. To ensure that qualified applicants receive services, the committee shall consider changes in the process the department uses to determine eligibility.

(b) The board shall appoint the committee in compliance with the requirements of the federal agency administering medical assistance. The appointments shall provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work.

(c) The department shall adopt rules for membership on the committee to provide for efficiency of operation, rotation, stability, and continuity.

(d) The board, on the recommendation of the commissioner, may appoint regional and local medical care advisory committees and other advisory committees as considered necessary.

(e) The board, on the recommendation of the commissioner, shall appoint a hospital payment advisory committee. The committee shall advise the board and the department on necessary changes in hospital payment methodologies for inpatient hospital prospective payments and on adjustments for disproportionate share hospitals that will ensure reasonable, adequate, and equitable payments to hospital providers and that will address the essential role of rural hospitals. The board shall appoint to the committee persons with knowledge of and an interest in hospital payment issues.

SECTION 19. Section 32.024, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department, in its rules and standards governing the scope of hospital and long-term services, shall allow hospitals to provide swing-bed and other long-term care services and shall provide adequate reimbursement for those services.

SECTION 20. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.040 to read as follows:

Sec. 32.040. LIMITATION ON LIABILITY. In an action on a health care liability claim based on the delivery of a pregnant woman's child under the medical assistance program in which final judgment is rendered against a physician, hospital, or other health care provider, the physician, hospital, or health care provider is not liable for noneconomic damages in an amount that exceeds $250,000 recoverable by or on behalf of an injured person or the estate of the injured person, including past, present, and future physical pain and suffering, mental anguish and suffering, loss of consortium, disfigurement, and any other nonpecuniary damages.

SECTION 21. Section 32.028, Human Resources Code, is amended by adding Subsection (d) to read as follows:

(d) The department, in its rules and standards relating to rates paid for inpatient hospital services on a prospective payment basis, shall ensure that the prospective payment methodology for hospital services sets the hospital-specific standardized amount at not less than $1,600.

SECTION 22. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.917 to read as follows:

Sec. 51.917. RURAL HEALTH; FAMILY PRACTICE RESIDENCY PROGRAM. (a) The Texas Higher Education Coordinating Board, the office of rural health care in the Texas Department of Health, medical schools, nursing schools, and schools of allied health sciences shall cooperate to improve and expand programs for rural areas by:

(1) expanding rural preceptor programs;

(2) developing relief service programs for rural physicians and allied health personnel to facilitate ready access to continuing medical education; and

(3) requiring family practice residency programs to provide an opportunity for residents to have a one-month rotation through a rural setting.

(b) The office of rural health care in the Texas Department of Health shall coordinate efforts under Subsection (a) of this section.

(c) Each medical school shall incorporate a clerkship in family practice during the third core clinical year.

SECTION 23. Section 61.534, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher education, including loans for undergraduate education, received by a physician through a lender [~~in Texas~~].

(c) The coordinating board each fiscal biennium shall attempt to allocate all funds appropriated to it for the purpose of providing repayment assistance under this subchapter.

SECTION 24. Section 3, Article 5.15-1, Insurance Code, is amended to read as follows:

Sec. 3. RATE STANDARDS. Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective

loss and expense experience for all professional liability insurance for physicians and health care providers written in [~~inside~~] this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is

insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

SECTION 25. Section 4, Article 5.15-1, Insurance Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except for Subsection (d) of Article 5.15 of this code, the [~~The~~] provisions of Article 5.15, Insurance Code, shall apply to the filing of rates and rating information required under this article.

(d) An insurer who writes professional liability insurance for a physician or a health care provider may not use for a specific risk under such a liability policy a rate or premium that is greater than the rate or premium that has been filed by the insurer and approved by the State Board of Insurance under Article 5.15 of this code.

SECTION 26. Article 5.15-1, Insurance Code, is amended by adding Section 4B to read as follows:

Sec. 4B. RATE APPEALS. (a) Each insurer covered by this article shall adopt a procedure for reconsideration of a rate or premium charged a physician or health care provider for professional liability insurance coverage. The procedure shall include an opportunity for a hearing before officers or employees who have responsibility for determining rates and premiums to be charged for professional liability insurance and a requirement that the insurer reconsider the rate or premium and provide the

physician or health care provider a written explanation of the rate or premium being charged.

(b) If a physician or health care provider is not satisfied with a decision under procedures established under Subsection (a) of this section, the physician or health care provider may appeal to the State Board of Insurance for a review of the rate or premium and a determination if the rate or premium being charged complies with criteria under Section 3 of this article. A decision of the State Board of Insurance under this subsection may not be appealed.

(c) The State Board of Insurance by rule shall establish criteria to be followed by insurers in establishing reconsideration procedures under Subsection (a) of this section and standards and procedures to be followed in review of rates and premiums by the board.

SECTION 27. In making the initial appointments to the advisory committee on rural health care, the board shall appoint three members to serve two-year terms, three members to serve four-year terms, and three members to serve six-year terms in order to stagger the terms.

SECTION 28. (a) The office of rural health care in the Texas Department of Health assumes all rights, privileges, powers, and duties under any contract entered into by the State Rural Medical Education Board before September 1, 1989.

(b) The property and records in the custody of the State Rural Medical Education Board on the effective date of this Act shall be transferred to the office of rural health care in the Texas Department of Health not later than December 31, 1989.

(c) All appropriations to the State Rural Medical Education Board may be expended by the office of rural health care in the Texas Department of Health.

SECTION 29. Sections 10, 13, 14, 15, 17, and 20 of this Act apply only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

SECTION 30. This Act takes effect September 1, 1989.

SECTION 31. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 1 By McKinney

Amend CSHB 18, 1st printing in the following manner

1) Amend CSHB by striking the language on line 27 page 21 and by substituting the following:

(A) placing the patient's life in serious jeopardy;

2) Amend CSHB by striking the language on line 11 page 3 and by substituting the following:

(5) four public members who reside in rural areas.

3) Amend CSHB by striking the language on line 15 page 29 and by substituting the following:

medical care or health care in the same or a similar locale as the locale where the claim arose.

4) Amend Section 4 of CSHB 18 by striking the period at the end of the sentence and adding the following phrase:

"and to the Coordinating Board."

ADOPTED

APR 26 1989

Betty Murray
Chief Clerk
House of Representatives

When (2)

Amend CSHB No. 18 on page 25 by deleting the phrase after the comma on line 24 and continuing through the word "provider" on line 25

ADOPTED

APR 27 1989

Betty Murray
Chief Clerk
House of Representatives

AMENDMENT NO. 3 BY Saunders

Amend C.S.H.B. 18 as follows:

~~(1) Insert the~~ following as Section 30 of the bill: Section 101.001, Subsection (2)(B), Civil Practice and Remedies Code, is amended to read as follows:

(B) a political subdivision of this state, including any city, county, school district, hospital district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, hospital authority, river authority, and any hospital owned, operated or leased or jointly owned, operated or leased by a political subdivision of this state; and

~~(2) Insert the following as~~ Section 31 ~~of the bill:~~ Section 101.023, Civil Practice and Remedies Code, is amended by adding Subsection (d) as follows:

(d) If a hospital district, hospital authority or hospital owned, operated, leased, or jointly owned, operated or leased by a governmental unit has limited liability pursuant to this section and it engages a person or entity pursuant to contract to provide management or consulting services for operation of the hospital, the liability of such person or entity is limited to the extent and up to but not in excess of the maximum amount of the liability of the governmental unit pursuant to this section, provided the governing body of such hospital district, hospital authority or hospital retains ultimate responsibility and control of the hospital's operations.

(3) Renumber the existing Sections 30 and 31 of C.S.H.B. 18 to Sections 32 and 33.

26020

ADOPTED

APR 27 1989

Betty Murray
Chief Clerk
House of Representatives

(4)

Amend CS HB 18 By Parker

Amend on Pages 22 line 22 and 24 line 13 by striking "by clear and convincing evidence".

ADOPTED

APR 27 1989

Betty Murray
Chief Clerk
House of Representatives

Insert 75 Amd (3)

(2) "Governmental unit" means:

(A) this state and all the several agencies of government that collectively constitute the government of this state, including other agencies bearing different designations, and all departments, bureaus, boards, commissions, offices, agencies, councils, and courts;

(C) any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.

AMENDMENT NO. 5 BY Colbert

Amend C.S.S.B. 18 as follows:

(1) On page 11, line 7, strike "In" and substitute "(a) Except as provided by Subsection (b) of this section, in".

(2) On page 11, between lines 16 and 17, insert:

"(b) This section does not apply to damages arising from an act or omission by a physician, hospital, or other health care provider that is grossly negligent or constitutes an intentional tort."

(3) On page 32, line 3, strike "In" and substitute "(a) Except as provided by Subsection (b) of this section, in".

(4) On page 32, between lines 12 and 13, insert:

"(b) This section does not apply to damages arising from an act or omission by a physician, hospital, or other health care provider that is grossly negligent or constitutes an intentional tort."

ADOPTED

APR 27 1989

Betty Murray
Chief Clerk
House of Representatives

Amendment No. 6 By McKinney

Amend Section 11 of CSHB 18 by adding a sentence to section 15 on page 21, line 13 as follows:

This population limitation is applicable only to the Texas Department of Health serving in the Medical Education Board

ADOPTED

APR 27 1989

Betty Murray
Chief Clerk
House of Representatives

Uher (7)

Amend CSHB 18 on page 29 by deleting paragraph (1) & (2) beginning on line 9 and ending on line 15 and inserting the following

(1) the person is knowledgeable of the accepted standards of medical care or health care commensurate with the care and skill of other physicians or other health care providers of similar training, experience, or certification ~~when treating a patient for~~ for the treatment of ~~an injury~~ a patient under the same or similar circumstances.

ADOPTED

APR 27 1989

Betty Murray
Chief Clerk
House of Representatives

(8)

Amend SCHB 18 as follows:

On page 5, between lines 19 and 20 add new subsection g to read as follows:

(g) The coordinating Board may adjust health education enrollments based on data collected and analyzed under this article.

On page 5, line 20 strike "(g)" substitute "(h)".

On page 5, line 22 strike "(h)" substitute "(i)".

ADOPTED

APR 27 1989

Chief Clerk
House of Representatives

Amendment No. 9

By: Usher

CSHB 18

By McKinney

Amend Section 17 of CSHB 18 by adding a new subsection (d) to Sec. 14.02 as follows:

(d) The plaintiff is not required to file the affidavit with the petition if the defendant has failed to timely respond to the production of medical records as provided under Article 4590i, Sec. 4.01(d). The plaintiff has the burden of proof to show that the records were not timely provided as required.

ADOPTED

APR 27 1989

Betty Murray
Chief Clerk
House of Representatives

Amendment No. 10

By: Uhler

CSHB 18

By McKinney

Amend Section 17 of CSHB 18 by striking the second sentence of Sec. 14.02(a) in its entirety and substituting the following language:

"The affidavit shall state that the expert has reviewed the claim and has reasonable cause to believe the defendant has departed from the accepted standard of medical or health care."

ADOPTED

APR 26 1989

Betty Murray
Chief Clerk
House of Representatives

ENGROSSED
SECOND READING

By McKinney, Schlueter, Rudd, et al. H.B. No. 18

A BILL TO BE ENTITLED

AN ACT

relating to health care, including the office of rural health care, surveys of hospitals and physicians, health education enrollments, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers; providing civil penalties.

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

SECTION 1. This Act may be cited as the Omnibus Rural Health Care Rescue Act.

SECTION 2. Article 4414b, Revised Statutes, is amended by adding Sections 1.11 and 1.12 to read as follows:

Sec. 1.11. OFFICE OF RURAL HEALTH CARE. (a) The office of rural health care is in the department to promote access to health care in rural areas.

(b) The commissioner shall appoint a director to administer the office of rural health care. The director must have a history of involvement with rural health care practice or issues.

(c) The office of rural health care, in consultation with the advisory committee on rural health care, shall establish mechanisms to ensure access to medical care in rural areas and to recruit and retain practitioners in those areas.

Sec. 1.12. IMPACT STATEMENT ON PROPOSED RULES. (a) Before

the adoption of a rule, including the amendment or repeal of a rule, the Texas Department of Health, the Texas Department of Human Services, and the Texas Department of Mental Health and Mental Retardation shall request an impact statement from the office of rural health care that describes the effect of the proposed rule on rural health care and makes recommendations concerning the proposed rule.

(b) Each agency covered by this section shall consider fully the recommendations of the office of rural health care concerning the proposed rule.

SECTION 3. Article 4414b, Revised Statutes, is amended by adding Section 1.13 to read as follows:

Sec. 1.13. ADVISORY COMMITTEE ON RURAL HEALTH CARE. (a) The board shall appoint a committee to advise the board and the office of rural health care on the health care needs of rural residents and the delivery of health care to rural populations.

(b) The board shall appoint the advisory committee to provide for a balanced representation of the geographical regions of the state.

(c) The advisory committee is composed of nine members, including:

(1) two physicians licensed to practice in this state who have been in active practice in a rural area for the five years preceding appointment;

(2) one professional nurse registered to practice in this state who has been in active practice in a rural area for the five years preceding appointment;

(3) one hospital administrator who is a member of the Academy of Hospital Administrators and who has been actively engaged in hospital administration in a rural area for the five years preceding appointment;

(4) one allied health practitioner who is licensed, registered, or certified by the state licensing board for the practitioner's speciality, or who is accredited by a recognized professional organization if licensing, registration, or certification is not required by law, and who has practiced in a rural area for the five years preceding appointment; and

(5) four public members who reside in rural areas.

(d) A person is not eligible to be appointed or to serve as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the health care field;

(2) is employed by a health care facility, corporation, or agency, or by a corporation authorized to underwrite health care insurance;

(3) governs or administers a health care facility, corporation, or agency;

(4) has a financial interest, other than a consumer's interest, in a health care facility, corporation, or agency; or

(5) meets the criteria for appointment provided by Subsections (c)(1) through (c)(4) of this section.

(e) Advisory committee members serve for staggered six-year terms, with the terms of three members expiring August 31 of each odd-numbered year.

(f) A vacancy on the advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(g) A member of the advisory committee is entitled to reimbursement for expenses incurred in performing duties under this section. The reimbursement may not exceed the amount specified in the General Appropriations Act for travel and per diem allowances for state employees.

(h) The advisory committee may elect a chairman, vice-chairman, and secretary from among its members and may adopt rules for the conduct of its activities.

SECTION 4. Article 4414b, Revised Statutes, is amended by adding Section 1.14 to read as follows:

Sec. 1.14. HEALTH PROFESSIONS RESOURCE CENTER. (a) The department shall establish in the office of rural health care a comprehensive health professions resource center for the collection and analysis of educational and employment trends for health professions in this state.

(b) The department shall place high priority on collecting and disseminating data on health professions demonstrating an acute shortage in this state, including:

(1) data concerning nursing personnel; and

(2) the health professions in which shortages occur in rural areas.

(c) To the extent possible, the department may collect high priority health professions data from existing sources that the department determines are credible. The department may enter

agreements with those sources that establish guidelines concerning the identification, acquisition, transfer, and confidentiality of the data.

(d) At a minimum, the data collected by the department shall include the following in regard to health professionals:

(1) the number and geographic distribution;

(2) licensure or certification status;

(3) specialty areas, if applicable; and

(4) trends or changes in license holders according to number or geographic distribution.

(e) The department may use the data collected and analyzed under this article to publish reports regarding:

(1) the educational and employment trends for health professions;

(2) the supply and demand of health professions; and

(3) other issues, as necessary, concerning health professions in this state.

(f) The department shall report its findings annually to the legislature and to the coordinating board.

(g) The coordinating board may adjust health education enrollments based on data collected and analyzed under this article.

(h) The board may adopt rules to govern the reporting and collection of data.

(i) In this section, "health profession" means any health or allied health profession that is licensed, certified, or registered by a state board, agency, or association.

SECTION 5. Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended by adding Section 5 to read as follows:

Sec. 5. The Texas Department of Health shall ensure that a licensed physician involved in direct patient care as defined by the Texas State Board of Medical Examiners is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) to survey physicians on the medical staff of a hospital.

SECTION 6. The Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) is amended by adding Section 5B to read as follows:

Sec. 5B. (a) In this section:

(1) "Active labor" means labor at a time at which:

(A) delivery is imminent;

(B) there is inadequate time to safely transfer the patient to another hospital before delivery; or

(C) a transfer may threaten the health and safety of the patient or unborn child.

(2) "Emergency medical condition" means a medical condition that is manifested by acute symptoms, including severe pain, of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's life in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any body organ or

part.

(3) "Emergency services" means services that are usually and customarily available at a hospital and that must be provided immediately for further medical examination and treatment as required to:

(A) stabilize an emergency medical condition; or

(B) provide for the care of a woman in active labor or, if the hospital is not equipped for that service, provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

(4) "Emergency hospital patient transfer" means the transfer of a patient with an emergency medical condition or in active labor in a manner that conforms with board rules relating to hospital patient transfers from a hospital that is not capable of providing the appropriate level of emergency services to a general hospital that is capable of providing the appropriate level of emergency services.

(5) "Person" means:

(A) an individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative; or

(B) a hospital district, county, municipality, or other political subdivision, and includes a department, division, board, or other agency of a political subdivision.

(b) Except as authorized by rules adopted by the Texas Board of Health, a person who owns or operates a general hospital, is an officer or employee of a general hospital, or is a member of the

medical staff of a general hospital may not deny emergency services available at that hospital to an individual because the individual is unable to pay for the services when:

(1) the individual is the subject of an emergency hospital patient transfer made in accordance with a transfer agreement under Subsection (d) of this section; and

(2) the individual is diagnosed as being in active labor or as having an emergency medical condition and is determined to be in need of emergency services that are available at the prospective receiving general hospital by a receiving physician who is a member of the medical staff of that hospital.

(c) The governing body of each hospital shall adopt binding policies relating to the provision of emergency services to hospital transfer patients that are consistent with board rules. If possible, each governing body shall implement its policy relating to the provision of emergency services by adopting emergency services agreements with other hospitals.

(d) If a transfer agreement is executed between hospitals, the agreement shall address the transfer of both emergency and nonemergency patients and shall be submitted to the Licensing Agency. At a minimum, the transfer agreement must provide that:

(1) transfers will be accomplished in a medically appropriate manner as required by Section 5(b) of this Act and the rules adopted by the Texas Board of Health;

(2) the transfer or receipt of patients may not be based on the individual's inability to pay for the services provided by the transferring or receiving hospital;

(3) multiple transfer agreements may be entered into by a hospital based on the type or level of medical services available at other hospitals;

(4) the hospitals will recognize the right of an individual to request a transfer to the care of a physician and hospital of the individual's own choosing;

(5) the hospitals will recognize and comply with the requirements of the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes) relating to the transfer of patients to mandated providers; and

(6) a public hospital or hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services, and staff available for providing care to the patient.

(e) The Texas Board of Health may adopt rules to implement and enforce this section.

(f) This section does not relieve an individual of the individual's obligation to pay for services provided by a hospital if the individual can pay for those services.

SECTION 7. Section 7(a), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Applications for licenses shall be made to the Licensing Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that:

(1) there are one or more physicians on the medical staff of the hospital;

(2) these physicians are currently licensed by the Texas State Board of Medical Examiners; and

(3) the Governing Body of the hospital has adopted and implemented a patient transfer policy in accordance with Sections 5(b) and (d) of this Act and an emergency hospital patient transfer policy in accordance with Section 5B of this Act.

SECTION 8. Section 9B(d), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) If a hospital does not timely adopt, implement, and enforce a patient transfer policy in accordance with Sections 5(b) and (d) of this Act and an emergency hospital patient transfer policy in accordance with Section 5B of this Act, the facility is subject to a civil penalty of not more than $1,000 for each day of violation and for each act of violation. In determining the amount of the penalty, the district court shall consider the facility's history of previous violations, the seriousness of the violation, if the health and safety of the public was threatened by the violation, and the demonstrated good faith of the facility.

SECTION 9. Section 9C, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9C. A person harmed by the failure of a hospital to timely adopt, implement, or enforce a patient transfer policy in accordance with Sections 5(b) and (d) of this Act, or an emergency

hospital patient transfer policy in accordance with Section 5B of this Act, may petition the district court of the county in which the person resides, or if the person is not a resident of the state, a district court of Travis County, for appropriate injunctive relief. Such person also may pursue remedies for civil damages existing under current common law.

SECTION 10. The Maternal and Infant Health Improvement Act (Article 4447y, Vernon's Texas Civil Statutes) is amended by adding Section 14 to read as follows:

Sec. 14. LIMITATION ON LIABILITY. (a) Except as provided by Subsection (b) of this section, in an action on a health care liability claim based on the provision of medical services under this Act in which final judgment is rendered against a physician, hospital, or other health care provider, the physician, hospital, or health care provider is not liable for noneconomic damages in an amount that exceeds $250,000 recoverable by or on behalf of an injured person or the estate of the injured person, including past, present, and future physical pain and suffering, mental anguish and suffering, loss of consortium, disfigurement, and any other nonpecuniary damages.

(b) This section does not apply to damages arising from an act or omission by a physician, hospital, or other health care provider that is grossly negligent or constitutes an intentional tort.

SECTION 11. Chapter 348, Acts of the 63rd Legislature, Regular Session, 1973 (Article 4498c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. The office of rural health care in the Texas Department of Health serves as the State Medical Education Board for purposes of Article III, Section 50a, of the Texas Constitution. [~~There--is-hereby-established-and-created-the-State Rural-Medical-Education-Board,-which-shall-have-the-general--powers and-duties-authorized-and-imposed-by-the-provisions-of-this-Act.~~

[~~Sec.-1a.--The-State-Rural-Medical-Education-Board-is-subject to--the--Texas-Sunset-Act-(Chapter-325,-Government-Code),-but-it-is not-abolished-under-that-Act.--The-board-shall--be--reviewed--under the--Texas--Sunset--Act--during--the-period-in-which-state-agencies abolished-September-1-of-1993-and-of-every-12th-year-after-1993-are reviewed.~~

[~~Sec.-2.--The--State--Rural--Medical--Education--Board--shall consist--of-six-(6)-members,-who-shall-be-appointed-by-the-Governor with-the-advice-and-consent-of-the-Senate,-and-who-shall--have--the following--qualifications:---Three--(3)--of--the--members--shall-be legally-qualified-practicing-physicians,-who--shall--have--had--not less--than--five--(5)--years--experience--in-the-actual-practice-of medicine-within-the-State-of-Texas-in-rural--areas--as--defined--by this-Act,-of-good-professional-standing-and-graduates-of-recognized medical--colleges,--three--(3)--of--whose--members-shall-consist-of citizens-of-this-State-who-have-maintained-residence-for--a--period of--not-less-than-five-(5)-years-in-a-rural-area-as-defined-by-this Act.~~

[~~The-terms-of-office-of-members-of-said-Board--shall--be--for six--(6)--years--except-the-terms-of-office-of-members-appointed-to the-initial-Board-shall-be-two-for-two-years,-two--for--four--years~~

~~and--two--for-six-years.--The-initial-appointments-shall-be-made-to insure-that-there-shall-always-be-an-equal--number--of--said--Board members--with--the--same--term--of-both-qualifications-as-described above.--Any-vacancy--in--an--unexpired--term--shall--be--filled--by appointment--of--the--Governor--with--the-advice-and-consent-of-the Senate-for-the-unexpired-term.--The--members--of--the--State--Rural Medical--Education--Board--shall-qualify-by-taking-a-Constitutional Oath-of-office-before-an-officer--authorized--to--administer--oaths with--this--State,--and,--upon-presentation-of-such-oath-of-office, together-with-a-certificate-of-their-appointment,-the-Secretary--of State--shall--issue-commissions-to-them,-which-shall-be-evidence-of their-authority-to-act-as-such.~~

~~[Sec.-3.--The-Board-shall--meet--within--30--days--after--the effective-date-of-this-Act-and-elect-a-Chairman,-Vice-Chairman,-and Secretary--from--among--its--members.---The-vote-of-the-majority-of Board-members-is-sufficient-for-passage-of-any-business-or-proposal which-comes-before-the-Board.~~

~~[Sec.-4.--A-member-of-the-Board-is-not-entitled-to--a--salary for--duties--performed-as-a-member-of-the-Board.--However,-a-member is-entitled-to-$25-for-each-day-he-is-in-attendance-at-meetings--or hearings--or--on--authorized--business-of-the-Board,-including-time spent-in-traveling-to-and-from-the-place-of-the-meeting,-hearing-or other-authorized-business,-and-is-entitled-to-a--reimbursement--for travel-and-other-necessary-expenses-incurred-in-performing-official duties,---as--evidenced--by--vouchers--approved--by--the--Executive Secretary.~~

~~[Sec.-5.--The-State-Rural-Medical-Education-Board-shall--have~~

the following powers and duties:

[(a) The Chairman, or in his absence the Vice-Chairman, shall preside at all meetings of the Board. In the absence of both the Chairman and the Vice-Chairman from any meeting of the Board, the members of the Board present may select one of their number to serve as Chairman for the meeting.

[(b) The Board shall have regular meetings at times specified by a majority vote of the Board.

[(c) The Chairman may call special meetings at any time. He shall call a special meeting on written request signed by at least three members of the Board.

[(d) A majority of the Board constitutes a quorum to transact business.

[(e) To make rules and regulations for its government and that of its officers and employees, and to prescribe the duties of its officers, consultants and employees.

[(f) To employ a director and other such clerical employees as it may deem necessary within the limits of funds made available for such purposes. The director shall keep the books, records and accounts of the Board and shall prepare and countersign all checks, vouchers and warrants drawn upon the funds of the Board, and the same shall be signed by the Chairman of the Board. The Director shall also be the Treasurer of the Board and shall keep and account for all funds of the Board, and shall execute and file with the Board a surety bond in the sum of $20,000, payable to the State of Texas, and conditioned upon the faithful performance of his duties, said premium to be paid out of funds of the Board.

[~~Sec. 6.~~] It shall be the duty of the office of rural health care [~~Board~~] to receive and pass upon, allow or disallow all applications for loans, grants or scholarships made by students who are bona fide citizens and residents of the State of Texas and who have a desire to become physicians, and who are acceptable for enrollment in a qualified medical school. The purpose of such loans, grants or scholarships shall be to enable such applicants to obtain a standard medical education which will qualify them to become licensed, practicing physicians and surgeons within the State of Texas. It shall be the duty of the office of rural health care [~~Board~~] to make a careful and full investigation of the ability, character and qualifications of each applicant and to determine his fitness to become a recipient of such loan or scholarship, and for that purpose the office of rural health care [~~Board~~] may propound such examination to each applicant which it deems proper, and the Texas Board of Health [~~said Board~~] may prescribe such rules and regulations as it deems necessary and proper to carry out the purposes and intentions of this Act. The investigation of the applicant shall include an investigation of the ability of the applicant, who is unable to pay, or of the parents of such applicant, to pay his own tuition at such a medical school and the office of rural health care [~~Board~~] in granting such loans and scholarships shall give preference to qualified applicants, or whose parents are unable to pay the applicant's tuition at such a medical school.

The office of rural health care [~~said Board~~] shall have authority to grant to each applicant deemed by the office of rural

health care [Board] to be qualified to receive the same, a loan, grant or scholarship for the purpose of acquiring a medical education as herein provided for, upon such terms and conditions to be imposed by the office of rural health care [Board] as provided for in this Act. The office of rural health care [Board] shall, except in those cases which it deems proper, make every effort to grant loans to applicants rather than grants or scholarships. Before awarding funds, the office of rural health care [Board] may review candidates for loans, grants or scholarships to determine their intent concerning the location of future practice.

Sec. 2 [7]. Applicants who are granted loans, grants or scholarships by the office of rural health care [Board] shall receive an amount which may defray his or her tuition and other expenses in any reputable, accepted and accredited medical school or medical college or school listed by the World Health Organization, or a scholarship to any such medical college or school for a term not exceeding four (4) years, same to be paid at such time and in such manner as may be determined by the office of rural health care [Board]. The loans, grants and scholarships herein provided may be proportioned in any such manner as to pay to the medical school to which any applicant is admitted such funds as are required by that school, and the balance to be paid directly to the applicant; all of which shall be under such terms and conditions as may be provided under rules and regulations of the office of rural health care [Board]. The said loans, grants, or scholarships shall be based upon the condition that the full amount thereof shall be repaid to the State of Texas in cash in full with

ten (10) percent interest from the date of each payment by the State on such loan, grant or scholarship or by satisfaction of other conditions of the office of rural health care [~~Board~~] or this Act. If the applicant practices his profession in a rural area as defined by this Act the office of rural health care [~~Board~~] is authorized and shall credit one-fifth of the loan, grant or scholarship together with interest thereon to the applicant for each year of such practice as certified by the office of rural health care [~~Board~~]. At the end of the second full year of practice in a rural area as provided for herein, the applicant shall be privileged to pay off the balance of the loan, grant or scholarship as the case may be with accrued interest thereon, and upon such payment shall be relieved from further obligation under his contract. Should the applicant default under his contract at any time the full principal and accrued interest plus a penalty of 100 percent of the outstanding balance plus attorneys' fees as defined by said contract shall be due and owing to the State.

Sec. 3 [~~7A~~]. Texas residents who attend a medical school within the United States shall have first priority in the distribution of loan funds. Funds shall then be made available to Texas residents who attend a medical school outside the United States. A "Texas resident," as used in this Act, shall be a person who has actually resided in the State of Texas for two (2) years immediately prior to becoming an applicant hereunder.

Sec. 4 [~~8~~]. Each applicant before being granted a loan, grant or scholarship shall enter into a contract with the office of rural health care [~~Board~~], which shall be deemed a contract within

the State of Texas, agreeing to the terms and conditions upon which the loan or scholarship shall be granted to him, which said contract shall include such terms and provisions as will carry out the full purpose and intent of this Act, and the form thereof shall be prepared and approved by the Attorney General of this State, and shall be signed by the director of the office of rural health care and [~~Chairman of the Board, countersigned by the Secretary, and shall be signed by~~] the applicant. For the purposes of this Act the disabilities and minorityhood of all applicants granted loans or scholarships hereunder shall be and the same are hereby removed and said applicants are declared to be full lawful age for the purpose of entering into the contract hereinabove provided for, and such contract so executed by any applicant is hereby declared to be a valid and binding contract the same as though the said applicant were of the full age of twenty-one (21) years and upward. The office of rural health care [~~Board~~] is hereby vested with the full and complete authority and power to sue in its own name any applicant for any balance due the office of rural health care [~~Board~~] upon any such contract.

Sec. 5 [~~9~~]. It shall be the duty of the office of rural health care [~~Board~~] to contact and make inquiry of such of the medical colleges or schools as herein provided as it deems proper, and make such arrangements and enter into such contracts, within the limitations as to cost as herein provided, for the admission of students granted loans or scholarships by the office of rural health care [~~Board~~], such contracts to be approved by the Attorney General of this State, and money obligations of such contracts so

made by the office of rural health care [~~Board~~] with any such college shall be paid for out of the funds to be provided by law for such purposes, and all students granted loans, grants or scholarships shall attend the medical school with which the office of rural health care [~~Board~~] has entered a contract, or any accredited medical school or college in which said applicant may obtain admission, and which is approved by the office of rural health care [~~Board~~].

Sec. 6 [~~10~~]. The Texas Board of Health [~~board~~] shall promulgate and adopt rules and regulations for the cancellation of any contract made between the office of rural health care [~~it~~] and any applicant for loans or scholarships upon such cause deemed sufficient by the office of rural health care [~~Board~~]. And the office of rural health care [~~Board~~] shall have authority to cancel such contracts which it may lawfully cancel made with any of the colleges or schools as herein provided.

Sec. 7 [~~11~~]. All payments of funds or loans or scholarships hereunder shall be made by requisition of the office of rural health care [~~Board~~] signed by the director and [~~Chairman and the Secretary~~] directed to the Comptroller of the Public Accounts, who shall thereupon issue a warrant on the Treasury of the State of Texas for the amount fixed in the requisition and payable to the person designated thereon, which said warrant upon presentation shall be paid by the Treasurer out of any funds appropriated by the Legislature for the purpose provided for under this Act.

Sec. 8 [~~12~~]. The office of rural health care [~~Board~~] may contract with any insurance company or companies licensed to do

business in Texas for issuance on the life of any applicant an amount sufficient to retire the principal and interest owed under a loan made under the provisions of this Act, the costs of the insurance shall be paid by the student borrower. No contract for insurance provided for in this section may be approved except by the office of rural health care [~~Board--during--a--regular--meeting attended-by-a-quorum-of-the-total-Board-membership~~].

Sec. 9 [~~13~~]. The office of rural health care [~~Board~~] may extend the time for beginning repayment for unusual or financial hardships with approval of the Attorney General.

Sec. 10 [~~14~~]. Upon any default as provided for herein the office of rural health care [~~Board~~] shall turn the same over to the Attorney General for prosecution and suit for the remaining sum shall be instituted by the Attorney General, or any county or district attorney acting for him, in the county of the person's residence, the county in which is located the institution at which the person was last enrolled, or in Travis County, unless the Attorney General finds reasonable justification for delaying suit and so advises the office of rural health care [~~Board~~] in writing.

[~~Sec. 15. The Board may appoint advisory committees from outside its members as it deems necessary to assist in achieving the purposes of this Act.~~]

Sec. 11 [~~16~~]. In achieving the goals outlined in this Act and the performance of functions assigned to it, the office of rural health care [~~Board~~] may contract with any other State governmental agency as authorized by law, with any agency of the United States, and with corporations, associations, partnerships,

and individuals.

Sec. 12 [~~17~~]. The office of rural health care [~~Board~~] may accept gifts, grants or donations of real or personal property from any individual, group, association, or corporation or the United States, subject to limitations or conditions set by law. The gifts, grants, or donations of money shall be deposited in the Texas Rural Medical Education [~~Board~~] fund, separately accounted for, and expended in accordance with the specific purposes for which given and under such conditions as are imposed by the donor and as provided by law.

Sec. 13 [~~18~~]. All transactions under this Act are subject to audit by the State Auditor.

Sec. 14 [~~19~~]. The office of rural health care [~~board~~] shall make a report of its activities under this Act [~~the--operation--of the--State--Rural-Medical-Education-Board~~] to the Governor annually and to the Legislature not later than December 1, prior to the Regular Session of the Legislature.

Sec. 15 [~~20~~]. Rural areas as defined in this Act shall mean residence in or intention to practice in a county of the State of Texas which according to the last preceding Federal Census had a population of less than 30,000. This population limitation is applicable only to the Texas Department of Health serving as the medical education board.

SECTION 12. Section 74.001, Civil Practice and Remedies Code, is designated as Subchapter A with a heading to read as follows:

SUBCHAPTER A. PROVISIONS RELATING TO NONMEDICAL PERSONNEL

SECTION 13. Chapter 74, Civil Practice and Remedies Code, is amended by adding Subchapter B and by renumbering and amending Section 74.002 to read as follows:

SUBCHAPTER B. PROVISIONS RELATING TO MEDICAL PERSONNEL

Sec. 74.011. DEFINITIONS. In this subchapter:

(1) "Emergency medical care" means care given for a medical condition that is manifested by acute symptoms, including severe pain, of sufficient severity that the absence of immediate medical attention could result in:

(A) placing the patient's life in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any body organ or part.

(2) "Emergency prehospital care" means care provided to the sick or injured before or during transportation to a medical facility, including any necessary stabilization of the sick or injured in connection with that transportation.

(3) "Gross negligence" has the meaning assigned by Section 41.001.

Sec. 74.012. PERSONS CERTIFIED AS EMERGENCY MEDICAL SERVICES PERSONNEL [~~74.002. UNLICENSED MEDICAL PERSONNEL~~]. (a) Persons who are training or are certified as emergency medical services personnel under the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) and [~~not licensed in the healing arts~~] who in good faith administer emergency care that is not

grossly negligent [~~as-emergency-medical-service-personnel~~] are not liable in civil damages for an act performed in administering the care [~~unless--the--act--is--wilfully-or-wantonly-negligent~~]. This section applies without regard to whether the care is provided for or in expectation of remuneration.

(b) A claimant under this section must prove gross negligence, and the burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence.

Sec. 74.013. TRAINING PROGRAMS. (a) A state agency, political subdivision of the state, or a private organization that sponsors, authorizes, supports, finances, or supervises the training of emergency medical services personnel in a program approved by the Texas Department of Health is not liable for civil damages for an act or omission that is not grossly negligent and that relates to the delivery of care during the training program.

(b) A person who is certified by the Texas Department of Health as a program instructor, examiner, or course coordinator under the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) is not liable for civil damages for an act or omission that is not grossly negligent and that relates to the delivery of care during a training program for emergency medical services personnel.

Sec. 74.014. PHYSICIANS GIVING INSTRUCTIONS. (a) A physician who acts in good faith while giving instructions that are not grossly negligent relating to emergency prehospital care to a specially skilled emergency medical technician or a paramedic emergency medical technician is not liable for civil damages as a

result of issuing the instructions.

(b) A specially skilled emergency medical technician or a paramedic emergency medical technician who follows the instructions of a physician and renders care that is not grossly negligent and that is rendered in good faith is not liable for civil damages as a result of following the physician's instructions.

Sec. 74.015. EMERGENCY CARE. (a) A hospital in this state, an employee or person acting on behalf of the hospital who works in the facility and provides patient care, and a physician or person licensed in the healing arts who in good faith renders emergency medical care that is not grossly negligent are not liable for civil damages as a result of the medical care.

(b) The protections provided by Subsection (a) do not apply to medical care or treatment:

(1) that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient;

(2) that is unrelated to the original medical emergency; or

(3) that is provided by a hospital, that relates to the transfer or receipt of an emergency patient, and for which there is not a transfer agreement between the transferring and receiving hospitals.

(c) A claimant under this section must prove gross negligence, and the burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence.

(d) In an action for damages that involves a claim of negligence arising from the provision of emergency medical care,

the trier of fact shall consider, together with all other relevant matters:

(1) whether the person providing care lacked the patient's medical history or was unable to obtain a full medical history, including the knowledge of preexisting medical conditions, allergies, and medications;

(2) the lack of a preexisting physician-patient relationship;

(3) the circumstances constituting the emergency; and

(4) the degree of care and skill ordinarily exercised by reputable members of the physician's profession in the same or similar locality, in like cases, and under similar emergency circumstances.

SECTION 14. Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

SUBCHAPTER G. PROOF [~~RES-IPSA-LOQUITUR~~]

Sec. 7.01. APPLICATION OF RES IPSA LOQUITUR. The common-law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of this state as of August 29, 1977 [~~the effective date of this subchapter~~].

Sec. 7.02. STANDARD OF MEDICAL CARE OR HEALTH CARE. (a) In a suit involving a health care liability claim against a physician or health care provider for the injury to or death of a patient, the person bringing the suit may prove that the treatment or lack

of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the person shows that the physician or health care provider did not use the degree of care and skill that:

(1) may reasonably be expected of a prudent, competent physician or health care provider in the same or similar circumstances; and

(2) is commensurate with the care and skill of other physicians or health care providers of similar training, experience, or certification.

(b) The existence of a bad result of the treatment by the physician or health care provider is not evidence that the physician or health care provider departed from accepted standards of medical care.

SECTION 15. Subchapter J, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

SUBCHAPTER J. STATUTE OF LIMITATIONS

Sec. 10.01. LIMITATIONS ON HEALTH CARE LIABILITY CLAIMS. (a) Notwithstanding any other law, no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed[~~,--provided that,--minors-under-the-age-of-12-years-shall-have-until-their-14th birthday-in-which-to-file,-or--have--filed--on--their--behalf,--the claim~~]. Except as herein provided, this subchapter applies to all

persons regardless of minority or other legal disability.

(b) [~~Sec. 10.02. CAUSES OF ACTION COVERED BY OTHER LAW.~~] Causes of action accruing between August 29, 1977, [~~the effective date of this Act~~] and the effective date of Article 5.82, Insurance Code, shall be filed pursuant to Section 4 of Article 5.82.

Sec. 10.02. HEALTH CARE LIABILITY CLAIMS BROUGHT BY MINORS. (a) Minors must file notice concerning a health care liability claim within eight years after the date of the occurrence of the breach or tort or after the date the medical or health care treatment that is the subject of the notice or the hospitalization for which the notice is made is completed. However, the notice may not be given later than the minor's 20th birthday.

(b) In this section, "notice" means actual notice to the health care provider or written notice to the health care provider from the parent or legal guardian of the minor. The notice, whether actual or written, must reasonably describe the facts, conditions, or circumstances that would cause a reasonably prudent person to make inquiry that, if pursued, would lead to the discovery of an injury.

(c) If actual or written notice is not received by the health care provider within eight years as provided by Subsection (a) of this section, the minor's cause of action is barred.

(d) If actual or written notice is received by the health care provider within eight years as provided by Subsection (a) of this section, the minor's cause of action is barred on the minor's 20th birthday.

SECTION 16. The Medical Liability and Insurance Improvement

Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. PERIODIC PAYMENT OF FUTURE DAMAGES

Sec. 13.01. DEFINITION. In this subchapter, "judgment creditor" means a person to whom periodic payments under this subchapter are paid.

Sec. 13.02. PERIODIC PAYMENT OF FUTURE DAMAGES REQUIRED. (a) If a physician or health care provider is found to be liable on a health care liability claim for future damages totalling more than $100,000, the court shall order that all future damages be paid by the physician or health care provider by means of periodic payments.

(b) The court shall provide that the future medical expenses of the judgment creditor are to be paid by means of periodic payments for the lifetime of the judgment creditor, without regard to the life expectancy of the judgment creditor at the time the trier of fact found the physician or health care provider liable for future damages.

(c) The periodic payments must include interest that accrues at the rate provided by Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes).

Sec. 13.03. CONTINUING JURISDICTION. (a) A court that enters a judgment or order for periodic payments under this subchapter retains jurisdiction over the action and the parties to the action until all payments have been made, or for one year after the death of all judgment creditors, whichever occurs first.

(b) Continuing jurisdiction by the court under this section

1 does not affect the finality of the judgment for any purpose,
2 including appeal.
3 Sec. 13.04. DEATH OF JUDGMENT CREDITOR. On the death of a
4 judgment creditor, the physician or health care provider's
5 liability for the future medical expenses of the judgment creditor
6 ends.
7 SECTION 17. The Medical Liability and Insurance Improvement
8 Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is
9 amended by adding Subchapter N to read as follows:
10 SUBCHAPTER N. EXPERT WITNESSES
11 Sec. 14.01. QUALIFICATION OF EXPERT WITNESS IN SUIT AGAINST
12 PHYSICIAN. In a suit involving a health care liability claim
13 against a physician or health care provider for injury to or death
14 of a patient, a person may qualify as an expert witness on the
15 issue of whether the physician or health care provider departed
16 from accepted standards of medical care or health care in a manner
17 that proximately resulted in the injury or death only if the person
18 is knowledgeable of the accepted standards of medical care or
19 health care commensurate with the care and skill of other
20 physicians or other health care providers of similar training,
21 experience, or certification for the treatment of a patient under
22 the same or similar circumstances.
23 Sec. 14.02. AFFIDAVIT OF EXPERT WITNESS. (a) In a suit for
24 damages involving a health care liability claim, the plaintiff must
25 file with the petition an affidavit of an expert who is competent
26 to testify. The affidavit shall state that the expert has reviewed
27 the claim and has reasonable cause to believe the defendant has

departed from the accepted standard of medical or health care. The court shall dismiss the suit if the affidavit is not filed with the petition.

(b) The contemporaneous filing requirement of Subsection (a) of this section does not apply when the statute of limitations would expire before the affidavit can be prepared. The plaintiff has the burden of proof to show that the affidavit could not be obtained before the statute of limitations expires. In that case, the plaintiff shall file the affidavit not later than the 60th day after the date on which the petition is filed. The court may, on motion, after hearing, and for good cause, extend that time as it determines justice requires.

(c) If the affidavit is filed as provided by Subsection (b) of this section, the defendant must file an answer to the petition not later than the 30th day after the date on which the affidavit is filed.

(d) The plaintiff is not required to file the affidavit with the petition if the defendant has failed to timely respond to the production of medical records as provided under Section 4.01(d) of this Act. The plaintiff has the burden of proof to show that the records were not timely provided as required.

Sec. 14.03. CONFLICT WITH TEXAS RULES OF CIVIL EVIDENCE. (a) To the extent that this subchapter conflicts with the Texas Rules of Civil Evidence, this subchapter controls.

(b) Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this subchapter.

SECTION 18. Section 32.022, Human Resources Code, is amended to read as follows:

Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES [~~COMMITTEE~~]. (a) The board, on the recommendation of the commissioner, shall appoint a medical care advisory committee to advise the board and the department in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's goal of providing access to high quality, comprehensive medical and health care services to medically indigent [~~needy~~] persons in the state. To ensure that qualified applicants receive services, the committee shall consider changes in the process the department uses to determine eligibility.

(b) The board shall appoint the committee in compliance with the requirements of the federal agency administering medical assistance. The appointments shall provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work.

(c) The department shall adopt rules for membership on the committee to provide for efficiency of operation, rotation, stability, and continuity.

(d) The board, on the recommendation of the commissioner, may appoint regional and local medical care advisory committees and other advisory committees as considered necessary.

(e) The board, on the recommendation of the commissioner, shall appoint a hospital payment advisory committee. The committee

shall advise the board and the department on necessary changes in hospital payment methodologies for inpatient hospital prospective payments and on adjustments for disproportionate share hospitals that will ensure reasonable, adequate, and equitable payments to hospital providers and that will address the essential role of rural hospitals. The board shall appoint to the committee persons with knowledge of and an interest in hospital payment issues.

SECTION 19. Section 32.024, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department, in its rules and standards governing the scope of hospital and long-term services, shall allow hospitals to provide swing-bed and other long-term care services and shall provide adequate reimbursement for those services.

SECTION 20. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.040 to read as follows:

Sec. 32.040. LIMITATION ON LIABILITY. (a) Except as provided by Subsection (b) of this section, in an action on a health care liability claim based on the delivery of a pregnant woman's child under the medical assistance program in which final judgment is rendered against a physician, hospital, or other health care provider, the physician, hospital, or health care provider is not liable for noneconomic damages in an amount that exceeds $250,000 recoverable by or on behalf of an injured person or the estate of the injured person, including past, present, and future physical pain and suffering, mental anguish and suffering, loss of consortium, disfigurement, and any other nonpecuniary damages.

(b) This section does not apply to damages arising from an

act or omission by a physician, hospital, or other health care provider that is grossly negligent or constitutes an intentional tort.

SECTION 21. Section 32.028, Human Resources Code, is amended by adding Subsection (d) to read as follows:

(d) The department, in its rules and standards relating to rates paid for inpatient hospital services on a prospective payment basis, shall ensure that the prospective payment methodology for hospital services sets the hospital-specific standardized amount at not less than $1,600.

SECTION 22. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.917 to read as follows:

Sec. 51.917. RURAL HEALTH; FAMILY PRACTICE RESIDENCY PROGRAM. (a) The Texas Higher Education Coordinating Board, the office of rural health care in the Texas Department of Health, medical schools, nursing schools, and schools of allied health sciences shall cooperate to improve and expand programs for rural areas by:

(1) expanding rural preceptor programs;

(2) developing relief service programs for rural physicians and allied health personnel to facilitate ready access to continuing medical education; and

(3) requiring family practice residency programs to provide an opportunity for residents to have a one-month rotation through a rural setting.

(b) The office of rural health care in the Texas Department of Health shall coordinate efforts under Subsection (a) of this

section.

(c) Each medical school shall incorporate a clerkship in family practice during the third core clinical year.

SECTION 23. Section 61.534, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher education, including loans for undergraduate education, received by a physician through a lender [~~in Texas~~].

(c) The coordinating board each fiscal biennium shall attempt to allocate all funds appropriated to it for the purpose of providing repayment assistance under this subchapter.

SECTION 24. Section 3, Article 5.15-1, Insurance Code, is amended to read as follows:

Sec. 3. RATE STANDARDS. Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written in [~~inside~~] this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or

savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

SECTION 25. Section 4, Article 5.15-1, Insurance Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) <u>Except for Subsection (d) of Article 5.15 of this code, the</u> [~~The~~] provisions of Article 5.15, Insurance Code, shall apply

to the filing of rates and rating information required under this article.

(d) An insurer who writes professional liability insurance for a physician or a health care provider may not use for a specific risk under such a liability policy a rate or premium that is greater than the rate or premium that has been filed by the insurer and approved by the State Board of Insurance under Article 5.15 of this code.

SECTION 26. Article 5.15-1, Insurance Code, is amended by adding Section 4B to read as follows:

Sec. 4B. RATE APPEALS. (a) Each insurer covered by this article shall adopt a procedure for reconsideration of a rate or premium charged a physician or health care provider for professional liability insurance coverage. The procedure shall include an opportunity for a hearing before officers or employees who have responsibility for determining rates and premiums to be charged for professional liability insurance and a requirement that the insurer reconsider the rate or premium and provide the physician or health care provider a written explanation of the rate or premium being charged.

(b) If a physician or health care provider is not satisfied with a decision under procedures established under Subsection (a) of this section, the physician or health care provider may appeal to the State Board of Insurance for a review of the rate or premium and a determination if the rate or premium being charged complies with criteria under Section 3 of this article. A decision of the State Board of Insurance under this subsection may not be appealed.

(c) The State Board of Insurance by rule shall establish criteria to be followed by insurers in establishing reconsideration procedures under Subsection (a) of this section and standards and procedures to be followed in review of rates and premiums by the board.

SECTION 27. Section 101.001(2), Civil Practice and Remedies Code, is amended to read as follows:

(2) "Governmental unit" means:

(A) this state and all the several agencies of government that collectively constitute the government of this state, including other agencies bearing different designations, and all departments, bureaus, boards, commissions, offices, agencies, councils, and courts;

(B) a political subdivision of this state, including any city, county, school district, hospital district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, hospital authority, [~~and~~] river authority, and any hospital owned, operated, or leased or jointly owned, operated, or leased by a political subdivision of this state; and

(C) any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.

SECTION 28. Section 101.023, Civil Practice and Remedies Code, is amended by adding Subsection (d) to read as follows:

(d) If a hospital district, hospital authority or hospital owned, operated, or leased or jointly owned, operated, or leased by a governmental unit has limited liability pursuant to this section and it engages a person or entity pursuant to contract to provide management or consulting services for operation of the hospital, the liability of such person or entity is limited to the extent and up to but not in excess of the maximum amount of the liability of the governmental unit pursuant to this section, provided the governing body of such hospital district, hospital authority, or hospital retains ultimate responsibility and control of the hospital's operations.

SECTION 29. In making the initial appointments to the advisory committee on rural health care, the board shall appoint three members to serve two-year terms, three members to serve four-year terms, and three members to serve six-year terms in order to stagger the terms.

SECTION 30. (a) The office of rural health care in the Texas Department of Health assumes all rights, privileges, powers, and duties under any contract entered into by the State Rural Medical Education Board before September 1, 1989.

(b) The property and records in the custody of the State Rural Medical Education Board on the effective date of this Act shall be transferred to the office of rural health care in the Texas Department of Health not later than December 31, 1989.

(c) All appropriations to the State Rural Medical Education

Board may be expended by the office of rural health care in the Texas Department of Health.

SECTION 31. Sections 10, 13, 14, 15, 17, and 20 of this Act apply only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

SECTION 32. This Act takes effect September 1, 1989.

SECTION 33. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

3rd READING

AMENDMENT NO. 1 BY McKinney

Amend CSHB 18 as follows:

(1) On page 3, line 10, strike "and".

(2) On page 3, line 11, strike "four" and substitute "three".

(3) On page 3, line 11, strike the period and substitute:

(6) "; and one person who is licensed in this state as a dentist, podiatrist, or optometrist and who has practiced in a rural area for the five years preceding appointment.".

ADOPTED

MAY 1 1989

Betty Murray
Chief Clerk
House of Representatives

HOUSE ENGROSSMENT

By McKinney, Schlueter, Rudd, et al. H.B. No. 18

A BILL TO BE ENTITLED

AN ACT

relating to health care, including the office of rural health care, surveys of hospitals and physicians, health education enrollments, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers; providing civil penalties.

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

SECTION 1. This Act may be cited as the Omnibus Rural Health Care Rescue Act.

SECTION 2. Article 4414b, Revised Statutes, is amended by adding Sections 1.11 and 1.12 to read as follows:

Sec. 1.11. OFFICE OF RURAL HEALTH CARE. (a) The office of rural health care is in the department to promote access to health care in rural areas.

(b) The commissioner shall appoint a director to administer the office of rural health care. The director must have a history of involvement with rural health care practice or issues.

(c) The office of rural health care, in consultation with the advisory committee on rural health care, shall establish mechanisms to ensure access to medical care in rural areas and to recruit and retain practitioners in those areas.

Sec. 1.12. IMPACT STATEMENT ON PROPOSED RULES. (a) Before

the adoption of a rule, including the amendment or repeal of a rule, the Texas Department of Health, the Texas Department of Human Services, and the Texas Department of Mental Health and Mental Retardation shall request an impact statement from the office of rural health care that describes the effect of the proposed rule on rural health care and makes recommendations concerning the proposed rule.

(b) Each agency covered by this section shall consider fully the recommendations of the office of rural health care concerning the proposed rule.

SECTION 3. Article 4414b, Revised Statutes, is amended by adding Section 1.13 to read as follows:

Sec. 1.13. ADVISORY COMMITTEE ON RURAL HEALTH CARE. (a) The board shall appoint a committee to advise the board and the office of rural health care on the health care needs of rural residents and the delivery of health care to rural populations.

(b) The board shall appoint the advisory committee to provide for a balanced representation of the geographical regions of the state.

(c) The advisory committee is composed of nine members, including:

(1) two physicians licensed to practice in this state who have been in active practice in a rural area for the five years preceding appointment;

(2) one professional nurse registered to practice in this state who has been in active practice in a rural area for the five years preceding appointment;

(3) one hospital administrator who is a member of the Academy of Hospital Administrators and who has been actively engaged in hospital administration in a rural area for the five years preceding appointment;

(4) one allied health practitioner who is licensed, registered, or certified by the state licensing board for the practitioner's speciality, or who is accredited by a recognized professional organization if licensing, registration, or certification is not required by law, and who has practiced in a rural area for the five years preceding appointment;

(5) three public members who reside in rural areas; and

(6) one person who is licensed in this state as a dentist, podiatrist, or optometrist and who has practiced in a rural area for the five years preceding appointment.

(d) A person is not eligible to be appointed or to serve as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the health care field;

(2) is employed by a health care facility, corporation, or agency, or by a corporation authorized to underwrite health care insurance;

(3) governs or administers a health care facility, corporation, or agency;

(4) has a financial interest, other than a consumer's interest, in a health care facility, corporation, or agency; or

(5) meets the criteria for appointment provided by

Subsections (c)(1) through (c)(4) of this section.

(e) Advisory committee members serve for staggered six-year terms, with the terms of three members expiring August 31 of each odd-numbered year.

(f) A vacancy on the advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(g) A member of the advisory committee is entitled to reimbursement for expenses incurred in performing duties under this section. The reimbursement may not exceed the amount specified in the General Appropriations Act for travel and per diem allowances for state employees.

(h) The advisory committee may elect a chairman, vice-chairman, and secretary from among its members and may adopt rules for the conduct of its activities.

SECTION 4. Article 4414b, Revised Statutes, is amended by adding Section 1.14 to read as follows:

Sec. 1.14. HEALTH PROFESSIONS RESOURCE CENTER. (a) The department shall establish in the office of rural health care a comprehensive health professions resource center for the collection and analysis of educational and employment trends for health professions in this state.

(b) The department shall place high priority on collecting and disseminating data on health professions demonstrating an acute shortage in this state, including:

(1) data concerning nursing personnel; and

(2) the health professions in which shortages occur in

rural areas.

(c) To the extent possible, the department may collect high priority health professions data from existing sources that the department determines are credible. The department may enter agreements with those sources that establish guidelines concerning the identification, acquisition, transfer, and confidentiality of the data.

(d) At a minimum, the data collected by the department shall include the following in regard to health professionals:

(1) the number and geographic distribution;

(2) licensure or certification status;

(3) specialty areas, if applicable; and

(4) trends or changes in license holders according to number or geographic distribution.

(e) The department may use the data collected and analyzed under this article to publish reports regarding:

(1) the educational and employment trends for health professions;

(2) the supply and demand of health professions; and

(3) other issues, as necessary, concerning health professions in this state.

(f) The department shall report its findings annually to the legislature and to the coordinating board.

(g) The coordinating board may adjust health education enrollments based on data collected and analyzed under this article.

(h) The board may adopt rules to govern the reporting and

collection of data.

(i) In this section, "health profession" means any health or allied health profession that is licensed, certified, or registered by a state board, agency, or association.

SECTION 5. Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended by adding Section 5 to read as follows:

Sec. 5. The Texas Department of Health shall ensure that a licensed physician involved in direct patient care as defined by the Texas State Board of Medical Examiners is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) to survey physicians on the medical staff of a hospital.

SECTION 6. The Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) is amended by adding Section 5B to read as follows:

Sec. 5B. (a) In this section:

(1) "Active labor" means labor at a time at which:

(A) delivery is imminent;

(B) there is inadequate time to safely transfer the patient to another hospital before delivery; or

(C) a transfer may threaten the health and safety of the patient or unborn child.

(2) "Emergency medical condition" means a medical condition that is manifested by acute symptoms, including severe pain, of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's life in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any body organ or part.

(3) "Emergency services" means services that are usually and customarily available at a hospital and that must be provided immediately for further medical examination and treatment as required to:

(A) stabilize an emergency medical condition; or

(B) provide for the care of a woman in active labor or, if the hospital is not equipped for that service, provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

(4) "Emergency hospital patient transfer" means the transfer of a patient with an emergency medical condition or in active labor in a manner that conforms with board rules relating to hospital patient transfers from a hospital that is not capable of providing the appropriate level of emergency services to a general hospital that is capable of providing the appropriate level of emergency services.

(5) "Person" means:

(A) an individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative; or

(B) a hospital district, county, municipality, or other political subdivision, and includes a department,

division, board, or other agency of a political subdivision.

(b) Except as authorized by rules adopted by the Texas Board of Health, a person who owns or operates a general hospital, is an officer or employee of a general hospital, or is a member of the medical staff of a general hospital may not deny emergency services available at that hospital to an individual because the individual is unable to pay for the services when:

(1) the individual is the subject of an emergency hospital patient transfer made in accordance with a transfer agreement under Subsection (d) of this section; and

(2) the individual is diagnosed as being in active labor or as having an emergency medical condition and is determined to be in need of emergency services that are available at the prospective receiving general hospital by a receiving physician who is a member of the medical staff of that hospital.

(c) The governing body of each hospital shall adopt binding policies relating to the provision of emergency services to hospital transfer patients that are consistent with board rules. If possible, each governing body shall implement its policy relating to the provision of emergency services by adopting emergency services agreements with other hospitals.

(d) If a transfer agreement is executed between hospitals, the agreement shall address the transfer of both emergency and nonemergency patients and shall be submitted to the Licensing Agency. At a minimum, the transfer agreement must provide that:

(1) transfers will be accomplished in a medically appropriate manner as required by Section 5(b) of this Act and the

rules adopted by the Texas Board of Health;

(2) the transfer or receipt of patients may not be based on the individual's inability to pay for the services provided by the transferring or receiving hospital;

(3) multiple transfer agreements may be entered into by a hospital based on the type or level of medical services available at other hospitals;

(4) the hospitals will recognize the right of an individual to request a transfer to the care of a physician and hospital of the individual's own choosing;

(5) the hospitals will recognize and comply with the requirements of the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes) relating to the transfer of patients to mandated providers; and

(6) a public hospital or hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services, and staff available for providing care to the patient.

(e) The Texas Board of Health may adopt rules to implement and enforce this section.

(f) This section does not relieve an individual of the individual's obligation to pay for services provided by a hospital if the individual can pay for those services.

SECTION 7. Section 7(a), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Applications for licenses shall be made to the Licensing

Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that:

(1) there are one or more physicians on the medical staff of the hospital;

(2) these physicians are currently licensed by the Texas State Board of Medical Examiners; and

(3) the Governing Body of the hospital has adopted and implemented a patient transfer policy in accordance with Sections 5(b) and (d) of this Act <u>and an emergency hospital patient transfer policy in accordance with Section 5B of this Act</u>.

SECTION 8. Section 9B(d), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) If a hospital does not timely adopt, implement, and enforce a patient transfer policy in accordance with Sections 5(b) and (d) of this Act <u>and an emergency hospital patient transfer policy in accordance with Section 5B of this Act</u>, the facility is subject to a civil penalty of not more than $1,000 for each day of violation and for each act of violation. In determining the amount of the penalty, the district court shall consider the facility's history of previous violations, the seriousness of the violation, if the health and safety of the public was threatened by the violation, and the demonstrated good faith of the facility.

SECTION 9. Section 9C, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as

follows:

Sec. 9C. A person harmed by the failure of a hospital to timely adopt, implement, or enforce a patient transfer policy in accordance with Sections 5(b) and (d) of this Act, or an emergency hospital patient transfer policy in accordance with Section 5B of this Act, may petition the district court of the county in which the person resides, or if the person is not a resident of the state, a district court of Travis County, for appropriate injunctive relief. Such person also may pursue remedies for civil damages existing under current common law.

SECTION 10. The Maternal and Infant Health Improvement Act (Article 4447y, Vernon's Texas Civil Statutes) is amended by adding Section 14 to read as follows:

Sec. 14. LIMITATION ON LIABILITY. (a) Except as provided by Subsection (b) of this section, in an action on a health care liability claim based on the provision of medical services under this Act in which final judgment is rendered against a physician, hospital, or other health care provider, the physician, hospital, or health care provider is not liable for noneconomic damages in an amount that exceeds $250,000 recoverable by or on behalf of an injured person or the estate of the injured person, including past, present, and future physical pain and suffering, mental anguish and suffering, loss of consortium, disfigurement, and any other nonpecuniary damages.

(b) This section does not apply to damages arising from an act or omission by a physician, hospital, or other health care provider that is grossly negligent or constitutes an intentional

tort.

SECTION 11. Chapter 348, Acts of the 63rd Legislature, Regular Session, 1973 (Article 4498c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. The office of rural health care in the Texas Department of Health serves as the State Medical Education Board for purposes of Article III, Section 50a, of the Texas Constitution. [~~There--is-hereby-established-and-created-the-State Rural-Medical-Education-Board,-which-shall-have-the-general--powers and-duties-authorized-and-imposed-by-the-provisions-of-this-Act.~~

[~~Sec.-1a.--The-State-Rural-Medical-Education-Board-is-subject to--the--Texas-Sunset-Act-(Chapter-325,-Government-Code),-but-it-is not-abolished-under-that-Act.--The-board-shall--be--reviewed--under the--Texas--Sunset--Act--during--the-period-in-which-state-agencies abolished-September-1-of-1993-and-of-every-12th-year-after-1993-are reviewed.~~

[~~Sec.-2.--The--State--Rural--Medical--Education--Board--shall consist--of-six-(6)-members,-who-shall-be-appointed-by-the-Governor with-the-advice-and-consent-of-the-Senate,-and-who-shall--have--the following--qualifications:---Three--(3)--of--the--members--shall-be legally-qualified-practicing-physicians,-who--shall--have--had--not less--than--five--(5)--years--experience--in-the-actual-practice-of medicine-within-the-State-of-Texas-in-rural--areas--as--defined--by this-Act,-of-good-professional-standing-and-graduates-of-recognized medical--colleges,--three--(3)--of--whose--members-shall-consist-of citizens-of-this-State-who-have-maintained-residence-for--a--period of--not-less-than-five-(5)-years-in-a-rural-area-as-defined-by-this~~

Act.

[The terms of office of members of said Board shall be for six (6) years except the terms of office of members appointed to the initial Board shall be two for two years, two for four years and two for six years. The initial appointments shall be made to insure that there shall always be an equal number of said Board members with the same term of both qualifications as described above. Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired term. The members of the State Rural Medical Education Board shall qualify by taking a Constitutional Oath of office before an officer authorized to administer oaths with this State, and, upon presentation of such oath of office, together with a certificate of their appointment, the Secretary of State shall issue commissions to them, which shall be evidence of their authority to act as such.

[Sec. 3. The Board shall meet within 30 days after the effective date of this Act and elect a Chairman, Vice Chairman, and Secretary from among its members. The vote of the majority of Board members is sufficient for passage of any business or proposal which comes before the Board.

[Sec. 4. A member of the Board is not entitled to a salary for duties performed as a member of the Board. However, a member is entitled to $25 for each day he is in attendance at meetings or hearings or on authorized business of the Board, including time spent in traveling to and from the place of the meeting, hearing or other authorized business, and is entitled to a reimbursement for

~~travel-and-other-necessary-expenses-incurred-in-performing-official duties,---as--evidenced--by--vouchers--approved--by--the--Executive Secretary.~~

~~[Sec.-5.--The-State-Rural-Medical-Education-Board-shall--have the-following-powers-and-duties:~~

~~[(a)--The--Chairman,--or--in--his--absence-the-Vice-Chairman, shall-preside-at-all-meetings-of-the-Board.--In-the-absence-of-both the-Chairman-and-the-Vice-Chairman-from-any-meeting-of--the--Board, the--members-of-the-Board-present-may-select-one-of-their-number-to serve-as-Chairman-for-the-meeting.~~

~~[(b)--The--Board--shall--have--regular--meetings---at---times specified-by-a-majority-vote-of-the-Board.~~

~~[(c)--The-Chairman-may-call-special-meetings-at-any-time.--He shall--call-a-special-meeting-on-written-request-signed-by-at-least three-members-of-the-Board.~~

~~[(d)--A--majority--of--the--Board--constitutes--a--quorum--to transact-business.~~

~~[(e)--To--make--rules--and-regulations-for-its-government-and that-of-its-officers-and-employees,-and-to-prescribe-the-duties--of its-officers,-consultants-and-employees.~~

~~[(f)--To--employ-a-director-and-other-such-clerical-employees as-it-may-deem-necessary-within-the-limits-of-funds-made--available for--such-purposes.--The-director-shall-keep-the-books,-records-and accounts-of-the-Board-and-shall-prepare-and-countersign-all-checks, vouchers-and-warrants-drawn-upon-the-funds-of-the--Board,--and--the same--shall--be--signed-by-the-Chairman-of-the-Board.--The-Director shall-also-be-the-Treasurer-of-the-Board-and-shall-keep-and-account~~

~~for all funds of the Board, and shall execute and file with the Board a surety bond in the sum of $20,000, payable to the State of Texas, and conditioned upon the faithful performance of his duties, said premium to be paid out of funds of the Board.~~

[~~Sec. 6.~~] It shall be the duty of the office of rural health care [~~Board~~] to receive and pass upon, allow or disallow all applications for loans, grants or scholarships made by students who are bona fide citizens and residents of the State of Texas and who have a desire to become physicians, and who are acceptable for enrollment in a qualified medical school. The purpose of such loans, grants or scholarships shall be to enable such applicants to obtain a standard medical education which will qualify them to become licensed, practicing physicians and surgeons within the State of Texas. It shall be the duty of the office of rural health care [~~Board~~] to make a careful and full investigation of the ability, character and qualifications of each applicant and to determine his fitness to become a recipient of such loan or scholarship, and for that purpose the office of rural health care [~~Board~~] may propound such examination to each applicant which it deems proper, and the Texas Board of Health [~~said Board~~] may prescribe such rules and regulations as it deems necessary and proper to carry out the purposes and intentions of this Act. The investigation of the applicant shall include an investigation of the ability of the applicant, who is unable to pay, or of the parents of such applicant, to pay his own tuition at such a medical school and the office of rural health care [~~Board~~] in granting such loans and scholarships shall give preference to qualified

applicants, or whose parents are unable to pay the applicant's tuition at such a medical school.

The office of rural health care [~~said--Board~~] shall have authority to grant to each applicant deemed by the office of rural health care [~~Board~~] to be qualified to receive the same, a loan, grant or scholarship for the purpose of acquiring a medical education as herein provided for, upon such terms and conditions to be imposed by the office of rural health care [~~Board~~] as provided for in this Act. The office of rural health care [~~Board~~] shall, except in those cases which it deems proper, make every effort to grant loans to applicants rather than grants or scholarships. Before awarding funds, the office of rural health care [~~Board~~] may review candidates for loans, grants or scholarships to determine their intent concerning the location of future practice.

Sec. 2 [~~7~~]. Applicants who are granted loans, grants or scholarships by the office of rural health care [~~Board~~] shall receive an amount which may defray his or her tuition and other expenses in any reputable, accepted and accredited medical school or medical college or school listed by the World Health Organization, or a scholarship to any such medical college or school for a term not exceeding four (4) years, same to be paid at such time and in such manner as may be determined by the office of rural health care [~~Board~~]. The loans, grants and scholarships herein provided may be proportioned in any such manner as to pay to the medical school to which any applicant is admitted such funds as are required by that school, and the balance to be paid directly to the applicant; all of which shall be under such terms and

conditions as may be provided under rules and regulations of the office of rural health care [~~Board~~]. The said loans, grants, or scholarships shall be based upon the condition that the full amount thereof shall be repaid to the State of Texas in cash in full with ten (10) percent interest from the date of each payment by the State on such loan, grant or scholarship or by satisfaction of other conditions of the office of rural health care [~~Board~~] or this Act. If the applicant practices his profession in a rural area as defined by this Act the office of rural health care [~~Board~~] is authorized and shall credit one-fifth of the loan, grant or scholarship together with interest thereon to the applicant for each year of such practice as certified by the office of rural health care [~~Board~~]. At the end of the second full year of practice in a rural area as provided for herein, the applicant shall be privileged to pay off the balance of the loan, grant or scholarship as the case may be with accrued interest thereon, and upon such payment shall be relieved from further obligation under his contract. Should the applicant default under his contract at any time the full principal and accrued interest plus a penalty of 100 percent of the outstanding balance plus attorneys' fees as defined by said contract shall be due and owing to the State.

Sec. 3 [~~7A~~]. Texas residents who attend a medical school within the United States shall have first priority in the distribution of loan funds. Funds shall then be made available to Texas residents who attend a medical school outside the United States. A "Texas resident," as used in this Act, shall be a person who has actually resided in the State of Texas for two (2) years

immediately prior to becoming an applicant hereunder.

Sec. 4 [8]. Each applicant before being granted a loan, grant or scholarship shall enter into a contract with the office of rural health care [~~Board~~], which shall be deemed a contract within the State of Texas, agreeing to the terms and conditions upon which the loan or scholarship shall be granted to him, which said contract shall include such terms and provisions as will carry out the full purpose and intent of this Act, and the form thereof shall be prepared and approved by the Attorney General of this State, and shall be signed by the director of the office of rural health care and [~~Chairman-of-the-Board,-countersigned--by--the--Secretary,--and shall--be--signed--by~~] the applicant. For the purposes of this Act the disabilities and minorityhood of all applicants granted loans or scholarships hereunder shall be and the same are hereby removed and said applicants are declared to be full lawful age for the purpose of entering into the contract hereinabove provided for, and such contract so executed by any applicant is hereby declared to be a valid and binding contract the same as though the said applicant were of the full age of twenty-one (21) years and upward. The office of rural health care [~~Board~~] is hereby vested with the full and complete authority and power to sue in its own name any applicant for any balance due the office of rural health care [~~Board~~] upon any such contract.

Sec. 5 [9]. It shall be the duty of the office of rural health care [~~Board~~] to contact and make inquiry of such of the medical colleges or schools as herein provided as it deems proper, and make such arrangements and enter into such contracts, within

the limitations as to cost as herein provided, for the admission of students granted loans or scholarships by the office of rural health care [~~Board~~], such contracts to be approved by the Attorney General of this State, and money obligations of such contracts so made by the office of rural health care [~~Board~~] with any such college shall be paid for out of the funds to be provided by law for such purposes, and all students granted loans, grants or scholarships shall attend the medical school with which the office of rural health care [~~Board~~] has entered a contract, or any accredited medical school or college in which said applicant may obtain admission, and which is approved by the office of rural health care [~~Board~~].

Sec. 6 [~~10~~]. The Texas Board of Health [~~board~~] shall promulgate and adopt rules and regulations for the cancellation of any contract made between the office of rural health care [~~it~~] and any applicant for loans or scholarships upon such cause deemed sufficient by the office of rural health care [~~Board~~]. And the office of rural health care [~~Board~~] shall have authority to cancel such contracts which it may lawfully cancel made with any of the colleges or schools as herein provided.

Sec. 7 [~~11~~]. All payments of funds or loans or scholarships hereunder shall be made by requisition of the office of rural health care [~~Board~~] signed by the director and [~~Chairman and the Secretary~~] directed to the Comptroller of the Public Accounts, who shall thereupon issue a warrant on the Treasury of the State of Texas for the amount fixed in the requisition and payable to the person designated thereon, which said warrant upon presentation

shall be paid by the Treasurer out of any funds appropriated by the Legislature for the purpose provided for under this Act.

Sec. 8 [~~12~~]. The office of rural health care [~~Board~~] may contract with any insurance company or companies licensed to do business in Texas for issuance on the life of any applicant an amount sufficient to retire the principal and interest owed under a loan made under the provisions of this Act, the costs of the insurance shall be paid by the student borrower. No contract for insurance provided for in this section may be approved except by the office of rural health care [~~Board--during--a--regular--meeting attended-by-a-quorum-of-the-total-Board-membership~~].

Sec. 9 [~~13~~]. The office of rural health care [~~Board~~] may extend the time for beginning repayment for unusual or financial hardships with approval of the Attorney General.

Sec. 10 [~~14~~]. Upon any default as provided for herein the office of rural health care [~~Board~~] shall turn the same over to the Attorney General for prosecution and suit for the remaining sum shall be instituted by the Attorney General, or any county or district attorney acting for him, in the county of the person's residence, the county in which is located the institution at which the person was last enrolled, or in Travis County, unless the Attorney General finds reasonable justification for delaying suit and so advises the office of rural health care [~~Board~~] in writing.

[~~Sec. 15. The Board may appoint advisory committees from outside its members as it deems necessary to assist in achieving the purposes of this Act.~~]

Sec. 11 [~~16~~]. In achieving the goals outlined in this Act

and the performance of functions assigned to it, the office of rural health care [~~Board~~] may contract with any other State governmental agency as authorized by law, with any agency of the United States, and with corporations, associations, partnerships, and individuals.

Sec. 12 [~~17~~]. The office of rural health care [~~Board~~] may accept gifts, grants or donations of real or personal property from any individual, group, association, or corporation or the United States, subject to limitations or conditions set by law. The gifts, grants, or donations of money shall be deposited in the Texas Rural Medical Education [~~Board~~] fund, separately accounted for, and expended in accordance with the specific purposes for which given and under such conditions as are imposed by the donor and as provided by law.

Sec. 13 [~~18~~]. All transactions under this Act are subject to audit by the State Auditor.

Sec. 14 [~~19~~]. The office of rural health care [~~board~~] shall make a report of its activities under this Act [~~the--operation--of the--State--Rural-Medical-Education-Board~~] to the Governor annually and to the Legislature not later than December 1, prior to the Regular Session of the Legislature.

Sec. 15 [~~20~~]. Rural areas as defined in this Act shall mean residence in or intention to practice in a county of the State of Texas which according to the last preceding Federal Census had a population of less than 30,000. This population limitation is applicable only to the Texas Department of Health serving as the medical education board.

SECTION 12. Section 74.001, Civil Practice and Remedies Code, is designated as Subchapter A with a heading to read as follows:

SUBCHAPTER A. PROVISIONS RELATING TO NONMEDICAL PERSONNEL

SECTION 13. Chapter 74, Civil Practice and Remedies Code, is amended by adding Subchapter B and by renumbering and amending Section 74.002 to read as follows:

SUBCHAPTER B. PROVISIONS RELATING TO MEDICAL PERSONNEL

Sec. 74.011. DEFINITIONS. In this subchapter:

(1) "Emergency medical care" means care given for a medical condition that is manifested by acute symptoms, including severe pain, of sufficient severity that the absence of immediate medical attention could result in:

(A) placing the patient's life in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any body organ or part.

(2) "Emergency prehospital care" means care provided to the sick or injured before or during transportation to a medical facility, including any necessary stabilization of the sick or injured in connection with that transportation.

(3) "Gross negligence" has the meaning assigned by Section 41.001.

Sec. 74.012. PERSONS CERTIFIED AS EMERGENCY MEDICAL SERVICES PERSONNEL [~~74.002. UNLICENSED MEDICAL PERSONNEL~~]. (a) Persons who are training or are certified as emergency medical services

personnel under the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) and [~~not-licensed-in-the-healing arts~~] who in good faith administer emergency care that is not grossly negligent [~~as-emergency-medical-service-personnel~~] are not liable in civil damages for an act performed in administering the care [~~unless--the--act--is--wilfully-or-wantonly-negligent~~]. This section applies without regard to whether the care is provided for or in expectation of remuneration.

(b) A claimant under this section must prove gross negligence, and the burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence.

Sec. 74.013. TRAINING PROGRAMS. (a) A state agency, political subdivision of the state, or a private organization that sponsors, authorizes, supports, finances, or supervises the training of emergency medical services personnel in a program approved by the Texas Department of Health is not liable for civil damages for an act or omission that is not grossly negligent and that relates to the delivery of care during the training program.

(b) A person who is certified by the Texas Department of Health as a program instructor, examiner, or course coordinator under the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) is not liable for civil damages for an act or omission that is not grossly negligent and that relates to the delivery of care during a training program for emergency medical services personnel.

Sec. 74.014. PHYSICIANS GIVING INSTRUCTIONS. (a) A physician who acts in good faith while giving instructions that are

not grossly negligent relating to emergency prehospital care to a specially skilled emergency medical technician or a paramedic emergency medical technician is not liable for civil damages as a result of issuing the instructions.

(b) A specially skilled emergency medical technician or a paramedic emergency medical technician who follows the instructions of a physician and renders care that is not grossly negligent and that is rendered in good faith is not liable for civil damages as a result of following the physician's instructions.

Sec. 74.015. EMERGENCY CARE. (a) A hospital in this state, an employee or person acting on behalf of the hospital who works in the facility and provides patient care, and a physician or person licensed in the healing arts who in good faith renders emergency medical care that is not grossly negligent are not liable for civil damages as a result of the medical care.

(b) The protections provided by Subsection (a) do not apply to medical care or treatment:

(1) that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient;

(2) that is unrelated to the original medical emergency; or

(3) that is provided by a hospital, that relates to the transfer or receipt of an emergency patient, and for which there is not a transfer agreement between the transferring and receiving hospitals.

(c) A claimant under this section must prove gross negligence, and the burden of proof may not be shifted to the

defendant or satisfied by evidence of ordinary negligence.

(d) In an action for damages that involves a claim of negligence arising from the provision of emergency medical care, the trier of fact shall consider, together with all other relevant matters:

(1) whether the person providing care lacked the patient's medical history or was unable to obtain a full medical history, including the knowledge of preexisting medical conditions, allergies, and medications;

(2) the lack of a preexisting physician-patient relationship;

(3) the circumstances constituting the emergency; and

(4) the degree of care and skill ordinarily exercised by reputable members of the physician's profession in the same or similar locality, in like cases, and under similar emergency circumstances.

SECTION 14. Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

SUBCHAPTER G. PROOF [~~RES-IPSA-LOQUITUR~~]

Sec. 7.01. APPLICATION OF RES IPSA LOQUITUR. The common-law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of this state as of August 29, 1977 [~~the effective date of this subchapter~~].

Sec. 7.02. STANDARD OF MEDICAL CARE OR HEALTH CARE. (a) In

a suit involving a health care liability claim against a physician or health care provider for the injury to or death of a patient, the person bringing the suit may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the person shows that the physician or health care provider did not use the degree of care and skill that:

(1) may reasonably be expected of a prudent, competent physician or health care provider in the same or similar circumstances; and

(2) is commensurate with the care and skill of other physicians or health care providers of similar training, experience, or certification.

(b) The existence of a bad result of the treatment by the physician or health care provider is not evidence that the physician or health care provider departed from accepted standards of medical care.

SECTION 15. Subchapter J, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

SUBCHAPTER J. STATUTE OF LIMITATIONS

Sec. 10.01. LIMITATIONS ON HEALTH CARE LIABILITY CLAIMS. (a) Notwithstanding any other law, no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed[~~, provided~~

~~that,--minors-under-the-age-of-12-years-shall-have-until-their-14th birthday-in-which-to-file,-or--have--filed--on--their--behalf,--the claim~~]. Except as herein provided, this subchapter applies to all persons regardless of minority or other legal disability.

(b) [~~Sec.-10.02.--CAUSES-OF-ACTION--COVERED--BY--OTHER--LAW.~~] Causes of action accruing between August 29, 1977, [~~the-effective date-of-this-Act~~] and the effective date of Article 5.82, Insurance Code, shall be filed pursuant to Section 4 of Article 5.82.

Sec. 10.02. HEALTH CARE LIABILITY CLAIMS BROUGHT BY MINORS. (a) Minors must file notice concerning a health care liability claim within eight years after the date of the occurrence of the breach or tort or after the date the medical or health care treatment that is the subject of the notice or the hospitalization for which the notice is made is completed. However, the notice may not be given later than the minor's 20th birthday.

(b) In this section, "notice" means actual notice to the health care provider or written notice to the health care provider from the parent or legal guardian of the minor. The notice, whether actual or written, must reasonably describe the facts, conditions, or circumstances that would cause a reasonably prudent person to make inquiry that, if pursued, would lead to the discovery of an injury.

(c) If actual or written notice is not received by the health care provider within eight years as provided by Subsection (a) of this section, the minor's cause of action is barred.

(d) If actual or written notice is received by the health care provider within eight years as provided by Subsection (a) of

this section, the minor's cause of action is barred on the minor's 20th birthday.

SECTION 16. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. PERIODIC PAYMENT OF FUTURE DAMAGES

Sec. 13.01. DEFINITION. In this subchapter, "judgment creditor" means a person to whom periodic payments under this subchapter are paid.

Sec. 13.02. PERIODIC PAYMENT OF FUTURE DAMAGES REQUIRED. (a) If a physician or health care provider is found to be liable on a health care liability claim for future damages totalling more than $100,000, the court shall order that all future damages be paid by the physician or health care provider by means of periodic payments.

(b) The court shall provide that the future medical expenses of the judgment creditor are to be paid by means of periodic payments for the lifetime of the judgment creditor, without regard to the life expectancy of the judgment creditor at the time the trier of fact found the physician or health care provider liable for future damages.

(c) The periodic payments must include interest that accrues at the rate provided by Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes).

Sec. 13.03. CONTINUING JURISDICTION. (a) A court that enters a judgment or order for periodic payments under this subchapter retains jurisdiction over the action and the parties to

the action until all payments have been made, or for one year after the death of all judgment creditors, whichever occurs first.

(b) Continuing jurisdiction by the court under this section does not affect the finality of the judgment for any purpose, including appeal.

Sec. 13.04. DEATH OF JUDGMENT CREDITOR. On the death of a judgment creditor, the physician or health care provider's liability for the future medical expenses of the judgment creditor ends.

SECTION 17. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. EXPERT WITNESSES

Sec. 14.01. QUALIFICATION OF EXPERT WITNESS IN SUIT AGAINST PHYSICIAN. In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient, a person may qualify as an expert witness on the issue of whether the physician or health care provider departed from accepted standards of medical care or health care in a manner that proximately resulted in the injury or death only if the person is knowledgeable of the accepted standards of medical care or health care commensurate with the care and skill of other physicians or other health care providers of similar training, experience, or certification for the treatment of a patient under the same or similar circumstances.

Sec. 14.02. AFFIDAVIT OF EXPERT WITNESS. (a) In a suit for damages involving a health care liability claim, the plaintiff must

file with the petition an affidavit of an expert who is competent to testify. The affidavit shall state that the expert has reviewed the claim and has reasonable cause to believe the defendant has departed from the accepted standard of medical or health care. The court shall dismiss the suit if the affidavit is not filed with the petition.

(b) The contemporaneous filing requirement of Subsection (a) of this section does not apply when the statute of limitations would expire before the affidavit can be prepared. The plaintiff has the burden of proof to show that the affidavit could not be obtained before the statute of limitations expires. In that case, the plaintiff shall file the affidavit not later than the 60th day after the date on which the petition is filed. The court may, on motion, after hearing, and for good cause, extend that time as it determines justice requires.

(c) If the affidavit is filed as provided by Subsection (b) of this section, the defendant must file an answer to the petition not later than the 30th day after the date on which the affidavit is filed.

(d) The plaintiff is not required to file the affidavit with the petition if the defendant has failed to timely respond to the production of medical records as provided under Section 4.01(d) of this Act. The plaintiff has the burden of proof to show that the records were not timely provided as required.

Sec. 14.03. CONFLICT WITH TEXAS RULES OF CIVIL EVIDENCE. (a) To the extent that this subchapter conflicts with the Texas Rules of Civil Evidence, this subchapter controls.

(b) Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this subchapter.

SECTION 18. Section 32.022, Human Resources Code, is amended to read as follows:

Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES [~~COMMITTEE~~]. (a) The board, on the recommendation of the commissioner, shall appoint a medical care advisory committee to advise the board and the department in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's goal of providing access to high quality, comprehensive medical and health care services to medically indigent [~~needy~~] persons in the state. To ensure that qualified applicants receive services, the committee shall consider changes in the process the department uses to determine eligibility.

(b) The board shall appoint the committee in compliance with the requirements of the federal agency administering medical assistance. The appointments shall provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work.

(c) The department shall adopt rules for membership on the committee to provide for efficiency of operation, rotation, stability, and continuity.

(d) The board, on the recommendation of the commissioner, may appoint regional and local medical care advisory committees and

other advisory committees as considered necessary.

(e) The board, on the recommendation of the commissioner, shall appoint a hospital payment advisory committee. The committee shall advise the board and the department on necessary changes in hospital payment methodologies for inpatient hospital prospective payments and on adjustments for disproportionate share hospitals that will ensure reasonable, adequate, and equitable payments to hospital providers and that will address the essential role of rural hospitals. The board shall appoint to the committee persons with knowledge of and an interest in hospital payment issues.

SECTION 19. Section 32.024, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department, in its rules and standards governing the scope of hospital and long-term services, shall allow hospitals to provide swing-bed and other long-term care services and shall provide adequate reimbursement for those services.

SECTION 20. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.040 to read as follows:

Sec. 32.040. LIMITATION ON LIABILITY. (a) Except as provided by Subsection (b) of this section, in an action on a health care liability claim based on the delivery of a pregnant woman's child under the medical assistance program in which final judgment is rendered against a physician, hospital, or other health care provider, the physician, hospital, or health care provider is not liable for noneconomic damages in an amount that exceeds $250,000 recoverable by or on behalf of an injured person or the estate of the injured person, including past, present, and future

physical pain and suffering, mental anguish and suffering, loss of consortium, disfigurement, and any other nonpecuniary damages.

(b) This section does not apply to damages arising from an act or omission by a physician, hospital, or other health care provider that is grossly negligent or constitutes an intentional tort.

SECTION 21. Section 32.028, Human Resources Code, is amended by adding Subsection (d) to read as follows:

(d) The department, in its rules and standards relating to rates paid for inpatient hospital services on a prospective payment basis, shall ensure that the prospective payment methodology for hospital services sets the hospital-specific standardized amount at not less than $1,600.

SECTION 22. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.917 to read as follows:

Sec. 51.917. RURAL HEALTH; FAMILY PRACTICE RESIDENCY PROGRAM. (a) The Texas Higher Education Coordinating Board, the office of rural health care in the Texas Department of Health, medical schools, nursing schools, and schools of allied health sciences shall cooperate to improve and expand programs for rural areas by:

(1) expanding rural preceptor programs;

(2) developing relief service programs for rural physicians and allied health personnel to facilitate ready access to continuing medical education; and

(3) requiring family practice residency programs to provide an opportunity for residents to have a one-month rotation

through a rural setting.

(b) The office of rural health care in the Texas Department of Health shall coordinate efforts under Subsection (a) of this section.

(c) Each medical school shall incorporate a clerkship in family practice during the third core clinical year.

SECTION 23. Section 61.534, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher education, including loans for undergraduate education, received by a physician through a lender [~~in Texas~~].

(c) The coordinating board each fiscal biennium shall attempt to allocate all funds appropriated to it for the purpose of providing repayment assistance under this subchapter.

SECTION 24. Section 3, Article 5.15-1, Insurance Code, is amended to read as follows:

Sec. 3. RATE STANDARDS. Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written in [~~inside~~] this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience for all professional liability insurance for

physicians and health care providers written outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

SECTION 25. Section 4, Article 5.15-1, Insurance Code, is amended by amending Subsection (a) and adding Subsection (d) to

read as follows:

(a) Except for Subsection (d) of Article 5.15 of this code, the [~~The~~] provisions of Article 5.15, Insurance Code, shall apply to the filing of rates and rating information required under this article.

(d) An insurer who writes professional liability insurance for a physician or a health care provider may not use for a specific risk under such a liability policy a rate or premium that is greater than the rate or premium that has been filed by the insurer and approved by the State Board of Insurance under Article 5.15 of this code.

SECTION 26. Article 5.15-1, Insurance Code, is amended by adding Section 4B to read as follows:

Sec. 4B. RATE APPEALS. (a) Each insurer covered by this article shall adopt a procedure for reconsideration of a rate or premium charged a physician or health care provider for professional liability insurance coverage. The procedure shall include an opportunity for a hearing before officers or employees who have responsibility for determining rates and premiums to be charged for professional liability insurance and a requirement that the insurer reconsider the rate or premium and provide the physician or health care provider a written explanation of the rate or premium being charged.

(b) If a physician or health care provider is not satisfied with a decision under procedures established under Subsection (a) of this section, the physician or health care provider may appeal to the State Board of Insurance for a review of the rate or premium

and a determination if the rate or premium being charged complies with criteria under Section 3 of this article. A decision of the State Board of Insurance under this subsection may not be appealed.

(c) The State Board of Insurance by rule shall establish criteria to be followed by insurers in establishing reconsideration procedures under Subsection (a) of this section and standards and procedures to be followed in review of rates and premiums by the board.

SECTION 27. Section 101.001(2), Civil Practice and Remedies Code, is amended to read as follows:

(2) "Governmental unit" means:

(A) this state and all the several agencies of government that collectively constitute the government of this state, including other agencies bearing different designations, and all departments, bureaus, boards, commissions, offices, agencies, councils, and courts;

(B) a political subdivision of this state, including any city, county, school district, hospital district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, hospital authority, [~~and~~] river authority, and any hospital owned, operated, or leased or jointly owned, operated, or leased by a political subdivision of this state; and

(C) any other institution, agency, or organ of

government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.

SECTION 28. Section 101.023, Civil Practice and Remedies Code, is amended by adding Subsection (d) to read as follows:

(d) If a hospital district, hospital authority or hospital owned, operated, or leased or jointly owned, operated, or leased by a governmental unit has limited liability pursuant to this section and it engages a person or entity pursuant to contract to provide management or consulting services for operation of the hospital, the liability of such person or entity is limited to the extent and up to but not in excess of the maximum amount of the liability of the governmental unit pursuant to this section, provided the governing body of such hospital district, hospital authority, or hospital retains ultimate responsibility and control of the hospital's operations.

SECTION 29. In making the initial appointments to the advisory committee on rural health care, the board shall appoint three members to serve two-year terms, three members to serve four-year terms, and three members to serve six-year terms in order to stagger the terms.

SECTION 30. (a) The office of rural health care in the Texas Department of Health assumes all rights, privileges, powers, and duties under any contract entered into by the State Rural Medical Education Board before September 1, 1989.

(b) The property and records in the custody of the State Rural Medical Education Board on the effective date of this Act

shall be transferred to the office of rural health care in the Texas Department of Health not later than December 31, 1989.

(c) All appropriations to the State Rural Medical Education Board may be expended by the office of rural health care in the Texas Department of Health.

SECTION 31. Sections 10, 13, 14, 15, 17, and 20 of this Act apply only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

SECTION 32. This Act takes effect September 1, 1989.

SECTION 33. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 20, 1989

TO: Honorable Brad Wright, Chair
Committee on Public Health
House of Representatives
Austin, Texas

In Re: Committee Substitute for House Bill No. 18

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Committee Substitute for House Bill No. 18 (relating to the office of rural health care, surveys of hospitals and physicians, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers; providing civil penalties) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would establish an office of rural health, an advisory committee on rural health, a comprehensive health professions resource center and require that a physician be included on those Title XVIII reviews for the purpose of surveying physicians on the medical staff of a hospital. In addition, the office of rural health would serve as the State Medical Education Board for purposes of Article III, Section 50a, of the Texas Constitution. Any changes in rural health care delivery would require the approval of the advisory committee.

The bill would also require the Department of Human Services to adjust its Medicaid reimbursement rates for hospitals. The most significant of these cost adjustments are the elimination of the 10% budgetary adjustment factor adopted in 1986 and the inclusion of an outlier adjustment for high cost patients.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost to the Department of Health out of the General Revenue Fund	Probable Cost Out of the General Revenue Fund to the Department of Human Services	Probable Cost to the Department of Human Services Out of Federal Funds	Change in Number of State Employees from FY 1989
1990	$371,763	$232,620	$367,380	+ 4.0
1991	362,132	220,980	379,020	+ 4.0
1992	362,132	209,460	390,540	+ 4.0
1993	362,132	206,100	393,900	+ 4.0
1994	362,132	207,000	393,000	+ 4.0

Similar annual costs would continue as long as the provisions of the bill are in effect.

Local units of government that provide health care services for indigent persons would realize a minimal increase in reimbursement. Similarly, state operated health care providers such as The University of Texas Medical Branch at Galveston would also realize a minimal increase in reimbursement.

Criminal Justice Policy Impact Statement: No change in the sanctions applicable to adults convicted of felony crimes is anticipated.

Source: Department of Health; Department of Human Services;
LBB Staff: JO, JWH, AL, CD/GR, LV

71FCSHB18

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 3, 1989

TO: Honorable Brad Wright, Chair
Committee on Public Health
House of Representatives
Austin, Texas

In Re: House Bill No. 18
By: McKinney/Schlueter

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 18 (relating to the office of rural health care, surveys of hospitals and physicians, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would establish an office of rural health, an advisory committee on rural health, and require that a physician be included on all Title XVIII surveys in order to survey physicians on the medical staff of a hospital. Any changes in rural health delivery would require the approval of the advisory committee.

The bill would also require the Department of Human Services to adjust its Medicaid reimbursement rates for hospitals. The most significant of these cost adjustments are the elimination of the 10% budgetary adjustment factor adopted in 1986 and the inclusion of an outlier adjustment for high cost patients.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost to the Department of Health out of the General Revenue Fund	Probable Cost Out of the General Revenue Fund to the Department of Human Services	Probable Cost to the Department of Human Services Out of Federal Funds	Change in Number of State Employees from FY 1989
1990	$556,430	$44,184,215	$69,780,744	+ 4.0
1991	546,799	45,450,745	77,959,112	+ 4.0
1992	546,799	45,397,263	84,643,594	+ 4.0
1993	546,799	47,191,642	90,193,053	+ 4.0
1994	546,799	50,202,442	95,311,882	+ 4.0

Similar annual costs would continue as long as the provisions of the bill are in effect.

Local units of government that provide health care services for indigent persons would realize increased reimbursement. Similarly, state operated health care providers such as The University of Texas Medical Branch at Galveston would also realize increased reimbursement.

Criminal Justice Policy Impact Statement: No change in the sanctions applicable to adults convicted of felony crimes is anticipated.

Source: Department of Health; Department of Human Services;
LBB Staff: JO, JWH, AL, CD/GR, PA

71FHB18

2

By: McKinney, et al. (Senate Sponsor - Brooks) H.B. No. 18

(In the Senate - Received from the House May 2, 1989; May 3, 1989, read first time and referred to Committee on Health and Human Services; May 22, 1989, reported adversely, with favorable Committee Substitute by the following vote: Yeas 5, Nays 0; May 22, 1989, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	PNV	Absent
Brooks	x			
Uribe				x
Edwards	x			
Johnson	x			
Parmer				x
Tejeda	x			
Truan				x
Whitmire				x
Zaffirini	x			

COMMITTEE SUBSTITUTE FOR H.B. No. 18 By: Brooks

A BILL TO BE ENTITLED
AN ACT

relating to health care, including the center for rural health initiatives, surveys of hospitals and physicians, health professions resource center, hospital patient transfers, medical and hospital care advisory committee, state indemnification for the provision of charity care or services, rural health Family Practice residency programs, medical education, professional liability insurance for physicians and other health care professionals, securing of enhanced Medicaid and Medicare reimbursement in Texas by providing for the completion of orders for the dispensing of drugs under physician supervision, relating to the rule-making authority of the Texas Department of Human Services; providing civil penalties.

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

SECTION 1. This Act may be cited as the Omnibus Rural Health Care Rescue Act.

SECTION 2. Title 71, Revised Statutes, is amended by adding Article 4414b-1 to read as follows:

Art. 4414b-1. CENTER FOR RURAL HEALTH INITIATIVES

Sec. 1. DEFINITIONS. (a) "Center" means the Center for Rural Health Initiatives; and

(b) "Executive Committee" means the executive committee of the Center for Rural Health Initiatives.

Sec. 2. CENTER FOR RURAL HEALTH INITIATIVES. The Center for Rural Health Initiatives is established.

Sec. 3. PURPOSE. The center shall assume a leadership role in working or contracting with state and federal agencies, universities, private interest groups, communities, foundations, and offices of rural health to develop rural health initiatives and maximize use of existing resources without duplicating existing effort. The center shall provide a central information and referral source and serve as the primary state resource in coordinating, planning, and advocating for the continued access to rural health care services in Texas.

Sec. 4. DUTIES. (a) The center shall:

(1) educate the public and recommend appropriate public policies regarding the continued viability of rural health care delivery in Texas;

(2) monitor and work with state and federal agencies to assess the impact of proposed rules and regulations on rural areas; provide impact statements of proposed rules and regulations as deemed appropriate by the center; streamline regulations to assist in the development of service diversification of health care facilities; and target state and federal programs to rural areas;

(3) promote and develop community involvement and community support in maintaining, rebuilding, or diversifying local

health services;

(4) promote and develop diverse and innovative health care service models in rural areas;

(5) encourage the use of advanced communications technology to provide access to specialty expertise, clinical consultation, and continuing education;

(6) assist rural health care providers, communities, and individuals in applying for public and private grants and programs;

(7) encourage the development of regional emergency transportation networks;

(8) work with state agencies, universities, and private interest groups to conduct and promote research on rural health issues, maintain and collect a timely data base, develop and maintain a rural health resource library;

(9) solicit the assistance of other offices or programs of rural health in Texas that are university-based to carry out the duties of this Act;

(10) disseminate information and provide technical assistance to communities, health care providers and individual consumers of health care services; and

(11) develop plans to implement a fee-for-service health care professional recruitment service and a medical supplies group purchasing program within the center.

(b) The center is authorized to solicit, receive, and spend grants, gifts, and donations from public and private sources.

(c) The center may contract with public and private entities in the performance of its responsibilities.

Sec. 5. EXECUTIVE COMMITTEE. (a) The executive committee is the governing body of the center.

(b) The executive committee is composed of:

(1) three members appointed by the governor, including: one physician licensed to practice in Texas, one pharmacist licensed to practice in Texas, and one business or community leader.

(2) three members appointed by the lieutenant governor, including: one registered nurse licensed to practice in Texas, one allied health professional who is licensed, registered, or certified to practice in Texas, and one rural health policy expert; and

(3) three members appointed by the speaker of the house of representatives, including: one physician licensed to practice in Texas, one hospital administrator, and one health economist.

(c) The appointments to the executive committee shall be individuals who reside, work, or practice in rural areas of the state or who have demonstrated knowledge and expertise in rural issues.

(d) The appointments to the executive committee shall provide for a balanced representation of the geographical regions of the state.

(e) The members of the executive committee serve staggered six-year terms, with the terms of three members expiring August 31 of each odd-numbered year.

(f) The members of the executive committee shall annually elect one member to serve as presiding officer.

(g) The executive committee shall meet at least quarterly or at the call of the presiding officer and shall adopt rules for the conduct of the meetings.

(h) Any actions taken by the executive committee must be approved by a majority vote.

(i) Members of the executive committee receive no compensation but are entitled to reimbursement of actual and necessary expenses incurred in the performance of their duties.

(j) The executive committee shall establish policies and adopt rules to implement this Act.

Sec. 6. EXECUTIVE DIRECTOR. (a) The executive committee may hire an executive director to serve as the chief executive officer of the center and to perform the administrative duties of the office.

(b) The executive director serves at the will of the executive committee.

(c) The executive director may hire staff within the guidelines established by the executive committee.

Sec. 7. ADVISORY COMMITTEE. (a) The advisory committee is composed of the following:

(1) the commissioner of health or a representative of the department designated by the commissioner;

(2) the commissioner of human services or a representative of the department designated by the commissioner;

(3) the commissioner of agriculture or a representative of the department designated by the commissioner;

(4) the executive director of the Texas Department of Commerce or a representative of the department designated by the executive director; and

(5) the commissioner of higher education or a representative of the Texas Higher Education Coordinating Board designated by the commissioner.

(b) The executive committee may appoint additional agencies as necessary to serve on the advisory committee in a temporary capacity. The executive committee also may request that a state agency designate an employee to serve as a liaison with the center.

(c) The Texas Department of Health shall provide administrative support to the center as necessary to carry out the duties of this Act. The department and the other agencies represented on the advisory committee shall provide staff support to the center and may provide staff and other support services to the executive committee.

(d) The advisory committee may participate fully in executive committee meetings; however, advisory committee members do not have voting privileges.

Sec. 8. REPORTS TO LEGISLATURE. No later than January 1 of each odd-numbered year, the center shall submit a biennial report to the legislature regarding the activities of the center and any findings and recommendations relating to rural issues.

Sec. 9. APPLICATION OF SUNSET ACT. The center for rural health initiatives is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that Act, the center is abolished and this Act expires September 1, 2001.

SECTION 3. Title 71, Revised Statutes, is amended by adding Article 4414b-2 to read as follows:

Art. 4414b-2. HEALTH PROFESSIONS RESOURCE CENTER. (a) In conjunction with the Texas Higher Education Coordinating Board and in such a way as to avoid duplication of effort, the department shall establish a comprehensive health professions resource center for the collection and analysis of educational and employment trends for health professions in this state.

(b) The department shall place high priority on collecting and disseminating data on health professions demonstrating an acute shortage in this state, including:

(1) data concerning nursing personnel; and

(2) the health professions in which shortages occur in rural areas.

(c) To the extent possible, the department may collect high priority health professions data from existing sources that the department determines are credible. The department may enter agreements with those sources that establish guidelines concerning the identification, acquisition, transfer, and confidentiality of the data.

(d) At a minimum, the data collected by the department shall include the following in regard to health professionals:

(1) the number and geographic distribution;

(2) licensure or certification status;

(3) specialty areas, if applicable; and

(4) trends or changes in license holders according to number or geographic distribution.

(e) The department may use the data collected and analyzed under this article to publish reports regarding:

(1) the educational and employment trends for health

professions;

(2) the supply and demand of health professions; and

(3) other issues, as necessary, concerning health professions in this state.

(f) The board may adopt rules to govern the reporting and collection of data.

(g) In this section, "health profession" means any health or allied health profession that is licensed, certified, or registered by a state board, agency, or association.

(h) The Texas Higher Education Coordinating Board may require the assistance of other state agencies or institutions of higher education for the development of any report.

SECTION 4. Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended by adding Section 5 to read as follows:

Sec. 5. The Texas Department of Health shall ensure that a licensed physician involved in direct patient care as defined by the Texas State Board of Medical Examiners is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) to survey the quality of services provided by physicians in hospitals.

SECTION 5. Article 4414b, Revised Statutes, is amended by adding Section 1.15 to read as follows:

Sec. 1.15. BREAST CANCER SCREENING. (a) The Center for Rural Health Initiatives may establish a breast cancer screening program in counties with a population of 50,000 or less, according to the most recent federal census.

(b) The Center for Rural Health Initiatives may provide breast cancer screening under the program through contracts with public or private entities to provide mobile units and on-site screening services.

(c) The Center for Rural Health Initiatives shall coordinate the breast cancer screening program with programs administered by the Texas Cancer Council.

(d) The board may appoint an advisory committee to advise the Office of Rural Health Care on the breast cancer screening program, including targeting those areas of the state in which the program is most needed. The advisory committee may be composed of physicians who practice in rural areas, administrators of hospitals in rural areas, and representatives of organizations formed to promote breast cancer awareness.

SECTION 6. The Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) is amended to read as follows:

Sec. 5. (a) The Licensing Agency, with the advice of the Hospital Licensing Advisory Council, shall adopt and enforce such rules and minimum standards as may be designed to further the purposes of this Act. Except as provided by Subsections (b) and (d) of this section, the rules or minimum standards so adopted or enforced shall be limited to minimum requirements for staffing by physicians and nurses, hospital services relating to patient care, and safety, fire prevention, and sanitary provisions of hospitals as defined in this Act. Any rules or standards set shall be adopted by the Texas Board of Health in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The standards may not exceed the minimum standards for certification under Title XVIII of the Social Security Act.

(b) The Texas Board of Health shall adopt rules to implement the following minimum standards governing the transfer of patients between hospitals that do not have a transfer agreement. The rules must provide that patient transfers between hospitals will [~~should~~] be accomplished through hospital policies that result in [~~a~~] medically appropriate transfers [~~manner~~] from physician to physician as well as from hospital to hospital by providing [~~for~~]:

(1) notification to the receiving hospital prior to the transfer and confirmation by that hospital that the patient meets that hospital's admissions criteria relating to appropriate bed, physician, and other services necessary to treat the patient;

(2) the use of medically appropriate life support measures which a reasonable and prudent physician in the same or

similar locality exercising ordinary care would use to stabilize the patient prior to transfer and to sustain the patient during the transfer;

(3) the provision of appropriate personnel and equipment which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use for the transfer;

(4) the transfer of all necessary records for continuing the care for the patient; and

(5) [~~the--date--by--which--each--hospital--must--adopt policies--in--accordance--with--the-rules.~~] that the transfer of a patient may not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition or economic status.

(c) Minimum standards prescribed by Board rules shall not contain provisions which require the consent of the patient or personal representative of the patient prior to transfer. The rules shall also provide that a public hospital or hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services, and staff available for providing care to the patient.

(d) [~~Each--hospital-shall-adopt-binding-policies-relating-to patient-transfers-that-are-consistent-with-the-rules-adopted-by-the Texas-Board-of-Health.--If-possible,-each-hospital-shall--implement its--transfer--policies--by-adopting-transfer-agreements-with-other hospitals.~~] If transfer agreements are executed between hospitals that are consistent with the requirements of this subsection, any patient transfers between the hospitals will be governed by the agreement. The transfer agreement shall be submitted to the Texas Department of Health for review for compliance with the transfer agreement requirements. Such review shall be completed within thirty days from the date submitted by hospitals. At a minimum, the transfer agreement shall provide that:

(1) transfers will be accomplished in a medically appropriate manner;

(2) the transfer or receipt of patients shall not be based upon the individual's inability to pay for the services rendered by the transferring or receiving hospital;

(3) multiple transfer agreements may be entered into by a hospital based upon the type or level of medical services available at other hospitals;

(4) the hospitals will recognize the right of an individual to request transfer into the care of a physician and hospital of the individual's own choosing; and

(5) the hospitals will recognize and comply with the requirements of the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes) relating to the transfer of patients to mandated providers.

(e) The Texas Department of Health may adopt rules to facilitate the transfer of patients between hospitals that do not have a transfer agreement based upon the recommendation of an advisory committee appointed by the Texas Board of Health. The advisory committee is composed of twelve members, including:

(1) two physicians licensed to practice in this state who have been in active practice in a rural area;

(2) two hospital administrators who have been actively engaged in hospital administration in a rural area and who represent a public hospital and a private hospital;

(3) two physicians licensed to practice in this state who have been in active practice in an urban area;

(4) two hospital administrators who have been actively engaged in hospital administration in an urban area and who represent a public hospital and a private hospital;

(5) an emergency medical technician and a person serving as a volunteer to an emergency medical services provider; and

(6) two consumer members.

(f) The Commissioner of Health shall appoint, with the advice and consent of the Texas Board of Health, a person to serve in the capacity of Hospital Licensing Director. The duties of the

Hospital Licensing Director shall be the administration of this Act and he shall be directly responsible to the Licensing Agency. Any person so appointed as Hospital Licensing Director must possess the following qualifications: He shall have had at least five (5) years experience and/or training in the field of hospital administration, be of good moral character, and a resident of the State of Texas for a period of not less than three (3) years.

SECTION 7. Section 32.022, Human Resources Code, is amended to read as follows:

Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES [~~COMMITTEE~~]. (a) The board, on the recommendation of the commissioner, shall appoint a medical care advisory committee to advise the board and the department in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's goal of providing access to high quality, comprehensive medical and health care services to medically indigent [~~needy~~] persons in the state. To ensure that qualified applicants receive services, the committee shall consider changes in the process the department uses to determine eligibility.

(b) The board shall appoint the committee in compliance with the requirements of the federal agency administering medical assistance. The appointments shall provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work.

(c) The department shall adopt rules for membership on the committee to provide for efficiency of operation, rotation, stability, and continuity.

(d) The board, on the recommendation of the commissioner, may appoint regional and local medical care advisory committees and other advisory committees as considered necessary.

(e) The board, on the recommendation of the commissioner, shall appoint a hospital payment advisory committee. The committee shall advise the board and the department on necessary changes in hospital payment methodologies for inpatient hospital prospective payments and on adjustments for disproportionate share hospitals that will ensure reasonable, adequate, and equitable payments to hospital providers and that will address the essential role of rural hospitals. The board shall appoint to the committee persons with knowledge of and an interest in hospital payment issues.

SECTION 8. Section 32.024, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department, in its rules and standards governing the scope of hospital and long-term services, shall establish a swing bed program in accordance with federal regulations to provide reimbursement for skilled nursing patients who are served in hospital settings provided that the length of stay is limited to 30 days per year and the hospital is located in a county with a population of 100,000 or less. If the swing beds are used for more than one 30 day length of stay per year, per patient, the hospital must comply with the Minimum Licensing Standards as mandated by Article 4442(c), Vernon's Texas Statutes, and the Medicaid standards for nursing home certification, as promulgated by the Texas Department of Human Services.

SECTION 9. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.917 to read as follows:

Sec. 51.917. RURAL HEALTH; FAMILY PRACTICE RESIDENCY PROGRAM. The Texas Higher Education Coordinating Board, the Center for Rural Health Initiatives in the Texas Department of Health, medical schools, nursing schools, and schools of allied health sciences shall cooperate to improve and expand programs for rural areas.

(a) The Texas Higher Education Coordinating Board shall:

(1) encourage and coordinate the creation or expansion of rural preceptor program among medical schools, teaching hospitals, nursing schools, and schools of allied health sciences; and

(2) require family practice residency programs to provide an opportunity for residents to have a one-month rotation

through a rural setting.

(b) The Center for Rural Health Initiatives shall develop relief service programs for rural physicians and allied health personnel to facilitate ready access to continuing medical education.

(c) Each medical school shall:

(1) incorporate a clerkship in family practice during the third core clinical year; and

(2) report to the legislature and the Texas Higher Education Coordinating Board on its efforts to fulfill the intent of Chapter 58, Education Code of having at least 25% of their first year primary care residents in family practice.

SECTION 10. Section 61.534, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher education, including loans for undergraduate education, received by a physician through a lender [~~in Texas~~].

(c) Each fiscal biennium, the coordinating board shall attempt to allocate all funds appropriated to it for the purpose of providing repayment assistance under this subchapter.

SECTION 11. Amend Subchapter I, Chapter 61, Education Code, by adding Section 61.536(2) to read as follows:

Sec. 61.536. ADVISORY COMMITTEES. The coordinating board may:

(1) appoint advisory committees from outside the board's membership to assist the board in performing its duties under this subchapter; and

(2) request the assistance of the Family Practice Residency Advisory Committee in performing those duties.

SECTION 12. Section 3, Article 5.15-1, Insurance Code, is amended to read as follows:

Sec. 3. RATE STANDARDS: Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written in [~~inside~~] this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

SECTION 13. Article 5.15-1, Insurance Code, is amended by adding Section 4B to read as follows:

Sec. 4B. RATE APPEALS. (a) Each insurer covered by this

article shall adopt a procedure for reconsideration of a rate or premium charged a physician or health care provider for professional liability insurance coverage. The procedure shall include an opportunity for a hearing before officers or employees who have responsibility for determining rates and premiums to be charged for professional liability insurance and a requirement that the insurer reconsider the rate or premium and provide the physician or health care provider a written explanation of the rate or premium being charged.

(b) If a physician or health care provider is not satisfied with a decision under procedures established under Subsection (a) of this section, the physician or health care provider may appeal to the State Board of Insurance for a review of the rate or premium and a determination if the rate or premium being charged complies with criteria under Section 3 of this article. A decision of the State Board of Insurance under this subsection may not be appealed.

(c) The State Board of Insurance by rule shall establish criteria to be followed by insurers in establishing reconsideration procedures under Subsection (a) of this section and standards and procedures to be followed in review of rates and premiums by the board.

SECTION 14. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 110 to read as follows:

CHAPTER 110. STATE LIABILITY FOR INDEMNIFICATION OF CERTAIN HEALTH CARE PROFESSIONALS.

Sec. 110.001. DEFINITIONS. In this chapter:

(1) "Charity care or services" means care or services provided by a health care professional under:

(A) the indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes);

(B) the Medicaid program under Chapter 32, Human Resources Code;

(C) the Maternal and Infant Health Improvement Act (Article 4447y, Vernon's Texas Civil Statutes);

(D) the Texas Primary Health Care Services Act (Article 4438d, Vernon's Texas Civil Statutes);

(E) the Chronically Ill and Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes); or

(F) a contract with a migrant or community health center that receives funds under 42 U.S.C. 254b and 254c.

(2) "Eligible medical malpractice claim" means a medical claim against a health care professional who renders charity care in at least ten (10) percent of the patient encounters engaged in by said health care professional during the policy year in which the claim was made.

(3) "Health care professional" means:

(A) a person who is licensed to practice medicine under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

(B) a person registered by the Board of Nurse Examiners as an Advanced Nurse Practitioner or a Certified Nurse Midwife; or

(C) a person recognized by the Board of Medical Examiners as a Physician Assistant.

(4) "Insurer" means an insurance company chartered to write or admitted to write and writing medical professional liability insurance in this state or the Texas Medical Liability Insurance Underwriting Association (Subchapter E, Chapter 21, Article 21.49-3, Insurance Code) or any self insurance trust created under Subchapter E, Chapter 21, Article 21.49-4, Insurance Code, for the purpose of providing medical professional liability insurance. The term "insurer" does not include an institution of higher education that provides medical professional liability coverage under Chapter 59, Education Code.

(5) "Medical malpractice claim" means a claim or action against a health care professional alleging one or more negligent acts or omissions in the diagnosis, care or treatment of a patient and alleging that injury to or death of a patient resulted therefrom, without regard to whether said claim or action is based upon tort or contract principles.

(6) "Patient encounters" means an occasion on which a health care professional renders professional health care services to a patient.

Sec. 110.002. STATE LIABILITY: PERSONS COVERED. In a cause of action against a health care professional based on conduct described in Section 110.003, the state shall indemnify the health care professional for actual damages adjudged against the health care professional or which the health care professional becomes obligated to pay pursuant to a settlement reached in accordance with this chapter.

Sec. 110.003. STATE LIABILITY: CONDUCT COVERED. (a) The state is liable for indemnification under this chapter only if the damages are based on an eligible medical malpractice claim against a health care professional in the course and scope of said person's professional health care activities.

(b) The state is not liable for indemnification for an intentional act or an act of gross negligence.

Sec. 110.004. LIMITS ON AMOUNT OF RECOVERABLE DAMAGES. (a) State liability for indemnification under this chapter may not exceed:

(1) $100,000 for a single occurrence in the case of an eligible medical malpractice claim arising as a result of prenatal care, care during labor and delivery, and care given to a mother or infant during the 30-day period immediately following delivery, or as a result of emergency care; or,

(2) $25,000 for a single occurrence in the case of any other eligible medical malpractice claim.

(b) The state shall be payor of first resort for an eligible medical malpractice claim for amounts falling within the limits set forth in subsection (a) of this section.

Sec. 110.005. TIMELY NOTICE TO ATTORNEY GENERAL REQUIRED. The state is not liable for indemnification for damages under this chapter unless the health care professional against whom the cause of action is asserted:

(1) is covered under a valid professional liability insurance policy that is issued by an insurer and that provides coverage for the medical malpractice claim that is the subject of the claim or action with a policy limit of not less than $100,000 per occurrence and $300,000 aggregate for the policy period; and,

(2) delivers or causes to be delivered to the Attorney General a true copy of any written notice of said medical malpractice claim and any summons or citation served on the health care professional, which written notice, summons or citation shall be delivered to the Attorney General not later than the 45th day after the receipt thereof by the health care professional.

Sec. 110.006. INFORMATION PROVIDED TO ATTORNEY GENERAL; SETTLEMENTS. (a) The insurer for a health care professional who is the subject of an eligible malpractice claim shall designate an attorney or other representative assigned to the claim who shall keep the Attorney General or his designee reasonably informed of significant developments in the claim or action, including all settings for trials or dispositive motions, all settlement offers and demands, all pleadings by or against the health care professional, all judgments or other dispositive orders, and all written recommendations of counsel for the health care professional regarding settlement.

(b) If a settlement agreement is reached between the health care professional and a claimant, the insurer for the health care professional shall promptly notify the Attorney General of same. The settlement shall become final and binding upon the State unless, within ten (10) days of the receipt of said notice by the Attorney General (or such greater or lesser period of time as the court in which the action is filed may allow), the Attorney General files in said court (or, if no action is pending in any court, in a district court of Travis County, Texas) a written objection to the settlement setting forth in detail why the court should find that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case. A hearing

shall promptly be held upon any such objection, either before the court or a special master appointed by the court for that purpose. At any such hearing, the burden shall be upon the Attorney General to prove that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case. Unless the court finds that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case, the court shall enter an order approving the settlement and directing the State to make the required indemnity payment thereunder. Such an order shall be reviewable by an appellate court only upon the filing of an application for writ of mandamus within fifteen (15) days of the date said order is signed, and only for an abuse of discretion by the trial court. Any such application for writ of mandamus shall be given priority in the appellate court in which it is filed above all other applications for writ of mandamus docketed in said court.

(c) If the Attorney General files an objection under subsection (b) of this section, the court may, with the agreement of the parties to the settlement agreement, permit the payment of any other sums due to be paid under said agreement by parties other than the State while the objection of the Attorney General is pending adjudication.

(d) If a suit involving an eligible medical malpractice claim is imminently scheduled for jury trial, or is being tried before a jury, and settlement negotiations are ongoing between the health care professional and any claimant, either of those parties may request the court to require the Attorney General or his designee to assign an attorney to monitor such negotiations so that if a settlement agreement is reached between the parties, the attorney so assigned by the Attorney General can immediately advise the court of any objection, in which event the hearing described in subsection (b) of this section regarding the reasonableness of the settlement amount shall be held immediately after the settlement agreement is reduced to writing or announced on the record in open court, so that the trial court may render its determination before the petit jury or jury panel is discharged.

(e) Except to the extend that the Attorney General is authorized under this section to object to the reasonableness of a settlement, the Attorney General shall not be authorized to intervene in any court proceeding involving an eligible medical malpractice claim. The insurer for the health care professional shall be in charge of the defense of any such claim.

(f) Upon final disposition of an eligible medical malpractice claim by settlement or judgment, funds shall be paid by the Comptroller on vouchers which shall be promptly prepared, verified and signed by the Attorney General.

Sec. 110.007. EXPIRATION. Unless continued in existence, this Chapter expires September 1, 1993.

SECTION 15. Subchapter B, Chapter 5, Insurance Code, is amended by adding Article 5.15-4 to read as follows:

Art. 5.15-4. REDUCTION IN CERTAIN PROFESSIONAL LIABILITY INSURANCE PREMIUMS.

Sec. 1. DEFINITIONS. In this article, "charity care or services," "eligible medical malpractice claim," "health care professional," "insurer," "medical malpractice claim," and "patient encounter" have the meanings assigned by Section 110.001, Civil Practice and Remedies Code.

Sec. 2. QUALIFICATION FOR DISCOUNT. A health care professional is entitled to a premium discount for medical professional liability insurance coverage if the professional meets the criteria stated in Section 4 of this article.

Sec. 3. AMOUNT OF PREMIUM DISCOUNT. The State Board of Insurance shall approve premium discounts to be used by each insurer on premiums to be charged to a health care professional covered by this section. The board shall base the approved discounts upon loss and statistical data provided by each insurer

and on the reduction in the insurer's liability exposure based on the state's indemnification of the first $100,000 or $25,000 under Chapter 110, Civil Practice and Remedies Code, of an eligible malpractice claim against a health care professional.

Sec. 4. QUALIFICATION FOR PREMIUM DISCOUNT. (a) A health care professional is entitled to a premium discount for medical professional liability insurance coverage if the projected patient encounters of the health care professional during the policy year will involve providing charity care or services in 10 percent or more of the health care professional's patient encounters; and

(b) the health care professional completes 15 hours of continuing education during the term of the policy on patient safety and risk reduction subjects related to the health care professional's practice which are sponsored, approved, endorsed, or accredited by the State Board of Insurance, an "insurer" as defined in this Act, or by state or nationally recognized accrediting organizations or continuing medical or nurse education programs.

Sec. 5. REQUEST FOR PREMIUM DISCOUNT. A health care professional who desires a premium discount for medical professional liability insurance coverage shall submit to the insurer not later than the 30th day before the beginning of the term of the policy a written verified application for a new policy or a verified statement for a policy to be renewed stating that the health care professional desires a premium discount and qualifies for a premium discount under this article. The application or statement also shall provide necessary information to determine the eligibility of the health care professional and the amount of the discount.

Sec. 6. AUDIT: PENALTY. (a) At the end of a policy year, an insurer may audit the records of any health care professional to whom the insurer has provided a discount under this article to determine if the health care professional provided the charity care and services necessary under Section 4 of this article to qualify for the premium discount during the preceding policy year.

(b) To conduct the audit, the insurer is entitled to access to any books and records necessary to determine if the verified application or statement submitted for the coverage was correct and the health care professional was eligible for the premium discount. If a health care professional denies access to the property or to the books and records, the insurer may obtain an appropriate court order from a court of competent jurisdiction to gain access to the books and the records.

(c) If an insurer's audit indicates that a health care professional did not provide charity care or services in 10 percent or more of the health care professional's patient encounters, the insurer may charge the health care professional an amount equal to the difference between the premium paid and the premium that would have been due if the health care professional had not received the premium discount plus 20 percent of the amount of the premium that would have been due without the premium discount.

(d) If a health care professional who has received the premium discount for the policy year submits the difference between the premium paid and the premium that would have been due if the health care professional had not received the premium discount plus interest at the legal rate for the unpaid premium prior to 30 days before the expiration of the policy year, the health care professional will not be subject to the penalty provided in subsection (c).

Sec. 7. PROHIBITIONS ON INSURER; SANCTIONS. (a) An insurer may not cancel or refuse to renew a health care professional's medical professional liability insurance coverage solely on the basis that the health care professional is eligible for a premium discount under this article except for the following reasons:

(1) fraud or misrepresentation in obtaining coverage;

(2) failure to pay premiums when due; or

(3) the insurer's being placed under supervision or in conservatorship or receivership, if the cancellation or nonrenewal is approved by the supervisor, conservator, or receiver.

(b) A health care professional who files the appropriate verified application or statement under this Article will be

entitled to a premium discount as approved by the Board under Section 3 of this Article. When consent to rate is used, a health care professional will be entitled to the appropriate discount from the rate agreed to by consent.

(c) An insurer who violates this article is subject to the sanctions authorized under Section 7, Article 1.10, of this code.

Sec. 8. AUTHORITY OF STATE BOARD OF INSURANCE. The State Board of Insurance shall administer this article and shall adopt necessary rules, forms, endorsements, and procedures to carry out this article.

Sec. 9. EXPIRATION. Unless continued in existence this Article expires September 1, 1993.

SECTION 16. Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) This Act shall be so construed that:

(1) a person licensed to practice medicine shall have the authority to delegate to any qualified and properly trained person or persons acting under the physician's supervision any medical act which a reasonable and prudent physician would find is within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician, the act can be properly and safely performed by the person to whom the medical act is delegated and the act is performed in its customary manner, not in violation of any other statute, and the person does not hold himself out to the public as being authorized to practice medicine. The delegating physician shall remain responsible for the medical acts of the person performing the delegated medical acts. The board may determine whether or not an act constitutes the practice of medicine, not inconsistent with this Act, and may determine whether any medical act may or may not be properly or safely delegated by physicians;

(2) a person licensed to practice medicine is authorized and shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the acts or acts of administering or providing, in the physician's office, dangerous drugs, as ordered by the physician which are used or required to meet the immediate needs of the physician's patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined by the board. The administration or provision of dangerous drugs shall be in compliance with laws relating to the practice of medicine and Texas and federal laws relating to the dangerous drugs. This subdivision does not permit the physician or person or persons acting under the supervision of the physician to keep a pharmacy, advertised or otherwise, for the retailing of dangerous drugs without complying with the applicable laws relating to the dangerous drugs;

(3) a person licensed to practice medicine shall be authorized and shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing dangerous drugs, if the provision is provided through a facility licensed by the State Board of Pharmacy pursuant to applicable law, as ordered by the physician, which are used or required to meet the immediate needs of the physician's patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined by the board. The provision of dangerous drugs shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, Texas or federal drug laws, and rules that may be properly issued by the State Board of Pharmacy. The administration shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, and Texas or federal drug laws. This subdivision does not permit

the physician or person or persons acting under the supervision of the physician to keep a pharmacy, advertised or otherwise, for the retailing of the dangerous drugs without complying with the applicable laws relating to the retailing of dangerous drugs. In this subdivision and in Subdivision (2) of this subsection, "administering" means the direct application of a drug by injection, inhalation, ingestion, or any other means to the body of the physician's patient; "provision" means to supply one or more unit doses of a drug, medicine, or dangerous drug. The drug or medicine shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws. However, a qualified and trained person or persons, acting under the supervision of a physician, may be permitted to specify at the time of the provision the inclusion of the date of provision and the patient's name and address;

(4) in the provision of services and the administration of therapy by public health departments, as officially prescribed by the Texas Department of Health for the prevention or treatment of specific communicable diseases or health conditions for which the Texas Department of Health is responsible for control under state law, a person licensed to practice medicine shall be authorized and shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing dangerous drugs, as ordered by the physician that are used or required to meet the needs of the patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined by the board. The provision of dangerous drugs shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of pharmacy, and laws relating to the practice of professional nursing. The orders may not be inconsistent with this Act and may not be used for the performance of acts or duties that require the exercise of independent medical judgment. In this subdivision, "administering" means the direct application of a drug by injection, inhalation, ingestion, or any other means to the body of the patient; "provision" means to supply one or more unit doses of a drug, medicine, or dangerous drug. The drug or medicine shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws. However, a qualified and trained person or persons, acting under the supervision of a physician, may be permitted to specify at the time of the provision the inclusion of the date of provision and the patient's name and address; [.]

(5) (A) At a site serving a medically underserved population, a physician licensed by the board shall be authorized to delegate to a registered nurse or physician assistant acting under adequate physician supervision, the act or acts of administering, providing or carrying out a prescription drug order as authorized by the physician through physician's orders, standing medical orders, standing delegation orders or other orders or protocols as defined by the board.

(B) The carrying out of prescription drug orders under this subsection shall comply with other applicable laws.

(C) Physician supervision shall be adequate if:

(i) the physician is responsible for the formulation or approval of such physician's orders, standing medical orders, standing delegation orders, or other orders or protocols and periodically review such orders and the services provided patients under such orders;

(ii) a physician is on site at least once a week to provide medical direction and consultation;

(iii) the physician receives a daily status report from the registered nurse or physician assistant on any problems or complications encountered; and

(iv) a physician is available through direct telecommunication for consultation, assistance with medical

emergencies, or patient referral.

(D) In this subsection:

(i) "Registered nurse" means a registered nurse recognized by the Board of Nurse Examiners as having the specialized education and training required under Section 7, Article 4514, Revised Statutes.

(ii) "Physician assistant" means a physician assistant recognized by the Board of Medical Examiners as having the specialized education and training required under Subsection (d), Section 5.02 of this Act.

(iii) "Carrying out a prescription drug order" means to complete a prescription drug order presigned by the delegating physician by providing the following information: the patient's name and address; the drug to be dispensed; directions to the patient in regard to the taking and dosage; the name, address and telephone number of the physician; the name, address, telephone and identification number of the registered nurse or physician assistant completing the prescription drug order; the date; and the number of refills permitted. The board may adopt additional methods to carry into effect or put into force a physician's prescription under physician's orders, standing medical orders, standing delegation orders or other orders or protocols.

(iv) "A site serving a medically underserved population" means:

(1) a site located in a medically underserved area;

(2) a site located in a health manpower shortage area;

(3) a clinic designated as a rural health clinic under the Rural Health Clinic Services Act of 1977 (P.L. 95-210);

(4) a public health clinic, family planning clinic, or clinic operated by the State or a political subdivision;

(5) a site located in an area in which the Texas Department of Health determines there exists an insufficient number of physicians providing services to eligible clients of federal, state or locally funded health care programs; or

(6) a site that the Texas Department of Health determines serves a disproportionate number of clients eligible to participate in federal, state or locally funded health care programs;

(v) "health manpower shortage area" means (1) an area in an urban or rural area of Texas (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the Secretary of Health and Human Services determines has a health manpower shortage and which is not reasonably accessible to an adequately served area; (2) a population group which the Secretary determines to have such a shortage; or (3) a public or non-profit private medical facility or other facility which the Secretary determines has such a shortage as delineated in 42 USC Sec. 254(e)(a)(1).

(vi) "medically underserved area" means an area in Texas with a medically underserved population or an urban or rural area designated by the Secretary of Health and Human Services as an area in Texas with a shortage of personal health services or a population group designated by the secretary as having a shortage of such services (as defined in 42 USC Sec. 300(e)-1(7)).

(E) After making a determination under either subdivisions (D)(iv)(5) or (D)(iv)(6) that a site serves a medically underserved population, the Department of Health shall publish notice of its determination in the Texas Register and provide an opportunity for public comment in the same manner as for a proposed rule under the Texas Register and Administrative Procedures Act.

(F) The authority granted to a physician to delegate under this subdivision shall not be construed as limiting the authority of a physician to delegate under any other subdivision of this subsection.

(6) (A) A duly licensed and qualified optometrist may administer topical ocular pharmaceutical agents in the practice of optometry as provided by this subdivision. These pharmaceutical agents may not be used for therapeutic purpose.

(B) To be entitled to use topical ocular pharmaceutical agents in the practice of optometry, an optometrist must possess a valid standing delegation order that:

(i) is issued to the optometrist by an area physician licensed to practice medicine in this state; and

(ii) authorizes the use of the pharmaceutical agents authorized by this subdivision.

(C) On request, an optometrist will be issued a standing delegation order described by Paragraph (B) of this subdivision unless the physician acting as a reasonable and prudent physician determines that denial is within the scope of sound medical judgment as it pertains to optometry, or that it is not in the public interest, and the basis for denial shall be given to the requesting optometrist in writing if requested. It is necessary that the physician have knowledge of the requesting optometrist, and if not, then same shall be good cause for denial.

(D) A standing delegation order issued under this subdivision or a representation of the order will be prominently displayed in the office of the optometrist. The board will prescribe the form of the standing delegation order and the certificate or representation of the order. The standing delegation order, as a minimum, will:

(i) be in writing, dated and signed by the physician;

(ii) specify the available topical ocular pharmaceutical agents, including but not limited to topical anesthetics and dilating agents, to be administered in the office; and

(iii) specify that said agents shall not be used for therapeutic purposes.

(E) On the complaint of any person or on its own initiative, the board of medical examiners may cancel a standing delegation order issued under this section if it determines that the optometrist possessing the order has violated the standing delegation order or this section.

(F) Except as provided by Paragraph (E) of this subdivision, a standing delegation order issued under this subdivision remains valid as along as:

(i) the physician who issued the order is a resident of this state and is licensed to practice medicine in this state;

(ii) no irregularities are found on annual review; and

(iii) the order is not canceled for good cause by either party.

(G) A physician who has issued a standing delegation order in compliance with this subdivision is immune from liability in connection with acts performed pursuant to the standing delegation order so long as he has used prudent judgment in the issuance or the continuance of the standing delegation order.

(H) Nothing herein is intended to limit or expand the practice of optometry as defined by law.

(7) [~~(6)~~] Authority to delegate medical acts to properly qualified persons as provided in this section is recognized as applicable to emergency care rendered by emergency medical personnel certified by the Texas Department of Health.

(8) [~~(7)~~] (A) It is the policy of this state that the prevention of ophthalmia neonatorum in newborn infants is of paramount importance for the protection of the health of Texas children.

(B) Authority to delegate medical acts to a lay midwife registered under Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is recognized as applicable to the possession of and administration of eye prophylaxis for the prevention of ophthalmia neonatorum.

(C) A physician who has issued such standing order is immune from liability in connection with acts performed pursuant to the standing delegation order as long as the lay

midwife has provided proof of compliance with Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), prior to the issuance of the order.

SECTION 17. Section 5.02, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding new subsection (d) to read as follows:

(d) The board shall adopt rules establishing:

(1) any specialized education and training, including pharmacology, a physician assistant must have to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06 of this Act; and

(2) a system for assigning an identification number to a physician assistant who provides the board with evidence of completing the required specialized education and training.

SECTION 18. Article 4514, Revised Statutes, is amended by adding a Section 7 that reads:

Sec. 7. The board shall adopt rules establishing:

(a) any specialized education and training, including pharmacology, a registered nurse must have to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes); and

(b) a system for assigning an identification number to a registered nurse who provides the board with evidence of completing the required specialized education and training.

SECTION 19. Section 5, Article 4518, Revised Statutes, is amended to read as follows:

Sec. 5. Insofar as any of the following acts require substantial specialized judgment and skill and insofar as the proper performance of any of the following acts is based upon knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in a approved school of professional nursing, "Professional Nursing" shall be defined as the performance for compensation of any nursing act (a) in the observation, assessment, intervention, evaluation, rehabilitation, care and counsel and health teachings of persons who are ill, injured or infirm or experiencing changes in normal health processes; (b) in the maintenance of health or prevention of illness; (c) in the administration of medications or treatments as ordered [~~prescribed~~] by a licensed physician, including a podiatric physician licensed by the Texas State Board of Podiatry Examiners, or dentist; (d) in the supervision or teaching of nursing; (e) in the administration, supervision, and evaluation of nursing practices, policies, and procedures. The foregoing shall not be deemed to include acts of medical diagnosis or prescription of therapeutic or corrective measures. Nothing in this section shall be construed as prohibiting a registered nurse recognized by the board as having the specialized education and training required under Section 7, Article 4514, Revised Statutes, and functioning under adequate physician supervision from carrying out prescription drug orders or treatments under physician's orders, standing medical orders, standing delegation orders or other orders or protocols.

SECTION 20. Subdivision (33), Section 5, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(33) "Prescription drug order" means:

(a) a written order from a practitioner or verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(b) a written or verbal order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

SECTION 21. Subsection (h), Section 2, The Texas Dangerous Drug Act (Article 4476-14, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) The term "prescription" means a written order or telephonic order, by a practitioner or an order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) or an order by an

agent of the practitioner who is designated in writing as authorized to communicate prescriptions by telephone, to a pharmacist for a dangerous drug to be dispensed, which specifies the date of its issue, the name and address of the patient (and, if such dangerous drug is prescribed for an animal, the species of such animal), the name and quantity of the dangerous drug prescribed, and the directions for use of such drug.

SECTION 22. The Texas Dangerous Drug Act (Article 4476-14, Vernon's Texas Civil Statutes), is amended by adding Section 3B to read as follows:

Sec. 3A. (a) Each practitioner shall designate in writing the name of each agent authorized to communicate prescriptions by telephone for that practitioner. A list of agents designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific agent.

(b) This section does not relieve a practitioner or the practitioner's agent from the requirements of Section 40, Texas Pharmacy Act (Vernon's Texas Civil Statutes). The practitioner remains personally responsible for the actions of each agent who communicates prescriptions to a pharmacist.

Sec. 3B. (a) Each practitioner shall designate in writing the name of each registered nurse or physician assistant authorized to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). A list of the registered nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific registered nurse or physician assistant.

SECTION 23. The Texas Department of Human Services shall not impose any conditions on Medicaid reimbursement of rural health clinics that are more stringent than those imposed by the Rural Health Clinic Services Act of 1977 (P.L. 95-210) or the laws of this state regulating the practice of medicine, pharmacy or professional nursing.

SECTION 24. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. EXPERT WITNESSES

Sec. 14.01. QUALIFICATION OF EXPERT WITNESS IN SUIT AGAINST PHYSICIAN. (a) In a suit involving a health care liability claim against a physician for injury to or death of a patient, a person may qualify as an expert witness on the issue of whether the physician departed from accepted standards of medical care only if:

(1) The person is practicing at the time such testimony is given or was practicing at the time the claim arose and has knowledge of accepted standards of medical care for the diagnosis, care or treatment of the illness, injury or condition involved in the claim; or

(2) The court, after a hearing conducted outside the presence of the jury, determines that the person is otherwise qualified to give expert testimony on said issue.

(b) For the purpose of this section, "practicing" includes, but is not limited to, training residents or students at an accredited school of medicine or osteopathy or serving as a consulting physician to other physicians who provide direct patient care, upon the request of such other physicians.

SECTION 25. Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 7.02, to read as follows:

Sec. 7.02. JURY INSTRUCTION AUTHORIZED IN CERTAIN CASES. (a) In a jury trial involving a health care liability claim against a physician or hospital for injury to or death of a patient in which the court determines that the following instruction is reasonably applicable to the facts, the court shall provide the following instruction in the court's charge to the jury:

"A finding of negligence may not be based solely on evidence of a bad result to the patient in question, but such a bad result may be considered by you, along with other evidence, in determining the issue of negligence; you shall be the sole judges of the weight, if any, to be given to any such evidence."

(b) Nothing in subsection (a) of this section shall affect the existing law regarding the applicability or nonapplicability of the doctrine of res ipsa loquitur to a health care liability claim.

(c) The determination of whether the instruction authorized by subsection (a) of this section is reasonably applicable to the facts shall be made by the trial court in its sole discretion, and such determination by the trial court shall be reviewable by an appellate court only for an abuse of such discretion.

SECTION 26. Sections 14 and 15 of this Act take effect on January 1, 1990, and apply only to causes of action that accrue on or after that date.

SECTION 27. Sections 24 and 25 of this Act apply only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

SECTION 28. This Act takes effect September 1, 1989.

SECTION 29. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

* * * * *

Austin, Texas
May 22, 1989

Hon. William P. Hobby
President of the Senate

Sir:

We, your Committee on Health and Human Services to which was referred H.B. No. 18, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do not pass, but that the Committee Substitute adopted in lieu thereof do pass and be printed.

Tejeda, Acting Chairman

SENATE FAVORABLY AS SUBSTITUTED COMMITTEE REPORT

Lt. Governor William P. Hobby
President of the Senate

5-22-89
(date)/(time)

Sir:

We, your Committee on HEALTH AND HUMAN SERVICES to which was referred CSHB 18 (measure) by McKinney (sponsor) have on 5-22 (hearing date), 1989, had the same

under consideration and I am instructed to report it back with the recommendation (s) that it

(X) do pass as substituted, and be printed
( ) the caption remained the same as original measure
(X) the caption changed with adoption of the substitute

( ) do pass as substituted, and be ordered not printed

( ) and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. (X) yes ( ) no

A revised fiscal note was requested. ( ) yes ( ) no

An actuarial analysis was requested. ( ) yes ( ) no

Considered by subcommittee. ( ) yes ( ) no

Senate Sponsor of House Measure Brooks

The measure was reported from Committee by the following vote:

	YEA	NAY	PNV	ABSENT
Brooks, Chairman	X			
Uribe, Vice Chairman				
Edwards	X			
Johnson	X			
Parmer				
Tejeda	X			
Truan				
Whitmire				
Zaffirini	X			
TOTAL VOTES	5			

Linda M Kristopeis
COMMITTEE CLERK

Frank Tejeda
CHAIRMAN (ACTING)

Paper clip the original and one copy of this form along with TWO copies of the Committee Substitute to the original bill and retain one copy for Reporting Committee file.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

May 15, 1989

TO: Honorable Chet Brooks, Chairman
Committee on Health and Human Services
Senate Chamber
Austin, Texas

In Re: House Bill No. 18,
as engrossed
By: McKinney, et. al.

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 18, as engrossed (relating to health care, including the office of rural health care, surveys of hospitals and physicians, health education enrollments, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers; providing civil penalties) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would establish an office of rural health, an advisory committee on rural health, a comprehensive health professions resource center and require that a physician be included on those Title XVIII reviews for the purpose of surveying physicians on the medical staff of a hospital. In addition, the office of rural health would serve as the State Medical Education Board for purposes of Article III, Section 50a, of the Texas Constitution. Any changes in rural health care delivery would require the approval of the advisory committee.

The bill would also require the Department of Human Services to adjust its Medicaid reimbursement rates for hospitals. The most significant of these cost adjustments are the elimination of the 10% budgetary adjustment factor adopted in 1986 and the inclusion of an outlier adjustment for high cost patients.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost to the Department of Health out of the General Revenue Fund	Probable Cost Out of the General Revenue Fund to the Department of Human Services	Probable Cost to the Department of Human Services Out of Federal Funds	Change in Number of State Employees from FY 1989
1990	$371,763	$232,620	$367,380	+ 4.0
1991	362,132	220,980	379,020	+ 4.0
1992	362,132	209,460	390,540	+ 4.0
1993	362,132	206,100	393,900	+ 4.0
1994	362,132	207,000	393,000	+ 4.0

Similar annual costs would continue as long as the provisions of the bill are in effect.

Local units of government that provide health care services for indigent persons would realize a minimal increase in reimbursement. Similarly, state operated health care providers such as The University of Texas Medical Branch at Galveston would also realize a minimal increase in reimbursement.

Source: Department of Health; Department of Human Services;
LBB Staff: JO, JWH, AL, CD/GR, BL

71FHB18ae

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 20, 1989

TO: Honorable Brad Wright, Chair
Committee on Public Health
House of Representatives
Austin, Texas

In Re: Committee Substitute for House Bill No. 18

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Committee Substitute for House Bill No. 18 (relating to the office of rural health care, surveys of hospitals and physicians, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers; providing civil penalties) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would establish an office of rural health, an advisory committee on rural health, a comprehensive health professions resource center and require that a physician be included on those Title XVIII reviews for the purpose of surveying physicians on the medical staff of a hospital. In addition, the office of rural health would serve as the State Medical Education Board for purposes of Article III, Section 50a, of the Texas Constitution. Any changes in rural health care delivery would require the approval of the advisory committee.

The bill would also require the Department of Human Services to adjust its Medicaid reimbursement rates for hospitals. The most significant of these cost adjustments are the elimination of the 10% budgetary adjustment factor adopted in 1986 and the inclusion of an outlier adjustment for high cost patients.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost to the Department of Health out of the General Revenue Fund	Probable Cost Out of the General Revenue Fund to the Department of Human Services	Probable Cost to the Department of Human Services Out of Federal Funds	Change in Number of State Employees from FY 1989
1990	$371,763	$232,620	$367,380	+ 4.0
1991	362,132	220,980	379,020	+ 4.0
1992	362,132	209,460	390,540	+ 4.0
1993	362,132	206,100	393,900	+ 4.0
1994	362,132	207,000	393,000	+ 4.0

Similar annual costs would continue as long as the provisions of the bill are in effect.

Local units of government that provide health care services for indigent persons would realize a minimal increase in reimbursement. Similarly, state operated health care providers such as The University of Texas Medical Branch at Galveston would also realize a minimal increase in reimbursement.

Criminal Justice Policy Impact Statement: No change in the sanctions applicable to adults convicted of felony crimes is anticipated.

Source: Department of Health; Department of Human Services;
LBB Staff: JO, JWH, AL, CD/GR, LV

71FCSHB18

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 3, 1989

TO: Honorable Brad Wright, Chair
Committee on Public Health
House of Representatives
Austin, Texas

In Re: House Bill No. 18
By: McKinney/Schlueter

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 18 (relating to the office of rural health care, surveys of hospitals and physicians, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would establish an office of rural health, an advisory committee on rural health, and require that a physician be included on all Title XVIII surveys in order to survey physicians on the medical staff of a hospital. Any changes in rural health delivery would require the approval of the advisory committee.

The bill would also require the Department of Human Services to adjust its Medicaid reimbursement rates for hospitals. The most significant of these cost adjustments are the elimination of the 10% budgetary adjustment factor adopted in 1986 and the inclusion of an outlier adjustment for high cost patients.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost to the Department of Health out of the General Revenue Fund	Probable Cost Out of the General Revenue Fund to the Department of Human Services	Probable Cost to the Department of Human Services Out of Federal Funds	Change in Number of State Employees from FY 1989
1990	$556,430	$44,184,215	$69,780,744	+ 4.0
1991	546,799	45,450,745	77,959,112	+ 4.0
1992	546,799	45,397,263	84,643,594	+ 4.0
1993	546,799	47,191,642	90,193,053	+ 4.0
1994	546,799	50,202,442	95,311,882	+ 4.0

Similar annual costs would continue as long as the provisions of the bill are in effect.

Local units of government that provide health care services for indigent persons would realize increased reimbursement. Similarly, state operated health care providers such as The University of Texas Medical Branch at Galveston would also realize increased reimbursement.

Criminal Justice Policy Impact Statement: No change in the sanctions applicable to adults convicted of felony crimes is anticipated.

Source: Department of Health; Department of Human Services;
LBB Staff: JO, JWH, AL, CD/GR, PA

71FHB18

ADOPTED

MAY 24 1989

Secretary of the Senate

By: McKinney, Schlueter, Rudd, et al. H.B. 18

Substitute the following for H.B. No. 18

By _____ C.S.H.B. 18

A BILL TO BE ENTITLED

~~AN ACT~~

~~relating to health~~ care, including the center for rural health initiatives, surveys of hospitals and physicians, health professions resource center, hospital patient transfers, medical and hospital care advisory committee, state indemnification for the provision of charity care or services, rural health Family Practice residency programs, medical education, professional liability insurance for physicians and other health care professionals, securing of enhanced Medicaid and Medicare reimbursement in Texas by providing for the completion of orders for the dispensing of drugs under physician supervision, relating to the rule-making authority of the Texas Department of Human Services; providing civil penalties.

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

SECTION 1. This Act may be cited as the Omnibus Rural Health Care Rescue Act.

SECTION 2. Title 71, Revised Statutes, is amended by adding Article 4414b-1 to read as follows:

Art. 4414b-1. CENTER FOR RURAL HEALTH INITIATIVES

Sec. 1. DEFINITIONS. (a) "Center" means the Center for Rural Health Initiatives; ~~and~~

(b) "Executive Committee" means the executive committee of the Center for Rural Health Initiatives.

05068904.3

Sec. 2. CENTER FOR RURAL HEALTH INITIATIVES. The Center for Rural Health Initiatives is established.

Sec. 3. PURPOSE. The center shall assume a leadership role in working or contracting with state and federal agencies, universities, private interest groups, communities, foundations, and offices of rural health to develop rural health initiatives and maximize use of existing resources without duplicating existing effort. The center shall provide a central information and referral source and serve as the primary state resource in coordinating, planning, and advocating for the continued access to rural health care services in Texas.

Sec. 4. DUTIES. (a) The center shall:

(1) educate the public and recommend appropriate public policies regarding the continued viability of rural health care delivery in Texas;

(2) monitor and work with state and federal agencies to assess the impact of proposed rules and regulations on rural areas; provide impact statements of proposed rules and regulations as deemed appropriate by the center; streamline regulations to assist in the development of service diversification of health care facilities; and target state and federal programs to rural areas;

(3) promote and develop community involvement and community support in maintaining, rebuilding, or diversifying local health services;

(4) promote and develop diverse and innovative

health care service models in rural areas;

(5) encourage the use of advanced communications technology to provide access to specialty expertise, clinical consultation, and continuing education;

(6) assist rural health care providers, communities, and individuals in applying for public and private grants and programs;

(7) encourage the development of regional emergency transportation networks;

(8) work with state agencies, universities, and private interest groups to conduct and promote research on rural health issues, maintain and collect a timely data base, and develop and maintain a rural health resource library;

(9) solicit the assistance of other offices or programs of rural health in Texas that are university-based to carry out the duties of this Act;

(10) disseminate information and provide technical assistance to communities, health care providers, and individual consumers of health care services; and

(11) develop plans to implement a fee-for-service health care professional recruitment service and a medical supplies group purchasing program within the center.

(b) The center is authorized to solicit, receive, and spend grants, gifts, and donations from public and private sources.

(c) The center may contract with public and private entities in the performance of its responsibilities.

Sec. 5. EXECUTIVE COMMITTEE. (a) The executive committee is the governing body of the center.

(b) The executive committee is composed of:

(1) three members appointed by the governor, including: one physician licensed to practice in Texas, one pharmacist licensed to practice in Texas, and one business or community leader;

(2) three members appointed by the lieutenant governor, including: one registered nurse licensed to practice in Texas, one allied health professional who is licensed, registered, or certified to practice in Texas, and one rural health policy expert; and

(3) three members appointed by the speaker of the house of representatives, including: one physician licensed to practice in Texas, one hospital administrator, and one health economist.

(c) The appointments to the executive committee shall be individuals who reside, work, or practice in rural areas of the state or who have demonstrated knowledge and expertise in rural issues.

(d) The appointments to the executive committee shall provide for a balanced representation of the geographical regions of the state.

(e) The members of the executive committee serve staggered six-year terms, with the terms of three members expiring August 31 of each odd-numbered year.

(f) The members of the executive committee shall

annually elect one member to serve as presiding officer.

(g) The executive committee shall meet at least quarterly or at the call of the presiding officer and shall adopt rules for the conduct of the meetings.

(h) Any actions taken by the executive committee must be approved by a majority vote.

(i) Members of the executive committee receive no compensation but are entitled to reimbursement of actual and necessary expenses incurred in the performance of their duties.

(j) The executive committee shall establish policies and adopt rules to implement this Act.

Sec. 6. EXECUTIVE DIRECTOR. (a) The executive committee may hire an executive director to serve as the chief executive officer of the center and to perform the administrative duties of the office.

(b) The executive director serves at the will of the executive committee.

(c) The executive director may hire staff within the guidelines established by the executive committee.

Sec. 7. ADVISORY COMMITTEE. (a) The advisory committee is composed of the following:

(1) the commissioner of health or a representative of the department designated by the commissioner;

(2) the commissioner of human services or a representative of the department designated by the commissioner;

(3) the commissioner of agriculture or a representative of the department designated by the commissioner;

(4) the executive director of the Texas Department of Commerce or a representative of the department designated by the executive director; and

(5) the commissioner of higher education or a representative of the Texas Higher Education Coordinating Board designated by the commissioner.

(b) The executive committee may appoint additional agencies as necessary to serve on the advisory committee in a temporary capacity. The executive committee also may request that a state agency designate an employee to serve as a liaison with the center.

(c) The Texas Department of Health shall provide administrative support to the center as necessary to carry out the duties of this Act. The department and the other agencies represented on the advisory committee shall provide staff support to the center and may provide staff and other support services to the executive committee.

(d) The advisory committee may participate fully in executive committee meetings; however, advisory committee members do not have voting privileges.

Sec. 8. REPORTS TO LEGISLATURE. No later than January 1 of each odd-numbered year, the center shall submit a biennial report to the legislature regarding the activities of the center and any findings and recommendations relating to rural issues.

Sec. 9. APPLICATION OF SUNSET ACT. The center for rural health initiatives is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that Act, the center is abolished and this Act expires September 1, 2001.

SECTION 3. Title 71, Revised Statutes, is amended by adding Article 4414b-2 to read as follows:

Art. 4414b-2. HEALTH PROFESSIONS RESOURCE CENTER.

(a) In conjunction with the Texas Higher Education Coordinating Board and in such a way as to avoid duplication of effort, the department shall establish a comprehensive health professions resource center for the collection and analysis of educational and employment trends for health professions in this state.

(b) The department shall place high priority on collecting and disseminating data on health professions demonstrating an acute shortage in this state, including:

(1) data concerning nursing personnel; and

(2) the health professions in which shortages occur in rural areas.

(c) To the extent possible, the department may collect high priority health professions data from existing sources that the department determines are credible. The department may enter agreements with those sources that establish guidelines concerning the identification, acquisition, transfer, and confidentiality of the data.

(d) At a minimum, the data collected by the department

shall include the following in regard to health professionals:

(1) the number and geographic distribution;

(2) licensure or certification status;

(3) specialty areas, if applicable; and

(4) trends or changes in license holders according to number or geographic distribution.

(e) The department may use the data collected and analyzed under this article to publish reports regarding:

(1) the educational and employment trends for health professions;

(2) the supply and demand of health professions; and

(3) other issues, as necessary, concerning health professions in this state.

(f) The board may adopt rules to govern the reporting and collection of data.

(g) In this section, "health profession" means any health or allied health profession that is licensed, certified, or registered by a state board, agency, or association.

(h) The Texas Higher Education Coordinating Board may require the assistance of other state agencies or institutions of higher education for the development of any report.

SECTION 4 . Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended by adding Section 5 to read as follows:

Sec. 5. The Texas Department of Health shall ensure

that a licensed physician involved in direct patient care as defined by the Texas State Board of Medical Examiners is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) when surveying to survey the quality of services provided by physicians in hospitals.

SECTION 5. Article 4414b, Revised Statutes, is amended by adding Section 1.15 to read as follows:

Sec. 1.15. BREAST CANCER SCREENING. (a) The Center for Rural Health Initiatives may establish a breast cancer screening program in counties with a population of 50,000 or less, according to the most recent federal census.

(b) The Center for Rural Health Initiatives may provide breast cancer screening under the program through contracts with public or private entities to provide mobile units and on-site screening services.

(c) The Center for Rural Health Initiatives shall coordinate the breast cancer screening program with programs administered by the Texas Cancer Council.

(d) The board may appoint an advisory committee to advise the Office of Rural Health Care on the breast cancer screening program, including targeting those areas of the state in which the program is most needed. The advisory committee may be composed of physicians who practice in rural areas, administrators of hospitals in rural areas, and representatives of organizations formed to promote breast cancer awareness.

SECTION 6. Section 5A ~~The~~ Texas Hospital Licensing Law (Article

4437f, Vernon's Texas Civil Statutes) is amended to read as follows:

Sec. 5. (a) The Licensing Agency, with the advice of the Hospital Licensing Advisory Council, shall adopt and enforce such rules and minimum standards as may be designed to further the purposes of this Act. Except as provided by Subsections (b) and (d) of this section, the rules or minimum standards so adopted or enforced shall be limited to minimum requirements for staffing by physicians and nurses, hospital services relating to patient care, and safety, fire prevention, and sanitary provisions of hospitals as defined in this Act. Any rules or standards set shall be adopted by the Texas Board of Health in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The standards may not exceed the minimum standards for certification under Title XVIII of the Social Security Act.

(b) The Texas Board of Health shall adopt rules to implement the following minimum standards governing the transfer of patients between hospitals that do not have a transfer agreement. The rules must provide that patient transfers between hospitals will [should] be accomplished through hospital policies that result in [a] medically appropriate transfers [manner] from physician to physician as well as from hospital to hospital by providing [for]:

(1) notification to the receiving hospital prior to the transfer and confirmation by that hospital that the

patient meets that hospital's admissions criteria relating to appropriate bed, physician, and other services necessary to treat the patient;

(2) the use of medically appropriate life support measures which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use to stabilize the patient prior to transfer and to sustain the patient during the transfer;

(3) the provision of appropriate personnel and equipment which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use for the transfer;

(4) the transfer of all necessary records for continuing the care for the patient; and

(5) [~~the date by which each hospital must adopt policies in accordance with the rules~~] that the transfer of a patient may not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, or economic status.

(c) Minimum standards prescribed by Board rules shall not contain provisions which require the consent of the patient or personal representative of the patient prior to transfer. The rules shall also provide that a public hospital or hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services, and staff available for

providing care to the patient.

(d) [~~Each hospital shall adopt binding policies relating to patient transfers that are consistent with the rules adopted by the Texas Board of Health. If possible, each hospital shall implement its transfer policies by adopting transfer agreements with other hospitals.~~] If transfer agreements are executed between hospitals that are consistent with the requirements of this subsection, any patient transfers between the hospitals will be governed by the agreement. The transfer agreement shall be submitted to the Texas Department of Health for review for compliance with the transfer agreement requirements. Such review shall be completed within ~~thirty~~ 30 days from the date submitted by hospitals. At a minimum, the transfer agreement shall provide that:

(1) transfers will be accomplished in a medically appropriate manner;

(2) the transfer or receipt of patients shall not be based upon the individual's inability to pay for the services rendered by the transferring or receiving hospital;

(3) multiple transfer agreements may be entered into by a hospital based upon the type or level of medical services available at other hospitals;

(4) the hospitals will recognize the right of an individual to request transfer into the care of a physician and hospital of the individual's own choosing; ~~and~~

(5) the hospitals will recognize and comply with the requirements of the Indigent Health Care and Treatment Act

(Article 4438f, Vernon's Texas Civil Statutes) relating to the transfer of patients to mandated providers;

(e) The Texas Department of Health may adopt rules to facilitate the transfer of patients between hospitals that do not have a transfer agreement based upon the recommendation of an advisory committee appointed by the Texas Board of Health. The advisory committee is composed of ~~twelve~~ members, including:

(1) two physicians licensed to practice in this state who have been in active practice in a rural area;

(2) two hospital administrators who have been actively engaged in hospital administration in a rural area and who represent a public hospital and a private hospital;

(3) two physicians licensed to practice in this state who have been in active practice in an urban area;

(4) two hospital administrators who have been actively engaged in hospital administration in an urban area and who represent a public hospital and a private hospital;

(5) an emergency medical technician and a person serving as a volunteer to an emergency medical services provider; and

(6) two consumer members.

(f) The Commissioner of Health shall appoint, with the advice and consent of the Texas Board of Health, a person to serve in the capacity of Hospital Licensing Director. The duties of the Hospital Licensing Director shall be the administration of this Act and he shall be directly respon-

sible to the Licensing Agency. Any person so appointed as Hospital Licensing Director must possess the following qualifications: He shall have had at least five (5) years experience and/or training in the field of hospital administration, be of good moral character, and a resident of the State of Texas for a period of not less than three (3) years.

INSERT #3

SECTION 10. Section 32.022, Human Resources Code, is amended to read as follows:

Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES [~~COMMITTEE~~]. (a) The board, on the recommendation of the commissioner, shall appoint a medical care advisory committee to advise the board and the department in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's goal of providing access to high quality, comprehensive medical and health care services to medically indigent [needy] persons in the state. To ensure that qualified applicants receive services, the committee shall consider changes in the process the department uses to determine eligibility.

(b) The board shall appoint the committee in compliance with the requirements of the federal agency administering medical assistance. The appointments shall provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work.

(c) The department shall adopt rules for membership on the committee to provide for efficiency of operation, rota-

tion, stability, and continuity.

(d) The board, on the recommendation of the commissioner, may appoint regional and local medical care advisory committees and other advisory committees as considered necessary.

(e) The board, on the recommendation of the commissioner, shall appoint a hospital payment advisory committee. The committee shall advise the board and the department on necessary changes in hospital payment methodologies for inpatient hospital prospective payments and on adjustments for disproportionate share hospitals that will ensure reasonable, adequate, and equitable payments to hospital providers and that will address the essential role of rural hospitals. The board shall appoint to the committee persons with knowledge of and an interest in hospital payment issues.

SECTION ~~8~~ 11. Section 32.024, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department, in its rules and standards governing the scope of hospital and long-term services, shall establish a swing bed program in accordance with federal regulations to provide reimbursement for skilled nursing patients who are served in hospital settings provided that the length of stay is limited to 30 days per year and the hospital is located in a county with a population of 100,000 or less. If the swing beds are used for more than one 30-day length of stay per year, per patient, the hospital must comply with the Minimum Licensing Standards as mandated by Article 4442(c), Vernon's

Texas Statutes, and the Medicaid standards for nursing home certification, as promulgated by the Texas Department of Human Services.

SECTION 9. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.917 to read as follows:

Sec. 51.917. RURAL HEALTH; FAMILY PRACTICE RESIDENCY PROGRAM. The Texas Higher Education Coordinating Board, the Center for Rural Health Initiatives in the Texas Department of Health, medical schools, nursing schools, and schools of allied health sciences shall cooperate to improve and expand programs for rural areas.

(a) The Texas Higher Education Coordinating Board shall:

(1) encourage and coordinate the creation or expansion of rural preceptor program among medical schools, teaching hospitals, nursing schools, and schools of allied health sciences; and

(2) require family practice residency programs to provide an opportunity for residents to have a one-month rotation through a rural setting.

(b) The Center for Rural Health Initiatives shall develop relief service programs for rural physicians and allied health personnel to facilitate ready access to continuing medical education.

(c) Each medical school shall:

(1) incorporate a clerkship in family practice during the third core clinical year; and

(2) report to the legislature and the Texas Higher

Education Coordinating Board on its efforts to fulfill the intent of Chapter 58, Education Code, of having at least 25% of their first year primary care residents in family practice.

SECTION 10. Section 61.534, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher education, including loans for undergraduate education, received by a physician through a lender [~~in Texas~~].

(c) Each fiscal biennium, the coordinating board shall attempt to allocate all funds appropriated to it for the purpose of providing repayment assistance under this subchapter.

SECTION 11. ~~Amend Subchapter I, Chapter 61, Education Code, by adding~~ Section 61.536(2) to read as follows:

Sec. 61.536. ADVISORY COMMITTEES. The coordinating board may:

(1) appoint advisory committees from outside the board's membership to assist the board in performing its duties under this subchapter; and

(2) request the assistance of the Family Practice Residency Advisory Committee in performing those duties.

SECTION 12. Section 3, Article 5.15-1, Insurance Code, is amended to read as follows:

Sec. 3. RATE STANDARDS. Rates shall be made in

accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written in [~~inside~~] this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the

classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

SECTION 16. Article 5.15-1, Insurance Code, is amended by adding Section 4B to read as follows:

Sec. 4B. RATE APPEALS. (a) Each insurer covered by this article shall adopt a procedure for reconsideration of a rate or premium charged a physician or health care provider for professional liability insurance coverage. The procedure shall include an opportunity for a hearing before officers or employees who have responsibility for determining rates and premiums to be charged for professional liability insurance and a requirement that the insurer reconsider the rate or premium and provide the physician or health care provider a written explanation of the rate or premium being charged.

(b) If a physician or health care provider is not satisfied with a decision under procedures established under Subsection (a) of this section, the physician or health care provider may appeal to the State Board of Insurance for a review of the rate or premium and a determination if the rate or premium being charged complies with criteria under Section 3 of this article. A decision of the State Board of Insurance under this subsection may not be appealed.

(c) The State Board of Insurance by rule shall establish criteria to be followed by insurers in establishing reconsideration procedures under Subsection (a) of this section and standards and procedures to be followed in review of rates and premiums by the board.

SECTION 14. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 110 to read as follows:

CHAPTER 110. STATE LIABILITY FOR INDEMNIFICATION OF CERTAIN HEALTH CARE PROFESSIONALS.

Sec. 110.001. DEFINITIONS. In this chapter:

(1) "Charity care or services" means care or services provided by a health care professional under:

(A) the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes);

(B) the Medicaid program under Chapter 32, Human Resources Code;

(C) the Maternal and Infant Health Improvement Act (Article 4447y, Vernon's Texas Civil Statutes);

(D) the Texas Primary Health Care Services Act (Article 4438d, Vernon's Texas Civil Statutes);

(E) the Chronically Ill and Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes); or

(F) a contract with a migrant or community health center that receives funds under 42 U.S.C. 254b and 254c.

(2) "Eligible medical malpractice claim" means a medical claim against a health care professional who renders charity care in at least ~~ten~~ (10) percent of the patient encounters engaged in by said health care professional during the policy year in which the claim was made.

(3) "Health care professional" means:

(A) a person who is licensed to practice medicine under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

(B) a person registered by the Board of Nurse Examiners as an Advanced Nurse Practitioner or a Certified Nurse Midwife; or

(C) a person recognized by the Board of Medical Examiners as a Physician Assistant.

(4) "Insurer" means an insurance company chartered to write or admitted to write and writing medical professional liability insurance in this state or the Texas Medical Liability Insurance Underwriting Association (Subchapter E, Chapter 21, Article 21.49-3, Insurance Code) or any self-insurance trust created under Subchapter E, Chapter 21, Article 21.49-4, Insurance Code, for the purpose of providing medical professional liability insurance. The term "insurer" does not include an institution of higher education that provides medical professional liability coverage under Chapter 59, Education Code.

(5) "Medical malpractice claim" means a claim or action against a health care professional alleging one or

more negligent acts or omissions in the diagnosis, care or treatment of a patient and alleging that injury to or death of a patient resulted therefrom, without regard to whether said claim or action is based upon tort or contract principles.

(6) "Patient encounters" means an occasion on which a health care professional renders professional health care services to a patient.

Sec. 110.002. STATE LIABILITY: PERSONS COVERED. In a cause of action against a health care professional based on conduct described in Section 110.003, the state shall indemnify the health care professional for actual damages adjudged against the health care professional or which the health care professional becomes obligated to pay pursuant to a settlement reached in accordance with this chapter.

Sec. 110.003. STATE LIABILITY: CONDUCT COVERED. (a) The state is liable for indemnification under this chapter only if the damages are based on an eligible medical malpractice claim against a health care professional in the course and scope of said person's professional health care activities.

(b) The state is not liable for indemnification for an intentional act or an act of gross negligence.

Sec. 110.004. LIMITS ON AMOUNT OF RECOVERABLE DAMAGES. (a) State liability for indemnification under this chapter may not exceed:

(1) $100,000 for a single occurrence in the case of an eligible medical malpractice claim arising as a result of

prenatal care, care during labor and delivery, and care given to a mother or infant during the 30-day period immediately following delivery, or as a result of emergency care; or

(2) $25,000 for a single occurrence in the case of any other eligible medical malpractice claim.

(b) The state shall be payor of first resort for an eligible medical malpractice claim for amounts falling within the limits set forth in subsection (a) of this section.

Sec. 110.005. TIMELY NOTICE TO ATTORNEY GENERAL REQUIRED. The state is not liable for indemnification for damages under this chapter unless the health care professional against whom the cause of action is asserted:

(1) is covered under a valid professional liability insurance policy that is issued by an insurer and that provides coverage for the medical malpractice claim that is the subject of the claim or action with a policy limit of not less than $100,000 per occurrence and $300,000 aggregate for the policy period; and

(2) delivers or causes to be delivered to the Attorney General a true copy of any written notice of said medical malpractice claim and any summons or citation served on the health care professional, which written notice, summons or citation shall be delivered to the Attorney General not later than the 45th day after the receipt thereof by the health care professional.

Sec. 110.006. INFORMATION PROVIDED TO ATTORNEY GENERAL; SETTLEMENTS. (a) The insurer for a health care professional

who is the subject of an eligible malpractice claim shall designate an attorney or other representative assigned to the claim who shall keep the Attorney General or his designee reasonably informed of significant developments in the claim or action, including all settings for trials or dispositive motions, all settlement offers and demands, all pleadings by or against the health care professional, all judgments or other dispositive orders, and all written recommendations of counsel for the health care professional regarding settlement.

(b) If a settlement agreement is reached between the health care professional and a claimant, the insurer for the health care professional shall promptly notify the Attorney General of same. The settlement shall become final and binding upon the State unless, within ~~ten~~ (10) days of the receipt of said notice by the Attorney General (or such greater or lesser period of time as the court in which the action is filed may allow), the Attorney General files in said court (or, if no action is pending in any court, in a district court of Travis County, Texas) a written objection to the settlement setting forth in detail why the court should find that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case. A hearing shall promptly be held upon any such objection, either before the court or a special master appointed by the court for that purpose. At any such

hearing, the burden shall be upon the Attorney General to prove that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case. Unless the court finds that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case, the court shall enter an order approving the settlement and directing the State to make the required indemnity payment thereunder. Such an order shall be reviewable by an appellate court only upon the filing of an application for writ of mandamus within fifteen (15) days of the date said order is signed, and only for an abuse of discretion by the trial court. Any such application for writ of mandamus shall be given priority in the appellate court in which it is filed above all other applications for writ of mandamus docketed in said court.

(c) If the Attorney General files an objection under subsection (b) of this section, the court may, with the agreement of the parties to the settlement agreement, permit the payment of any other sums due to be paid under said agreement by parties other than the State while the objection of the Attorney General is pending adjudication.

(d) If a suit involving an eligible medical malpractice

claim is imminently scheduled for jury trial, or is being tried before a jury, and settlement negotiations are ongoing between the health care professional and any claimant, either of those parties may request the court to require the Attorney General or his designee to assign an attorney to monitor such negotiations so that if a settlement agreement is reached between the parties, the attorney so assigned by the Attorney General can immediately advise the court of any objection, in which event the hearing described in subsection (b) of this section regarding the reasonableness of the settlement amount shall be held immediately after the settlement agreement is reduced to writing or announced on the record in open court, so that the trial court may render its determination before the petit jury or jury panel is discharged.

(e) Except to the extent that the Attorney General is authorized under this section to object to the reasonableness of a settlement, the Attorney General shall not be authorized to intervene in any court proceeding involving an eligible medical malpractice claim. The insurer for the health care professional shall be in charge of the defense of any such claim.

(f) Upon final disposition of an eligible medical malpractice claim by settlement or judgment, funds shall be paid by the Comptroller on vouchers which shall be promptly prepared, verified and signed by the Attorney General.

Sec. 110.007. EXPIRATION. Unless continued in existence, this Chapter expires September 1, 1993.

SECTION 15. Subchapter B, Chapter 5, Insurance Code, is amended by adding Article 5.15-4 to read as follows:

Art. 5.15-4. REDUCTION IN CERTAIN PROFESSIONAL LIABILITY INSURANCE PREMIUMS

Sec. 1. DEFINITIONS. In this article, "charity care or services," "eligible medical malpractice claim," "health care professional," "insurer," "medical malpractice claim," and "patient encounter" have the meanings assigned by Section 110.001, Civil Practice and Remedies Code.

Sec. 2. QUALIFICATION FOR DISCOUNT. A health care professional is entitled to a premium discount for medical professional liability insurance coverage if the professional meets the criteria stated in Section 4 of this article.

Sec. 3. AMOUNT OF PREMIUM DISCOUNT. The State Board of Insurance shall approve premium discounts to be used by each insurer on premiums to be charged to a health care professional covered by this section. The board shall base the approved discounts upon loss and statistical data provided by each insurer and on the reduction in the insurer's liability exposure based on the state's indemnification of the first $100,000 or $25,000 under Chapter 110, Civil Practice and Remedies Code, of an eligible malpractice claim against a health care professional.

Sec. 4. QUALIFICATION FOR PREMIUM DISCOUNT. ~~(a)~~ A health care professional is entitled to a premium discount for medical professional liability insurance coverage if: the projected patient encounters of the health care professional

during the policy year will involve providing charity care or services in 10 percent or more of the health care professional's patient encounters; and

(b) the health care professional completes 15 hours of continuing education during the term of the policy on patient safety and risk reduction subjects related to the health care professional's practice which are sponsored, approved, endorsed, or accredited by the State Board of Insurance, an "insurer" as defined in this Act, or by state or nationally recognized accrediting organizations or continuing medical or nurse education programs.

Sec. 5. REQUEST FOR PREMIUM DISCOUNT. A health care professional who desires a premium discount for medical professional liability insurance coverage shall submit to the insurer not later than the 30th day before the beginning of the term of the policy a written verified application for a new policy or a verified statement for a policy to be renewed stating that the health care professional desires a premium discount and qualifies for a premium discount under this article. The application or statement also shall provide necessary information to determine the eligibility of the health care professional and the amount of the discount.

Sec. 6. AUDIT; PENALTY. (a) At the end of a policy year, an insurer may audit the records of any health care professional to whom the insurer has provided a discount under this article to determine if the health care professional provided the charity care and services necessary under Section

4 of this article to qualify for the premium discount during the preceding policy year.

(b) To conduct the audit, the insurer is entitled to access to any books and records necessary to determine if the verified application or statement submitted for the coverage was correct and the health care professional was eligible for the premium discount. If a health care professional denies access to the property or to the books and records, the insurer may obtain an appropriate court order from a court of competent jurisdiction to gain access to the books and the records.

(c) If an insurer's audit indicates that a health care professional did not provide charity care or services in 10 percent or more of the health care professional's patient encounters, the insurer may charge the health care professional an amount equal to the difference between the premium paid and the premium that would have been due if the health care professional had not received the premium discount plus 20 percent of the amount of the premium that would have been due without the premium discount.

(d) If a health care professional who has received the premium discount for the policy year submits the difference between the premium paid and the premium that would have been due if the health care professional had not received the premium discount plus interest at the legal rate for the unpaid premium prior to 30 days before the expiration of the policy year, the health care professional will not be subject

to the penalty provided in subsection (c).

Sec. 7. PROHIBITIONS ON INSURER; SANCTIONS. (a) An insurer may not cancel or refuse to renew a health care professional's medical professional liability insurance coverage solely on the basis that the health care professional is eligible for a premium discount under this article except for the following reasons:

(1) fraud or misrepresentation in obtaining coverage;

(2) failure to pay premiums when due; or

(3) the insurer's being placed under supervision or in conservatorship or receivership, if the cancellation or nonrenewal is approved by the supervisor, conservator, or receiver.

(b) A health care professional who files the appropriate verified application or statement under this Article will be entitled to a premium discount as approved by the Board under Section 3 of this Article. When consent to rate is used, a health care professional will be entitled to the appropriate discount from the rate agreed to by consent.

(c) An insurer who violates this article is subject to the sanctions authorized under Section 7, Article 1.10, of this code.

Sec. 8. AUTHORITY OF STATE BOARD OF INSURANCE. The State Board of Insurance shall administer this article and shall adopt necessary rules, forms, endorsements, and procedures to carry out this article.

1 Sec. 9. EXPIRATION. Unless continued in existence this
2 Article expires September 1, 1993.
3 SECTION 10. Subsection (d), Section 3.06, Medical
4 Practice Act (Article 4495b, Vernon's Texas Civil Statutes),
5 is amended to read as follows:
6 (d) This Act shall be so construed that:
7 (1) a person licensed to practice medicine shall have the
8 authority to delegate to any qualified and properly trained
9 person or persons acting under the physician's supervision any
10 medical act which a reasonable and prudent physician would
11 find is within the scope of sound medical judgment to delegate
12 if, in the opinion of the delegating physician, the act can be
13 properly and safely performed by the person to whom the
14 medical act is delegated and the act is performed in its
15 customary manner, not in violation of any other statute, and
16 the person does not hold himself out to the public as being
17 authorized to practice medicine. The delegating physician
18 shall remain responsible for the medical acts of the person
19 performing the delegated medical acts. The board may deter-
20 mine whether or not an act constitutes the practice of
21 medicine, not inconsistent with this Act, and may determine
22 whether any medical act may or may not be properly or safely
23 delegated by physicians;
24 (2) a person licensed to practice medicine is authorized
25 and shall have the authority to delegate to any qualified and
26 properly trained person or persons, acting under the physi-
27 cian's supervision, the acts or acts of administering or

providing, in the physician's office, dangerous drugs, as ordered by the physician which are used or required to meet the immediate needs of the physician's patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined by the board. The administration or provision of dangerous drugs shall be in compliance with laws relating to the practice of medicine and Texas and federal laws relating to the dangerous drugs. This subdivision does not permit the physician or person or persons acting under the supervision of the physician to keep a pharmacy, advertised or otherwise, for the retailing of the dangerous drugs without complying with the applicable laws relating to the dangerous drugs;

(3) a person licensed to practice medicine shall be authorized and shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing dangerous drugs, if the provision is provided through a facility licensed by the State Board of Pharmacy pursuant to applicable law, as ordered by the physician, which are used or required to meet the immediate needs of the physician's patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined

by the board. The provision of dangerous drugs shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, Texas or federal drug laws, and rules that may be properly issued by the State Board of Pharmacy. The administration shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, and Texas or federal drug laws. This subdivision does not permit the physician or person or persons acting under the supervision of the physician to keep a pharmacy, advertised or otherwise, for the retailing of the dangerous drugs without complying with the applicable laws relating to the retailing of dangerous drugs. In this subdivision and in Subdivision (2) of this subsection, "administering" means the direct application of a drug by injection, inhalation, ingestion, or any other means to the body of the physician's patient; "provision" means to supply one or more unit doses of a drug, medicine, or dangerous drug. The drug or medicine shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws. However, a qualified and trained person or persons, acting under the supervision of a physician, may be permitted to specify at the time of the provision the inclusion of the date of provision and the patient's name and address;

(4) in the provision of services and the administration of therapy by public health departments, as officially

prescribed by the Texas Department of Health for the prevention or treatment of specific communicable diseases or health conditions for which the Texas Department of Health is responsible for control under state law, a person licensed to practice medicine shall be authorized and shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing dangerous drugs, as ordered by the physician that are used or required to meet the needs of the patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined by the board. The provision of dangerous drugs shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of pharmacy, and laws relating to the practice of professional nursing. The orders may not be inconsistent with this Act and may not be used for the performance of acts ~~or~~ and duties that require the exercise of independent medical judgment. In this subdivision, "administering" means the direct application of a drug by injection, inhalation, ingestion, or any other means to the body of the patient; "provision" means to supply one or more unit doses of a drug, medicine, or dangerous drug. The drug or medicine shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws. However, a qualified and trained person or persons, acting under the

supervision of a physician, may be permitted to specify at the time of the provision the inclusion of the date of provision and the patient's name and address; [.].

(5) (A) At a site serving a medically underserved population, a physician licensed by the board shall be authorized to delegate to a registered nurse or physician assistant acting under adequate physician supervision, the act or acts of administering, providing or carrying out a prescription drug order as authorized by the physician through physician's orders, standing medical orders, standing delegation orders or other orders or protocols as defined by the board.

(B) The carrying out of prescription drug orders under this subsection shall comply with other applicable laws.

(C) Physician supervision shall be adequate if:

(i) ~~the physician~~ a delegating physician is responsible for the formulation or approval of such physician's orders, standing medical orders, standing delegation orders, or other orders or protocols and periodically review such orders and the services provided patients under such orders;

(ii) ~~a physician~~ is on site at least once a week to provide medical direction and consultation;

(iii) ~~the physician~~ receives a daily status report from the registered nurse or physician assistant on any problems or complications encountered; and

(iv) ~~a physician~~ is available through direct telecommunication for consultation, assistance with medical

emergencies, or patient referral.

(D) In this subsection:

(i) "Registered nurse" means a registered nurse recognized by the Board of Nurse Examiners as having the specialized education and training required under Section 7, Article 4514, Revised Statutes.

(ii) "Physician assistant" means a physician assistant recognized by the Board of Medical Examiners as having the specialized education and training required under Subsection (d), Section 5.02 of this Act.

(iii) "Carrying out a prescription drug order" means to complete a prescription drug order presigned by the delegating physician by providing the following information: the patient's name and address; the drug to be dispensed; directions to the patient in regard to the taking and dosage; the name, address, and telephone number of the physician; the name, address, telephone and identification number of the registered nurse or physician assistant completing the prescription drug order; the date; and the number of refills permitted. The board may adopt additional methods to carry into effect or put into force a physician's prescription under physician's orders, standing medical orders, standing delegation orders, or other orders or protocols.

(iv) "A site serving a medically underserved population" means:

(a) a site located in a medically underserved area;

(2) a site located in a health manpower shortage area;

(3) a clinic designated as a rural health clinic under the Rural Health Clinic Services Act of 1977 (P.L. 95-210);

(4) a public health clinic, family planning clinic, or clinic operated by the State or a political subdivision;

(5) a site located in an area in which the Texas Department of Health determines there exists an insufficient number of physicians providing services to eligible clients of federal, state, or locally funded health care programs; or

(6) a site that the Texas Department of Health determines serves a disproportionate number of clients eligible to participate in federal, state, or locally funded health care programs.

(v) "health manpower shortage area" means (1) an area in an urban or rural area of Texas (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the Secretary of Health and Human Services determines has a health manpower shortage and which is not reasonably accessible to an adequately served area; (2) a population group which the Secretary determines to have such a shortage; or (3) a public or non-profit private medical facility or other facility which the Secretary determines has

such a shortage as delineated in 42 USC Sec. 254(e)(a)(1).

(vi) "medically underserved area" means an area in Texas with a medically underserved population or an urban or rural area designated by the Secretary of Health and Human Services as an area in Texas with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services (as defined in 42 USC Sec. 300(e)-1(7)).

(E) After making a determination under either subdivisions (D)(iv)(5) or (D)(iv)(6) that a site serves a medically underserved population, the Department of Health shall publish notice of its determination in the Texas Register and provide an opportunity for public comment in the same manner as for a proposed rule under the Texas Register ~~and~~ Administrative Procedures Act.

(F) The authority granted to a physician to delegate under this subdivision shall not be construed as limiting the authority of a physician to delegate under any other subdivision of this subsection.

(6) (A) A duly licensed and qualified optometrist may administer topical ocular pharmaceutical agents in the practice of optometry as provided by this subdivision. These pharmaceutical agents may not be used for therapeutic purposes.

(B) To be entitled to use topical ocular pharmaceutical agents in the practice of optometry, an optometrist must possess a valid standing delegation order that:

(i) is issued to the optometrist by an area physician

licensed to practice medicine in this state; and

(ii) authorizes the use of the pharmaceutical agents authorized by this subdivision.

(C) On request, an optometrist will be issued a standing delegation order described by Paragraph (B) of this subdivision unless the physician acting as a reasonable and prudent physician determines that denial is within the scope of sound medical judgment as it pertains to optometry, or that it is not in the public interest, and the basis for denial shall be given to the requesting optometrist in writing if requested. It is necessary that the physician have knowledge of the requesting optometrist, and if not, then same shall be good cause for denial.

(D) A standing delegation order issued under this subdivision or a representation of the order will be prominently displayed in the office of the optometrist. The board will prescribe the form of the standing delegation order and the certificate or representation of the order. The standing delegation order, as a minimum, will:

(i) be in writing, dated and signed by the physician;

(ii) specify the available topical ocular pharmaceutical agents, including but not limited to topical anesthetics and dilating agents, to be administered in the office; and

(iii) specify that said agents shall not be used for therapeutic purposes.

(E) On the complaint of any person or on its own initiative, the board of medical examiners may cancel a standing

delegation order issued under this section if it determines that the optometrist possessing the order has violated the standing delegation order or this section.

(F) Except as provided by Paragraph (E) of this subdivision, a standing delegation order issued under this subdivision remains valid as long as:

(i) the physician who issued the order is a resident of this state and is licensed to practice medicine in this state;

(ii) no irregularities are found on annual review; and

(iii) the order is not canceled for good cause by either party.

(G) A physician who has issued a standing delegation order in compliance with this subdivision is immune from liability in connection with acts performed pursuant to the standing delegation order so long as he has used prudent judgment in the issuance or the continuance of the standing delegation order.

(H) Nothing herein is intended to limit or expand the practice of optometry as defined by law.

(7) [~~(6)~~] Authority to delegate medical acts to properly qualified persons as provided in this section is recognized as applicable to emergency care rendered by emergency medical personnel certified by the Texas Department of Health.

(8) [~~(7)~~] (A) It is the policy of this state that the prevention of ophthalmia neonatorum in newborn infants is of paramount importance for the protection of the health of Texas children.

(B) Authority to delegate medical acts to a lay midwife registered under Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is recognized as applicable to the possession of and administration of eye prophylaxis for the prevention of ophthalmia neonatorum.

(C) A physician who has issued such a standing delegation order is immune from liability in connection with acts performed pursuant to the standing delegation order as long as the lay midwife has provided proof of compliance with Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), prior to the issuance of the order.

SECTION ~~17~~ 20. Section 5.02, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding new subsection (d) to read as follows:

(d) The board shall adopt rules establishing:

(1) any specialized education and training, including pharmacology, a physician assistant must have to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06 of this Act; and

(2) a system for assigning an identification number to a physician assistant who provides the board with evidence of completing the required specialized education and training.

SECTION ~~18~~ 21. Article 4514, Revised Statutes, is amended by adding a Section 7 ~~that reads~~ to read as follows:

Sec. 7. The board shall adopt rules establishing:

(a) any specialized education and training, including pharmacology, a registered nurse must have to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes); and

(b) a system for assigning an identification number to a registered nurse who provides the board with evidence of completing the required specialized education and training.

SECTION 19. Section 5, Article 4518, Revised Statutes, is amended to read as follows:

Sec. 5. Insofar as any of the following acts require substantial specialized judgment and skill and insofar as the proper performance of any of the following acts is based upon knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing, "Professional Nursing" shall be defined as the performance for compensation of any nursing act (a) in the observation, assessment, intervention, evaluation, rehabilitation, care and counsel and health teachings of persons who are ill, injured or infirm or experiencing changes in normal health processes; (b) in the maintenance of health or prevention of illness; (c) in the administration of medications or treatments as ordered [prescribed] by a licensed physician, including a podiatric physician licensed by the Texas State Board of Podiatry Examiners, or dentist; (d) in the supervision or teaching of nursing; (e) in the administration, supervision, and evalua-

tion of nursing practices, policies, and procedures. The foregoing shall not be deemed to include acts of medical diagnosis or prescription of therapeutic or corrective measures. Nothing in this section shall be construed as prohibiting a registered nurse recognized by the board as having the specialized education and training required under Section 7, Article 4514, Revised Statutes, and functioning under adequate physician supervision from carrying out prescription drug orders or treatments under physician's orders, standing medical orders, standing delegation orders or other orders or protocols.

SECTION 20. Subdivision (33), Section 5, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(33) "Prescription drug order" means:

(a) a written order from a practitioner or verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(b) a written or verbal order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

SECTION 21. Subsection (h), Section 2, The Texas Dangerous Drug Act (Article 4476-14, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) The term "prescription" means a written order or telephonic order, by a practitioner or an order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical

Practice Act (Article 4495b, Vernon's Texas Civil Statutes) or an order by an agent of the practitioner who is designated in writing as authorized to communicate prescriptions by telephone, to a pharmacist for a dangerous drug to be dispensed, which specifies the date of its issue, the name and address of the patient (and, if such dangerous drug is prescribed for an animal, the species of such animal), the name and quantity of the dangerous drug prescribed, and the directions for use of such drug.

SECTION 22. The Texas Dangerous Drug Act (Article 4476-14, Vernon's Texas Civil Statutes), is amended by adding Section 3B to read as follows:

Sec. 3A. (a) Each practitioner shall designate in writing the name of each agent authorized to communicate prescriptions by telephone for that practitioner. A list of agents designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific agent.

(b) This section does not relieve a practitioner or the practitioner's agent from the requirements of Section 40, Texas Pharmacy Act (Vernon's Texas Civil Statutes). The practitioner remains personally responsible for the actions of each agent who communicates prescriptions to a pharmacist.

Sec. 3B. (a) Each practitioner shall designate in writing the name of each registered nurse or physician assistant authorized to carry out a prescription drug order pursuant to

Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). A list of the registered nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific registered nurse or physician assistant.

SECTION 23. The Texas Department of Human Services shall not impose any conditions on Medicaid reimbursement of rural health clinics that are more stringent than those imposed by the Rural Health Clinic Services Act of 1977 (P.L. 95-210) or the laws of this state regulating the practice of medicine, pharmacy, or professional nursing.

SECTION 24. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. EXPERT WITNESSES

Sec. 14.01. QUALIFICATION OF EXPERT WITNESS IN SUIT AGAINST PHYSICIAN. (a) In a suit involving a health care liability claim against a physician for injury to or death of a patient, a person may qualify as an expert witness on the issue of whether the physician departed from accepted standards of medical care only if:

(1) The person is practicing at the time such testimony is given or was practicing at the time the claim

arose and has knowledge of accepted standards of medical care for the diagnosis, care or treatment of the illness, injury or condition involved in the claim; or

(2) The court, after a hearing conducted outside the presence of the jury, determines that the person is otherwise qualified to give expert testimony on said issue.

(b) For the purpose of this section, "practicing" includes, but is not limited to, training residents or students at an accredited school of medicine or osteopathy or serving as a consulting physician to other physicians who provide direct patient care, upon the request of such other physicians.

SECTION 25. Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 7.02 to read as follows:

Sec. 7.02. JURY INSTRUCTION AUTHORIZED IN CERTAIN CASES.

(a) In a jury trial involving a health care liability claim against a physician or hospital for injury to or death of a patient in which the court determines that the following instruction is reasonably applicable to the facts, the court shall provide the following instruction in the court's charge to the jury:

"A finding of negligence may not be based solely on evidence of a bad result to the patient in question, but such a bad result

may be considered by you, along with other evidence, in determining the issue of negligence; you shall be the sole judges of the weight, if any, to be given to any such evidence."

(b) Nothing in subsection (a) of this section shall affect the existing law regarding the applicability or non-applicability of the doctrine of res ipsa loquitur to a health care liability claim.

(c) The determination of whether the instruction authorized by subsection (a) of this section is reasonably applicable to the facts shall be made by the trial court in its sole discretion, and such determination by the trial court shall be reviewable by an appellate court only for an abuse of such discretion.

SECTION 26. Sections 14 and 15 of this Act take effect on January 1, 1990, and apply only to causes of action that accrue on or after that date.

SECTION 27. Sections 24 and 25 of this Act apply only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

SECTION 28. This Act takes effect September 1, 1989.

SECTION 29. The importance of this legislation and the crowded condition of the calendars in both houses create an

emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

ADOPTED

MAY 24 1989

Secretary of the Senate

Floor Amendment 1 C.S.H.B. 18

By Brooks

1. Amend Section 1 of the bill by changing the name of the act from "Omnibus Rural Health Care Rescue Act" to "Omnibus Health Care Rescue Act."

2. Amend Section 4 of the bill by changing the words "to survey" to "when surveying" (page 4, line 20).

3. Amend Section 6 of the bill by inserting in the first sentence of subsection 5 (b) (page 4, line 58) between the words "Health" and "shall" the following:

"based upon the recommendations of the advisory committee established in subsection (e) of this Section,"

4. Amend Section 6 of the bill by inserting after the word "agreement" and before the "." at the end of the first sentence of subsection 5 (b) (page 4, line 60) the following:

"or for services not included in such transfer agreements"

5. Amend Section 6 of the bill by inserting after the word "manner" and before the ";" at the end of subdivision (1) of subsection 5(d) (page 5, line 35) the following:

"and comply with subdivisions (2), (3), (4) and (5) of subsection (b) of this Section"

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(a) Applications for licenses shall be made to the Licensing Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that:

(1) there are one or more physicians on the medical staff of the hospital;

(2) these physicians are currently licensed by the Texas State Board of Medical Examiners; and

6. Amend Section 6 of the bill by inserting in subdivision (~~1~~ 2) of subsection 5(d) (page 5, line 36) between the words "patients" and "shall" the following:

"in need of emergency care"

7. Amend Section 6 of the bill by striking the word "and" at the end of subdivision (4) of subsection 5(d) (page 5, line 44) and substituting for "." at the end of subdivision (5) of subsection 5(d) (page 5, line 48) the following:

"; and"

8. Amend Section 6 of the bill by adding a new subdivision (6), (page 5, between lines 48 and 49), to subsection 5(d) to read as follows:

"(6) consideration be given to availability of appropriate facilities, services, and staff for providing care to the patient."

9. Add new SECTIONS 7, 8, and 9 to the bill (page 6, between lines 7 and 8) that read as follows and renumber the existing sections accordingly:

"SECTION 7. Section 7(a) ~~(3)~~, Texas Hosp. Lic. Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) is amended to read as follows:

(3) the Governing Body of the hospital has adopted and implemented a patient transfer policy in accordance with Section [s] 5(b) and [~~(d)~~] has implemented patient transfer agreements in accordance with Section 5(d) or complied with Section 5(e) of this Act.

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SECTION 8. Section 9B(d), Article 4437f, Vernon's Texas Civil Statutes, is amended to read as follows:

(d) If a hospital does not timely adopt, implement, and enforce a patient transfer policy in accordance with Section [s] 5(b) and [(d)] implement patient transfer agreements in accordance with Section 5(d) or complied with Section 5(e) of this Act, the facility is subject to a civil penalty of not more than $1,000 for each day of violation and for each act of violation. In determining the amount of the penalty, the district court shall consider the facility's history of previous violations, the seriousness of the violation, if the health and safety of the public was threatened by the violation, and the demonstrated good faith of the facility.

SECTION 9. Section 9C, Article 4437f, Vernon's Texas Civil Statutes, is amended to read as follows:

Sec. 9C. A person harmed by the failure of a hospital to timely adopt, implement, or enforce a patient transfer policy in accordance with Section [s] 5(b) and [(d)] patient transfer agreements in accordance with Section 5(d) or Section 5(e) of this Act, may petition the district court of the county in which the person resides, or if the person is not a resident of the state, a district court of Travis County, for appropriate injunctive relief. Such person also may pursue remedies for civil damages existing under current common law."

10. Amend Section 16 of the bill by amending subdivision (C) of subsection 3.06(d)(5) by:

1) inserting between the word "if" and the ":" (page 13, line 57) the words "a delegating physician";

2) deleting the words "the physician" at the beginning of subdivision (i) (page 13, line 58);

3) deleting the words "a physician" at the beginning of subdivision (ii) (page 13, line 63);

4) deleting the words "the physician" at the beginning of subdivision (iii) (page 13, line 65); and,

5) deleting the words "a physician" at the beginning of subdivision (iv) (page 13, line 68).

11. Amend Section 16 of the bill by amending subdivision (4) of subsection 3.06(d)(5)(D)(iv) (page 14, line 29) to read as follows:

INSERT #6

"(4) a public health clinic or a family planning clinic under contract with the Texas Department of Human Services or the Texas Department of Health;"

12. Add new Sections 26 and 27 to the bill, amending the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes), (page 18, between lines 14 and 15), to read as follows and renumber subsequent sections appropriately:

INSERT #7

SECTION 26. Section 1.03, Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (24) - (26) to read as follows:

"(24) "Emergency medical services and trauma care system" means an arrangement of available resources that are coordinated for the effective delivery of emergency health care services in geographical regions consistent with planning and management standards.

INSERT #19 CONT.

(25) "Trauma patient" means any critically injured person who has been:

(A) evaluated by a physician, a registered nurse, or emergency medical services personnel; and

(B) found to require medical care in a trauma facility.

(26) "Trauma facility" means a health care facility that is capable of comprehensive treatment of seriously injured persons and that is a part of an emergency medical services and trauma care system.

SECTION 30. The Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) is amended by adding Articles 4 and 5 to read as follows:

ARTICLE 4. EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS

Sec. 4.01. DUTIES OF BUREAU. The bureau shall:

(1) develop and monitor a statewide emergency medical services and trauma care system;

(2) designate trauma facilities;

(3) develop and maintain a trauma reporting and analysis system to:

(A) identify severely injured trauma patients at each health care facility in this state;

(B) identify the total amount of uncompensated trauma care expenditures made each fiscal year by each health care facility in this state; and

(C) monitor trauma patient care in each health care facility, including each designated trauma center, in emergency medical services and trauma care systems in this

state; and

(4) provide for coordination and cooperation between this state and any other state with which this state shares a standard metropolitan statistical area.

Sec. 4.02. EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS. (a) The board by rule shall adopt minimum standards and objectives to implement emergency medical services and trauma care systems. The board by rule shall provide for the designation of trauma facilities and for triage, transfer, and transportation policies that reflect the recommendations of the technical advisory committee. The board and the technical advisory committee shall consider guidelines adopted by the American College of Surgeons and the American College of Emergency Physicians in adopting rules under this section. The rules must provide specific requirements for the care of trauma patients, must ensure that the trauma care is fully coordinated with all hospitals and emergency medical services in the delivery area, and must reflect the geographic areas of the state, considering time and distance. The rules must include:

(1) prehospital care management guidelines for triage and transportation of trauma patients;

(2) flow patterns of trauma patients and geographic boundaries regarding trauma patients;

(3) assurances that trauma facilities will provide quality care to trauma patients referred to the facilities;

(4) minimum requirements for resources and equipment needed by a trauma facility to treat trauma patients;

(5) standards for the availability and qualifica-

tions of the health care personnel, including physicians and surgeons, treating trauma patients within a facility;

(6) requirements for data collection, including trauma incidence reporting, system operation, and patient outcome;

(7) requirements for periodic performance evaluation of the system and its components; and

(8) assurances that designated trauma facilities will not refuse to accept the transfer of a trauma patient from another facility solely because of the person's inability to pay for services or because of the person's age, sex, race, religion, or national origin.

(b) The bureau may grant an exception to a rule adopted under this section if it finds that compliance with the rule would not be in the best interests of the persons served in the affected local emergency medical services and trauma care delivery area.

(c) Each emergency medical services and trauma care system must have:

(1) local or regional medical control for all field care and transportation, consistent with geographic and current communications capability;

(2) triage, transport, and transfer protocols; and

(3) one or more hospitals categorized according to trauma care capabilities using standards adopted by board rule.

(d) This section does not prohibit a health care facility from providing services that it is authorized to provide under a license issued to the facility by the depart-

ment.

Sec. 4.03. TRAUMA FACILITIES. (a) The bureau may designate trauma facilities that are a part of an emergency medical services and trauma care system. A trauma facility shall be designated by the level of trauma care and services provided in accordance with the American College of Surgeons guidelines for level I, II, and III trauma centers and rules adopted by the board for level IV trauma centers. In adopting rules under this section, the board may consider trauma caseloads, geographic boundaries, or minimum population requirements, but the bureau may not deny designation solely on these criteria. The board may not set an arbitrary limit on the number of facilities designated as trauma facilities.

(b) A health care facility may apply to the bureau for designation as a trauma facility and the bureau shall grant the designation if the facility meets the requirements for designation prescribed by board rules.

(c) After September 1, 1993, a health care facility may not use the terms "trauma facility," "trauma hospital," "trauma center," or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the facility has been designated as a trauma facility under this Act.

Sec. 4.04. FEES. (a) The bureau shall charge a fee to a health care facility that applies for initial or continuing designation as a trauma facility.

(b) The board by rules shall set the amount of the fee schedule for initial or continuing designation as a trauma facility according to the number of beds in the health care

Insert #1 cont

facility.

(c) The board shall set the fee for the highest level designation at not more than $3 a bed, but the total fee for the facility may not be less than $100 or more than $3,000. The fee for an intermediate level designation shall be set at not more than $2 a bed, but the total fee for the facility may not be less than $100 or more than $2,000. The fee for the lowest level designation shall be set at not more than $1 a bed, but the total fee for the facility may not be less than $100 or more than $1,000.

(d) A fee under Subsection (c) of this section may not exceed the cost directly related to designating trauma facilities under this Act.

(e) This section does not restrict the authority of a health care facility to provide a service for which it has received a license under other state law.

Sec. 4.05. DENIAL, SUSPENSION, OR REVOCATION OF DESIGNATION. (a) The department may deny, suspend, or revoke a health care facility's designation as a trauma facility if the facility fails to comply with the rules adopted under this Act.

(b) The denial, suspension, or revocation of a designation by the department and the appeal from that action are governed by the department's rules for a contested case hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 4.06. ADVISORY COMMITTEE. (a) The board shall appoint a 12-member technical advisory committee to advise the bureau in areas requiring professional medical expertise and

to review and comment on hospital administrative and operational considerations relating to rules adopted under this Act.

(b) Appointees to the technical advisory committee must include:

(1) hospital administrators who represent both urban and rural facilities, chosen from a list of nominees submitted by statewide associations of hospitals;

(2) representatives appointed from a statewide associations of emergency nurses;

(3) practicing physicians who are board-certified in emergency medicine, neurosurgery, surgery, and anesthesiology;

(4) two family practice physicians, at least one of whom has been in active practice in a rural area for at least five years preceding appointment; and

(5) at least one member who usually represents claimants, chosen from a list of nominees submitted by the statewide association of trial lawyers.

(c) A member of the technical advisory committee is entitled to the per diem and travel allowance authorized by the General Appropriations Act for state employees.

ARTICLE 5. FUNDING FOR EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS

Sec. 5.01. LEGISLATIVE FINDINGS. The legislature finds that death caused by injury is the leading cause of death for persons one through 44 years of age, and the third overall cause of death for all ages. Effective emergency medical services response and resuscitation systems, medical

Insert #7 C.S.H.B.

care systems, and medical facilities reduce the occurrence of unnecessary mortality. It is estimated that trauma costs more than $63 million a day nationally, which includes lost wages, medical expenses, and indirect costs. Proportionately, this cost to Texas would be more than $4 million a day. Many hospitals provide emergency medical care to patients who are unable to pay for catastrophic injuries directly or through an insurance or entitlement program. In order to improve the health of the people of the state, it is necessary to improve the quality of emergency and medical care to the people of Texas who are victims of unintentional, life-threatening injuries by encouraging hospitals to provide trauma care and increasing the availability of emergency medical services.

Sec. 5.02. GRANT PROGRAM. (a) The department shall establish a program to award grants to initiate, expand, maintain, and improve emergency medical services and to support medical systems and facilities that provide trauma care.

(b) The board by rule shall establish eligibility criteria for awarding the grants. The rules must require the department to consider:

(1) the need of an area for the provision of emergency medical services or trauma care and the extent to which the grant would meet the identified need;

(2) the availability of personnel and training programs;

(3) the availability of other funding sources;

(4) the assurance of providing quality services;

(5) the use or acquisition of helicopters for

emergency medical evacuation; and

(6) the development or existence of an emergency medical services system.

(c) The department may approve grants according to the rules adopted by the board. A grant awarded under this section is governed by the Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes) and by the rules adopted under that Act.

(d) The department may require a grantee to provide matching funds equal to not more than 75 percent of the amount of the grant.

Sec. 5.03. ACCEPTANCE OF GIFTS. A trauma facility or an emergency medical services and trauma care system may accept gifts or other contributions for the purposes of this Act.

13. Amend Section 26 of the bill by renumbering the references to Sections 14 and 15 in C.S.H.B. 18 to reflect the renumbering caused by the addition of new Sections.

14. Amend Section 27 of the bill by renumbering the references to Sections 24 and 25 in C.S.H.B. 18 to reflect the renumbering caused by the addition of new Sections.

INSERT X

relating to health care, including powers and duties of the center for rural health initiatives, the collection of data concerning health professions, surveys of hospitals and physicians, breast cancer screening, hospital patient transfers, the establishment of advisory committees, the swing bed program to provide reimbursement for skilled nursing patients, rural health family practice residency programs, medical education, professional liability insuance for physicians and other health care professionals, state indemnification for the provision of charity care or services, the delegation of prescription drug orders, qualifications of expert witnesses and jury instructions in health care liability claims, and emergency medical services and trauma care systems; providing civil penalties.

(((Capital [illegible])))

AMEND THE CAPTION TO CONFORM

TO THE BODY OF THE BILL

ADOPTED

MAY 24 1979

SENATE AMENDMENTS

MAY 24 PM 9:30
HOUSE OF REPRESENTATIVES

2nd Printing

By McKinney, Schlueter, Rudd, et al. H.B. No. 18

A BILL TO BE ENTITLED

AN ACT

relating to health care, including the office of rural health care, surveys of hospitals and physicians, health education enrollments, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers; providing civil penalties.

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

SECTION 1. This Act may be cited as the Omnibus Rural Health Care Rescue Act.

SECTION 2. Article 4414b, Revised Statutes, is amended by adding Sections 1.11 and 1.12 to read as follows:

Sec. 1.11. OFFICE OF RURAL HEALTH CARE. (a) The office of rural health care is in the department to promote access to health care in rural areas.

(b) The commissioner shall appoint a director to administer the office of rural health care. The director must have a history of involvement with rural health care practice or issues.

(c) The office of rural health care, in consultation with the advisory committee on rural health care, shall establish mechanisms to ensure access to medical care in rural areas and to recruit and retain practitioners in those areas.

Sec. 1.12. IMPACT STATEMENT ON PROPOSED RULES. (a) Before

the adoption of a rule, including the amendment or repeal of a rule, the Texas Department of Health, the Texas Department of Human Services, and the Texas Department of Mental Health and Mental Retardation shall request an impact statement from the office of rural health care that describes the effect of the proposed rule on rural health care and makes recommendations concerning the proposed rule.

(b) Each agency covered by this section shall consider fully the recommendations of the office of rural health care concerning the proposed rule.

SECTION 3. Article 4414b, Revised Statutes, is amended by adding Section 1.13 to read as follows:

Sec. 1.13. ADVISORY COMMITTEE ON RURAL HEALTH CARE. (a) The board shall appoint a committee to advise the board and the office of rural health care on the health care needs of rural residents and the delivery of health care to rural populations.

(b) The board shall appoint the advisory committee to provide for a balanced representation of the geographical regions of the state.

(c) The advisory committee is composed of nine members, including:

(1) two physicians licensed to practice in this state who have been in active practice in a rural area for the five years preceding appointment;

(2) one professional nurse registered to practice in this state who has been in active practice in a rural area for the five years preceding appointment;

(3) one hospital administrator who is a member of the Academy of Hospital Administrators and who has been actively engaged in hospital administration in a rural area for the five years preceding appointment;

(4) one allied health practitioner who is licensed, registered, or certified by the state licensing board for the practitioner's speciality, or who is accredited by a recognized professional organization if licensing, registration, or certification is not required by law, and who has practiced in a rural area for the five years preceding appointment;

(5) three public members who reside in rural areas; and

(6) one person who is licensed in this state as a dentist, podiatrist, or optometrist and who has practiced in a rural area for the five years preceding appointment.

(d) A person is not eligible to be appointed or to serve as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the health care field;

(2) is employed by a health care facility, corporation, or agency, or by a corporation authorized to underwrite health care insurance;

(3) governs or administers a health care facility, corporation, or agency;

(4) has a financial interest, other than a consumer's interest, in a health care facility, corporation, or agency; or

(5) meets the criteria for appointment provided by

Subsections (c)(1) through (c)(4) of this section.

(e) Advisory committee members serve for staggered six-year terms, with the terms of three members expiring August 31 of each odd-numbered year.

(f) A vacancy on the advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(g) A member of the advisory committee is entitled to reimbursement for expenses incurred in performing duties under this section. The reimbursement may not exceed the amount specified in the General Appropriations Act for travel and per diem allowances for state employees.

(h) The advisory committee may elect a chairman, vice-chairman, and secretary from among its members and may adopt rules for the conduct of its activities.

SECTION 4. Article 4414b, Revised Statutes, is amended by adding Section 1.14 to read as follows:

Sec. 1.14. HEALTH PROFESSIONS RESOURCE CENTER. (a) The department shall establish in the office of rural health care a comprehensive health professions resource center for the collection and analysis of educational and employment trends for health professions in this state.

(b) The department shall place high priority on collecting and disseminating data on health professions demonstrating an acute shortage in this state, including:

(1) data concerning nursing personnel; and

(2) the health professions in which shortages occur in

rural areas.

(c) To the extent possible, the department may collect high priority health professions data from existing sources that the department determines are credible. The department may enter agreements with those sources that establish guidelines concerning the identification, acquisition, transfer, and confidentiality of the data.

(d) At a minimum, the data collected by the department shall include the following in regard to health professionals:

(1) the number and geographic distribution;

(2) licensure or certification status;

(3) specialty areas, if applicable; and

(4) trends or changes in license holders according to number or geographic distribution.

(e) The department may use the data collected and analyzed under this article to publish reports regarding:

(1) the educational and employment trends for health professions;

(2) the supply and demand of health professions; and

(3) other issues, as necessary, concerning health professions in this state.

(f) The department shall report its findings annually to the legislature and to the coordinating board.

(g) The coordinating board may adjust health education enrollments based on data collected and analyzed under this article.

(h) The board may adopt rules to govern the reporting and

collection of data.

(i) In this section, "health profession" means any health or allied health profession that is licensed, certified, or registered by a state board, agency, or association.

SECTION 5. Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended by adding Section 5 to read as follows:

Sec. 5. The Texas Department of Health shall ensure that a licensed physician involved in direct patient care as defined by the Texas State Board of Medical Examiners is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) to survey physicians on the medical staff of a hospital.

SECTION 6. The Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) is amended by adding Section 5B to read as follows:

Sec. 5B. (a) In this section:

(1) "Active labor" means labor at a time at which:

(A) delivery is imminent;

(B) there is inadequate time to safely transfer the patient to another hospital before delivery; or

(C) a transfer may threaten the health and safety of the patient or unborn child.

(2) "Emergency medical condition" means a medical condition that is manifested by acute symptoms, including severe pain, of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's life in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any body organ or part.

(3) "Emergency services" means services that are usually and customarily available at a hospital and that must be provided immediately for further medical examination and treatment as required to:

(A) stabilize an emergency medical condition; or

(B) provide for the care of a woman in active labor or, if the hospital is not equipped for that service, provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

(4) "Emergency hospital patient transfer" means the transfer of a patient with an emergency medical condition or in active labor in a manner that conforms with board rules relating to hospital patient transfers from a hospital that is not capable of providing the appropriate level of emergency services to a general hospital that is capable of providing the appropriate level of emergency services.

(5) "Person" means:

(A) an individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative; or

(B) a hospital district, county, municipality, or other political subdivision, and includes a department,

division, board, or other agency of a political subdivision.

(b) Except as authorized by rules adopted by the Texas Board of Health, a person who owns or operates a general hospital, is an officer or employee of a general hospital, or is a member of the medical staff of a general hospital may not deny emergency services available at that hospital to an individual because the individual is unable to pay for the services when:

(1) the individual is the subject of an emergency hospital patient transfer made in accordance with a transfer agreement under Subsection (d) of this section; and

(2) the individual is diagnosed as being in active labor or as having an emergency medical condition and is determined to be in need of emergency services that are available at the prospective receiving general hospital by a receiving physician who is a member of the medical staff of that hospital.

(c) The governing body of each hospital shall adopt binding policies relating to the provision of emergency services to hospital transfer patients that are consistent with board rules. If possible, each governing body shall implement its policy relating to the provision of emergency services by adopting emergency services agreements with other hospitals.

(d) If a transfer agreement is executed between hospitals, the agreement shall address the transfer of both emergency and nonemergency patients and shall be submitted to the Licensing Agency. At a minimum, the transfer agreement must provide that:

(1) transfers will be accomplished in a medically appropriate manner as required by Section 5(b) of this Act and the

rules adopted by the Texas Board of Health;

(2) the transfer or receipt of patients may not be based on the individual's inability to pay for the services provided by the transferring or receiving hospital;

(3) multiple transfer agreements may be entered into by a hospital based on the type or level of medical services available at other hospitals;

(4) the hospitals will recognize the right of an individual to request a transfer to the care of a physician and hospital of the individual's own choosing;

(5) the hospitals will recognize and comply with the requirements of the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes) relating to the transfer of patients to mandated providers; and

(6) a public hospital or hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services, and staff available for providing care to the patient.

(e) The Texas Board of Health may adopt rules to implement and enforce this section.

(f) This section does not relieve an individual of the individual's obligation to pay for services provided by a hospital if the individual can pay for those services.

SECTION 7. Section 7(a), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Applications for licenses shall be made to the Licensing

Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that:

(1) there are one or more physicians on the medical staff of the hospital;

(2) these physicians are currently licensed by the Texas State Board of Medical Examiners; and

(3) the Governing Body of the hospital has adopted and implemented a patient transfer policy in accordance with Sections 5(b) and (d) of this Act <u>and an emergency hospital patient transfer policy in accordance with Section 5B of this Act</u>.

SECTION 8. Section 9B(d), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) If a hospital does not timely adopt, implement, and enforce a patient transfer policy in accordance with Sections 5(b) and (d) of this Act <u>and an emergency hospital patient transfer policy in accordance with Section 5B of this Act</u>, the facility is subject to a civil penalty of not more than $1,000 for each day of violation and for each act of violation. In determining the amount of the penalty, the district court shall consider the facility's history of previous violations, the seriousness of the violation, if the health and safety of the public was threatened by the violation, and the demonstrated good faith of the facility.

SECTION 9. Section 9C, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as

follows:

Sec. 9C. A person harmed by the failure of a hospital to timely adopt, implement, or enforce a patient transfer policy in accordance with Sections 5(b) and (d) of this Act, or an emergency hospital patient transfer policy in accordance with Section 5B of this Act, may petition the district court of the county in which the person resides, or if the person is not a resident of the state, a district court of Travis County, for appropriate injunctive relief. Such person also may pursue remedies for civil damages existing under current common law.

SECTION 10. The Maternal and Infant Health Improvement Act (Article 4447y, Vernon's Texas Civil Statutes) is amended by adding Section 14 to read as follows:

Sec. 14. LIMITATION ON LIABILITY. (a) Except as provided by Subsection (b) of this section, in an action on a health care liability claim based on the provision of medical services under this Act in which final judgment is rendered against a physician, hospital, or other health care provider, the physician, hospital, or health care provider is not liable for noneconomic damages in an amount that exceeds $250,000 recoverable by or on behalf of an injured person or the estate of the injured person, including past, present, and future physical pain and suffering, mental anguish and suffering, loss of consortium, disfigurement, and any other nonpecuniary damages.

(b) This section does not apply to damages arising from an act or omission by a physician, hospital, or other health care provider that is grossly negligent or constitutes an intentional

tort.

SECTION 11. Chapter 348, Acts of the 63rd Legislature, Regular Session, 1973 (Article 4498c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. The office of rural health care in the Texas Department of Health serves as the State Medical Education Board for purposes of Article III, Section 50a, of the Texas Constitution. [~~There is hereby established and created the State Rural Medical Education Board, which shall have the general powers and duties authorized and imposed by the provisions of this Act.~~

[~~Sec. 1a. The State Rural Medical Education Board is subject to the Texas Sunset Act (Chapter 325, Government Code), but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished September 1 of 1993 and of every 12th year after 1993 are reviewed.~~

[~~Sec. 2. The State Rural Medical Education Board shall consist of six (6) members, who shall be appointed by the Governor with the advice and consent of the Senate, and who shall have the following qualifications: Three (3) of the members shall be legally qualified practicing physicians, who shall have had not less than five (5) years experience in the actual practice of medicine within the State of Texas in rural areas as defined by this Act, of good professional standing and graduates of recognized medical colleges, three (3) of whose members shall consist of citizens of this State who have maintained residence for a period of not less than five (5) years in a rural area as defined by this~~

~~Act.~~

~~[The terms of office of members of said Board shall be for six (6) years except the terms of office of members appointed to the initial Board shall be two for two years, two for four years and two for six years. The initial appointments shall be made to insure that there shall always be an equal number of said Board members with the same term of both qualifications as described above. Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired term. The members of the State Rural Medical Education Board shall qualify by taking a Constitutional Oath of office before an officer authorized to administer oaths with this State, and, upon presentation of such oath of office, together with a certificate of their appointment, the Secretary of State shall issue commissions to them, which shall be evidence of their authority to act as such.~~

~~[Sec. 3. The Board shall meet within 30 days after the effective date of this Act and elect a Chairman, Vice Chairman, and Secretary from among its members. The vote of the majority of Board members is sufficient for passage of any business or proposal which comes before the Board.~~

~~[Sec. 4. A member of the Board is not entitled to a salary for duties performed as a member of the Board. However, a member is entitled to $25 for each day he is in attendance at meetings or hearings or on authorized business of the Board, including time spent in traveling to and from the place of the meeting, hearing or other authorized business, and is entitled to a reimbursement for~~

~~travel-and-other-necessary-expenses-incurred-in-performing-official duties,---as--evidenced--by--vouchers--approved--by--the--Executive Secretary.~~

~~[Sec.-5.--The-State-Rural-Medical-Education-Board-shall--have the-following-powers-and-duties:~~

~~[(a)--The--Chairman,--or--in--his--absence-the-Vice-Chairman, shall-preside-at-all-meetings-of-the-Board.--In-the-absence-of-both the-Chairman-and-the-Vice-Chairman-from-any-meeting-of--the--Board, the--members-of-the-Board-present-may-select-one-of-their-number-to serve-as-Chairman-for-the-meeting.~~

~~[(b)--The--Board--shall--have--regular--meetings---at---times specified-by-a-majority-vote-of-the-Board.~~

~~[(c)--The-Chairman-may-call-special-meetings-at-any-time.--He shall--call-a-special-meeting-on-written-request-signed-by-at-least three-members-of-the-Board.~~

~~[(d)--A--majority--of--the--Board--constitutes--a--quorum--to transact-business.~~

~~[(e)--To--make--rules--and-regulations-for-its-government-and that-of-its-officers-and-employees,-and-to-prescribe-the-duties--of its-officers,-consultants-and-employees.~~

~~[(f)--To--employ-a-director-and-other-such-clerical-employees as-it-may-deem-necessary-within-the-limits-of-funds-made--available for--such-purposes.--The-director-shall-keep-the-books,-records-and accounts-of-the-Board-and-shall-prepare-and-countersign-all-checks, vouchers-and-warrants-drawn-upon-the-funds-of-the--Board,--and--the same--shall--be--signed-by-the-Chairman-of-the-Board.--The-Director shall-also-be-the-Treasurer-of-the-Board-and-shall-keep-and-account~~

~~for-all-funds-of-the-Board,-and-shall-execute--and--file--with--the Board--a-surety-bond-in-the-sum-of-$20,000,-payable-to-the-State-of Texas,-and-conditioned-upon-the-faithful-performance-of-his-duties, said-premium-to-be-paid-out-of-funds-of-the-Board.~~

[~~Sec.-6.~~] It shall be the duty of the office of rural health care [~~Board~~] to receive and pass upon, allow or disallow all applications for loans, grants or scholarships made by students who are bona fide citizens and residents of the State of Texas and who have a desire to become physicians, and who are acceptable for enrollment in a qualified medical school. The purpose of such loans, grants or scholarships shall be to enable such applicants to obtain a standard medical education which will qualify them to become licensed, practicing physicians and surgeons within the State of Texas. It shall be the duty of the office of rural health care [~~Board~~] to make a careful and full investigation of the ability, character and qualifications of each applicant and to determine his fitness to become a recipient of such loan or scholarship, and for that purpose the office of rural health care [~~Board~~] may propound such examination to each applicant which it deems proper, and the Texas Board of Health [~~said-Board~~] may prescribe such rules and regulations as it deems necessary and proper to carry out the purposes and intentions of this Act. The investigation of the applicant shall include an investigation of the ability of the applicant, who is unable to pay, or of the parents of such applicant, to pay his own tuition at such a medical school and the office of rural health care [~~Board~~] in granting such loans and scholarships shall give preference to qualified

applicants, or whose parents are unable to pay the applicant's tuition at such a medical school.

The office of rural health care [~~said--Board~~] shall have authority to grant to each applicant deemed by the office of rural health care [~~Board~~] to be qualified to receive the same, a loan, grant or scholarship for the purpose of acquiring a medical education as herein provided for, upon such terms and conditions to be imposed by the office of rural health care [~~Board~~] as provided for in this Act. The office of rural health care [~~Board~~] shall, except in those cases which it deems proper, make every effort to grant loans to applicants rather than grants or scholarships. Before awarding funds, the office of rural health care [~~Board~~] may review candidates for loans, grants or scholarships to determine their intent concerning the location of future practice.

Sec. 2 [~~7~~]. Applicants who are granted loans, grants or scholarships by the office of rural health care [~~Board~~] shall receive an amount which may defray his or her tuition and other expenses in any reputable, accepted and accredited medical school or medical college or school listed by the World Health Organization, or a scholarship to any such medical college or school for a term not exceeding four (4) years, same to be paid at such time and in such manner as may be determined by the office of rural health care [~~Board~~]. The loans, grants and scholarships herein provided may be proportioned in any such manner as to pay to the medical school to which any applicant is admitted such funds as are required by that school, and the balance to be paid directly to the applicant; all of which shall be under such terms and

conditions as may be provided under rules and regulations of the office of rural health care [~~Board~~]. The said loans, grants, or scholarships shall be based upon the condition that the full amount thereof shall be repaid to the State of Texas in cash in full with ten (10) percent interest from the date of each payment by the State on such loan, grant or scholarship or by satisfaction of other conditions of the office of rural health care [~~Board~~] or this Act. If the applicant practices his profession in a rural area as defined by this Act the office of rural health care [~~Board~~] is authorized and shall credit one-fifth of the loan, grant or scholarship together with interest thereon to the applicant for each year of such practice as certified by the office of rural health care [~~Board~~]. At the end of the second full year of practice in a rural area as provided for herein, the applicant shall be privileged to pay off the balance of the loan, grant or scholarship as the case may be with accrued interest thereon, and upon such payment shall be relieved from further obligation under his contract. Should the applicant default under his contract at any time the full principal and accrued interest plus a penalty of 100 percent of the outstanding balance plus attorneys' fees as defined by said contract shall be due and owing to the State.

Sec. 3 [~~7A~~]. Texas residents who attend a medical school within the United States shall have first priority in the distribution of loan funds. Funds shall then be made available to Texas residents who attend a medical school outside the United States. A "Texas resident," as used in this Act, shall be a person who has actually resided in the State of Texas for two (2) years

immediately prior to becoming an applicant hereunder.

Sec. 4 [8]. Each applicant before being granted a loan, grant or scholarship shall enter into a contract with the office of rural health care [~~Board~~], which shall be deemed a contract within the State of Texas, agreeing to the terms and conditions upon which the loan or scholarship shall be granted to him, which said contract shall include such terms and provisions as will carry out the full purpose and intent of this Act, and the form thereof shall be prepared and approved by the Attorney General of this State, and shall be signed by the director of the office of rural health care and [~~Chairman-of-the-Board,-countersigned--by--the--Secretary,--and shall--be--signed--by~~] the applicant. For the purposes of this Act the disabilities and minorityhood of all applicants granted loans or scholarships hereunder shall be and the same are hereby removed and said applicants are declared to be full lawful age for the purpose of entering into the contract hereinabove provided for, and such contract so executed by any applicant is hereby declared to be a valid and binding contract the same as though the said applicant were of the full age of twenty-one (21) years and upward. The office of rural health care [~~Board~~] is hereby vested with the full and complete authority and power to sue in its own name any applicant for any balance due the office of rural health care [~~Board~~] upon any such contract.

Sec. 5 [9]. It shall be the duty of the office of rural health care [~~Board~~] to contact and make inquiry of such of the medical colleges or schools as herein provided as it deems proper, and make such arrangements and enter into such contracts, within

the limitations as to cost as herein provided, for the admission of students granted loans or scholarships by the office of rural health care [~~Board~~], such contracts to be approved by the Attorney General of this State, and money obligations of such contracts so made by the office of rural health care [~~Board~~] with any such college shall be paid for out of the funds to be provided by law for such purposes, and all students granted loans, grants or scholarships shall attend the medical school with which the office of rural health care [~~Board~~] has entered a contract, or any accredited medical school or college in which said applicant may obtain admission, and which is approved by the office of rural health care [~~Board~~].

Sec. 6 [~~10~~]. The Texas Board of Health [~~board~~] shall promulgate and adopt rules and regulations for the cancellation of any contract made between the office of rural health care [~~it~~] and any applicant for loans or scholarships upon such cause deemed sufficient by the office of rural health care [~~Board~~]. And the office of rural health care [~~Board~~] shall have authority to cancel such contracts which it may lawfully cancel made with any of the colleges or schools as herein provided.

Sec. 7 [~~11~~]. All payments of funds or loans or scholarships hereunder shall be made by requisition of the office of rural health care [~~Board~~] signed by the director and [~~Chairman and the Secretary~~] directed to the Comptroller of the Public Accounts, who shall thereupon issue a warrant on the Treasury of the State of Texas for the amount fixed in the requisition and payable to the person designated thereon, which said warrant upon presentation

shall be paid by the Treasurer out of any funds appropriated by the Legislature for the purpose provided for under this Act.

Sec. 8 [~~12~~]. The office of rural health care [~~Board~~] may contract with any insurance company or companies licensed to do business in Texas for issuance on the life of any applicant an amount sufficient to retire the principal and interest owed under a loan made under the provisions of this Act, the costs of the insurance shall be paid by the student borrower. No contract for insurance provided for in this section may be approved except by the office of rural health care [~~Board--during--a--regular--meeting attended-by-a-quorum-of-the-total-Board-membership~~].

Sec. 9 [~~13~~]. The office of rural health care [~~Board~~] may extend the time for beginning repayment for unusual or financial hardships with approval of the Attorney General.

Sec. 10 [~~14~~]. Upon any default as provided for herein the office of rural health care [~~Board~~] shall turn the same over to the Attorney General for prosecution and suit for the remaining sum shall be instituted by the Attorney General, or any county or district attorney acting for him, in the county of the person's residence, the county in which is located the institution at which the person was last enrolled, or in Travis County, unless the Attorney General finds reasonable justification for delaying suit and so advises the office of rural health care [~~Board~~] in writing.

[~~Sec. 15. The Board may appoint advisory committees from outside its members as it deems necessary to assist in achieving the purposes of this Act.~~]

Sec. 11 [~~16~~]. In achieving the goals outlined in this Act

and the performance of functions assigned to it, the office of rural health care [~~Board~~] may contract with any other State governmental agency as authorized by law, with any agency of the United States, and with corporations, associations, partnerships, and individuals.

Sec. 12 [~~17~~]. The office of rural health care [~~Board~~] may accept gifts, grants or donations of real or personal property from any individual, group, association, or corporation or the United States, subject to limitations or conditions set by law. The gifts, grants, or donations of money shall be deposited in the Texas Rural Medical Education [~~Board~~] fund, separately accounted for, and expended in accordance with the specific purposes for which given and under such conditions as are imposed by the donor and as provided by law.

Sec. 13 [~~18~~]. All transactions under this Act are subject to audit by the State Auditor.

Sec. 14 [~~19~~]. The office of rural health care [~~board~~] shall make a report of its activities under this Act [~~the--operation--of the--State--Rural-Medical-Education-Board~~] to the Governor annually and to the Legislature not later than December 1, prior to the Regular Session of the Legislature.

Sec. 15 [~~20~~]. Rural areas as defined in this Act shall mean residence in or intention to practice in a county of the State of Texas which according to the last preceding Federal Census had a population of less than 30,000. This population limitation is applicable only to the Texas Department of Health serving as the medical education board.

SECTION 12. Section 74.001, Civil Practice and Remedies Code, is designated as Subchapter A with a heading to read as follows:

SUBCHAPTER A. PROVISIONS RELATING TO NONMEDICAL PERSONNEL

SECTION 13. Chapter 74, Civil Practice and Remedies Code, is amended by adding Subchapter B and by renumbering and amending Section 74.002 to read as follows:

SUBCHAPTER B. PROVISIONS RELATING TO MEDICAL PERSONNEL

Sec. 74.011. DEFINITIONS. In this subchapter:

(1) "Emergency medical care" means care given for a medical condition that is manifested by acute symptoms, including severe pain, of sufficient severity that the absence of immediate medical attention could result in:

(A) placing the patient's life in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any body organ or part.

(2) "Emergency prehospital care" means care provided to the sick or injured before or during transportation to a medical facility, including any necessary stabilization of the sick or injured in connection with that transportation.

(3) "Gross negligence" has the meaning assigned by Section 41.001.

Sec. 74.012. PERSONS CERTIFIED AS EMERGENCY MEDICAL SERVICES PERSONNEL [~~74.002. UNLICENSED MEDICAL PERSONNEL~~]. (a) Persons who are training or are certified as emergency medical services

personnel under the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) and [~~not-licensed-in-the-healing arts~~] who in good faith administer emergency care that is not grossly negligent [~~as-emergency-medical-service-personnel~~] are not liable in civil damages for an act performed in administering the care [~~unless--the--act--is--wilfully-or-wantonly-negligent~~]. This section applies without regard to whether the care is provided for or in expectation of remuneration.

(b) A claimant under this section must prove gross negligence, and the burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence.

Sec. 74.013. TRAINING PROGRAMS. (a) A state agency, political subdivision of the state, or a private organization that sponsors, authorizes, supports, finances, or supervises the training of emergency medical services personnel in a program approved by the Texas Department of Health is not liable for civil damages for an act or omission that is not grossly negligent and that relates to the delivery of care during the training program.

(b) A person who is certified by the Texas Department of Health as a program instructor, examiner, or course coordinator under the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) is not liable for civil damages for an act or omission that is not grossly negligent and that relates to the delivery of care during a training program for emergency medical services personnel.

Sec. 74.014. PHYSICIANS GIVING INSTRUCTIONS. (a) A physician who acts in good faith while giving instructions that are

not grossly negligent relating to emergency prehospital care to a specially skilled emergency medical technician or a paramedic emergency medical technician is not liable for civil damages as a result of issuing the instructions.

(b) A specially skilled emergency medical technician or a paramedic emergency medical technician who follows the instructions of a physician and renders care that is not grossly negligent and that is rendered in good faith is not liable for civil damages as a result of following the physician's instructions.

Sec. 74.015. EMERGENCY CARE. (a) A hospital in this state, an employee or person acting on behalf of the hospital who works in the facility and provides patient care, and a physician or person licensed in the healing arts who in good faith renders emergency medical care that is not grossly negligent are not liable for civil damages as a result of the medical care.

(b) The protections provided by Subsection (a) do not apply to medical care or treatment:

(1) that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient;

(2) that is unrelated to the original medical emergency; or

(3) that is provided by a hospital, that relates to the transfer or receipt of an emergency patient, and for which there is not a transfer agreement between the transferring and receiving hospitals.

(c) A claimant under this section must prove gross negligence, and the burden of proof may not be shifted to the

defendant or satisfied by evidence of ordinary negligence.

(d) In an action for damages that involves a claim of negligence arising from the provision of emergency medical care, the trier of fact shall consider, together with all other relevant matters:

(1) whether the person providing care lacked the patient's medical history or was unable to obtain a full medical history, including the knowledge of preexisting medical conditions, allergies, and medications;

(2) the lack of a preexisting physician-patient relationship;

(3) the circumstances constituting the emergency; and

(4) the degree of care and skill ordinarily exercised by reputable members of the physician's profession in the same or similar locality, in like cases, and under similar emergency circumstances.

SECTION 14. Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

SUBCHAPTER G. PROOF [~~RES-IPSA-LOQUITUR~~]

Sec. 7.01. APPLICATION OF RES IPSA LOQUITUR. The common-law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of this state as of August 29, 1977 [~~the effective date of this subchapter~~].

Sec. 7.02. STANDARD OF MEDICAL CARE OR HEALTH CARE. (a) In

a suit involving a health care liability claim against a physician or health care provider for the injury to or death of a patient, the person bringing the suit may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the person shows that the physician or health care provider did not use the degree of care and skill that:

(1) may reasonably be expected of a prudent, competent physician or health care provider in the same or similar circumstances; and

(2) is commensurate with the care and skill of other physicians or health care providers of similar training, experience, or certification.

(b) The existence of a bad result of the treatment by the physician or health care provider is not evidence that the physician or health care provider departed from accepted standards of medical care.

SECTION 15. Subchapter J, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

SUBCHAPTER J. STATUTE OF LIMITATIONS

Sec. 10.01. LIMITATIONS ON HEALTH CARE LIABILITY CLAIMS. (a) Notwithstanding any other law, no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed[~~, provided~~

~~that,--minors-under-the-age-of-12-years-shall-have-until-their-14th birthday-in-which-to-file,-or--have--filed--on--their--behalf,--the claim~~]. Except as herein provided, this subchapter applies to all persons regardless of minority or other legal disability.

(b) [~~Sec.-10.02.--CAUSES-OF-ACTION--COVERED--BY--OTHER--LAW.~~] Causes of action accruing between August 29, 1977, [~~the-effective date-of-this-Act~~] and the effective date of Article 5.82, Insurance Code, shall be filed pursuant to Section 4 of Article 5.82.

Sec. 10.02. HEALTH CARE LIABILITY CLAIMS BROUGHT BY MINORS. (a) Minors must file notice concerning a health care liability claim within eight years after the date of the occurrence of the breach or tort or after the date the medical or health care treatment that is the subject of the notice or the hospitalization for which the notice is made is completed. However, the notice may not be given later than the minor's 20th birthday.

(b) In this section, "notice" means actual notice to the health care provider or written notice to the health care provider from the parent or legal guardian of the minor. The notice, whether actual or written, must reasonably describe the facts, conditions, or circumstances that would cause a reasonably prudent person to make inquiry that, if pursued, would lead to the discovery of an injury.

(c) If actual or written notice is not received by the health care provider within eight years as provided by Subsection (a) of this section, the minor's cause of action is barred.

(d) If actual or written notice is received by the health care provider within eight years as provided by Subsection (a) of

this section, the minor's cause of action is barred on the minor's 20th birthday.

SECTION 16. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. PERIODIC PAYMENT OF FUTURE DAMAGES

Sec. 13.01. DEFINITION. In this subchapter, "judgment creditor" means a person to whom periodic payments under this subchapter are paid.

Sec. 13.02. PERIODIC PAYMENT OF FUTURE DAMAGES REQUIRED. (a) If a physician or health care provider is found to be liable on a health care liability claim for future damages totalling more than $100,000, the court shall order that all future damages be paid by the physician or health care provider by means of periodic payments.

(b) The court shall provide that the future medical expenses of the judgment creditor are to be paid by means of periodic payments for the lifetime of the judgment creditor, without regard to the life expectancy of the judgment creditor at the time the trier of fact found the physician or health care provider liable for future damages.

(c) The periodic payments must include interest that accrues at the rate provided by Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes).

Sec. 13.03. CONTINUING JURISDICTION. (a) A court that enters a judgment or order for periodic payments under this subchapter retains jurisdiction over the action and the parties to

the action until all payments have been made, or for one year after the death of all judgment creditors, whichever occurs first.

(b) Continuing jurisdiction by the court under this section does not affect the finality of the judgment for any purpose, including appeal.

Sec. 13.04. DEATH OF JUDGMENT CREDITOR. On the death of a judgment creditor, the physician or health care provider's liability for the future medical expenses of the judgment creditor ends.

SECTION 17. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. EXPERT WITNESSES

Sec. 14.01. QUALIFICATION OF EXPERT WITNESS IN SUIT AGAINST PHYSICIAN. In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient, a person may qualify as an expert witness on the issue of whether the physician or health care provider departed from accepted standards of medical care or health care in a manner that proximately resulted in the injury or death only if the person is knowledgeable of the accepted standards of medical care or health care commensurate with the care and skill of other physicians or other health care providers of similar training, experience, or certification for the treatment of a patient under the same or similar circumstances.

Sec. 14.02. AFFIDAVIT OF EXPERT WITNESS. (a) In a suit for damages involving a health care liability claim, the plaintiff must

file with the petition an affidavit of an expert who is competent to testify. The affidavit shall state that the expert has reviewed the claim and has reasonable cause to believe the defendant has departed from the accepted standard of medical or health care. The court shall dismiss the suit if the affidavit is not filed with the petition.

(b) The contemporaneous filing requirement of Subsection (a) of this section does not apply when the statute of limitations would expire before the affidavit can be prepared. The plaintiff has the burden of proof to show that the affidavit could not be obtained before the statute of limitations expires. In that case, the plaintiff shall file the affidavit not later than the 60th day after the date on which the petition is filed. The court may, on motion, after hearing, and for good cause, extend that time as it determines justice requires.

(c) If the affidavit is filed as provided by Subsection (b) of this section, the defendant must file an answer to the petition not later than the 30th day after the date on which the affidavit is filed.

(d) The plaintiff is not required to file the affidavit with the petition if the defendant has failed to timely respond to the production of medical records as provided under Section 4.01(d) of this Act. The plaintiff has the burden of proof to show that the records were not timely provided as required.

Sec. 14.03. CONFLICT WITH TEXAS RULES OF CIVIL EVIDENCE. (a) To the extent that this subchapter conflicts with the Texas Rules of Civil Evidence, this subchapter controls.

(b) Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this subchapter.

SECTION 18. Section 32.022, Human Resources Code, is amended to read as follows:

Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES [~~COMMITTEE~~]. (a) The board, on the recommendation of the commissioner, shall appoint a medical care advisory committee to advise the board and the department in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's goal of providing access to high quality, comprehensive medical and health care services to medically indigent [~~needy~~] persons in the state. To ensure that qualified applicants receive services, the committee shall consider changes in the process the department uses to determine eligibility.

(b) The board shall appoint the committee in compliance with the requirements of the federal agency administering medical assistance. The appointments shall provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work.

(c) The department shall adopt rules for membership on the committee to provide for efficiency of operation, rotation, stability, and continuity.

(d) The board, on the recommendation of the commissioner, may appoint regional and local medical care advisory committees and

other advisory committees as considered necessary.

(e) The board, on the recommendation of the commissioner, shall appoint a hospital payment advisory committee. The committee shall advise the board and the department on necessary changes in hospital payment methodologies for inpatient hospital prospective payments and on adjustments for disproportionate share hospitals that will ensure reasonable, adequate, and equitable payments to hospital providers and that will address the essential role of rural hospitals. The board shall appoint to the committee persons with knowledge of and an interest in hospital payment issues.

SECTION 19. Section 32.024, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department, in its rules and standards governing the scope of hospital and long-term services, shall allow hospitals to provide swing-bed and other long-term care services and shall provide adequate reimbursement for those services.

SECTION 20. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.040 to read as follows:

Sec. 32.040. LIMITATION ON LIABILITY. (a) Except as provided by Subsection (b) of this section, in an action on a health care liability claim based on the delivery of a pregnant woman's child under the medical assistance program in which final judgment is rendered against a physician, hospital, or other health care provider, the physician, hospital, or health care provider is not liable for noneconomic damages in an amount that exceeds $250,000 recoverable by or on behalf of an injured person or the estate of the injured person, including past, present, and future

physical pain and suffering, mental anguish and suffering, loss of consortium, disfigurement, and any other nonpecuniary damages.

(b) This section does not apply to damages arising from an act or omission by a physician, hospital, or other health care provider that is grossly negligent or constitutes an intentional tort.

SECTION 21. Section 32.028, Human Resources Code, is amended by adding Subsection (d) to read as follows:

(d) The department, in its rules and standards relating to rates paid for inpatient hospital services on a prospective payment basis, shall ensure that the prospective payment methodology for hospital services sets the hospital-specific standardized amount at not less than $1,600.

SECTION 22. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.917 to read as follows:

Sec. 51.917. RURAL HEALTH; FAMILY PRACTICE RESIDENCY PROGRAM. (a) The Texas Higher Education Coordinating Board, the office of rural health care in the Texas Department of Health, medical schools, nursing schools, and schools of allied health sciences shall cooperate to improve and expand programs for rural areas by:

(1) expanding rural preceptor programs;

(2) developing relief service programs for rural physicians and allied health personnel to facilitate ready access to continuing medical education; and

(3) requiring family practice residency programs to provide an opportunity for residents to have a one-month rotation

through a rural setting.

(b) The office of rural health care in the Texas Department of Health shall coordinate efforts under Subsection (a) of this section.

(c) Each medical school shall incorporate a clerkship in family practice during the third core clinical year.

SECTION 23. Section 61.534, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher education, including loans for undergraduate education, received by a physician through a lender [~~in Texas~~].

(c) The coordinating board each fiscal biennium shall attempt to allocate all funds appropriated to it for the purpose of providing repayment assistance under this subchapter.

SECTION 24. Section 3, Article 5.15-1, Insurance Code, is amended to read as follows:

Sec. 3. RATE STANDARDS. Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written in [~~inside~~] this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience for all professional liability insurance for

physicians and health care providers written outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

SECTION 25. Section 4, Article 5.15-1, Insurance Code, is amended by amending Subsection (a) and adding Subsection (d) to

read as follows:

(a) Except for Subsection (d) of Article 5.15 of this code, the [~~The~~] provisions of Article 5.15, Insurance Code, shall apply to the filing of rates and rating information required under this article.

(d) An insurer who writes professional liability insurance for a physician or a health care provider may not use for a specific risk under such a liability policy a rate or premium that is greater than the rate or premium that has been filed by the insurer and approved by the State Board of Insurance under Article 5.15 of this code.

SECTION 26. Article 5.15-1, Insurance Code, is amended by adding Section 4B to read as follows:

Sec. 4B. RATE APPEALS. (a) Each insurer covered by this article shall adopt a procedure for reconsideration of a rate or premium charged a physician or health care provider for professional liability insurance coverage. The procedure shall include an opportunity for a hearing before officers or employees who have responsibility for determining rates and premiums to be charged for professional liability insurance and a requirement that the insurer reconsider the rate or premium and provide the physician or health care provider a written explanation of the rate or premium being charged.

(b) If a physician or health care provider is not satisfied with a decision under procedures established under Subsection (a) of this section, the physician or health care provider may appeal to the State Board of Insurance for a review of the rate or premium

and a determination if the rate or premium being charged complies with criteria under Section 3 of this article. A decision of the State Board of Insurance under this subsection may not be appealed.

(c) The State Board of Insurance by rule shall establish criteria to be followed by insurers in establishing reconsideration procedures under Subsection (a) of this section and standards and procedures to be followed in review of rates and premiums by the board.

SECTION 27. Section 101.001(2), Civil Practice and Remedies Code, is amended to read as follows:

(2) "Governmental unit" means:

(A) this state and all the several agencies of government that collectively constitute the government of this state, including other agencies bearing different designations, and all departments, bureaus, boards, commissions, offices, agencies, councils, and courts;

(B) a political subdivision of this state, including any city, county, school district, hospital district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, hospital authority, [~~and~~] river authority, and any hospital owned, operated, or leased or jointly owned, operated, or leased by a political subdivision of this state; and

(C) any other institution, agency, or organ of

government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.

SECTION 28. Section 101.023, Civil Practice and Remedies Code, is amended by adding Subsection (d) to read as follows:

(d) If a hospital district, hospital authority or hospital owned, operated, or leased or jointly owned, operated, or leased by a governmental unit has limited liability pursuant to this section and it engages a person or entity pursuant to contract to provide management or consulting services for operation of the hospital, the liability of such person or entity is limited to the extent and up to but not in excess of the maximum amount of the liability of the governmental unit pursuant to this section, provided the governing body of such hospital district, hospital authority, or hospital retains ultimate responsibility and control of the hospital's operations.

SECTION 29. In making the initial appointments to the advisory committee on rural health care, the board shall appoint three members to serve two-year terms, three members to serve four-year terms, and three members to serve six-year terms in order to stagger the terms.

SECTION 30. (a) The office of rural health care in the Texas Department of Health assumes all rights, privileges, powers, and duties under any contract entered into by the State Rural Medical Education Board before September 1, 1989.

(b) The property and records in the custody of the State Rural Medical Education Board on the effective date of this Act

shall be transferred to the office of rural health care in the Texas Department of Health not later than December 31, 1989.

(c) All appropriations to the State Rural Medical Education Board may be expended by the office of rural health care in the Texas Department of Health.

SECTION 31. Sections 10, 13, 14, 15, 17, and 20 of this Act apply only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

SECTION 32. This Act takes effect September 1, 1989.

SECTION 33. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

ADOPTED

MAY 24 1989

By: McKinney, Schlueter, Rudd, et al. H.B. 18

Substitute the following for H.B. No. 18

By _____ C.S.H.B. 18

A BILL TO BE ENTITLED

AN ACT

relating to health care, including the center for rural health initiatives, surveys of hospitals and physicians, health professions resource center, hospital patient transfers, medical and hospital care advisory committee, state indemnification for the provision of charity care or services, rural health Family Practice residency programs, medical education, professional liability insurance for physicians and other health care professionals, securing of enhanced Medicaid and Medicare reimbursement in Texas by providing for the completion of orders for the dispensing of drugs under physician supervision, relating to the rule-making authority of the Texas Department of Human Services; providing civil penalties.

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

SECTION 1. This Act may be cited as the Omnibus Rural Health Care Rescue Act.

SECTION 2. Title 71, Revised Statutes, is amended by adding Article 4414b-1 to read as follows:

Art. 4414b-1. CENTER FOR RURAL HEALTH INITIATIVES

Sec. 1. DEFINITIONS. (a) "Center" means the Center for Rural Health Initiatives; and

(b) "Executive Committee" means the executive committee of the Center for Rural Health Initiatives.

1 Sec. 2. CENTER FOR RURAL HEALTH INITIATIVES. The
2 Center for Rural Health Initiatives is established.
3 Sec. 3. PURPOSE. The center shall assume a leadership
4 role in working or contracting with state and federal agen-
5 cies, universities, private interest groups, communities,
6 foundations, and offices of rural health to develop rural
7 health initiatives and maximize use of existing resources
8 without duplicating existing effort. The center shall provide
9 a central information and referral source and serve as the
10 primary state resource in coordinating, planning, and advocat-
11 ing for the continued access to rural health care services in
12 Texas.
13 Sec. 4. DUTIES. (a) The center shall:
14 (1) educate the public and recommend appropriate
15 public policies regarding the continued viability of rural
16 health care delivery in Texas;
17 (2) monitor and work with state and federal
18 agencies to assess the impact of proposed rules and regu-
19 lations on rural areas; provide impact statements of proposed
20 rules and regulations as deemed appropriate by the center;
21 streamline regulations to assist in the development of service
22 diversification of health care facilities; and target state
23 and federal programs to rural areas;
24 (3) promote and develop community involvement and
25 community support in maintaining, rebuilding, or diversifying
26 local health services;
27 (4) promote and develop diverse and innovative

health care service models in rural areas;

(5) encourage the use of advanced communications technology to provide access to specialty expertise, clinical consultation, and continuing education;

(6) assist rural health care providers, communities, and individuals in applying for public and private grants and programs;

(7) encourage the development of regional emergency transportation networks;

(8) work with state agencies, universities, and private interest groups to conduct and promote research on rural health issues, maintain and collect a timely data base, develop and maintain a rural health resource library;

(9) solicit the assistance of other offices or programs of rural health in Texas that are university-based to carry out the duties of this Act;

(10) disseminate information and provide technical assistance to communities, health care providers and individual consumers of health care services; and

(11) develop plans to implement a fee-for-service health care professional recruitment service and a medical supplies group purchasing program within the center.

(b) The center is authorized to solicit, receive, and spend grants, gifts, and donations from public and private sources.

(c) The center may contract with public and private entities in the performance of its responsibilities.

1 Sec. 5. EXECUTIVE COMMITTEE. (a) The executive
2 committee is the governing body of the center.
3 (b) The executive committee is composed of:
4 (1) three members appointed by the governor,
5 including: one physician licensed to practice in Texas, one
6 pharmacist licensed to practice in Texas, and one business or
7 community leader.
8 (2) three members appointed by the lieutenant
9 governor, including: one registered nurse licensed to practice
10 in Texas, one allied health professional who is licensed,
11 registered, or certified to practice in Texas, and one rural
12 health policy expert; and
13 (3) three members appointed by the speaker of the
14 house of representatives, including: one physician licensed to
15 practice in Texas, one hospital administrator, and one health
16 economist.
17 (c) The appointments to the executive committee shall be
18 individuals who reside, work, or practice in rural areas of
19 the state or who have demonstrated knowledge and expertise in
20 rural issues.
21 (d) The appointments to the executive committee shall
22 provide for a balanced representation of the geographical
23 regions of the state.
24 (e) The members of the executive committee serve
25 staggered six-year terms, with the terms of three members
26 expiring August 31 of each odd-numbered year.
27 (f) The members of the executive committee shall

annually elect one member to serve as presiding officer.

(g) The executive committee shall meet at least quarterly or at the call of the presiding officer and shall adopt rules for the conduct of the meetings.

(h) Any actions taken by the executive committee must be approved by a majority vote.

(i) Members of the executive committee receive no compensation but are entitled to reimbursement of actual and necessary expenses incurred in the performance of their duties.

(j) The executive committee shall establish policies and adopt rules to implement this Act.

Sec. 6. EXECUTIVE DIRECTOR. (a) The executive committee may hire an executive director to serve as the chief executive officer of the center and to perform the administrative duties of the office.

(b) The executive director serves at the will of the executive committee.

(c) The executive director may hire staff within the guidelines established by the executive committee.

Sec. 7. ADVISORY COMMITTEE. (a) The advisory committee is composed of the following:

(1) the commissioner of health or a representative of the department designated by the commissioner;

(2) the commissioner of human services or a representative of the department designated by the commissioner;

(3) the commissioner of agriculture or a representative of the department designated by the commissioner;

(4) the executive director of the Texas Department of Commerce or a representative of the department designated by the executive director; and

(5) the commissioner of higher education or a representative of the Texas Higher Education Coordinating Board designated by the commissioner.

(b) The executive committee may appoint additional agencies as necessary to serve on the advisory committee in a temporary capacity. The executive committee also may request that a state agency designate an employee to serve as a liaison with the center.

(c) The Texas Department of Health shall provide administrative support to the center as necessary to carry out the duties of this Act. The department and the other agencies represented on the advisory committee shall provide staff support to the center and may provide staff and other support services to the executive committee.

(d) The advisory committee may participate fully in executive committee meetings; however, advisory committee members do not have voting privileges.

Sec. 8. REPORTS TO LEGISLATURE. No later than January 1 of each odd-numbered year, the center shall submit a biennial report to the legislature regarding the activities of the center and any findings and recommendations relating to rural issues.

Sec. 9. APPLICATION OF SUNSET ACT. The center for rural health initiatives is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that Act, the center is abolished and this Act expires September 1, 2001.

SECTION 3. Title 71, Revised Statutes, is amended by adding Article 4414b-2 to read as follows:

Art. 4414b-2. HEALTH PROFESSIONS RESOURCE CENTER.

(a) In conjunction with the Texas Higher Education Coordinating Board and in such a way as to avoid duplication of effort, the department shall establish a comprehensive health professions resource center for the collection and analysis of educational and employment trends for health professions in this state.

(b) The department shall place high priority on collecting and disseminating data on health professions demonstrating an acute shortage in this state, including:

(1) data concerning nursing personnel; and

(2) the health professions in which shortages occur in rural areas.

(c) To the extent possible, the department may collect high priority health professions data from existing sources that the department determines are credible. The department may enter agreements with those sources that establish guidelines concerning the identification, acquisition, transfer, and confidentiality of the data.

(d) At a minimum, the data collected by the department

shall include the following in regard to health professionals:

(1) the number and geographic distribution;

(2) licensure or certification status;

(3) specialty areas, if applicable; and

(4) trends or changes in license holders according to number or geographic distribution.

(e) The department may use the data collected and analyzed under this article to publish reports regarding:

(1) the educational and employment trends for health professions;

(2) the supply and demand of health professions; and

(3) other issues, as necessary, concerning health professions in this state.

(f) The board may adopt rules to govern the reporting and collection of data.

(g) In this section, "health profession" means any health or allied health profession that is licensed, certified, or registered by a state board, agency, or association.

(h) The Texas Higher Education Coordinating Board may require the assistance of other state agencies or institutions of higher education for the development of any report.

SECTION 4 . Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended by adding Section 5 to read as follows:

Sec. 5. The Texas Department of Health shall ensure

that a licensed physician involved in direct patient care as defined by the Texas State Board of Medical Examiners is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) to survey the quality of services provided by physicians in hospitals.

SECTION 5. Article 4414b, Revised Statutes, is amended by adding Section 1.15 to read as follows:

Sec. 1.15. BREAST CANCER SCREENING. (a) The Center for Rural Health Initiatives may establish a breast cancer screening program in counties with a population of 50,000 or less, according to the most recent federal census.

(b) The Center for Rural Health Initiatives may provide breast cancer screening under the program through contracts with public or private entities to provide mobile units and on-site screening services.

(c) The Center for Rural Health Initiatives shall coordinate the breast cancer screening program with programs administered by the Texas Cancer Council.

(d) The board may appoint an advisory committee to advise the Office of Rural Health Care on the breast cancer screening program, including targeting those areas of the state in which the program is most needed. The advisory committee may be composed of physicians who practice in rural areas, administrators of hospitals in rural areas, and representatives of organizations formed to promote breast cancer awareness.

SECTION 6. The Texas Hospital Licensing Law (Article

4437f, Vernon's Texas Civil Statutes) is amended to read as follows:

Sec. 5. (a) The Licensing Agency, with the advice of the Hospital Licensing Advisory Council, shall adopt and enforce such rules and minimum standards as may be designed to further the purposes of this Act. Except as provided by Subsections (b) and (d) of this section, the rules or minimum standards so adopted or enforced shall be limited to minimum requirements for staffing by physicians and nurses, hospital services relating to patient care, and safety, fire prevention, and sanitary provisions of hospitals as defined in this Act. Any rules or standards set shall be adopted by the Texas Board of Health in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The standards may not exceed the minimum standards for certification under Title XVIII of the Social Security Act.

(b) The Texas Board of Health shall adopt rules to implement the following minimum standards governing the transfer of patients <u>between hospitals that do not have a transfer agreement.</u> The rules must provide that patient transfers between hospitals <u>will</u> [should] be accomplished <u>through hospital policies that result</u> in [a] medically appropriate <u>transfers</u> [manner] from physician to physician as well as from hospital to hospital by providing [for]:

(1) notification to the receiving hospital prior to the transfer and confirmation by that hospital that the

patient meets that hospital's admissions criteria relating to appropriate bed, physician, and other services necessary to treat the patient;

(2) the use of medically appropriate life support measures which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use to stabilize the patient prior to transfer and to sustain the patient during the transfer;

(3) the provision of appropriate personnel and equipment which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use for the transfer;

(4) the transfer of all necessary records for continuing the care for the patient; and

(5) [~~the date by which each hospital must adopt policies in accordance with the rules.~~] <u>that the transfer of a patient may not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition or economic status.</u>

(c) Minimum standards prescribed by Board rules shall not contain provisions which require the consent of the patient or personal representative of the patient prior to transfer. <u>The rules shall also provide that a public hospital or hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services, and staff available for</u>

providing care to the patient.

(d) [Each hospital shall adopt binding policies relating to patient transfers that are consistent with the rules adopted by the Texas Board of Health. If possible, each hospital shall implement its transfer policies by adopting transfer agreements with other hospitals.] If transfer agreements are executed between hospitals that are consistent with the requirements of this subsection, any patient transfers between the hospitals will be governed by the agreement. The transfer agreement shall be submitted to the Texas Department of Health for review for compliance with the transfer agreement requirements. Such review shall be completed within thirty days from the date submitted by hospitals. At a minimum, the transfer agreement shall provide that:

(1) transfers will be accomplished in a medically appropriate manner;

(2) the transfer or receipt of patients shall not be based upon the individual's inability to pay for the services rendered by the transferring or receiving hospital;

(3) multiple transfer agreements may be entered into by a hospital based upon the type or level of medical services available at other hospitals;

(4) the hospitals will recognize the right of an individual to request transfer into the care of a physician and hospital of the individual's own choosing; and

(5) the hospitals will recognize and comply with the requirements of the Indigent Health Care and Treatment Act

(Article 4438f, Vernon's Texas Civil Statutes) relating to the transfer of patients to mandated providers.

(e) The Texas Department of Health may adopt rules to facilitate the transfer of patients between hospitals that do not have a transfer agreement based upon the recommendation of an advisory committee appointed by the Texas Board of Health. The advisory committee is composed of twelve members, including:

(1) two physicians licensed to practice in this state who have been in active practice in a rural area;

(2) two hospital administrators who have been actively engaged in hospital administration in a rural area and who represent a public hospital and a private hospital;

(3) two physicians licensed to practice in this state who have been in active practice in an urban area;

(4) two hospital administrators who have been actively engaged in hospital administration in an urban area and who represent a public hospital and a private hospital;

(5) an emergency medical technician and a person serving as a volunteer to an emergency medical services provider; and

(6) two consumer members.

(f) The Commissioner of Health shall appoint, with the advice and consent of the Texas Board of Health, a person to serve in the capacity of Hospital Licensing Director. The duties of the Hospital Licensing Director shall be the administration of this Act and he shall be directly respon-

sible to the Licensing Agency. Any person so appointed as Hospital Licensing Director must possess the following qualifications: He shall have had at least five (5) years experience and/or training in the field of hospital administration, be of good moral character, and a resident of the State of Texas for a period of not less than three (3) years.

SECTION 7. Section 32.022, Human Resources Code, is amended to read as follows:

Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES [~~COMMITTEE~~]. (a) The board, on the recommendation of the commissioner, shall appoint a medical care advisory committee to advise the board and the department in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's goal of providing access to high quality, comprehensive medical and health care services to medically indigent [needy] persons in the state. To ensure that qualified applicants receive services, the committee shall consider changes in the process the department uses to determine eligibility.

(b) The board shall appoint the committee in compliance with the requirements of the federal agency administering medical assistance. The appointments shall provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work.

(c) The department shall adopt rules for membership on the committee to provide for efficiency of operation, rota-

tion, stability, and continuity.

(d) The board, on the recommendation of the commissioner, may appoint regional and local medical care advisory committees and other advisory committees as considered necessary.

(e) The board, on the recommendation of the commissioner, shall appoint a hospital payment advisory committee. The committee shall advise the board and the department on necessary changes in hospital payment methodologies for inpatient hospital prospective payments and on adjustments for disproportionate share hospitals that will ensure reasonable, adequate, and equitable payments to hospital providers and that will address the essential role of rural hospitals. The board shall appoint to the committee persons with knowledge of and an interest in hospital payment issues.

SECTION 8. Section 32.024, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department, in its rules and standards governing the scope of hospital and long-term services, shall establish a swing bed program in accordance with federal regulations to provide reimbursement for skilled nursing patients who are served in hospital settings provided that the length of stay is limited to 30 days per year and the hospital is located in a county with a population of 100,000 or less. If the swing beds are used for more than one 30 day length of stay per year, per patient, the hospital must comply with the Minimum Licensing Standards as mandated by Article 4442(c), Vernon's

Texas Statutes, and the Medicaid standards for nursing home certification, as promulgated by the Texas Department of Human Services.

SECTION 9. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.917 to read as follows:

Sec. 51.917. RURAL HEALTH; FAMILY PRACTICE RESIDENCY PROGRAM. The Texas Higher Education Coordinating Board, the Center for Rural Health Initiatives in the Texas Department of Health, medical schools, nursing schools, and schools of allied health sciences shall cooperate to improve and expand programs for rural areas.

(a) The Texas Higher Education Coordinating Board shall:

(1) encourage and coordinate the creation or expansion of rural preceptor program among medical schools, teaching hospitals, nursing schools, and schools of allied health sciences; and

(2) require family practice residency programs to provide an opportunity for residents to have a one-month rotation through a rural setting.

(b) The Center for Rural Health Initiatives shall develop relief service programs for rural physicians and allied health personnel to facilitate ready access to continuing medical education.

(c) Each medical school shall:

(1) incorporate a clerkship in family practice during the third core clinical year; and

(2) report to the legislature and the Texas Higher

Education Coordinating Board on its efforts to fulfill the intent of Chapter 58, Education Code of having at least 25% of their first year primary care residents in family practice.

SECTION 10 Section 61.534, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher education, including loans for undergraduate education, received by a physician through a lender. [~~in Texas~~].

(c) Each fiscal biennium, the coordinating board shall attempt to allocate all funds appropriated to it for the purpose of providing repayment assistance under this subchapter.

SECTION 11. Amend Subchapter I, Chapter 61, Education Code, by adding Section 61.536(2) to read as follows:

Sec. 61.536. ADVISORY COMMITTEES. The coordinating board may:

(1) appoint advisory committees from outside the board's membership to assist the board in performing its duties under this subchapter; and

(2) request the assistance of the Family Practice Residency Advisory Committee in performing those duties.

SECTION 12. Section 3, Article 5.15-1, Insurance Code, is amended to read as follows:

Sec. 3. RATE STANDARDS: Rates shall be made in

accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written in [~~inside~~] this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the

classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

SECTION 13. Article 5.15-1, Insurance Code, is amended by adding Section 4B to read as follows:

Sec. 4B. RATE APPEALS. (a) Each insurer covered by this article shall adopt a procedure for reconsideration of a rate or premium charged a physician or health care provider for professional liability insurance coverage. The procedure shall include an opportunity for a hearing before officers or employees who have responsibility for determining rates and premiums to be charged for professional liability insurance and a requirement that the insurer reconsider the rate or premium and provide the physician or health care provider a written explanation of the rate or premium being charged.

(b) If a physician or health care provider is not satisfied with a decision under procedures established under Subsection (a) of this section, the physician or health care provider may appeal to the State Board of Insurance for a review of the rate or premium and a determination if the rate or premium being charged complies with criteria under Section 3 of this article. A decision of the State Board of Insurance under this subsection may not be appealed.

(c) The State Board of Insurance by rule shall establish criteria to be followed by insurers in establishing reconsideration procedures under Subsection (a) of this section and standards and procedures to be followed in review of rates and premiums by the board.

SECTION 14. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 110 to read as follows:

CHAPTER 110. STATE LIABILITY FOR INDEMNIFICATION OF CERTAIN HEALTH CARE PROFESSIONALS.

Sec. 110.001. DEFINITIONS. In this chapter:

(1) "Charity care or services" means care or services provided by a health care professional under:

(A) the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes);

(B) the Medicaid program under Chapter 32, Human Resources Code;

(C) the Maternal and Infant Health Improvement Act (Article 4447y, Vernon's Texas Civil Statutes);

(D) the Texas Primary Health Care Services Act (Article 4438d, Vernon's Texas Civil Statutes);

(E) the Chronically Ill and Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes); or

(F) a contract with a migrant or community health center that receives funds under 42 U.S.C. 254b and 254c.

(2) "Eligible medical malpractice claim" means a medical claim against a health care professional who renders charity care in at least ten (10) percent of the patient encounters engaged in by said health care professional during the policy year in which the claim was made.

(3) "Health care professional" means:

(A) a person who is licensed to practice medicine under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

(B) a person registered by the Board of Nurse Examiners as an Advanced Nurse Practitioner or a Certified Nurse Midwife; or

(C) a person recognized by the Board of Medical Examiners as a Physician Assistant.

(4) "Insurer" means an insurance company chartered to write or admitted to write and writing medical professional liability insurance in this state or the Texas Medical Liability Insurance Underwriting Association (Subchapter E, Chapter 21, Article 21.49-3, Insurance Code) or any self insurance trust created under Subchapter E, Chapter 21, Article 21.49-4, Insurance Code, for the purpose of providing medical professional liability insurance. The term "insurer" does not include an institution of higher education that provides medical professional liability coverage under Chapter 59, Education Code.

(5) "Medical malpractice claim" means a claim or action against a health care professional alleging one or

more negligent acts or omissions in the diagnosis, care or treatment of a patient and alleging that injury to or death of a patient resulted therefrom, without regard to whether said claim or action is based upon tort or contract principles.

(6) "Patient encounters" means an occasion on which a health care professional renders professional health care services to a patient.

Sec. 110.002. STATE LIABILITY: PERSONS COVERED. In a cause of action against a health care professional based on conduct described in Section 110.003, the state shall indemnify the health care professional for actual damages adjudged against the health care professional or which the health care professional becomes obligated to pay pursuant to a settlement reached in accordance with this chapter.

Sec. 110.003. STATE LIABILITY: CONDUCT COVERED. (a) The state is liable for indemnification under this chapter only if the damages are based on an eligible medical malpractice claim against a health care professional in the course and scope of said person's professional health care activities.

(b) The state is not liable for indemnification for an intentional act or an act of gross negligence.

Sec. 110.004. LIMITS ON AMOUNT OF RECOVERABLE DAMAGES.

(a) State liability for indemnification under this chapter may not exceed:

(1) $100,000 for a single occurrence in the case of an eligible medical malpractice claim arising as a result of

1 prenatal care, care during labor and delivery, and care given
2 to a mother or infant during the 30-day period immediately
3 following delivery, or as a result of emergency care; or,
4 (2) $25,000 for a single occurrence in the case of
5 any other eligible medical malpractice claim.
6 (b) The state shall be payor of first resort for an
7 eligible medical malpractice claim for amounts falling within
8 the limits set forth in subsection (a) of this section.
9 Sec. 110.005. TIMELY NOTICE TO ATTORNEY GENERAL RE-
10 QUIRED. The state is not liable for indemnification for
11 damages under this chapter unless the health care professional
12 against whom the cause of action is asserted:
13 (1) is covered under a valid professional liability
14 insurance policy that is issued by an insurer and that
15 provides coverage for the medical malpractice claim that is
16 the subject of the claim or action with a policy limit of not
17 less than $100,000 per occurrence and $300,000 aggregate for
18 the policy period; and,
19 (2) delivers or causes to be delivered to the
20 Attorney General a true copy of any written notice of said
21 medical malpractice claim and any summons or citation served
22 on the health care professional, which written notice, summons
23 or citation shall be delivered to the Attorney General not
24 later than the 45th day after the receipt thereof by the
25 health care professional.
26 Sec. 110.006. INFORMATION PROVIDED TO ATTORNEY GENERAL;
27 SETTLEMENTS. (a) The insurer for a health care professional

who is the subject of an eligible malpractice claim shall designate an attorney or other representative assigned to the claim who shall keep the Attorney General or his designee reasonably informed of significant developments in the claim or action, including all settings for trials or dispositive motions, all settlement offers and demands, all pleadings by or against the health care professional, all judgments or other dispositive orders, and all written recommendations of counsel for the health care professional regarding settlement.

(b) If a settlement agreement is reached between the health care professional and a claimant, the insurer for the health care professional shall promptly notify the Attorney General of same. The settlement shall become final and binding upon the State unless, within ten (10) days of the receipt of said notice by the Attorney General (or such greater or lesser period of time as the court in which the action is filed may allow), the Attorney General files in said court (or, if no action is pending in any court, in a district court of Travis County, Texas) a written objection to the settlement setting forth in detail why the court should find that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case. A hearing shall promptly be held upon any such objection, either before the court or a special master appointed by the court for that purpose. At any such

hearing, the burden shall be upon the Attorney General to prove that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case. Unless the court finds that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case, the court shall enter an order approving the settlement and directing the State to make the required indemnity payment thereunder. Such an order shall be reviewable by an appellate court only upon the filing of an application for writ of mandamus within fifteen (15) days of the date said order is signed, and only for an abuse of discretion by the trial court. Any such application for writ of mandamus shall be given priority in the appellate court in which it is filed above all other applications for writ of mandamus docketed in said court.

(c) If the Attorney General files an objection under subsection (b) of this section, the court may, with the agreement of the parties to the settlement agreement, permit the payment of any other sums due to be paid under said agreement by parties other than the State while the objection of the Attorney General is pending adjudication.

(d) If a suit involving an eligible medical malpractice

claim is imminently scheduled for jury trial, or is being tried before a jury, and settlement negotiations are ongoing between the health care professional and any claimant, either of those parties may request the court to require the Attorney General or his designee to assign an attorney to monitor such negotiations so that if a settlement agreement is reached between the parties, the attorney so assigned by the Attorney General can immediately advise the court of any objection, in which event the hearing described in subsection (b) of this section regarding the reasonableness of the settlement amount shall be held immediately after the settlement agreement is reduced to writing or announced on the record in open court, so that the trial court may render its determination before the petit jury or jury panel is discharged.

(e) Except to the extent that the Attorney General is authorized under this section to object to the reasonableness of a settlement, the Attorney General shall not be authorized to intervene in any court proceeding involving an eligible medical malpractice claim. The insurer for the health care professional shall be in charge of the defense of any such claim.

(f) Upon final disposition of an eligible medical malpractice claim by settlement or judgment, funds shall be paid by the Comptroller on vouchers which shall be promptly prepared, verified and signed by the Attorney General.

Sec. 110.007 EXPIRATION. Unless continued in existence, this Chapter expires September 1, 1993.

SECTION 15. Subchapter B, Chapter 5, Insurance Code, is amended by adding Article 5.15-4 to read as follows:

Art. 5.15-4. REDUCTION IN CERTAIN PROFESSIONAL LIABILITY INSURANCE PREMIUMS

Sec. 1. DEFINITIONS. In this article, "charity care or services," "eligible medical malpractice claim," "health care professional," "insurer," "medical malpractice claim," and "patient encounter" have the meanings assigned by Section 110.001, Civil Practice and Remedies Code.

Sec. 2. QUALIFICATION FOR DISCOUNT. A health care professional is entitled to a premium discount for medical professional liability insurance coverage if the professional meets the criteria stated in Section 4 of this article.

Sec. 3. AMOUNT OF PREMIUM DISCOUNT. The State Board of Insurance shall approve premium discounts to be used by each insurer on premiums to be charged to a health care professional covered by this section. The board shall base the approved discounts upon loss and statistical data provided by each insurer and on the reduction in the insurer's liability exposure based on the state's indemnification of the first $100,000 or $25,000 under Chapter 110, Civil Practice and Remedies Code, of an eligible malpractice claim against a health care professional.

Sec. 4. QUALIFICATION FOR PREMIUM DISCOUNT. (a) A health care professional is entitled to a premium discount for medical professional liability insurance coverage if the projected patient encounters of the health care professional

during the policy year will involve providing charity care or services in 10 percent or more of the health care professional's patient encounters; and

(b) the health care professional completes 15 hours of continuing education during the term of the policy on patient safety and risk reduction subjects related to the health care professional's practice which are sponsored, approved, endorsed, or accredited by the State Board of Insurance, an "insurer" as defined in this Act, or by state or nationally recognized accrediting organizations or continuing medical or nurse education programs.

Sec. 5. REQUEST FOR PREMIUM DISCOUNT. A health care professional who desires a premium discount for medical professional liability insurance coverage shall submit to the insurer not later than the 30th day before the beginning of the term of the policy a written verified application for a new policy or a verified statement for a policy to be renewed stating that the health care professional desires a premium discount and qualifies for a premium discount under this article. The application or statement also shall provide necessary information to determine the eligibility of the health care professional and the amount of the discount.

Sec. 6. AUDIT; PENALTY. (a) At the end of a policy year, an insurer may audit the records of any health care professional to whom the insurer has provided a discount under this article to determine if the health care professional provided the charity care and services necessary under Section

4 of this article to qualify for the premium discount during the preceding policy year.

(b) To conduct the audit, the insurer is entitled to access to any books and records necessary to determine if the verified application or statement submitted for the coverage was correct and the health care professional was eligible for the premium discount. If a health care professional denies access to the property or to the books and records, the insurer may obtain an appropriate court order from a court of competent jurisdiction to gain access to the books and the records.

(c) If an insurer's audit indicates that a health care professional did not provide charity care or services in 10 percent or more of the health care professional's patient encounters, the insurer may charge the health care professional an amount equal to the difference between the premium paid and the premium that would have been due if the health care professional had not received the premium discount plus 20 percent of the amount of the premium that would have been due without the premium discount.

(d) If a health care professional who has received the premium discount for the policy year submits the difference between the premium paid and the premium that would have been due if the health care professional had not received the premium discount plus interest at the legal rate for the unpaid premium prior to 30 days before the expiration of the policy year, the health care professional will not be subject

to the penalty provided in subsection (c).

Sec. 7. PROHIBITIONS ON INSURER; SANCTIONS. (a) An insurer may not cancel or refuse to renew a health care professional's medical professional liability insurance coverage solely on the basis that the health care professional is eligible for a premium discount under this article except for the following reasons:

(1) fraud or misrepresentation in obtaining coverage;

(2) failure to pay premiums when due; or

(3) the insurer's being placed under supervision or in conservatorship or receivership, if the cancellation or nonrenewal is approved by the supervisor, conservator, or receiver.

(b) A health care professional who files the appropriate verified application or statement under this Article will be entitled to a premium discount as approved by the Board under Section 3 of this Article. When consent to rate is used, a health care professional will be entitled to the appropriate discount from the rate agreed to by consent.

(c) An insurer who violates this article is subject to the sanctions authorized under Section 7, Article 1.10, of this code.

Sec. 8. AUTHORITY OF STATE BOARD OF INSURANCE. The State Board of Insurance shall administer this article and shall adopt necessary rules, forms, endorsements, and procedures to carry out this article.

1 Sec. 9. EXPIRATION. Unless continued in existence this
2 Article expires September 1, 1993.
3 SECTION 16. Subsection (d), Section 3.06, Medical
4 Practice Act (Article 4495b, Vernon's Texas Civil Statutes),
5 is amended to read as follows:
6 (d) This Act shall be so construed that:
7 (1) a person licensed to practice medicine shall have the
8 authority to delegate to any qualified and properly trained
9 person or persons acting under the physician's supervision any
10 medical act which a reasonable and prudent physician would
11 find is within the scope of sound medical judgment to delegate
12 if, in the opinion of the delegating physician, the act can be
13 properly and safely performed by the person to whom the
14 medical act is delegated and the act is performed in its
15 customary manner, not in violation of any other statute, and
16 the person does not hold himself out to the public as being
17 authorized to practice medicine. The delegating physician
18 shall remain responsible for the medical acts of the person
19 performing the delegated medical acts. The board may deter-
20 mine whether or not an act constitutes the practice of
21 medicine, not inconsistent with this Act, and may determine
22 whether any medical act may or may not be properly or safely
23 delegated by physicians;
24 (2) a person licensed to practice medicine is authorized
25 and shall have the authority to delegate to any qualified and
26 properly trained person or persons, acting under the physi-
27 cian's supervision, the acts or acts of administering or

1 providing, in the physician's office, dangerous drugs, as
2 ordered by the physician which are used or required to meet
3 the immediate needs of the physician's patients. The admini-
4 stration or provision, as ordered by a physician, may be
5 delegated through physician's orders, standing medical orders,
6 standing delegation orders, or other orders, where applicable,
7 as the orders are defined by the board. The administration or
8 provision of dangerous drugs shall be in compliance with laws
9 relating to the practice of medicine and Texas and federal
10 laws relating to the dangerous drugs. This subdivision does
11 not permit the physician or person or persons acting under the
12 supervision of the physician to keep a pharmacy, advertised or
13 otherwise, for the retailing of dangerous drugs without
14 complying with the applicable laws relating to the dangerous
15 drugs;
16 (3) a person licensed to practice medicine shall be
17 authorized and shall have the authority to delegate to any
18 qualified and properly trained person or persons, acting under
19 the physician's supervision, the act or acts of administering
20 or providing dangerous drugs, if the provision is provided
21 through a facility licensed by the State Board of Pharmacy
22 pursuant to applicable law, as ordered by the physician, which
23 are used or required to meet the immediate needs of the
24 physician's patients. The administration or provision, as
25 ordered by a physician, may be delegated through physician's
26 orders, standing medical orders, standing delegation orders,
27 or other orders, where applicable, as the orders are defined

by the board. The provision of dangerous drugs shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, Texas or federal drug laws, and rules that may be properly issued by the State Board of Pharmacy. The administration shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, and Texas or federal drug laws. This subdivision does not permit the physician or person or persons acting under the supervision of the physician to keep a pharmacy, advertised or otherwise, for the retailing of the dangerous drugs without complying with the applicable laws relating to the retailing of dangerous drugs. In this subdivision and in Subdivision (2) of this subsection, "administering" means the direct application of a drug by injection, inhalation, ingestion, or any other means to the body of the physician's patient; "provision" means to supply one or more unit doses of a drug, medicine, or dangerous drug. The drug or medicine shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws. However, a qualified and trained person or persons, acting under the supervision of a physician, may be permitted to specify at the time of the provision the inclusion of the date of provision and the patient's name and address;

(4) in the provision of services and the administration of therapy by public health departments, as officially

1 prescribed by the Texas Department of Health for the pre-
2 vention or treatment of specific communicable diseases or
3 health conditions for which the Texas Department of Health is
4 responsible for control under state law, a person licensed to
5 practice medicine shall be authorized and shall have the
6 authority to delegate to any qualified and properly trained
7 person or persons, acting under the physician's supervision,
8 the act or acts of administering or providing dangerous drugs,
9 as ordered by the physician that are used or required to meet
10 the needs of the patients. The administration or provision,
11 as ordered by a physician, may be delegated through physi-
12 cian's orders, standing medical orders, standing delegation
13 orders, or other orders, where applicable, as the orders are
14 defined by the board. The provision of dangerous drugs shall
15 be in compliance with any laws relating to the practice of
16 medicine, laws relating to the practice of pharmacy, and laws
17 relating to the practice of professional nursing. The orders
18 may not be inconsistent with this Act and may not be used for
19 the performance of acts or duties that require the exercise of
20 independent medical judgment. In this subdivision, "admin-
21 istering" means the direct application of a drug by injection,
22 inhalation, ingestion, or any other means to the body of the
23 patient; "provision" means to supply one or more unit doses of
24 a drug, medicine, or dangerous drug. The drug or medicine
25 shall be supplied in a suitable container that has been
26 labeled in compliance with the applicable drug laws. However,
27 a qualified and trained person or persons, acting under the

supervision of a physician, may be permitted to specify at the time of the provision the inclusion of the date of provision and the patient's name and address; [.]

(5) (A) At a site serving a medically underserved population, a physician licensed by the board shall be authorized to delegate to a registered nurse or physician assistant acting under adequate physician supervision, the act or acts of administering, providing or carrying out a prescription drug order as authorized by the physician through physician's orders, standing medical orders, standing delegation orders or other orders or protocols as defined by the board.

(B) The carrying out of prescription drug orders under this subsection shall comply with other applicable laws.

(C) Physician supervision shall be adequate if:

(i) the physician is responsible for the formulation or approval of such physician's orders, standing medical orders, standing delegation orders, or other orders or protocols and periodically review such orders and the services provided patients under such orders;

(ii) a physician is on site at least once a week to provide medical direction and consultation;

(iii) the physician receives a daily status report from the registered nurse or physician assistant on any problems or complications encountered; and

(iv) a physician is available through direct telecommunication for consultation, assistance with medical

emergencies, or patient referral.

(D) In this subsection:

(i) "Registered nurse" means a registered nurse recognized by the Board of Nurse Examiners as having the specialized education and training required under Section 7, Article 4514, Revised Statutes.

(ii) "Physician assistant" means a physician assistant recognized by the Board of Medical Examiners as having the specialized education and training required under Subsection (d), Section 5.02 of this Act.

(iii) "Carrying out a prescription drug order" means to complete a prescription drug order presigned by the delegating physician by providing the following information: the patient's name and address; the drug to be dispensed; directions to the patient in regard to the taking and dosage; the name, address and telephone number of the physician; the name, address, telephone and identification number of the registered nurse or physician assistant completing the prescription drug order; the date; and the number of refills permitted. The board may adopt additional methods to carry into effect or put into force a physician's prescription under physician's orders, standing medical orders, standing delegation orders or other orders or protocols.

(iv) "A site serving a medically underserved population" means:

(1) a site located in a medically underserved area;

(2) a site located in a health manpower shortage area;

(3) a clinic designated as a rural health clinic under the Rural Health Clinic Services Act of 1977 (P.L. 95-210);

(4) a public health clinic, family planning clinic, or clinic operated by the State or a political subdivision;

(5) a site located in an area in which the Texas Department of Health determines there exists an insufficient number of physicians providing services to eligible clients of federal, state or locally funded health care programs; or

(6) a site that the Texas Department of Health determines serves a disproportionate number of clients eligible to participate in federal, state or locally funded health care programs;

(v) "health manpower shortage area" means (1) an area in an urban or rural area of Texas (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the Secretary of Health and Human Services determines has a health manpower shortage and which is not reasonably accessible to an adequately served area; (2) a population group which the Secretary determines to have such a shortage; or (3) a public or non-profit private medical facility or other facility which the Secretary determines has

such a shortage as delineated in 42 USC Sec. 254(e)(a)(1).

(vi) "medically underserved area" means an area in Texas with a medically underserved population or an urban or rural area designated by the Secretary of Health and Human Services as an area in Texas with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services (as defined in 42 USC Sec. 300(e)-1(7)).

(E) After making a determination under either subdivisions (D)(iv)(5) or (D)(iv)(6) that a site serves a medically underserved population, the Department of Health shall publish notice of its determination in the Texas Register and provide an opportunity for public comment in the same manner as for a proposed rule under the Texas Register and Administrative Procedures Act.

(F) The authority granted to a physician to delegate under this subdivision shall not be construed as limiting the authority of a physician to delegate under any other subdivision of this subsection.

(6) (A) A duly licensed and qualified optometrist may administer topical ocular pharmaceutical agents in the practice of optometry as provided by this subdivision. These pharmaceutical agents may not be used for therapeutic purpose.

(B) To be entitled to use topical ocular pharmaceutical agents in the practice of optometry, an optometrist must possess a valid standing delegation order that:

(i) is issued to the optometrist by an area physician

licensed to practice medicine in this state; and

(ii) authorizes the use of the pharmaceutical agents authorized by this subdivision.

(C) On request, an optometrist will be issued a standing delegation order described by Paragraph (B) of this subdivision unless the physician acting as a reasonable and prudent physician determines that denial is within the scope of sound medical judgment as it pertains to optometry, or that it is not in the public interest, and the basis for denial shall be given to the requesting optometrist in writing if requested. It is necessary that the physician have knowledge of the requesting optometrist, and if not, then same shall be good cause for denial.

(D) A standing delegation order issued under this subdivision or a representation of the order will be prominently displayed in the office of the optometrist. The board will prescribe the form of the standing delegation order and the certificate or representation of the order. The standing delegation order, as a minimum, will:

(i) be in writing, dated and signed by the physician;

(ii) specify the available topical ocular pharmaceutical agents, including but not limited to topical anesthetics and dilating agents, to be administered in the office; and

(iii) specify that said agents shall not be used for therapeutic purposes.

(E) On the complaint of any person or on its own initiative, the board of medical examiners may cancel a standing

delegation order issued under this section if it determines that the optometrist possessing the order has violated the standing delegation order or this section.

(F) Except as provided by Paragraph (E) of this subdivision, a standing delegation order issued under this subdivision remains valid as along as:

(i) the physician who issued the order is a resident of this state and is licensed to practice medicine in this state;

(ii) no irregularities are found on annual review; and

(iii) the order is not canceled for good cause by either party.

(G) A physician who has issued a standing delegation order in compliance with this subdivision is immune from liability in connection with acts performed pursuant to the standing delegation order so long as he has used prudent judgment in the issuance or the continuance of the standing delegation order.

(H) Nothing herein is intended to limit or expand the practice of optometry as defined by law.

(7) [~~(6)~~] Authority to delegate medical acts to properly qualified persons as provided in this section is recognized as applicable to emergency care rendered by emergency medical personnel certified by the Texas Department of Health.

(8) [~~(7)~~] (A) It is the policy of this state that the prevention of ophthalmia neonatorum in newborn infants is of paramount importance for the protection of the health of Texas children.

(B) Authority to delegate medical acts to a lay midwife registered under Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is recognized as applicable to the possession of and administration of eye prophylaxis for the prevention of ophthalmia neonatorum.

(C) A physician who has issued such standing order is immune from liability in connection with acts performed pursuant to the standing delegation order as long as the lay midwife has provided proof of compliance with Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), prior to the issuance of the order.

SECTION 17. Section 5.02, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding new subsection (d) to read as follows:

(d) The board shall adopt rules establishing:

(1) any specialized education and training, including pharmacology, a physician assistant must have to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06 of this Act; and

(2) a system for assigning an identification number to a physician assistant who provides the board with evidence of completing the required specialized education and training.

SECTION 18. Article 4514, Revised Statutes, is amended by adding a Section 7 that reads:

Sec. 7. The board shall adopt rules establishing:

1 a) any specialized education and training, including
2 pharmacology, a registered nurse must have to carry out a
3 prescription drug order pursuant to Subdivision (5), Subsec-
4 tion (d), Section 3.06, Medical Practice Act (Article 4495b,
5 Vernon's Texas Civil Statutes); and
6 b) a system for assigning an identification number
7 to a registered nurse who provides the board with evidence of
8 completing the required specialized education and training.
9 SECTION 19. Section 5, Article 4518, Revised Statutes, is
10 amended to read as follows:
11 Sec. 5. Insofar as any of the following acts require
12 substantial specialized judgment and skill and insofar as the
13 proper performance of any of the following acts is based upon
14 knowledge and application of the principles of biological,
15 physical, and social science as acquired by a completed course
16 in a approved school of professional nursing, "Professional
17 Nursing" shall be defined as the performance for compensation
18 of any nursing act (a) in the observation, assessment,
19 intervention, evaluation, rehabilitation, care and counsel and
20 health teachings of persons who are ill, injured or infirm or
21 experiencing changes in normal health processes; (b) in the
22 maintenance of health or prevention of illness; (c) in the
23 administration of medications or treatments as ordered
24 [prescribed] by a licensed physician, including a podiatric
25 physician licensed by the Texas State Board of Podiatry
26 Examiners, or dentist; (d) in the supervision or teaching of
27 nursing; (e) in the administration, supervision, and evalua-

tion of nursing practices, policies, and procedures. The foregoing shall not be deemed to include acts of medical diagnosis or prescription of therapeutic or corrective measures. Nothing in this section shall be construed as prohibiting a registered nurse recognized by the board as having the specialized education and training required under Section 7, Article 4514, Revised Statutes, and functioning under adequate physician supervision from carrying out prescription drug orders or treatments under physician's orders, standing medical orders, standing delegation orders or other orders or protocols.

SECTION 20. Subdivision (33), Section 5, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(33) "Prescription drug order" means:

(a) a written order from a practitioner or verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(b) a written or verbal order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

SECTION 21. Subsection (h), Section 2, The Texas Dangerous Drug Act (Article 4476-14, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) The term "prescription" means a written order or telephonic order, by a practitioner or an order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical

1 Practice Act (Article 4495b, Vernon's Texas Civil Statutes) or
2 an order by an agent of the practitioner who is designated in
3 writing as authorized to communicate prescriptions by tele-
4 phone, to a pharmacist for a dangerous drug to be dispensed,
5 which specifies the date of its issue, the name and address of
6 the patient (and, if such dangerous drug is prescribed for an
7 animal, the species of such animal), the name and quantity of
8 the dangerous drug prescribed, and the directions for use of
9 such drug.

10 SECTION 22. The Texas Dangerous Drug Act (Article 4476-
11 14, Vernon's Texas Civil Statutes), is amended by adding
12 Section 3B to read as follows:

13 Sec. 3A. (a) Each practitioner shall designate in writing
14 the name of each agent authorized to communicate prescriptions
15 by telephone for that practitioner. A list of agents desig-
16 nated by the practitioner must be maintained in the prac-
17 titioner's usual place of business. On request by a pharm-
18 acist, a practitioner shall furnish the pharmacist with a copy
19 of the written authorization for a specific agent.

20 (b) This section does not relieve a practitioner or the
21 practitioner's agent from the requirements of Section 40,
22 Texas Pharmacy Act (Vernon's Texas Civil Statutes). The
23 practitioner remains personally responsible for the actions of
24 each agent who communicates prescriptions to a pharmacist.

25 Sec. 3B. (a) Each practitioner shall designate in writing
26 the name of each registered nurse or physician assistant
27 authorized to carry out a prescription drug order pursuant to

Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). A list of the registered nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific registered nurse or physician assistant.

SECTION 23. The Texas Department of Human Services shall not impose any conditions on Medicaid reimbursement of rural health clinics that are more stringent than those imposed by the Rural Health Clinic Services Act of 1977 (P.L. 95-210) or the laws of this state regulating the practice of medicine, pharmacy or professional nursing.

SECTION 24. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. EXPERT WITNESSES

Sec. 14.01. QUALIFICATION OF EXPERT WITNESS IN SUIT AGAINST PHYSICIAN. (a) In a suit involving a health care liability claim against a physician for injury to or death of a patient, a person may qualify as an expert witness on the issue of whether the physician departed from accepted standards of medical care only if:

(1) The person is practicing at the time such testimony is given or was practicing at the time the claim

arose and has knowledge of accepted standards of medical care for the diagnosis, care or treatment of the illness, injury or condition involved in the claim; or

(2) The court, after a hearing conducted outside the presence of the jury, determines that the person is otherwise qualified to give expert testimony on said issue.

(b) For the purpose of this section, "practicing" includes, but is not limited to, training residents or students at an accredited school of medicine or osteopathy or serving as a consulting physician to other physicians who provide direct patient care, upon the request of such other physicians.

SECTION 25. Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 7.02, to read as follows:

Sec. 7.02. JURY INSTRUCTION AUTHORIZED IN CERTAIN CASES.

(a) In a jury trial involving a health care liability claim against a physician or hospital for injury to or death of a patient in which the court determines that the following instruction is reasonably applicable to the facts, the court shall provide the following instruction in the court's charge to the jury:

"A finding of negligence may not be based solely on evidence of a bad result to the patient in question, but such a bad result

1 may be considered by you, along with other
2 evidence, in determining the issue of
3 negligence; you shall be the sole judges
4 of the weight, if any, to be given to any
5 such evidence."
6 (b) Nothing in subsection (a) of this section shall
7 affect the existing law regarding the applicability or non-
8 applicability of the doctrine of res ipsa loquitur to a health
9 care liability claim.
10 (c) The determination of whether the instruction
11 authorized by subsection (a) of this section is reasonably
12 applicable to the facts shall be made by the trial court in
13 its sole discretion, and such determination by the trial court
14 shall be reviewable by an appellate court only for an abuse of
15 such discretion.
16 SECTION 26. Sections 14 and 15 of this Act take effect
17 on January 1, 1990, and apply only to causes of action that
18 accrue on or after that date.
19 SECTION 27. Sections 24 and 25 of this Act apply only to
20 a cause of action that accrues on or after the effective date
21 of this Act. An action that accrued before the effective date
22 of this Act is governed by the law in effect at the time the
23 action accrued, and that law is continued in effect for that
24 purpose.
25 SECTION 28. This Act takes effect September 1, 1989.
26 SECTION 29. The importance of this legislation and the
27 crowded condition of the calendars in both houses create an

emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

ADOPTED

MAY 24 1989

Floor Amendment 1 C.S.H.B. 18

By

1. Amend Section 1 of the bill by changing the name of the act from "Omnibus Rural Health Care Rescue Act" to "Omnibus Health Care Rescue Act."

2. Amend Section 4 of the bill by changing the words "to survey" to "when surveying" (page 4, line 20).

3. Amend Section 6 of the bill by inserting in the first sentence of subsection 5 (b) (page 4, line 58) between the words "Health" and "shall" the following:

> ", based upon the recommendations of the advisory committee established in subsection (e) of this Section,"

4. Amend Section 6 of the bill by inserting after the word "agreement" and before the "." at the end of the first sentence of subsection 5 (b) (page 4, line 60) the following:

> "or for services not included in such transfer agreements"

5. Amend Section 6 of the bill by inserting after the word "manner" and before the ";" at the end of subdivision (1) of subsection 5(d) (page 5, line 35) the following:

> "and comply with subdivisions (2), (3), (4) and (5) of subsection (b) of this Section"

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6. Amend Section 6 of the bill by inserting in subdivision (1) of subsection 5(d) (page 5, line 36) between the words "patients" and "shall" the following:

"in need of emergency care"

7. Amend Section 6 of the bill by striking the word "and" at the end of subdivision (4) of subsection 5(d) (page 5, line 44) and substituting for "." at the end of subdivision (5) of subsection 5(d) (page 5, line 48) the following:

"; and"

8. Amend Section 6 of the bill by adding a new subdivision (6), (page 5, between lines 48 and 49), to subsection 5(d) to read as follows:

"(6) consideration be given to availability of appropriate facilities, services, and staff for providing care to the patient."

9. Add new SECTIONS 7, 8, and 9 to the bill (page 6, between lines 7 and 8) that read as follows and renumber the existing sections accordingly:

"SECTION 7. Section 7(a)(3), Article 4437f, Vernon's Texas Civil Statutes is amended to read as follows:

(3) the Governing Body of the hospital has adopted and implemented a patient transfer policy in accordance with Section[s] 5(b) and [~~(d)~~] has implemented patient transfer agreements in accordance with Section 5(d) or complied with Section 5(e) of this Act.

SECTION 8. Section 9B(d), Article 4437f, Vernon's Texas Civil Statutes, is amended to read as follows:

(d) If a hospital does not timely adopt, implement, and enforce a patient transfer policy in accordance with Section[s] 5(b) and [~~(d)~~] <u>implement patient transfer agreements in accordance with Section 5(d) or complied with Section 5(e)</u> of this Act, the facility is subject to a civil penalty of not more than $1,000 for each day of violation and for each act of violation. In determining the amount of the penalty, the district court shall consider the facility's history of previous violations, the seriousness of the violation, if the health and safety of the public was threatened by the violation, and the demonstrated good faith of the facility.

SECTION 9. Section 9C, Article 4437f, Vernon's Texas Civil Statutes is amended to read as follows:

Sec. 9C. A person harmed by the failure of a hospital to timely adopt, implement, or enforce a patient transfer policy in accordance with Section[s] 5(b) and [~~(d)~~] <u>patient transfer agreements in accordance with Section 5(d) or Section 5(e)</u> of this Act, may petition the district court of the county in which the person resides, or if the person is not a resident of the state, a district court of Travis County, for appropriate injunctive relief. Such person also may pursue remedies for civil damages existing under current common law."

10. Amend Section 16 of the bill by amending subdivision (C) of subsection 3.06(d)(5) by:

1) inserting between the word "<u>if</u>" and the "<u>:</u>" (page 13, line 57) the words "<u>a delegating physician</u>";

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2) deleting the words "the physician" at the beginning of subdivision (i) (page 13, line 58);

3) deleting the words "a physician" at the beginning of subdivision (ii) (page 13, line 63);

4) deleting the words "the physician" at the beginning of subdivision (iii) (page 13, line 65); and,

5) deleting the words "a physician" at the beginning of subdivision (iv) (page 13, line 68).

11. Amend Section 16 of the bill by amending subdivision (4) of subsection 3.06(d)(5)(D)(iv) (page 14, line 29) to read as follows:

"(4) a public health clinic or a family planning clinic under contract with the Texas Department of Human Services or the Texas Department of Health;"

12. Add new Sections 26 and 27 to the bill, amending the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes), (page 18, between lines 14 and 15), to read as follows and renumber subsequent sections appropriately:

SECTION 26. Section 1.03, Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (24) - (26) to read as follows:

(24) "Emergency medical services and trauma care system" means an arrangement of available resources that are coordinated for the effective delivery of emergency health care services in geographical regions consistent with planning and management standards.

(25) "Trauma patient" means any critically injured person who has been:

(A) evaluated by a physician, a registered nurse, or emergency medical services personnel; and

(B) found to require medical care in a trauma facility.

(26) "Trauma facility" means a health care facility that is capable of comprehensive treatment of seriously injured persons and that is a part of an emergency medical services and trauma care system.

SECTION 27. The Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) is amended by adding Articles 4 and 5 to read as follows:

ARTICLE 4. EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS

Sec. 4.01 DUTIES OF BUREAU. The bureau shall:

(1) develop and monitor a statewide emergency medical services and trauma care system;

(2) designate trauma facilities;

(3) develop and maintain a trauma reporting and analysis system to:

(A) identify severely injured trauma patients at each health care facility in this state;

(B) identify the total amount of uncompensated trauma care expenditures made each fiscal year by each health care facility in this state; and

(C) monitor trauma patient care in each health care facility, including each designated trauma center, in emergency medical services and trauma care systems in this

state; and

(4) provide for coordination and cooperation between this state and any other state with which this state shares a standard metropolitan statistical area.

Sec. 4.02. EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS. (a) The board by rule shall adopt minimum standards and objectives to implement emergency medical services and trauma care systems. The board by rule shall provide for the designation of trauma facilities and for triage, transfer, and transportation policies that reflect the recommendations of the technical advisory committee. The board and the technical advisory committee shall consider guidelines adopted by the American College of Surgeons and the American College of Emergency Physicians in adopting rules under this section. The rules must provide specific requirements for the care of trauma patients, must ensure that the trauma care is fully coordinated with all hospitals and emergency medical services in the delivery area, and must reflect the geographic areas of the state, considering time and distance. The rules must include:

(1) prehospital care management guidelines for triage and transportation of trauma patients;

(2) flow patterns of trauma patients and geographic boundaries regarding trauma patients;

(3) assurances that trauma facilities will provide quality care to trauma patients referred to the facilities;

(4) minimum requirements for resources and equipment needed by a trauma facility to treat trauma patients;

(5) standards for the availability and qualifica-

tions of the health care personnel, including physicians and surgeons, treating trauma patients within a facility;

(6) requirements for data collection, including trauma incidence reporting, system operation, and patient outcome;

(7) requirements for periodic performance evaluation of the system and its components; and

(8) assurances that designated trauma facilities will not refuse to accept the transfer of a trauma patient from another facility solely because of the person's inability to pay for services or because of the person's age, sex, race, religion, or national origin.

(b) The bureau may grant an exception to a rule adopted under this section if it finds that compliance with the rule would not be in the best interests of the persons served in the affected local emergency medical services and trauma care delivery area.

(c) Each emergency medical services and trauma care system must have:

(1) local or regional medical control for all field care and transportation, consistent with geographic and current communications capability;

(2) triage, transport, and transfer protocols; and

(3) one or more hospitals categorized according to trauma care capabilities using standards adopted by board rule.

(d) This section does not prohibit a health care facility from providing services that it is authorized to provide under a license issued to the facility by the depart-

1 ment.

2 Sec. 4.03 TRAUMA FACILITIES. (a) The bureau may
3 designate trauma facilities that are a part of an emergency
4 medical services and trauma care system. A trauma facility
5 shall be designated by the level of trauma care and services
6 provided in accordance with the American College of Surgeons
7 guidelines for level I, II, and III trauma centers and rules
8 adopted by the board for level IV trauma centers. In adopting
9 rules under this section, the board may consider trauma
10 caseloads, geographic boundaries, or minimum population
11 requirements, but the bureau may not deny designation solely
12 on these criteria. The board may not set an arbitrary limit
13 on the number of facilities designated as trauma facilities.

14 (b) A health care facility may apply to the bureau for
15 designation as a trauma facility and the bureau shall grant
16 the designation if the facility meets the requirements for
17 designation prescribed by board rules.

18 (c) After September 1, 1993, a health care facility may
19 not use the terms "trauma facility," "trauma hospital,"
20 "trauma center," or similar terminology in its signs or
21 advertisements or in the printed materials and information it
22 provides to the public unless the facility has been designated
23 as a trauma facility under this Act.

24 Sec. 4.04. FEES. (a) The bureau shall charge a
25 fee to a health care facility that applies for initial or
26 continuing designation as a trauma facility.

27 (b) The board by rules shall set the amount of the fee
28 schedule for initial or continuing designation as a trauma
29 facility according to the number of beds in the health care

facility.

(c) The board shall set the fee for the highest level designation at not more than $3 a bed, but the total fee for the facility may not be less than $100 or more than $3,000. The fee for an intermediate level designation shall be set at not more than $2 a bed, but the total fee for the facility may not be less than $100 or more than $2,000. The fee for the lowest level designation shall be set at not more than $1 a bed, but the total fee for the facility may not be less than $100 or more than $1,000.

(d) A fee under Subsection (c) of this section may not exceed the cost directly related to designating trauma facilities under this Act.

(e) This section does not restrict the authority of a health care facility to provide a service for which it has received a license under other state law.

Sec. 4.05. DENIAL, SUSPENSION, OR REVOCATION OF DESIGNATION. (a) The department may deny, suspend, or revoke a health care facility's designation as a trauma facility if the facility fails to comply with the rules adopted under this Act.

(b) The denial, suspension, or revocation of a designation by the department and the appeal from that action are governed by the department's rules for a contested case hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 4.06. ADVISORY COMMITTEE. (a) The board shall appoint a 12-member technical advisory committee to advise the bureau in areas requiring professional medical expertise and

to review and comment on hospital administrative and operational considerations relating to rules adopted under this Act.

(b) Appointees to the technical advisory committee must include:

(1) hospital administrators who represent both urban and rural facilities, chosen from a list of nominees submitted by statewide associations of hospitals;

(2) representatives appointed from a statewide associations of emergency nurses;

(3) practicing physicians who are board-certified in emergency medicine, neurosurgery, surgery, and anesthesiology;

(4) two family practice physicians, at least one of whom has been in active practice in a rural area for at least five years preceding appointment; and

(5) at least one member who usually represents claimants, chosen from a list of nominees submitted by the statewide association of trial lawyers.

(c) A member of the technical advisory committee is entitled to the per diem and travel allowance authorized by the General Appropriations Act for state employees.

ARTICLE 5. FUNDING FOR EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS

Sec. 5.01. LEGISLATIVE FINDINGS. The legislature finds that death caused by injury is the leading cause of death for persons one through 44 years of age, and the third overall cause of death for all ages. Effective emergency medical services response and resuscitation systems, medical

care systems, and medical facilities reduce the occurrence of unnecessary mortality. It is estimated that trauma costs more than $63 million a day nationally, which includes lost wages, medical expenses, and indirect costs. Proportionately, this cost to Texas would be more than $4 million a day. Many hospitals provide emergency medical care to patients who are unable to pay for catastrophic injuries directly or through an insurance or entitlement program. In order to improve the health of the people of the state, it is necessary to improve the quality of emergency and medical care to the people of Texas who are victims of unintentional, life-threatening injuries by encouraging hospitals to provide trauma care and increasing the availability of emergency medical services.

Sec. 5.02 GRANT PROGRAM. (a) The department shall establish a program to award grants to initiate, expand, maintain, and improve emergency medical services and to support medical systems and facilities that provide trauma care.

(b) The board by rule shall establish eligibility criteria for awarding the grants. The rules must require the department to consider:

(1) the need of an area for the provision of emergency medical services or trauma care and the extent to which the grant would meet the identified need;

(2) the availability of personnel and training programs;

(3) the availability of other funding sources;

(4) the assurance of providing quality services;

(5) the use or acquisition of helicopters for

emergency medical evacuation; and

(6) the development or existence of an emergency medical services system.

(c) The department may approve grants according to the rules adopted by the board. A grant awarded under this section is governed by the Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes) and by the rules adopted under that Act.

(d) The department may require a grantee to provide matching funds equal to not more than 75 percent of the amount of the grant.

Sec. 5.03. ACCEPTANCE OF GIFTS. A trauma facility or an emergency medical services and trauma care system may accept gifts or other contributions for the purposes of this Act.

13. Amend Section 26 of the bill by renumbering the references to Sections 14 and 15 in C.S.H.B. 18 to reflect the renumbering caused by the addition of new Sections.

14. Amend Section 27 of the bill by renumbering the references to Sections 24 and 25 in C.S.H.B. 18 to reflect the renumbering caused by the addition of new Sections.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

May 23, 1989

TO: Honorable Chet Brooks, Chairman
Committee on Health and Human Services
Senate Chamber
Austin, Texas

In Re: Senate Committee Substitute for House Bill No. 18

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Committee Substitute for House Bill No. 18 (relating to health care, including the center for rural health initiatives, surveys of hospitals and physicians, health professions resource center, hospital patient transfers, medical and hospital care advisory committee, state indemnification for the provision of charity care or services, rural health Family Practice residency programs, medical education, professional liability insurance for physicians and other health care professionals, securing of enhanced Medicaid and Medicare reimbursement in Texas by providing for the completion of orders for the dispensing of drugs under physician supervision, relating to the rule-making authority of the Texas Department of Human Services; providing civil penalties) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would establish a center for rural health initiatives, an advisory committee to the center, a comprehensive health professions resource center and would require that a physician be included on Title XVIII reviews for the purpose of surveying physicians on the medical staff of a hospital.

The bill would also require the Department of Human Services to adjust its Medicaid reimbursement rates for hospitals by adjusting the standard dollar amount to not less than $1,583.

The bill would require the Texas Higher Education Coordinating Board to increase emphasis on family practice residency services and continuing medical education in rural areas.

The bill would provide state indemnification, subject to specified limitations, of certain health care providers whose medical practice consists of substantial percentage of charity care patients. The Attorney General would be required to monitor developments of litigation involving a potential medical malpractice claim. The indemnification provision would be effective until September 1, 1993.

The bill would provide for reductions in malpractice insurance premiums paid by health care providers affected by provisions of the bill.

The bill would authorize physicians at medically under-served sites to delegate certain tasks to nurses through physicians orders, and would require the Board of Nurse Examiners to provide regulatory and educational activity related to this provision.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost Out of the General Revenue Fund *	Probable Cost Out of the Professional Nurse Registration Fund No. 138	Probable Cost Out of Federal Funds
1990	$14,485,820	$53,746	$367,380
1991	1,033,112	45,246	379,020
1992	1,021,592	45,246	390,540
1993	1,018,232	45,246	393,900
1994	1,019,132	45,246	393,000

Fiscal Year	Probable Cost Out of the State Board of Insurance Operating Fund No. 36	Change in Number of State Employees from FY 1989
1990	$86,160	+ 8.5
1991	66,932	+ 8.5
1992	66,932	+ 8.5
1993	66,932	+ 8.5
1994	66,932	+ 8.5

* Given that the frequency of such liability on the part of the state as well as the costs associated with these claims is not known, the fiscal implication of the indemnification costs of the bill for 1992 and subsequent years cannot be determined. The indemnification cost included in the cost out of the General Revenue Fund for the 1990-91 biennium is $13,556,437.

Similar annual costs would continue as long as the provisions of the bill are in effect.

Local units of government that provide health care services for indigent persons would realize a minimal increase in reimbursement. Similarly, state operated health care providers such as The University of Texas Medical Branch at Galveston would also realize a minimal increase in reimbursement.

Source: Department of Health; Department of Human Services;
Board of Nurse Examiners; Office of the Attorney General;
State Board of Insurance;
LBB Staff: JO, JWH, AL, CD/GR, CKM

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

May 15, 1989

TO: Honorable Chet Brooks, Chairman
Committee on Health and Human Services
Senate Chamber
Austin, Texas

In Re: House Bill No. 18,
as engrossed
By: McKinney, et. al.

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 18, as engrossed (relating to health care, including the office of rural health care, surveys of hospitals and physicians, health education enrollments, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers; providing civil penalties) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would establish an office of rural health, an advisory committee on rural health, a comprehensive health professions resource center and require that a physician be included on those Title XVIII reviews for the purpose of surveying physicians on the medical staff of a hospital. In addition, the office of rural health would serve as the State Medical Education Board for purposes of Article III, Section 50a, of the Texas Constitution. Any changes in rural health care delivery would require the approval of the advisory committee.

The bill would also require the Department of Human Services to adjust its Medicaid reimbursement rates for hospitals. The most significant of these cost adjustments are the elimination of the 10% budgetary adjustment factor adopted in 1986 and the inclusion of an outlier adjustment for high cost patients.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost to the Department of Health out of the General Revenue Fund	Probable Cost Out of the General Revenue Fund to the Department of Human Services	Probable Cost to the Department of Human Services Out of Federal Funds	Change in Number of State Employees from FY 1989
1990	$371,763	$232,620	$367,380	+ 4.0
1991	362,132	220,980	379,020	+ 4.0
1992	362,132	209,460	390,540	+ 4.0
1993	362,132	206,100	393,900	+ 4.0
1994	362,132	207,000	393,000	+ 4.0

Similar annual costs would continue as long as the provisions of the bill are in effect.

Local units of government that provide health care services for indigent persons would realize a minimal increase in reimbursement. Similarly, state operated health care providers such as The University of Texas Medical Branch at Galveston would also realize a minimal increase in reimbursement.

Source: Department of Health; Department of Human Services;
LBB Staff: JO, JWH, AL, CD/GR, BL

71FHB18ae

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 20, 1989

TO: Honorable Brad Wright, Chair
Committee on Public Health
House of Representatives
Austin, Texas

In Re: Committee Substitute for House Bill No. 18

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Committee Substitute for House Bill No. 18 (relating to the office of rural health care, surveys of hospitals and physicians, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers; providing civil penalties) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would establish an office of rural health, an advisory committee on rural health, a comprehensive health professions resource center and require that a physician be included on those Title XVIII reviews for the purpose of surveying physicians on the medical staff of a hospital. In addition, the office of rural health would serve as the State Medical Education Board for purposes of Article III, Section 50a, of the Texas Constitution. Any changes in rural health care delivery would require the approval of the advisory committee.

The bill would also require the Department of Human Services to adjust its Medicaid reimbursement rates for hospitals. The most significant of these cost adjustments are the elimination of the 10% budgetary adjustment factor adopted in 1986 and the inclusion of an outlier adjustment for high cost patients.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost to the Department of Health out of the General Revenue Fund	Probable Cost Out of the General Revenue Fund to the Department of Human Services	Probable Cost to the Department of Human Services Out of Federal Funds	Change in Number of State Employees from FY 1989
1990	$371,763	$232,620	$367,380	+ 4.0
1991	362,132	220,980	379,020	+ 4.0
1992	362,132	209,460	390,540	+ 4.0
1993	362,132	206,100	393,900	+ 4.0
1994	362,132	207,000	393,000	+ 4.0

Similar annual costs would continue as long as the provisions of the bill are in effect.

Local units of government that provide health care services for indigent persons would realize a minimal increase in reimbursement. Similarly, state operated health care providers such as The University of Texas Medical Branch at Galveston would also realize a minimal increase in reimbursement.

Criminal Justice Policy Impact Statement: No change in the sanctions applicable to adults convicted of felony crimes is anticipated.

Source: Department of Health; Department of Human Services;
LBB Staff: JO, JWH, AL, CD/GR, LV

71FCSHB18

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 3, 1989

TO: Honorable Brad Wright, Chair
Committee on Public Health
House of Representatives
Austin, Texas

In Re: House Bill No. 18
By: McKinney/Schlueter

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 18 (relating to the office of rural health care, surveys of hospitals and physicians, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would establish an office of rural health, an advisory committee on rural health, and require that a physician be included on all Title XVIII surveys in order to survey physicians on the medical staff of a hospital. Any changes in rural health delivery would require the approval of the advisory committee.

The bill would also require the Department of Human Services to adjust its Medicaid reimbursement rates for hospitals. The most significant of these cost adjustments are the elimination of the 10% budgetary adjustment factor adopted in 1986 and the inclusion of an outlier adjustment for high cost patients.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost to the Department of Health out of the General Revenue Fund	Probable Cost Out of the General Revenue Fund to the Department of Human Services	Probable Cost to the Department of Human Services Out of Federal Funds	Change in Number of State Employees from FY 1989
1990	$556,430	$44,184,215	$69,780,744	+ 4.0
1991	546,799	45,450,745	77,959,112	+ 4.0
1992	546,799	45,397,263	84,643,594	+ 4.0
1993	546,799	47,191,642	90,193,053	+ 4.0
1994	546,799	50,202,442	95,311,882	+ 4.0

Similar annual costs would continue as long as the provisions of the bill are in effect.

Local units of government that provide health care services for indigent persons would realize increased reimbursement. Similarly, state operated health care providers such as The University of Texas Medical Branch at Galveston would also realize increased reimbursement.

Criminal Justice Policy Impact Statement: No change in the sanctions applicable to adults convicted of felony crimes is anticipated.

Source: Department of Health; Department of Human Services;
LBB Staff: JO, JWH, AL, CD/GR, PA

71FHB18

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ENROLLED

H.B. No. 18

AN ACT

relating to health care, including powers and duties of the center for rural health initiatives, the collection of data concerning health professions, surveys of hospitals and physicians, breast cancer screening, hospital patient transfers, the establishment of advisory committees, the swing bed program to provide reimbursement for skilled nursing patients, rural health family practice residency programs, medical education, professional liability insurance for physicians and other health care professionals, state indemnification for the provision of charity care or services, the delegation of prescription drug orders, qualifications of expert witnesses and jury instructions in health care liability claims, and emergency medical services and trauma care systems; providing civil penalties.

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

SECTION 1. This Act may be cited as the Omnibus Health Care Rescue Act.

SECTION 2. Title 71, Revised Statutes, is amended by adding Article 4414b-1 to read as follows:

Art. 4414b-1. CENTER FOR RURAL HEALTH INITIATIVES

Sec. 1. DEFINITIONS. (a) "Center" means the Center for Rural Health Initiatives.

(b) "Executive committee" means the executive committee of the Center for Rural Health Initiatives.

Sec. 2. CENTER FOR RURAL HEALTH INITIATIVES. The Center for Rural Health Initiatives is established.

Sec. 3. PURPOSE. The center shall assume a leadership role in working or contracting with state and federal agencies, universities, private interest groups, communities, foundations, and offices of rural health to develop rural health initiatives and maximize use of existing resources without duplicating existing effort. The center shall provide a central information and referral source and serve as the primary state resource in coordinating, planning, and advocating for the continued access to rural health care services in Texas.

Sec. 4. DUTIES. (a) The center shall:

(1) educate the public and recommend appropriate public policies regarding the continued viability of rural health care delivery in Texas;

(2) monitor and work with state and federal agencies to assess the impact of proposed rules and regulations on rural areas; provide impact statements of proposed rules and regulations as deemed appropriate by the center; streamline regulations to assist in the development of service diversification of health care facilities; and target state and federal programs to rural areas;

(3) promote and develop community involvement and community support in maintaining, rebuilding, or diversifying local health services;

(4) promote and develop diverse and innovative health care service models in rural areas;

(5) encourage the use of advanced communications

technology to provide access to specialty expertise, clinical consultation, and continuing education;

(6) assist rural health care providers, communities, and individuals in applying for public and private grants and programs;

(7) encourage the development of regional emergency transportation networks;

(8) work with state agencies, universities, and private interest groups to conduct and promote research on rural health issues, maintain and collect a timely data base, and develop and maintain a rural health resource library;

(9) solicit the assistance of other offices or programs of rural health in Texas that are university-based to carry out the duties of this Act;

(10) disseminate information and provide technical assistance to communities, health care providers, and individual consumers of health care services; and

(11) develop plans to implement a fee-for-service health care professional recruitment service and a medical supplies group purchasing program within the center.

(b) The center is authorized to solicit, receive, and spend grants, gifts, and donations from public and private sources.

(c) The center may contract with public and private entities in the performance of its responsibilities.

Sec. 5. EXECUTIVE COMMITTEE. (a) The executive committee is the governing body of the center.

(b) The executive committee is composed of:

(1) three members appointed by the governor, including: one physician licensed to practice in Texas, one pharmacist licensed to practice in Texas, and one business or community leader;

(2) three members appointed by the lieutenant governor, including: one registered nurse licensed to practice in Texas, one allied health professional who is licensed, registered, or certified to practice in Texas, and one rural health policy expert; and

(3) three members appointed by the speaker of the house of representatives, including: one physician licensed to practice in Texas, one hospital administrator, and one health economist.

(c) The appointments to the executive committee shall be individuals who reside, work, or practice in rural areas of the state or who have demonstrated knowledge and expertise in rural issues.

(d) The appointments to the executive committee shall provide for a balanced representation of the geographical regions of the state.

(e) The members of the executive committee serve staggered six-year terms, with the terms of three members expiring August 31 of each odd-numbered year.

(f) The members of the executive committee shall annually elect one member to serve as presiding officer.

(g) The executive committee shall meet at least quarterly or at the call of the presiding officer and shall adopt rules for the

conduct of the meetings.

(h) Any actions taken by the executive committee must be approved by a majority vote.

(i) Members of the executive committee receive no compensation but are entitled to reimbursement of actual and necessary expenses incurred in the performance of their duties.

(j) The executive committee shall establish policies and adopt rules to implement this Act.

Sec. 6. EXECUTIVE DIRECTOR. (a) The executive committee may hire an executive director to serve as the chief executive officer of the center and to perform the administrative duties of the office.

(b) The executive director serves at the will of the executive committee.

(c) The executive director may hire staff within the guidelines established by the executive committee.

Sec. 7. ADVISORY COMMITTEE. (a) The advisory committee is composed of the following:

(1) the commissioner of health or a representative of the department designated by the commissioner;

(2) the commissioner of human services or a representative of the department designated by the commissioner;

(3) the commissioner of agriculture or a representative of the department designated by the commissioner;

(4) the executive director of the Texas Department of Commerce or a representative of the department designated by the executive director; and

(5) the commissioner of higher education or a representative of the Texas Higher Education Coordinating Board designated by the commissioner.

(b) The executive committee may appoint additional agencies as necessary to serve on the advisory committee in a temporary capacity. The executive committee also may request that a state agency designate an employee to serve as a liaison with the center.

(c) The Texas Department of Health shall provide administrative support to the center as necessary to carry out the duties of this Act. The department and the other agencies represented on the advisory committee shall provide staff support to the center and may provide staff and other support services to the executive committee.

(d) The advisory committee may participate fully in executive committee meetings; however, advisory committee members do not have voting privileges.

Sec. 8. REPORTS TO LEGISLATURE. No later than January 1 of each odd-numbered year, the center shall submit a biennial report to the legislature regarding the activities of the center and any findings and recommendations relating to rural issues.

Sec. 9. APPLICATION OF SUNSET ACT. The Center for Rural Health Initiatives is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that Act, the center is abolished and this Act expires September 1, 2001.

SECTION 3. Title 71, Revised Statutes, is amended by adding Article 4414b-2 to read as follows:

Art. 4414b-2. HEALTH PROFESSIONS RESOURCE CENTER. (a) In conjunction with the Texas Higher Education Coordinating Board and in such a way as to avoid duplication of effort, the department shall establish a comprehensive health professions resource center for the collection and analysis of educational and employment trends for health professions in this state.

(b) The department shall place high priority on collecting and disseminating data on health professions demonstrating an acute shortage in this state, including:

(1) data concerning nursing personnel; and

(2) the health professions in which shortages occur in rural areas.

(c) To the extent possible, the department may collect high priority health professions data from existing sources that the department determines are credible. The department may enter agreements with those sources that establish guidelines concerning the identification, acquisition, transfer, and confidentiality of the data.

(d) At a minimum, the data collected by the department shall include the following in regard to health professionals:

(1) the number and geographic distribution;

(2) licensure or certification status;

(3) specialty areas, if applicable; and

(4) trends or changes in license holders according to number or geographic distribution.

(e) The department may use the data collected and analyzed under this article to publish reports regarding:

(1) the educational and employment trends for health professions;

(2) the supply and demand of health professions; and

(3) other issues, as necessary, concerning health professions in this state.

(f) The board may adopt rules to govern the reporting and collection of data.

(g) In this section, "health profession" means any health or allied health profession that is licensed, certified, or registered by a state board, agency, or association.

(h) The Texas Higher Education Coordinating Board may require the assistance of other state agencies or institutions of higher education for the development of any report.

SECTION 4. Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended by adding Section 5 to read as follows:

Sec. 5. The Texas Department of Health shall ensure that a licensed physician involved in direct patient care as defined by the Texas State Board of Medical Examiners is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) when surveying the quality of services provided by physicians in hospitals.

SECTION 5. Article 4414b, Revised Statutes, is amended by adding Section 1.15 to read as follows:

Sec. 1.15. BREAST CANCER SCREENING. (a) The Center for Rural Health Initiatives may establish a breast cancer screening program in counties with a population of 50,000 or less, according

to the most recent federal census.

(b) The Center for Rural Health Initiatives may provide breast cancer screening under the program through contracts with public or private entities to provide mobile units and on-site screening services.

(c) The Center for Rural Health Initiatives shall coordinate the breast cancer screening program with programs administered by the Texas Cancer Council.

(d) The board may appoint an advisory committee to advise the Office of Rural Health Care on the breast cancer screening program, including targeting those areas of the state in which the program is most needed. The advisory committee may be composed of physicians who practice in rural areas, administrators of hospitals in rural areas, and representatives of organizations formed to promote breast cancer awareness.

SECTION 6. Section 5, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. (a) The Licensing Agency, with the advice of the Hospital Licensing Advisory Council, shall adopt and enforce such rules and minimum standards as may be designed to further the purposes of this Act. Except as provided by Subsections (b) and (d) of this section, the rules or minimum standards so adopted or enforced shall be limited to minimum requirements for staffing by physicians and nurses, hospital services relating to patient care, and safety, fire prevention, and sanitary provisions of hospitals as defined in this Act. Any rules or standards set shall be

adopted by the Texas Board of Health in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The standards may not exceed the minimum standards for certification under Title XVIII of the Social Security Act.

(b) The Texas Board of Health, based upon the recommendations of the advisory committee established in Subsection (e) of this section, shall adopt rules to implement the following minimum standards governing the transfer of patients between hospitals that do not have a transfer agreement or for services not included in such transfer agreements. The rules must provide that patient transfers between hospitals will [~~should~~] be accomplished through hospital policies that result in [~~a~~] medically appropriate transfers [~~manner~~] from physician to physician as well as from hospital to hospital by providing [~~for~~]:

(1) notification to the receiving hospital prior to the transfer and confirmation by that hospital that the patient meets that hospital's admissions criteria relating to appropriate bed, physician, and other services necessary to treat the patient;

(2) the use of medically appropriate life support measures which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use to stabilize the patient prior to transfer and to sustain the patient during the transfer;

(3) the provision of appropriate personnel and equipment which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use for the

transfer;

(4) the transfer of all necessary records for continuing the care for the patient; and

(5) that the transfer of a patient may not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, or economic status [~~the date by which each hospital must adopt policies in accordance with the rules~~].

(c) Minimum standards prescribed by Board rules shall not contain provisions which require the consent of the patient or personal representative of the patient prior to transfer. The rules shall also provide that a public hospital or hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services, and staff available for providing care to the patient.

(d) If transfer agreements are executed between hospitals that are consistent with the requirements of this subsection, any patient transfers between the hospitals will be governed by the agreement. The transfer agreement shall be submitted to the Texas Department of Health for review for compliance with the transfer agreement requirements. Such review shall be completed within 30 days from the date submitted by hospitals. At a minimum, the transfer agreement shall provide that:

(1) transfers will be accomplished in a medically appropriate manner and comply with Subdivisions (2), (3), (4), and (5) of Subsection (b) of this section;

(2) the transfer or receipt of patients in need of

emergency care shall not be based upon the individual's inability to pay for the services rendered by the transferring or receiving hospital;

(3) multiple transfer agreements may be entered into by a hospital based upon the type or level of medical services available at other hospitals;

(4) the hospitals will recognize the right of an individual to request transfer into the care of a physician and hospital of the individual's own choosing;

(5) the hospitals will recognize and comply with the requirements of the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes) relating to the transfer of patients to mandated providers; and

(6) consideration be given to availability of appropriate facilities, services, and staff for providing care to the patient. [~~Each-hospital-shall-adopt-binding-policies--relating to--patient-transfers-that-are-consistent-with-the-rules-adopted-by the-Texas-Board--of--Health.---If--possible,--each--hospital--shall implement--its--transfer--policies--by-adopting-transfer-agreements with-other-hospitals.~~]

(e) The Texas Department of Health may adopt rules to facilitate the transfer of patients between hospitals that do not have a transfer agreement based upon the recommendation of an advisory committee appointed by the Texas Board of Health. The advisory committee is composed of 12 members, including:

(1) two physicians licensed to practice in this state who have been in active practice in a rural area;

(2) two hospital administrators who have been actively engaged in hospital administration in a rural area and who represent a public hospital and a private hospital;

(3) two physicians licensed to practice in this state who have been in active practice in an urban area;

(4) two hospital administrators who have been actively engaged in hospital administration in an urban area and who represent a public hospital and a private hospital;

(5) an emergency medical technician and a person serving as a volunteer to an emergency medical services provider; and

(6) two consumer members.

(f) The Commissioner of Health shall appoint, with the advice and consent of the Texas Board of Health, a person to serve in the capacity of Hospital Licensing Director. The duties of the Hospital Licensing Director shall be the administration of this Act and he shall be directly responsible to the Licensing Agency. Any person so appointed as Hospital Licensing Director must possess the following qualifications: He shall have had at least five (5) years experience and/or training in the field of hospital administration, be of good moral character, and a resident of the State of Texas for a period of not less than three (3) years.

SECTION 7. Section 7(a), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Applications for licenses shall be made to the Licensing Agency upon forms provided by it, and shall contain such

information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that:

(1) there are one or more physicians on the medical staff of the hospital;

(2) these physicians are currently licensed by the Texas State Board of Medical Examiners; and

(3) the Governing Body of the hospital has adopted and implemented a patient transfer policy in accordance with Section [~~Sections~~] 5(b) and has implemented patient transfer agreements in accordance with Section 5(d) or complied with Section 5(e) [~~(d)~~] of this Act.

SECTION 8. Section 9B(d), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) If a hospital does not timely adopt, implement, and enforce a patient transfer policy in accordance with Section [~~Sections~~] 5(b) and implement patient transfer agreements in accordance with Section 5(d) or complied with Section 5(e) [~~(d)~~] of this Act, the facility is subject to a civil penalty of not more than $1,000 for each day of violation and for each act of violation. In determining the amount of the penalty, the district court shall consider the facility's history of previous violations, the seriousness of the violation, if the health and safety of the public was threatened by the violation, and the demonstrated good faith of the facility.

SECTION 9. Section 9C, Texas Hospital Licensing Law (Article

4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9C. A person harmed by the failure of a hospital to timely adopt, implement, or enforce a patient transfer policy in accordance with Section [~~Sections~~] 5(b) and patient transfer agreements in accordance with Section 5(d) or Section 5(e) [~~(d)~~] of this Act, may petition the district court of the county in which the person resides, or if the person is not a resident of the state, a district court of Travis County, for appropriate injunctive relief. Such person also may pursue remedies for civil damages existing under current common law.

SECTION 10. Section 32.022, Human Resources Code, is amended to read as follows:

Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES [~~COMMITTEE~~]. (a) The board, on the recommendation of the commissioner, shall appoint a medical care advisory committee to advise the board and the department in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's goal of providing access to high quality, comprehensive medical and health care services to medically indigent [~~needy~~] persons in the state. To ensure that qualified applicants receive services, the committee shall consider changes in the process the department uses to determine eligibility.

(b) The board shall appoint the committee in compliance with the requirements of the federal agency administering medical assistance. The appointments shall provide for a balanced

representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work.

(c) The department shall adopt rules for membership on the committee to provide for efficiency of operation, rotation, stability, and continuity.

(d) The board, on the recommendation of the commissioner, may appoint regional and local medical care advisory committees and other advisory committees as considered necessary.

(e) The board, on the recommendation of the commissioner, shall appoint a hospital payment advisory committee. The committee shall advise the board and the department on necessary changes in hospital payment methodologies for inpatient hospital prospective payments and on adjustments for disproportionate share hospitals that will ensure reasonable, adequate, and equitable payments to hospital providers and that will address the essential role of rural hospitals. The board shall appoint to the committee persons with knowledge of and an interest in hospital payment issues.

SECTION 11. Section 32.024, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department, in its rules and standards governing the scope of hospital and long-term services, shall establish a swing bed program in accordance with federal regulations to provide reimbursement for skilled nursing patients who are served in hospital settings provided that the length of stay is limited to 30 days per year and the hospital is located in a county with a population of 100,000 or less. If the swing beds are used for more

than one 30-day length of stay per year, per patient, the hospital must comply with the Minimum Licensing Standards as mandated by Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442(c), Vernon's Texas Civil Statutes), and the Medicaid standards for nursing home certification, as promulgated by the Texas Department of Human Services.

SECTION 12. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.917 to read as follows:

Sec. 51.917. RURAL HEALTH; FAMILY PRACTICE RESIDENCY PROGRAM. (a) The Texas Higher Education Coordinating Board, the Center for Rural Health Initiatives in the Texas Department of Health, medical schools, nursing schools, and schools of allied health sciences shall cooperate to improve and expand programs for rural areas.

(b) The Texas Higher Education Coordinating Board shall:

(1) encourage and coordinate the creation or expansion of a rural preceptor program among medical schools, teaching hospitals, nursing schools, and schools of allied health sciences; and

(2) require family practice residency programs to provide an opportunity for residents to have a one-month rotation through a rural setting.

(c) The Center for Rural Health Initiatives shall develop relief service programs for rural physicians and allied health personnel to facilitate ready access to continuing medical education.

(d) Each medical school shall:

(1) incorporate a clerkship in family practice during the third core clinical year; and

(2) report to the legislature and the Texas Higher Education Coordinating Board on its efforts to fulfill the intent of Chapter 58, Education Code, of having at least 25 percent of their first year primary care residents in family practice.

SECTION 13. Section 61.534, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher education, including loans for undergraduate education, received by a physician through a lender [~~in Texas~~].

(c) Each fiscal biennium, the coordinating board shall attempt to allocate all funds appropriated to it for the purpose of providing repayment assistance under this subchapter.

SECTION 14. Section 61.536, Education Code, is amended to read as follows:

Sec. 61.536. ADVISORY COMMITTEES. The coordinating board may:

(1) appoint advisory committees from outside the board's membership to assist the board in performing its duties under this subchapter; and

(2) request the assistance of the Family Practice Residency Advisory Committee in performing those duties.

SECTION 15. Section 3, Article 5.15-1, Insurance Code, is amended to read as follows:

Sec. 3. RATE STANDARDS. Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written in [~~inside~~] this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in

the area with respect to the classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

SECTION 16. Article 5.15-1, Insurance Code, is amended by adding Section 4B to read as follows:

Sec. 4B. RATE APPEALS. (a) Each insurer covered by this article shall adopt a procedure for reconsideration of a rate or premium charged a physician or health care provider for professional liability insurance coverage. The procedure shall include an opportunity for a hearing before officers or employees who have responsibility for determining rates and premiums to be charged for professional liability insurance and a requirement that the insurer reconsider the rate or premium and provide the physician or health care provider a written explanation of the rate or premium being charged.

(b) If a physician or health care provider is not satisfied with a decision under procedures established under Subsection (a) of this section, the physician or health care provider may appeal to the State Board of Insurance for a review of the rate or premium and a determination if the rate or premium being charged complies with criteria under Section 3 of this article. A decision of the State Board of Insurance under this subsection may not be appealed.

(c) The State Board of Insurance by rule shall establish

criteria to be followed by insurers in establishing reconsideration procedures under Subsection (a) of this section and standards and procedures to be followed in review of rates and premiums by the board.

SECTION 17. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 110 to read as follows:

CHAPTER 110. STATE LIABILITY FOR INDEMNIFICATION OF CERTAIN HEALTH CARE PROFESSIONALS

Sec. 110.001. DEFINITIONS. In this chapter:

(1) "Charity care or services" means care or services provided by a health care professional under:

(A) the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes);

(B) the Medicaid program under Chapter 32, Human Resources Code;

(C) the Maternal and Infant Health Improvement Act (Article 4447y, Vernon's Texas Civil Statutes);

(D) the Texas Primary Health Care Services Act (Article 4438d, Vernon's Texas Civil Statutes);

(E) the Chronically Ill and Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes); or

(F) a contract with a migrant or community health center that receives funds under 42 U.S.C. 254b and 254c.

(2) "Eligible medical malpractice claim" means a medical claim against a health care professional who renders charity care in at least 10 percent of the patient encounters engaged in by said health care professional during the policy year

in which the claim was made.

(3) "Health care professional" means:

(A) a person who is licensed to practice medicine under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

(B) a person registered by the Board of Nurse Examiners as an advanced nurse practitioner or a certified nurse midwife; or

(C) a person recognized by the Board of Medical Examiners as a physician assistant.

(4) "Insurer" means an insurance company chartered to write or admitted to write and writing medical professional liability insurance in this state or the Texas Medical Liability Insurance Underwriting Association (Subchapter E, Chapter 21, Article 21.49-3, Insurance Code) or any self-insurance trust created under Subchapter E, Chapter 21, Article 21.49-4, Insurance Code, for the purpose of providing medical professional liability insurance. The term "insurer" does not include an institution of higher education that provides medical professional liability coverage under Chapter 59, Education Code.

(5) "Medical malpractice claim" means a claim or action against a health care professional alleging one or more negligent acts or omissions in the diagnosis, care, or treatment of a patient and alleging that injury to or death of a patient resulted therefrom, without regard to whether said claim or action is based upon tort or contract principles.

(6) "Patient encounter" means an occasion on which a

health care professional renders professional health care services to a patient.

Sec. 110.002. STATE LIABILITY: PERSONS COVERED. In a cause of action against a health care professional based on conduct described in Section 110.003, the state shall indemnify the health care professional for actual damages adjudged against the health care professional or which the health care professional becomes obligated to pay pursuant to a settlement reached in accordance with this chapter.

Sec. 110.003. STATE LIABILITY: CONDUCT COVERED. (a) The state is liable for indemnification under this chapter only if the damages are based on an eligible medical malpractice claim against a health care professional in the course and scope of said person's professional health care activities.

(b) The state is not liable for indemnification for an intentional act or an act of gross negligence.

Sec. 110.004. LIMITS ON AMOUNT OF RECOVERABLE DAMAGES. (a) State liability for indemnification under this chapter may not exceed:

(1) $100,000 for a single occurrence in the case of an eligible medical malpractice claim arising as a result of prenatal care, care during labor and delivery, and care given to a mother or infant during the 30-day period immediately following delivery, or as a result of emergency care; or

(2) $25,000 for a single occurrence in the case of any other eligible medical malpractice claim.

(b) The state shall be payor of first resort for an eligible

medical malpractice claim for amounts falling within the limits set forth in Subsection (a) of this section.

Sec. 110.005. TIMELY NOTICE TO ATTORNEY GENERAL REQUIRED. The state is not liable for indemnification for damages under this chapter unless the health care professional against whom the cause of action is asserted:

(1) is covered under a valid professional liability insurance policy that is issued by an insurer and that provides coverage for the medical malpractice claim that is the subject of the claim or action with a policy limit of not less than $100,000 per occurrence and $300,000 aggregate for the policy period; and

(2) delivers or causes to be delivered to the attorney general a true copy of any written notice of said medical malpractice claim and any summons or citation served on the health care professional, which written notice, summons, or citation shall be delivered to the attorney general not later than the 45th day after the receipt thereof by the health care professional.

Sec. 110.006. INFORMATION PROVIDED TO ATTORNEY GENERAL; SETTLEMENTS. (a) The insurer for a health care professional who is the subject of an eligible malpractice claim shall designate an attorney or other representative assigned to the claim who shall keep the attorney general or his designee reasonably informed of significant developments in the claim or action, including all settings for trials or dispositive motions, all settlement offers and demands, all pleadings by or against the health care professional, all judgments or other dispositive orders, and all written recommendations of counsel for the health care professional

regarding settlement.

(b) If a settlement agreement is reached between the health care professional and a claimant, the insurer for the health care professional shall promptly notify the attorney general of same. The settlement shall become final and binding upon the state unless, within 10 days of the receipt of said notice by the attorney general (or such greater or lesser period of time as the court in which the action is filed may allow), the attorney general files in said court (or, if no action is pending in any court, in a district court of Travis County, Texas) a written objection to the settlement setting forth in detail why the court should find that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case. A hearing shall promptly be held upon any such objection, either before the court or a special master appointed by the court for that purpose. At any such hearing, the burden shall be upon the attorney general to prove that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case. Unless the court finds that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case, the court shall enter an order approving

the settlement and directing the state to make the required indemnity payment thereunder. Such an order shall be reviewable by an appellate court only upon the filing of an application for writ of mandamus within 15 days of the date said order is signed, and only for an abuse of discretion by the trial court. Any such application for writ of mandamus shall be given priority in the appellate court in which it is filed above all other applications for writ of mandamus docketed in said court.

(c) If the attorney general files an objection under Subsection (b) of this section, the court may, with the agreement of the parties to the settlement agreement, permit the payment of any other sums due to be paid under said agreement by parties other than the state while the objection of the attorney general is pending adjudication.

(d) If a suit involving an eligible medical malpractice claim is imminently scheduled for jury trial, or is being tried before a jury, and settlement negotiations are ongoing between the health care professional and any claimant, either of those parties may request the court to require the attorney general or his designee to assign an attorney to monitor such negotiations so that if a settlement agreement is reached between the parties, the attorney so assigned by the attorney general can immediately advise the court of any objection, in which event the hearing described in Subsection (b) of this section regarding the reasonableness of the settlement amount shall be held immediately after the settlement agreement is reduced to writing or announced on the record in open court, so that the trial court may render its determination before

the petit jury or jury panel is discharged.

(e) Except to the extent that the attorney general is authorized under this section to object to the reasonableness of a settlement, the attorney general shall not be authorized to intervene in any court proceeding involving an eligible medical malpractice claim. The insurer for the health care professional shall be in charge of the defense of any such claim.

(f) Upon final disposition of an eligible medical malpractice claim by settlement or judgment, funds shall be paid by the comptroller on vouchers that shall be promptly prepared, verified, and signed by the attorney general.

Sec. 110.007. EXPIRATION. Unless continued in existence, this chapter expires September 1, 1993.

SECTION 18. Subchapter B, Chapter 5, Insurance Code, is amended by adding Article 5.15-4 to read as follows:

Art. 5.15-4. REDUCTION IN CERTAIN PROFESSIONAL LIABILITY INSURANCE PREMIUMS

Sec. 1. DEFINITIONS. In this article, "charity care or services," "eligible medical malpractice claim," "health care professional," "insurer," "medical malpractice claim," and "patient encounter" have the meanings assigned by Section 110.001, Civil Practice and Remedies Code.

Sec. 2. QUALIFICATION FOR DISCOUNT. A health care professional is entitled to a premium discount for medical professional liability insurance coverage if the professional meets the criteria stated in Section 4 of this article.

Sec. 3. AMOUNT OF PREMIUM DISCOUNT. The State Board of

Insurance shall approve premium discounts to be used by each insurer on premiums to be charged to a health care professional covered by this section. The board shall base the approved discounts upon loss and statistical data provided by each insurer and on the reduction in the insurer's liability exposure based on the state's indemnification of the first $100,000 or $25,000 under Chapter 110, Civil Practice and Remedies Code, of an eligible malpractice claim against a health care professional.

Sec. 4. QUALIFICATION FOR PREMIUM DISCOUNT. A health care professional is entitled to a premium discount for medical professional liability insurance coverage if:

(1) the projected patient encounters of the health care professional during the policy year will involve providing charity care or services in 10 percent or more of the health care professional's patient encounters; and

(2) the health care professional completes 15 hours of continuing education during the term of the policy on patient safety and risk reduction subjects related to the health care professional's practice that are sponsored, approved, endorsed, or accredited by the State Board of Insurance, an "insurer" as defined in this Act, or state or nationally recognized accrediting organizations or continuing medical or nurse education programs.

Sec. 5. REQUEST FOR PREMIUM DISCOUNT. A health care professional who desires a premium discount for medical professional liability insurance coverage shall submit to the insurer not later than the 30th day before the beginning of the term of the policy a written verified application for a new policy

or a verified statement for a policy to be renewed stating that the health care professional desires a premium discount and qualifies for a premium discount under this article. The application or statement also shall provide necessary information to determine the eligibility of the health care professional and the amount of the discount.

Sec. 6. AUDIT; PENALTY. (a) At the end of a policy year, an insurer may audit the records of any health care professional to whom the insurer has provided a discount under this article to determine if the health care professional provided the charity care and services necessary under Section 4 of this article to qualify for the premium discount during the preceding policy year.

(b) To conduct the audit, the insurer is entitled to access to any books and records necessary to determine if the verified application or statement submitted for the coverage was correct and the health care professional was eligible for the premium discount. If a health care professional denies access to the property or to the books and records, the insurer may obtain an appropriate court order from a court of competent jurisdiction to gain access to the books and the records.

(c) If an insurer's audit indicates that a health care professional did not provide charity care or services in 10 percent or more of the health care professional's patient encounters, the insurer may charge the health care professional an amount equal to the difference between the premium paid and the premium that would have been due if the health care professional had not received the premium discount plus 20 percent of the amount of the premium that

would have been due without the premium discount.

(d) If a health care professional who has received the premium discount for the policy year submits the difference between the premium paid and the premium that would have been due if the health care professional had not received the premium discount plus interest at the legal rate for the unpaid premium prior to 30 days before the expiration of the policy year, the health care professional will not be subject to the penalty provided in Subsection (c).

Sec. 7. PROHIBITIONS ON INSURER; SANCTIONS. (a) An insurer may not cancel or refuse to renew a health care professional's medical professional liability insurance coverage solely on the basis that the health care professional is eligible for a premium discount under this article except for the following reasons:

(1) fraud or misrepresentation in obtaining coverage;

(2) failure to pay premiums when due; or

(3) the insurer's being placed under supervision or in conservatorship or receivership, if the cancellation or nonrenewal is approved by the supervisor, conservator, or receiver.

(b) A health care professional who files the appropriate verified application or statement under this article will be entitled to a premium discount as approved by the board under Section 3 of this article. When consent to rate is used, a health care professional will be entitled to the appropriate discount from the rate agreed to by consent.

(c) An insurer who violates this article is subject to the sanctions authorized under Section 7, Article 1.10, of this code.

1 Sec. 8. AUTHORITY OF STATE BOARD OF INSURANCE. The State
2 Board of Insurance shall administer this article and shall adopt
3 necessary rules, forms, endorsements, and procedures to carry out
4 this article.
5 Sec. 9. EXPIRATION. Unless continued in existence this
6 article expires September 1, 1993.
7 SECTION 19. Subsection (d), Section 3.06, Medical Practice
8 Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to
9 read as follows:
10 (d) This Act shall be so construed that:
11 (1) a person licensed to practice medicine shall have
12 the authority to delegate to any qualified and properly trained
13 person or persons acting under the physician's supervision any
14 medical act which a reasonable and prudent physician would find is
15 within the scope of sound medical judgment to delegate if, in the
16 opinion of the delegating physician, the act can be properly and
17 safely performed by the person to whom the medical act is delegated
18 and the act is performed in its customary manner, not in violation
19 of any other statute, and the person does not hold himself out to
20 the public as being authorized to practice medicine. The
21 delegating physician shall remain responsible for the medical acts
22 of the person performing the delegated medical acts. The board may
23 determine whether or not an act constitutes the practice of
24 medicine, not inconsistent with this Act, and may determine whether
25 any medical act may or may not be properly or safely delegated by
26 physicians;
27 (2) a person licensed to practice medicine is

1 authorized and shall have the authority to delegate to any
2 qualified and properly trained person or persons, acting under the
3 physician's supervision, the act or acts of administering or
4 providing, in the physician's office, dangerous drugs, as ordered
5 by the physician which are used or required to meet the immediate
6 needs of the physician's patients. The administration or
7 provision, as ordered by a physician, may be delegated through
8 physician's orders, standing medical orders, standing delegation
9 orders, or other orders, where applicable, as the orders are
10 defined by the board. The administration or provision of dangerous
11 drugs shall be in compliance with laws relating to the practice of
12 medicine and Texas and federal laws relating to the dangerous
13 drugs. This subdivision does not permit the physician or person or
14 persons acting under the supervision of the physician to keep a
15 pharmacy, advertised or otherwise, for the retailing of the
16 dangerous drugs without complying with the applicable laws relating
17 to the dangerous drugs;
18 (3) a person licensed to practice medicine shall be
19 authorized and shall have the authority to delegate to any
20 qualified and properly trained person or persons, acting under the
21 physician's supervision, the act or acts of administering or
22 providing dangerous drugs, if the provision is provided through a
23 facility licensed by the State Board of Pharmacy pursuant to
24 applicable law, as ordered by the physician, which are used or
25 required to meet the immediate needs of the physician's patients.
26 The administration or provision, as ordered by a physician, may be
27 delegated through physician's orders, standing medical orders,

1 standing delegation orders, or other orders, where applicable, as
2 the orders are defined by the board. The provision of dangerous
3 drugs shall be in compliance with any laws relating to the practice
4 of medicine, laws relating to the practice of professional nursing,
5 laws relating to the practice of pharmacy, Texas or federal drug
6 laws, and rules that may be properly issued by the State Board of
7 Pharmacy. The administration shall be in compliance with any laws
8 relating to the practice of medicine, laws relating to the practice
9 of professional nursing, laws relating to the practice of pharmacy,
10 and Texas or federal drug laws. This subdivision does not permit
11 the physician or person or persons acting under the supervision of
12 the physician to keep a pharmacy, advertised or otherwise, for the
13 retailing of the dangerous drugs without complying with the
14 applicable laws relating to the retailing of dangerous drugs. In
15 this subdivision and in Subdivision (2) of this subsection,
16 "administering" means the direct application of a drug by
17 injection, inhalation, ingestion, or any other means to the body of
18 the physician's patient; "provision" means to supply one or more
19 unit doses of a drug, medicine, or dangerous drug. The drug or
20 medicine shall be supplied in a suitable container that has been
21 labeled in compliance with the applicable drug laws. However, a
22 qualified and trained person or persons, acting under the
23 supervision of a physician, may be permitted to specify at the time
24 of the provision the inclusion of the date of provision and the
25 patient's name and address;
26 (4) in the provision of services and the
27 administration of therapy by public health departments, as

1 officially prescribed by the Texas Department of Health for the
2 prevention or treatment of specific communicable diseases or health
3 conditions for which the Texas Department of Health is responsible
4 for control under state law, a person licensed to practice medicine
5 shall be authorized and shall have the authority to delegate to any
6 qualified and properly trained person or persons, acting under the
7 physician's supervision, the act or acts of administering or
8 providing dangerous drugs, as ordered by the physician that are
9 used or required to meet the needs of the patients. The
10 administration or provision, as ordered by a physician, may be
11 delegated through physician's orders, standing medical orders,
12 standing delegation orders, or other orders, where applicable, as
13 the orders are defined by the board. The provision of dangerous
14 drugs shall be in compliance with any laws relating to the practice
15 of medicine, laws relating to the practice of pharmacy, and laws
16 relating to the practice of professional nursing. The orders may
17 not be inconsistent with this Act and may not be used for the
18 performance of acts and duties that require the exercise of
19 independent medical judgment. In this subdivision, "administering"
20 means the direct application of a drug by injection, inhalation,
21 ingestion, or any other means to the body of the patient;
22 "provision" means to supply one or more unit doses of a drug,
23 medicine, or dangerous drug. The drug or medicine shall be
24 supplied in a suitable container that has been labeled in
25 compliance with the applicable drug laws. However, a qualified and
26 trained person or persons, acting under the supervision of a
27 physician, may be permitted to specify at the time of the provision

the inclusion of the date of provision and the patient's name and address.

(5)(A) At a site serving a medically underserved population, a physician licensed by the board shall be authorized to delegate to a registered nurse or physician assistant acting under adequate physician supervision, the act or acts of administering, providing, or carrying out a prescription drug order as authorized by the physician through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board.

(B) The carrying out of prescription drug orders under this subsection shall comply with other applicable laws.

(C) Physician supervision shall be adequate if a delegating physician:

(i) is responsible for the formulation or approval of such physician's orders, standing medical orders, standing delegation orders, or other orders or protocols and periodically reviews such orders and the services provided patients under such orders;

(ii) is on site at least once a week to provide medical direction and consultation;

(iii) receives a daily status report from the registered nurse or physician assistant on any problems or complications encountered; and

(iv) is available through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

(D) In this subsection:

(i) "Registered nurse" means a registered nurse recognized by the Board of Nurse Examiners as having the specialized education and training required under Section 7, Article 4514, Revised Statutes.

(ii) "Physician assistant" means a physician assistant recognized by the Board of Medical Examiners as having the specialized education and training required under Subsection (d), Section 5.02 of this Act.

(iii) "Carrying out a prescription drug order" means to complete a prescription drug order presigned by the delegating physician by providing the following information: the patient's name and address; the drug to be dispensed; directions to the patient in regard to the taking and dosage; the name, address, and telephone number of the physician; the name, address, telephone and identification number of the registered nurse or physician assistant completing the prescription drug order; the date; and the number of refills permitted. The board may adopt additional methods to carry into effect or put into force a physician's prescription under physician's orders, standing medical orders, standing delegation orders, or other orders or protocols.

(iv) "A site serving a medically underserved population" means:

(a) a site located in a medically underserved area;

(b) a site located in a health manpower shortage area;

(c) a clinic designated as a rural health clinic under the Rural Health Clinic Services Act of 1977 (Pub. L. No. 95-210);

(d) a public health clinic or a family planning clinic under contract with the Texas Department of Human Services or the Texas Department of Health;

(e) a site located in an area in which the Texas Department of Health determines there exists an insufficient number of physicians providing services to eligible clients of federal, state, or locally funded health care programs; or

(f) a site that the Texas Department of Health determines serves a disproportionate number of clients eligible to participate in federal, state, or locally funded health care programs.

(v) "Health manpower shortage area" means (1) an area in an urban or rural area of Texas (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the secretary of health and human services determines has a health manpower shortage and which is not reasonably accessible to an adequately served area; (2) a population group which the secretary determines to have such a shortage; or (3) a public or nonprofit private medical facility or other facility which the secretary determines has such a shortage as delineated in 42 U.S.C. Section 254(e)(a)(1).

(vi) "Medically underserved area" means an

area in Texas with a medically underserved population or an urban or rural area designated by the secretary of health and human services as an area in Texas with a shortage of personal health services or a population group designated by the secretary as having a shortage of such services (as defined in 42 U.S.C. Section 300(e)-1(7)).

(E) After making a determination under either Subdivision (D)(iv)(e) or (D)(iv)(f) that a site serves a medically underserved population, the Texas Department of Health shall publish notice of its determination in the Texas Register and provide an opportunity for public comment in the same manner as for a proposed rule under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(F) The authority granted to a physician to delegate under this subdivision shall not be construed as limiting the authority of a physician to delegate under any other subdivision of this subsection.

(6)(A) A duly licensed and qualified optometrist may administer topical ocular pharmaceutical agents in the practice of optometry as provided by this subdivision. These pharmaceutical agents may not be used for therapeutic purposes.

(B) To be entitled to use topical ocular pharmaceutical agents in the practice of optometry, an optometrist must possess a valid standing delegation order that:

(i) is issued to the optometrist by an area physician licensed to practice medicine in this state; and

(ii) authorizes the use of the

1 pharmaceutical agents authorized by this subdivision.

2 (C) On request, an optometrist will be issued a
3 standing delegation order described by Paragraph (B) of this
4 subdivision unless the physician acting as a reasonable and prudent
5 physician determines that denial is within the scope of sound
6 medical judgment as it pertains to optometry, or that it is not in
7 the public interest, and the basis for denial shall be given to the
8 requesting optometrist in writing if requested. It is necessary
9 that the physician have knowledge of the requesting optometrist,
10 and if not, then same shall be good cause for denial.

11 (D) A standing delegation order issued under
12 this subdivision or a representation of the order will be
13 prominently displayed in the office of the optometrist. The board
14 will prescribe the form of the standing delegation order and the
15 certificate or representation of the order. The standing
16 delegation order, as a minimum, will:

17 (i) be in writing, dated and signed by the
18 physician;

19 (ii) specify the available topical ocular
20 pharmaceutical agents, including but not limited to topical
21 anesthetics and dilating agents, to be administered in the office;
22 and

23 (iii) specify that said agents shall not
24 be used for therapeutic purposes.

25 (E) On the complaint of any person or on its own
26 initiative, the board of medical examiners may cancel a standing
27 delegation order issued under this section if it determines that

the optometrist possessing the order has violated the standing delegation order or this section.

(F) Except as provided by Paragraph (E) of this subdivision, a standing delegation order issued under this subdivision remains valid as long as:

(i) the physician who issued the order is a resident of this state and is licensed to practice medicine in this state;

(ii) no irregularities are found on annual review; and

(iii) the order is not canceled for good cause by either party.

(G) A physician who has issued a standing delegation order in compliance with this subdivision is immune from liability in connection with acts performed pursuant to the standing delegation order so long as he has used prudent judgment in the issuance or the continuance of the standing delegation order.

(H) Nothing herein is intended to limit or expand the practice of optometry as defined by law.

(7) [~~(6)~~] Authority to delegate medical acts to properly qualified persons as provided in this section is recognized as applicable to emergency care rendered by emergency medical personnel certified by the Texas Department of Health.

(8) [~~(7)~~] (A) It is the policy of this state that the prevention of ophthalmia neonatorum in newborn infants is of paramount importance for the protection of the health of Texas

children.

(B) Authority to delegate medical acts to a lay midwife registered under Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is recognized as applicable to the possession of and administration of eye prophylaxis for the prevention of ophthalmia neonatorum.

(C) A physician who has issued such a standing delegation order is immune from liability in connection with acts performed pursuant to the standing delegation order as long as the lay midwife has provided proof of compliance with Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), prior to the issuance of the order.

SECTION 20. Section 5.02, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) The board shall adopt rules establishing:

(1) any specialized education and training, including pharmacology, a physician assistant must have to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06, of this Act; and

(2) a system for assigning an identification number to a physician assistant who provides the board with evidence of completing the required specialized education and training.

SECTION 21. Article 4514, Revised Statutes, is amended by adding Section 7 to read as follows:

Sec. 7. The board shall adopt rules establishing:

(1) any specialized education and training, including pharmacology, a registered nurse must have to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes); and

(2) a system for assigning an identification number to a registered nurse who provides the board with evidence of completing the required specialized education and training.

SECTION 22. Section 5, Article 4518, Revised Statutes, is amended to read as follows:

Sec. 5. Insofar as any of the following acts require substantial specialized judgment and skill and insofar as the proper performance of any of the following acts is based upon knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing, "Professional Nursing" shall be defined as the performance for compensation of any nursing act (a) in the observation, assessment, intervention, evaluation, rehabilitation, care and counsel and health teachings of persons who are ill, injured or infirm or experiencing changes in normal health processes; (b) in the maintenance of health or prevention of illness; (c) in the administration of medications or treatments as ordered [~~prescribed~~] by a licensed physician, including a podiatric physician licensed by the Texas State Board of Podiatry Examiners, or dentist; (d) in the supervision or teaching of nursing; (e) in the administration, supervision, and evaluation of nursing practices, policies, and procedures. The foregoing shall not be

deemed to include acts of medical diagnosis or prescription of therapeutic or corrective measures. Nothing in this section shall be construed as prohibiting a registered nurse recognized by the board as having the specialized education and training required under Section 7, Article 4514, Revised Statutes, and functioning under adequate physician supervision from carrying out prescription drug orders or treatments under physician's orders, standing medical orders, standing delegation orders, or other orders or protocols.

SECTION 23. Subdivision (33), Section 5, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(33) "Prescription drug order" means:

(A) a written order from a practitioner or verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written or verbal order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

SECTION 24. Subsection (h), Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) The term "prescription" means a written order or telephonic order, by a practitioner or an order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) or an order by an agent of the practitioner who is designated in writing as

authorized to communicate prescriptions by telephone, to a pharmacist for a dangerous drug to be dispensed, which specifies the date of its issue, the name and address of the patient (and, if such dangerous drug is prescribed for an animal, the species of such animal), the name and quantity of the dangerous drug prescribed, and the directions for use of such drug.

SECTION 25. Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes), is amended by adding Section 3B to read as follows:

Sec. 3B. (a) Each practitioner shall designate in writing the name of each registered nurse or physician assistant authorized to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). A list of the registered nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific registered nurse or physician assistant.

SECTION 26. The Texas Department of Human Services shall not impose any conditions on Medicaid reimbursement of rural health clinics that are more stringent than those imposed by the Rural Health Clinic Services Act of 1977 (Pub. L. No. 95-210) or the laws of this state regulating the practice of medicine, pharmacy, or professional nursing.

SECTION 27. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is

amended by adding Subchapter N to read as follows:

SUBCHAPTER N. EXPERT WITNESSES

Sec. 14.01. QUALIFICATION OF EXPERT WITNESS IN SUIT AGAINST PHYSICIAN. (a) In a suit involving a health care liability claim against a physician for injury to or death of a patient, a person may qualify as an expert witness on the issue of whether the physician departed from accepted standards of medical care only if:

(1) the person is practicing at the time such testimony is given or was practicing at the time the claim arose and has knowledge of accepted standards of medical care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; or

(2) the court, after a hearing conducted outside the presence of the jury, determines that the person is otherwise qualified to give expert testimony on said issue.

(b) For the purpose of this section, "practicing" includes, but is not limited to, training residents or students at an accredited school of medicine or osteopathy or serving as a consulting physician to other physicians who provide direct patient care, upon the request of such other physicians.

SECTION 28. Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 7.02 to read as follows:

Sec. 7.02. JURY INSTRUCTION AUTHORIZED IN CERTAIN CASES. (a) In a jury trial involving a health care liability claim against a physician or hospital for injury to or death of a patient in which the court determines that the following instruction is

reasonably applicable to the facts, the court shall provide the following instruction in the court's charge to the jury:

"A finding of negligence may not be based solely on evidence of a bad result to the patient in question, but such a bad result may be considered by you, along with other evidence, in determining the issue of negligence; you shall be the sole judges of the weight, if any, to be given to any such evidence."

(b) Nothing in Subsection (a) of this section shall affect the existing law regarding the applicability or nonapplicability of the doctrine of res ipsa loquitur to a health care liability claim.

(c) The determination of whether the instruction authorized by Subsection (a) of this section is reasonably applicable to the facts shall be made by the trial court in its sole discretion, and such determination by the trial court shall be reviewable by an appellate court only for an abuse of such discretion.

SECTION 29. Section 1.03, Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (24)-(26) to read as follows:

(24) "Emergency medical services and trauma care system" means an arrangement of available resources that are coordinated for the effective delivery of emergency health care services in geographical regions consistent with planning and management standards.

(25) "Trauma patient" means any critically injured person who has been:

(A) evaluated by a physician, a registered

nurse, or emergency medical services personnel; and

(B) found to require medical care in a trauma facility.

(26) "Trauma facility" means a health care facility that is capable of comprehensive treatment of seriously injured persons and that is a part of an emergency medical services and trauma care system.

SECTION 30. The Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) is amended by adding Articles 4 and 5 to read as follows:

Art. 4. EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS

Sec. 4.01. DUTIES OF BUREAU. The bureau shall:

(1) develop and monitor a statewide emergency medical services and trauma care system;

(2) designate trauma facilities;

(3) develop and maintain a trauma reporting and analysis system to:

(A) identify severely injured trauma patients at each health care facility in this state;

(B) identify the total amount of uncompensated trauma care expenditures made each fiscal year by each health care facility in this state; and

(C) monitor trauma patient care in each health care facility, including each designated trauma center, in emergency medical services and trauma care systems in this state; and

(4) provide for coordination and cooperation between

this state and any other state with which this state shares a standard metropolitan statistical area.

Sec. 4.02. EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS. (a) The board by rule shall adopt minimum standards and objectives to implement emergency medical services and trauma care systems. The board by rule shall provide for the designation of trauma facilities and for triage, transfer, and transportation policies that reflect the recommendations of the technical advisory committee. The board and the technical advisory committee shall consider guidelines adopted by the American College of Surgeons and the American College of Emergency Physicians in adopting rules under this section. The rules must provide specific requirements for the care of trauma patients, must ensure that the trauma care is fully coordinated with all hospitals and emergency medical services in the delivery area, and must reflect the geographic areas of the state, considering time and distance. The rules must include:

(1) prehospital care management guidelines for triage and transportation of trauma patients;

(2) flow patterns of trauma patients and geographic boundaries regarding trauma patients;

(3) assurances that trauma facilities will provide quality care to trauma patients referred to the facilities;

(4) minimum requirements for resources and equipment needed by a trauma facility to treat trauma patients;

(5) standards for the availability and qualifications of the health care personnel, including physicians and surgeons,

1 treating trauma patients within a facility;

2 (6) requirements for data collection, including trauma

3 incidence reporting, system operation, and patient outcome;

4 (7) requirements for periodic performance evaluation

5 of the system and its components; and

6 (8) assurances that designated trauma facilities will

7 not refuse to accept the transfer of a trauma patient from another

8 facility solely because of the person's inability to pay for

9 services or because of the person's age, sex, race, religion, or

10 national origin.

11 (b) The bureau may grant an exception to a rule adopted

12 under this section if it finds that compliance with the rule would

13 not be in the best interests of the persons served in the affected

14 local emergency medical services and trauma care delivery area.

15 (c) Each emergency medical services and trauma care system

16 must have:

17 (1) local or regional medical control for all field

18 care and transportation, consistent with geographic and current

19 communications capability;

20 (2) triage, transport, and transfer protocols; and

21 (3) one or more hospitals categorized according to

22 trauma care capabilities using standards adopted by board rule.

23 (d) This section does not prohibit a health care facility

24 from providing services that it is authorized to provide under a

25 license issued to the facility by the department.

26 Sec. 4.03. TRAUMA FACILITIES. (a) The bureau may designate

27 trauma facilities that are a part of an emergency medical services

and trauma care system. A trauma facility shall be designated by the level of trauma care and services provided in accordance with the American College of Surgeons guidelines for level I, II, and III trauma centers and rules adopted by the board for level IV trauma centers. In adopting rules under this section, the board may consider trauma caseloads, geographic boundaries, or minimum population requirements, but the bureau may not deny designation solely on these criteria. The board may not set an arbitrary limit on the number of facilities designated as trauma facilities.

(b) A health care facility may apply to the bureau for designation as a trauma facility and the bureau shall grant the designation if the facility meets the requirements for designation prescribed by board rules.

(c) After September 1, 1993, a health care facility may not use the terms "trauma facility," "trauma hospital," "trauma center," or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the facility has been designated as a trauma facility under this Act.

Sec. 4.04. FEES. (a) The bureau shall charge a fee to a health care facility that applies for initial or continuing designation as a trauma facility.

(b) The board by rule shall set the amount of the fee schedule for initial or continuing designation as a trauma facility according to the number of beds in the health care facility.

(c) The board shall set the fee for the highest level designation at not more than $3 a bed, but the total fee for the

1 facility may not be less than $100 or more than $3,000. The fee
2 for an intermediate level designation shall be set at not more than
3 $2 a bed, but the total fee for the facility may not be less than
4 $100 or more than $2,000. The fee for the lowest level designation
5 shall be set at not more than $1 a bed, but the total fee for the
6 facility may not be less than $100 or more than $1,000.
7 (d) A fee under Subsection (c) of this section may not
8 exceed the cost directly related to designating trauma facilities
9 under this Act.
10 (e) This section does not restrict the authority of a health
11 care facility to provide a service for which it has received a
12 license under other state law.
13 Sec. 4.05. DENIAL, SUSPENSION, OR REVOCATION OF DESIGNATION.
14 (a) The department may deny, suspend, or revoke a health care
15 facility's designation as a trauma facility if the facility fails
16 to comply with the rules adopted under this Act.
17 (b) The denial, suspension, or revocation of a designation
18 by the department and the appeal from that action are governed by
19 the department's rules for a contested case hearing and by the
20 Administrative Procedure and Texas Register Act (Article 6252-13a,
21 Vernon's Texas Civil Statutes).
22 Sec. 4.06. ADVISORY COMMITTEE. (a) The board shall appoint
23 a 12-member technical advisory committee to advise the bureau in
24 areas requiring professional medical expertise and to review and
25 comment on hospital administrative and operational considerations
26 relating to rules adopted under this Act.
27 (b) Appointees to the technical advisory committee must

include:

(1) hospital administrators who represent both urban and rural facilities, chosen from a list of nominees submitted by statewide associations of hospitals;

(2) representatives appointed from statewide associations of emergency nurses;

(3) practicing physicians who are board-certified in emergency medicine, neurosurgery, surgery, and anesthesiology;

(4) two family practice physicians, at least one of whom has been in active practice in a rural area for at least five years preceding appointment; and

(5) at least one member who usually represents claimants, chosen from a list of nominees submitted by the statewide association of trial lawyers.

(c) A member of the technical advisory committee is entitled to the per diem and travel allowance authorized by the General Appropriations Act for state employees.

Art. 5. FUNDING FOR EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS

Sec. 5.01. LEGISLATIVE FINDINGS. The legislature finds that death caused by injury is the leading cause of death for persons one through 44 years of age, and the third overall cause of death for all ages. Effective emergency medical services response and resuscitation systems, medical care systems, and medical facilities reduce the occurrence of unnecessary mortality. It is estimated that trauma costs more than $63 million a day nationally, which includes lost wages, medical expenses, and indirect costs.

Proportionately, this cost to Texas would be more than $4 million a day. Many hospitals provide emergency medical care to patients who are unable to pay for catastrophic injuries directly or through an insurance or entitlement program. In order to improve the health of the people of the state, it is necessary to improve the quality of emergency and medical care to the people of Texas who are victims of unintentional, life-threatening injuries by encouraging hospitals to provide trauma care and increasing the availability of emergency medical services.

Sec. 5.02. GRANT PROGRAM. (a) The department shall establish a program to award grants to initiate, expand, maintain, and improve emergency medical services and to support medical systems and facilities that provide trauma care.

(b) The board by rule shall establish eligibility criteria for awarding the grants. The rules must require the department to consider:

(1) the need of an area for the provision of emergency medical services or trauma care and the extent to which the grant would meet the identified need;

(2) the availability of personnel and training programs;

(3) the availability of other funding sources;

(4) the assurance of providing quality services;

(5) the use or acquisition of helicopters for emergency medical evacuation; and

(6) the development or existence of an emergency medical services system.

1 (c) The department may approve grants according to the rules
2 adopted by the board. A grant awarded under this section is
3 governed by the Uniform Grant and Contract Management Act of 1981
4 (Article 4413(32g), Vernon's Texas Civil Statutes) and by the rules
5 adopted under that Act.
6 (d) The department may require a grantee to provide matching
7 funds equal to not more than 75 percent of the amount of the grant.
8 Sec. 5.03. ACCEPTANCE OF GIFTS. A trauma facility or an
9 emergency medical services and trauma care system may accept gifts
10 or other contributions for the purposes of this Act.
11 SECTION 31. Sections 17 and 18 of this Act take effect on
12 January 1, 1990, and apply only to causes of action that accrue on
13 or after that date.
14 SECTION 32. Sections 27 and 28 of this Act apply only to a
15 cause of action that accrues on or after the effective date of this
16 Act. An action that accrued before the effective date of this Act
17 is governed by the law in effect at the time the action accrued,
18 and that law is continued in effect for that purpose.
19 SECTION 33. This Act takes effect September 1, 1989.
20 SECTION 34. The importance of this legislation and the
21 crowded condition of the calendars in both houses create an
22 emergency and an imperative public necessity that the
23 constitutional rule requiring bills to be read on three several
24 days in each house be suspended, and this rule is hereby suspended.

H.B. No. 18

President of the Senate

Speaker of the House

I certify that H.B. No. 18 was passed by the House on May 1, 1989, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 18 on May 26, 1989, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 18 was passed by the Senate, with amendments, on May 24, 1989, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

H. B. No. 18

By M. Kinney / [illegible] Rodd

A BILL TO BE ENTITLED

AN ACT

relating to the office of rural health care, surveys of hospitals and physicians, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers; providing civil penalties.

MAR 8 1989 — 1. Filed with the Chief Clerk.

MAR 13 1989 — 2. Read first time and Referred to Committee on Public Health

APR 18 1989 — 3. Reported ___ favorably ([redacted]) (as substituted) and sent to Printer at 12:20pm

APR 21 1989 — 4. Printed and distributed at 4:31pm

APR 21 1989

APR 24 1989 — 5. Sent to Committee on Calendars at 7:53 am

APR 27 1989 — Motion to suspend all necessary rules and take up out of order prevails by non record vote.

APR 27 1989 — 6. Read second time (amended); passed to third reading ~~(failed)~~ by (Non-Record Vote) ~~(Record Vote of ___ yeas, ___ nays, ___ present, not voting)~~. as subs.

_____ 7. Motion to reconsider and table the vote by which H.B. _____ was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____ present, not voting.

MAY 1 1989 — 9. Read third time (amended); finally passed ~~(failed)~~ by (Non-Record Vote) ~~(Record Vote of ___ yeas, ___ nays, ___ present, not voting)~~.

_____ 10. Caption ordered amended to conform to body of bill.

_____ 11. Motion to reconsider and table the vote by which H. B. _____ was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

MAY 1 1989 — 12. Ordered Engrossed at 3:39 pm

MAY 01 1989 — 13. Engrossed.

MAY 01 1989 — 14. Returned to Chief Clerk at 11:17pm

MAY 2 1989 — 15. Sent to Senate.

Betty Murray
Chief Clerk of the House

MAY 2 1989 — 16. Received from the House

MAY 3 1989 — 17. Read, referred to Committee on HEALTH AND HUMAN SERVICES

_____ 18. Reported favorably

MAY 22 1989 — 19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

_____ 20. Ordered not printed.

MAY 24 1989 — 21. Regular order of business suspended by unanimous consent (a viva voce vote.) (_____ yeas, _____ nays.)

81

89 MAR 28 12:37 89 APR 21 PM 4:31

MAY 24 1989 22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.

MAY 24 1989 23. Read second time amended passed ~~to third reading by:~~ (a viva voce vote.) (_____ yeas, _____ nays.)

MAY 24 1989 24. Caption ordered amended to conform to body of bill.

MAY 24 1989 25. Senate and Constitutional 3-Day Rules suspended by vote of 29 yeas, 1 nays to place bill on third reading and final passage.

MAY 24 1989 26. Read third time and passed by ~~(a viva voce vote.)~~ (30 yeas, 0 nays.)

OTHER ACTION: OTHER ACTION:

Betty King
Secretary of the Senate

May 24, 1989 27. Returned to the House.

MAY 24 1989 28. Received from the Senate (with amendments.) (as substituted.)

MAY 26 1989 Motion to table motion not to concur in Senate sub. and amendments prevailed by record vote 101 yeas 44 nays 1 pnv.

MAY 26 1989 29. House (Concurred) ~~(Refused to Concur)~~ in Senate (Amendments) (Substitute) by a (Non-Record Vote) ~~(Record Vote of _____ yeas, _____ nays, _____ present, not voting).~~

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

MAY 26 1989 32. Ordered Enrolled at 12:55 pm

HOUSE OF REPRESENTATIVES

89 MAY 24 PM 9:30

89 MAY -1 PM 4:17

Patterson Perry Campbell Telford Melton
Clemons Laney J. Johnson Russell Robinson
Berlanga Harrison Taylor Smithee Kubiak
Finnell Hilderbran Stiles Waterfield Alexander
Oakley Counts Uher Linebarger Lucio
Glossbrenner Saunders McCollough Valigura
Edge Junnell
McDonald
R. Lewis

By [signature] Rudd H.B. No. 18

A BILL TO BE ENTITLED

AN ACT

relating to the office of rural health care, surveys of hospitals and physicians, emergency hospital patient transfers, liability for the provision of medical care, periodic payment of future damages, the provision of medical care to low-income and indigent persons, medical education, and professional liability insurance for physicians and other health care providers; providing civil penalties.

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

SECTION 1. This Act may be cited as the Omnibus Rural Health Care Rescue Act.

SECTION 2. Article 4414b, Revised Statutes, is amended by adding Sections 1.11 and 1.12 to read as follows:

Sec. 1.11. OFFICE OF RURAL HEALTH CARE. (a) The office of rural health care is in the department to promote access to health care in rural areas.

(b) The commissioner shall appoint a director to administer the office of rural health care. The director must have a history of involvement with rural health care practice or issues.

(c) The office of rural health care, in consultation with the advisory committee on rural health care, shall establish mechanisms to ensure access to medical care in rural areas and to recruit and retain practitioners in those areas.

Sec. 1.12. IMPACT STATEMENT ON PROPOSED RULES. (a) Before

President of the Senate

Speaker of the House

I certify that H.B. No. 18 (1) was passed by the House on May 1 (2), 1989, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 18 on May 26 (3), 1989, by a non-record vote.

Chief Clerk of the House

**** Preparation: 'A;CT64;

I certify that H.B. No. 18 (1) was passed by the Senate, with amendments, on May 24 (2), 1989, by the following vote: Yeas 30 (3), Nays 0 (4).

Secretary of the Senate

APPROVED:

Date

Governor

**** Preparation: 'A;CT14;